

**STATE OF INDIANA
BEFORE THE ALCOHOL AND TOBACCO COMMISSION**

IN THE MATTER OF)	
THE PERMIT OF)	
)	
UNITED PSM, INC.)	
601 OLD WHEATLAND ROAD)	PERMIT NO. DL42-22291
VINCENNES, INDIANA, 47591)	
)	
Applicant.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND OF THE CASE

United SPM, Inc., 601 Old Wheatland Road, Vincennes, IN 47591, permit number DL42-22291 (Applicant), is the applicant for the renewal of a permit to sell beer and wine for off-premises consumption at a grocery store located in an incorporated area to be issued by the Alcohol and Tobacco Commission (Commission). The application was assigned to the Alcoholic Beverage Board of Knox County (Local Board). The Applicant's matter was heard on June 20, 2017, where it was denied by a vote of 3-0. On July 5, 2017, the Commission adopted the findings of the Local Board and denied the permit. Within the statutory delineated time period, the Applicant filed a timely Motion to Appeal.

The matter was set for hearing on October 10, 2017. The Applicant did not show up to the appeal hearing. The Hearing Officer also took judicial notice of the entire contents of the file related to this cause. Having been duly advised of the facts and law at issue, the Hearing Officer now submits these Proposed Findings of Fact and Conclusions of Law to the Commission for its consideration.

II. EVIDENCE BEFORE THE LOCAL BOARD

- A. The following individuals testified before the Local Board in favor of the Applicant in this cause:
1. Surinder Singh, Owner;
- B. The following evidence was introduced and admitted before the Local Board in favor of the Applicant in this cause:
1. None.
- C. The following individuals testified before the Local Board against the Applicant in this cause:
1. None.
- D. The following evidence was introduced and admitted before the Local Board against the Applicant in this cause:
1. None.

III. EVIDENCE BEFORE THE COMMISSION

- A. The following individuals testified before the Commission in favor of the Applicant in this cause:
1. None.
- B. The following evidence was introduced and admitted before the Commission in favor of the Applicant in this cause:
1. None.
- C. The following individuals testified before the Commission against the Applicant in this cause:
1. None.
- D. The following evidence was introduced and admitted before the Commission against the Applicant in this cause:
1. None.

IV. FINDINGS OF FACT

1. United PSM, Inc., 601 Old Wheatland Road, Vincennes, IN 46350, permit number DL42-22291 is the Applicant for a beer and wine grocery store. (ATC File).
2. The Applicant meets the qualifications to hold a permit pursuant to Ind. Code §7.1-3-4-2(a)(2)(A) and Ind. Code §7.1-3-14-3. (Local Board Hearing; ATC Hearing).
3. On February 16, 2015, Applicant was cited for Furnishing Alcohol to a Minor under Ind. Code §7.1-5-7-8. This violation was paid. (ATC File).
4. On April 22, 2015, Applicant was cited for Failure to Post Smoking Prohibited Signs under Ind. Code §7.1-5-12-7(b). This violation was paid. (ATC File).
5. On January 1, 2016, Applicant was cited for Furnishing Alcohol to a Minor under Ind. Code §7.1-5-7-8. This violation was paid. (ATC File).
6. On July 6, 2016, Applicant was cited for Furnishing Alcohol to a Minor under Ind. Code §7.1-5-5-7. This violation was paid. (ATC File).
7. On January 20, 2017, Applicant was cited for Furnishing Alcohol to a Minor under Ind. Code §7.1-5-5-7. This violation was paid. (ATC File).
8. Applicant has not instituted any major material changes in procedures over the last year, other than firing the clerks responsible. (Local Board Hearing).
9. Any Finding of Fact may be considered a Conclusion of Law if the context so warrants.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Ind. Code §7.1-1-2-2 and 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 Commission is authorized to act upon proper application. *Id.*
4. The Hearing Judge may take judicial notice of the Commission file relevant to a case, including the transcript of proceedings and exhibits before the local board. 905 IAC 1-36-7(a).
5. The Hearing Judge scheduled a *de novo* review of the appeal on behalf of the Commission, including a public hearing and a review of the record and documents in the Commission file, to which the Applicant did not appear. Ind. Code §7.1-3-19-11(a); 905 IAC 1-36-7(a), -37-11(e)(2); *see also* Ind. Code §4-21.5-3-27(d).
6. The findings here are based exclusively upon the substantial and reliable evidence in the record of proceedings and on matters officially noticed in the proceeding. 905 IAC 1-37-11(e)(2); Ind. Code §4-21.5-3-27(d).
7. In determining whether to renew a permit, the Commission may consider whether the applicant has allowed the premises to become a public nuisance, or the scene of acts prohibited by the Indiana Penal Code. 905 IAC 1-27-2.
8. The Commission may reverse a local board's action in denying an application for a permit *only* if it finds that the local board's decision was (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (b) contrary to constitutional right, power, privilege, or immunity; (c) in excess of, or contrary to, statutory jurisdiction, authority, limitations or rights; or (d) without observation of procedure required by law, or unsupported by substantial evidence. Ind. Code §7.1-3-19-11.

9. In this case, the Local Board based their decision upon the number of violations taking place at the premises. (Local Board Hearing).

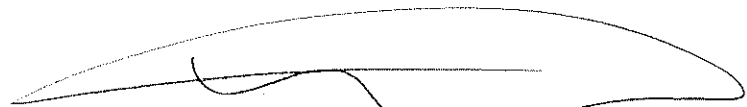
10. Any Conclusion of Law may be considered a Finding of Fact if the context so warrants.

IV. RECOMMENDATION

In this case, since the Applicant did not show up for his appeal hearing, the Applicant's appeal is based solely on the ATC record, Local Board Hearing, and Commission decision to deny the renewal of the permit. Due to the number of violations both before and after the last renewal, the decisions of the Local Board and Commission were not made under any of the conditions listed in Ind. Code §7.1-3-19-11 which would reverse those decisions.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the decision of the Knox Local Board resulting in a 3-0 vote to deny the application for the permit number DL42-22291, was supported by substantial evidence, was not arbitrary and the Commission should deny said application. The application of United PSM, Inc., 601 Old Wheatland Road, Vincennes, IN 47591, for a beer and wine dealer permit, was not sufficient and the permit applied for herein is DENIED.

DATE: October 18, 2017



David Rothenberg, Hearing Officer

Approved this 22 day of November, 2017.



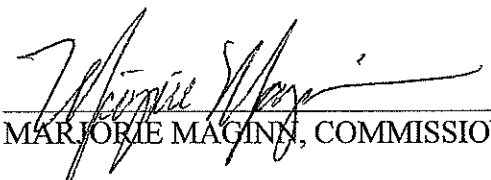
DAVID COOK, CHAIRMAN



DAVID COLEMAN, VICE CHAIRMAN



DALE GRUBB, COMMISSIONER



MARJORIE MAGINN, COMMISSIONER