

STATE OF INDIANA

BEFORE THE INDIANA ALCOHOL AND TOBACCO COMMISSION

IN THE MATTER OF)
THE APPLICATION OF)
EL CAJON DE ARAUCA AGRITAINMENT RANCH LLC) **PERMIT NO. RR33-39970**
C/O ESTHER BARBER)
PO BOX 33437)
INDIANAPOLIS, INDIANA 46203)

PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW

Comes now the Hearing Judge, James W Payne, and makes the following finding and order regarding the Fact Finding held in this cause of action:

BACKGROUND INFORMATION

The Applicant filed with the Indiana Alcohol and Tobacco Commission (ATC) a request that a permit be issued to serve alcohol under the label of Agritourism or Agritainment, which is the operation of a local farm with services that may include you-pick fruits and vegetables, corn mazes, hayrides, pumpkin patches, petting zoos, and cooking classes and similar activities, in addition to serving food and beverages, and alcoholic beverages if approved by the ATC and the local alcohol Board.

The Applicant had applied for an alcohol permit and was in the process of complying with the rules, regulations and licensing procedures required by both ATC and the Henry County Local Alcohol board (Board) to begin serving alcohol. Along with that, there are numerous other requirements and agencies such as the health department, zoning department, and fire department requirements.

The Board held a hearing on August 2, 2023, and after testimony and evidence, denied the permit requested by the Applicant. Subsequently, the ATC full commission affirmed the denial of the permit application as determined by the Board on August 15, 2023.

On August 16, 2023, ATC sent a note to the applicant informing it of the ATC's decision and the process for appeal. On August 25, 2023, the Applicant sent a note to ATC appealing the decision of the local board and requesting a hearing before the full ATC Commission as allowed by law.

ATC subsequently notified the Applicant that a pretrial hearing was scheduled on October 13, 2023. At that hearing, the Hearing Judge advised the Applicant that a *de novo*, fact-finding hearing would be held on December 7, 2023, at 10 AM at the ATC offices.

At the hearing on December 7, 2023, the Applicant provided evidence and testimony about the circumstances of the application before the Board. The finding on December 7, 2023, at the time by the Hearing Judge was that the witness was not an attorney nor well-versed in the matters of permits for alcohol service and the Hearing Judge continued the matter for the Applicant to address the issues that were identified at the local Board in its denial of the permit, which included zoning issues, building issues, fire inspection, health department, water inspection, the septic system and port-a-potty issues as well as financial ones.

At subsequent hearings on February 7, 2024, April 4, 2024, and June 6, 2024, Applicant was given an opportunity to resolve issues that had been raised by the local board. On April 4, 2024, the Hearing Judge made preliminary findings and set June 6, 2024, as the last opportunity for the Applicant to resolve issues that were pending---that is the septic system, water inspection and approval from the health department. Applicant was told to deliver any such documentation that would indicate compliance with all the issues previously mentioned and to do that on or before June 6, 2024.

Evidence before the local board.

A. The following individuals testified before the local board in favor of the applicant in this cause:

1. Carlos Leon
2. Esther Barber

B. The following evidence was introduced and admitted before the local board in favor of the applicant in this cause:

None

C. The following individuals testified before the local board against the applicant in this cause:

None

D. The following evidence was introduced and admitted before the local board against the applicant in this cause:

None

EVIDENCE BEFORE THE APPEAL HEARING

A. The following individuals testified before the Hearing Judge in favor of the applicant in this cause:

1. Carlos Leon
2. Providing evidence but not under oath is Esther Barber

B. The following evidence was introduced and admitted before the Hearing Judge in favor of the applicant in this cause (these are documents submitted over a period of months between December 7, 2023, and July 6, 2024:

1. Note from the zoning Department of Henry County that there is no problem with the zoning.
2. Statement that the location had been cleared by the division of fire and building safety. Indiana Department of Homeland Security.
3. Statement from the Department of Health that the septic system had not been approved and that completion would take three months.
4. Invoice from Watson excavating regarding the start and completion of the septic system.
5. Statement from Watsons Excavating dated January 19, 2024, stating excavating and installation of the septic system would cost \$22,600. Statement from QuickBooks of Watson Excavating indicating a payment of \$11,752.
6. Statement of January 12, 2024, of the sodium evaluation report.
7. Statement of sales summary and statement of account from Indiana Members Credit Union.
8. Statements from Watson Excavating and an email stating the status of the septic system from February 1, 2024.
9. Email of April 18, 2024, from the Henry County Planning Commission indicating delay in the hearing regarding the Planning Commission's review of this matter.

10. Statement of July 10, 2024, from the Office of Water Control—IDEM for the well driller to contact it regarding clearance of construction.

C. The following individuals testified before the Hearing Judge against the applicant in this cause:

None

D. The following evidence was introduced and admitted before the Hearing Judge against the applicant in this cause:

None.

FINDING OF FACTS

1. El Cajon De Arauca Agritainment Ranch LLC has applied for permit number RR33-39970.
2. The permit is not being placed within 200 feet of a church or school.
3. The applicant has applied for its permit to operate as an agritainment location.
4. Since it is an agritainment designation, the applicant intends to operate a restaurant serving food and alcoholic beverages in the context of a facility which not only sells food and beverages but provides services like a you-pick fruits and vegetables, corn maze, hayride, pumpkin patch petting zoo, and other activities.
5. In order to provide service to the public, local jurisdictions require that businesses comply zoning, health, fire and other inspections to ensure the safety for customers, employees and other folks.
6. The local board denied the request of this Applicant because it determined that several issues had not been addressed at the time that the local board hearing occurred.
7. The local board found that there had been no proof of zoning approval.
8. The local board found that there was no building or fire inspection release.
9. The local board found that the local health department and state water inspectors had not completed and approved the water quality inspection.
10. The local board found that the septic system had not been approved by the local or state health departments.
11. The local board found that there had not been sufficient financial information and infrastructure presented.
12. At the continued hearing on April 4, 2024, the Hearing Judge found that the Applicant over the previous five months had worked on but had not fully resolved issues regarding zoning,

building and fire inspection, health permit issues, septic issues, water issues, and finance issues, even despite the documents submitted by the Applicant.

13. The Hearing Judge at that date found that the Applicant had tried to move forward on all of these things but that the winter weather interfered with the installation of the septic system and the water inspection had not been conducted.
14. On April 4, 2024, the Hearing Judge instructed the Applicant to resolve issues with the septic system and water and get approval from the health department, instructing the Applicant that, when those were approved, to deliver those documents to the ATC offices.
15. June 6, 2023, the Hearing Judge indicated to the Applicant that the pending issues must be resolved by July 11, 2024, or the Hearing Judge would enter his order based upon the information provided.
16. Even at this date, Applicant has not delivered of those documents to the offices of ATC.
17. The Hearing Judge therefore finds that Applicant has not provided sufficient information to overturn the Henry County Local Alcohol Board's determination that the permit request of the Applicant should be denied.
18. The Hearing Judge therefore finds that the Applicant has failed to comply with the application requirements for operation of an agritainment business providing food and serving alcoholic beverages that could and should be allowed to serve the public.
19. Any Finding of Fact can be considered a Conclusion of Law if the context so warrants.

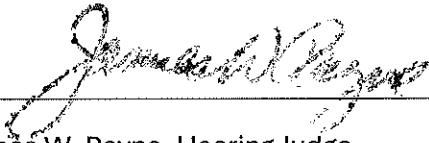
CONCLUSIONS OF LAW

1. The Indiana Alcohol and Tobacco Commission has jurisdiction over this matter pursuant to Ind. Code Sec 7.1-1-2-2 and Ind. Code Sec 7.1-2-3-7
2. The Indiana Alcohol and Tobacco Commission has jurisdiction to hear matters of enforcement of its rules and regulations. (Ind. Code Sec 7.1-2-3-7 (4)).
3. The Hearing Judge complied with the requirements for a hearing on the issuance of a permit by giving at least five days' notice of the hearing and continuing the fact finding hearing several times to give the Applicant the time and opportunity to comply with local county, state, and ATC requirements to operate a business and to serve alcoholic beverages (905 IAC 1-37-7).
4. The Hearing Judge conducted the hearings consistent with 905 IAC 1-37-10 and heard evidence consistent with 905 IAC 1-37-11.

5. The Hearing Judge may take judicial notice of the commission file relevant to a case, including the transcript and exhibits before the local board. 905 IAC 1-36-7(a).
6. The Hearing Judge conducted a *de novo* hearing of the matter on behalf of ATC, including a public hearing and a review of the record and documents in the Commission records. IC 7.1-3-19-1 1(a); 905 IAC 1-36-7(a); 905 IAC 1-37-1;1€(2). see also IC 4-21.5-3-27(d).
7. The findings are based exclusively upon substantial and reliable evidence in the record of the Local Board proceedings, on matters officially noticed in the proceeding, and on the verbal testimony and evidence provided at the hearings. 905 IAC 1-37-11(2) and IC 4-21.5-3-27(d).
8. The commission may reverse a local Board's action in denying an application for a permit only if it finds that the local Board's decision was (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (b) contrary to constitutional right, power, privilege or immunity; (c) in excess of, or contrary to, statutory jurisdiction, authority, limitations or rights; or (d) without observation of procedure required by law, or unsupported by substantial evidence. IC 7.1-3-19-11.
9. The decision of the Local Board was not arbitrary and/or an abuse of discretion.
10. The decision of the Local Board was supported by substantial evidence.
11. Any Conclusion of Law may be considered a Finding of Fact if the context so warrants.

IT IS THEREFORE ORDERED AND DECREED that the decision of the Henry County local board to recommend denial of permit for RR33-39970 was supported by a substantial and preponderance of the evidence and was therefore not arbitrary or capricious, and the Indiana Alcohol Tobacco Commission affirms the finding of the Henry County Local Alcohol Board, and the permit request is denied.

All of which is ordered this 27th day of August 2024.


James W. Payne, Hearing Judge
Indiana Alcohol and Tobacco Commission

Cc: El Cajon De Arauca Agritainment Ranch, LLC:

C/o Esther Barber

PO Box 33437

Indianapolis, Indiana 46203

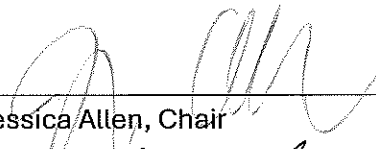
Carlos E. Leon Rameriz

7642 W. County Road 350 South

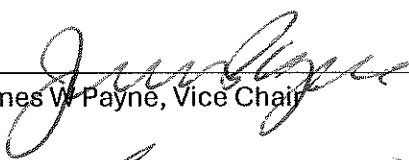
Shirley, Indiana 47384

Commission Adoption:

Date: 10/1/24



Jessica Allen, Chair



James W. Payne, Vice Chair



Marjorie Maginn, Commissioner



Mark A. Jones, Commissioner