

**DOCKET NO. 512737**

IN RE ORIGINAL APPLICATION OF	§	BEFORE THE TEXAS
MYOLONAS INVESTMENT	§	
CORPORATION	§	
D/B/A BABY DOLLS II	§	
MB, LB & PE	§	ALCOHOLIC
	§	
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-1478)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 5<sup>th</sup> day of June 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Stephen J. Burger. The hearing convened on March 17, 2006 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 4, 2006. This Proposal For Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Transcripts, and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's Original Application for the issuance of a Mixed Beverage Permit, a Mixed Beverage Late Hours Permit and a Beverage Cartage Permit be **GRANTED**.

This Order will become final and enforceable on June 26, 2006 unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

**SIGNED** on this the 5th day of June 2006.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

LBH/aa

Hon. Stephen J. Burger  
Administrative Law Judge  
State Office of Administrative Hearings  
Houston, Texas  
*VIA FAX (713) 812-1001*

Mylonas Investment Corporation  
d/b/a Baby Dolls II  
**RESPONDENT**  
6340 Westheimer  
Houston, Texas 77057  
**CERTIFIED MAIL NO. 7005 3110 0000 6409 2417**

Harlan Murphy  
**ATTORNEY FOR RESPONDENT**  
2 Houston Center  
909 Fannin  
Houston, Texas 77010  
*VIA FAX (713) 654-1301*

State Representative Beverly Woodley  
**PROTESTANTS**  
2200 Post Oak Blvd, Suite 625  
Houston, Texas 77056  
**VIA FACSIMILE: (713) 629-7206**

Lindy Hendricks  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Houston District Office

# State Office of Administrative Hearings

LH-  
protest



Shelia Bailey Taylor  
Chief Administrative Law Judge

May 4, 2006

Alan Steen  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

VIA REGULAR MAIL

**RE: Docket No. 458-06-1478; Texas Alcoholic Beverage Commission v. Mylonas Investment Corporation d/b/a Baby Dolls II**

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in black ink that reads "S.J. Burger".

Stephen J. Burger  
Administrative Law Judge

SJB/mc  
Enclosure

xc: Lindy B. Hendricks, Texas Alcoholic Beverage Commission, 427 W. 20<sup>th</sup> Street, Suite 600, Houston, Texas 77008 -

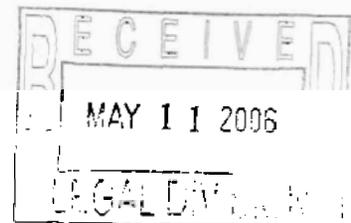
VIA REGULAR MAIL

Ronald A. Monshaugen, Attorney at Law, 1225 North Loop West, Suite 640, Houston, Texas 77008 -

VIA REGULAR MAIL

State Representative Beverly Woolley, 2200 Post Oak Blvd., Suite 625, Houston, Texas 77056 -

VIA REGULAR MAIL



North Loop Office Park  
2020 North Loop West, Suite 111 ♦ Houston, Texas 77018  
(713) 957-0010 Fax (713) 812-1001

<b>TEXAS ALCOHOLIC BEVERAGE</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>COMMISSION, ET AL,</b>	§	
<b>Protestants</b>	§	
<b>V.</b>	§	
	§	
<b>ORIGINAL APPLICATION OF</b>	§	<b>OF</b>
<b>MYLONAS INVESTMENT</b>	§	
<b>CORPORATION</b>	§	
<b>D/B/A BABY DOLLS II</b>	§	
<b>Applicant</b>	§	
<b>HARRIS COUNTY, TEXAS</b>	§	
<b>TABC NO. 512737</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

Mylonas Investment Corporation, D/B/A Baby Dolls II (Applicant) filed an original application with the Texas Alcoholic Beverage Commission (Commission or TABC) for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit for the premises located at 6340 Westheimer, Houston, Harris County, Texas. State Representative Beverly Woolley, of District 136, protested the application and asserted that the permits should be denied based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.<sup>1</sup> Protestants allege that the premises have previously been investigated for vice complaints, and are adjacent to a residential area. The Administrative Law Judge (ALJ) recommends that the Commission grant Applicant the original permits.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

No contested issues of notice, jurisdiction, or venue were raised in this proceeding. Therefore, these matters are set out in the findings of fact and conclusions of law without further discussion here.

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<sup>1</sup>The Protest was filed by State Representative Beverly Woolley. The TABC appeared only as a jurisdictional petitioner, had no independent evidence to protest the issuance of the permits, and is neutral on the issues. Additionally, the TABC asserted the Applicant is qualified to hold the permits at the location.

On March 17, 2006, a public hearing was held before Stephen J. Burger, ALJ, in Houston, Harris County, Texas. Protestants were represented by attorney Harlan Murphy. The TABC attorney was Lindy Hendricks. Applicant was represented by attorney Ron Monshaugen.

## II. LEGAL STANDARDS AND APPLICABLE LAW

The Commission or Administrator may refuse to issue a permit if it has reasonable grounds to believe that the place or manner in which the applicant may conduct his business warrants the refusal based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8).

## III. EVIDENCE AND PUBLIC COMMENT

### A. Protestants' Evidence

Protestants offered three letters from concerned citizens, admitted as public comments, and the testimony of one witness. The TABC did not offer any testimony, but did offer 1) certified copies of Applicant's file, and 2) the US mail green card of the notice, which were admitted. The testimony from the evidentiary portion of the hearing is summarized as follows:

#### **Officer Sam Roccaforte**

Officer Roccaforte works as an undercover vice officer for the Houston Police Department, and received complaints from the public regarding Applicant's premises. On June 5, 2005, Officer Roccaforte entered the premises about 11:00 p.m., undercover. He ordered a drink, and ultimately asked a dancer for a lap dance. He next asked the dancer for oral sex, which was declined by the dancer; however, the dancer did respond that for \$700, she would engage in regular sex. An arrest was made.

Officer Roccaforte also testified that he has seen other reports of violations at Applicant's premises, and believes the sexual activity is getting worse. He stated that he has made arrests at an adjacent club. However, at Applicant's premises, he only recalls the June 5, 2005, incident.

## **B. Applicant's Evidence**

Applicant presented the testimony of one witness, and Exhibits 1-12, drawings and pictures. The testimony is summarized below.

### **George Mylonas**

George Mylonas owns Applicant's club. The prior owner was his brother, who owned and operated the club from 1984, to the date of his death in July of 2005. The club was closed for about 25 days upon the death of the prior owner, and Mr. Mylonas has applied for new permits for the club, at the same location.

According to Mr. Mylonas, the club is located at Westheimer near Winrock. Westheimer is a busy street in Houston. There are "gentlemens" clubs, restaurants, night clubs, and other businesses located nearby on Westheimer. Among the nearby establishments are: the Penthouse, a club similar to Applicant's; a shopping center; a sports bar; and two massage parlors.

Mr. Mylonas stated all his dancers and bartenders are licensed. He also has security officers and parking lot attendants. Prior to his brother's death, Mr. Mylonas helped out at the club. He will be the head manager at the club, along with three other managers. He was not that familiar with the actual application, as an agent filled it out.

Mr. Mylonas stated that the Briargrove residential area is adjacent to the club, both of which are separated by Bering Ditch, a large drainage structure. Photos of the ditch were admitted.

Mr. Mylonas stated that should the permits not be granted, he could operate as a “nude” club, similar to another nude club that is closer to Briargrove than Applicant’s club.

### C. Public Comment

#### Wendi Lojo

Wendi Lojo appeared on behalf of Representative Beverly Woolley’s office, and gave an unsworn statement. Ms. Woolley’s office was contacted by Briargrove Property Owners, Inc., and concerned citizens regarding Applicant’s application, and Ms. Woolley supports the concerned citizens who contacted her office.

## IV. ANALYSIS

Protestants seek denial of Applicant’s renewal permits on the basis of the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. To prevail at the hearing, Protestants needed to show “increased criminal activity and increased drinking problems” were occurring because of Applicant’s club. Additionally, where a qualified applicant requests to operate in a wet area, some unusual condition or situation must be shown to exist. In re Simonton Gin., Inc., Tex. Civ. App. 616 SW2d 274 (1981).

Applicant’s club is located on a busy commercial street and is one of several alcohol related businesses in the area. Additionally, Applicant’s club has been operating at the present location, in the same fashion, for over 20 years. Applicant has met all TABC requirements. Although undercover vice officer Roccaforte has made an arrest at the club, and has had complaints regarding the club, he admitted that arrests were also made at adjacent clubs.

The only other evidence concerning the protest were general objections to the granting of permits by Mr. Murphy, and the objections stated in the three letters submitted to the TABC, two from residents of Briargrove, and one from Pam Holm, the Houston City Council Member representing the affected district. While not admitted as evidence, the ALJ takes official notice of these letters as public comments, and finds them, if taken as true, insufficient to deny the granting of the permits. The letter from Pam Holm merely recites that the permits, if granted, would have a negative impact on the quality of life of area residents. The letter from Harlan Murphy alleges that because there is an elementary school nearby, and some sort of violations by the club over the past two years, the granting of the permits would be detrimental to the community.

The final letter, from Charles Bacarisse, the District Clerk of Harris County and a concerned resident of Briargrove, cites 11 types of calls to the Houston Police Department over the past two years regarding incidents reportedly occurring at Applicant's club. However, the evidence submitted by the Protestants does not support the allegations. Furthermore, even if all the allegations were proven, the ALJ would find that they are insufficient, or do not constitute an unusual condition, based on the location of the club, and the types of businesses existing in the area.

There is insufficient evidence, under Texas law, that the place or manner that Applicant conducts its business warrants the refusal of Applicant's permits based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.

Based on the above, the ALJ concludes that the allegations, as set out in the Notice of Hearing, were not proven

## V. RECOMMENDATION

The ALJ recommends that Applicant's application for the permits be granted.

**VI. FINDINGS OF FACT**

1. Mylonas Investment Corporation, D/B/A Baby Dolls II (Applicant) filed an original application with the Texas Alcoholic Beverage Commission (Commission) for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit for the premises located at 6340 Westheimer, Houston, Harris County, Texas.
2. The Commission, as Petitioner, filed a Protest on behalf of State Representative Beverly Woolley, joined by some residents of the area, protesting the Application, asserting that the Application should be denied based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency, because the premises are adjacent to a residential area, including a school, and the Applicant's business has generated telephone calls to the police regarding incidents of various illegal activities.
3. A Notice of Hearing dated February 23, 2006, was issued by the Commission notifying the parties that a hearing would be held on the application and informing the parties of the time, place, and nature of the hearing.
4. On March 17, 2006, a public hearing was held before Administrative Law Judge Stephen J. Burger in Houston, Texas. The Commission appeared at the hearing, and was represented by Lindy Hendricks, attorney. Protestants were represented by Harlan Murphy, Attorney. Applicant was represented by Ronald Monshaugen, attorney. Evidence was received and the record closed on the same date.
5. Applicant's club, Baby Dolls II, is a sexually oriented business located on a busy commercial street and is one of several alcohol related businesses in the area.
6. The Applicant has met all Commission requirements to hold the permits at the premises location.
7. Applicant's club, Baby Dolls II, has been operating since 1984, at the same location.
8. Although there has been one arrest for solicitation at Baby Dolls II, in June, 2005, there is insufficient evidence that Baby Dolls II has been subject to a larger number of calls to the police for law violations than other businesses in the same area.
9. Although Baby Dolls II is adjacent to the Briargate residential area, Baby Dolls does not present any more unusual conditions or situations to Briargate than any of the surrounding businesses located near the Baby Dolls II location.

**VII. CONCLUSIONS OF LAW**

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5, §§ 6.01 and 11.46(a)(8).
2. The State Office of Administrative Hearings has jurisdiction to conduct the hearing in this matter and to issue a Proposal for Decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was effected on all parties pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE § 155.55.
4. The place or manner in which the Applicant conducts its business does not warrant the refusal of the permits based on the general welfare, health, peace, or morals, and safety of the people or violate the public sense of decency. TEX. ALCO. BEV. CODE ANN. §11.46(a)(8).
5. The Applicant's original application for a Mixed Beverage Permit and Mixed Beverage Late Hours Permit for the premises known as Baby Dolls II, located at 6340 Westheimer, Houston, Harris County Texas, should be granted.

**SIGNED May 4, 2006.**

  
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**STEPHEN J. BURGER**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**