

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

IN THE MATTER OF)	
THE PERMIT OF)	
)	
HUEHN TAVERNA INC.)	
d/b/a HUEHN TAP)	PERMIT NO. RR45-06666
4404 TOWLE AVENUE)	
HAMMOND, INDIANA 46320)	
)	
Applicant.)	

**PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

I. BACKGROUND OF THE CASE

Huehn Taverna Inc., d/b/a Huehn Tap, 4404 Towle Avenue, Hammond, Indiana 46320, permit number RR45-06666 (Applicant), is the Applicant for a type 210¹ Alcohol and Tobacco Commission (Commission) permit. The application was assigned to the Alcoholic Beverage Board of Lake County (Local Board). The Local Board held a hearing on December 6, 2012, and voted 4-0 to recommend denial with respect to this permit. On December 18, 2012, the Commission voted to deny the application at its regularly held meeting.

On April 8, 2013, the Applicant filed a request to appeal Commission's denial. Although the request was not timely, the Commission granted the request due to confusion related to Applicant's correct mailing address. On June 13, 2013, notice of an appeal hearing was mailed to Applicant and all remonstrators. The matter was assigned to Commission Hearing Officer Melissa Coxey (Hearing Officer). The matter was set for hearing on July 11, 2013. Applicant failed to appear at the hearing. The Hearing judge also took judicial notice of the entire contents of the file related to this cause. Having been duly advised of the facts and

¹ Liquor, beer and wine (drug store) dealer located in an unincorporated area.

law at issue, the Hearing Officer now submits these Proposed Findings of Fact and Conclusions of Law to the Commission for its consideration.

III. EVIDENCE BEFORE THE LOCAL BOARD

- A. The following individuals testified before the Local Board in favor of the Applicant in this cause:
1. Victor Arrocha, Applicant; and,
 2. Waldamar Matias, witness for the Applicant.
- B. The following evidence was introduced and admitted before the Local Board in favor of the Applicant in this cause:
- None.
- C. The following individuals testified before the Local Board against the Applicant in this cause:
1. Kris Kantar, Hammond City Attorney;
 2. Mark Kalwinski, Councilman First District, City of Hammond;
 3. Brian Miller, Chief of Police, City of Hammond; and,
 4. Janet Venecz, Councilwoman at Large, City of Hammond.
- D. The following evidence was introduced and admitted before the Local Board against the Applicant in this cause:
1. Remonstrator's exhibit 1 – calls for service from Hammond Police Department.

V. FINDINGS OF FACT

1. Huehn Taverna, Inc., d/b/a Huehn Tap, 4404 Towle Avenue, Hammond, Indiana 46327, permit number RR45-06666, is the Applicant for renewal of a Type 210 permit. (ATC File).
2. Four (4) persons appeared at the Local Board Hearing to remonstrate against the issuance of this permit. Remonstrators also presented evidence to indicate that the Applicant's business has become a burden to local law enforcement. (Local Board Hearing; ATC File).
3. Because Applicant failed to appear at the Appeal Hearing, no evidence was presented to rebut testimony of the Remonstrators. (ATC Hearing).

4. The weight of the evidence indicates the Local Board was justified in recommending denial of the application. (Local Board Hearing).

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

VI. 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 Officer 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 Officer 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. The Applicant is not a fit and proper applicant, has not maintained a reputation for decency and law obedience, and is not qualified to hold an alcoholic beverage permit under Indiana law. 905 IAC 1-27-1 and Ind. Code § 7.1-3-9-10.

8. The recommendation of the Local Board was based on substantial evidence.
(Local Board Hearing).

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. 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 4-0 vote to recommend denial of the application for the permit number RR45-06666, was supported by substantial evidence, was not arbitrary and capricious, and otherwise in accordance with law, and the Alcohol and Tobacco Commission should deny said application. The application of Huehn Taverna Inc. d/b/a Huehn Tap, 4404 Towle Avenue, Hammond, Indiana, for the Type 210 permit number RR45-06666, was insufficient and the permit applied for herein is DENIED.

DATE: August 19, 2013

Melissa L. Coxey, Hearing Officer