

STATE OF INDIANA  
BEFORE THE ALCOHOL & TOBACCO COMMISSION

IN THE MATTER OF )  
THE PERMIT OF: )  
 )  
ANGELA KLING, LLC ) PERMIT NO. RR31-30109  
3630 W BRADFORD RD NE )  
PALMYRA, IN 47164 )  
Applicant

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

**I. Background of the Case**

Angela Kling, LLC, d.b.a. Dat Kjun Bar ("Applicant") is an applicant for a new permit under the Alcohol and Tobacco Commission. The Applicant already has a permit to sell beer and wine at her restaurant, and wishes to sell liquor as well. The Alcoholic Beverage Board of Harrison County ("Local Board") held a hearing and voted 3-1 to recommend denial of the application for renewal. Applicant requested an appeal hearing before the Alcohol and Tobacco Commission ("Commission" or "ATC".) Applicant participated in an appeal hearing held before David Rothenberg ("Hearing Judge".) The Hearing Judge, having read the typed transcripts and documents from the Local Board hearing, the evidence and testimony submitted during the Local Board hearing and the contents of the entire file, as well as having taken judicial notice of the same, as well as the codes and standards adopted by the State of Indiana, now tenders Proposed Findings and Conclusions of Law to the Commission for its consideration.

**II. Procedural History**

1. On August 19, 2013, Applicant submitted an application to the Commission for a new permit to sell beer, wine, and liquor, numbered RR31-30109 ("Permit").
2. On November 5, 2013, the Local Board voted 3-1 to recommend denial of the application.
3. On November 19, 2013, the Commission voted 4-0 to adopt the recommendation of the Local Board to deny the application for the permit.

4. On March 27, 2014, the Hearing Judge heard the Applicant's appeal of the Commission's denial of the application for renewal.

### **III. Evidence Before the Local Board**

1. The following individuals testified before the Local Board on November 5, 2013, in favor of the Applicant:
  - a. The Applicant, Angela Kling, member Angela Kling, LLC.
  - b. James Slucher, husband of Angela Kling and part owner of Dat Kjun Bar
2. The following evidence was introduced and admitted before the Local Board in favor of the Applicant:
  - a. None.
3. The following individuals testified before the Local Board on November 5, 2013, against the Applicant:
  - a. John Jacobi, resident of Palmyra, IN
  - b. Mark Schenck, resident of Greenville, IN
  - c. Barbara Kincaid, resident of Greenville, IN
4. The following evidence was introduced and admitted before the Local Board against the Applicant:
  - a. A letter from Tom Jacobi, resident of Greenville, IN stating that he is against a liquor license, citing the lack of parking and the sale of alcoholic beverages in the area which he feels might result in impaired judgment when it comes to safety issues of the residents.
  - b. A letter from Valerie Hansen, a resident of Bradford, IN stating that she is against a liquor license due safety issues in the neighborhood. She states that there is a lot of traffic at all hours of the night and day due to the bar and that people do not respect the speed limit.
  - c. Pictures denoting the area around the premises.

### **IV. Evidence Before the Commission**

1. The contents of the entire Commission file regarding the Permit ("ATC File").

2. The following individuals testified at the Appeal Hearing on March 27, 2014, in favor of the Applicant:
  - a. The Applicant, Angela Kling, member Angela Kling, LLC.
  - b. James Slucher, husband of Angela Kling and part owner of Dat Kjun Bar
3. The following evidence was introduced and admitted before the Hearing Judge in favor of the Applicant:
  - a. Exhibit 1: A an aerial map of neighborhood surrounding Dat Kjun Bar;
  - b. Exhibit 2: Color-coded map of homes in neighborhood illustrating 33 homes "for" liquor service, four (4) homes "against" liquor service, seven (7) homes neutral on service, and seven (7) homes where residents were not home. This survey was taken the week prior to the hearing;
  - c. Exhibit 3: Signed letters from residents who are in favor of liquor service; and
  - d. Exhibit 4: 78 letters from bar patrons in favor of liquor service.
4. The following individuals testified at the Appeal Hearing on December 20, 2012, against the Applicant:
  - a. Mark Schenck, resident of Greenville, IN
  - b. Melissa Schenck, resident of Greenville, IN
5. The following evidence was introduced and admitted before the Hearing Judge against the Applicant:
  - a. None.
  - b. Note: a petition was faxed to the Alcohol and Tobacco Commission office on April 1<sup>st</sup>, 2014, with 19 signatures, representing people who were not in favor of liquor service. Of these people, one had been listed neutral and two to three had not been home during the color-coded survey which was done prior to the hearing by applicant.

#### **V. Findings of Fact**

1. Applicant is applying for the aforementioned permit. (Local Board Hearing; ATC File).

2. Applicant has served beer and wine under various names for many years. (ATC File)
3. Mr. Shireman, local board member, stated that his basis for denial was based on lack of desire as evidenced by three remonstrators and two letters stating their lack of support for the permit, in combination with a lack of testimony or evidence outside of the owners. (Local Board Hearing).
4. Mr. Smith, local board member, stated that his basis for approval was the unknown factor as whether had alcohol will make the situation outlined by the remonstrators any worse and he was "give them a shot at it". (Local Board Hearing)
5. Mr. Lander, local board member, stated that his basis for denial was that "[t]he community members outnumbered your (the applicants') testimony, so based on that alone, it appears to me that this is not something the community wants." (Local Board Hearing)
6. Officer Gibson, local board member, stated that his basis for denial is the lack of community desire (Local Board).
7. In general, the local board voted against awarding the permit due to lack of desire of community illustrated at the local board meeting (Local Board).
8. Taken at in the light favorable to the remonstrators, there are 33 residents "for" liquor sales and 21 residents either "against", "neutral", or "not home" according to the map survey and the petition that was sent to the ATC after the appeal hearing. (Appeal Hearing)
9. Remonstrators state there is noise presently coming from the bar at various times of the week and there are presently parking problems. (Local Board; ATC Hearing)
10. There have been no complaints to the police regarding noise or traffic within the last couple of years at Applicant's premises. (ATC Hearing)
11. Applicant has installed a decibel meter outside of the building to monitor the noise levels. (ATC Hearing)
12. Applicant has worked with community to solve any issues which have been brought to his attention (ATC Hearing)
13. Any Finding of Fact may be considered a Conclusion of Law, if the context so warrants.

## VI. Conclusions of Law

1. The ATC has jurisdiction over this matter pursuant to Ind. Code 7.1-1-2-2; Ind. Code 7.1-2-3-9.
2. The permit application was properly submitted pursuant to Ind. Code 7.1-3-1-4.
3. The ATC is commissioned to act upon proper application. Id.
4. The Hearing judge conducted a *de novo* review of the appeal on behalf of the ATC, including a public hearing. 905 IAC 1-36-7(a); Ind. Code 7.1-3-19-11.5
5. The Hearing Judge may consider as evidence all documents, codes and standards that have been adopted by an agency of this state. 905 IAC 1-36-8(e)
6. The Hearing Judge may consider as evidence all documents in the ATC file, including the transcript of proceedings and exhibits before the Local Board. 905 IAC 1-36-7(a)
7. Evidence at the hearing was received in accordance with the Indiana Administrative Code and the Commission's rules. The findings here are based exclusively upon substantial and reliable evidence in the record of proceedings and on matters officially noted in the proceedings. 905 IAC 1-37-11(e); Ind. Code 4-21.5-3-27(d)
8. The Commission has discretion to grant or refuse a Permit application. Ind. Code §§ 7.1-3-19-1, *et seq.*
9. The Commission shall consider the acts of the applicant, or its employees or agents, in determining the moral character and repute of the Applicant. 905 IAC 1-27-1.
10. The Commission may infer the esteem with which the Applicant is held by the community from police reports, evidence submitted at Commission proceedings, and information contained in public records. Id.
11. The Commission is required to follow the recommendation of the Local Board when the Local Board votes to deny an application by a majority vote, unless the recommendation is arbitrary, capricious, contrary to a constitutional right, outside statutory jurisdiction, without observance of required procedures, or unsupported by substantial evidence. Ind. Code § 7.1-3-19-11.
12. The Applicant contends the Commission's decision to not issue the Permit was unsupported by substantial evidence.
13. Substantial evidence is the standard to be applied by the Commission in review of the record of proceedings. Substantial evidence requires something more than a scintilla, and less than a preponderance of evidence; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Indiana Alcoholic Beverage Comm. v. River Road Lounge*, 590 N.E. 2d 656, 659 (Ind. App.

1992); see also *Roberts v. County of Allen*, 773 N.E.2d 850, 853 (Ind. App. 2002).  
Substantial evidence is more than speculation or conjecture. *Id.*

14. The Applicant is a fit and proper applicant, has maintained a reputation for decency and law obedience, and is well qualified to hold an alcoholic beverage permit under Indiana Law. 905 IAC 1-27-1; Ind. Code 7.1-3-19-10
15. The Local Board met all of the requirements under Ind. Code §7.1-3-19-11 with the evidence presented at the time, however the Appeal Hearing, done under the de novo standard, allows new evidence to be submitted both in regards to the Applicant and any remonstrators.
16. In accordance with the above, the Applicant has demonstrated that there is a desire in the community to allow liquor to be served on the premises by means of survey and signed forms and letters stating such.

Therefore, it is ORDERED, ADJUDGED AND DECREED that the findings of the Local Board to deny this be REVERSED.

It is further ORDERED, ADJUDGED AND DECREED that the evidence adduced at the Appeal Hearing was in favor of the Applicant, and the application of Angela Kling, LLC for the issuance of permit #RR31-30109, is APPROVED.

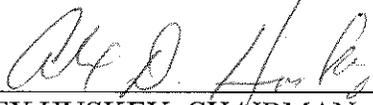
Dated: April 4, 2014



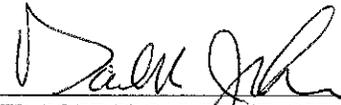
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David Rothenberg  
Hearing Judge

Approved this 7<sup>th</sup> day of May, 2014.



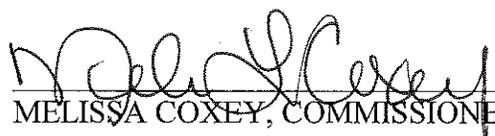
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ALEX HUSKEY, CHAIRMAN



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DAVID JOHNSON, VICE CHAIR



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DALE GRUBB, COMMISSIONER



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MELISSA COXEY, COMMISSIONER