

MINUTES

ALCOHOL AND TOBACCO COMMISSION

AUGUST 18, 2014

CALL TO ORDER/NOTING OF QUORUM

Chairman Huskey called the meeting to order and noted the quorum and the attendance. Present were Vice Chairman Johnson, Commissioner Coxe and Commissioner Grubb. Also in attendance were Executive Secretary Rothenberg, Commission Counsel Allen, Prosecutor Mader, Master Officer Bedwell and Superintendent Strittmatter.

Carol Tietz and Jenny Drewry were present as observers.

DISPOSITION OF MINUTES

Commissioner Grubb moved to approve the minutes for the August 5, 2014 meeting. Commissioner Coxe seconded. The motion was unanimously approved.

PROSECUTOR'S RECOMMENDATIONS

PARTIES' AGREED DISPOSITIONS – Prosecutor Mader recommended the Commission approve the Parties' Agreed Dispositions that were submitted.

Commissioner Grubb moved to approve the Dispositions that were submitted for the August 18, 2014 meeting. Commissioner Coxe seconded. The motion was unanimously approved.

HEARING JUDGE'S RECOMMENDATIONS

DL45-13278 SHRIRAM, INC. – Hearing Judge Coxe stated the local board recommended this permit be denied for failure to appear as required. The Commission upheld that denial and the Permittee filed a timely notice of appeal. The Hearing Judge now submits her Proposed Findings of Fact and Conclusions of Law for recommendation to the Commission.

Commissioner Grubb moved to uphold the recommendation of the Hearing Judge to reverse the denial and approve the renewal of the permit. Vice Chairman Johnson seconded. The motion was unanimously approved.

RR76-13567 ROSEMARY E. SULLIVAN – Hearing Judge Rothenberg stated the local board recommended denial of the renewal of this permit because the permittee failed to disclose a misdemeanor conviction. The Commission upheld the denial and the permittee filed a timely notice of appeal. The Hearing Judge now submits his Proposed Findings of Fact and Conclusions of Law for recommendation to the Commission.

Commissioner Grubb moved to uphold the Hearing Judge's recommendation to reverse the denial and approve the renewal of the permit. Commissioner Coxe seconded. The motion was unanimously approved.

CONSIDERATION OF APPLICATIONS

Vice Chairman Johnson moved to approve and incorporate by reference these lists of permits for renewal, either with or without a quorum at the local board meeting, which have been recommended by local boards and reviewed by our staff with the authority of the Commission. Commissioner Grubb seconded. The motion was unanimously approved.

Vice Chairman Johnson moved to approve and incorporate by reference these lists of permit applications for a new permit, or applications for changes in location or ownership or both of existing permits, which were either recommended by local boards or where a quorum was not present, and reviewed by at least two Commissioners. Commissioner Grubb seconded. The motion was unanimously approved.

Vice Chairman Johnson moved to approve and incorporate by reference these lists of permit applications for catering. Commissioner Grubb seconded. The motion was unanimously approved.

Vice Chairman Johnson moved to approve and incorporate by reference these lists of permits to be placed in escrow for not more than five years, which have been reviewed and recommended by a Commissioner as appropriate for escrow. Commissioner Grubb seconded. The motion was unanimously approved.

Eight hundred eighty-seven (887) renewals approved, sixty-two (62) new and/or transfer applications approved, seven (7) permits approved for catering, six (6) permits approved for first year escrow, three (3) permits approved for second year escrow, six (6) permits approved for third year escrow and one (1) permit approved for fourth year escrow.

RENEWAL LETTERS AND WAIVER OF FEES

Commissioner Grubb moved to approve the renewal and fee waived letters of extension for the preceding weeks. Commissioner Coxe seconded. The motion was unanimously approved.

APPLICATIONS FOR DISCUSSION

RC89-02880 HARTLEY HILLS COUNTRY CLUB, INC. – Commission Counsel Allen stated the permittee requests the Commission convert this club permit to a restaurant permit. Initially, the request was to convert from a type 211-1 permit to a 210 permit. However, the surveyor has submitted a form stating the location is outside the city limits, so the permit would be converted to a type 209.

Commissioner Coxe moved to approve the conversion to a type 209. Commissioner Grubb seconded. The motion was unanimously approved.

RR02-19942 CBDD, LLC – Commission Counsel Allen noted this permittee is requesting the Commission convert this type 209 permit to a type 210 permit because the location was annexed into the city limits of Fort Wayne.

Vice Chairman Johnson noted he received a letter from the attorney and would like time to contact her regarding this request for conversion.

Chairman Huskey also stated that it may be necessary to have Excise investigate this location because there are some areas of Fort Wayne where permits cannot be converted, even though the area was annexed into the city limits.

Vice Chairman Johnson moved to table this matter for further investigation. Commissioner Grubb seconded. The motion was unanimously approved.

RR20-30694 JOSE DE JESUS DAVILA ORTIZ – Commissioner Coxey noted this is a new application with the local board voting 3-0 to disapprove.

Commissioner Coxey stated the applicant does not own the building and does not have a valid lease.

Commissioner Coxey moved to uphold the local board's recommendation and deny the new permit. Commissioner Grubb seconded. The motion was unanimously approved.

RH49-29935 GLOBAL HOTELS, LLC – Commissioner Coxey noted this is a new application. The applicant failed to appear before the local board.

Commissioner Coxey moved to disapprove the application for a new permit. Commissioner Grubb seconded. The motion was unanimously approved.

DL54-03769 JOHN F. CUNNINGHAM & ASSOCIATES, INC. – Commissioner Coxey noted this is a renewal application. The permittee failed to appear before the local board.

Commissioner Coxey stated she spoke with the permittee's attorney and there may have been a question as to whether the permittee needed to appear due to a past violation.

Commissioner Coxey moved to continue this matter to the next meeting. Commissioner Grubb seconded. The motion was unanimously approved.

RR79-23167 VUZ, INC. – Commissioner Coxey noted this is a renewal application with the local board voting 4-0 to disapprove because of violations.

Commissioner Coxey reviewed the violation file and it shows violations for no employee permit, a floor plan modification and failure to display. She does not feel comfortable voting to deny this renewal for such minor violations.

Commissioner Coxey moved to continue this to the next meeting to give her the opportunity to review the recording of the local board meeting. Commissioner Grubb seconded. The motion was unanimously approved.

RR32-28406 KIMIGA SUKI, INC. – Commissioner Coxey noted this is a renewal application with the local board voting 2-1 to disapprove.

Commissioner Coxey moved to uphold the local board's recommendation and deny the renewal. Vice Chairman Johnson seconded. The motion was unanimously approved.

DL32-19737 MBI, INCORPORATED – Commissioner Coxe noted this is a renewal application with the local board voting 3-0 to disapprove for failure to appear before the local board.

Commissioner Coxe moved to uphold the local board and deny the renewal. Commissioner Grubb seconded. The motion was unanimously approved.

INACTIVE FILES

No Inactive Files

OLD BUSINESS

DL50-29240 DOLGENCORP, LLC – Vice Chairman Johnson stated the Proposed Findings of Fact and Conclusions of Law were continued from the 8-5-14 meeting, for further review.

Vice Chairman Johnson reviewed this file and the file for DL50-29224 Amrit One Stop. Both of these new applications were considered by the local board at the same meeting. The Vice Chair stated he believes the facts were not exactly the same for both cases and he also believes that the recommendations given by the hearing judges regarding both of these files were correct.

Vice Chairman Johnson moved to uphold the Hearing Judge's recommendation and deny the new permit. No second was made. Commissioner Grubb recused himself from voting.

Chairman Huskey stated the motion dies due to a lack of a second. The Proposed Findings of Fact and Conclusions of Law will be assigned to an independent administrative law judge.

RR49-30652 EL CENTENARIO LLC – Vice Chairman Johnson noted this is a transfer of ownership and location with the local board voting 2-1 to disapprove. This was tabled from the last meeting.

Vice Chairman Johnson stated he reviewed the audio from the local board meeting. He found the meeting to be very confusing with 2 votes being taken. The first vote was 3-1 to disapprove and the second 2-1 to disapprove. The board member who made the initial motion to approve recused herself from the second vote. The Vice Chair also stated he did not feel the applicant was being honest in his testimony.

Vice Chairman Johnson moved to uphold the local board and deny the transfers. Commissioner Grubb seconded. The motion was unanimously approved.

NEW BUSINESS

REVOCATION OF EMPLOYEE PERMITS

--- Commissioner Grubb stated the following permittee was convicted of a disqualifying crime after this employee permit was issued: Victoria G. Freed, permit #BR1777452. Ms. Freed will not be eligible to hold an employee permit until February 1, 2015.

Commissioner Grubb stated after conducting an investigation of the permittee, Senior Officer Rich Swallow recommended the Commission revoke the permit.

Commissioner Grubb moved to uphold the recommendation of Officer Swallow and revoke the employee permit. Commissioner Coxey seconded. The motion was unanimously approved.

--- Commissioner Grubb stated the following permittee was convicted of a disqualifying crime after this employee permit was issued: Chad A. Allard, permit #BR1768080. Mr. Allard will not be eligible to hold an employee permit until July 14, 2015.

Commissioner Grubb stated after conducting an investigation of the permittee, Senior Officer Rich Swallow recommended the Commission revoke the permit.

Commissioner Grubb moved to uphold the recommendation of Officer Swallow and revoke the employee permit. Commissioner Coxey seconded. The motion was unanimously approved.

--- Commissioner Grubb stated the following permittee was convicted of a disqualifying crime after this employee permit was issued: Miles C. Alexander, permit #BR1781542. Mr. Alexander will not be eligible to hold an employee permit until August 8, 2015.

Commissioner Grubb stated after conducting an investigation of the permittee, Senior Officer Rich Swallow recommended the Commission revoke the permit.

Commissioner Grubb moved to uphold the recommendation of Officer Swallow and revoke the employee permit. Commissioner Coxey seconded. The motion was unanimously approved.

--- Commissioner Grubb stated the following permittee was convicted of a disqualifying crime after this employee permit was issued: Damon L. Scott, Jr., permit #BR1776326. Mr. Scott will not be eligible to hold an employee permit until August 3, 2015.

Commissioner Grubb stated after conducting an investigation of the permittee, Senior Officer Rich Swallow recommended the Commission revoke the permit.

Commissioner Grubb moved to uphold the recommendation of Officer Swallow and revoke the employee permit. Commissioner Coxey seconded. The motion was unanimously approved.

POLICY DETERMINATIONS

Executive Secretary Rothenberg informed the Chairman and Commission that they do not have the ability to designate or give away the ultimate authority for approval or disapproval of matters coming before them. In the case of DL50-29240 Dolgencorp, LLC, assigning the matter to an independent ALJ will not take the ultimate authority from the Commission. The Commission will still have to make the final determination.

ANNOUNCEMENTS

No Announcements

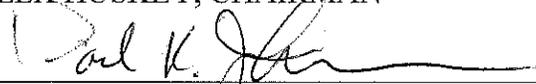
ADJOURNMENT

Commissioner Grubb moved to adjourn the meeting. Commissioner Coxe seconded. The motion was unanimously approved.

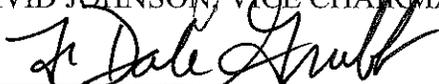
Approved this 2nd day of September, 2014.



ALEX HUSKEY, CHAIRMAN



DAVID JOHNSON, VICE CHAIRMAN



DALE GRUBB, COMMISSIONER

MELISSA COXEY, COMMISSIONER