

MINUTES

ALCOHOL AND TOBACCO COMMISSION

MAY 5, 2010

**CALL TO ORDER/NOTING OF QUORUM**

Chairman Snow called the meeting to order and noted the quorum and the attendance. Present were Vice Chairman Johnson, Commissioner Guthrie and Commissioner Sturtz. Superintendent Huskey and Executive Secretary Dunsmore were also in attendance.

Trevor Vance, Connie Vickery, Marc Carmichael, John Barnett, and Jim Purucker were present as observers.

**DISPOSITION OF MINUTES**

Commissioner Sturtz moved to approve the minutes that were submitted for the April 20, 2010 meeting. The motion was seconded by Commissioner Guthrie and it was unanimously approved.

**HEARING JUDGE'S RECOMMENDATIONS**

PARTIES' AGREED DISPOSITIONS – Vice Chairman Johnson moved to approve the parties' agreed dispositions that were submitted for the May 5, 2010 meeting, with the exception of permit #RR39-01844 and #RR46-05905. Motion seconded by Commissioner Guthrie and it was unanimously approved.

RC45-21113 VFW POST #1919 – Hearing Judge Dunsmore stated this permit was denied renewal by the Commission. The permittee filed a timely notice of appeal and the matter was set for hearing. The Hearing Judge now submits his Proposed Findings of Fact and Conclusions of Law for recommendation to the Commission.

Vice Chairman Johnson moved to uphold the Findings of the Hearing Judge and deny the renewal. Motion seconded by Commissioner Guthrie and it was unanimously approved.

DL29-26331 SADLER & SADLER, LLC – Hearing Judge Dunsmore stated the local board recommended denial of this new application and the Commission upheld the denial. The applicant filed a timely notice of appeal and the matter was set for hearing. The Hearing Judge now submits his Proposed Findings of Fact and Conclusions of Law for recommendation to the Commission.

The Hearing Judge made reference to his findings that the applicant will report the first year's sales' figures to the local board to make sure the applicant remains qualified under the character of business test to hold the permit. Also, Matt Price, remonstrator's attorney, informed Hearing Judge Dunsmore that he would file an objection to the Findings; however, nothing was filed. The objection was regarding a definition that is not addressed in our statutes. Hearing Judge Dunsmore stated this is something the

legislature may want to address. Andi Metzel, applicant's attorney, filed an objection, but withdrew it.

Vice Chairman Johnson moved to uphold the Hearing Judge's recommendation to approve the new permit. Motion seconded by Commissioner Guthrie and it was unanimously approved.

### **CONSIDERATION OF APPLICATIONS**

Commissioner Sturtz moved to approve and incorporate by reference these lists of permits for renewal, which have been recommended by local boards and reviewed by said staff with the authority of the Commission. Motion seconded by Commissioner Guthrie and it was unanimously approved.

Commissioner Sturtz moved to approve and incorporate by reference these lists of permit applications for a new permit, which includes the tabled applications, or applications for changes in location or ownership or both of existing permits, which have been recommended by local boards and reviewed by at least two Commissioners. Motion seconded by Commissioner Guthrie and it was unanimously approved.

Commissioner Sturtz moved to approve and incorporate by reference these lists of permit applications for catering. Motion seconded by Commissioner Guthrie and it was unanimously approved.

Commissioner Sturtz moved to approve and incorporate by reference these lists of permits to be placed in escrow for not more than five years, which have been reviewed and recommended by a Commissioner as appropriate for escrow. Motion seconded by Commissioner Guthrie and it was unanimously approved.

Three hundred seventy-one (371) renewals approved, thirty-two (32) new and/or transfer permits approved, nine (9) permits approved for catering, six (6) permits approved for first year escrow, and three (3) permits approved for second year escrow.

### **RENEWAL LETTERS AND WAIVER OF FEES**

Vice Chairman Johnson moved to approve the renewal letters and the waiver of fees for letters of extension for the preceding weeks. Motion seconded by Commissioner Sturtz and it was unanimously approved.

### **APPLICATIONS FOR DISCUSSION**

RR48-10152 765 RIDERS, LLC – Commissioner Guthrie noted the renewal of this permit was denied by the Commission and an appeal was filed. Hearing Judge Dunsmore, after holding a prehearing conference with the permittee's attorney, recommends the Commission remand this renewal to the local board for reinvestigation.

Commissioner Guthrie moved to uphold the Hearing Judge's recommendation and remand this renewal. Motion seconded by Commissioner Sturtz and it was unanimously approved.

DL45-01588 KEVIN THOMAS - Commissioner Guthrie noted the renewal of this permit was denied by the Commission and an appeal was filed. Hearing Judge Dunsmore, after holding a prehearing conference with the permittee's attorney, recommends the Commission remand this renewal to the local board for reinvestigation.

Commissioner Guthrie moved to uphold the Hearing Judge's recommendation and remand this renewal. Motion seconded by Vice Chairman Johnson and it was unanimously approved.

DL20-26788 MICHIAN ELKHART, INC. - Commissioner Guthrie noted this is a new type 115 application with the local board voting two (2) to one (1) to disapprove.

Commissioner Guthrie stated the local board cited no need for the services and the establishment appears to be a tobacco store.

Commissioner Guthrie moved to uphold the local board's recommendation and deny the new application. Motion seconded by Commissioner Sturtz and it was unanimously approved.

### **INACTIVE FILES**

INACTIVE FILES - Vice Chairman Johnson moved to make nineteen (19) permits inactive. Thirteen (13) permits are not subject to auction and six (6) permits are subject to auction. Motion seconded by Commissioner Sturtz and it was unanimously approved.

### **OLD BUSINESS**

No Old Business

### **NEW BUSINESS**

RR49-26639 J H SOUTHPORT RESTAURANT, LLC - Vice Chairman Johnson stated an appeal was filed regarding the above referenced application. Hearing Judge Dunsmore recused himself from this case.

Commissioner Guthrie moved to appoint Vice Chairman Johnson as hearing judge in this matter. Motion seconded by Commissioner Sturtz and it was unanimously approved.

### **POLICY DETERMINATIONS**

No Policy Determinations

### **ANNOUNCEMENTS**

No Announcements

**ADJOURNMENT**

Commissioner Sturtz moved to adjourn the meeting. Motion seconded by Commissioner Guthrie and it was unanimously approved.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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P. TOM SNOW, CHAIRMAN

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DAVID JOHNSON, VICE CHAIR

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DALE STURTZ, COMMISSIONER

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FRANK GUTHRIE, COMMISSIONER