

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

IN THE MATTER OF)	
THE PERMIT OF)	
)	
JLS FAMILY, LLC)	
d/b/a THE WATERIN' HOLE)	PERMIT NO. DL1132603
765 E. US HIGHWAY 40)	
KNIGHTSVILLE, INDIANA)	
)	
Applicant.)	

**PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

I. BACKGROUND OF THE CASE

JLS Family, LLC, 765 E. US Highway 40, Knightsville, Indiana (Applicant), permit number DL1132603 (Permit), is the applicant for a new Alcohol and Tobacco Commission (Commission) beer, wine, and liquor package liquor store in an incorporated area, also known as a type 217 permit. The application was assigned to the Alcoholic Beverage Board of Clay County (Local Board). Local Board held a hearing on November 8, 2021, at which time the Local Board voted 3-0 to deny the Application with one Local Board member abstaining. On November 16, 2021, Commission upheld the recommendation of Local Board to deny Permit.

On December 3, 2021, Applicant timely filed Petitioner's Objection and Request for Administrative Review and Hearing of the Commission's Denial of Application (Appeal). The matter was assigned to Chairwoman Jessica Allen as hearing judge (Hearing Judge). On or about December 6, 2021, Daryle Dale York (Mr. York), Terry Harrison (Mr. Harrison), Hildey Moore (Ms. Moore), and Ralph "Pete" Taylor (Mr. Taylor) (collectively, Remonstrators) filed separate petitions requesting intervening remonstrator status. On April 12, 2022, the Hearing Officer granted Mr. York's petition to intervene and denied the petitions filed by the rest of the Remonstrators. The Hearing Judge took judicial notice of the entire contents of the

Commission's file related to this cause. Having been duly advised of the facts and law at issue, Hearing Judge now submits these Proposed Findings of Fact and Conclusions of Law to the full Commission for its consideration.

III. EVIDENCE BEFORE THE LOCAL BOARD

- A. The following individuals testified before Local Board in favor of Applicant in this cause:
1. Jon Clark, owner and member of JLS Family, LLC ("Mr. Clark"); and
 2. Jared Grable, Building contractor for the Applicant ("Mr. Grable).
- B. The following evidence was introduced and admitted before Local Board in favor of Applicant in this cause:
- None.
- C. The following individuals testified before Local Board against Applicant in this cause:
1. Mr. Harrison;
 2. Ms. Moore;
 3. Steve French;
 4. Mr. Taylor;
 5. Mr. York; and
 6. Bruce Hoopengartner.
- D. The following evidence was introduced and admitted before Local Board against the Applicant in this cause:
1. None.

IV. EVIDENCE BEFORE THE APPEAL HEARING

- A. The following individuals testified before Hearing Judge in Favor of Applicant in this cause:
1. Mr. Clark;
 2. Mr. Grable; and
 3. Alex Intermill, attorney for the Applicant.
- B. The following evidence was introduced and admitted before Hearing Judge in favor of Applicant in this cause:
- a. Maps showing location of Permit premises and surrounding area (Exs. A, B, and C);
 - b. Map showing the Permit premises, neighborhood and neighboring and nearby businesses, and the Remonstrators' residences (Ex. D);
 - c. Letter of support for and attesting to the good character and reputation of Jon Clark sent by Scott E. Zimmerman, Greencastle City Planner -- admitted with hearsay objection

- (Ex. E);
- d. Letter of support for and attesting to the good character and reputation of Jon Clark sent by attorney G. Jayson Marksberry -- admitted with hearsay objection (Ex. F);
- e. 58 letters of support for the Applicant and the proposed package liquor store (Ex. G), including:
 - 1. 8 letters from parcels within 1000 feet of the proposed permit premises.
 - f. Petition with approximately 376 signatures in favor of the Permit and the proposed package liquor store at location (Ex H), including:
 - 1. 161 signatures listing Knightsville, Brazil, or Harmony, Indiana as their address.
 - g. Opinion of impact of Permit on property values issued by Helmer Appraisal, Inc., -- admitted with hearsay objection (Ex. I);
 - h. Affidavit and opinion of Kim Emmert O'Dell of Emmert Realty regarding the effect of the proposed package liquor store on property values -- admitted with hearsay objection (Ex J);
 - i. Photographs showing the prior building at the proposed premises (Exs. L-N);
 - j. Photographs of the new building constructed by the Applicant at the proposed premises (Exs. O and P);
 - k. Construction plans for the new building constructed by the Applicant at the proposed premises (Ex. T); and
 - l. Email correspondence regarding the issuance of the Construction Design Release by the Indiana Department of Homeland Security and a copy of the release (Ex. U).

C. The following individuals testified and/or were present before Hearing Judge against Applicant in this cause:

- 1. Mr. Harrison;
- 2. Ms. Moore;
- 3. Mr. Taylor;
- 4. Mr. York; and
- 5. Eddie Felling, attorney for Mr. York.

D. The following evidence was introduced and admitted before Hearing Judge against Applicant in this cause:

- 1. Video submitted by Mr. Harrison -- admitted with hearsay objection (Ex. 1);
- 2. Video submitted by Mr. Harrison -- admitted with hearsay objection (Ex. 2);
- 3. Video submitted by Mr. Harrison -- admitted with hearsay objection (Ex. 3);
- 4. 8 photographs (Ex. 4);
- 5. Petition of approximately 17 persons opposed to the Permit and proposed location of a package liquor store at the premises, including signature of the remonstrators -- admitted with hearsay objection (Ex. 6).
- 6. Petition of approximately 18 persons opposed to the Permit and proposed location of a package liquor store at the premises (Ex. 7).
- 7. Report of Inspection from Indiana Department of Homeland Security and emails between upfront185@yahoo.com and publicrecords@dhs.in.gov (Ex. 5).

FINDINGS OF FACT

1. JLS Family, LLC, 765 E. US Highway 40, Knightsville, Indiana, permit number DL1132603, is the applicant for a new beer, wine, and liquor package liquor store in an incorporated area, also known as a type 217 permit. (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 and the Commission provided proper notice of the Local Board Hearing, as required by Indiana law. Any issues with the posting notice at the permit premises location, also referred to as the “orange sign,” were corrected prior to substantive hearing by the Local Board. (ATC File).

5. The Applicant is of good moral character and good repute in the community, as required by 905 IAC 1-27-1. (Local Board Hearing, ATC Hearing).

6. The Applicant currently owns and operates a package liquor store in Fillmore, Indiana under permit number DL67-31967 (“Fillmore Location”). There have been no alcohol violations issued to the Applicant at the Fillmore Location. (Local Board Hearing, ATC Hearing).

7. Remonstrators expressed concerns about a package liquor store in their neighborhood, demonstrating that they did not need or desire the services. (Local Board hearing. ATC hearing.)

8. The remonstrators provided two petitions signed by a total of 36 people opposing the Applicant’s package liquor store and the issuance of the Permit. Each Remonstrator signed the petition, along with 16 additional people listing Knightsville as their place of residence. Thirteen of those people opposed to the permit, including 4 Remonstrators, live or operate a business within 1000 feet of Permit premises (ATC Hearing; Exs. 6 & 7).

9. The Applicant provided 58 letters of support from members of the community, 23 of which listed Knightsville as their place of residence, 33 from Brazil, and one from Harmony. Eight of the letters were from addresses that are within 1000 feet of the premises. (ATC Hearing, Ex. G).

10. The Applicant provided petitions signed by approximately 376 people stating that they are 21 years old or older, they have a desire for and believe there is a need for the Applicant's proposed package liquor store at the premises. Approximately 161 of those signatures list Knightsville, Brazil, or Harmony as their address. One signature lists an address that is within 1000 feet of the premises. (ATC Hearing, Ex. H).

11. 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 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 § 7.1-3-19-1 l(a); 905 IAC 1-36-7(a), -37-1 l(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-II(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. The Local Board based their decision upon evidence presented demonstrating the lack of need and desire for the services at this location. (Local Board hearing.)

9. A determination of whether there exists a need for the permit, or a desire for the services, and to what degree of impact of such services have on the neighborhood and area businesses turns on the facts on each case. 905 IAC 1-27-4(b).

10. Applicant and remonstrators may demonstrate desire in the community to receive services or the lack of need or desire for the services by means of surveys and signed petition forms or letters stating such. *In the matter of Angela Kling, LLC RR31-30109.*

11. Greater weight is given to testimony and concerns of people in close proximity to the proposed location than those further away. *In the Matter of Pavillion Partners, LLC RR64-31493.*

12. More weight is given to oral comments provided at local board hearings from persons who own or operate a business or own real property or reside at locations within 1000 feet of a proposed permit premises indicating that the Local Board and the Commission should give greatest weight to the residents and business owners within that same distance. IC 7.1-2-4-22.

13. 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.

14. Four Remonstrators reside within 1000 feet of the permit premises. One remonstrator owns a business within 1000 feet of the permit premises. Remonstrators presented signatures of nine additional residents within 1000 feet of the proposed premises that objected to the issuance of the permit. (Local Board hearing; ATC hearing; Exs. 6 & 7).

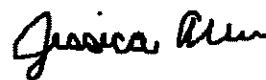
15. Applicant presented signatures of 1 resident and letters from 8 residents within 1000 feet of the proposed premises that supported issuance of the permit. (Exs. G & H).

16. The decision of Local Board was not arbitrary and capricious.

17. 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 decision of the Clay County Local Board resulting in a 3-0 vote to recommend denial of the application for the permit number DL1132603, was supported by substantial evidence and was not arbitrary and capricious. The Alcohol and Tobacco Commission denies issuance of new application to JLS Family, LLC, 765 E. US Highway 40, Knightsville, Indiana, permit number DL1132603.

DATED: July 8, 2022



Jessica Allen, Hearing Judge

Distribution

Alex Intermill, Attorney for Application

AIntermill@boselaw.com

Remonstrators at:

Hildegard Moore, Remonstrator

hildegardmoore@gmail.com

Ralph Taylor

yburen10@gmail.com

Terry Harrison

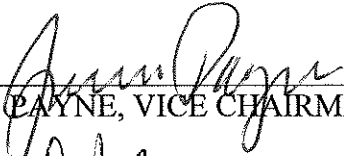
upfront185@yahoo.com

Daryle Dale York, Remonstrator, via attorney Darrell E. Felling, II

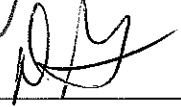
darrellfelling@gmail.com

Approved this 16th day of August, 2022.

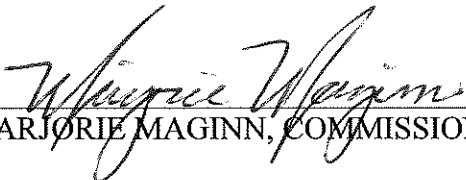
JESSICA ALLEN, CHAIR



JAMES PAYNE, VICE CHAIRMAN



DALE GRUBB, COMMISSIONER



MARJORIE MAGINN, COMMISSIONER

