

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

IN THE MATTER OF)	
THE PERMIT OF)	
)	
ROSEMARY E. SULLIVAN)	
NAUTICAL TURTLE INC.)	PERMIT NO. RR76-13567
2340 W. ORLANDO ROAD)	
ANGOLA, INDIANA 46703)	
)	
Applicant.)	

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

I. BACKGROUND OF THE CASE

Rosemary E. Sullivan, d/b/a Nautical Turtle, Inc. 2340 W. Orlando Road, Angola, Indiana 46703, permit number RR76-13567, (the "Applicant"), is the Applicant for a type 209 Alcohol and Tobacco Commission (the "Commission" or the "ATC") permit. The application was assigned to the Alcoholic Beverage Board of Steuben County ("Local Board"). The Local Board held a hearing on August 28, 2013, and voted to deny the application 3-0 with respect to this permit. On September 17, 2013, the Commission voted to deny the application at its regularly held meeting.

On September 27, 2013, the Applicant filed Petitioner's Request for Administrative Review and Request to Appeal Commission's Denial of Application, and the matter was assigned to the Commission Hearing Judge David Rothenberg ("Hearing Judge"). The matter was set for hearing on February 19, 2014 and that time, witnesses were sworn, evidence was heard, and the matter was taken under advisement. 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 law at issue, the Hearing Judge now submits these Proposed Findings of Fact and Conclusions of Law to the Commission for its consideration.

II. PROCEDURAL HISTORY

1. On September 17, 2013, the Applicant received the Notice of Denial stating that the Commission rejected its application.
2. On September 27, 2013 the Applicant timely filed its request for administrative review and request for appeal within the fifteen (15) day deadline required by 905 IAC 1-36-2.
3. No remonstrators filed a petition for intervention as remonstrator, as required by 905 IAC 1-36-2.
4. On February 19, 2014, the Hearing Judge conducted a hearing regarding this appeal.

III. EVIDENCE BEFORE THE LOCAL BOARD

- A. The following individuals testified before the Local Board in favor of the Applicant in this cause:
 1. Rosemary E. Sullivan, Applicant
- B. There was no evidence introduced before the Local Board and Applicant was not represented by counsel at the hearing before the Local Board.

IV. EVIDENCE BEFORE THE COMMISSION

- A. The following individuals testified before the Commission in favor of the Applicant in this cause:
 1. Rosemary Elizabeth Sullivan, Applicant. The Applicant desires to offer a family style restaurant to its customers on a year round basis. The Nautical Turtle is located on Crooked Lake and is therefore a popular locale in the summer months. This is the only restaurant of its type located in the area that can give individuals as well as families lunch and dinner throughout the week offering breakfast on the weekends. The Applicant has not had

any ATC violations concerning the sale of alcohol. There is a need and desire for the permit, and the Applicant is of good repute in the community.

B. The following evidence was introduced and admitted before the Commission:

1. The Hearing Judge took judicial notice of the transcript from the Steuben County Local Board Hearing.

C. The following individuals testified before the Commission against the Applicant in this cause:

None.

D. The following evidence was introduced and admitted before the Commission against the Applicant in this cause:

None.

V. FINDINGS OF FACT

1. Rosemary E. Sullivan, d/b/a Nautical Turtle, Inc. 2340 W. Orlando Road, Angola, Indiana 46703, permit number RR76-13567, (the "Applicant"), is the Applicant for a type 209 permit (ATC file).

2. The Applicant meets the qualifications to hold a type 209 permit.

3. The Applicant is of good moral character and of good repute in the community as required by 905 IAC 1-27-1.

4. The Applicant has presented evidence to indicate that there is need and desire in the community for the permit by her testimony that it is the only location of its kind in the Crooked Lake area offering breakfast, lunch and dinner. (ATC Hearing).

5. There were no remonstrators present at the Local Board or Appeal hearing. (Local Board Hearing, ATC Hearing).

6. The Applicant understands the seriousness of reviewing any and all ATC documents prior to signing such documents. (ATC Hearing).

7. The Applicant understands that any and all felony and misdemeanor convictions must be acknowledged on all ATC documents that specifically ask the question of whether applicant has ever been convicted of a felony or misdemeanor. (ATC Hearing).

8. The Applicant did not intentionally fail to disclose the misdemeanor convictions from 2002. (ATC Hearing).

9. The Applicant testifies that she signed a blank renewal application that was then completed by a third party preparer. (ATC Hearing). The Applicant requests that Group Exhibit "A" be admitted into evidence post hearing because the Applicant did not have these documents at the time of the hearing. The proffered document is the same document the Applicant received when she initially filed her Application for her permit, as documented by her hearing testimony.

10. The question pertaining to convictions of a felony or misdemeanor was never orally asked of Applicant by the preparer. (ATC Hearing).

11. The Applicant has since been forthright about the conviction of a misdemeanor in 2002 which does not preclude an individual from holding a permit. (ATC Hearing).

12. The continued operation of this permit premises and renewal of this application will not result in any adverse effect on the surrounding neighborhood.

13. 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 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. The Applicant is a fit and proper applicant, has maintained a reputation for decency and law obedience, and is qualified to hold an alcoholic beverage permit under Indiana law. 905 IAC 1-27-1 and Ind. Code § 7.1-3-9-10.
8. 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.

9. Indiana law charges the Commission with ensuring that laws and regulations are enforced uniformly throughout the state. Ind. Constitution, Art. IV, Sec. 23; *See, Indiana Alcoholic Beverage Commission v. Osco Drug*, 431 N.E.2d 823, 830 (Ind. App. 1982).

10. The Commission may reverse a local board's action in denying an application for a permit 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.

11. Upon further testimony and presentation of evidence that was not available to the Steuben County Local Board at the time, the submission of the information in question was unintentional.

12. 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 Steuben County Local Board resulting in a 3-0 vote concerning the application for the permit number RR76-13567 was not supported by substantial evidence, was arbitrary and capricious, and otherwise not in accordance with law, and the Indiana Alcohol and Tobacco Commission should approve said application. The application of Rosemary E. Sullivan, d/b/a Nautical Turtle, Inc. 2340 W. Orlando Road, Angola, Indiana 46703, permit number RR76-13567, is GRANTED.

DATE: July 23, 2014



David Rothenberg, Hearing Judge

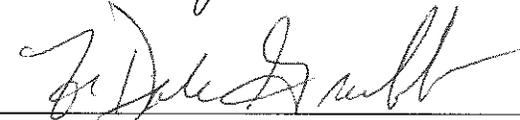
Approved this 18th day of August, 2014.



ALEX HUSKEY, CHAIRMAN



DAVID JOHNSON, VICE CHAIR



DALE GRUBB, COMMISSIONER



MELISSA COXEY, COMMISSIONER

