

ALCOHOL AND TOBACCO COMMISSION

August 16, 2016

10:00 A.M.

1. Call to Order and Noting of Quorum –

2. Disposition of Minutes

August 2, 2016

3. Prosecutor's Recommendations –

PAD Forms

4. Hearing Judge's Recommendations –

RR49-31463 Fountain Tap, LLC – Proposed Findings of Fact and Conclusions of Law
RR49-28421 PNC Bancorp, LLC - Proposed Findings of Fact and Conclusions of Law

5. Consideration of Applications -

685 Renewals

81 New/Transfers

~~21~~ Catering

5 1st Year Escrow

6 2nd Year Escrow

5 3rd Year Escrow

4 4th Year Escrow

4 5th Year Escrow

10 New/Renewal Carriers

18 New/Renewal Direct Wine Shippers

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

7. Applications for Discussion –

RR49-04789 Arantee Group

RR31-30365 BigRagu, LLC – Renewal with LB voting 4-0 to deny

RR32-32491 El Volcan Corporation – New application with LB voting 4-0 to deny

8. Inactive Files –

37 Permits Not Subject to Auction

17 Permits Subject to Auction

9. Old Business -

10. New Business –

Revocation of Employee Permit –

Catherine Wilson, BR1807379 – 2 convictions

Probationary Employee Permits

BR1712466 Erin Pittman – 1 conviction
VB1734225 Roger Clarence Brown – 1 conviction
BR1754404 Stacy E Higdon – 1 conviction

11. Policy Determinations –

12. Announcements -

INDUSTRY ROUNDTABLE DISCUSSIONS

August 23, 1:30 pm, C-Store Roundtable (ATC)

September 20, 1:30 pm, Pharmacy/Grocery Store Roundtable (ATC)

October 4, 1:30 pm, RR Permit Roundtable (ATC)

13. Adjournment

MINUTES

ALCOHOL AND TOBACCO COMMISSION

AUGUST 16, 2016

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, Commissioner Maginn and Commissioner Grubb. Prosecutor Mader, Commission Counsel Allen, Executive Secretary Rothenberg, Superintendent Strittmatter, Master Officer Bedwell and Corporal Lynch were also in attendance.

Jeff McKean, Dan Carden, Matt Brase, Greg Genrich, Brooke Barnett, Bart Herriman, Marc Carmichael, Katie Maddox, Jim Purucker, Joe Hoage, Diane Masariu and Alex Intermill were present as observers.

DISPOSITION OF MINUTES

Vice Chairman Coleman moved to approve the minutes from the August 2, 2016 meeting. Commissioner Maginn seconded. The motion was unanimously approved.

PROSECUTOR'S RECOMMENDATIONS

PARTIES' AGREED DISPOSITIONS – Prosecutor Mader recommended the Commission approve the 161 Parties' Agreed Dispositions that were submitted, totaling approximately \$77,925.00 in fines.

Commissioner Maginn moved to approve the Dispositions that were submitted for the August 16, 2016 meeting. Commissioner Grubb seconded. The motion was unanimously approved.

HEARING JUDGE'S RECOMMENDATIONS

RR49-31463 FOUNTAIN TAP, LLC – Hearing Judge Rothenberg noted this was an approval by the local board and an upholding of that approval by the commission. One of the remonstrators filed a petition for intervention, with a request for appeal, and was granted intervening status. The appeal hearing was held with most of the remonstrance being about things that may happen in the future, based on the applicant's previous businesses. No evidence was found to prove those things may happen. The Hearing Judge recommended the Commission approve the permit for one year.

Vice Chairman Coleman moved to uphold the Hearing Judge's recommendation to approve the permit for one year. Commissioner Maginn seconded. The motion was unanimously approved.

RR49-28421 PNC BANCORP, LLC – Hearing Judge Rothenberg noted this was a recommended denial by the local board and the upholding of that denial by the Commission. Evidence was presented by remonstrator, Sgt. Carter regarding incidents happening outside of the club. The Hearing Judge found no nexus between the owner and those incidents. The recommendation of the Hearing Judge is to approve the renewal for one year.

Commissioner Maginn moved to uphold the Hearing Judge's recommendation to approve the renewal for one year. Vice Chairman Coleman seconded. The motion was unanimously approved.

CONSIDERATION OF APPLICATIONS

Commissioner Grubb moved to approve and incorporate by reference these lists of permits for renewal, which have been recommended by local boards and reviewed by our staff with the authority of the commission and hereby move for approval of same and the inclusion of these lists as part of the minutes. Commissioner Maginn seconded. The motion was unanimously approved.

Commissioner Grubb 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 have been recommended by local boards and reviewed by at least two commissioners and hereby move for approval of same, pending final floor plan approval by the Indiana State Excise Police, and inclusion of these lists as part of the minutes. Commissioner Maginn seconded. The motion was unanimously approved.

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

Commissioner Grubb 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 and hereby move for approval of same and the inclusion of these lists as part of the minutes. Commissioner Maginn seconded. The motion was unanimously approved.

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

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

Six hundred eighty-five (685) renewals approved, eighty-one (81) new and/or transfer applications approved, twenty-two (22) permits approved for catering, five (5) permits approved for first year escrow, six (6) permits approved for second year escrow, five (5) permits approved for third year escrow, four (4) permits approved for fourth year escrow, four (4) permits approved for fifth year escrow, ten (10) new and renewal carrier permits approved and eighteen (18) new and renewal direct wine shipper permits approved.

*Chairman Cook made note that nine (9) of the new permits are DNR/state park permits. See transcript for discussion.

RENEWAL LETTERS AND WAIVER OF FEES

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

APPLICATIONS FOR DISCUSSION

CALCO PACKING, LLC – Chairman Cook stated he sent out notice to this applicant regarding the Commission's actions with respect to revocation of the permit and subsequent fines that were assessed. The Chairman gave this applicant until end of business on August 15, 2016, to request a hearing on the matter. As of this date and time, no request was received.

Vice Chairman Coleman moved to uphold the Commission's actions of 7-19-16, regarding this application. Commissioner Maginn seconded. The motion was unanimously approved.

RR49-04789 ARANTEE GROUP – Executive Secretary Rothenberg stated the renewal of this permit was denied by the Commission in July. No appeal was filed because the permittee failed to sign for their certified letter of notification. Prior to the denial, the permittee filed for an Extension that extended the permit to August. The permittee is involved in a lawsuit and because the court, seeing that there was an Extension, assumed the permit was valid even though the permit was dead. The court is directing the Commission to place the permit in escrow.

Vice Chairman Coleman moved to reactivate this permit and put it in escrow. Commissioner Maginn seconded. The motion was unanimously approved.

RR31-30365 BIGRAGU, LLC – Chairman Cook noted this is a renewal with the local board voting 4-0 to deny.

Chairman Cook stated Corporal Turner submitted a memo notifying the Commission that the permittee failed to appear several times at the local board meeting as required.

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

RR32-32491 EL VOLCAN CORPORATION – Chairman Cook noted this is a new application with the local board voting 4-0 to deny.

Chairman Cook listened to the recording of the local board meeting. The discussion included information about transferring the permit between two individuals, one being of illegal status in the United States and the other being of questionable status in the United States. The discussion mentioned the individual had work authorization and an application pending, but we do not know what the pending application is.

Chairman Cook has worked extensively with immigration law and is very familiar with what is legal.

Chairman Cook recommended the Commission remand this to the local board for clarification of whether or not these individuals have the proper status required to hold this permit.

Commissioner Maginn moved to remand this application to the local board. Vice Chairman Coleman seconded. The motion was unanimously approved.

INACTIVE FILES

Commissioner Grubb moved to make fifty-four (54) permits inactive. Thirty-seven of the permits are not subject to auction and seventeen permits are subject to auction. Commissioner Maginn seconded. The motion was unanimously approved.

OLD BUSINESS

No Old Business

NEW BUSINESS

REVOCAION OF EMPLOYEE PERMIT – Commissioner Grubb moved to revoke the following permit, due to the fact that the permittee has two DUI convictions. Commissioner Maginn seconded. The motion was unanimously approved.

Catherine Wilson, BR1807379

PROBATIONARY EMPLOYEE PERMITS - Commissioner Grubb moved, pursuant to IC 7.1-3-18-9.5, to order the following employee permit holder(s) 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 to reschedule for the February 3, 2017 meeting. Commissioner Maginn seconded. The motion was unanimously approved.

Erin Pittman, BR1712466; Roger Clarence Brown, VB1734225; Stacy E Higdon, BR1754404

POLICY DETERMINATIONS

NON-RULE POLICY ATC 011 – Chairman Cook stated we are in the process of submitting a form for approval regarding the non-rule policy.

ANNOUNCEMENTS

INDUSTRY ROUNDTABLE DISCUSSIONS – Chairman Cook stated the schedule for the remainder of the discussions is as follows:

- August 23, 1:30 pm, C-Store Roundtable (ATC)
- September 20, 1:30 pm, Pharmacy/Grocery Store Roundtable (ATC)
- October 4, 1:30 pm, RR Permit Roundtable (ATC)

TRADE PRACTICE RULES COMMITTEE – Chairman Cook announced the formation of a trade practice rule committee, to assist in the understanding of these complex rules. The committee is made up of a cross-section of industry members, those members being: Chairman Cook, Prosecutor Mader, Industry Liaison Scott Bedwell, Excise Officer Matt Bell, Casino Association of Indiana; Don Rix, CEO of Big Red Liquors; Commissioner Dale Grubb, Attorney Bart Herriman, Attorney Scott Chin, Attorney Alex Intermill, Patrick Tamm, CEO of Indianan Association of Beverage Retailers and Attorney Brian Burdick.

ADJOURNMENT

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

Approved this 6 day of September, 2016.

David Cook
DAVID COOK, CHAIRMAN

David H. Coleman
DAVID COLEMAN, VICE CHAIRMAN

Dale Grubb
DALE GRUBB, COMMISSIONER

Marjorie Maginn
MARJORIE MAGINN, COMMISSIONER

1 Chairman Cook The Chair would note of the new and transfer applications, nine of
2 those are for state park renewals, pursuant to the recently enacted
3 legislation regarding the Dunes State Park and the alcohol in state
4 parks. Yesterday, I received a remonstrance letter with some
5 attachments raising issues mainly of which have been vetted and heard
6 before. The only thing---and I'm going to make that a part of the record.
7 But, I wanted to make sure that we had special recognition that those
8 state park applications were a part of the new and transfer applications.
9 And, then, David, it's my understanding that you had several meetings
10 with the Department of Natural Resources about the application
11 process. Is that right?

12 David Rothenberg Yes. We had several meetings with DNR, along with their staff. Angie
13 Willis was there and Michelle Stone was there. We had talked about
14 what they needed to fill out on those applications. We did not come up
15 with a brand new application for DNR. So, some of those questions on
16 the new application didn't really pertain to them. I think it was noted in
17 the remonstrance that some of the boxes weren't checked. Well, not all
18 of the boxes needed to be checked. Just as if you are applying for a
19 package liquor store, you don't need to check the minimum food
20 requirements. So, we did work with them on the process. They were
21 compliant. They gave us everything we asked for. And, again, we
22 reviewed with them a couple of times what needed to be filled out on
23 the application, what needed to be turned in, what didn't need to be
24 turned in. There were some extra things they had to turn in. There

25 were some things they didn't have to turn in in relation to restaurant
26 permits or in relation to liquor store permits, for instance. So, they did
27 comply with everything we asked for on the applications.

28 Chairman In addition, there were some questions raised about two applications
29 pending at the same time because of the Pavilion Partners appeal
30 process and this application.

31 Rothenberg Right. So, right now, there is an application under appeal for Pavilion
32 Partners up in the Dunes. And, the remonstrator pointed out that you
33 could not apply for an application concurrently while an application
34 was in process at the same premises. It's certainly my understanding
35 and I hope that it occurs quickly that that application, if these DNR
36 applications are approved, the one for the Dunes, for instance, that
37 Pavilion Partners will withdraw their appeal. And that will, in fact, go
38 away. If that wasn't the case and if somehow Pavilion Partners was
39 required initially to withdraw their application before DNR could apply,
40 that would preclude Pavilion Partners from applying for another
41 application for an entire year. So, when you look at the due process
42 aspect of it, it doesn't seem equitable to require them to drop that
43 application and have to wait an entire year if something with the DNR
44 applications didn't go through.

45 Chairman The fact of the matter is our approval today of these applications,
46 especially as it relates to Pavilion Partners and the Dunes State Park,
47 renders the issues in the appeal moot. Doesn't it?

48 Rothenberg Well, they couldn't continue with the application process for Pavilion
49 Partners because that premises already has a permit.

50 Chairman That's my point. Okay. Any other questions for David, based on
51 questions I've asked? I am going to pass this down and make this part
52 of the record. Then, do I have a motion regarding the 81 new and
53 transfer applications?

54 Commissioner Grubb Mr. Chairman, I incorporate by reference this list of permit applications
55 for a new permit, or application for changes in location or ownership, or
56 both, of existing permits which have been recommended by local
57 boards and reviewed by at least two commissioners and hereby move
58 for approval of same, pending final floor plan by the Excise Police and
59 inclusion of this list as part of the minutes of the 8-16-16 meeting.

60 Commissioner Maginn Can we make the nine state park applications, that they're approved
61 once the appeal on Pavilion Partners is withdrawn?

62 Chairman Well, I think it would only apply to the Dunes State Park. Right?

63 Maginn Right. To that one?

64 Rothenberg Well, you know, actually, that's probably not true because some of the
65 DNR premises also have inns that are operating concurrently.
66 Something that we're requiring them to do is we are requiring them, at
67 least DNR, meaning DNR, who operates those inns, to turn in a letter
68 asking us to surrendering those permits and making them dead. But,
69 just as Pavilion Partners, they didn't want to make those dead until the
70 other ones were active because you could get stuck with nothing then.
71 So, I think it's probably all or nothing. If that's a requirement of the

72 commission that both Pavilion Partners and the inns that are operating
73 within the state parks turn in these letters before these are activated,
74 then that could certainly be a valid contingency. But, it would apply to
75 any park that presently has an application in, or an operating inn.

76 Chairman Would it suffice if we just directed the Executive Secretary to inform us
77 in the event that becomes an issue after we have approved these permits
78 and they can be put back on the commission for some consideration of
79 that issue?

80 Maginn That's fine. I just wanted to note, too, that the reason these are
81 happening is because there is a brand new law that permits state parks
82 to, for the first time, get these permits from us.

83 Vice Chairman Coleman I'll second the motion.

84 Chairman All right. It's been moved and seconded then that the 81 new and
85 transfer applications be approved as submitted. Any further discussion?
86 All in favor say, aye.

87 Maginn Aye.

88 Grubb Aye.

89 Coleman Aye.

90 Chairman Opposed say, no. Motion carries.