

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

IN RE: THE PERMIT APPLICATION OF:	)	
	)	
DOLGENCORP LLC	)	ATC File No. DL44-33357
d/b/a DOLLAR GENERAL STORE #8478	)	
7855 W. US HIGHWAY 20	)	
SHIPSHEWANA, INDIANA,	)	
	)	
<i>Applicant.</i>	)	

**PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

Comes now, James W. Payne, Hearing Judge, having presided over the appeal hearing in the above-referenced matter on February 8, 2024, and recommends the following findings and orders:

**I. BACKGROUND**

DolgenCorp LLC d/b/a Dollar General Store #8478 (Applicant) filed an application with the Indiana Alcohol and Tobacco Commission (ATC) for a beer and wine grocery permit number (DL44-33357). The application was sent to the Alcoholic Beverage Board of LaGrange County (Local Board) for a hearing which was held on September 14, 2023. The local Board voted 3-0 to approve the application and issue the permit. On October 17, 2023, the ATC overturned the Local Board's recommendation and denied the application based, in part, on opposition to the proposed permit received by ATC and the information available in the ATC files and the hearing of the local Board. The Applicant filed *its Petitioner's Objection and Request for Administrative Review and Hearing of the Commission's Denial of Application*, and the matter was assigned to Vice Chair of the Commission, James W. Payne, as hearing judge.

On November 21, 2023, William Christner and Esther Christner ("Christners") and John Does and Jane Does, by counsel, filed a Petition to Intervene as Intervening Remonstrators. No other Remonstrators sought intervening Remonstrators status. On January 26, 2024, the Hearing Judge granted their Petition to Intervene because the Christners appeared as Remonstrators at the local board hearing and denied the petition as to John Does and Jane Does.

On February 8, 2024, the hearing judge conducted a *de novo* hearing on this matter, at which witnesses were sworn, testimony was heard, documentary evidence was submitted, and the

matter was taken under advisement. The Hearing Judge at that time took judicial notice of the entire contents of the ATC file related to this cause and the Applicant.

## **II. EVIDENCE BEFORE THE LOCAL BOARD**

- A. The following individuals testified before the Local Board in favor of the Applicant:
1. Kimberly King, store manager of Dollar General store #8478 in Shipshewana, Indiana (Ms. King).
  2. Brian Trump, then district manager for Dollar General store # 8478. (Mr. Trump).
  3. Lisa C McKinney, Attorney for Applicant.
- B. The following evidence was introduced and admitted before the Local Board in favor of the Applicant:
1. Exhibit A – documents depicting the inside of a typical Dollar General store and describing appellant’s operations.
  2. Exhibit B – signatures from nine (9) individuals on petitions stating their desire for the applicant to sell beer and wine edits Shipshewana location.
- C. The following individuals testified before the local board in opposition to the Applicant:
1. Catherine Horsley.
  2. Clara Wagler.
  3. William Christner.
- D. The following evidence was introduced in admitted before the local board in opposition to the Applicant:
1. Exhibit C – Email from Laverne Miller.

## **III. EVIDENCE BEFORE THE COMMISSION**

- A. The following individuals testified at the ATC hearing in favor of the Applicant:
1. Ms. King.
  2. Mr. Trump.
  3. Andrea Nelson, district manager for Dollar General store #8478.
  4. Alex C. Intermill, Attorney for the Applicant.
- B. The following evidence was introduced in at the ATC hearing in favor of the Applicant:
1. Exhibit A – Petition with approximately 106 signatures in favor of the permit.
  2. Exhibit B – US Census Bureau data showing the population of LaGrange County, Indiana and Shipshewana, Indiana.
  3. Exhibit C – Excel spreadsheet highlighting people from Remonstrators’ petitions who live within the town limits of Shipshewana.

4. Exhibit D – Screenshot from the town of Shipshewana website indicating the number of visitors to the town annually.

C. The following individuals testified at the ATC hearing in opposition to the Applicant:

1. Marlin Eash, resident of Shipshewana.
2. Harley Yoder, Shipshewana resident and operator of The Cove Youth Center in Shipshewana.
3. Clara Wagler, owner and operator of Kids Kreations in Shipshewana.
4. Kathryn Horsley, Shipshewana resident.
5. Lavern Miller, Shipshewana business owner and local pastor.
6. Jay Chupp, resident of Shipshewana and owner and operator E&S Sales in Shipshewana.
7. Jerry Troyer, Shipshewana resident.

D. The following evidence was introduced at the Commission hearing in opposition to the Applicant:

1. Exhibit 1 – Town of Shipshewana Resolution 11-F-1-d (2709).
2. Exhibit 3 – Transcript of LaGrange County Local Board hearing on September 14, 2023.
3. Exhibit 4 – Transcript of ATC Commission meeting on October 3, 2023, discussing the application.
4. Exhibit 5 – Transcript of ATC Commission meeting on October 17, 2023, discussing the application.
5. Exhibit 8 – Map of LaGrange County identifying alcohol permits in the county.
6. Exhibit 9 – Map of residences of Remonstrators.

#### **IV. FINDINGS OF FACT**

1. Dolgencorp LLC (d/b/a Dollar General store #8478) is located at 7855 US Highway 20, in Shipshewana, Indiana and is the applicant for a beer and wine grocery store permit.

2. The Town of Shipshewana is located in LaGrange County, Indiana.

3. LaGrange County has a population of approximately 40,000, about 50% of which are Amish.

4. The Town of Shipshewana has a population of approximately 843 and is surrounded by Amish farms and businesses.

5. The Shipshewana community thrives on the tourism industry due to its unique character and culture.

6. The Applicant currently operates a retail grocery store at the proposed permit premises in Shipshewana.

7. The proposed permit premises is not located within two hundred (200) feet of a church or school.

8. The Applicant is seeking an alcohol permit to address customer requests and to make beer and wine available for purchase, along with grocery and non-grocery items.

9. At the local board hearing, the Applicant stated that it is seeking a permit for the convenience of its customers because there is nowhere else in town for customers to buy grocery items in addition to beer and wine. At no time during the local board hearing did the Applicant states that it was seeking a permit in response to a high demand from the Shipshewana community.

10. The Applicant is seeking an alcohol permit so that it may sell of beer and wine in order to increase sales.

11. The Applicant testified that other Dollar General stores in LaGrange County that sell beer and wine have a higher average sale amount per transaction.

12. The Applicant submitted petitions signed by approximately 106 individuals in support of Applicant's permit application. Of those signatures, fewer than half of them indicated they lived in the Shipshewana community.

13. Ms. King testified that Applicant's customers frequently ask for beer and wine to be sold at the location.

14. Ms. Nelson testified that she has personal knowledge of customers at the Shipshewana premises asking for beer and wine and that she believes this demonstrates a need and desire for the permit.

15. Resolution 11-F-1-d(2709) adopted by the Town of Shipshewana states that "a substantial portion of local citizens and civic leaders are opposed to the sale of alcoholic beverages within the town limits" and that "the town Council of the town of Shipshewana, Indiana reasonably believes that the issuance of a liquor retailers permit within the town limits of the town of Shipshewana would have a negative impact on the local population in the tourism based local economy" (Exhibit 1).

16. The Remonstrators provided petitions signed by hundreds of Shipshewana residents opposing the issuance of the permit.

17. Approximately twenty (20) individuals, including residents of Shipshewana and the surrounding community, appeared at the Commission hearing on February 8, 2024, in opposition to the issuance of the permit.

18. No Shipshewana residents appeared at the Commission hearing on February 8, 2024, in support of the permit being issued.

19. Testimony presented during the Commission hearing on February 8, 2024, indicates that there is a long history of the LaGrange County Local Board denying applications for the issuance of alcohol permits based upon the community's opposition, the community's Amish and Mennonite population, and the town's unique character. *John Malone Enterprises, Inc. v. Shaeffer*, 674 N.E. 2d 599 (Ind. Ct. App 1996).

20. Although the LaGrange County Local Board has recently voted in favor of two (2) retail restaurant permits in Shipshewana allowing the sale of beer and wine for on premises consumption (RR44-39735 and RR4-40228), those permits are distinguishable from the Applicant's application for a beer and wine grocery store permit for off-premises consumption.

21. 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 IC 7.1-1-2-2 and IC 7.1-2-3-9.

2. The permit application was submitted pursuant to IC 7.1-3-1-4.

3. The Commission is authorized to act upon proper applications. *Id.*

4. 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's file and evidence and testimony. IC 7.1-3-19-1 1(a); 905 IAC 1-36-7(a); 905 IAC 1-37(2).

5. The Hearing Judge may take judicial notice of the Commission file relevant to a case, including the transcript of proceedings and the exhibits before the local board. 905 IAC 1-36-7(a).

6. The Findings are based exclusively upon substantial and reliable evidence in the record of the proceedings, the ATC files, and all matters officially noticed in the proceeding. 905 IAC 1-36-7(a).

7. The ATC has absolute discretion in granting or denying an application for a permit. IC 7.1-2-3-9. IC 7.1-3-19-1, IC 7.1-3-19-10.

8. Upon application for a new or upon application for a transfer of location of an existing permit, the Commission shall investigate the desirability of the permit regarding its potential geographical location. In making this determination, the Commission may consider, but

is not limited to, the following factors: (a) the need for such services at the location of the permit; (b) the desire of the neighborhood or the community to receive such services; (c) the impact of such services on other business in the neighborhood or community; and (d) the impact of such services on the neighborhood or community. 905 IAC 1-27-4.

9. The Commission may overturn the recommendation of the local board if it finds that the decision of the local board is: 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. IC 7.1-3-19-11.

10. The substantial evidence standard is met "if a reasonable person would conclude that the evidence and the logical and reasonable inferences therefrom are of such a substantial character and probative value so as to support the administrative determination." *Indiana Alcoholic Beverage Commission v. Edwards*, 659 N.E.2d 631, 635 (1995) (citing *Civil Rights Commission v. Weigart, Inc.*, 588 N.E.2d 1288, 1289 (Ind. 1992)).

11. The substantial evidence standard requires a lower burden of proof than the preponderance of the evidence test, yet more than the scintilla of evidence test. *Burke v. City of Anderson*, 612 N.E.2d 559, 565, n.1 (Ind. Ct. App. 1993).

12. The Local Board's recommendation to approve the Applicant's request for a permit was not supported by substantial evidence because the evidence in opposition of the permit far outweighs the evidence in support of the permit.

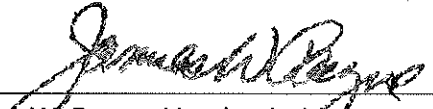
13. The Commission properly considered all of the factors set forth in 905 IAC 1-27-4, including the need and desirability of the permit at the proposed location, before denying the Applicant's application, and a reasonable person could conclude that the evidence presented at the hearings was substantial enough as to support the Commission's determination that there is no need or desire for a beer and wine grocery store permit in Shipshewana, and that such a permit would detract from the character of the community.

14. The Commission acted appropriately and well within its discretionary authority in denying the issuance of a permit to the Applicant because the recommendation of the LaGrange County Local Board was not supported by substantial evidence.

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

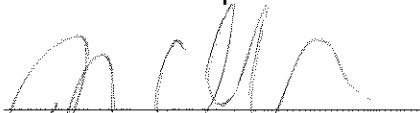
THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the recommendation of the LaGrange County Local Alcoholic Beverage Board to approve the Applicant's permit application under DL44-33357 is hereby not accepted by the ATC Commission based on the fact that the recommendation is unsupported by substantial evidence, the issuance of the permit to the Applicant under DL44-33357 is denied.

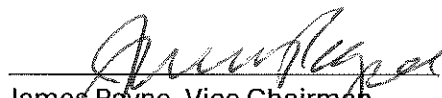
All of which is dated this 3<sup>rd</sup> day of September, 2024


  
James W. Payne, Hearing Judge

Commission Adoption:

Date: 10/1/24

  
Jessica Allen, Chair

  
James Payne, Vice Chairman

  
Marjorie Maginn, Commissioner

  
Mark A. Jones, Commissioner

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