

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

<b>IN THE MATTER OF</b>	)	
<b>THE PERMIT OF</b>	)	
	)	
<b>MICKEY’S BAR &amp; GRILL, LLC</b>	)	
<b>501 TIPTON ST.</b>	)	<b>PERMIT NO. RR46-31859</b>
<b>LAPORTE INDIANA, 46350</b>	)	
	)	
<b>Applicant.</b>	)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**I. BACKGROUND OF THE CASE**

Mickey’s Bar & Grill, LLC, 501 Tipton St., LaPorte, IN 46350, permit number RR46-31859 (Applicant), is the applicant for the renewal of a permit to sell beer, wine, and liquor at 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 LaPorte County (Local Board). The Applicant’s matter was heard on March 2, 2017, where it was denied by a vote of 3-0. On March 21, 2017, the Commission adopted the findings of the Local Board and denied the permit. On March 27, 2017, the Applicant filed a timely Motion to Appeal.

The matter was set for hearing on June 8, 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. Jorge Montemayor, Owner; and
  2. Josh Montemayor, Manager/Owner.
- 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 testified 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 testified before the Commission in favor of the Applicant in this cause:
1. Josh Montemayor, Manager/Owner.
- B. The following evidence was introduced and admitted before the Commission in favor of the Applicant in this cause:
1. None.
- 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. Mickey's Bar & Grill, 501 Tipton Street, LaPorte IN 46350, permit number RR46-31859, is the Applicant for a beer, wine, and liquor restaurant. (ATC File).
2. The Applicant meets the qualifications to hold a permit pursuant to Ind. Code §7.1-3-4-2(a)(2)(A) and Ind. Code §7.1-3-14-3. (Local Board Hearing; ATC Hearing).
3. Applicant took over ownership of establishment as a transfer on December 23, 2015. (ATC File).
4. On January 31, 2016, Applicant was cited for Sales to an Intoxicated Person under Ind. Code §7.1-5-10-15 and serving without an employee permit under Ind. Code §7.1-5-6-3 and 905 IAC 1-12-1-2. This violation was paid. (ATC File).
5. On January 31, 2016, Joshua Gearhart was struck and killed by a train shortly after leaving Applicant's premises. (ATC File).
6. LaPorte County Coroner found the BAC level of Joshua Gearhart to be .243, over 3x the legal limit. (ATC File).
7. On June 22, 2016, Applicant was cited for Sales discrimination under Ind. Code §7.1-5-5-7. This violation was paid. (ATC File).
8. On September 13, 2016, Applicant was cited for Unlawful Gambling under Ind. Code §35-45-5-2 and Public Nuisance under 905 IAC 1-27-2. This violation was paid. (ATC File).
9. On September 28, 2016, Applicant was cited for Operating Under and Expired Permit under Ind. Code §7.1-3-1-3 and serving without an employee permit under Ind. Code §7.1-5-6-3 and 905 IAC 1-12-1-2. This violation was paid. (ATC File).

10. On October 7, 2016, Applicant was cited for sales to an intoxicated person under Ind. Code §7.1-5-10-15. This citation is still open. (ATC File).

11. Applicant has not instituted any major material changes in procedures over the last year.

12. 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 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 renew a permit, the Commission may consider whether the applicant has allowed the premises to become a public nuisance, or the scene of acts prohibited by the Indiana Penal Code. 905 IAC 1-27-2.

8. 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.

9. 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.

10. In this case, the Local Board based their decision upon the number of violations taking place at the premises. (Local Board Hearing).

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

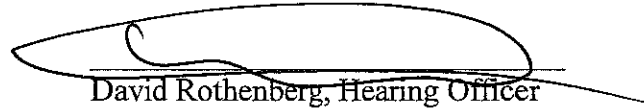
#### **IV. RECOMMENDATION**

The Applicant received this permit on December 23, 2015. In approximately one month, the Applicant received their first citation that resulted in a violation. As a direct result in over-service that day, a patron was hit by a train and lost his life. Whether or not this was a direct result of over-serving the patron, the patron was over-served, with a BAC of over .20 found in his system at the time of his death. Following that violation, the Applicant received three violations and has been cited for overserving patrons once again. In addition, the

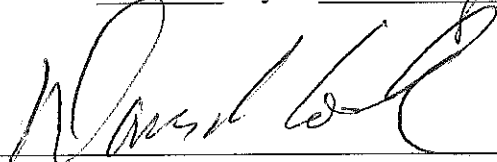
Applicant has not instituted any material changes in programs or procedures to attempt to cure the cause of the violations. In a very short period of time, the Applicant has demonstrated a lack of responsibility that goes with the privilege of holding a permit to sell alcohol.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the decision of the LaPorte Local Board resulting in a 3-0 vote to deny the application for the permit number RR46-31859, was supported by substantial evidence, was not arbitrary and the Alcohol and Tobacco Commission should deny said application. The application of Mickey's Bar & Grill, LLC, 501 Tipton St., LaPorte, IN 46350, for a beer, wine, and liquor restaurant permit, was not sufficient and the permit applied for herein is DENIED.

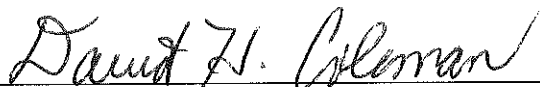
DATE: July 11, 2017

  
David Rothenberg, Hearing Officer

Approved this 15 day of August, 2017.



DAVID COOK, CHAIRMAN



DAVID COLEMAN, VICE CHAIRMAN



DALE GRUBB, COMMISSIONER



MARJORIE MAGINN, COMMISSIONER