

ALCOHOL AND TOBACCO COMMISSION

January 20, 2015

10:00 A.M.

1. Call to Order and Noting of Quorum –

2. Disposition of Minutes

January 6, 2015

3. Prosecutor's Recommendations –

PAD Forms

4. Hearing Judge's Recommendations –

DL50-29240 Dolgencorp, LLC – Proposed Findings of Fact and Conclusions of Law
WH49-29931 Spirited Sales, LLC – Proposed Findings of Fact and Conclusions of Law

5. Consideration of Applications -

650 Renewals

75 New/Transfers

8 Catering

9 1st Year Escrow

3 2nd Year Escrow

1 3rd Year Escrow

3 4th Year Escrow

1 5th Year Escrow

6. Renewal Letters and Waiver of Fees for Letters of Extension -

7. Applications for Discussion –

8. Inactive Files –

14 Permits Not Subject to Auction

4 Permits Subject to Auction

9. Old Business -

RR71-00532 Christopher Russell – Continued from last meeting

RR02-19942 CBDD, LLC – Continued from last meeting

RR41-23178 BMS of Indiana, LLC – Continued from last meeting

10. New Business -

Revocation of Employee Permits

11. Policy Determinations –

12. Announcements -

13. Adjournment

MINUTES

ALCOHOL AND TOBACCO COMMISSION

JANUARY 20, 2015

CALL TO ORDER/NOTING OF QUORUM

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

Jeff McKean, Anthony Miton, Jon Laramore, Anne Ricchiuto, Phil Terry, Matt Brase, Mark Webb, Jill Ritchie, Mark Carmichael, Deb Scott, Bart Herriman, Steve Badger, Alex Intermill, Diane Masariu, Chip Garver and Mike Maxwell were present as observers.

DISPOSITION OF MINUTES

Commissioner Grubb moved to approve the minutes from the January 6, 2015 meeting. Commissioner Coxey seconded. The motion was unanimously approved.

PROSECUTOR'S RECOMMENDATIONS

PARTIES' AGREED DISPOSITIONS – Prosecutor Mader recommended the Commission approve the 68 Parties' Agreed Dispositions that were submitted, totaling approximately \$24,350.00 in fines.

Commissioner Grubb moved to approve the Dispositions that were submitted for the January 20, 2015 meeting. Commissioner Coxey seconded. The motion was unanimously approved.

HEARING JUDGE'S RECOMMENDATIONS

DL50-29240 DOLGENCORP, LLC – Hearing Judge Rothenberg stated this is an application for a new permit that was recommended to be denied by the local board. The Commission upheld that denial and an appeal was filed. The Findings of Fact and Conclusions of Law were submitted a few months ago, but no vote was taken by the Commission. The Hearing Judge now submits them for consideration by the Commission. Commissioner Grubb previously recused himself from the vote, but retracted that recusal at this meeting.

Commissioner Coxey restated her objections that most of the remonstrators were competitors. Also, there is evidence that the petitions were circulated at churches in the area that are opposed to alcohol, another permit of this type was approved the same day and the Excise officer recommended approval of the permit.

Chairman Cook stated he reviewed the file and his thoughts were that the local board is probably the best judge on the credit and appropriate weight that should be given to the remonstrators.

Vice Chairman Johnson moved to uphold the Hearing Judge's recommendation. Commissioner Grubb seconded. Chairman Cook voted to approve and Commissioner Coxey voted to deny.

WH49-29931 SPIRITED SALES, LLC – See transcript

CONSIDERATION OF APPLICATIONS

Commissioner Coxey 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.

Commissioner Coxey 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 for approval 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.

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

Commissioner Coxey 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.

Six hundred fifty (650) renewals approved, seventy-five (75) new and/or transfer applications approved, eight (8) permits approved for catering, nine (9) permits approved for first year escrow, three (3) permits approved for second year escrow, one (1) permit approved for third year escrow, three (3) permits approved for fourth year escrow and one (1) permit approved for fifth 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. Vice Chairman Johnson seconded. The motion was unanimously approved.

APPLICATIONS FOR DISCUSSION

No Applications for Discussion

INACTIVE FILES

Commissioner Grubb moved to make eighteen (18) permits inactive. Four permits are subject to auction and fourteen permits are not subject to auction. Commissioner Coxey seconded. The motion was unanimously approved.

OLD BUSINESS

RR71-00532 CHRISTOPHER RUSSELL – Chairman Cook stated this was continued from the last meeting, due to the settlement conference being scheduled for January 15, 2015.

Prosecutor Mader noted that Mr. Russell did not appear for the settlement conference and he has not paid the fine that was assessed.

Executive Secretary Rothenberg stated the local board voted to recommended denial of the renewal of this permit after the permit had been made dead. The local board was not aware that it was dead. After the local board voted, the Commission voted to reactivate the permit. The Executive Secretary recommended the Commission continue this matter to give him time to sort out the details.

Commissioner Grubb moved to continue this until February 17th. Commissioner Coxey seconded. The motion was unanimously approved.

RR02-19942 CBDD, LLC – Chairman Cook stated this matter was continued from the last meeting.

Commission Counsel Allen stated pursuant to IC 7-1-3-22-3(b), the Commission is instructed to look at the date of the notice of publication for the annexation and the date the permit was obtained in order to determine whether a permit can be converted from a permit that is located outside the city limits to a permit that is located inside the city limits. The notice of publication was March 15, 1993. The permit was obtained on September 18, 2002. And, the annexation eventually took place in December of 2002. Therefore, the permit was obtained during the period of time after the notice, but before annexation. Commission Counsel recommended denial of the conversion from a type 209 permit to a type 210 permit.

Commissioner Coxey moved to adopt Counsel's recommendation to deny the conversion. Commissioner Grubb seconded. The motion was unanimously approved.

RR41-23178 BMS OF INDIANA, LLC – Commission Counsel Allen stated this is also a matter of annexation. However, in this case the notice of publication and the actual annexation took place five to six years prior to the permit being obtained. Counsel could not find any reason why the permit was applied for as a type 209 (outside city limits) permit instead of a type 210 (inside city limits) permit. Her recommendation was to treat this as an error and convert the permit to a type 210.

Commissioner Coxey moved to adopt Counsel's recommendation to approve the conversion. 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: Kara F. Morgan, permit #BR1692048. Ms. Morgan will not be eligible to hold an employee permit until January 12, 2018.

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: Cynthia J. Epeards, permit #VB1731625. Ms. Epeards will not be eligible to hold an employee permit until January 3, 2016.

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: Jill E. Cowden, permit #BR1667497. Ms. Cowden will not be eligible to hold an employee permit until January 6, 2018.

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: Michael R. Kapp, permit #BR1780173. Mr. Kapp will not be eligible to hold an employee permit until January 6, 2018.

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: Richard A. Alcoser, Jr., permit #BR1782686. Mr. Alcoser will not be eligible to hold an employee permit until January 5, 2016.

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

No Policy Determinations

ANNOUNCEMENTS

RESIGNATION OF VICE CHAIRMAN JOHNSON AND COMMISSIONER COXEY – Chairman Cook thanked Vice Chairman Johnson and Commissioner Coxey for their many years of service to the State of Indiana and the alcoholic beverage industry. He said he would miss their expertise.

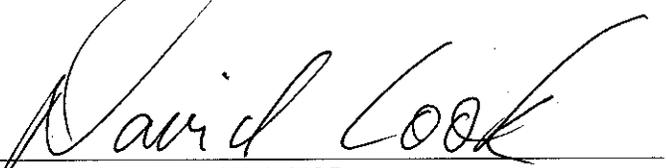
APPOINTMENT OF DAVID COLEMAN- Chairman Cook stated Judge David Coleman has been appointed to the position of Vice Chairman of the ATC. His term begins on February 9, 2015.

FEBRUARY COMMISSION MEETING – Chairman Cook stated the next meeting of the Commission is February 10th, due to the fact that there will not be a quorum on the 3rd.

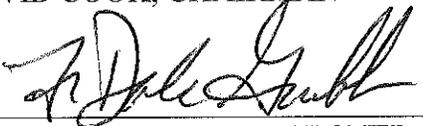
ADJOURNMENT

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

Approved this 10th day of February, 2015.



DAVID COOK, CHAIRMAN



DALE GRUBB, COMMISSIONER

1 Hearing Judge Rothenberg Spirited sales application number or permit #WH49-29931. Spirited
2 Sales, LLC applied for this application on September 19, 2013. On
3 March 4, 2014, as part of the Commission's regular meeting, in
4 accordance with IC 7.1-3-23-32, the Commission expressed their intent
5 to deny the application. On March 4, 2014, under IC 7.1-3-23-33, the
6 applicant requested a public hearing in which they could be heard and
7 offer evidence. That hearing was held on July 15, 2014. A transcript of
8 that hearing was made available to the Commission. There were post-
9 hearing briefs submitted by the remonstrators and the applicant, which I
10 gave to the Commission. All of the evidence that was offered at the
11 hearing was given to each commissioner. I issued my
12 recommendations, Findings of Fact and Conclusions of Law, which
13 again given to each commissioner and post-hearing briefs were---post-
14 hearing briefs were actually submitted before I did those, which again
15 given to the Commission. Finally, any objections and/or comments by
16 remonstrators or the applicant were asked to be submitted, which were
17 and again dispersed among the commissioners. At this time, it would
18 be my recommendation, as far as Findings of Fact and Conclusions of
19 Law, to deny the application for Spirited Sales to wholesale liquor.

20 Chairman Cook All right. Do I hear a motion, then?

21 Vice Chairman Johnson Mr. Chairman, I would move at this time to approve and adopt the
22 Findings and Conclusions and Proposed Orders of the hearing judge,
23 which would result in the denial of this application.

24 Cook Is there a second?

25 Commissioner Grubb Second.

26 Cook All right. It's been moved and seconded that the commission adopt the

27 Findings of Fact and Conclusions of Law denying Spirited Sales permit

28 to wholesale---to obtain a wholesale liquor permit. Is there any

29 discussion that needs to be had? All right then. All in favor of adopting

30 the Findings of Fact and Conclusions of Law denying the Spirited Sales

31 permit, indicate by saying, aye.

32 Johnson Aye.

33 Grubb Aye.

34 Cook Aye. Opposed say, no. You recused yourself.

35 Commissioner Coxey I was recused. Yes.

36 Cook So, that's 3-0, so the Findings of Fact and Conclusions of Law denying

37 Spirited Sales a permit to wholesale liquor permit will be adopted and

38 that permit is denied.