

STATE OF INDIANA

BEFORE THE INDIANA ALCOHOL & TOBACCO COMMISSION

IN THE MATTER OF)	
THE PERMIT OF:)	
)	
ANGELA BIDDINGS, D/B/A)	PERMIT NO. RR45-21557
LINK ENTERTAINMENT CLUB)	
752 BROADWAY,)	
GARY, INDIANA 46402)	
Applicant		

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND OF THE CASE

Angela Biddings, d/b/a/ Link Entertainment Club (“Applicant”), 752 Broadway, Gary, Indiana, 46402, permit # RR45-21557, by Counsel, Darnail Lyles and is the applicant for the renewal of a Type 210 Alcohol and Tobacco Commission permit. The Applicant was assigned to the Alcohol Beverage Board of Lake County (“Local Board”). The Local Board held a hearing on March 2, 2010 and voted 3-0 to deny the application for renewal.

The Applicant filed a timely Notice of Appeal and the matter was assigned to Alcohol and Tobacco Commission (“ATC” or “Commission”) Hearing Judge E. Edward Dunsmore (“Former Hearing Judge”). An Appeal Hearing was held on May 18, 2011 (“Appeal Hearing”) and at that time, witnesses were sworn, evidence was received and the matter was taken under advisement. After taking the matter under advisement, the Hearing Judge was appointed to the Henry County Superior Court before issuing proposed findings of fact and conclusions of law. On June 29, 2011, N. Davey Neal (“Hearing Judge”) was appointed as Executive Secretary to replace the Former Hearing Judge. The Hearing Judge, having read the typed transcript and documents from the Local Board Hearing, the evidence and testimony submitted during the Appeal Hearing and the contents of the entire ATC file, as well as having taken official notice of the same as well as the codes and standards adopted by this State, now tenders his Proposed Findings of Fact and Conclusions of Law to the Commission for its consideration.

II. PROCEDURAL HISTORY

1. Angela Biddings, d/b/a/ Link Entertainment Club (“Applicant”) applied to renew her Alcohol and Tobacco Commission Type 210 Restaurant permit (“permit”).

2. The Applicant's permit extension was granted on January 14, 2010; the extension was due to expire on April 13, 2010. The Applicant held a valid permit extension up to and including the date of the Appeal Hearing.
3. The Local Board held its hearing in Crown Point, Indiana on March 2, 2010. The Applicant was present at the hearing.
4. The three Members of Local Board who were present voted to deny the renewal.
5. The Applicant filed a timely Notice of Appeal to the Local Board's Decision.
6. On May 18, 2011 the Former Hearing Judge conducted a hearing on the Applicant's appeal of the denial of the renewal of her Permit.

III. EVIDENCE BEFORE THE LOCAL BOARD

- A. The following individuals testified before the Local Board in favor of the Applicant in this case:
 1. The Applicant responded to questions from the Local Board.
- B. The following individuals testified before the Local Board against the Applicant in this cause:
 1. None. There were no sworn witnesses or Remonstrators.
- C. The following evidence was introduced and admitted before the Local Board in favor of the Applicant in this cause:
 1. None.
- D. The following evidence was introduced and admitted before the Local Board against the Applicant in this cause:
 1. None. The Local Board reviewed Indiana State Excise Police ("Excise" or "ISEP") records which were not formally marked as Exhibits but are considered part of the ATC file.

IV. EVIDENCE BEFORE THE COMMISSION

- A. The following individuals testified before the Commission in favor of the Applicant in this cause:
 1. Angela Biddings, Permit Holder
 2. Darryl Biddings, Manager of premises
- B. The following evidence was introduced and admitted before the Commission in

Favor of the Applicant in this cause:

1. Exhibit 1 Lake Superior Court Record- Demonstrating that Applicant had as misdemeanor conviction.
- C. The following individuals testified before the Commission against the Applicant in this cause:
1. None.
- D. The following evidence was introduced and admitted before the Commission against the Applicant in this cause:
1. None.

V. FINDINGS OF FACT

1. The Applicant, Angela Biddings, d/b/a Link Entertainment Club, located at 752 Broadway, Gary, Indiana, permit number RR45-21557, is the Applicant for renewal of the aforementioned permit. (LB Hearing; ATC File).
2. Applicant operates Link Entertainment Club (“business”) in the City of Gary, Indiana. (Appeal Hearing)
3. The Applicant’s business is in a commercial area on Broadway in Gary. (Appeal Hearing)
4. The Applicant’s business has never been cited for nuisance by a court of law or the City of Gary, Indiana. The Applicant has been cited by Excise for various administrative and criminal violations (LB Hearing; Appeal Hearing; ATC File)
5. Patrons of the Applicant’s business have been convicted of visiting a common nuisance pursuant to Ind. Code 7.1-5-10-21(a). (ATC File)
6. The Applicant’s business has been rented by several 2011 candidates for Gary Mayor, Common Council and City Court Judge as well as other Citizens. (Appeal Hearing)
7. The Applicant had never been convicted of a felony. The applicant has pleaded guilty to misdemeanor conversion. (Local Board Hearing; Appeal Hearing; ATC File).
8. The Applicant’s husband, Darryl Biddings, Jr. (“Applicant’s husband”,) was the manager of the business when ISEP conducted several undercover investigations. (ATC File; Appeal Hearing).
9. Applicant’s husband admitted to operating the business, including serving alcohol, without an appropriate alcohol permit. (Appeal Hearing).
10. Applicant’s husband was unable to apply for the original ATC permit because of a felony conviction prior to the original application (dated January 19, 2005). (ATC

File).

11. Applicant applied for several escrow extensions while the facility was being renovated. Each application for extension of escrow was accompanied by a final inspection by ISEP officers. (ATC File; Appeal Hearing).
12. Applicant's husband signed as the permit holder on the July 15, 2008 final inspection report filed by ISEP officer Walter Collins. (ATC File).
13. Applicant stated she had no knowledge of the operations and that Applicant's husband ran the business. Applicant further stated that she had only applied for the ATC permit because Applicant's husband was disqualified from doing so. (ATC File).
14. The Applicant entered into a Settlement Agreement with the ATC on January 5, 2011 and paid a fine of \$1000.00. The Settlement Agreement resolved the charged offenses related to activities undertaken with an expired permit, but the violations remain part of the Applicant's file for the purposes of renewal. (ATC File; Appeal Hearing)
15. The Applicant has operated Link Entertainment Club on a series of permit extensions without incident since January 2010. (Appeal Hearing)
16. Any Finding of Fact may be considered a Conclusion of Law, if the context so warrants.

VI. CONCLUSIONS OF LAW

1. The ATC has jurisdiction over this matter pursuant to Ind. Code 7.1-1-2-2; 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 ATC is commissioned to act upon proper application. Id.
4. The Hearing judge conducted a *de novo* review of the appeal on behalf of the ATC, including a public hearing. 905 IAC 1-36-7(a); Ind. Code 7.1-3-19-11.5
5. The Hearing Judge may consider as evidence all documents, codes and standards that have been adopted by an agency of this state. 905 IAC 1-36-8(e)
6. The Hearing Judge may consider as evidence all documents in the ATC file, including the transcript of proceedings and exhibits before the Local Board. 905 IAC 1-36-7(a)
7. Evidence at the hearing was received in accordance with the Indiana Administrative Code and the Commission's rules. The findings here are based exclusively upon substantial and reliable evidence in the record of proceedings and on matters

officially noted in the proceedings. 905 IAC 1-37-11(e); Ind. Code 4-21.5-3-27(d)

8. The Commission has discretion to grant or refuse a Permit application. Ind. Code §§ 7.1-3-19-1, *et seq.*
9. The Commission is required to follow the recommendation of the Local Board when the Local Board votes to deny an application by a majority vote, unless the recommendation is arbitrary, capricious, contrary to a constitutional right, outside statutory jurisdiction, without observance of required procedures, or unsupported by substantial evidence. Ind. Code § 7.1-3-19-11.
10. A renewal application may be denied for one of the following reasons: (1) the permittee does not maintain a high and fine reputation, and is not of good moral character and good repute in the community; (2) the permittee has allowed the licensed premises to become a public nuisance, or the scene of acts or conduct which are prohibited by the criminal laws of Indiana or the United States; (3) the permittee violates or refuses to comply with a provision or a rule or regulation of the Commission; (4) the permittee has ceased to possess any of the qualifications, including alteration or cessation of the particular business or type of business then engaged in, which qualifies him to hold that particular type of permit; or (5) the applicant has not fully disclosed the true facts in respect to the location of the permit premises for which the permit is applied. 905 IAC 1-27-1, 2, and 3.
11. The Commission may refuse to renew a permit if the owner, manager, or management of the establishment is not a person with a high and fine reputation for decency and law obedience in the community. Ind. Code § 7.1-3-9-10.
12. In its consideration of a renewal application, the Commission **cannot** consider: (1) the need for such services at the location of the permit; (2) the desire of the neighborhood or the community to receive such services; (3) the impact of such services on other business in the neighborhood or community; (4) the impact of such services on the neighborhood or community. 905 IAC 1-27-5.
13. In determining whether an applicant for renewal of a permit is of good moral character and good repute in the community, the Commission **must** consider whether the acts or conduct of the applicant would constitute actions or conduct prohibited by the Indiana Penal Code or criminal offenses under the laws of the United States. 905 IAC 1-27-1. The Commission may also consider the esteem in which the person is held by members of his community, and such assessment of his character as may reasonably be inferred from police reports, evidence admitted in court and Commission proceedings, information contained in public records and other sources of information as permitted by Ind. Code § 7.1-3-19-18 and Ind. Code § 7.1-3-19-10. *Id.*; *Hanley v. E. Ind. Inv. Corp.*, 706 N.E.2d 576, 578 (Ind.Ct. App. 1999).

14. In determining an applicant's eligibility to hold, renew or continue to hold a permit, particularly where the applicant is of good moral character and of good repute, the Commission shall consider whether acts or conduct of the applicant or agents or employees would constitute action or conduct prohibited by the Indiana Penal Code or United States Code. 905 IAC 1-27-1.
15. Police runs to an establishment are insufficient to show bad character unless it can be established that there is a nexus between the criminal conduct and the permittee's moral character. *Hanley*, 706 N.E.2d 576, 578.
16. Isolated incidents of ISEP violations are insufficient to establish that the permittee lacked good moral character or is not held in high esteem by the community. *Id.* at 579.
17. The elements for maintaining a public nuisance require that the permittee allows the licensed premises to become a public nuisance or be the scene of acts or conduct prohibited by the laws of the United States or Indiana. *Indiana Alcoholic Beverage Comm. v. River Road Lounge*, 590 N.E. 2d 656, 658 (Ind. App. 1992). "Allow" has been construed by Indiana courts to mean "concede, consent to, and to grant." *Id.* In light of such definition, the permittee must have direct or indirect knowledge of illegal activity on its premise. *Id.*
18. The Applicant contends the Local Board's decision not to renew the Permit was (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) contrary to constitutional right, power, privilege, or immunity; (c) in excess of, or contrary to, statutory jurisdiction, authority, limitations or rights; (d) without observance of procedure required by law; and/or (e) unsupported by substantial evidence.
19. An administrative agency action is arbitrary and capricious "where there is no reasonable basis for the action." *Ind. Civil Rights Comm'n v. Delaware County Cir. Ct.*, 668 N.E.2d 1219, 1221 (Ind. 1996).
20. 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). Substantial evidence is more than speculation or conjecture. *Id.*
21. The Applicant is **not** a fit and proper applicant, has **not** maintained a reputation for decency and law obedience, and is **not** well qualified to hold an alcoholic beverage permit under Indiana Law. 905 IAC 1-27-1; Ind. Code 7.1-3-19-10

22. The initial findings of the Local Board were **not**: 1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with 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 or procedure required by law; or 5) unsupported by substantial evidence. Ind. Code 7.1-3-19-11

Therefore, it is ORDERED, ADJUDGED AND DECREED that the findings of the Local Board to deny this renewal application were based on substantial evidence and must be upheld.

It is further ORDERED, ADJUDGED AND DECREED that the evidence adduced at the Local Board Hearing and at the Appeal Hearing was not in favor of the Applicant, and the appeal of Angela Biddings, d/b/a/ Link Entertainment Club for the renewal of permit #RR45-21557, is DENIED, and the renewal permit applied for at the Link Entertainment Center is hereby DENIED.

Dated: October 5, 2011

N. Davey Neal
Hearing Judge