

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

IN THE MATTER OF)	
THE PERMIT OF)	
)	
WAIL ODTALLAH)	PERMIT NO. RR45-29938
1008-1010 W. 5th AVENUE)	
HIGHLAND, IN 46322)	
)	
Applicant.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND OF THE CASE

Wail Odtallah, 1008-1010 W. 5th Avenue, Highland, IN 46322, permit number RR45-29938 (Applicant), is the applicant for a permit to sell beer, wine, and liquor in 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 Lake County (Local Board). Although the initial hearing was scheduled on August 6, 2013, the Local Board continued it. There were no remonstrators at that particular hearing. The Local Board then scheduled the permit to be heard at the next hearing on September 3, 2013. At that hearing, the Local Board again continued this matter, but it was inadvertently entered into the computer system as being "approved." No remonstrators were present at that particular hearing. As is the procedure of the Commission, the permit, having been marked as "approved" on the computer system, was sent to the Commission to be accepted, which it was in September, 2013. A permit was issued, but returned at the Local Board meeting on October 1, 2013, at which the Local Board was supposed to hear the applicant's case. There were no remonstrators present at the Local Board meeting and the permit hearing was continued until

November 6, 2013, due to Mr. Purnell, a potential remonstrator, asking the Applicant to demonstrate community support. On November 6, 2013, the Local Board met and voted 2-1 to deny the permit based on “no community need/desire”. The permit never again came up before the full Commission.

Applicant filed Petitioner Request for Appeal Hearing, and the matter was assigned to the Hearing Officer. The matter was set for hearing on April 16, 2014, 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. Wail Odtallah, Applicant;
 - 2. James Harris, Attorney for Applicant

- B. The following evidence was introduced and admitted before the Local Board in favor of the Applicant in this cause:
 - 1. Letter from Ronald Brewer, Gary Councilman at Large

- C. The following individuals testified before the Local Board against the Applicant in this cause:
 - 1. Robert Campbell, remonstrator (resident and member of local school board);
 - 2. Rufus Purnell, remonstrator (resident).

- D. The following evidence was introduced and admitted before the Local Board against the Applicant in this cause:
 - 1. None (Note: a Memo from Michael Protho, Gary Councilman, 2nd District was sent to the Commission on December 30, 2013, AFTER all voting had taken place).

III. EVIDENCE BEFORE THE COMMISSION

- A. The following individuals testified before the Commission in favor of the Applicant in this cause:
1. Wail Odtallah, Applicant;
 2. James Harris, Attorney for Applicant.
- 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. Robert Campbell, remonstrator (resident and member of local school board);
 2. Rufus Purnell, remonstrator (resident).
- D. The following evidence was introduced and admitted before the Commission against the Applicant in this cause:
1. None

IV. FINDINGS OF FACT

1. Wail Odtallah, 1008 – 1010 W. 5th Street, Highland, Indiana 46402, permit number DL45-29938, is the Applicant for a Type 210 permit. (ATC File).
2. The Applicant meets the qualifications to hold a permit pursuant to Ind. Code § 7.1-3-4-2, Ind. Code § 7.1-3-5-2, and Ind. Code § 7.1-3-15-2. (Local Board Hearing; ATC Hearing).
3. The permit is not being placed within two hundred (200) feet of a church or school. (ATC File).
4. The permit is being placed in a commercial location and is not being placed in a residential district as referred to in Ind. Code § 7.1-3-19-13 and 905 IAC 1-18-1. (ATC File; ATC Hearing).

5. The Applicant is of good moral character and of good repute in the community as required by 905 IAC 1-27-1. (ATC Hearing).

6. The Applicant's store is similar to stores of competitors holding alcoholic beverage permits in Indiana. (Local Board Hearing; ATC Hearing; ATC File).

7. Two (2) people appeared at the Local Board Hearing to remonstrate against the issuance of this permit. The same two (2) people appeared at the ATC Hearing to remonstrate against the issuance of this permit. (Local board Hearing; ATC Hearing).

8. Remonstrators presented evidence to indicate their feeling that there is no need or desire in the Gary community for the permit through testimony opposing issuance of the permit. (Local Board Hearing; ATC Hearing; ATC File).

9. Specifically, the remonstrators testified that they believe the restaurant would exacerbate the problem of offering individuals who have addition problems another outlet to purchase alcohol in addition to exposing minors to alcohol. (ATC Hearing).

10. The restaurant would be operated by Mr. Odtallah and his brother as a 50/50 partnership and one of them would always be present in the restaurant to monitor the patrons (ATC Hearing).

11. Mr. Odtallah has had almost 20 years experience in dealing with alcohol either at his family restaurant business, or as a manager at a liquor store in East Chicago. (ATC Hearing).

12. Throughout the notice process, which lasted through four (4) Local Board hearing dates, totaling approximately 120 days, there has been a sign in the window of the restaurant to notice remonstrators of the intent to apply for an alcohol license. (ATC Hearing).

13. There were no remonstrators, nor had there been any inquiries in the premises, to give feedback as to the desire of the community for this permit, with the exception of Mr. Campbell remonstrating at the last Local Board hearing and Mr. Purnell sitting with the Local Board at every meeting. (ATC Hearing).

14. Local Board Member, Cynthia Watts, stated initially that she did not want to make a decision, indicating that this was her first meeting and implying that she was not acquainted with the standards on which a permit should be denied or granted. She was instructed that she would have to vote. (Local Board Hearing).

15. Local Board Officer Jaime Patrick was not notified Ms. Watts would be attending the meeting. She appeared approximately ten (10) minutes before the meeting and had a very brief review of the handbook. After the meeting concluded, Officer Patrick told her that there would be an orientation before the next meeting. She did not attend an orientation, nor has she attended another meeting since. (ATC File).

16. 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 issue a permit, the Commission may consider the geographic desirability of a proposed permit location, the need for the permit at the proposed location, the community's desire for the permit, and the impact of the permit on the community and other businesses. 905 IAC 1-27-4.

8. When considering a permit location, the commission may consider the need for such services at the location of the permit. 905 IAC 1-27-4(a).

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 lack of desire/need for the services at this location. (ATC file).

11. The local board's decision to deny the permit included Board Member Watts' vote, under which she stated she was uncomfortable voting. Furthermore, she had not received orientation or training as to the standards of the Local Board. (ATC File).

12. Based on the inexperience and lack of any type of orientation or training as to standards of one of the people who voted to deny the permit, the Local Board decision was arbitrary and should be overturned.

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

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the decision of the Lake County Local Board resulting in a 2-1 vote to deny the application for the permit number RR45-29938, was not supported by substantial evidence, was arbitrary and the Alcohol and Tobacco Commission should approve said application. The application of Wail Odtallah, 1008 – 1010 W. 5th Avenue, Gary, Indiana, for the Type 210 permit number RR45-29938, was sufficient and the permit applied for herein is APPROVED.

DATE: April 29, 2014



David Rothenberg, Hearing Office

Approved this 3rd day of June, 2014.



ALEX HUSKEY, CHAIRMAN



DAVID JOHNSON, VICE CHAIR



DALE GRUBB, COMMISSIONER



MELISSA COXEY, COMMISSIONER