

DOCKET NO. 595180

IN RE THE ORIGINAL	§	BEFORE THE
APPLICATION OF RICHARD LYNN	§	
WILSON, D/B/A RILEY'S TAVERN	§	
MB	§	TEXAS ALCOHOLIC
	§	
COMAL COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-01-3750)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 31st day of December, 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Steven M. Rivas. The hearing convened and adjourned on September 27, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 27, 2001. 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.

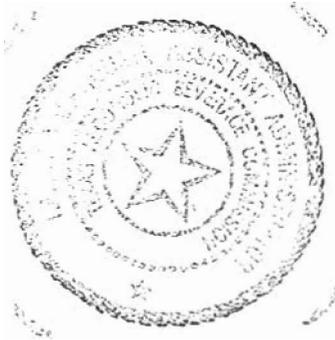
The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Transcripts, and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and 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 the Original Application of Richard Lynn Wilson, d/b/a Riley's Tavern, for a Mixed Beverage Permit be **GRANTED**.

This Order will become final and enforceable on January 21, 2002, 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.

WITNESS MY HAND AND SEAL OF OFFICE on this the 31st day of December, 2001.



On Behalf of the Administrator,

A handwritten signature in cursive script that reads 'Randy Yarbrough'.

Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

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SOAH DOCKET NO. 458-01-3750

IN RE: THE ORIGINAL	§	BEFORE THE STATE OFFICE
APPLICATION OF RICHARD LYNN	§	
WILSON D/B/A RILEY'S TAVERN	§	
	§	OF
	§	
COMAL COUNTY, TEXAS	§	
(TABC CASE NO. 595180)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Joe Torres and other residents of Hunter, Comal County, Texas (Protestants) brought this action against Richard "Rick" Lynn Wilson d/b/a Riley's Tavern (Applicant) seeking to deny the approval of Applicant's permit by the Texas Alcoholic and Beverage Commission (TABC). Protestants alleged Applicant has conducted his business against the public's general welfare, health, peace, morals, safety, and sense of decency. Applicant appeared, was represented by counsel, and contested the allegations of Protestants. This Proposal for Decision finds the permit should be approved.

I. Procedural History, Jurisdiction and Notice

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, those matters are included in the findings of fact and conclusions of law and will not be further discussed in the text of this proposal.

The hearing in this case commenced on September 27, 2001, in the Stephen F. Austin building, 11th floor, 1700 N. Congress Avenue, Austin, Texas 78701, before Barbara Owens, Administrative Law Judge (ALJ) with the State Office of Administrative Hearings. After evidence was received, the hearing concluded on the same day. Protestants were collectively represented by Barbara Molina, attorney. Applicant was represented by Don Walden, attorney. The TABC was represented by Dewey Brackin, attorney.

II. Evidence

A. Protestants' case

The Protestants offered five exhibits. Exhibit No. 1 is a hand-drawn map of the surrounding community where Riley's Tavern is situated. Exhibit No. 2 is a copy of Quest magazine. Exhibit three is a short term lease agreement between Riley's Tavern and Rehabilitation Equipment Company, Inc. Exhibit No. 4 is a collection of pages downloaded from the Riley's Tavern website. Exhibit No. 5 is the Amended Notice of Hearing and Protestants' More Definite Statement. These exhibits were admitted into evidence. In addition to the above mentioned documentary exhibits, the ALJ heard testimony of Joe Torres, Linda Villarreal, Isabel Mercado, and Kevin Bammert.

1. Testimony of Joe Torres

Mr. Torres currently resides in New Braunfels, Texas, but lived in Hunter, Texas, for 40 years and still has family living in Hunter. He owns property in Hunter and visits Hunter almost daily. He opposes Applicant's permit because recent large events held at Riley's gave rise to safety concerns. Large events held at Riley's caused patrons to park their vehicles throughout the Hunter community. He initially attempted to resolve his concerns with Applicant by meeting with him and the TABC, to no avail. He has been to court several times opposing the TABC permit for Riley's. His concern is that a new permit for Riley's will result in problems with loud music and large crowds at the tavern. His concerns stem from events in 1996 that drew large crowds to Hunter. Since 1996, the crowd size for events at Riley's not been as large. He would withdraw his protest if Applicant required his customers to park their vehicles only in Riley's parking lot, stop playing loud music, and take measures to prevent people from urinating in public.

2. Testimony of Linda Villarreal

Ms. Villarreal is a lifetime resident of Hunter, Texas, and has resided near Riley's Tavern for the past 26 years. She is mainly concerned that Riley's Tavern will host loud and disturbing college fraternity parties and live bands. In the past, fraternities from nearby colleges have held social gatherings at Riley's and have caused unreasonable noise and congestion in the area where Ms. Villarreal's family lives. She has called police in the past due to the large overflowing crowd and loud music at Riley's Tavern. Her cousins previously owned a now defunct establishment called Max's. Although she did not wage any legal protests against Max's, she complained to the Sheriff's Department when problems arose at Max's. She is unaware of any other family member having any interest in any other business with a TABC permit. She admits she would not protest the renewal of Riley's Tavern permit if she were sure the tavern would operate in a similar manner as it did under former management.

3. Testimony of Isabel Mercado

Ms. Mercado has lived in Hunter, Texas for 44 years. She protests the Riley's Tavern permit due to safety concerns. On one occasion, she witnessed a truck exit Riley's Tavern at a high rate of speed and crash through a barrier at a railroad crossing. She was too shocked to call the police. On another occasion, she witnessed a struggle between a male and female near her home. She believes the combatants were patrons of Riley's Tavern. She, too, is concerned about the large crowds and loud music that plagued Riley's Tavern in the mid-1990's.

4. Testimony of Kevin Bammert

Mr. Bammert is an Enforcement Agent with the TABC based in New Braunfels, Texas. Agent Bammert has previously responded to calls about traffic problems and loud music at Riley's Tavern. He personally observed several meetings between the residents of Hunter and representatives of Riley's Tavern regarding community concerns. When the tavern was under the management of its original owner, J.C. Riley, he never received any complaints about Riley's Tavern. Shortly after Applicant took over operation of Riley's Tavern, Bammert received complaints from Ms. Villarreal about traffic and noise concerns. He has observed loud music

emanating from Riley's Tavern on some occasions. The crowd at the college gathering in 1996 "overwhelmed" the staff at Riley's Tavern. Bammert issued citations to patrons of Riley's Tavern at the 1996 event, but no citations were issued to the tavern itself. Recently, Bammert has observed 50 or less patrons at Riley's at any given time.

B. Applicant's case

Applicant offered ten exhibits. Exhibit No. 1 is the Order Denying Beer License. Exhibit No. 2 is a District Court Order for Cause No. C97-137B. Exhibit No. 3 is an Order regarding Riley's Tavern signed by Comal County Judge Carter Casteel. Exhibit No. 4 is the First Amended Original Petition Appealing Refusal of Alcoholic Beverage License under Cause No. C98-664B. Exhibit No. 5 is the Final Order issued under Cause No. C98-664B. Exhibit No. 6 is a Third Court of Appeals decision under Cause No. 03-99-00428-CV. Exhibit No. 7 is a Commissioners' Court Order signed by Joy Streater, Comal County Clerk. Exhibit No. 8 is Comal County Resolution #97-16. Exhibit No. 9 is a Timeline of Events. Exhibit No. 10 is the Applicant's drawing of Riley's Tavern. In addition to the above mentioned documentary exhibits, the ALJ heard testimony of Applicant, Gasper "Pie" Garcia, Eloisa Torres, Guillermo "Chino" Torres, Kelly Gene Hudgins, Diane Gilmore, James "Rick" Self, and Larry Watts.

1. Testimony of Rick Wilson

Rick Wilson is the applicant in this matter. His primary occupation is in computer sales. He purchased Riley's Tavern in June 1995. Riley's Tavern first opened for business under Applicant in October 1995 as a bar with a store and sandwich shop. Two months later, the store and sandwich shop operation was discontinued leaving the premises primarily open as a tavern. After a few months of operation, Riley's Tavern proved to be an unprofitable business.

In 1996, Applicant negotiated possible promotional events with John Dixon, a local promoter, in an effort to create business for the tavern. One of the events presented to Applicant was the "Crawfest," a one-day fundraising event that would target the college crowd. The Crawfest was designed to raise funds for a children's summer camp. The agreement held that Dixon would promote the event and collect the revenue generated by the cost of admission. Applicant would provide the establishment and collect the revenue generated by the alcohol sales. In April 1996, the event went off as planned. Applicant admits he had no clue how big the event would be. The Crawfest was a one-time event.

Dixon later approached Applicant about putting on a horseshoe tournament on Thursday nights during the summer of 1996. In keeping with the Crawfest arrangement, Dixon collected the admission revenue and Applicant collected the alcohol sales revenue. This event, called Summer Slam, was held on eight consecutive Thursdays in the summer of 1996. During this same time, Applicant was approached by Hunter residents concerned about the noise and traffic problems presented by the weekly horseshoe tournament. Applicant had a meeting with the concerned citizens and heard the complaints regarding the tavern operation.

In September 1996, Applicant surrendered his beer and wine license and closed Riley's Tavern. Applicant continued to own the building and considered leasing or selling the premises to

Don Anderson. Mr. Anderson considered operating Riley's as a restaurant. Mr. Anderson's application for a beer and wine license was protested. The Comal County Judge denied Mr. Anderson's beer and wine permit. Anderson appealed to the District Court, which reversed the decision of the County Judge. Applicant was not satisfied with the terms of Mr. Anderson's proposed lease agreement and subsequently terminated all business dealings with Anderson. Applicant decided not to lease the Tavern to anyone else.

After a series of court proceedings, Applicant obtained his TABC permit in October 1999 and commenced operation of Riley's Tavern shortly thereafter. Applicant operated Riley's Tavern as a typical bar with occasional live music. During this time, Wilson was not interested in putting on events that specifically targeted or appealed to the college crowd in the same manner as Crawfest or Summer Slam in 1996. Furthermore, since Riley's Tavern re-opened in October 1999, the crowd of patrons never grew to a number similar to the crowds that attended the Crawfest or Summer Slam in 1996.

In 1999, Applicant entered into an agreement with John Farris, a property owner in Hunter, to clear out an area near Riley's Tavern to be used as a parking lot for the tavern's patrons. This adjacent parking lot allows parking for 30 to 40 vehicles. The available parking on Riley's property itself allows parking for 20 to 25 vehicles. Applicant intends to utilize the adjacent lot for parking purposes. In 1997, the Comal County Commissioners' Court deemed certain areas near Riley's Tavern were improper and/or unsafe parking areas. Yet, no signs or other traffic-regulating devices have ever been installed or implemented.

Applicant has a sound meter used to measure decibel levels of sound put out by outside speakers at Riley's Tavern. Applicant intends to utilize the sound meter in an effort to comply with any and all noise restrictions placed on Riley's Tavern. Applicant hopes to present live music acts in the future but will limit the performances indoors. Applicant also intends to hold fundraising events at Riley's Tavern in the future, but not to the extent or magnitude of Crawfest 1996. Furthermore, Wilson intends to take steps to prevent underage drinking in his establishment.

2. Testimony of Gasper "Pie" Garcia

Mr. Garcia is a resident of Hunter, Texas. He has known Applicant for approximately eight years. He has lived two and-a-half blocks away from Riley's Tavern for 29 years. At times, Garcia frequents Riley's Tavern. He has observed cars parked in the street near the tavern but has never seen any of the neighborhood driveways blocked by parked cars. He has experienced no problems with Riley's Tavern in the past and does not anticipate any problems with Riley's Tavern in the future.

3. Testimony of Eloisa Torres

Ms. Torres is a 28-year resident of Hunter and lives in the general area of Riley's Tavern. She has worked in the past as a housekeeper for Applicant and as a general assistant at the tavern. At times, she has helped Applicant prepare for big events and has assisted during fundraisers held at Riley's Tavern by serving food and cleaning. She has never had to barricade her property or place "do not park" signs near her property.

4. Testimony of Guillermo “Chino” Torres

Mr. Torres is the father of Eloisa Torres and also lives in Hunter in the general vicinity of Riley’s Tavern. In the past, he has been employed by Applicant to clean the premises of Riley’s Tavern when necessary. He has never had any problems with Riley’s Tavern. He has never had to barricade his property or place any signs to deter parking near his property. He used to pick up trash in the streets for Wilson when large events were held at Riley’s Tavern in the past.

5. Testimony of Kelly Gene Hudgins

Mr. Hudgins is a resident of Hunter, Texas, and has lived in the general vicinity of Riley’s Tavern for the past five years. He has never had any problems with Riley’s Tavern. He sometimes consults Applicant regarding air-conditioning problems at Riley’s, but has never been employed by Applicant. Mr. Hudgins sometimes visits Riley’s Tavern and has on one occasion observed a large crowd at the Tavern.

6. Testimony of Diane Gilmore

Ms. Gilmore lives in Hunter, Texas, and has lived approximately two miles from Riley’s Tavern for 10 years. She is acquainted with Applicant by being a frequent patron of Riley’s Tavern. She did not know Applicant before going to the tavern. She has no reason to believe that her health, safety or welfare will be threatened if Riley’s Tavern is granted its permit.

7. Testimony of James “Rick” Self

Mr. Self lives in Beorne, Texas, and is employed as a benefits coordinator by the Combined Law Enforcement Association of Texas (CLEAT). He is a retired peace officer and previously worked 30 years with the San Antonio Police Department. He is as a frequent patron of Riley’s Tavern. He has never observed any unlawful or illegal activity at Riley’s Tavern. He believes Applicant would operate the tavern in a law-abiding manner. He has never worked for Applicant nor is he related to Applicant. He has observed small and large crowds at Riley’s but has never seen a live band playing outside.

8. Testimony of Larry Watts

Mr. Watts lives in Hays County approximately seven miles from Riley’s Tavern and is the Chief of Staff at CLEAT. He is a retired peace officer and previously worked 21 years with the Houston Police Department. He knows Applicant because he is a frequent patron of Riley’s Tavern. He has worked in the vice squad and has enforced TABC rules in the past. He sometimes holds meetings at the tavern with officers from Austin and San Antonio. He has never observed any unlawful or illegal activity at Riley’s Tavern. On one occasion he witnessed an employee of Riley’s refuse to serve a patron who appeared to be intoxicated. He has never worked for Applicant nor is he related to Applicant.

III. STATUTORY AUTHORITY

The applicable statutory provisions at TEX. ALCO. BEV. CODE. ANN. §§11.46(a)(8) state:

(a) The commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that any of the following circumstances exists:

(8) The place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.

IV. ANALYSIS

Protestants are primarily concerned with traffic congestion and noise caused by large events held at Riley's Tavern. The testimony of the Protestants' witnesses centers around a period of time when Riley's held large outdoor events as a means to draw publicity and generate revenue for the tavern. The time period in question was spring and summer of 1996. Since that time, Applicant has operated the tavern in a manner conducive to a neighborhood tavern. The Applicant's witnesses testified that in the same time period of 1996, Riley's featured large outdoor events. However, in the past five years, Applicant has heard the complaints of a few citizens and has not held large events at Riley's Tavern. Applicant has even limited live bands to playing inside rather than outside. In the recent past, Applicant has expressed interest in working with the residents of Hunter to find a compromise where he can operate the tavern in a suitable manner. The complaints of the Protestants all derive from a handful of incidents five years ago. Based on all the testimony and the evidence presented, the ALJ is not convinced there is reasonable grounds to believe the applicant may conduct his business detrimental to the general welfare, health, peace, morals and safety of the people of Hunter, Texas.

V. RECOMMENDATION

This Court recommends the TABC approve Rick Wilson's TABC application for Riley's Tavern located in Hunter, Texas.

VI. FINDINGS OF FACTS

1. On August 10, 2001, Staff sent the notice of hearing by certified mail, return receipt requested, to both Richard "Rick" Lynn Wilson d/b/a/ Riley's Tavern (Applicant) and his attorney. The notice of hearing informed Applicant his application for a TABC permit would not be approved if it was established the place and manner in which the applicant may conduct its business warrants refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and the public sense of decency.
2. The hearing in this case commenced on September 27, 2001, in in the Stephen F. Austin building, 11th floor, 1700 N. Congress Avenue, Austin, Texas 78701, before Barbara Owens, Administrative Law Judge (ALJ) with the State Office of Administrative Hearings.

Protestants were collectively represented by Barbara Molina, attorney. Applicant was represented by Don Walden, attorney. The Texas Alcoholic Beverage Commission was represented by Dewey Brackin, attorney.

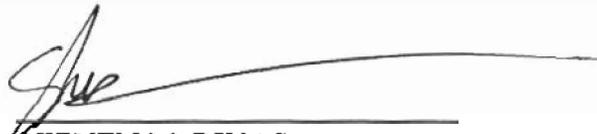
3. Applicant opened Riley's Tavern under his name in October 1995.
4. In April 1996, Riley's Tavern hosted a one-day fundraising event called "Crawfest." This event drew hundreds of patrons from the surrounding college community.
5. In the summer of 1996, Riley's Tavern hosted horseshoe tournaments on eight consecutive Thursday nights. The event was called "Summer Slam."
6. In the summer of 1996, Applicant had two meetings with citizens of Hunter, Texas, and heard the concerns of the citizens regarding the recent events held at the Tavern.
7. In September 1996, Applicant surrendered his beer and wine license and closed Riley's Tavern.
8. In October 1999, Applicant obtained his TABC license and permit and commenced operation of Riley's Tavern again.
9. Since Riley's Tavern re-opened in 1999, the crowd of patrons has not been as large as the crowds that attended Crawfest and Summer Slam.
10. Because of an arrangement between Applicant and John Farris, patrons of Riley's Tavern can use an adjacent parking lot to park their vehicles should the parking lot at Riley's Tavern be full.
11. Applicant allows live bands to play indoors only. He no longer allows bands to play outdoors.
12. Applicant has a sound meter used to measure sound decibel levels and intends to utilize it and comply with any sound restrictions imposed upon him.

VII. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE. ANN. §26.03, 61.71 and 106.13.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. Ch. 2003.

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3. Service of proper and timely notice of the hearing was effected upon Applicant pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. Ch. 2001.
 4. Based upon Findings of Facts Nos. 3-12, Protestants have not demonstrated the place or manner in which Applicant may conduct his business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency as prescribed by the TEX. ALCO. BEV. CODE. ANN. §§11.46(a)(8).
 5. Based upon Conclusion of Law No. 4 and Findings of Facts Nos. 3-12, the denial of Applicant's TABC permit for Riley's Tavern in Hunter, Texas, is not warranted and the permit should be APPROVED.

SIGNED this 27th day of November, 2001.



STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS