

STATE OF INDIANA
BEFORE THE ALCOHOL & TOBACCO COMMISSION

IN THE MATTER OF)
THE PERMIT OF:)
)
ALMA VELA) **PERMIT NO. RR71-22023**
d/b/a LOS AMIGOS)
643 LAPORTE AVENUE)
SOUTH BEND, IN 46628)
Applicant

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Background of the Case

Alma Vela (“Applicant”) is an applicant for renewal of Alcohol and Tobacco Commission permit type 112. The Alcoholic Beverage Board of St. Joseph County (“Local Board”) held a hearing and voted 3-0 to recommend denial of the application for renewal. Applicant requested an appeal hearing before the Alcohol and Tobacco Commission (“Commission” or “ATC”.) Applicant, by counsel Mitch Heppenheimer participated in an appeal hearing held before Douglas M. Kowalski (“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 of Fact and Conclusions of Law to the Commission for its consideration.

II. Procedural History

1. On December 20, 2011, Applicant submitted an application to the Commission to renew a type 112 permit, numbered RR71-22023 (“Permit”).
2. On February 22, 2012, the Local Board continued the hearing without testimony.
3. On March 28, 2012, the Local Board took some testimony, but then granted Applicant’s request for a continuance.

4. On April 25, 2012, the Local Board voted 3-0 to recommend denial of the application for renewal due to criminal offenses taking place at the permit premises and the premises becoming a public nuisance.
5. On May 1, 2012, the Commission voted 4-0 to adopt the recommendation of the Local Board to deny the application for renewal.
6. On January 22, 2013, 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 March 28, 2012, and/or April 25, 2012, in favor of the Applicant:
 - a. The Applicant, Alma Vela, owner of Los Amigos, responded to questions from the Local Board.
 - b. Maria Melendez, owner of the property leased by Los Amigos.
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 March 28, 2012, and/or April 25, 2012, against the Applicant:
 - a. Aladeen DeRose, Attorney for the City of South Bend
 - b. Sgt. John Mortakis, South Bend Police Department (SBPD)
4. The following evidence was introduced and admitted before the Local Board against the Applicant:
 - a. City of South Bend's Brief in Opposition to Renewal of Permit; 5 pages.
 - b. SBPD police report by Michael Smith; 1 page
 - c. SBPD police report by Kathy Fulnecky; 3 pages
 - d. SBPD police report by John Mortakis; 3 pages
 - e. Screen print of property info; 2 pages
 - f. SBPD police report by Aaron Brick; 3 pages

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 January 22, 2013, in favor of the Applicant:
 - a. The Applicant, Alma Vela.
 - b. Applicant was represented by legal counsel, Mitch Heppenheimer.
3. The following evidence was introduced and admitted before the Hearing Judge in favor of the Applicant:
 - a. Search Warrant Letter from Sgt. Mortakis to Mario Carillo & Maria Melendez dated January 31, 2012, 2 pages.
4. The following individuals testified at the Appeal Hearing on December 20, 2012, against the Applicant:
 - a. Aladeen DeRose, Attorney for the City of South Bend
 - b. Sgt. John Mortakis, South Bend Police Department (SBPD)
 - c. Ann Carol Nash, Assistant City Attorney for City of South Bend
5. The following evidence was introduced and admitted before the Hearing Judge against the Applicant:
 - a. License Application for Restaurant City of South Bend; 1 page
 - b. Map of 635 Studebaker and 642 Laporte South Bend, IN; 1 page
 - c. Property title information; 3 pages
 - d. U.S. Department of Justice report of investigation; 3 pages
 - e. U.S. Department of Justice communication to Sgt. Mortakis; 1 page
 - f. Sentencing Memorandum; 6 pages
 - g. Page 2 of unknown report; 1 page
 - h. Page 3 of unknown report; 1 page
 - i. Finding of Fact and Action Taken by City of South Bend Division of Code Enforcement; 1 page
 - j. Affidavit of Michelle Adams; 17 pages
 - k. Warranty Deed for 635 Studebaker, South Bend, Indiana 46628; 1 page
 - l. Summary of ABB minutes for the property address of 643 Laporte; 29 pages

V. Findings of Fact

1. Applicant is applying for the aforementioned permit. (Local Board Hearing; ATC File).
2. Permit is located at 643 LaPorte Avenue, South Bend, Indiana 46628.
3. The South Bend Police Department in conjunction with the Federal Task Force made a series of drug buys within the permit premises of Los Amigos during the hours of normal operation. (Local Board)
4. On those occasions, drugs were purchased from Mario Carillo. (Local Board)
5. Alma Vela does not dispute that the transactions occurred, but states she did not know they were taking place. (Local Board)
6. Mario Carillo entered a plea of guilty to the charge of distribution of cocaine stemming from this investigation.
7. Title to 643 LaPorte Avenue, South Bend, Indiana 46628, was conveyed to Mario Carillo and Maria Melendez, doing business as LaFiesta Restaurant, on February 14, 2000. (Remonstrator's exhibit C)
8. Maria Melendez attended both local board hearings with Alma Vela. Mario Carillo was incarcerated at the time. (Local Boards)
9. On March 28, 2012, Alma Vela indicated that Maria Melendez was the owner of the property on which the restaurant is located. Vela made no mention of any other relationship with Melendez. (Local Board)
10. Melendez was also the bartender at Los Amigos. (Local Board)
11. While the Local Board was questioning Vela about her knowledge of the drug transactions, Vela and Melendez had a side conversation in Spanish stating that "as they use Padilla, they use other people, too." (Local Board March 28)
12. At the April 25, 2012 local board hearing, Vela acted as translator for Melendez for the board's questions.
13. Through Vela, the board asked Melendez if she knew about the drug activity.
14. Melendez answered in Spanish saying that she lived with Carillo and found out what he was doing. (Local Board April 25)
15. Vela neglected to translate to the board that Melendez did have knowledge of the drug transactions. (Local Board)

16. Vela insisted that she hardly knew Carillo, going so far as saying “Mr. Carrillo-Dominguez, whatever his freaking name is.” (Local Board April page 25)
17. Maria Melendez has had a relationship with Mario Carillo for approximately 30 years. They have a child together, Adriana Dominguez. (Remonstrator’s exhibit D, Appeal Hearing)
18. Melendez and Carillo lived at 635 N. Studebaker, South Bend Indiana. (Local Board)
19. Vela testified that she never lived at 635 N. Studebaker. (Appeal Hearing)
20. Vela listed 635 N. Studebaker as her address on an application for restaurant permit. (Appeal Hearing)
21. Alma Vela denied having a sister by the name of Adriana Dominguez. (Appeal Hearing)
22. After playing semantics and then prompted by counsel, Vela admitted that Adriana Dominguez is her half-sister. (Appeal Hearing)
23. Vela also reluctantly testified that Maria Melendez is not only the land lord of the permit premises and bartender, but also Vela’s mother. (Appeal Hearing)
24. On March 28, 2012, while under oath Alma Vela stated that the permit she was applying for was for her own use and benefit and not for the benefit of another person. (Local Board, pg 3)
25. Alma Vela stated that she runs the business, Los Amigos, and she is renting the business. (Local Board, March 28 pages 13 & 14)
26. Mario Carillo stated he owns the bar and that he paid for the liquor license under Alma Vela’s name because she is a U.S. citizen. Further, Carillo and Melendez pay the bills associated with the bar. (Remonstrator’s exhibit C)
27. On July 24, 2012, Alma Vela attempted to pay for her business license with a check drawn on Maria Melendez’s account. (Remonstrator’s exhibit J)
28. 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 Local Board's decision to not issue the Permit was arbitrary and capricious, and unsupported by substantial evidence.
13. An administrative agency action is arbitrary and capricious "where there is no reasonable basis for the action." *Ind. Civil Rights Comm'n v. Delaware County Cir. Ct.*, 668 N.E.2d 1219, 1221 (Ind. 1996).
14. 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.*

15. The LB found by showing of substantial evidence that the Permittee has allowed the permit premises to become a public nuisance in violation of 905 IAC 1-27-1.
16. At the appeal hearing, the Permittee failed to refute the finding of the LB that by substantial evidence it had been established that the permit premises has become a public nuisance.
17. The Permittee's lack of candor shown to the Alcohol and Tobacco Commission and Local Board demonstrates substantial evidence that permittee has failed to maintain a high and fine reputation in violation of 905 IAC 1-27-2.
18. The recommendation by the LB and the adoption of that recommendation by the ABC was not: 1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; 2) contrary to a constitutional right, power, privilege, or immunity; 3) in excess of, or contrary to, statutory jurisdiction, authority, limitations or rights; 4) without observance of procedure required by law; or 5) unsupported by substantial evidence. IC 7.1-3-19-11

THEREFORE IT IS ORDERED, ADJUDGED and DECREED that the recommendation of the St Joseph County Local Board and the adoption of that recommendation by the Alcohol and Tobacco Commission is hereby upheld and renewal of permit is hereby denied.

Dated: June 10, 2013

Doug Kowalski
Hearing Judge