

**BEFORE THE
INDIANA ALCOHOL & TOBACCO COMMISSION**

IN THE MATTER OF)
THE PERMIT OF:)

PEK INC.,) **PERMIT NO. RR64-31218**
d/b/a SUNSET)
5844 U.S. HIGHWAY 6)
PORTAGE, INDIANA 46368)

PROPOSED FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

I. BACKGROUND OF THE CASE

Pek, Inc., d/b/a Sunset, (Permittee) 5844 U.S. Highway 6, Portage, Indiana 46368, Permit No. RR64-31218, a Type 210 permit¹ (Permit) applied for a renewal of its permit for the period covering October 1, 2018 through and including September 30, 2019. The application for renewal was assigned to the Local Alcoholic Beverage Board of Porter County (Local Board), which on November 8, 2018, heard and recommended a denial of the renewal by a 4 – 0 vote. The Indiana Alcohol & Tobacco Commission (ATC or Commission) approved the recommendation of the Local Board and denied the renewal on November 20, 2018.

Permittee timely filed a Notice of Appeal with the ATC on December 13, 2018. The matter was assigned for an appeal hearing and heard on April 5, 2019. At that time, witnesses were sworn, evidence was received and heard and the matter was taken under advisement. The Hearing Judge also took judicial notice of the entire contents of the ATC file relating to Permit, including Local Board hearing and exhibits therein. Following the hearing, Mark Webb, attorney for Permittee, requested the opportunity to submit proposed findings of fact and conclusions of law (Permittee's Findings.) As of October 18, 2019, hearing judge had not received Permittee's Findings and issued an order that Permittee's Findings be submitted by November 1, 2019. Permittee submitted Permittee's Findings on October 31, 2019, and were made part of the ATC file. Having been duly advised of the facts and law at issue here, the Hearing Judge now submits her Proposed Findings of Fact and Conclusions of Law to the ATC for its consideration.

¹ Beer/Wine/Liquor permit issued in an incorporated area.

II. EVIDENCE BEFORE THE LOCAL BOARD

- A. The following individuals testified before the Local Board in favor of the permittee in this cause:
1. George Mamounas, sole shareholder, PEK, Inc.
- B. The following documentary evidence was introduced and admitted before the Local Board in favor of the permittee in this cause:
1. None.
- C. The following individuals testified before the Local Board against the permittee in this cause:
1. None.
- D. The following documentary evidence was introduced and admitted before the Local Board against the permittee in this cause:
1. None.

III. EVIDENCE BEFORE THE ATC

- A. The following individuals testified before the ATC in favor of the permittee in this cause:
1. George Mamounas, sole shareholder of Pek, Inc.
 2. Mark C. Webb, attorney for permittee.
- B. The following documentary evidence was introduced and admitted before the ATC in favor of the permittee in this cause:
1. None.
- C. The following individuals testified before the ATC in opposition to the permittee in this cause:
1. None.
- D. The following documentary evidence was introduced and admitted before the ATC in opposition to the permittee in this cause:
1. None.

IV. FINDINGS OF FACT

1. Pek, Inc., d/b/a Sunset, 5844 U.S. Highway 6, Portage, Indiana 46368, is the holder of a Type 210 beer/wine/restaurant permit, No. RR64-31218, issued by the ATC. (ATC File)
2. Said permit was first issued in July, 2015, and has been renewed annually since that time. (ATC File).
3. George Mamounas is the sole shareholder of Pek, Inc. (ATC File; ATC Hearing).
4. The establishment has been in Mamounas' family since it first opened in 1998. (ATC Hearing).²
5. Mamounas has managed the establishment since it opened, having taken over operations upon the death of his father Pete Mamounas, in 2000. (LB Record; ATC Hearing).
6. Beginning in 2017, local law enforcement began responding more frequently to disruptions in the establishment's parking lot, having to break up fights, for a total of 53 calls for service at the establishment that year. (LB Record).
7. In March, 2017, Permittee received a notice of violation for furnishing alcohol to a minor (IC 7.1-5-7-8), allowing a minor to loiter (IC 7.1-5-7-10(B)), and public nuisance 905 IAC 1-27-2(P).
8. Permittee paid a fine for the violation for furnishing alcohol to a minor. (ATC File.)
9. The violation for allowing a minor to loiter was deferred and the violation for public nuisance was dismissed. (ATC File.)
10. In February, 2018, Permittee received a notice of violation for service of setups (IC 7.1-5-8-4), allowing a minor to loiter (IC 7.1-5-7-10(B)), and Public Nuisance (905 IAC 1-17-2(O)). (ATC File.)
11. The violation for service of setups resulted from the disc jockey hired by the Permittee bringing his own alcohol into the permit premises. (ATC File.)
12. The disc jockey denied bringing the alcoholic beverage into the permit premises so Permittee gave him a warning not to bring in alcoholic beverages in the future. (ATC Hearing.)

² The permit was first issued in 1998 as Pete Mamounas Incorporated d/b/a Sunset Lounge, at the same address, as Permit No. RR64-11125. The permit was transferred to George Mamounas' company, Pek, Inc., in 2015, thus resulting in a new permit number.

13. The violation for public nuisance resulted from Indiana State Excise Police officers finding two hand rolled marijuana cigarettes inside the permit premises. (ATC File.)
14. Permittee stated that at the time of this incident his bouncers were not yet patting patrons down at the door. When asked how his staff would handle the smell of marijuana in the permit premises, Permittee again stated that this incident was before his bouncers were patting patrons down at the door. (ATC Hearing.)
15. Permittee suspended the bouncer that allowed the minor into the bar for three weeks. Permittee blamed the unusually large crowd that evening for the bouncer failing to check the ID of the underage patron. (ATC File, LB Hearing.)
16. Permittee paid a fine for the violations. (ATC File.)
17. In May, 2018, Permittee received a violation for public nuisance (905 IAC 1-27-2(O)) for:
 - a. an incident that occurred on April 21, 2018, in which Permittee's patrons were involved in an altercation in the parking lot at the permit premises that caught the attention of Portage Police Department officers involved in a traffic stop nearby; and,
 - b. the large number of police runs by Portage Police Department to the permit premises. (ATC File, LB Hearing, and ATC Hearing.)
18. Permittee paid a fine for the violations. (ATC File.)
19. Permittee increased his security staff to five (5) bouncers in January 2018, almost four (4) months prior to the altercation in the parking lot on April 21, 2018. (ATC Hearing.)
20. Additional corrective measures testified to by Permittee include:
 - a. Limiting the number of people allowed in the permit premises;
 - b. Requesting a second form of identification for anyone under the age of 25;
 - c. Patting down patrons;
 - d. Checking purses and bags brought to the permit premises;
 - e. Instructing bartenders that if they are not comfortable with the age of a patron, they should card that patron again;
 - f. Banning people involved in fights from returning for a period of time between one month and permanently;

- g. Working on placing signs, but has not yet placed the signs, at the door listing prohibited items such as drugs and weapons; and
- h. Using an ID scanner to check the identification of patrons entering the premises (LB Hearing, ATC Hearing.)

21. Although Permittee is limiting the number of people allowed in the permit premises to comply with the capacity limitations set by the fire marshal, Permittee is attempting to appeal the fire marshal's capacity and desires to increase the capacity. (ATC Hearing.)

22. When questioned whether staffing levels would change with the change in the capacity, Permittee initially stated that he could handle a larger crowd size with the current staffing levels. After further questioning by his attorney, Permittee acquiesced that he would need to increase his staff proportionately with the increase in the capacity of the permit premises. (ATC Hearing.)

23. Permittee was already using ID scanners at the time of the February 2018 violation for allowing a minor to loiter. (ATC Hearing.)

24. Permittee made multiple casual remarks that create concern over Permittee's understanding of the issues and desire to correct. (Local Board hearing, ATC hearing.)

25. At Local Board Permittee stated:

“I can't explain it. I can't. But it happens in a bar. People are having a good time. They drink. They get into altercations. It happens. You know....”

26. At the ATC appeal hearing, Permittee stated:

“I've enforced it to all my employees. If they see anybody staggering, anybody look like they're on drugs, it's zero tolerance anymore. And because again, it's my fault. We're the sober ones. They're the ones that are intoxicated so they have a poor sense of judgment.”

27. While attorney for Permittee attempted to rehabilitate or restore the Permittee's credibility following these statements, the commission is not convinced Permittee understands or accepts his responsibilities as the holder of an alcoholic beverage permit.

28. When describing the policies in place for when situations are handled internally by staff and when local law enforcement is contacted, Permittee stated that he did have policies in place but could provide vague, imprecise descriptions of those policies. (ATC Hearing.)

29. Permittee stated that the increase in police runs at his premises was due to the change in clientele which was “predominately white clientele...Now, the African Americans have come in to [his] establishment.” (Local Board hearing, ATC hearing.)
30. Permittee stated at the appeal hearing that he has only had one police run with Portage Police Department since the local board hearing in November of 2018, and that he no longer has issues with runs from the Portage Police Department. (ATC Hearing.)
31. From October 8, 2018 to the April 5, 2019 appeal hearing, permittee had one substantive run for a situation that originated inside the permit premises involving the patrons at the permit premises:
 - a. In December 2018, Permittee’s employees contacted Portage Police Department about a disturbance in the permit premises resulting in two arrests. See Report No. 18-31048 attached hereto as Attachment 1.
32. The local board made its decision to deny renewal based on the number of violations at the permit premises. (LB Record).
33. The local board felt that the permittee had not done enough to address the problems at the permit premises giving rise to their concerns. (LB Record).
34. The Commission’s findings only consider incidents that occurred with the Portage Police Department up to the appeal hearing on April 5, 2019.
35. The Commission’s findings only consider ATC violations for which a Notice of Violation was sent by the Commission Prosecutor prior to the Local Board hearing on November 8, 2018, pursuant to IC 7.1-3-1-3(g).
36. Any Finding of Fact may be considered as a Conclusion of Law if the context so warrants.

V. CONCLUSIONS OF LAW

1. The Indiana Alcohol & Tobacco Commission has jurisdiction over this matter pursuant to IC 7.1-1-2-2; IC 7.1-2-3-9.
2. The permit application was properly submitted pursuant to IC 7.1-3-1-4.
3. The ATC is authorized to act upon a proper application. *Id.*

4. The Hearing Judge may take judicial notice of the ATC file relevant to a case, including the transcript of the proceedings and exhibits, if any, before the local board. 905 IC 1-36-7(a).
5. The Hearing Judge conducted a *de novo* review of the appeal on behalf of the ATC, including a public hearing and review of the record and documents in the ATC file. IC 7.1-3-19-11(a); 905 IAC 1-36-7(a); 905 IAC 1-37-11(e)(2); *see also*, IC 4-21.5-3-27(d).
6. The findings here are based exclusively upon the substantial and reliable evidence in the record of proceedings and on matters officially noticed in the proceedings. IC 4-21.5-3-27(d); 905 IAC 1-37-11(e)(2).
7. The permittee meets the qualifications to hold the permit in this matter. IC 7.1-3-4-2; IC 7.1-3-9-1.
8. The ATC may reverse a local board's recommendation to deny the renewal of an alcoholic beverage permit if it finds that the local board's action is (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (2) contrary to a constitutional right, power, privilege, or immunity; (3) in excess of, or contrary to, statutory jurisdiction, authority, limitations or rights; (4) without observance of procedure required by law; or (5) unsupported by substantial evidence. IC 7.1-3-19-11.
9. There was no evidence submitted that the permittee lacked good moral character or did not have a good reputation within the community it served.
10. The Commission does not consider actions taken by the Permittee prior to the issues giving rise to the concerns of the Local Board to be corrective actions that would affect the decision made by the Local Board. *255 Morris, LLC v. Indiana Alcohol and Tobacco Commission*, 93 NE 3d 1149, 1155 (2018).
11. Actions taken by the Permittee prior to the issues giving rise to the concerns of the Local Board, include:
 - a. Increasing security personnel to five; and
 - b. Using an ID scanner.
12. The Commission does not find that limiting the number of people allowed in the permit premises will be an effective corrective action because Permittee also testified that he believes the capacity for his premises is too low and is seeking to appeal to the fire marshal for a larger capacity.

13. The Commission does not find that the size of the crowd is a mitigating factor in allowing a minor to loiter.
14. The Commission does not find the increase in security staff to five (5) bouncers a corrective action since it occurred prior to the incident on April 21, 2018.
15. The Commission does not find that the race of the patrons at the permit premises is relevant to whether Permittee is able to adequately and lawfully operate the permit premises.
16. The evidence presented at the appeal hearing does not show that the decision of the Local Board should be over turned pursuant to IC 7.1-3-19-11.
17. Sustaining the denial of the renewal of the permit at issue here is supported by the evidence submitted before the ATC. IC 7.1-3-19-11(a)(5).

VI. ORDER

IT IS THEREFORE RECOMMENDED that the recommendation of the Local Alcoholic Beverage Board of Porter County to deny renewal of Permit No. RR64-31218, should be upheld and the renewal application for Pek, Inc., d/b/a Sunset, 5844 U.S. Highway 6, Portage, Indiana 46368 is hereby DENIED.

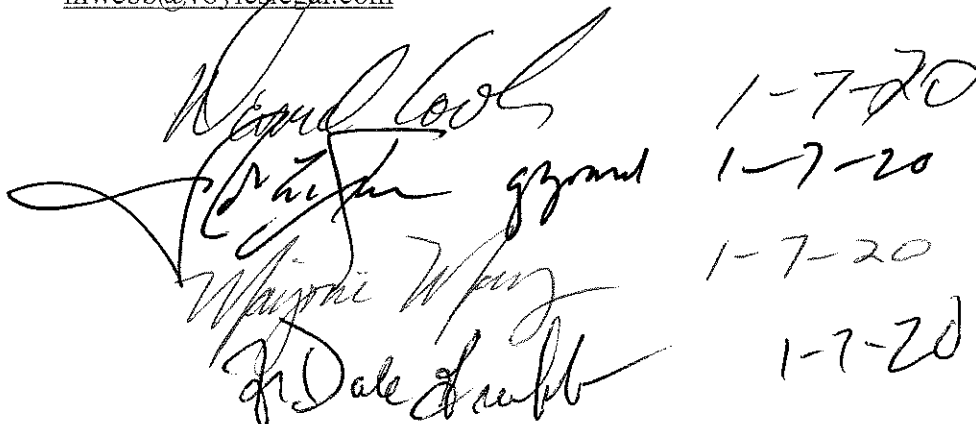
DATED: 12/2/19



 JESSICA ALLEN, HEARING JUDGE

Order shall be sent to attorney for the Permittee by email and hand delivery on December 2, 2019:

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 Ronald Cook 1-7-20
 Christopher Gyzard 1-7-20
 Wayne Wray 1-7-20
 Dale Webb 1-7-20