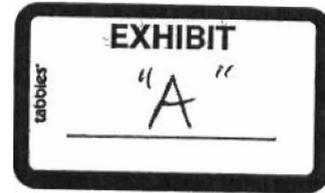


SOAH DOCKET NO. 453-04-1077



TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION, Petitioner, and TARRANT	§	
COUNTY CHALLENGE, INC., and	§	
VARIOUS OTHER CITIZEN	§	
PROTESTANTS, Protestants	§	
	§	
	§	
V.	§	OF
	§	
SIMPSON-MCKNIGHT INVESTMENTS,	§	
INC. D/B/A GUNSMOKE GRILL,	§	
Applicant	§	
Tarrant County, Texas	§	
(TABC Case No. 607124)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Simpson-McKnight Investments, Inc. d/b/a Gunsmoke Grill (Applicant), seeks a Mixed Beverage Permit, a Mixed Beverage Late Hours Permit, and a Food and Beverage Certificate for a premises to be located at 3105 Cockrell Avenue, Fort Worth, Tarrant County, Texas, from the Texas Alcoholic Beverage Commission (the Commission). The Protestants, consisting of the Challenge Coalition Tarrant Awareness Project and local area residents, assert that the permits should be denied for general welfare, peace, morals, and safety concerns. The Commission's staff (Staff) did not take a position concerning the application; it found no basis existed for denial of the requested permits. This proposal for decision recommends the permits be issued.

I. PROCEDURAL HISTORY

On July 21, 2003, Applicant filed an original application for a Mixed Beverage Permit, a Mixed Beverage Late Hours Permit, and a Food and Beverage Certificate. The premises where this application is sought is located at 3105 Cockrell Avenue, Fort Worth, Tarrant County, Texas. The Protestants to the application assert that it should be denied due to issues related to traffic safety, loud noise, trash, damage to property, and criminal activity occurring on or near the premises and in the surrounding residential

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neighborhood. The Protestants contend that the presence of another licensed premises in an area with a significant number of other alcoholic beverage sales outlets would create a detrimental effect on the Texas Christian University student population and the general welfare, morals, and safety of the public.

Staff issued a notice of hearing on November 7, 2003, informing all parties that a hearing would be held on the application, as required by § 2001.052 of the Administrative Procedure Act, TEX. GOV'T CODE ANN. Chapter 2001. The hearing was held on December 19, 2003, in Fort Worth, Texas, before Tanya Cooper, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH). Staff appeared and was represented by Timothy E. Griffith, Commission Staff Attorney. Applicant appeared and was represented by Travis McKnight. Protestants were represented at the hearing by Larry Ellis, for the Challenge Coalition Tarrant Awareness Project. There were no challenges to the notice of hearing, jurisdiction, or venue. The hearing concluded, and the record closed on that date.

II. JURISDICTION

The Commission has jurisdiction and authority over this matter pursuant to Chapter 5 and §§ 6.01, and 11.61 of the Texas Alcoholic Beverage Code (the Code). TEX. ALCO. BEV. CODE ANN. § 1.01 *et seq.* The State Office of Administrative Hearings has authority to conduct a hearing in this matter and make recommendations to the Commission, including the issuance of a proposal for decision containing findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. Chapter 2003 and § 5.43 of the Code.

III. DISCUSSION

A. Applicable Law

The statutory foundation for the protest to this application is § 11.46(a)(8) of the Code, which provides:

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 exist:

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

B. Public Comment

The ALJ convened a public hearing in this matter prior to taking evidence in this case. Four persons spoke during the public hearing outlining their observations concerning the application. One major focus of concern relating to this application was the requested Mixed Beverage Late Hours Permit. Applicant responded to that concern stating that the hours of operation for the proposed premises were not yet fully established, but felt that it was necessary to seek permission to operate at later hours in order to maintain flexibility sufficient to meet the new business' needs and achieve a successful venture. After all persons wishing to speak were given an opportunity to be heard, the ALJ closed the public hearing.

C. Evidence

1. **Physical Setting.** From a review of the application and undisputed witness testimony, the proposed location of Gunsmoke Grill is 3105 Cockrell Avenue, Fort Worth, Tarrant County, Texas. Cockrell Avenue is a city street within the Bluebonnet Place neighborhood. Other Commission-licensed premises are currently located in the area, but are accessed from Berry Street, which is a major roadway adjacent to the neighborhood. The property is near the Texas Christian University campus.

The building located on the property was formerly a residence. The structure is approximately 75

years old. Applicant has undertaken significant renovations to update and restore the property in order to open it for business activities.

2. The Staff's Evidence. The Staff took no position regarding issuance of the requested permits. Upon receiving Applicant's application, Staff conducted an investigation of the application's contents. It found no basis for denial of the requested permits. During the course of Staff's investigation, protests to the application were received.

Staff presented numerous exhibits. These included, among other things, the application filed by Applicant with certificates of approval from the City Secretary of the City of Fort Worth, Tarrant County Clerk, and Tarrant County Judge and protest letters received by Staff from two individual citizens and the Challenge Coalition-Tarrant Awareness Project.

Agent Scott Jones, a Commission employee with several years experience, including investigation of protested applications for Commission-issued licenses or permits, found no basis for denial of the permits sought in this application. He noted in his report concerning the proposed site, that traffic hazards might be lessened because traffic traveling to and from Gunsmoke Grill would be dispersing on Cockrell Avenue, rather than the more heavily-traveled Berry Street. Agent Jones also found that no Commission criminal or administrative history existed for the Applicant, its representatives, or the proposed location.

3. The Protestants' Evidence. The Protestants presented two witnesses at the hearing, Larry Ellis and Dr. Angela Taylor. Two exhibits were admitted into evidence for the Protestants.

Mr. Ellis testified that he and other members of the Challenge Coalition Tarrant Awareness Project were concerned about the number of Commission-licensed premises in the 76109 zip code, where this proposed premises would be located. According to Mr. Ellis, there are 16,258 legal-age drinkers within that zip code area, and forty-one licensed premises. This combination created a ratio (known as alcoholic beverage outlet density), of one licensed premises for every 397 people within the zip code. Mr. Ellis

stated that research shows a correlation between areas with a high density of alcoholic beverage outlets and increased numbers of alcohol-related traffic accidents, tendency for persons to develop the disease of alcoholism, and the occurrence of other types of criminal activity.

Dr. Taylor, Director of Alcohol and Drug Education for Texas Christian University (TCU), testified that University officials are concerned with issues associated with underage drinking, and the proximity of the proposed licensed premises to the TCU campus. Dr. Taylor stated that the location, 3105 Cockrell Avenue, was approximately one mile from the campus.

Dr. Taylor said that currently 79% of the University's student population were under the age of 21. According to Dr. Taylor, research shows that underage drinkers are twice as likely to drink and drive an automobile. She opined that increasing the density of alcohol retail outlets in the area near the University campus, even by one additional outlet, could be detrimental. She also discussed that advertising in student publications created an inappropriate tone and culture for encouraging excessive drinking, which contributed to long-range adverse health effects. When asked to compare alcohol outlet density between Texas Christian University and other colleges nationwide, Dr. Taylor said that the current level for outlets in the TCU-area was about average. She did note, however, that the alcohol outlet density was higher in the neighborhoods near the TCU campus, when generally compared to other residential neighborhoods in Fort Worth generally.

In addition to witness testimony, the Protestants presented letters from two concerned citizens, who previously sent correspondence to the Commission's Staff protesting this application. (See Staff's Exhibit 4.) Both citizens indicated support for the activities that Applicant had undertaken in renovating the property. Each person further expressed pleasure that the property's proposed use was as a restaurant, but cited concerns that traffic and other potential criminal activity often associated with the operation of bars would have a generally detrimental effect on their neighborhood.

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4. The Applicant's Evidence.

Travis McKnight, Applicant's Vice-President and Secretary, testified at the hearing. Mr. McKnight discussed plans for the proposed premises provided the permits requested from the Commission were granted. He also addressed concerns which were raised during the public hearing in this case and the testimony of Protestants' witnesses.

Mr. McKnight stated that his general intent was to uplift conditions in the area surrounding the proposed licensed premises, Gunsmoke Grill. In addition to operating a commercial enterprise in the neighborhood, he and other family members live nearby the Cockrell Avenue property. Mr. McKnight testified that he is interested in protecting the quality of the neighborhood and his investment, having already spent approximately \$275,000.00 in the overall project to improve the property. Additional property had been purchased and was designated as a parking area for Gunsmoke Grill customers to avoid creating traffic congestion, and alleviate parking issues, which were recognized as potential problems in the area. He disputed that activities on the property, including the proposed operation of a licensed premises for alcoholic beverage sales, would lower surrounding property values as presumptive and speculative.

According to Mr. McKnight, zoning in the area was designated as "E", which made it permissible to operate a restaurant in the area. He acknowledged that there were some establishments in the surrounding area that were bars, but contrasted his proposed activities from those businesses. Mr. McKnight said that Gunsmoke Grill would be operated as a full-service restaurant during all hours it would be open for business. While there would be a designated area within the restaurant for bar operations, no bar operations, as a stand-alone business, were contemplated.

Specifically addressing concerns about the application's request for a Late Hours Permit, Mr. McKnight said that there was a chance that Gunsmoke Grill might not be open late, but felt it was necessary to seek all applicable Commission-issued permits initially in order to operate effectively and profitably. Recognizing that other licensed premises in the area were open later, Mr. McKnight opined that Gunsmoke

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Grill might need to be open for business to preclude non-patrons from congregating on its property, and in order to protect and control its own premises.

Mr. McKnight testified that Gunsmoke Grill employees would undergo seller/server training to understand the laws and standards applicable to serving alcoholic beverages. He would require employees to "card" patrons to prevent serving alcoholic beverages to underage consumers. Persons approaching over consumption would be "cut off" and served no additional alcoholic beverages. Mr. McKnight expressed that it was his every intention to adhere to the law and regulations of the Commission in the operation of this establishment. In concluding his testimony, Mr. McKnight expressed his desire to work with persons from Texas Christian University and other members of the community to improve the area in general.

D. Analysis, Conclusion, and Recommendation

Based on the evidence presented, the ALJ concludes the Protestants failed to demonstrate that the place or manner in which Applicant may conduct its business warrants refusal of the requested permits based on concerns for the general welfare, peace, morals, and safety of the people or that issuance of the permits would be contrary to the public sense of decency. As a result, the permits sought by Applicant from the Commission should be issued.

Sales of alcoholic beverages and late hours operations have been approved for this area as demonstrated by the certifications from the Fort Worth City Secretary, Tarrant County Clerk, and Tarrant County Judge. Zoning is appropriate for commercial activities, including restaurants and Commission-licensed establishments. Staff, after an investigation of this application, found no basis for denial of the requested permits. No Commission record of criminal or administrative history exists for this Applicant, its representatives, or the location. While there are other alcoholic beverage retailers in the area, there is insufficient evidence to support that the specific area is so overly saturated with licensed premises as to

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warrant denial of this application.

Traffic concerns are minimal. Gunsmoke Grill patrons will access the premises on Cockrell Avenue, which is less-heavily traveled than nearby Berry Street. Additional property has been obtained and designated for off-street parking by Applicant for its customers.

There was no evidence that issuance of the permits will produce an increase in the incidence of underage drinkers. The ALJ recognizes that the proposed licensed premises in close proximity to Texas Christian University; however, Applicant, through its representative, has expressed its intention to operate this proposed premises within State laws and regulations of the Commission. Specific steps to control certain violations of concern from occurring including "carding" patrons to preclude serving underage customers and "cutting off" legal age patrons displaying potential for over consumption. Again, this premises has no history for creating or allowing criminal conduct to be ongoing on the property.

One of the major objections to this application concerned the proposed hours for operation of the business. While Applicant's representative, Mr. McKnight, said that the hours for operation are not firmly established, his testimony was persuasive to the ALJ. This is a new business undertaking with substantial investment already in place. In the ALJ's opinion, it is only prudent that an original application contain a request for all permits which may be potentially needed in order to make this venture a financial success. Further, Mr. McKnight's point was well-taken in that this business might need to be authorized for later hours of operation in order to protect its own interests and effectively police its own property. The ability to control its own property during said hours is likely to preclude any higher incident of loud noise, trash, or other criminal activity which was cited as one of Protestants' concerns in seeking denial of the application.

In summary, given that no evidence was produced to show Applicant, its representatives, or the proposed premises' location have a history of noncompliance with Code provisions, Commission regulations, or other relevant laws, Applicant should be given an opportunity to conduct its business subject

to the Commission's regulatory authority over this premises. The permit application for Gunsmoke Grill, 3105 Cockrell Avenue, Fort Worth, Texas, meets the Commission's requirements. Accordingly, the application should be granted.

IV. FINDINGS OF FACT

1. On July 21, 2003, Simpson-McKnight Investments, Inc. d/b/a Gunsmoke Grill (Applicant), filed an original application with the Texas Alcoholic Beverage Commission (the Commission) for a Mixed Beverage Permit, a Mixed Beverage Late Hours Permit, and a Food and Beverage Certificate for a premises located at 3105 Cockrell Avenue, Fort Worth, Tarrant County, Texas.
2. Protests to the application were filed by the Challenge Coalition Tarrant Awareness Project and various other local citizens (the Protestants) asserting that the application should be denied due to unsafe traffic conditions, prospective late closing hours in a residential area, proximity to children or other under-age drinkers in the area, location of other Commission-licensed alcoholic beverage sales outlets in the area, potential incidents of criminal activity, noise, and litter on or near the premises and the negative impact that operation of a Commission-licensed premises would have upon the safety, peace, and general welfare of the public in that area.
3. On November 7, 2003, Commission's Staff issued a notice of hearing informing all parties that a hearing would be held on the application and the time, place, and nature of the hearing.
4. The hearing was held on December 19, 2003, in Fort Worth, Tarrant County, Texas, before Tanya Cooper, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH). Commission's Staff appeared and was represented by Timothy E. Griffith, Staff Attorney. Applicant appeared and was represented by Travis McKnight. The Protestants appeared and were represented by Larry Ellis, for the Challenge Coalition Tarrant Awareness Project. The hearing concluded and the record closed on that same date.
5. Applicant's application contains all required certifications from the City of Fort Worth and Tarrant County officials.
6. The location, 3105 Cockrell Avenue, is located in an area zoned for commercial activity, including restaurants and other establishments engaged in the sale, service, and consumption of alcoholic beverages.
7. The neighborhood surrounding the proposed licensed premises is mixed with other businesses, including some bars, residences, and an educational institution, Texas Christian University.
8. Additional property has been purchased and designated for off-street parking by Applicant for its

customers' use to ease traffic congestion in the neighborhood.

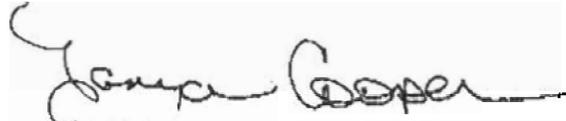
9. Traffic concerns are likely to be less significant or problematic because fewer vehicles drive on Cockrell Avenue, as opposed to a main-thoroughfare, Berry Street, which is nearby and more heavily-traveled.
10. Applicant's request for authorization to operate in extended or late hours is reasonable and appropriate in order to have sufficient flexibility to meet the desires of its customers, protect its property investment, and properly police its premises.
11. Applicant, its representatives, and the proposed location have no criminal or administrative history for violations of the law or regulations associated with the operation of a licensed premises, as maintained by the Commission in relation to licensed premises.
12. No evidence was produced to show Applicant's operation of a licensed premises on its property will result in a decrease of any surrounding properties' value, or create loud noise, trash, or criminal activity.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Chapter 5 and §§ 6.01, 11.46(a)(8), and 11.61 and TEX. ALCO. BEV. CODE ANN. § 1.01 *et seq.*
2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. Chapters 2001 and 2003, and 1 TEX. ADMIN. CODE §155.1 *et seq.*
3. No objections to the notice of hearing, jurisdiction, or venue were raised by the parties.
4. Based on the foregoing findings, a preponderance of the evidence does not show that issuance of the requested permits will adversely affect the safety of the public, nor will it adversely affect the general welfare, peace, or morals of the people or violate the public sense of decency, pursuant to TEX. ALCO. BEV. CODE ANN. §11.46(a)(8).
5. Based on the foregoing findings and conclusions, the preponderance of the evidence shows this application meets all requirements for issuance by the Commission. TEX. ALCO. BEV. CODE chs. 11, 28, and 29.

6. The application of Simpson-McKnight Investments, Inc., d/b/a Gunsmoke Grill for a Mixed Beverage Permit, a Mixed Beverage Late Hours Permit, and a Food and Beverage Certificate should be granted.

SIGNED 23rd January 2004.

A handwritten signature in cursive script, appearing to read "Tanya Cooper", is written over a light gray rectangular background.

**TANYA COOPER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

DOCKET NO. 607124

IN RE SIMPSON-MCKNIGHT	§	BEFORE THE
INVESTMENTS INC.	§	
D/B/A GUNSMOKE GRILL	§	
ORIGINAL APPLICATION MB, LB, FB	§	
	§	TEXAS ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-1077)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 18th day of February, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Tanya Cooper. The hearing convened on December 19, 2003, and adjourned on December 19, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on January 23, 2004. This Proposal For Decision (attached hereto as Exhibit "A"), was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. 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.

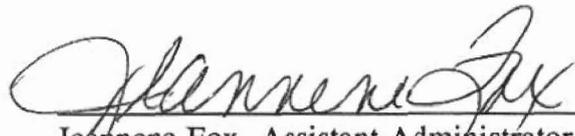
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the Original Application for a MB, LB and FB is hereby **GRANTED**.

This Order will become final and enforceable on March 10, 2004, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile or through the U.S. Mail, as indicated below.

SIGNED this 18th day of February, 2004.

On Behalf of the Administrator,



**Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission**

TEG/bc

**The Honorable Tanya Cooper
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (817) 377-3706**

**SIMPSON-MCKNIGHT INVESTMENTS INC.
D/B/A GUNSMOKE GRILL
RESPONDENT
3129 Stadium Dr.
Fort Worth, TX 76109
CERTIFIED MAIL/RRR NO. 7001 2510 0007 0098 5465**

PROTESTANTS:

**Tarrant County Challenge Inc.
Attn: Larry Ellis
VIA FAX (817) 336-6642**

**Elliott Carman
3211 Cockrell
Fort Worth, TX 76109
VIA REGULAR MAIL**

**Keri Ryan
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ATTORNEY FOR PETITIONER
TABC Legal Section

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Fort Worth District Office