

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

|                                     |   |                              |
|-------------------------------------|---|------------------------------|
| <b>IN THE MATTER OF</b>             | ) |                              |
| <b>THE PERMIT OF</b>                | ) |                              |
|                                     | ) |                              |
| <b>IMPERIAL MUSIC HALL, LLC</b>     | ) | <b>Permit No. RR49-35088</b> |
| <b>d/b/a THE CITADEL MUSIC HALL</b> | ) |                              |
| <b>6447 W. WASHINGTON ST.</b>       | ) |                              |
| <b>INDIANAPOLIS, IN 46241</b>       | ) |                              |
|                                     | ) |                              |
| <b>Applicant.</b>                   | ) |                              |

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**I. BACKGROUND OF THE CASE**

Imperial Music Hall, LLC d/b/a The Citadel Music Hall, 6447 W. Washington St., Indianapolis, IN 46241, permit number RR49-35088 (“Applicant” or “The Citadel,”) is the applicant for a permit to sell beer, wine, and liquor to be issued by the Alcohol and Tobacco Commission (“Commission”). The application was assigned to the Marion County Local Board (“Local Board”). The Local Board held a hearing on March 4, 2019, and recommended to the Commission to deny this application based on no need and/or desire for the services and a negative impact on the business and neighborhood community. On March 19, 2019, the Commission accepted the recommendation of the Local Board and voted to deny the application at its regularly held meeting.

On April 3, 2019, Applicant filed Petitioner Imperial Music Hall’s Notice of Appeal Hearing, and the matter was assigned to the Hearing Officer Jessica Allen (“Hearing Officer”). The matter was set for a de novo hearing on September 16, 2019, and at that time, witnesses were sworn, evidence was heard, and the matter was taken under advisement (“ATC

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.

### **III. EVIDENCE BEFORE THE LOCAL BOARD**

- A. The following individuals testified before the Local Board in favor of the Applicant in this cause:
1. Chris Triebes, owner and member of the Applicant;
  2. Osmann Raja, owner and member of the Applicant; and
  3. Sean Dewey, attorney for the Applicant.
- B. The following evidence was introduced and admitted before the Local Board in favor of the Applicant in this cause:
1. Before and after pictures of facility;
  2. Security Plan;
  3. Code of Conduct and Alcohol Plan;
  4. Petition signed by fifty-six (55) people in favor of granting an alcoholic beverage permit to the Applicant, including:
    - a. 46 legible addresses;
    - b. 6 illegible addresses;
    - c. 1 scribble; and
    - d. 2 with no address listed;
  5. Petition signed by seventeen (15) business owners representing sixteen (16) businesses in favor of Applicant; and
  6. Letter authored by Waqas Baig, President of Roller City and Classy Car Wash and landlord of the building in which the Applicant leases space.
- C. The following individuals appeared and testified before the Local Board against the Applicant in this cause:
1. Jared Evans, City Councilor District 22;
  2. Bill Stinson, Sr. Director of Public Affairs, Airport Authority;
  3. Mark Schoch, Manager, Western Bowl;
  4. David Shank, Director, West Side Chamber of Commerce;
  5. Lisa Bentley, Executive Director, Indy Gateway;
  6. Lt. Bill Carter, IMPD Nuisance Abatement;
  7. Sgt. David Kinsey, IMPD Southwest District; and
  8. Commander Susan Hill, IMPD Southwest District Commander.

D. The following evidence was introduced and admitted before the Local Board against the Applicant in this cause:

1. Binder presented by Lt. Carter;
  - a. Map of Area (Exhibit 1).
  - b. Items from remonstrators:
    - i. East White Lick Creek Trail Alliance (Exhibit 2A);
    - ii. Indy Gateway (Exhibit 2B);
    - iii. West Side Chamber of Commerce (Exhibit 2C);
    - iv. Merchants West (Exhibit 2D);
    - v. Mount Olive Ministries (Exhibit 2E); and
    - vi. Petitions with thirteen signatures of business owners/police officers opposing alcoholic beverage permit (Exhibit 2F).
  - c. News articles and police runs for premises address prior to Applicant operating:
    - i. Fox 59 article dated August 18, 2018 (Exhibit 3A);
    - ii. Fox 59 article dated September 24, 2017 (Exhibit 3B);
    - iii. IMPD report dated August 5, 2018 (Exhibit 3C);
    - iv. Commanders Information Sheet dated October 15, 2017 (Exhibit 3D);
    - v. IMPD Report dated August 27, 2017 (Exhibit 3E);
    - vi. IMPD Report dated March 7, 2009 (Exhibit 3F); and
    - vii. IMPD law enforcement case list dated January 1, 2010, through December 31, 2019, printed on March 1, 2019 (Exhibit 3G).
  - d. Items related to Mojoes in Joliet, Illinois, 2015:
    - i. The Times Weekly.Com story on fight dated March 16, 2015 (Exhibit 4A);
    - ii. Herald-News story on show dated April 13, 2015 (Exhibit 4B);
    - iii. Herald-News story on expansion of business dated May 13, 2015 (Exhibit 4C);
    - iv. Herald-News story on overcrowding dated May 14, 2015 (Exhibit 4D);
    - v. Herald-News story on shots fired outside of premises dated May 18, 2015 (Exhibit 4E);
    - vi. Herald-News story on overcrowding dated May 27, 2015 (Exhibit 4F);
    - vii. The Times Weekly.Com story on closing club dated June 2, 2015 (Exhibit 4G);
    - viii. Emergency Closure Order by Liquor Control Commissioner of Joliet dated January 6, 2012 (Exhibit 4H); and
    - ix. Emergency Closure Order by Liquor Control Commissioner of Joliet dated January 17, 2012 (Exhibit 4I).

- e. Concert-related items for the Citadel:
  - i. Various ticketing and fliers for advertisements (Exhibit 5A);
  - ii. Up in Smoke Festival flier (Exhibit 5B); and
  - iii. Wikipedia article 420 (cannabis culture) (Exhibit 5C).
- 2. Letter from Councilor Zach Adamson;
- 3. Letter from Councilor Jared Evans; and
- 4. Letter from Bill Stinson, Sr. Director of Public Affairs, Airport Authority.

#### IV. EVIDENCE BEFORE THE COMMISSION

A. The following individuals testified before the Commission in favor of the Applicant in this cause:

- 1. Chris Triebes, owner and member of the Applicant;
- 2. Osman Raja, owner and member of the Applicant;
- 3. Terry Copeland, general manager, Applicant;
- 4. David Rothenberg, attorney for the Applicant;
- 5. Jeff McKean, attorney for the Applicant;
- 6. Jason Richey, Home Realty Inc. owner, west side resident;
- 7. Robert Miller, west side resident (not testifying on behalf of IDHS);
- 8. Josh Russell, patron;
- 9. Jamie Brown, ATM technician, patron;
- 10. Patrick Dunson-Taylor, Atlas Supply sales rep, patron;
- 11. Steven Moors, contract sound engineer;
- 12. Joshua Stone, Denver Machine Shop, patron, west side resident;
- 13. Phillip Hall, Citadel maintenance employee, west side resident;
- 14. Ricochet Neeley, patron, west side resident;
- 15. Charles David McWeirter, professional photographer;
- 16. Terry Albert Moore, Beautiful Train Wreck band member, patron;
- 17. Matt Alexander Young, patron;
- 18. Donovan Weist, We Are Entertainment lyricist, patron;
- 19. Jermain Evans Sr., 21 Jump St. ENT booking manager; and
- 20. Eddie Willhoite Jr.

B. The following evidence was introduced and admitted before the Commission in favor of the Applicant in this cause:

- 1. Petition with approximately 1,076 patron signatures in favor of alcohol being served at this location, including:
  - a. 364 signatures of people in Indianapolis;
  - b. 485 signatures of people in Indiana;
  - c. 207 signatures of people from out-of-state;
  - d. 2 signatures of people from out-of-country; and

- e. 18 signatures of people that provided no address, a fake address, or an illegible address;
2. Letter of support from Debbie Parish, community member;
3. Letter of support from Michael McQuillen, Minority Leader, City-County Council of Indianapolis-Marion County;
4. Letter of support from Construction Company, business in Shelbyville, Indiana;
5. Letter of support from Classy Car Wash, local business owned by applicant's landlord;
6. Letter of support from Roller City Indy, local business owned by applicant's landlord;
7. Letter of support from Midwest Trike Megastore, local business;
8. Letter of support from Cash Exchange, local business;
9. Letter of support from Indy E Cigs, local business;
10. Letter of support from Jaden Used Tire & Wheel, local business;
11. Letter of support from The Artistry Realm, local business;
12. Letter of support from The Dugout, local business;
13. Letter of support from Denver Machine Shop, local business;
14. Letter of support from High Caliber Tattoo, local business;
15. Letter of support from Mirza W.A. Baig, landlord of premises and owner of Classy Car Wash and Roller City Indy;
16. Letter of support from bands:
  - a. Inferi;
  - b. Warforged;
  - c. Black Crow Initiate;
  - d. Lorna Shore; and
  - e. Rivers of Nihil;
17. Letter of support from Edward Forster, Vice President of Small Business Banking, Bank of America, Oak Brook, Illinois;
18. Letter in support from Nkatsilieris at unknown location for Which Wich Superior Sandwiches;
19. Zoning map of premises and area around premises;
20. Color coded zoning map of premises and area around premises;
21. List of nearby businesses to premises;
22. Current pictures of businesses on West Washington Street near premises;
23. Citadel Music Hall Employee Handbook;
24. Citadel Music Hall Security Plan;
25. Affidavit of Don Breeden, dated September 15, 2019;
26. E-mail from Jeff McKean on behalf of Citadel Music Hall dated June 6, 2019 to Lt. Carter, and Commander Hill, subject IMPD Police Officers for The Citadel Security Detail;
27. Zoning Verification from Indianapolis Department of Business and Neighborhood Services;
28. Agenda for West Merchant Meeting dated February 20, 2019;
29. Approximate show attendance at The Citadel for time period of March 23, 2019 through August 30, 2019;
30. Heat maps of four (4) concerts hosted by Applicant;

31. Facebook post, along with comments, of Councilor Evans entitled “Troubled music promotor request liquor license 6447 W. Washington St.” dated February 5, 2019;
32. CBS News Poll dated January 28, 2018;
33. Local ordinance ticket UTT#000096711268 issued on July 10, 2019 for Dancehall Permit Required;
34. Marion County Dancehall ordinance Chapter 881;
35. E-mail from Yamina Goertemiller, License Analyst Department of Business and Neighborhood Services – City of Indianapolis to David Rothenberg, dated June 28, 2019;
36. Dismissal of case number 49D04-1907-OV-028209 which was filed as a result of the issuance of UTT#000096711268;
37. Letter from Central Indiana Socialist Rifle Association to The Citadel, dated August 15, 2019;
38. Affidavit of Carly McKean, dated September 5, 2019;
39. E-mail string with the most recent from Officer Stephan Moore to various police officers including, Lt. Carter, and Commander Hill, dated May 9, 2019, subject RE: 20190509 6447 W. Washington St.;
40. E-mails between Councilor Evans and Lt. Carter, dated February 1, 2019 and February 4, 2019, subject 6447 W Washington;
41. Picture of Western Bowl marquee located at 6441 W. Washington St. advertising live music on Saturday, March 30 at 9 p.m., date of picture unknown;
42. Demonstrative wristbands;
43. Indianapolis Chamber of Commerce website regarding “Music Cities” Cultural Initiative dated August 20, 2018;
44. E-mail string to Cathy Burton of the Marion County Alliance of Neighborhood Associations from Lt. Carter dated between February 1, 2019 and February 4, 2019, subject 6447 W Washington;
45. Incomplete e-mail string between Lt. Carter, David Shank, and Lisa Bentley, dated February 23, 2019 and February 24, 2019, subject 6447 W Washington;
46. E-mail string with the most recent from Thomas Koppel to various police officers including, Lt. Carter and Commander Hill, dated May 9, 2019 and May 10, 2019, subject 20190509 W Washington St.;
47. E-mail string from David Rothenberg, dated September 11, 2019, and Jeff McKean, dated June 24, 2019, on behalf of Applicant following up on June 6, 2019 e-mail, subject IMPD Police Officers for the Citadel Security Detail;
48. E-mail string from Jeff McKean to IMPD Lt. William Carter, dated June 26, 2019 and June 27, 2019, subject The Citadel Appeal Hearing;
49. E-mail string from IMPD Officer Brian Durham to various IMPD officers including Lt. Carter and Commander Hill, dated July 2, 2019, subject Use of U/Cs;
50. Affidavit of Mark Webb, dated September 16, 2019;
51. Affidavit of Angela Falcone, dated September 15, 2019;
52. IMPD media reports, case report number IP190099951-002; and
53. Affidavit of Terry Copeland, dated September 12, 2019.

- C. The following individuals testified before the Commission against the Applicant in this cause:
1. Lt. William Carter, IMPD Nuisance Abatement;
  2. Sgt. David Kinsey, IMPD Southwest District;
  3. David Shanks, Founding Member, Westside Chamber of Commerce; and
  4. Jared Evans, councilman.
- D. The following evidence was introduced and admitted before the Commission against the Applicant in this cause:
- A. Remonstrance letter for West Side Chamber of Commerce to Hearing Judge dated September 16, 2019, detailing basis for remonstrance;
  - B. Yelp reviews of Applicant;
  - C. Google reviews of Applicant;
  - D. Flyer advertising Marco5k/Polobo performance for show on September 6, 2019 at Applicant's business;
  - E. E-mail string from Deborah Law, City Prosecutor for Indianapolis, dated June 19, 2019, subject Dancehall; and
  - F. IMPD Law Enforcement Version, Case report number IP190099951-001.

## **V. FINDINGS OF FACT**

1. Imperial Music Hall, LLC, d/b/a The Citadel Music Hall, 6447 W. Washington St., Indianapolis, IN 46241, permit number RR49-35088 is an applicant for a permit to sell beer, wine, and liquor. (ATC File).
2. The Applicant is not disqualified from holding a permit pursuant to Ind. Code § 7.1-3-4-2. (Local Board Hearing; ATC Hearing).
3. The permit is not being placed within two hundred (200) feet of a church or school. (ATC File).
4. The Applicant is of good moral character and of good repute in the community as required by 905 IAC 1-27-1. (Local Board Hearing; ATC Hearing).

5. Incidents which occurred at the premises location prior to Applicant operating are not attributable to Applicant. (Local Board Hearing; ATC Hearing).

6. Local Board members indicated that they believed the Applicant met the standards for having a high and fine reputation in the community. (Local Board Hearing, Lines 1172-79).

7. At the ATC Hearing, the Applicant presented a seven page, written security plan that provided more extensive details concerning its security policies and procedures than the security plan presented to the Local Board. (ATC Hearing; Exhibit 27, ATC Hearing).

8. Applicant provided detailed explanation and information regarding its policies and procedures for wristbanding including a demonstration to the Hearing Officer. (ATC Hearing; Exhibit 45; Exhibit 27).

9. Applicant provided extensive and detailed testimony through its General Manager Terry Copeland and owners Chris Triebes and Osmann Raja regarding the operation of the business. (ATC Hearing).

10. The Indianapolis Department of Business and Neighborhood Services issued a Zoning Verification in this matter which verifies that premises meets the applicable zoning requirements, including parking requirements. (ATC File; ATC Hearing; Exhibit 30).

11. Numerous neighbors and surrounding businesses provided in person testimony, letters, and affidavits that Applicant was a good neighbor and will not have a negative impact on the neighboring businesses in the community. (ATC Hearing; Exhibits 5-14).



12. The Applicant does not allow patrons to remain or congregate in the parking lot either before or after shows. No “tailgating” is allowed in the parking lot. (ATC Hearing; Exhibit 27).

13. At least 20 individuals testified for Applicant including patrons, employees, local residents, local businesses, and band members/artists. (ATC Hearing).

14. Applicant presented a petition in support of its request to secure an alcoholic beverage permit that was signed by more than 1,000 patrons of the business. (ATC Hearing; Exhibit 1).

15. Of the more than 1,000 signatures, 364 signatures were from residents of Indianapolis. None were residents within 1,000 feet of the premises. (ATC Hearing; Exhibit 1.)

16. Although remonstrators were concerned about the negative impact on the neighborhood of prior permittees at the premises, the Local Board and the Commission do not consider the acts of prior permittees when considering whether to grant a permit. (ATC Hearing; Local Board Hearing.)

17. Owner Chris Triebes operated the Emerson Theater under Permit No. RR49-32355 since October 19, 2016, and has received no violations from either the Indiana State Excise Police or the IMPD.

18. Remonstrator IMPD Sgt. William Carter (now Lt. Carter) acknowledged that there had been no problems with the operation of the Emerson Theater when it was owned by Mr. Triebes. (Local Board Hearing, Lines 511-521).

19. The Applicant will provide limited separation barriers for minors from any barroom or bar service area. (ATC Hearing).

20. The Applicant's limited separation for minors from any barroom or bar service area is consistent with other similar concert venues in central Indiana. (ATC Hearing).

21. Applicant understands that the minimum annual food sales must be either \$200,000 or 60% of the total food and alcohol sales to continue to qualify for limited separation. (ATC Hearing).

22. Remonstrators admit that if a "family sit-down" restaurant were located at this address, they would not oppose the service of alcohol. (ATC Hearing).

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

## VI. 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 conducted 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. 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 issue a permit, the Commission may consider the geographic desirability of a proposed permit location, the need for the permit at the proposed location, the community's desire for the permit, and the impact of the permit on the community and other businesses. 905 IAC 1-27-4.

8. In this case, the Local Board based their decision upon the lack of need and desire for the services at this location and impact on the neighborhood and local businesses. (ATC file).

9. "Need" means whether the services are available at this location or in some close geographic proximity. 905 IAC 1-27-4(a); *In the matter of Wal-Mart Stores East, L.P., DL82-21381*.

10. "Desire" means whether individuals would purchase those products at that location if they were available. 905-1-27-4(b); *In the matter of Wal-Mart Stores East, L.P., DL82-21381*.

11. Applicant may demonstrate desire in the community to receive services by means of survey and signed forms and letters stating such. *In the matter of Angela Kling, LLC RR31-30109*.

12. Community is the same area, subject to the same government, and sharing the same interests and concerns. *In the matter of Pavilion Partners, LLC, RR64-31493*, commission hearing October 6, 2015.

13. Greater weight is given to the testimony and concerns of people in close proximity to a permit location. *Id.*

14. Where an applicant shows that customers would be willing to purchase alcoholic beverages if they were available for sale, such evidence constitutes a desire to receive such services at that location. *In the matter of Wal-Mart Stores East, LP RR82-21381.*

15. Disqualification due to remonstrators' concerns should revolve around whether alcoholic beverage services should be served at Applicant's location, not whether one type of business model is preferred over another. *In the matter of Mancave Niteclub, LLC RR45-32669; Ind. Alcohol and Tobacco Comm. v. Ultimate Place, LLC, 894 N.E. 2d 1107 (Ind. Ct. App. 2008) (Memorandum Decision – Not for Publication.)*

16. The Commission may reverse a local board's action in denying an application for a permit 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. I.C. § 7.1-3-19-11.

17. The Applicant's limited separation of minors from any barroom or bar service area is in accordance with Indiana law. 905 IAC 1-41-2.

18. The Applicant addressed any of the legitimate concerns raised at the Local Board Hearing by providing substantial and credible evidence to refute those concerns during the ATC Hearing.

19. The Applicant has demonstrated that it is duly qualified to hold the permit in question and that the services are needed and desired at the location.

20. The Local Board met all of the requirements under IC 7.1-3-19-11 with the evidence presented at the local board at the time, however, the ATC Hearing, done under de novo standard, allows new evidence to be submitted. *In the matter of Angela Kling, LLC, RR31-30109.*

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

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the recommendation of the Marion County Local Board to deny the application for permit number RR49-35088 was not supported by substantial evidence following the de novo appeal hearing and the Alcohol and Tobacco Commission should reverse that decision. The evidence in support of the application of The Imperial Music Hall, LLC d/b/a The Citadel Music Hall for the Type 209 Permit was sufficient and the permit applied for herein is GRANTED for a one year period to allow the permittee to demonstrate strict compliance with Title 7.1 of the Indiana Code and Title 905 of the Indiana Administrative Code. At a renewal hearing following the one year period, Applicant must demonstrate to the satisfaction of the Commission that food sales for the permit year either total \$200,000 or 60% of the total food and alcohol sales, or if the Applicant has not been active for the full permit year that food sales

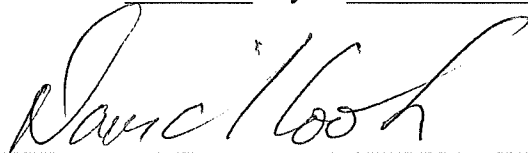
would have totaled \$200,000 or 60% of the total food and alcohol sales if the Applicant was active the full permit year.

DATE: 2/21/20



\_\_\_\_\_  
Jessica Allen, Hearing Officer

Approved this 3 day of March, 2020.



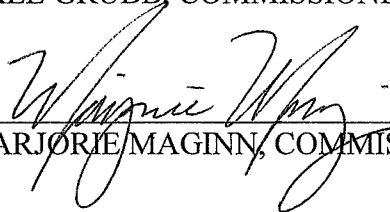
DAVID COOK, CHAIRMAN



JOHN KRAUSS, VICE CHAIRMAN



DALE GRUBB, COMMISSIONER



MARJORIE MAGINN, COMMISSIONER

