

**BEFORE THE  
ALCOHOL AND TOBACCO COMMISSION**

IN THE MATTER OF )  
THE PERMIT OF: )  
JERRY'S HIDEAWAY BAR ) PERMIT NO. RR84-03099  
1680 NORTH 1<sup>st</sup> St. )  
TERRE HAUTE, INDIANA 47804 )

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

**I. Background of the Case**

Jerry's Hideaway Bar and Grill, Inc. (dba North Star Tavern) ("Applicant") is an applicant for a renewal of a permit under the Alcohol and Tobacco Commission ("Commission" or "ATC"). The Alcoholic Beverage Board of Vigo County ("Local Board") held a hearing and voted 4-0 to recommend approval of the application for renewal. The ATC voted to adopt the recommendation and granted the Applicant a renewal. Ms. Gail Phillips filed for Intervening Remonstrator status, which was granted, and requested an appeal hearing before the Commission. Applicant participated in an appeal hearing held before David Rothenberg ("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 and Conclusions of Law to the Commission for its consideration.

**II. Procedural History**

1. On July 16, 2013, Applicant submitted an application to the Commission for a renewal of a permit to sell beer, wine, and liquor, numbered RR84-03099 ("Permit").
2. On October 21, 2013, the Local Board voted 4-0 to recommend approval of the renewal of Permit.
3. On November 19, 2013, the Commission voted 4-0 to adopt the recommendation of the Local Board to approve the application for the renewal of Permit.

4. On December 19, 2013, Ms. Gail Phillips ("Phillips") filed for Intervening Remonstrator Status under 905 IAC 1-36-2(b), which was granted on January 13, 2014, claiming the Permittee operates a Public Nuisance.
5. On April 28, 2014, the Hearing Judge heard the Intervening Remonstrator's appeal of the Commission's approval of the permit for renewal.

### **III. Evidence Before the Local Board**

1. The following individuals testified before the Local Board on October 21, 2013, in favor of the Applicant:
  - a. Jerry Wilson, president of Applicant;
  - b. Loni Iocoangeli, bar manager, Applicant; and
  - c. Jim Ray, owner Black Rock, provider of jukeboxes including that of Applicant.
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 October 21, 2013, against the Applicant:
  - a. Gail Phillips, resident of 2229 Boston Ave., Terre Haute, IN (400 feet from the Applicant premises).
4. The following evidence was introduced and admitted before the Local Board against the Applicant:
  - a. Exhibit 1 - Six-page printout of calls for service to the Terre Haute Police Department dating back to January 9, 2011.

### **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 April 28, 2014, in favor of the Applicant:

- a. Jerry Wilson Sr., president/stockholder, Applicant;
  - b. Jerry Wilson Jr., stockholder, Applicant; and
  - c. Loni Iocoangeli, bar manager, Applicant.
3. The following evidence was introduced and admitted before the Hearing Judge in favor of the Applicant:
- a. Exhibit 1 - Letter from Daniel Coyne, President of Property Recycling Services testifying to Mr. Jerry Wilson Sr.'s character; and
  - b. Petition with 139 signatures testifying to Mr. Jerry Wilson Sr.'s character.
4. The following individuals testified at the Appeal Hearing on April 28, 2014, against the Applicant:
- a. Gail Phillips, resident of 2229 Boston Ave., Terre Haute, IN; and
  - b. Jill Brewer, resident of Terre Haute, IN and friend of Phillips.
5. The following evidence was introduced and admitted before the Hearing Judge against the Applicant:
- a. Exhibit A - Eight-page printout of calls for service to the Terre Haute Police Department dating back to January 9, 2011;
  - b. Exhibit B - Remonstrator comments detailing Phillips arguments, news article detailing arrest of Jerry Wilson Sr. for allegedly operating a vehicle while intoxicated;
  - c. Exhibit C - Portion of 905 IAC, comments from Topix.com (bog, comments, news);
  - d. Exhibit D - Letter from Terre Haute City Attorney outlining the city ordinances pertaining to a noise curfew and asking North Star Tavern to not allow their patrons to "rev" their engines;
  - e. Exhibit E - E-mails dated April 13 and 16, 2013, from Phillips to both the United States Air Force and the city of Terre Haute concerning noise disturbances;
  - f. Exhibit F - E-mail dated April 14, 2013, from Phillips to city of Terre Haute concerning noise disturbances; and
  - g. Exhibit G - E-mail dated April 13, 2013, from Phillips to Police Chief Plasse concerning noise disturbances.

## V. Findings of Fact

1. Applicant is applying for the aforementioned permit. (Local Board Hearing; ATC File);
2. Premises has had permit for beer, liquor, and wine since 1998. (ATC File);
3. There have been complaints of noise having occurred outside the Applicant's premises and Phillips has phoned the police and communicated with various officials concerning this. (Local Board Hearing; ATC Hearing);
4. Applicant has worked with community to solve any issues which have been brought to his attention (ATC Hearing);
5. Operating a Vehicle While Intoxicated charges were dropped against Mr. Wilson Sr. on May 12, 2014, in Vigo County;
6. On March 9, 2010, the permittee paid a fine on its only ATC violation proceeding or following that date;
7. Phillips has been impacted by the noise coming from the premises, affecting her health (Local Board, ATC Hearing); and
8. Any Finding of Fact may be considered a Conclusion of Law, if the context so warrants.

## VI. Conclusions of Law

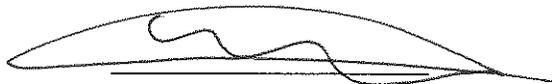
1. The ATC has jurisdiction over this matter pursuant to Ind. Code 7.1-1-2-2; Ind. Code 7.1-2-3-9.
2. The permit application was properly submitted pursuant to Ind. Code 7.1-3-1-4.
3. The ATC is commissioned to act upon proper application. Id.
4. The Hearing judge conducted a *de novo* review of the 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 or approve 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 Local Board met all of the requirements under Ind. Code §7.1-3-19-11, with the evidence presented at the time, however, the Appeal Hearing, done under the *de novo* standard, allows new evidence to be submitted both in regards to the Applicant and any remonstrators.
  13. In accordance with the above, the Local Board did not approve the renewal of the Applicant in a manner that was arbitrary, capricious, or contract to a constitutional right. In addition, the approval was not outside the statutory jurisdiction of the Local Board, all required procedures were followed, and there was substantial evidence to support the conclusion that the issues Phillips has with the Application do not rise to the level of a Public Nuisance and thus the approval of the permit renewal should be upheld.

Therefore, it is ORDERED, ADJUDGED AND DECREED that the findings of the Local Board to approve this be UPHeld.

It is further ORDERED, ADJUDGED AND DECREED that the evidence adduced at the Appeal Hearing was in favor of the Applicant, and the application of Jerry's Hideaway, Inc. d.b.a. North Star Tavern for the issuance of permit #RR84-03099, is APPROVED.

Dated: May 27, 2014

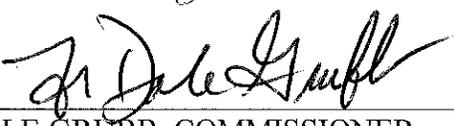


David Rothenberg  
Hearing Judge

Approved this 1<sup>st</sup> day of July, 2014.

  
ALEX HUSKEY, CHAIRMAN

  
DAVID JOHNSON, VICE CHAIR

  
DALE GRUBB, COMMISSIONER

  
MELISSA COXEY, COMMISSIONER