

ALCOHOL AND TOBACCO COMMISSION

June 6, 2017

10:00 A.M.

1. Call to Order and Noting of Quorum –

2. Disposition of Minutes

May 16, 2017

3. Prosecutor's Recommendations –

PAD Forms

4. Hearing Judge's Recommendations –

RR45-14427 Franco's of Highland, Inc. – Proposed Findings of Fact

5. Consideration of Applications -

449 renewals
64 new/transfers
6 catering
5 1st year escrow
6 2nd year escrow
3 3rd year escrow
2 5th year escrow
2 6th year escrow
1 7th year escrow
36 new/renewal direct wine shipper
31 new renewal carrier
15 new e-liquid

6. Renewal Letters and Waivers of Fees for Letters of Extension -

7. Applications for Discussion –

DL53-30862 Kishu, Inc., d/b/a Lakeside Market

RR45-33111 WNC of Fort Wayne, LLC – New with LB voting 4-0 to approve.

DL10-90290 J.E.S.R. Foods, Inc. – Renewal with LB voting 4-0 to deny.

DL02-30935 Jat Boyz Stores, Inc. – New with LB voting 4-0 to deny.

RR34-10317 Ultimate Place, LLC – Renewal with LB voting 3-0 to deny. 1 member abstained

RR18-33119 American Multi-Cinema, Inc. – New with LB voting 4-0 to approve.

8. Inactive Files –

11 permits not subject to auction
2 permits subject to auction

9. Old Business -

Revocation of employee permits – Proof of treatment not provided
BR1835688 Shawna Mitchem
BR1638165 Steffanie Jourdain
BR1760416 Connor Dant

10. New Business –

Probationary status of employee permits –
BR1607589 Victoria Lea Rhoads – 1 conviction
BR1775246 Melvin Ray Page, Jr. – 1 conviction
BR1845966 Brittany Connell – 1 conviction

11. Policy Determinations –

Withdrawal Refunds

Use of Old Forms

12. Announcements -

13. Adjournment

MINUTES

ALCOHOL AND TOBACCO COMMISSION

JUNE 6, 2017

CALL TO ORDER/NOTING OF QUORUM

Chairman Cook called the meeting to order and noted the quorum and the attendance. Present were Vice Chairman Coleman, Commissioner Maginn and Commissioner Grubb. Commission Counsel Allen, Executive Secretary Rothenberg, Prosecutor Mader, Superintendent Strittmatter, Corporal Lynch and Industry Liaison Stewart were also in attendance.

Jeff McKean, Katie Maddox, Diane Masariu, Greg Genrich, Marc Carmichael, David Woodward, Matt Norris, Matt Brase, Brooke Burtnett, Alex Intermill, Greg, Troutman, Mark Webb, and Jamal Abdurashed, were present as observers.

DISPOSITION OF MINUTES

Vice Chairman Coleman moved to approve the minutes from the May 16, 2017 meeting. Commissioner Maginn seconded. The motion was unanimously approved.

PROSECUTOR'S RECOMMENDATIONS

PARTIES' AGREED DISPOSITIONS – Prosecutor Mader recommended the Commission approve the 37 Parties' Agreed Dispositions that were submitted, totaling \$14,475.00 in fines.

Commissioner Maginn moved to approve the Dispositions that were submitted for the June 6, 2017 meeting. Commissioner Grubb seconded. The motion was unanimously approved.

HEARING JUDGE'S RECOMMENDATIONS

RR45-14427 FRANCO'S OF HIGHLAND, INC. – Vice Chairman Coleman moved to continue this to the June 20, 2017 meeting. The Commission needs more time to consider the Findings submitted by the Hearing Judge. Commissioner Maginn seconded. The motion was unanimously approved.

CONSIDERATION OF APPLICATIONS

Commissioner Grubb moved to approve and incorporate by reference these lists of permits for renewal, which have been recommended by local boards and reviewed by our staff with the authority of the commission and hereby move for approval of same and the inclusion of these lists as part of the minutes. Commissioner Maginn seconded. The motion was unanimously approved.

Commissioner Grubb moved to approve and incorporate by reference these lists of permit applications for a new permit, or applications for changes in location or ownership or both of existing permits, which have been recommended by local boards and reviewed by at least two commissioners and hereby move for approval of same, pending final floor plan approval by the Indiana State Excise Police, and inclusion

of these lists as part of the minutes. Commissioner Maginn seconded. The motion was unanimously approved.

Commissioner Grubb moved to approve and incorporate by reference these lists of applications for catering. Commissioner Maginn seconded. The motion was unanimously approved.

Commissioner Grubb moved to approve and incorporate by reference these lists of permits to be placed in escrow for not more than five years, which have been reviewed and recommended by a commissioner as appropriate for escrow and hereby move for approval of same and the inclusion of these lists as part of the minutes. Commissioner Maginn seconded. The motion was unanimously approved.

Commissioner Grubb moved to approve sixth year escrow for permit #RR84-95179 for transfer purposes only. Commissioner Maginn seconded. The motion was unanimously approved.

Commissioner Grubb moved to approve the renewal direct wine shipper permits. Commissioner Maginn seconded. The motion was unanimously approved.

Commissioner Grubb moved to approve the new and renewal carrier permits. Commissioner Maginn seconded. The motion was unanimously approved.

Commissioner Grubb moved to approve the new e-liquid permit applications. Commissioner Maginn seconded. The motion was unanimously approved.

Four hundred forty-nine (449) renewals approved, sixty-four (64) new and/or transfer applications approved, six (6) permits approved for catering, five (5) permits approved for first year escrow, six (6) permits approved for second year escrow, three (3) permits approved for third year escrow, three (3) permits approved for fifth year escrow, one (1) permit approved for sixth year escrow, thirty-six (36) new and renewal direct wine shipper permits approved, thirty-two (32) new and renewal carrier permits approved, and fifteen (15) new e-liquid permits approved.

RENEWAL LETTERS AND WAIVERS OF FEES

Vice Chairman Coleman moved to approve the renewal and fee waived letters of extension for the preceding weeks. Commissioner Maginn seconded. The motion was unanimously approved.

APPLICATIONS FOR DISCUSSION

HOUSE ENROLLED ACT 1496 – Commissioner Maginn discussed procedure and policy changes occurring with the implementation of the new law. See attached transcript.

DL53-30862 KISHU, INC. – Vice Chairman Coleman noted this was a transfer of ownership and location. The local board and Commission approved the transfers back in January. It has come to the attention of the Commission that this location is within 200 feet of a church. The permittee stated on the application that it was not.

Vice Chairman Coleman moved to revoke the previous approval for the transfer of location. Commissioner Grubb seconded. The motion was unanimously approved.

RR45-33111 WNC OF FORT WAYNE, LLC. – Chairman Cook noted this is a new application with the local board voting 4-0 to approve.

Commissioner Maginn moved to uphold the local board's recommendation to approve the new permit. Vice Chairman Coleman stated the permit was on the list of permits that were already approved.

Commissioner Maginn withdrew the motion.

DL10-90390 J.E.S.R. FOODS, INC. – Chairman Cook noted this is a renewal with the local board voting 4-0 to deny.

Vice Chairman Coleman noted the applicant failed to appear at the local board meeting, as required.

Vice Chairman Coleman moved to uphold the local board's recommendation to deny. Commissioner Maginn seconded. The motion was unanimously approved.

DL02-30935 JAT BOYZ STORES, INC. – Chairman Cook noted this is a new application with the local board voting 4-0 to deny.

Commissioner Maginn stated the applicant failed to appear as required. She also noted that the location is within 200 feet of a church.

Commissioner Maginn moved to uphold the local board's recommendation to deny. Commissioner Grubb seconded. The motion was unanimously approved.

RR34-10317 ULTIMATE PLACE, LLC – Chairman Cook noted this is a renewal with the local board voting 3-0 to deny.

Vice Chairman Coleman stated he reviewed the record. The permittee was found not guilty on several counts and several counts were dismissed by the local prosecutor. The Vice Chairman feels the local board was somewhat arbitrary and capricious in their recommendation to deny.

Chairman Cook also reviewed the record. His belief was that there was a misstatement by the local board regarding the legal standard for preponderance of the evidence being probable cause in determining character, when the standard is reasonable suspicion. No other evidence was presented regarding the permittee's character in the community.

Vice Chairman Coleman moved to overturn the local board and approve the renewal. Commissioner Maginn seconded. The motion was unanimously approved.

RR18-33119 AMERICAN MULTI-CINEMA, INC. – Chairman Cook noted this is a new application with the local board voting 4-0 to approve.

Commissioner Maginn stated this was previously heard and approved by the local board. However, there was a problem with the advertising and remonstrators appeared on the wrong date, after the approval. The matter was rescheduled. The Commissioner noted the remonstrators have no problem with the business, they just do not want alcohol being served at the movie theater.

Commissioner Maginn moved to uphold the local board's recommendation to approve the new permit for one year with no carry-out. Commissioner Grubb seconded. The motion was unanimously approved.

INACTIVE FILES

Commissioner Grubb moved to make thirteen (13) permits inactive. Eleven permits are not subject to auction and two permits are subject to auction. Commissioner Maginn seconded. The motion was unanimously approved.

OLD BUSINESS

REVOCATION OF EMPLOYEE PERMITS – Commissioner Grubb moved to revoke the following permittees for not providing proof of completing an alcohol treatment program. Commissioner Maginn seconded. The motion was unanimously approved.

BR1835688 Shawna Mitchem; BR1638165 Stefanie Jourdain; BR1760416 Connor Dant

NEW BUSINESS

PROBATIONARY EMPLOYEE PERMITS - Commissioner Grubb moved, pursuant to IC 7.1-3-18-9.5, to order the following employee permit holder(s) to complete an alcohol evaluation and treatment program within the next six months and provide proof of same to the Commission. The Commissioner further moved to reschedule for the December 5, 2017 meeting. Commissioner Maginn seconded. The motion was unanimously approved.

BR1607589 Victoria Lea Rhoads; BR1775246 Melvin Ray Page, Jr.; BR1845966 Brittany Connell

POLICY DETERMINATIONS

WITHDRAWAL REFUNDS – Executive Secretary Rothenberg stated refunds are made out to permit holders, regardless of who paid for the renewal, transfer, etc. This notification will be added to our forms so everyone is aware. If the manager paid for the renewal and it is refunded for some reason, the refund will be in the name of the permittee. The parties will have to work out any issues regarding refunds.

USE OF OLD FORMS – Commission Counsel Allen stated by July 1, 2017, only the new forms from our website should be used when filing with the ATC. In the future, when updates to the forms are made, the Commission will make announcements and the public will have approximately 30 days to switch to the new forms.

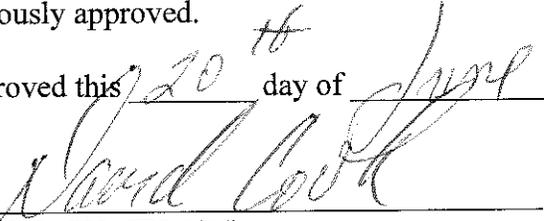
ANNOUNCEMENTS

No Announcements

ADJOURNMENT

Vice Chairman Coleman moved to adjourn the meeting. Commissioner Maginn seconded. The motion was unanimously approved.

Approved this 20th day of June, 2017.



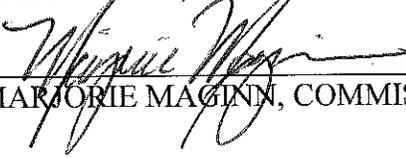
DAVID COOK, CHAIRMAN



DAVID COLEMAN, VICE CHAIRMAN



DALE GRUBB, COMMISSIONER



MARJORIE MAGINN, COMMISSIONER

1 Commissioner Maginn There is a copy of the newest version of State Form 56312, it's from
2 May 2017. It is titled "Supplement to Application for Retail Permit".
3 Please note that it is also available to download from our website and
4 can be completed online and printed out. I recommend you start using
5 it today, if possible. Also note that the Alcohol and Tobacco
6 Commission needs to capture new information because of the new law.
7 This was information we have not previously had in our system and
8 we're required to capture it in order to comply with the new law. So,
9 we are treating businesses that currently exist as having no carryout
10 privileges, until they complete this new state form---must send us the
11 new state form---every business out there that wants carryout. So,
12 submit the form, fill it out submit it to us and then you'll obtain our
13 approval, if you meet all the conditions of the law, of course. If a
14 business does not desire carryout, they do not need to do anything. So
15 the new law sets out three different types of restaurants that may be
16 eligible for carryout. I want to give you those three and tell you a little
17 bit about them. Number one are these restaurants that were issued
18 permits to current owners at their current location prior to November 1,
19 2016. They were held by someone at the location prior to 2016, but
20 transferred ownership only. Those are the ones that will qualify for
21 carryout when they submit their form. Second are the restaurants who
22 were issued a permit after November 1, 2016, but before May 14, 2017.
23 They have to look at their gross retail income from alcohol beverages
24 consumed on the premises and they have to have 60% or more. They

25 have to give us six months of, I'm sorry, after six months they give us
26 financial information of those six months that may be required to be
27 audited. Then, there is the third category that may qualify to have
28 carryout. Those are restaurants that were issued a permit after May 14,
29 2017, that certify that they will meet the 60% or more, gross retail
30 income from on-premises alcohol beverages consumption and meet the
31 other requirements of House Enrolled Act 1496. Further, this type
32 carryout privilege after six months of operations, four months of actual
33 income data must be submitted to us showing at least the 60% income
34 from on-premises consumption. I hope that's clear to everybody.
35 Thank you to the alcohol industry for helping us with getting the
36 changes out about the new laws and instructing your members and
37 clients on the best way to comply with the new law. We ask for your
38 patience as we process the new forms and make changes to our systems.

39 Chairman Cook Thank you. Before we begin with the actual agenda, there were a
40 number of permits that were kind of put on hold while we were all
41 processing the new law and how it was going to be implemented. We
42 indicated we would be able to take a position on those permits that had
43 been delayed, today. We are prepared to do that. I have a list of two, or
44 two lists. One is lists of those permits that will be renewed
45 unconditionally, because they were grandfathered, in light of the fact
46 they were issued before November 1, 2016. You have all been
47 provided a copy of that list. The Chair will entertain a motion to
48 approve those permits.

49 Vice Chairman Coleman So moved.

50 Commissioner Maginn Second.

51 Chairman Cook It's been moved and seconded that the list of unconditionally approved
52 permits that would be grandfathered, pursuant to 1496 provision
53 regarding those permits before November 1, 2016. Is there any further
54 discussion on that?

55 Vice Chairman Coleman That will be made part of the record?

56 Chairman Cook That is to be made part of the record and will be available to everyone.

57 Commissioner Maginn And, just to be clear, these do not have carryout privileges until they
58 submit a form to us.

59 Chairman Cook All in favor say, aye.

60 Vice Chairman Coleman Aye.

61 Commissioner Maginn Aye.

62 Commissioner Grubb Aye.

63 Chairman Cook Aye. All opposed say, no. Motion carries. We'll make that part of the
64 record. The second list is a list of conditionally approved permits with
65 no carryout and one year approval. Those permits are listed on this
66 exhibit that will be made part of the record. All of you have had an
67 opportunity to look at that. The chair will entertain a motion as it
68 relates to those permits.

69 Commissioner Maginn So moved.

70 Vice Chairman Coleman Second.

71 Chairman Cook Moved and seconded that the list of conditionally approved permits for
72 no carryout on premises consumption, one year approval, be approved
73 as submitted. Any further discussion? All in favor say, aye.

74 Commissioner Grubb Aye.

75 Vice Chairman Coleman Aye.

76 Commissioner Maginn Aye.

77 Chairman Cook Aye. Opposed say, no. Motion carries. That will be made part of the
78 record. The lists are available. If you have a client or a business that
79 was delayed that is not on that list, then you need to contact us
80 immediately and we'll try to figure out what is going on with it.