

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

IN THE MATTER OF)	
THE PERMIT OF)	
)	
FARLEY'S CORNER PUB LLC)	
d/b/a FARLEY'S CORNER PUB)	PERMIT NO. RR23-04382
104 E. MAIN STREET)	
ATTICA, IN 47918)	
)	
Applicant.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND OF THE CASE

Farley's Corner Pub, LLC, 104 E. Main Street, Attica, IN 47918, permit number RR23-04382 (Applicant), is the applicant for the renewal of a permit to sell beer, liquor, and wine, in a restaurant located in an incorporated area to be issued by the Alcohol and Tobacco Commission (ATC). The application was assigned to the Alcoholic Beverage Board of Fountain County (Local Board). The Applicant's matter was heard on July 9, 2015, where it was denied by a vote of 3-1. On July 21, 2015, the Commission adopted the findings of the Local Board and denied the permit. On August 4, 2015, the Applicant filed for an appeal hearing regarding the Commission's denial, which was granted.

The matter was set for hearing on November 9, 2015, and that time, witnesses were sworn, evidence was heard, and the matter was taken under advisement. 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. Thomas Farley, Applicant.
- 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. Thomas Farley, Applicant; and
 2. Daniel Askren, Attorney for Applicant.
- B. The following evidence was introduced and admitted before the Commission in favor of the Applicant in this cause:
1. Article dated 11/25/14 concerning a memorial ride sponsored by Applicant in memory of Royse Green resulting in a \$611 donation to the Attica Athletic Department (Exhibit 1);
 2. Article dated 11/18/14 concerning a donation event held at Applicant's premises resulting in a donation of winter gloves and hats for 120 children (Exhibit 1);
 3. Thank you note to Applicant concerning assistance with a fund-raising relay from Tammy Haddick (sp?) (Exhibit 1);
 4. Thank you note for fundraiser for Austin Dodd (Exhibit 1);
 5. Pictures from winter hat/glove fundraiser for Attica Athletic Department (Exhibit 1);
 6. Thank you letter concerning benefit bike ride/run for Austin Dodd dated November 20, 2014 (Exhibit 1);

7. Thank you letter concerning Royce Green benefit (\$610) from Attica Athletic Department (Exhibit 1);
 8. Thank you letter concerning Royce Green benefit from the family of Royce Green (Exhibit 1); and
 9. Thank you letter concerning establishment and assistance given to The Forgotten Veteran MC, which holds bike runs for various causes (Exhibit 1).
- 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. Farley's Corner Bar, LLC, 104 E. Main Street, Attica, IN 47918, permit number RR23-04382, is the Applicant for a beer, liquor, and wine restaurant permit. (ATC File).
2. The Applicant meets the qualifications to hold a permit pursuant to Ind. Code § 7.1-3-4-2. (Local Board Hearing; ATC Hearing).
3. The Applicant is of good repute in the community as required by 905 IAC 1-27-1. (ATC Hearing).
4. The Applicant was last renewed on November 26, 2013. (ATC File).
5. On December 7, 2013, Applicant was cited for Minimum Food Service (905 IAC 1-20-1), Retailer Certification Required (IC 7.1-3-1.5-13), and Server Certificates (IC 7.1-3-1.5-14), a fine of which was paid under EX-13-025018. (ATC File).
6. On November 13, 2014, Applicant was cited for Determine of Qualification (905 IAC 1-21-1) and Hindering Enforcement (IC 7.1-5-8-1), a fine of which was paid under EX-14-022419. (ATC File).

7. The basis for EX-14-022419 was that on the Applicant's 2011 application of transfer, Applicant indicated that he had not been convicted of a felony or misdemeanor, when in fact he had been convicted of Possession of Marijuana in December, 1999 (23C01-9812-DF-000492), Indecent Exposure as a misdemeanor in December 2006 (23C01-0604-CM-000103). In addition, bartender Tomi Farley was not cooperative with the Excise officers. (ATC File).

8. Tomi Farley no longer works at Farley's Corner Pub. (ATC Hearing).

9. On January 22, 2015, Applicant was cited for Falsifying Records (IC 7.1-5-6-4), a fine of which was paid under EX-15-000175. (ATC File).

10. The basis for EX-15-00175 was that on the Applicant's 2013 application for renewal, Applicant indicated that he had not been convicted of a felony or misdemeanor, when in fact he had been convicted of Possession of Marijuana in December, 1999 (23C01-9812-DF-000492), Indecent Exposure as a misdemeanor in December 2006 (23C01-0604-CM-000103), and Possession of Paraphernalia in January, 2013 (23C01-1203-000115). (ATC File).

11. All ATC violations were paid promptly by Applicant. (ATC Hearing).

12. Applicant has held several fund-raisers for the community and private citizens who have been in need of help and/or support. (ATC Hearing).

13. No remonstrators appeared at the Local Board hearing or the ATC Hearing and there have been no complaints by residents regarding the Applicant. (Local Board Hearing; ATC Hearing).

14. No police runs were noted, nor reports of criminal activity presented before the Local Board or Commission. (Local Board Hearing, ATC Hearing).

15. The Local Board voted 3-1, with Local Board member Foster recommending one year of renewal. (Local Board Hearing).

16. 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 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. The convictions for which Mr. Farley was convicted would not have automatically disqualified him to own a retail beer permit, but would have been considered at the time of the applications. Ind. Code 7.1-3-4-2(a)(2)(B).

8. It is unlawful for a person to falsify an application for an alcohol permit. Ind. Code §7.1-5-6-4.

9. 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.

10. In determining whether to renew a permit, the Commission may consider whether the applicant refuses to comply with the provisions and the rules and regulations of the Commission. Ind. Code §7.1-3-23-5.

11. 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.

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

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

IV. RECOMMENDATION

Applicant has been in business for approximately five (5) years. In that time, he has accumulated three (3) violations, two of which stem from Mr. Farley not acknowledging the fact that he has had prior convictions on his applications. The other violation entails a lack of minimum food. There have been no violations regarding serving minors, over-serving, etc. However, it is a basis for denial if the applicant has falsified the application in any way. There

was discussion at the Local Board over allowing the Applicant to operate for another year and allowing him to operate at a high level.

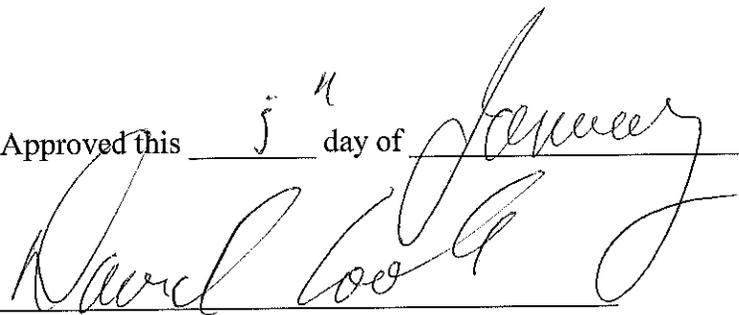
THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the decision of the Fountain County Local Board resulting in a 3-1 vote to deny the application for the permit number RR23-04382, was not supported by substantial evidence and the Alcohol and Tobacco Commission should approve said application. The application of Farley's Corner Pub, LLC, 104 E. Main Street, Attica, IN 47918, for a beer, liquor, and wine retail, was sufficient and the permit applied for herein is APPROVED for a one-year period of time on terms of strict compliance.

DATE: December 11, 2015



David Rothenberg, Hearing Officer

Approved this 5th day of January, 2016.



DAVID COOK, CHAIRMAN



DAVID COLEMAN, VICE CHAIRMAN

DALE GRUBB, COMMISSIONER



MARJORIE MAGINN, COMMISSIONER