

BEFORE THE INDIANA ALCOHOL AND TOBACCO COMMISSION

RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Mr. Westlund was sworn, his testimony was heard, and evidence was received. Notice was taken of the entire ATC file in this matter, including: the pre-trial brief filed by Mr. Sullivan immediately before the hearing; proceedings and documents before the Local Board; relevant statutes, rules and regulations; and previous relevant orders of the ATC. Following Mr. Sullivan's argument, he was given time to brief the issues, after the submission of which the matter would be under advisement. Mr. Sullivan filed his brief thereafter in a timely fashion.

The undersigned Hearing Judge having reviewed the submitted evidence and the matters of which notice was taken now tenders his Proposed Findings of Fact and Conclusions of Law to the Commission for its consideration.

PROCEDURAL HISTORY

1. On or about April 30, 2024, 1313 Newton Holdings LLC (“Applicant” or “Appellant”) filed its “Application For New Or Transfer Permit – Retailer or Dealer” (“Application”) with the ATC. The permit number is RR8241323 (ATC file)
2. The Alcohol Beverage Board of Vanderburgh County (“Local Board” or “VCLB”) conducted a hearing on the Application on June 11, 2024, at the conclusion of which the VCLB voted 2-1 to approve the Application, with one member abstaining due to having been contacted by someone about the permit prior to the meeting.
3. At its regular meeting on June 18, 2024, the Commission considered the Application and the vote of the VCLB thereon, ultimately denying the Application.
4. On July 5, 2024, Applicant filed its Petitioner’s Objection and Request for Administrative Review and Hearing of the Commission’s Denial of Application.
5. *A de novo*, public evidentiary hearing on the appeal was held on November 12, 2024, after which Counsel for Applicant filed his Post-Hearing Brief.

WITNESSES BEFORE THE COMMISSION

1. Mr. Charles G. Westlund, Jr.
2. No one testified before the Commission against the Applicant in this case.

EXHIBITS BEFORE THE COMMISSION

1. Applicant’s Exhibit #1: a photograph and map of the area in which the Permit would be located.

2. Applicant's Exhibit #2: "Indiana Alcoholic Beverage Licenses", a list of the license or permits held by Mr. Westlund in Indiana.
3. Applicant's Exhibit #3: "Chapter 18.125, Zoning District Use Groups" for the City of Evansville.
4. Applicant's Exhibit #4: "Chapter 18.05 General Provisions" for the City of Evansville.
5. Applicant's Exhibit #5 in 5 parts: Prior Notice of Violation and Settlement Offer Letters for other permits associated with Mr. Westlund.
6. Notice of the transcripts from the 6/11/2024 VCLB hearing and the 6/18/24 Commission was taken and they were made part of the record.
7. Notice was also taken of all records of the ATC as may be applicable to Applicant.

FINDINGS OF FACT

1. On or about April 30, 2024, 1313 Newton Holdings LLC ("Applicant" or "Appellant" filed its "Application For New Or Transfer Permit – Retailer or Dealer" ("Application) with the ATC. (ATC file)
2. Charles G. Westlund Jr. was listed in the Application as the 100% owner and sole member of the LLC. The Application also noted that "Owner will initially manage the premises". (ATC file)
3. The Application contained a signed Consent to Transfer Permit #RR82-39518 to Applicant, an Affidavit of Purchase Price, and records of a 1997 California criminal case in which Mr. Westlund was involved. (ATC file)
4. Mr. Westlund's testimony and his Exhibit #2 stated that he owns five other

permits in Indiana, one being in Anderson, three in Indianapolis and one in Evansville. They are: RR48-14318; RR49-36594; RR49-36592; RR49-04389; and RR82-36069. (Exhibit #2; testimony of Mr. Westlund)

RR48-14318, BEARVON CORPORATION (ANDERSON)

5. According to Applicant's Exhibit #2, RR48-14318 is in Anderson and its d/b/a is "The Pony". According to ATC records, the permit is in the name of Bearvon Corporation, the 100% shareholder is Holy Cow LLC., of which Mr. Westlund is a 25% owner, and its d/b/a is Hoosier Girls Showclub. (ATC files; Application For Renewal and Supplemental Ownership Information filed 6/20/2024)

RR49-36594, 7259 PENDLETON CLUB, LLC (INDIANAPOLIS)

6. According to Applicant's Exhibit #2, RR49-36594 is in Indianapolis and its d/b/a is "Jiggles". According to ATC records, the permit is owned by the 7259 Pendleton Club, LLC., of which Mr. Westlund is 50% owner, and its d/b/a is "Babes East". (ATC files; Application For Renewal and Supplemental Ownership Information filed 10/31/2024)

7. A Notice of Violation and Settlement Offer was issued to RR49-36594, 7259 Pendleton Club LLC c/o Mr. Westlund, on August 24, 2023, for "Adult Entertainment Performers". The underlying notice of violation issued by the ISEP officer stated, in part:

Manager Sering and I reviewed the required adult entertainment requirements and the records of the performers. I had Manager Sering randomly pull files of a few performers from the required entertainment records. Both dancers' files were missing a photograph of the entertainers' facial features the day of their auditions. The business has failed to retain photographs for 3 years for their entertainers. Manger Sering advised she was unaware of the requirement and will correct the issue immediately....

* * *

BUSINESS HISTORY: On March 23, 2023, a Notice of Warning was issued for Records of Employee Permits Required and Human Trafficking Forms Posted.

(ATC files, EX23-010061)

8. On October 24, 2023, the manager signed the settlement agreement, which stated that the agreement was “[t]o resolve the violation(s) in lieu of a hearing and in exchange for an admission to the underlying facts relating to the violation(s)...”. (ATC files, EX23-010061)

**RR49-36592, 8501 PENDLETON CLUB, LLC. “JAGUARS”/“HAREM HOUSE”
(INDIANAPOLIS)**

9. According to Applicant’s Exhibit #2, RR49-36592 is in Indianapolis and its d/b/a is “Jaguars”. According to ATC records the permit is owned by the 8501 Pendleton Club, LLC., of which Mr. Westlund is 50% owner, and its d/b/a is either “Jaguar’s” or “Harem House”. (ATC files; Application For Renewal filed June 26, 2023; Request For Extension filed February 14, 2025; Application For Renewal and Supplemental Ownership Information filed 10/31/2024.)

10. Notices of Violation and Settlement Offers were issued to RR49-36592, 8501 Pendleton Club LLC:

- A. On September 14, 2023, EX23-010092, for “Adult Entertainment Performers” and “Food Requirement (minimum menu required)”, settled on 10/24/2023 “in lieu of a hearing and in exchange for an admission to the underlying facts relating to the violation(s)...”.
- B. On April 5, 2024, EX24-000271, for Establishment did not post signage required; Adult Entertainer - Proof of Legal Residency in the US; Records of Photographs of Adult Entertainers; Awareness of Problem of Human Trafficking; Display Human Trafficking Awareness Posters; and Food Requirement (minimum menu required) This was settled on October 24, 2024 “in lieu of a hearing and in exchange for an admission to the underlying facts relating to the violation(s)...”.

- C. On June 17, 2025, a Notice of Violation and [revised] Settlement Offer was sent for EX25-000434, an investigation that took place in February 2025 alleging: Adult Entertainer - Proof of Legal Residency in the US; Records of Photographs of Adult Entertainers; Smoking Prohibited in Public Places, Places of Employment, State Vehicles; Reputation and Character (determination); and Public Nuisance – Criminal Recklessness. This matter is still pending.

(ATC Files)

RR49-36593 CLUB ONYX (INDIANAPOLIS)

11. 4444 Harding Club, LLC, RR49-36593, was also owned by Mr. Westlund. The Application For New Or Transfer Permit, signed by Mr. Westlund on June 12, 2020, and filed with IATC on June 16, 2020, stated that Mr. Westlund was the 100% owner and the manager of the business. (ATC files)

12. The permit was issued on August 27, 2020, and 4444 Harding Club, LLC, originally did business as “Classy Chassy”.

13. Mr. Westlund transferred one-half of his ownership interest (*i.e.* 50% of the entire ownership) to “CDR Indianapolis LLC” on or about September 10, 2020. 24.5% of CDR Indianapolis was owned by “00702, LLC”, a Wyoming limited liability company; 24.5% of CDR Indianapolis was owned by “Park Place Holdings, LLC”, a Nevada limited liability company; and 51% of CDR Indianapolis was owned by “CDR Holdings, LLC”, a Nevada limited liability company. CDR Holdings, LLC was solely owned by The Tiger Trust, a Nevada Irrevocable trust, of which Janet A. Carlson is the sole beneficiary. Mr. Westlund thus remained a 50% owner of 4444 Harding Club, LLC, Permit RR49-36593. (ATC files, Consent To Transfer

Partnership or Membership)

14. 4444 Harding Club, LLC, Permit RR49-36593, changed its d/b/a from “Classy Chassy” to “Club Onyx” on or about January 4, 2021. (ATC files; Indiana Secretary of State files)

15. Club Onyx’s permit had been set to be heard by the Marion County Local Alcoholic Beverage Board (“MCLB”) on February 6, 2023; however, it was continued to March 6, 2023, at Permittee’s counsel’s request. (ATC files)

16. On or about March 3, 2023, Mr. Webb, counsel for Applicant, filed an Escrow Request with the Commission to place Club Onyx’s permit into escrow, stating that it had closed on February 28, 2023, and: “Due to violations which have been issued to the establishment, Club Onyx has closed for a minimum period of sixty (60) days. This closure is necessary to allow permittee to address its issues to the satisfaction of the Commission and local and state law enforcement.” The Escrow Request went on to say that “Permittee has terminated all present employees and contractors...” (ATC files)

17. At the MCLB renewal hearing held on March 6, 2023, Club Onyx was represented by its counsel, Mr. Webb, and by Ryan Carlson, owner-representative from Las Vegas. (MCLB hearing of 3/6/23; ATC files).

18. The MCLB had before it documentary evidence that included the following:

A. Numerous police runs were made to Classy Chassy/Club Onyx by the Indianapolis Metropolitan Police Department (“IMPD”). Investigations by the Indiana State Excise Police (“ISEP”) revealed that from June 20, 2020, through February 28, 2023, there were sixty-eight (68) law enforcement runs to the address associated with the business. (ATC files, EX22-012416)

B. Those runs included fifteen reports of simple assault, nine reports of aggravated assault, fourteen reports of theft from a motor vehicle, two reports of drug/narcotics violation, two reports of driving under the influence, two reports of hit-and-run crashes, one report of a missing person, and one report of forcible rape. (ATC files, EX22-012416)

C. Undercover investigations by ISEP and IMPD during January and February, 2023, resulted in, among other things: dancers propositioning undercover officers (“UCs”) for sex in exchange for money; dancers performing lap dances while exposing their breasts and simulating fellatio on a fully-clothed officer; purchasing alcohol after 3:00 A.M. from a bathroom attendant; and multiple purchases of marijuana from the same bathroom attendant, after having been directed to her by employees/contractors of Permittee. (ATC files, EX22-012416)

D. On February 19, 2023, officers of the IMPD executed a search warrant at Club Onyx that resulted in the confiscation of multiple marijuana cigarettes and bags of marijuana, a digital scale, and a firearm that had three different serial numbers, one of which had been reported stolen. (ATC files, EX22-012416)

E. Video evidence was presented by Detective Mastin of the IMPD.

19. Mr. Carlson testified that: he oversees all of the operations and this is just one of many clubs that he oversees; his mother, Ms. Carlson, is the controlling shareholder though she is “elderly and invalid”; and, the other shareholders are passive owners with no control.

20. Mr. Carlson testified later in the hearing that he was not the director of operations

at this location, the on-site manager mostly reported to “the other owner of the business, Mr. Westlund”. Operationally, “the chain-of-command was the on-site manager went to Mr. Westlund because he’s the one [Mr. Westlund] who has experience in operating types of locations...”. (ATC files; MCLB hearing of March 6, 2023)

21. At the conclusion of the hearing, the MCLB voted 4-0 to deny the renewal of RR49-36593, Club Onyx’s permit; reasons included high and fine reputation, and all members recited nuisance as a reason.

VCLB MEETING

22. No one was present at the VCLB meeting held on June 11, 2024, to remonstrate regarding RR8241323. (ATC files, VCLB hearing transcript)

23. The location for RR8241323 meets the City of Evansville’s (“City”) requirement for the location of adult entertainment, and Applicant’s plans for this permit had been approved by the City. (ATC files, Exhibits #3 and #4)

24. The business is currently operating as an adult entertainment business without serving any alcohol. (VCLB transcript, Appeal Hearing)

25. Mr. Westlund owns, either in whole or in part, approximately thirty adult entertainment facilities around the country. (VCLB transcript, Appeal Hearing)

26. When asked by a member of the VCLB, Officer Lutes, whether he was recently denied at the Marion County Local Board a permit for Club Onyx, Mr. Westlund stated that was “not true”. (VCLB transcript, p.6)

27. The conversation between Mr. Westlund and the members of the VCLB continued, in part:

Officer Lutes: Okay. I don’t know if you understood my question exactly. The local board to not renew your permit, and, therefore did not hear the transfer of

the permit. I understand you were not at that hearing.

Jerry Westlund: I'm just saying what the lawyers over there told me the way I understood it. We made the decision to shut it down. We were not closed by an order from the city. We made the decision to close it down. Quite frankly, it got too difficult to manage"

Officer Lutes: Whose decision was that?"

Jerry Westlund: That was myself and my partner who owns it.

Kurt Keifer: I'm Curious. You said it bringing in that many people? [sic]

Jerry Westlund: Yes.

Kurt Keifer: Your decision was based on a financial decision or because you didn't get a license?

Jerry Westlund: The problem is that Indianapolis has some rather rough neighborhoods.

Kurt Keifer: I'm in Indianapolis all of the time. I know where Harding Street is.

Jerry Westlund: Well this is a property, while it was very lucrative, it was a complicated property to operate. We operated without problem, but unfortunately we had a situation that involved outside security at the end and quite frankly it ended up being three one-ounce bottles of Hennessey in the bottom of a trash can, so they had nothing to do with those of us operating the club other than we clearly have ...I'm sorry.

Officer Lutes: Continue.

Jerry Westlund: We had the responsibility of supervising that, which we were not able to do so for that reason we made the decision that this was becoming too difficult to operate and we didn't want to operate at an unsafe location.

Officer Lutes: I just want to paraphrase. I want to make sure I understand your position. You closed it because it was a difficult business to run and because of three, small bottles of Hennessey?

Jerry Westlund: Well, there was obviously a difficult bus... you're smiling, so I can appreciate you think there's irony in this, but I assure you in our business problems cost money. When we have problems, we don't want to be in the problems business. The last thing we want to do I can tell you ... we ended up unfortunately some managers there that ended up in a back-n-forth argument with some local law enforcement. There were some racial overtones involved in that. I believe the law enforcement officers that were involved in that are no longer on the department. Shortly after that we came to a resolution that 100% we closed that down prior to being told by anyone to close it down.

(VCLB transcript, pp. 7-9)

28. Mr. Westlund never did acknowledge to the VCLB that ATC had denied the renewal of the Club Onyx permit.

29. The VCLB voted 2-1 to approve the permit, with one of the board members abstaining "because somebody contacted me about your business." (VCLB transcript, p. 41)

30. At its regular meeting on June 18, 2024, the Commission overruled the VCLB and denied the permit.

APPEAL HEARING

31. There were no remonstrators at the appeal hearing.

32. Mr. Westlund testified that he had an ownership interest only in Club Onyx, that he did not operate it and was not present. (Westlund testimony)

33. Mr. Westlund insisted that he told his partners to shut down Club Onyx, that they weren't told by anyone to shut it down. Though he wasn't at the hearing, he testified that he was advised by Mr. Webb that that they were not shut down by anyone, and that the agreement was that they would remain shut down and could sell the license. Mr. Westlund did not know to whom the license was sold. (Westlund testimony)

34. The location for which they are seeking the permit is currently d/b/a Allstars Sports Bar & Cabaret. (Westlund testimony)

FACTUAL CONCLUSIONS

35. Mr. Westlund asserts that he holds "only" an "investor position" in the first four permits listed on Exhibit #2, which are: RR48-14318, "The Pony" in Anderson; RR49-36594, "Jiggles" in Indianapolis; RR49-36592, "Jaguars" in Indianapolis; and RR49-04389, The Pony in Indianapolis. (Exhibit #2; Appeal Hearing: Westlund testimony)

36. Though at times Mr. Westlund has acknowledged that permittees have an absolute responsibility to see that the businesses are run legally, he then immediately denies any personal responsibility by claiming absence or an "investor only" position.

37. Mr. Westlund's lack of acknowledgement in any hearing of the fact that Club Onyx's permit was not renewed, and not renewed due to a variety serious allegations – as

opposed to three bottles of Hennessey in the bottom of a trash can as he stated to the VCLB, constitutes at a minimum a clear lack of caring, as noted by a member of the MCLB during a hearing on Club Onyx's renewal.

38. Mr. Westlund's testimony and lack of candor in conjunction with that of his partner in Club Onyx, Mr. Carlson, cause this hearing judge to seriously question Mr. Westlund's credibility.

39. The allegations surrounding prior-but-later vacated convictions in a California case involving two counts of forgery and six counts of failure to file income tax do not provide any basis for this decision, though it appears under California law that they could be. Though Mr. Westlund and his counsel argue that those convictions were set aside and expunged under California law, there is no other language in the court's order stating that the matters are expunged. The documents provided do state that: probation was terminated, pleas of guilty or convictions were set aside, the charges were modified to misdemeanors, and the charges were dismissed "[p]ursuant to 1203.4 PC."¹

40. Any finding of fact may be considered a conclusion of law if the context so

¹ "(a)(1) When a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interest of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any time after the termination of the period of probation, if they are not then serving a sentence for an offense, on probation for an offense, or charged with the commission of an offense, be permitted by the court to withdraw their plea of guilty or plea of nolo contendere and enter a plea of not guilty; or, if they have been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall thereupon dismiss the accusations or information against the defendant and *except as noted below*, the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which they have been convicted, except as provided in Section 13555 of the Vehicle Code.... However, in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. *The order shall state, and the probationer shall be informed, that the order does not relieve them of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery Commission.*"

Cal. Penal Code § 1203.4 (West), Effective: July 10, 2023, West's Ann. Cal. Penal Code § 1203.4
§ 1203.4. Fulfillment of conditions of probation or discharge prior to termination; change of plea or vacation of verdict; dismissal and release from penalties and disabilities; exceptions; pardon (Emphasis added)

warrants.

CONCLUSIONS OF LAW

1. Any conclusion of law may be considered a finding of fact if the context so warrants.

2. The ATC has jurisdiction over this matter pursuant to Ind. Code § 7.1-1-2-2; I.C. § 7.1-2-3-9.

3. 1313 Newton Holdings LLC is an applicant for a transfer of a Type 210 Beer Wine & Liquor permit for a retail restaurant/adult entertainment facility, which permits are issued by the ATC..

4. The application for the permit was properly submitted pursuant to I.C. § 7.1-3-1-4; I.C. § 7.1-3-19-1 *et seq.*

5. The ATC is commissioned to act upon proper application. *Id.*

6. On June 11, 2024, the Vanderburgh County Local Board voted to approve the Permit by a vote of 2-1, with the fourth member of the VCLB abstaining.

7. 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).)

(a) 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 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
- (5) Unsupported by substantial evidence.

Such review shall be de novo.

- (b) If the commission determines not to follow the recommendation of a local board, after the commission's review of that recommendation according to the standards set forth in subsection (a) the commission shall make written findings of fact on each material issue on which the commission's determination is based.

I.C. § 7.1-3-19-11

8. "Three members of a local board shall constitute a quorum for the transaction of business. A local board may take action only upon the *affirmative votes* of at least three (3) of its members" I.C. § 7.1-2-4-16 (emphasis added)

9. At least three (3) members of the local board must vote the same way to constitute an "affirmative vote"; consequently, a 2-1 vote does not constitute an affirmative vote under I.C. § 7.1-2-4-16. *Indiana Alcoholic Beverage Comm'n v. State ex rel Harmon*, 269 Ind. 48, 379 N.E.2d 140 (1978).

10. Given that there was no majority recommendation or "affirmative vote" which was overturned by the Commission's vote, there was no need for the Commission to make written findings of fact. Moreover, the Commission may act within its own discretion and take action with or without the approval of the local board. *Id.*

11. 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; Ind. Code § 7.1-3-19-11.5.)

12. The Hearing Judge may also consider as evidence Commission orders and any codes and standards that have been adopted by an agency of this state. (905 IAC 1-36-8(e).)

13. "[A] witness's bias, prejudice or ulterior motives are always relevant in that they may discredit him [or her or] affect the weight of [the] testimony." (Exhibit #12, *Family Express*

at 9 (quoting *Standifer v. State*, 718 N.E.2d 1107, 1110 (Ind. 1999) (quoting *Pfeffercorn v. State*, 413 N.E.2d 1088, 1089 (Ind. Ct. App. 1980))).

14. The obligations of the commission include those set out in 905 IAC 1-27-1:

In determining an applicant's or permittee's eligibility to hold, renew or continue to hold a permit, particularly whether the applicant is of good moral character and of good repute, the Commission shall consider whether acts of conduct of the applicant, permittee or his employees or agents, would constitute action or conduct prohibited by the Indiana Penal Code (I.C. 35-41-1-1 *et seq.*), or a criminal offense under the laws of the United States. 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.

(905 IAC 1-27-1)

15. Moreover:

In its consideration, the commission [sic] is not required to determine beyond a reasonable doubt that the act or conduct of in issue would constitute an act or conduct prohibited by the Indiana Penal Code (I.C. 35-41-1-1, *et seq.*) or a criminal offense under the laws of the United States.

The Commission may refuse to grant or renew a permit, may revoke or suspend a permit, or may fine a permittee for a violation of this regulation."

(905 IAC 1-27-3)


16. Evidence at the Appeal Hearing was received in accordance with the Indiana Administrative Code and the Commission's rules. The findings here are based exclusively upon the substantial and reliable evidence in the record of proceedings and on matters officially noted in the proceedings. (905 IAC 1-36-8(e); Ind. Code § 4-21.5-3-27(d).)

17. Given the evidence, the undersigned finds that Applicant is not credible, that acts or conduct of the Applicant or his employees or agents at other locations in which Applicant has an ownership interest would constitute action or conduct prohibited by the Indiana Penal Code (I.C. 35-41-1-1 *et seq.*), or a criminal offense under the laws of the United States.


BEFORE THE INDIANA ALCOHOL AND TOBACCO COMMISSION

**CORRECTION OF SCRIVENOR'S ERROR IN RECOMMENDED AND ADOPTED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

It is hereby ordered that said Adoption of the Proposed Findings and Conclusions entered on September 16, 2025, in the above-captioned matter is corrected to show the adoption of the Recommended Findings Of Fact And Conclusions Of Law signed by Commissioner Jones on August 7, 2025, which recommended denial of 1313 Newton Holdings LLC's application for transfer of Permit No. RR82-41323.



Jessica Allen, Chair


James Payne, Vice Chair

Mark A. Jones, Commissioner