

**DOCKET NO. 610869**

IN RE PAUL'S LIQUOR STORE INC.	§	BEFORE THE
D/B/A PAUL'S LIQUOR BEER & WINE	§	
ORIGINAL APPLICATION BF & P	§	TEXAS ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	BEVERAGE COMMISSION
(SOAH DOCKET NO. 458-04-8219)	§	

**ORDER**

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

After proper notice was given, this case was heard by Administrative Law Judge. The hearing convened on September 10, 2004, and adjourned on September 10, 2004. The Administrative Law Judge Robert Jones made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 28, 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. 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.

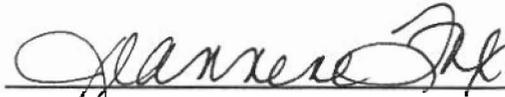
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the permits and/or licenses for Paul's Liquor Store Inc. d/b/a Paul's Liquor Beer & Wine, are hereby **GRANTED**.

**This Order will become final and enforceable on November 8, 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 and by mail as indicated below.

**SIGNED** on this 18th day of October, 2004, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Robert Jones  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FAX NO. 817/377-3706

PAUL'S LIQUOR STORE INC.  
D/B/A PAUL'S LIQUOR BEER & WINE  
RESPONDENT  
2109 WOODBERRY DR.  
FORT WORTH, TX 76112  
CERTIFIED MAIL/RRR NO. 7000 1530 0003 1902 1804

Kern A. Lewis  
ATTORNEY FOR RESPONDENT  
VIA FAX NO. 817/336-9005

Timothy E. Griffith  
ATTORNEY FOR PETITIONER  
TABC Legal Section

Licensing Division

Fort Worth District Office

DOCKET NO. 610869

IN RE PAUL'S LIQUOR STORE INC.	§	BEFORE THE
D/B/A PAUL'S LIQUOR BEER & WINE	§	
ORIGINAL APPLICATION BF & P	§	TEXAS ALCOHOLIC
	§	
	§	
TARRANT COUNTY, TEXAS	§	BEVERAGE COMMISSION
(SOAH DOCKET NO. 458-04-8219)	§	

**O R D E R**

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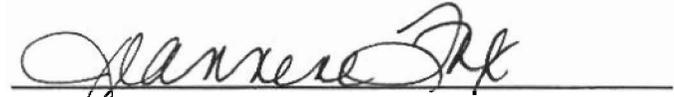
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On Behalf of the Administrator,

  
Jeannere Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Robert Jones  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FAX NO. 817/377-3706

PAUL'S LIQUOR STORE INC.  
D/B/A PAUL'S LIQUOR BEER & WINE  
RESPONDENT  
2109 WOODBERRY DR.  
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TABC Legal Section

Licensing Division

Fort Worth District Office

**DOCKET NO. 458-04-8219**

<b>TEXAS ALCOHOLIC BEVERAGE</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>COMMISSION, Petitioner, &amp;</b>	§	
<b>VARIOUS CITIZENS, Protestants</b>	§	
 	§	
<b>VS.</b>	§	<b>OF</b>
 	§	
<b>PAUL'S LIQUOR STORE, INC. D/B/A</b>	§	
<b>PAUL'S LIQUOR BEER &amp; WINE,</b>	§	
<b>Respondent</b>	§	
<b>TARRANT COUNTY, TEXAS</b>	§	
<b>(TABC CASE NO. 610869)</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

**I. INTRODUCTION**

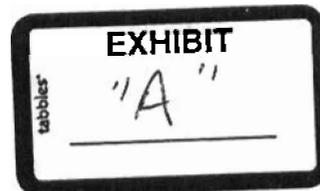
Paul's Liquor Store, Inc. d/b/a Paul's Liquor Beer & Wine ( Respondent or Applicant) filed an application for issuance of an original package store permit and beer retail dealer's off-premise license (the permits). Peggy Borchert, Pastor Jim Borchert, William Bennett, W. F. Stephens, and others (collectively the Protestants) protested issuance of the permits. After an investigation, the Staff of the Texas Alcoholic Beverage Commission (Staff) took no position on the protest.

Protestants objected to the issuance of the permits on the basis that "the place or manner in which the applicant may conduct [its] 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."<sup>1</sup> The Staff maintained that the Applicant had complied with all of the Texas Alcoholic Beverage Commission's (TABC) requirements to have the permits issued.

This proposal finds that there are not sufficient grounds to conclude the place or manner in which

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TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8)(Vernon 2004)(the Code).



Applicant will conduct its business warrants refusal of the permits. The Administrative Law Judge (ALJ) recommends the permits be issued.

## II. PROCEDURAL HISTORY

On April 20, 2004, Respondent filed an application for the permits. Staff informed Applicant that the TABC had received protests against issuing the permits. The matter was referred to the State Office of Administrative Hearings (SOAH). On September 10, 2004, a public hearing was convened before ALJ Robert F. Jones Jr., in the SOAH Fort Worth office located at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Staff was represented by Timothy Griffith, an attorney with the TABC Legal Division. Protestants appeared personally. Applicant appeared through Kern A. Lewis, its counsel, and Phong K. Tran, its president. The record closed on September 10, 2004.

Notice and jurisdiction were not contested issues, and those matters are addressed only in the Findings of Fact and Conclusions of Law.

## III. BACKGROUND

Applicant's proposed premises are located at 6524 Meadowbrook Drive, Fort Worth, Tarrant County, Texas. This is a single story building with a surrounding parking lot located in a commercially zoned area. Meadowbrook Drive runs west to east. The proposed premises are located on the southern side of Meadowbrook Drive, about 1,300 feet east of Meadowbrook's crossover intersection with Loop 820 East, which runs north and south in this portion of Fort Worth. The areas to the north and south of Meadowbrook and east of Loop 820 are residential.

The property along Meadowbrook near the proposed premises is primarily commercial in nature. A WalMart store is directly across Meadowbrook from the proposed premises. A Minyard grocery store is about 1,164 feet to the west on the south side of Meadowbrook Drive. To the east on the south side

of Meadowbrook Drive are: the Dollar General Store, the \$1<sup>00</sup> Store, Don's Discount Beauty Supply, a tax service, an O'Reilly Auto Parts, and an Eckerd Drugs.<sup>2</sup> The neighborhood around the proposed premises is residential, consisting of the Handley and Ryanwood neighborhoods. The Bethel Temple church and school are 1,635 feet to the east of the proposed premises on Meadowbrook Drive. There are apartments located near the Wal Mart.

Mr. Tran, Respondent's president, owns the real estate on which the proposed premises are located.<sup>3</sup> He will lease the building and appurtenances to Respondent. The property was in bad shape when Mr. Tran acquired it. The interior of the building was vandalized and was dirty and greasy. The building had termites. He made numerous improvements to the building: restrooms were remodeled; it was re-roofed; it was repainted; and a new walk-in cooler was added. Flood lights on poles were placed in the parking lot. A tall fence was erected around the rear of the property, and a video camera will be installed to survey the exterior.

The Wal Mart and the Minyard stores sell beer and wine, as do other convenience stores in the neighborhood. Mr. Tran measured the distance from proposed premises to several area liquor stores: the Majestic Liquor on Brentwood Stair Road is 4,614 feet to the north on Loop 820; the U Sav Liquor on East Lancaster is 1.2 miles south on Loop 820 and east on Lancaster; and, the Nu King Liquor on East Lancaster is 2.1 miles south on Loop 820 and west on Lancaster.<sup>4</sup> There are also liquor stores on the corner of Loop 820 and Randol Mill further north of the Majestic.<sup>5</sup>

TABC Agent William Feick was assigned to investigate the application after the protest was

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<sup>2</sup> Defendant's Exhibit #6. Respondent's exhibits were premarked by its counsel as "Defendant's" Exhibits. Any reference to a "Defendant's Exhibit" should be understood as having been offered and sponsored by Respondent.

<sup>3</sup> The building had previously housed a Braums ice cream store and then a barbeque.

<sup>4</sup> Defendant's Exhibit #1.

<sup>5</sup> Protestants' #2 (Peggy Borchert letter).

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lodged. In his opinion, the application meets all TABC requirements. He recommended that the Staff taken no position on the protest because a criminal history check and a location check were negative, and Respondent had filed a complete application. The area in which the proposed premises are located was certified by the Tarrant County clerk to be in a wet area appropriate for the requested package store permit and beer retail dealer's off-premise license. The proposed premises are certified by the Fort Worth city secretary as located in a wet area appropriate for the requested permits, and not prohibited by charter or ordinance. The Tarrant County judge has approved the application.<sup>6</sup> The area is zone E.<sup>7</sup> According to the City of Fort Worth municipal code, a liquor store is "a use is allowed by right" or "permitted by right" in zone E.<sup>8</sup>

#### IV. DISCUSSION AND ANALYSIS

##### A. The Protestants' Complaints

The Protestants raise public safety issues and quality of life concerns in asserting that the place or manner in which Applicant might operate justify denying the permits.

##### 1. The Governing Law

The TABC may refuse to issue an original permit if it has "reasonable grounds to believe" and finds that "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

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<sup>6</sup> TABC Exhibit #3.

<sup>7</sup> Defendant's Exhibit #8 (Daniel Foster Letter & Alyce Boyd Letter).

<sup>8</sup> *Code of the City of Fort Worth, Texas, Appendix A*, §§ 4.100(C)(2), 4.801(a), 4.802, 4.803. Compare with § 4.900(A) (Neighborhood commercial restricted ("ER") district. The purpose of the neighborhood commercial restricted ("ER") district is to provide areas for neighborhood-serving limited commercial, institutional and office uses. Alcoholic beverage sales are prohibited).

decency.”<sup>9</sup>

Generally, to deny a permit to a qualified applicant, some “unusual condition or situation must be shown so as to justify a finding that the place or manner in which the applicant may conduct his business warrants a refusal of a permit.”<sup>10</sup> The evidence concerning the unusual condition or situation must be more than mere conclusions.<sup>11</sup> The Code does not define how the place or manner in which a business might be operated to justify a denial of a permit, giving the TABC discretion in making this decision; there is no set formula.<sup>12</sup> For example, the location and surroundings of the proposed premises can be grounds for refusal of a license based on the general welfare.<sup>13</sup> However, the “fact that a large number of the residents of the area protest the issuance of the permits is not of itself sufficient reason to deny the application of an otherwise qualified applicant.”<sup>14</sup>

## 2. The Evidence

Protestants raised issues concerning: the proximity of the proposed premises to family oriented businesses, children, residential areas, churches, and a private school; safety, crime, and violent conduct; decline in property values; decline in quality of community; “over-saturation” of liquor stores; and, the

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<sup>9</sup> § 11.46(a)(8) of the Code.

<sup>10</sup> *Texas Alcoholic Beverage Comm'n v. Mikulenska*, 510 S.W.2d 616, 619 (Tex.Civ.App.--San Antonio 1974, no writ); *Elliott v. Dawson*, 473 S.W.2d 668, 670 (Tex.Civ.App.--Houston [1<sup>st</sup> Dist.] 1971, no writ).

<sup>11</sup> *In re Simonton Gin, Inc.*, 616 S.W.2d 274, 276 (Tex.Civ.App.-Houston [1<sup>st</sup> Dist.] 1981, no writ)

<sup>12</sup> *Brantley v. Texas Alcoholic Beverage Comm'n*, 1 S.W.3d 343, 347 (Tex.App.--Texarkana 1999, no writ); *see also, Helms v. Texas Alcoholic Beverage Comm'n*, 700 S.W.2d 607, 611 (Tex.App.--Corpus Christi 1985, no writ); *Ex parte Velasco*, 225 S.W.2d 921, 923 (Tex.Civ.App.-Eastland 1949, no writ).

<sup>13</sup> *Brantley*, 1 S.W.3d at 347; *see, e.g., Helms v. Texas Alcoholic Beverage Comm'n*, 700 S.W.2d 607, 611 (Tex.App.--Corpus Christi 1985); *Ex parte Velasco*, 225 S.W.2d 921, 923 (Tex.Civ.App.-Eastland 1949) (location and surroundings of proposed premises and number of such licensed establishments in community are proper considerations and may be basis for refusal of license); *but see Carson v. State*, 216 S.W.2d 816, 836-37 (Tex.Civ.App.--Fort Worth 1949)(*to the contrary*).

<sup>14</sup> *Mikulenska*, 510 S.W.2d at 619.

strong feeling in the community against the proposed premises. To some extent, each of these separate items influence the others. They are treated separately for ease of discussion.

**a. Proximity of the Proposed Premises**

The Protestants view the proposed premises as both a detraction from the neighborhood and an attraction to undesirable elements. They note the proposed premises are down the street from the Bethel Temple church and school. Another private school, Charis Christian Academy, is located on East Lancaster. The premises are next to stores such as the Dollar store which children frequent. The residential area of the neighborhood is within walking distance of the premises. One protestant predicted a liquor store in such close proximity would "contribute to the downfall" of an economically rebounding neighborhood.<sup>15</sup> Many expressed a desire that Mr. Tran move in a "family-friendly" business such as an ice cream shop or a sandwich shop instead of a liquor store.

Some Protestants are concerned that the proposed premises are in close proximity to apartments inhabited by lower-income individuals. They fear that the liquor store will attract these residents and encourage them to loiter near the premises endangering passers by. Two Protestants asserted that the store would exploit these people while endangering the community as a whole.<sup>16</sup>

The Respondent's supporters replied that the proximity of the proposed premises is convenient and that the proposed premises are three blocks from the school and church, far enough not to affect them. They support the application because Mr. Tran met with them and addressed their concerns, which included building a tall fence around the back of the proposed premises and agreeing not to sell single malt liquor cans. According to them, Mr. Tran took a blighted lot (some saw empty beer containers and needles when the community cleaned up the property before Mr. Tran took over the property) and stopped its use

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<sup>15</sup> Dorothy Dahl; Protestants' #2 (Dorothy Dahl Letter).

<sup>16</sup> Pastors Charles Perkins and William Bennett.

by loiterers for criminal activities.

Respondent offered the opinion of Charles McBride. He has lived in the area for 38 years, and has known Mr. Tran for 14 years both personally and professionally. Mr. McBride was a City of Fort Worth health inspector and first met Mr. Tran when Mr. Tran ran restaurants in Fort Worth. He describes Mr. Tran as conscientious, easy to work with, and law abiding. In his opinion, Mr. Tran will be an excellent addition to the neighborhood.

Mr. Tran, who lives in the neighborhood, testified that he desires a high quality clientele.

**b. Safety, Crime, and Violent Conduct**

The Protestants assert that the proposed premises will increase crime in the area. They fear increased loitering, robberies, and drunk driving in the neighborhood. One protestant cited "various studies" which "demonstrate a link between liquor store density and criminal activity, such as drug trafficking and weapons violations and assaults."<sup>17</sup> Others opined that liquor stores attract criminals and cause crime. Some warned that increased crime would discourage new families from moving into the neighborhood.

The Respondent's supporters do not believe in the liquor stores/crime relationship, and would rather have the building occupied by a conscientious businessman. They argue that the building attracted crime when vacant. Mr. Tran emphatically stated he could identify loiterers and undesirable persons and will not sell their preferred drink, which he identified as malt liquor, to them or allow them to stay on his premises.

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<sup>17</sup> Protestants' #2 (Peggy Borchert Letter).

**c. Decline in Property Values**

The Protestants link the increase in crime they associate with liquor stores to a decline in property values they fear would harm them if the application were granted. Many explained that the neighborhood had been in decline for a number of years. Through community interest and effort that decline as been reversed and a comeback has begun. They spoke of "trying to upgrade the neighborhood." One stated that the neighborhood is undergoing a period of improvement with "balanced and diverse ethnicity, young families with children as well as older couples, homeowners who maintain and improve their houses and yards, and newly improved streets and curbs." <sup>18</sup>

The Respondent's supporters do not believe the proposed premises will cause a reduction in surrounding property values. <sup>19</sup> They see the liquor store as a community asset which will increase tax revenues. They note that Mr. Tran has improved and cleaned up the building and lot. Mr. McBride believes the proposed premises will be an excellent addition to the neighborhood.

**d. Decline in Quality of Community**

Closely associated with the fears concerning a decline in property values is the Protestants' concern over a decline in the quality of their community. This reflects a concern for the aesthetics of the locale in terms of its attractiveness to families. Many expressed a desire that Mr. Tran move in a more "family friendly" business.

The Respondent's supporters assert that the property is zoned for this type of business and would rather have the building occupied by a conscientious businessman.

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<sup>18</sup> Protestants' #2 (Dorothy Dahl Letter).

<sup>19</sup> Protestants' #2 (Geoffrey Tait Letter).

e. **“Over-saturation” of Liquor Stores**

The Protestants insist the area is over-saturated with liquor stores: a Majestic on Brentwood Stair about an eighth of a mile from the proposed premises, and three “major” liquor stores on the corner of Loop 820 and Randol Mill, another next to Albertsons, and two on Eastchase.<sup>20</sup> On the other hand, the Respondent’s supporters find the proposed premises to be convenient.

f. **Community Feeling**

Peggy Borchert, a protestant, testified that many neighborhood people wished to attend the September 10, 2004, hearing to oppose the application but could not appear because of work. She described the populace as passionately against granting the application. She asserted that if this were determined by a residents’ vote there would be no liquor store. As proof, she offered a petition against the application she had circulated signed by more than 500 residents.<sup>21</sup> She described the signatories as eager to sign. Pastor Jim Borchert argued that the will of the majority of the people in the neighborhood was against the liquor store, and even if the proposed premises were legal granting the application would be unjust. Pastor Charles Perkins stated his congregation of 300 was against the application.

One of Respondent’s supporters described the Protestants as on a “moral crusade.”<sup>22</sup> Daniel Foster and Lloyd Jones described the community meeting that the Ryanwood Neighborhood Association and the Handley Neighborhood Association had with Mr. Tran on June 1, 2004. As a consequence of that meeting, the two associations voted to withdraw their objections to the application. According to Mr.

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<sup>20</sup> Protestants’ #2 (Peggy Borchert Letter).

<sup>21</sup> Protestants’ #1, which states: “Sign below with your signature and address if you don’t want a liquor store at the old Braums (Dotch’s Barbeque) on Meadowbrook, if you would prefer another type of establishment such as a restaurant, ice cream shop, pastry or sandwich shop etc. that would benefit the owner as well as all the neighbors in the surrounding area.”

<sup>22</sup> Protestants’ #2 (Geoffrey Tail Letter).

Jones, the Handley Neighborhood Association reaffirmed that decision at a later meeting on June 14, 2004.

## B. Analysis

The burden of proof in this case rests on the Protestants.<sup>23</sup> The Protestants must demonstrate that some unusual condition or circumstance exists to justify denial of the permits.

### 1. Proximity of the Proposed Premises

The location and surroundings of the proposed premises, and the number of such licensed establishments in the community, can be grounds for refusal of a license based on the general welfare.<sup>24</sup> The evidence shows that the Bethel Temple church and school are 1,635 feet from the proposed premises. The WalMart store is at least as close to Bethel Temple as the proposed premises. The Minyard grocery store is about 2,700 feet from Bethel Temple. The WalMart and the Minyard stores sell beer and wine, as do other convenience stores in the neighborhood, one apparently located between the WalMart and Bethel Temple. Charis Christian Academy, located on East Lancaster, is more removed from the premises.

The premises are next to the two "dollar" stores, a beauty supply, a tax service, an auto parts, and a drugstore. These establishments, the proposed premises, and the grocery stores are within walking distance of the residential neighborhood. The proposed premises are also in close proximity to apartments inhabited by lower-income individuals.

The evidence does not disclose any facts upon which a finding that the proposed premises'

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<sup>23</sup> 1 TEX. ADMIN. CODE § 155.41(b)

<sup>24</sup> *Brantley*, 1 S.W.3d at 347; *Helms*, 700 S.W.2d at 611; *Ex parte Velasco*, 225 S.W.2d at 923. (Tex.Civ.App.-Eastland 1949).

proximity to family-oriented businesses, children, residential areas, churches, and a private school creates an unusual condition or circumstance which would justify denial of the application. The ALJ cannot recommend that the Commission deny the application on this basis.

## **2. Safety, Crime, and Violent Conduct**

The Protestants assert that the proposed premises will increase loitering, robberies, and drunk driving in the neighborhood. Although Protestants made reference to studies demonstrating "a link between liquor store density and criminal activity, such as drug trafficking and weapons violations and assaults,"<sup>25</sup> the ALJ was not provided with citation to, or copies of, those studies to independently determine their relevance and authority. Other Protestants opined that liquor stores attract criminals and cause crime. The testimony the Protestants offered on this issue was conclusory.

No evidence of the crime statistics for the area nor an opinion from the police authorities was offered. The Respondent's supporters argued that the building intended to house the proposed premises attracted crime when vacant. Mr. Tran emphatically stated he could identify loiterers and undesirable persons and will not sell their preferred drink to them or allow them to stay on his premises.

The evidence does not disclose any facts upon which a finding that the proposed premises would increase the danger or incidence of crime so as to create an unusual condition or circumstance which would justify denial of the application. The ALJ cannot recommend that the Commission deny the application on this basis.

## **3. Decline in Property Values**

The Protestants are concerned with a decline in property values they fear would harm them if the

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<sup>25</sup> Protestants' #2 (Peggy Borchert Letter).

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Proposal for Decision

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application were granted. The Commission is not an insurer or guarantor of property values. The ALJ cannot recommend that the Commission deny the application on this basis.

#### 4. Decline in Quality of Community

The Protestants' concern over a decline in the quality of their community and its attractiveness to families is essentially a matter of taste. The photographs<sup>26</sup> of the proposed premises demonstrate a building consistent in color and architecture to its surroundings. The ALJ cannot recommend that the Commission deny the application on this basis.

#### 5. "Over-saturation" of Liquor Stores

Although the number of licensed establishments in a community can be grounds for refusal of a license, the number and concentration of existing liquor stores in the area does not seem especially high or dense. The Majestic Liquor on Brentwood Stair Road is almost one mile to the north on Loop 820. The liquor stores at the intersection of Loop 820 and Randol Mill are still further north of Majestic Liquor. The U Sav Liquor and the Nu King Liquor on East Lancaster are over a mile distant. No evidence was offered to show that this situation was unusual for Fort Worth neighborhoods the same size and population of the Protestants' neighborhoods. "Over-saturation" is more a rhetorical label than a factually based assertion.

The evidence does not disclose any facts upon which a finding that the proposed premises causes "over-saturation" of liquor stores so as to create an unusual condition or circumstance which would justify denial of the application. The ALJ cannot recommend that the Commission deny the application on this basis.

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<sup>26</sup> Defendant's Exhibits #2-7.

## 6. Community Feeling

The Protestants raised a spirited and impassioned protest of this application. Their fervent arguments are tempered somewhat by the support of Ryanwood Neighborhood Association and the Handley Neighborhood Association for the proposed premises. In *Texas Alcoholic Beverage Comm'n v. Mikulenska*,<sup>27</sup> which discussed an application for an on-premises license, a remarkably similar factual pattern was presented:

The proposed location was in a small business center located on a road which was entirely commercial for a mile in either direction. The proposed premises were the site of a former laundromat. The proposed location was in a wet area and no zoning ordinance prohibited such an operation. The applicant was a fully qualified applicant. There were no similar mixed beverage lounges in the vicinity, but there were numerous establishments which sell beer, wine and whiskey under off-premises permits. There were no schools or churches located within 300 feet of the proposed location. There were schools and churches within a few blocks of the proposed location.

A substantial number of citizens who resided in the vicinity of the proposed lounge protested the application. Eleven witnesses testified at the trial that it would not be in the best interests of the community to grant the application. Two ministers testified in opposition. They testified that they opposed the application because of the adverse effect such operation would have on the residential neighborhood and the numerous children in the neighborhood. One resident of the area testified that his nearby property would be devalued and further might be physically damaged by drunk drivers. This type of evidence was supported by the 887 persons who signed the petitions in opposition to the application.<sup>28</sup>

The court characterized such complaints as questioning whether the sale or purchase should be permitted at all, a question the court recognized as political.<sup>29</sup> Such questions are resolved in "wet-dry" elections, and in city zoning decisions. "The fact that a large number of the residents of the area protest the

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<sup>27</sup> 510 S.W.2d 616 (Tex.Civ.App.--San Antonio 1974, no writ).

<sup>28</sup> *Mikulenska*, 510 S.W.2d at 618-19.

<sup>29</sup> *Id.* at 619.

issuance of the permits is not of itself sufficient reason to deny the application of an otherwise qualified applicant.”<sup>30</sup> The ALJ cannot recommend that the Commission deny the application on this basis.

In summary, the ALJ recommends that the Commission grant the permits sought by Applicant.

## V. FINDINGS OF FACT

1. On April 20, 2004, Paul’s Liquor Store, Inc. d/b/a Paul’s Liquor Beer & Wine (Respondent or Applicant) filed an application for issuance of an original package store permit and beer retail dealer’s off-premise license (the permits).
2. Applicant’s proposed premises are located at 6524 Meadowbrook Drive, Fort Worth, Tarrant County, Texas.
3. The proposed premises are single story building with a surrounding parking lot located in a commercially zoned area.
4. Meadowbrook Drive runs west to east. The proposed premises are located on the southern side of Meadowbrook Drive, about 1,300 feet east of Meadowbrook’s crossover intersection with Loop 820 East, which runs north and south in this portion of Fort Worth.
5. The areas to the north and south of Meadowbrook and east of Loop 820 are residential.
6. The property along Meadowbrook near the proposed premises is primarily commercial in nature.
7. A Wal Mart store is directly across Meadowbrook from the proposed premises.
8. A Minyard grocery store is about 1,164 feet to the west on the south side of Meadowbrook Drive.
9. To the east on the south side of Meadowbrook Drive are: the Dollar General Store, the \$1<sup>00</sup> Store, Don’s Discount Beauty Supply, a tax service, an O’Reilly Auto Parts, and an Eckerd Drugs.
10. Phong K. Tran, Respondent’s president, owns the real estate on which the proposed premises are located. He will lease the building and appurtenances to Respondent.

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<sup>30</sup> *Id.*

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11. The neighborhood around the proposed premises is residential, consisting of the Handley and Ryanwood neighborhoods.
12. The Bethel Temple church and school are 1,635 feet to the east of the proposed premises on Meadowbrook Drive.
13. There are apartments located near the Wal Mart.
14. The Wal Mart and the Minyard stores sell beer and wine, as do other convenience stores in the neighborhood.
15. The Majestic Liquor on Brentwood Stair Road is 4,614 feet to the north on Loop 820 from the proposed premises.
16. The U Sav Liquor on East Lancaster is 1.2 miles south on Loop 820 and east on Lancaster from the proposed premises.
17. The Nu King Liquor on East Lancaster is 2.1 miles south on Loop 820 and west on Lancaster from the proposed premises.
18. There are also liquor stores on the corner of Loop 820 and Randol Mill further north of the Majestic.
19. Applicant has met all Commission requirements to hold the permits at the premise location, and has properly posted or published notice and complied with all Texas Alcoholic Beverage Commission requirements in effect at the time of the application.
20. The area in which the proposed premises are located was certified by the Tarrant County clerk to be in a wet area appropriate for the requested package store permit and beer retail dealer's off-premise license.
21. The proposed premises are certified by the Fort Worth city secretary as located in a wet area appropriate for the requested permits, and not prohibited by charter or ordinance.
22. The Tarrant County judge has approved the application.
23. The area is zoned E. A liquor store is "a use is allowed by right" or "permitted by right" in areas zoned E.
24. The proposed premises are not located in a place nor will they be operated in a manner which requires refusal of the permit based upon the general welfare, health, peace, morals, and safety.

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25. The Staff of the Texas Alcoholic Beverage Commission (Staff) informed Applicant that the Texas Alcoholic Beverage Commission (TABC) had received protests against issuing the permits.
26. The matter was referred to the State Office of Administrative Hearings (SOAH).
27. On August 12, 2004, Staff issued a notice of hearing notifying all parties that a hearing would be held on the application and informing the parties of the time, place, and nature of the hearing, of the legal authority and jurisdiction under which the hearing was to be held, giving reference to the particular sections of the statutes and rules involved, and including a short, plain statement of the matters asserted.
28. On September 10, 2004, a public hearing was convened before ALJ Robert F. Jones Jr., in the SOAH Fort Worth office located at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Staff was represented by Timothy Griffith, an attorney with the TABC Legal Division. Protestants appeared personally. Applicant appeared through Kern A. Lewis, its counsel, and Phong K. Tran, its president. The record was closed on September 10, 2004.

## VI. CONCLUSIONS OF LAW

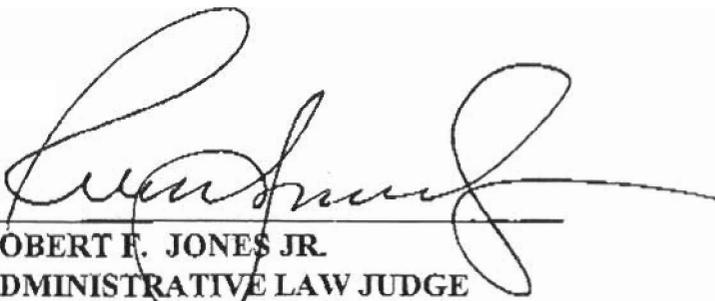
1. TABC has jurisdiction over this matter pursuant to Chapter 5 of the Texas Alcoholic Beverage Code (the Code).
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2004).
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052 (Vernon 2004).
4. The burden of proof to show that the place or manner in which the applicant may conduct its 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 rests on the Protestants. 1 TEX. ADMIN. CODE § 155.41(b).
5. Based on the foregoing findings and conclusions, the application of Paul's Liquor Store, Inc. d/b/a Paul's Liquor Beer & Wine for issuance of an original package store permit and beer retail dealer's off-premise license should be granted. §§ 11.42, 11.43 of the Code.

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SIGNED September 28, 2004.



ROBERT F. JONES JR.  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

# State Office of Administrative Hearings



**Shelia Bailey Taylor**  
Chief Administrative Law Judge

September 28, 2004

Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

Kern A. Lewis  
611 S. Main Street  
Westwood Centre, Suite 700  
Grapevine, Texas 76051

VIA FACSIMILE 817/336-9005

Evelyn Baldridge  
2617 Hunter Street  
Fort Worth, Texas 76112

VIA REGULAR MAIL

Wanda Knight  
7125 Norma Street  
Fort Worth, Texas 76112

VIA REGULAR MAIL

Peggy Borchert  
7129 Norma Street  
Fort Worth, Texas 76112

VIA REGULAR MAIL

**RE: Docket No. 458-04-3219; Texas Alcoholic Beverage Commission vs Paul's Liquor Store, Inc. d/b/a Paul's Liquor Beer & Wine (TABC Case No. 610869)**

Dear Mr. Steen:

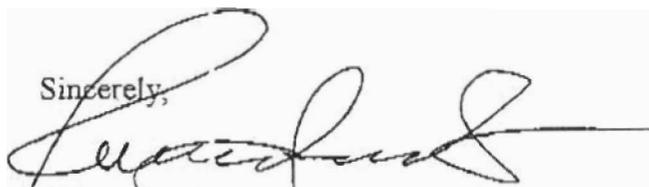
Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Timothy Griffith, attorney for Texas Alcoholic Beverage Commission, and to Kern A. Lewis, Attorney for Respondent. Paul's Liquor Store, Inc. d/b/a Paul's Liquor Beer & Wine (Respondent or Applicant) filed an application for issuance of an original package store permit and beer retail dealer's off-premise license (the permits). Peggy Borchert, Pastor Jim Borchert, William Bennett, W. F. Stephens, and others (collectively the Protestants) protested issuance of the permits. After an investigation, the Staff of the Texas Alcoholic Beverage Commission (Staff) took no position on the protest.

Protestants objected to the issuance of the permits on the basis that "the place or manner in which the applicant may conduct [its] 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". The Staff maintained that the Applicant had complied with all of the Texas Alcoholic Beverage Commissions's (TABC) requirements to have the permits issued.

This proposal finds that there are not sufficient grounds to conclude the place or manner in which Applicant will conduct its business warrants refusal of the permits. The Administrative Law Judge (ALJ) recommends the permits be issued.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings, located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas 76116. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,



Robert Jones  
Administrative Law Judge

attachments