

**STATE OF INDIANA
BEFORE THE INDIANA ALCOHOL AND TOBACCO COMMISSION**

IN THE MATTER OF)	
THE PERMIT OF)	
)	
INDIANA ENTERTAINMENT, LLC)	Permit No. RR49-36452
d/b/a STACKHOUSE TAVERN)	
3652 S. MERIDIAN STREET)	
INDIANAPOLIS, IN 46217)	
)	
Applicant.)	

HEARING JUDGE FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND OF THE CASE

Indiana Entertainment, LLC d/b/a Stackhouse Tavern, 3652 S. Meridian Street, Indianapolis, IN 46217, permit number RR49-36452 (“Applicant”), is the applicant for a permit to sell beer, wine, and liquor in a restaurant located in an incorporated area to be issued by the Alcohol and Tobacco Commission (“Commission”). The application was assigned to the Alcoholic Beverage Board of Marion County (“Local Board”). The Local Board held a hearing on May 18, 2020, and voted 3-1 to deny this application based on “no need and or desire” for the services. On June 3, 2020, the Commission unanimously voted to deny the application at its regularly held meeting.

On June 5, 2020, Applicant timely filed Petitioner Stackhouse Tavern’s Notice of Appeal Hearing, and the matter was assigned to the Hearing Officer David Cook (“Hearing Officer”). The matter was set for hearing on December 10, 2020, and that time, witnesses were sworn, evidence was heard, and the matter was taken under advisement. The Hearing Officer also took judicial notice of the entire contents of the file related to this cause. Having been

advised of the facts and law at issue, the Hearing Judge now submits these Proposed Findings of Fact and Conclusions of Law to the Commission for its consideration.

III. EVIDENCE BEFORE THE LOCAL BOARD

A. The following individuals testified before the Local Board in favor of the Applicant in this cause:

1. Christopher Burton, owner and member of the Applicant.

B. The following evidence was introduced and admitted before the Local Board in favor of the Applicant in this cause:

1. None.

C. The following individuals appeared and/or testified before the Local Board against the Applicant in this cause:

1. Anne Schott, neighbor to Applicant (spoke at hearing);
2. Mark Dutton, member of neighborhood of Applicant (spoke at hearing);
3. Father Douglas Hunter, Pastor St. Roch Catholic School and Church (spoke at hearing);
4. Julie McGuire (did not speak at hearing);
5. Justin Moed (did not speak at hearing);
6. Megan Chamblee (did not speak at hearing);
7. Stephen Chamblee (did not speak at hearing);
8. Michael Riedeman (did not speak at hearing);
9. Teresa Plummer (did not speak at hearing);
10. Corey Cranfill (did not speak at hearing);
11. John Lannan (did not speak at hearing);
12. Joseph Schott (did not speak at hearing);
13. Sharon Sandusky (did not speak at hearing);
14. Tom Lorenz (did not speak at hearing); and
15. Angela Lorenz (did not speak at hearing).

D. The following evidence was introduced and admitted before the Local Board against the Applicant in this cause:

1. Demonstrative exhibit summarizing Remonstrator's arguments;
 - (a) Maps of neighborhood
 - (b) List of local restaurants and dealer permits
 - (c) Historical documentation of violations belonging to prior owner
 - (d) Concerns regarding historical experience from prior owners

- (e) Pictures and stories regarding prior owners
- 2. Zoning variance and commitments;
- 3. Letter from Margiy Outten;
- 4. Letter from Gateway Alliance;
- 5. Letter from John Isom;
- 6. Letter from Kristen Jones Marion County City Councilor District 16;
- 7. Letter from Mary Bogeman;
- 8. Non-signed petition listing names and addresses (undated);
- 9. Petition from neighborhood collected on 2/15/20 and 2/16/20;
- 10. Petition collected at home and at St. Roch practice from 2/18/20-2/21/20;
- 11. Petition collected at home on 2/22/20;
- 12. Petition from Teacher and Support Staff form St. Roch Catholic School from 2/25-20-2/28/20; and
- 13. Petition from Northwest Perry Neighborhood Association Meeting 2/27/20.

IV. EVIDENCE BEFORE THE COMMISSION

A. The following individuals testified before the Commission in favor of the Applicant in this cause:

- 1. Christopher Burton, owner and member of the Applicant;
- 2. Austin Burton, General Manager of premises;
- 3. Mark Meyers, Mayor, Greenwood;
- 4. Brad Klopfenstein, President, Indiana Licensed Beverage Association; and
- 5. David Rothenberg, attorney for the Applicant.

B. The following evidence was introduced and admitted before the Commission in favor of the Applicant in this cause:

- 1. Petition with approximately 175 signatures in favor of alcohol being served at this location;
- 2. Letter from Mark Syber, Owner, Syberg Properties;
- 3. Letter from Bryan Leniski, Owner, We Dine, Indy;
- 4. Letter from Steve Burnett, Mayor, Franklin;
- 5. Letter from Duane Burgess, Sheriff, Johnson County;
- 6. Letter from Mark Myers, Mayor, Greenwood;
- 7. Letter from Norm Gabehart, Town Manager, Whiteland;
- 8. Letter from Tiffany Burton;
- 9. Letter from Brad Klopfenstien, President, Indiana Licensed Beverage Association;
- 10. Letter from Paul Annee, Councillor, Indianapolis City-Council (support withdrawn and opposition entered on 12/4/20, see Remonstrator Exhibit VV);
- 11. Letter from Kirby Cochran, Chief of Police, Franklin;
- 12. Affidavit of Margaret Smith;
- 13. Before and after pictures of premises;

14. Stackhouse Employee Handbook;
15. Stackhouse flyer and general policies;
16. E-mail from Mary Wilson, Principal, St. Roch's Catholic School;
17. Marion County Property Card for 3660 S. Meridian St.;
18. Schott Services Webpage;
19. Letter to John and Anne Schott, dated August 12, 2020;
20. Picture of camera in upper window of John and Anne Shott's residence facing Applicant's premises;
21. Indianapolis Metropolitan Police Department Limited Agency Agreement dated October 22, 2020;
22. Letter from Michelle Davis, Indiana State Representative; and
23. Letter from Gateway Community Alliance withdrawing their remonstrance; and
24. Demonstrative timeline.

C. The following individuals testified before the Commission against the Applicant in this cause:

1. Anne Schott, neighbor to Applicant;
2. Megan Chamblee, neighbor to Applicant; and
3. Michelle Salinas, Director, South Indy Quality of Life.

D. The following evidence was introduced and admitted before the Commission against the Applicant in this cause:

- A. Letter from Cathy Burton, President, MCANA;
- B. Letter from Michelle Salina, Director, South Indy Quality of Life;
- C. Letter from Taylor Williams, Advocacy Specialist, ALAIN;
- D. Letter from David Wurz, Employee, ARCO Gas Station;
- E. Letter from Tom & Megan Guthrie;
- F. Letter from John Lannon;
- G. Letter from Joseph Schott;
- H. Letter from Peggy Collison;
- I. Letter from Teresa Plummer;
- J. Letter from Lesa Petty;
- K. Letter from Lorenz Family;
- L. Letter from Stephen & Megan Chamblee;
- M. Garcia Petition (1 signature);
- N. Letter from Justin Moed, State Representative;
- O. Letter from Father Douglas Hunter, St. Roch Catholic Church & School;
- P. Petition Appeal (6 signatures);
- Q. Petition Signatures (11 signatures);
- R. Petition Signatures (16 signatures);
- S. Online Petition Signatures;
- T. Appeal Hearing Petitioners Map;
- U. IMPD Request for Extra Patrols;

- V. Map of Distance to Bynum's Steakhouse;
- W. Next door Online Post;
- X. INRC Neighborhood Map;
- Y. Residential Map and Indiana Code;
- Z. Indiana Secretary of State Certified Copies;
- AA. Criminal Record – 49F10-0901-CM-017977;
- BB. Stackhouse Tavern Facebook Page;
- CC. Ishia Facebook Page;
- DD. Application and Affidavit of Purchase;
- EE. Stackhouse Letter and Handbook Page;
- FF. Zoning Variance;
- GG. Variance Site Plan;
- HH. City Planner Outdoor Use;
- II. City Planner for Restaurant Use;
- JJ. Open House Invitation to Garfield Park Neighbors Group posted 11-3-20;
- KK. Garfield Park Neighbors Group Private Facebook Page;
- LL. Video 5-25-20, 4:00 am;
- MM. Video 6-18-20 7:30 am;
- NN. Video 7-11-20 6:44 am;
- OO. Video 10-8-20 7:09 pm;
- PP. Video 11-7-20 4:04 pm;
- QQ. Picture from 9-19-20;
- RR. Video 10-12-20 8:29 am;
- SS. Picture from 10-15-20;
- TT. Letter from Brad Thacker;
- UU. Letter from Michael & Diane Schloegl;
- VV. Letter from Paul Annee withdrawing initial letter of support
- WW. Marion County Property Card from 7546 Scatter Woods Lane;
- XX. Marion County Property Card from 3652 S. Meridian Street;
- YY. Indiana Entertainment Holdings, LLC Certificate;
- ZZ. Pictures of 3660 S. Meridian Street;
- AAA. Text messages between Margaret Smith and John Schott;
- BBB. ISEP Report 2015 Type II Gaming Violation;
- CCC. ISEP Report 2018 Public Drug Nuisance;
- DDD. ISEP Report 2018 Public Nuisance Gaming Violation;
- EEE. Email to Chris Burton;
- FFF. LeeLynn, LLC Certificate; and
- GGG. Petition Signature from 3755 S. Meridian St.

V. FINDINGS OF FACT

1. Indiana Entertainment, LLC, d/b/a Stackhouse, 3652 S. Meridian St., Indianapolis, IN 46217, permit number RR49-36452 is an applicant for a permit to sell beer, wine, and liquor. (ATC File).
2. Applicant meets the qualifications to hold a permit pursuant to Ind. Code § 7.1-3-4-2. (Local Board Hearing; ATC Hearing).
3. Evidence was presented of applicant's good moral character and of good repute in the Johnson County community. (Local Board Hearing; ATC Hearing).
4. Evidence was presented that applicant has improved communities into which he personally lives and has opened businesses. (ATC Hearing).
5. Applicant offered St. Roch Church use of his facilities and green space for a de minimis fee. (ATC Hearing).
6. Evidence was presented as to applicant's involvement in communities via service organizations and government boards. (ATC Hearing).
7. Alcohol has been sold at this address for over fifty (50) years for on-premises consumption. (ATC Hearing).
8. While permit premises is not within two hundred (200) feet of a church or school as prohibited by Ind. Code § 7.1-3-21-11, the permit premises is in a predominately residential area (the area is zoned residential D-A with variance of use granted many years ago for a tavern, evidence was submitted that Larry Calloway, Principal Planner II , Division of Planning Department of Metropolitan Development in May, 2020 indicated a new variance for applicant's planned use as a restaurant would be required ATC Hearing.) and is surrounded by family residences, is in close proximity to St.

Roach Catholic Church and School (280 feet), is in a school yellow flashing light slow zone area and is situated across from a school bus pick and drop off area. (ATC File, ATC Hearing).

9. The Indianapolis Department of Business and Neighborhood Services issued a Zoning Verification to the Applicant which is a clearance under which the ability to operate in the particular zoning district and distance to protected facilities are verified to meet zoning requirements as per Ind. Code § 7.1-3-1-5.6(j)(1). (Local Board Hearing, ATC Hearing, ATC File).
10. Applicant presented hand-signed petitions from approximately 175 people in favor of granting this premises a permit. Some of those signing were from Fishers, Brownsburg, Greenwood, Carmel and Camby, Indiana. Many were from zip codes outside of the 46217 area (the zip code area for the permit premises). (ATC Hearing).
11. Remonstrators submitted a written petition with ninety three (93) signatures from community members the majority of which were in the immediate area of the proposed permit premises (81 of which are within 1,000 feet of the proposed location).
12. Prior premises operator and permittee on, Woodcock Property Management, LLC dba LJs, allowed the establishment to become a public nuisance which resulted in their permit being revoked by the commission in July 2019. Remonstrators presented substantial evidence of prior criminal activity and other bad acts by the prior owners. (Local Board Hearing; ATC Hearing; ATC File).
13. A substantial portion of remonstrator testimony and exhibits before the Local Board and Commission pertained to Woodcock's misconduct by noise, criminal activity and

- leud behavior by patrons when they were in operation. (Local Board Hearing; ATC Hearing).
14. There was no evidence presented pertaining to the Applicant negatively impacting the other community businesses. (Local Board Hearing, ATC Hearing).
 15. The ninety-three (93) petition signatures that were collected in person by remonstrator were not directed at the lack of a high and fine reputation of the applicant, Chris Burton, rather, according to the opening paragraph of the petitions, were to evidence no need or desire for an alcohol permitted premises at that location.
 16. Exhibits presented to Local Board representing remonstrator opposition were compiled using addresses from petitioners who had signed petition prior to Applicant being identified as the potential new owner. (Local Board; ATC Hearing).
 17. Remaining remonstrator petitions were collected via online petition requests in an unidentified fashion, with no signatures. (Local Board Hearing Exhibits; ATC Hearing).
 18. The sole Local Board member who voted in favor of awarding permit to Applicant believed Applicant was being held accountable for prior owner's actions.
 19. Local Board Members who voted against this permit, did so based on persuasive evidence of no need or desire for an alcohol permit at that location. Evidence was submitted that there are thirty nine (39) alcohol permitted premises with a two (2) mile radius of the location in question.
 20. Some remonstrators originally objecting to the permit reversed their position and indicated their support, likewise some initial supporters withdrew their support. One (Gateway Community Alliance) went from opposition to neutral.

21. Applicant testified he has invested approximate \$350,000 into the physical property, including improvements , created a handbook of policies based on feedback from community members (ATC Hearing).
22. The applicant argues that he was denied the permit both at the local board and at the commission based upon evidence submitted of the bad character, criminal activity and other bad acts constituting a public nuisance by the prior owner, LJs. However, the record demonstrates and the Hearing Judge finds that, while substantial evidence in that regard was submitted, it is appropriate evidence of and just cause for the strong remonstrance against the application, not the applicant, by the immediate community members and that there is, indeed, no desire for or need for alcohol at his location. Persuasive evidence was presented of close proximity to a school and places where children frequent, that the proposed location is in a residential neighborhood surrounded by predominately single-family dwellings and there exists ample alcohol services in the immediate vicinity. Experience forms attitudes and opinions. The fact that negative prior experiences with an alcohol permitted premises causes an unwelcoming attitude in the local community and forms the basis for their opinions and objections, does not negate the local communities right to express no further desire or need for that type of service in their neighborhood. The remonstrators, in significant numbers situated closest to the proposed location, were clear they no longer felt the need for or the desire to have alcohol at that permit premises.
23. Any Finding of Fact may be considered a Conclusion of Law if the context so warrants.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Ind. Code § 7.1-1-2-2 and Ind. Code § 7.1-2-3-9.
2. The permit application was properly submitted pursuant to Ind. Code § 7.1-3-1-4.
3. The Commission is authorized to act upon proper application. *Id.*
4. The Hearing Judge may take judicial notice of the Commission file relevant to a case, including the transcript of proceedings and exhibits before the local board. 905 IAC 1-36-7(a).
5. The Hearing Judge conducted a *de novo* review of the appeal on behalf of the Commission, including a public hearing and a review of the record and documents in the Commission file. Ind. Code § 7.1-3-19-11(a); 905 IAC 1-36-7(a), -37-11(e)(2); *see also* Ind. Code § 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 proceeding. 905 IAC 1-37-11(e)(2); Ind. Code § 4-21.5-3-27(d).
7. In determining whether to issue a permit, the Commission may consider the geographic desirability of a proposed permit location, the need for the permit at the proposed location, the community's desire for the permit, and the impact of the permit on the community and other businesses. 905 IAC 1-27-4.
8. The local board based their decision upon evidence presented demonstrating the lack of need and desire for the services at this location. (ATC file).

9. A determination of whether there exists a need for the permit, or a desire for the services, and to what degree of impact of such services have on the neighborhood and area businesses turns on the facts on each case. 905 IAC 1-27-4(b).
10. Applicant and Remonstrators may demonstrate desire in the community to receive services or the lack of need or desire for the services by means of surveys and signed petition forms or letters stating such. *In the matter of Angela Kling, LLC RR31-30109.*
11. Where an applicant shows that customers would be willing to purchase alcoholic beverages if they were available for sale, such evidence may demonstrate a desire to receive such services at that location. *In the matter of Wal-Mart Stores East, LP DL82-21381*; see also *In the Matter of Garb-Ko, Inc. DL49-21523.*
12. Substantial evidence is the standard to be applied by the Commission in review of the record of proceedings. Substantial evidence requires something more than a scintilla, and less than a preponderance of evidence; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Indiana Alcoholic Beverage Comm. v. River Road Lounge*, 590 N.E. 2d 656, 659 (Ind. App. 1992); see also *Roberts v. County of Allen*, 773 N.E.2d 850, 853 (Ind. App. 2002).
13. The Local Board may have met all of the requirements under Ind. Code §7.1-3-19-11, with the evidence presented at the time, however, the Appeal Hearing, done under the *de novo* standard, allows new evidence to be submitted other in regards to the Applicant and any remonstrators. *In the matter of Jerry's Hideaway Bar, RR84-03099.*
14. Prior owner has no interest in operations, ownership of business, or ownership of land and therefore any character or reputation defects or action taken by or omitted by prior owner displayed should not be imputed to Applicant and should not be considered in

the Applicant's case. *In matter of Mark Newkirk, Jr., Permit RR46-32097.* The Hearing Judge concludes the aforementioned case does not apply in no substantive evidence was presented attacking the applicant's character or high and fine reputation and was not the controlling factor in the decision of the local board or the commission to deny the application.

15. If a licensed premises becomes a public nuisance, or the licensed premises becomes the scene of acts or conduct which are prohibited by the Indiana Penal Code, or by the criminal laws of the United States, the premises shall be subject to the sanction provided in Ind. Code § 7.1-3-6-1 through § 7.1-2-6-14. 905 IAC 1-27-2.
16. Greater weight is given to the testimony and concerns of people in the close proximity to the proposed location than to those further away. *In the Matter of Pavillion Partners, LLC. RR64-31493.*
17. The commission shall follow the recommendation of a majority of the members of a local board to grant or deny an application for a retailer's or dealer's permit of any type, unless, after the commission's review of that recommendation, the commission determines that to follow the recommendation would be (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 unsupported by substantial evidence. IC 7.1-3-19-11
18. Any Conclusion of Law may be considered a Finding of Fact if the context so warrants.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the decision of the Marion County Local Board resulting in a 3-1 vote to deny the application for the permit

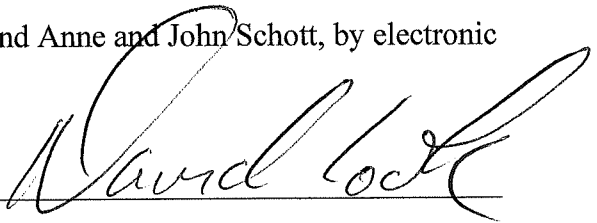
number RR49-36452, should be upheld and the Alcohol and Tobacco Commission should deny the application. The application of Indiana Entertainment, LLC d/b/a Stackhouse Tavern, 6447 W. Washington Street, Indianapolis, Indiana, for the Type 210 permit number RR49-36452, applied for herein is DENIED.

DATE: 1-28, 2021

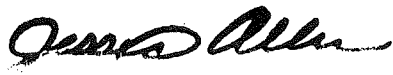

David Cook, Hearing Officer

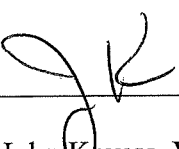
CERTIFICATE OF SERVICE

I certify that the foregoing Findings of Fact and Conclusions of Law of been sent to the Applicant's attorney of record, David Rothenberg and Anne and John Schott, by electronic mail this 28th day of January, 2021.


Hearing Judge, David Cook

The Hearing Judge's Findings of Fact & conclusion of Law are hereby ADOPTED / REJECTED this 2nd day of March, 2021.


Chairperson


John Krauss, Vice Chairman



Dale Grubb, Commissioner



Marjorie Maginn, Commissioner