

BEFORE THE
INDIANA ALCOHOL AND TOBACCO COMMISSION

IN THE MATTER OF)	
THE PERMIT OF)	
)	
DOSS RANCH)	PERMIT NO. RR32-31471
1795 US HIGHWAY 40)	
CLAYTON, INDIANA 46118)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND OF THE CASE

Doss Ranch, 1795 US Highway 40, Clayton, Indiana, 46118, permit number RR32-31471 (Applicant), is the applicant for the renewal of a permit to sell beer, liquor, and wine, in a restaurant located in an unincorporated area to be issued by the Alcohol and Tobacco Commission (ATC). The application was assigned to the Alcoholic Beverage Board of Hendricks County (Local Board). The Applicant's matter was heard on September 6, 2016, where it was denied by a vote of 4-0. On September 20, 2016, the Commission adopted the findings of the Local Board and denied the permit. On October 4, 2016, the Applicant filed for an appeal hearing regarding the Commission's denial, which was granted.

The matter was set for hearing on February 16, 2017, 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 duly advised of the facts and law at issue, the Hearing Officer now submits these Proposed Findings of Fact and Conclusions of Law to the Commission for its consideration.

II. EVIDENCE BEFORE THE LOCAL BOARD

- A. The following individuals testified before the Local Board in favor of the Applicant in this cause:
 - 1. Robert Doss, 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 before the Local Board against 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.

III. EVIDENCE BEFORE THE COMMISSION

- A. The following individuals appeared before the Commission in favor of the Applicant in this cause:
 - 1. Robert Doss, Applicant;
 - 2. Sherry Doss, Applicant; and
 - 3. Davey Neal, attorney for Applicant.
- B. The following evidence was introduced and admitted before the Commission in favor of the Applicant in this cause:
 - 1. Thirteen (13) pictures of the interior of Applicant's premises;
 - 2. Petition in support of Applicant's renewal with approximately 143 signatures;
 - 3. List containing two (2) permittees there were cited for violations but approved in Hendricks County; and
 - a. Cartel Brewing Company MM32-29985 (Unauthorized beverage sale, floor plan alterations) and
 - b. So Italian RR32-27483 (Furnishing to minor, lack of employee permit, limited separation)
 - 4. Computer-aided dispatch reports from Hendricks County Sherriff for the dates of October 3, 2015 through present for Applicant's premises.
- 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.

IV. FINDINGS OF FACT

1. Doss Ranch, 1795 US Highway 40, Clayton, Indiana, 46118, permit number RR32-31471, is the applicant for the renewal of a permit to sell beer, liquor, and wine. (ATC File).

2. The Applicant meets the qualifications to hold a permit pursuant to Ind. Code §§ 7.1-3-4-2(a)(1), (2)(B), and (3) through (13). (Local Board Hearing; ATC Hearing).

3. Applicant has operated the business for approximately 1 and 1/2 years in a building that had been abandoned for more than 10 years. (ATC Hearing).

4. Applicant invested close to \$70,000 to improve the site, including an interior remodel. (ATC Hearing).

5. In 2016, Applicant was cited for loitering - minors (Ind. Code §7.1-5-7-10), non-removal of containers after closing hours (905 IAC 1-10-1), and adulterated or misbranded beverages (Ind. Code. §7.1-5-10-6), of which a \$350 fine was paid. (ATC File).

6. The morning (3:30 am) of the incident leading up to the violation in above point five (5), there was a minor-employee consuming an alcoholic beverage at the bar and there was tea in a vodka bottle. In addition, the cook was found passed out in his vehicle in the parking lot. (Local Board Hearing, ATC File).

7. There have been no police runs to the premises for fighting, unruly behavior, or disturbances. (ATC Hearing).

8. The applicant has support in the community as demonstrated by the petition and the lack of remonstrators at the local board hearing. (Local Board, ATC Hearing).

9. Any Finding of Fact may be considered a Conclusion of Law if the context so warrants.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to *Ind. Code §7.1-1-2-2; §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 renew a permit, the Commission may consider whether the applicant refuses to comply with the provisions and the rules and regulations of the Commission. *Ind. Code §7.1-3-23-5.*

8. In determining whether to renew a permit, the Commission may consider the moral character and repute of the applicant. *905 IAC 1-27-1*.

9. 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 v. Eastern State Inv. Corp.*, 706 N.E.2d 576 at 578 (Ind. Ct. App. 1999).

10. In determining whether to renew a permit under the standards of 905 IAC 1-27-1, the Commission may consider the esteem in which the person is held by members of his community, and such assessment of his character as may be reasonably inferred from police reports, evidence admitted in court, and other commission proceedings. *Id.*

11. In determining whether to renew a permit, the Commission may consider whether the licensed premises has become a public nuisance, or is the scene of acts or conduct which are prohibited by the Indiana Penal Code. *905 IAC 1-27-2*.

12. 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.*

13. The court shall consider the efforts the owner of the business took to abate the public nuisance. *Ind. Code §7.1-2-6-1(c)*.

14. 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. *Ind. Code §7.1-3-19-11.*

15. Any Conclusion of Law may be considered a Finding of Fact if the context so warrants.

IV. RECOMMENDATION

The Applicant in this case has had no local police runs dispatched to their premises, and only one Indiana State Excise Police run to their premises. This run occurred within the first two years of obtaining an alcohol permit. During the visit, the officers found a minor employee to be in possession of alcohol, the owner of the bar consuming a beer after 3:00 am, and the cook from the establishment passed out in the front seat of a vehicle in the parking lot with the vehicle running. Under normal circumstances, this would not be enough to deny a permit renewal, but the local board had concerns over the fact that this was recently-issued permit and the owners were getting off to a bad start.

Since the evening of the visit, the owners no longer employ minors to work in the restaurant and have taken steps to ensure the circumstances which the excise officer observed were not going to be repeated. In light of the fact that this was the only violation, there are been no police runs or other complaints about this premises, and the community has shown support for the establishment, the permit should be renewed for one year, to determine whether the steps taken are effective.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the decision of the Hendricks County Local Board and the Commission to deny the application for the permit number RR32-31471, should be reversed and the application of Doss Ranch, 1795 US.

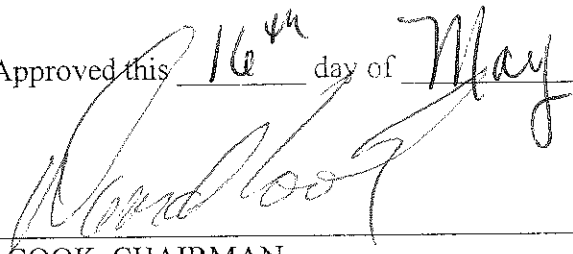
Highway 40, Clayton, Indiana, 46118, for a beer, liquor, and wine retail permit, thus applied for herein, be APPROVED.

DATE: April 20, 2017

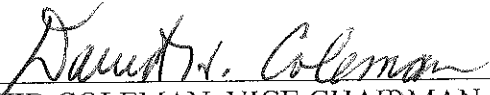


David Rothenberg, Hearing Officer

Approved this 16th day of May, 2017.



DAVID COOK, CHAIRMAN



DAVID COLEMAN, VICE CHAIRMAN



DALE GRUBB, COMMISSIONER



MARJORIE MAGINN, COMMISSIONER