

ALCOHOL AND TOBACCO COMMISSION

August 4, 2015

10:00 A.M.

1. Call to Order and Noting of Quorum –

2. Disposition of Minutes

July 21, 2015

3. Prosecutor's Recommendations –

PAD Forms

4. Hearing Judge's Recommendations –

RR02-02249 B&C Baughman Corporation – Proposed Findings of Fact and Conclusions of Law

5. Consideration of Applications -

618 Renewals

28 New/Transfers

2 Catering

2 1st Year Escrow

9 2nd Year Escrow

2 3rd Year Escrow

2 4th Year Escrow

2 5th Year Escrow

9 New/Renewal Carriers

10 New/Renewal Direct Wine Shippers

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

7. Applications for Discussion –

RR49-31463 Fountain Tap, LLC – New application with the local board voting 3-1 to approve

RR49-30353 21st Corner, LLC – Renewal with the local board voting 4-0 to disapprove.

8. Inactive Files –

5 Permits Not Subject to Auction

9. Old Business -

10. New Business -

Revocation of Employee Permits

BR1714044 Mathew Mounce

BR1795900 Blake Thomas

11. Policy Determinations –

12. Announcements -

13. Adjournment

MINUTES

ALCOHOL AND TOBACCO COMMISSION

AUGUST 4, 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 Coleman and Commissioner Maginn. Commission Counsel Allen, Prosecutor Mader, Executive Secretary Rothenberg, Master Officer Bedwell and Superintendent Strittmatter were also in attendance.

Katie Maddox, Mark Brooks, Garry Hamilton, Jerri Lerch, Kevin Hunter, Niki Kelly, Diane Masariu, Bart Herriman, Kimbia O'Brien, Tony Mitson, Melissa Coxey, Jenny Drewry, Matt Brase, Marc Carmichael, Jeff McKean, Mark Webb and Greg Genrich were present as observers.

Chairman Cook stated that former commissioner, Dale Sturtz, passed away last week. A moment of silence was observed.

Superintendent Strittmatter commented on Commissioner Sturtz's time with the Commission. He remembered Dale as one who used common sense when making decisions. The Superintendent asked that we keep Commissioner Sturtz's family in our thoughts and prayers during this time.

DISPOSITION OF MINUTES

Vice Chairman Coleman moved to approve the minutes from the July 21, 2015 meeting. Commissioner Maginn seconded. The motion was unanimously approved.

PROSECUTOR'S RECOMMENDATIONS

PARTIES' AGREED DISPOSITIONS – Prosecutor Mader recommended the Commission approve the 50 Parties' Agreed Dispositions that were submitted, totaling approximately \$25,750.00 in fines.

Commissioner Maginn moved to approve the Dispositions that were submitted for the August 4, 2015 meeting. Vice Chairman Coleman seconded. The motion was unanimously approved.

HEARING JUDGE'S RECOMMENDATIONS

RR02-02249 B&C BAUGHMAN CORPORATION – Vice Chairman Coleman moved not to adopt the Findings of Fact and Conclusions of Law that were submitted by Hearing Judge Rothenberg and to uphold the findings of the local board to deny the renewal. Commissioner Maginn seconded. The motion was unanimously approved.

**See transcript for discussion.

CONSIDERATION OF APPLICATIONS

Vice Chairman Coleman moved to approve and incorporate by reference these lists of permits for renewal. Commissioner Maginn seconded. The motion was unanimously approved.

Vice Chairman Coleman 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. Commissioner Maginn seconded. The motion was unanimously approved.

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

Vice Chairman Coleman moved to approve and incorporate by reference these lists of permits to be placed in escrow for not more than five years. Commissioner Maginn seconded. The motion was unanimously approved.

Vice Chairman Coleman moved to approve the new and renewal carrier permits. Commissioner Maginn seconded. The motion was unanimously approved.

Vice Chairman Coleman moved to approve the new and renewal direct wine shipper permits. Commissioner Maginn seconded. The motion was unanimously approved.

Six hundred eighteen (618) renewals approved, twenty-eight (28) new and/or transfer applications approved, two (2) permits approved for catering, two (2) permits approved for first year escrow, nine (9) permits approved for second year escrow, two (2) permits approved for third year escrow, two (2) permits approved for fourth year escrow, two (2) permits approved for fifth year escrow, one (1) new carrier permit approved, eight (8) renewal carrier permits approved, six (6) new direct wine shipper permits approved and four (4) renewal direct wine shipper permits approved.

RENEWAL LETTERS AND WAIVER OF FEES

Commissioner Maginn moved to approve the renewal and fee waived letters of extension for the preceding weeks. Vice Chairman Coleman seconded. The motion was unanimously approved.

APPLICATIONS FOR DISCUSSION

RR49-31463 FOUNTAIN TAP, LLC – Vice Chairman Coleman stated he, Commissioner Maginn and Commissioner Grubb visited the proposed location of this application. He noted there is a church near the location, but under IC 7.1-3-20-16.5, there is an exception regarding a permit being located within 200 feet of a church. The Vice Chairman also stated that the commission members reviewed the recording of the local board meeting.

Vice Chairman Coleman moved to uphold the local board's recommendation to approve the transfer. Commissioner Maginn seconded. The motion was unanimously approved.

RR49-30353 21ST CORNER, LLC – Commissioner Maginn stated she reviewed the file regarding this renewal application. She noted that in 2015, several incidents occurred at the location--- a person struck in the parking lot, a person shot and killed and fights.

~~Commissioner Maginn moved to uphold the local board's recommendation to deny the renewal. Vice Chairman Coleman seconded. The motion was unanimously approved.~~

INACTIVE FILES

Vice Chairman Coleman moved to make five (5) permits inactive. All five permits are not subject to auction. Commissioner Maginn seconded. The motion was unanimously approved.

OLD BUSINESS

No Old Business

NEW BUSINESS

REVOCATION OF EMPLOYEE PERMITS

Commissioner Maginn moved, pursuant to IC 7.1-3-18-9.5, to order the following employee permit holders to complete an alcohol evaluation and treatment program within the next six months and provide proof of same to the Commission. The Commissioner further moved that these revocations be rescheduled for the February 2, 2016 meeting. Vice Chairman Coleman seconded. The motion was unanimously approved.

Mathew Mounce, BR1714044; Blake Thomas, BR1795900

POLICY DETERMINATIONS

No Policy Determinations

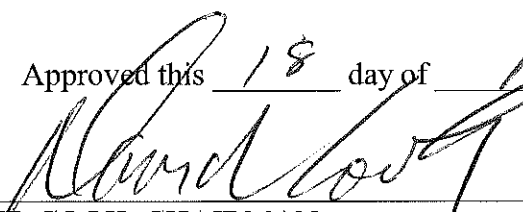
ANNOUNCEMENTS

No Announcements

ADJOURNMENT

Commissioner Maginn moved to adjourn the meeting. Vice Chairman Coleman seconded. The motion was unanimously approved.

Approved this 18 day of August, 2015.

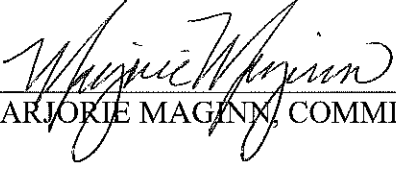


DAVID COOK, CHAIRMAN



DAVID COLEMAN, VICE CHAIRMAN

DALE GRUBB, COMMISSIONER



MARJORIE MAGINN, COMMISSIONER

1 Chairman Cook RR02-02249 B & C Baughman Corporation.

2 David Rothenberg Thank you, Mr. Chairman. This is a permit that was heard before the
3 Allen County Local Board on September 22, 2014. It was voted on 4-0
4 to deny the application, based on lack of good, moral character, in
5 addition to the location becoming a common nuisance. On October 7,
6 2014, the Commission denied the application and we held an appeal
7 hearing here on April 27, 2015. Everybody should have a copy of my
8 Findings of Fact and Conclusions of Law. There's quite a bit of
9 evidence and testimony at the appeal hearing. In the end, it was my
10 recommendation to reverse the local decision and approve the renewal
11 of the application.

12 Chairman I'll open it up for discussion.

13 Vice Chair Coleman Mr. Chairman, I have reviewed the Findings of Fact and Conclusions of
14 Law and I cannot agree with David on this. In paragraph 5 of the
15 Findings of Fact, it says, "Detective Gutierrez states that B. Baughman
16 was present at the premises and was aware that marijuana was being
17 smoked on August 1, 2014.", which B. Baughman denied. I think
18 David disregarded the detective's testimony. To me, when a detective
19 testifies under oath, I believe it is the truth and I cannot agree with his
20 conclusions here. If he allowed marijuana to be smoked there, it was a
21 criminal, common nuisance. So, I would oppose approving these
22 Findings of Fact and Conclusions of Law.

23 Commissioner Maginn Second.

24 Chairman

I just want to add that I reviewed both the local board hearing and I even sat in on portions of the appeal hearing in this matter. The police officer that testified at the local board did not testify at the appeal hearing, so the hearing judge didn't have the opportunity to evaluate his credibility in person. So, I am inclined to defer to the local board's determination of the credibility of that particular witness who did testify that Mr. Burke was present when there were several people openly smoking marijuana in the bar. In addition to that, the record reflected that he did plead to assisting a criminal, off of the original allegations of maintaining a common nuisance. There was discussion that he could well not have been there on the date that the allegations were that he was present and there was some discussion about gas receipts, but I searched the record and I saw that no such receipts were ever placed in the record. In addition to that, there is a well documented history of considerable police runs over 2013, and currently up to 2014, at the time of the hearing. The hearing judge made a distinction about a nexus between the criminal activity and the knowledge of the applicant in this matter, as far as making an evaluation relating to public nuisance. I can't believe that the law intends that if an establishment caters to those sorts of persons who engage in the criminal activity that was at this location over the two years that were under examination, that that person can be shielded by the idea that there is not a real nexus to be inferred. I think it's a reasonable inference that he had knowledge about these sorts of things because there was no change in the business

48 model, apparently, to try and discourage the type of clientele that was
49 coming there. So, for those reasons, I am not going to support the
50 Findings of Fact and Conclusions of Law. There has been a motion
51 made that the commission not adopt the Findings of Fact and affirm its
52 prior decision to uphold the local board's denial. Have we had a second
53 on that?

54 Maginn Yes.

55 Chairman All right. Any further discussion on that?

56 Coleman I might also note that on page 9, there was an error. It says, "August 1,
57 2015", but I think that's probably 2013. I'm not sure.

58 Chairman Anything further on discussion? All in favor of denying the submitted
59 Findings of Fact and Conclusions of Law and affirming the
60 Commission's adoption of the local board's finding of denial, say, aye.

61 Maginn Aye.

62 Coleman Aye.

63 Chairman Aye. Opposed, say, no. Motion carries.