

Said + protest

DOCKET NO. 615717

IN RE ORIGINAL APPLICATION OF	§	BEFORE THE TEXAS
THE ROCKIN D SALOON AND DANCE	§	
N & PE	§	
	§	
	§	ALCOHOLIC
	§	
HENDERSON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-6640)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 5th day of December, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Jerry Van Hamme. The hearing convened on July 5, 2005 and adjourned July 5, 2005. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 2, 2005. The 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. On November 1, 2005, Applicant filed Applicant's Exceptions To The SOAH ALJ's Proposal for Decision. Administrative Law Judge, Jerry Van Hamme, on November 7, 2005, ruled not to amend his decision.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Exhibits and Exceptions, 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.

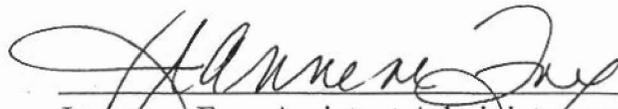
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the Original Application of Applicant, The Rockin D Saloon and Dance, for a Private Club Registration Permit and a Beverage Cartage Permit be **DENIED**.

This Order will become final and enforceable on December 26, 2005, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties in the manner indicated below.

SIGNED on this the 5th day of December, 2005, at Austin, Texas.

On Behalf of the Administrator,


Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/vr

Hon. Jerry Van Hamme
Administrative Law Judge
State Office of Administrative Hearings
Dallas, Texas
VIA FAX (214) 956-8611

Richard T. Wilbanks, III
ATTORNEY FOR APPLICANT
VIA FAX (903) 595-3796

The Rockin D. Saloon And Dance
APPLICANT
c/o Elizabeth Dykes & Tommy Glenn Dykes, Jr.
1976 FM 315 South
Chandler, Texas 75758
VIA CERTIFIED MAIL RRR 7005 0390 0005 7550 1388
& VIA FAX (903) 849-5002

**PROTESTANTS:
(VIA REGULAR MAIL)**

Leonard Hendren
President, Port Royal Homeowners Assn.
2252 Royal Drive West
Chandler, Tx. 75758

Thomas and Ann Hackler
2132 Royal Drive West
Chandler, Tx. 75758-5619

Delbert & Lorene Allen
5764 N. Cape Dr.
Chander, Tx. 75758

Jane Brooks Wilson
2381 Royal Drive East
Chandler, Tx. 75758

Pastor Eric R. Peyton
West Lake Baptist Church
1439 FM 315 South
Chandler, Tx. 75758

J. R. Brownlow
Sheriff, Henderson County
206-A N. Murchison
Athens, Tx. 75751

Judith L. Kennison
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Dallas District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

September 02, 2005

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78731

RE: Docket # 458-05-6640
TABC VS. THE ROCKIN D. SALOON & DANCE

Dear Ms. Fox:

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Van Hamme", written over a light blue rectangular background.

Jerry Van Hamme
Administrative Law Judge

JVH/sr
Enclosure

cc: Gayle Gordon, Staff Attorney for Texas Alcoholic Beverage Commission, Via Fax;
Richard T. Wilbanks, III, Respondent's Attorney, Via Fax; Pastor Eric Peyton, Protestant,
Via Fax; Leonard Hendren, Protestant, Via Mail; Ellen Wallace, Protestant, Via Mail;
Thomas & Ann Hackler, Protestant, Via Mail; Delbert & Lorene Allen, Protestant, Via Mail;
Jane Brooks Wilson, Protestant, Via Mail; J.R. Brownlow, Protestant, Via Mail

SOAH DOCKET NO. 458-05-6640

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
	§	
SHERIFF J.R. BROWNLOW AND	§	
CONCERNED CITIZENS OF	§	
CHANDLER, TEXAS,	§	
Protestants	§	OF
	§	
V.	§	
	§	
THE ROCKIN D SALOON AND DANCE	§	
Applicant	§	
	§	
HENDERSON COUNTY, TEXAS	§	
(TABC CASE NO. 615717)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Rockin D Saloon and Dance (Applicant) filed an application with the Texas Alcoholic Beverage Commission (Commission) for a Private Club Registration Permit and a Beverage Cartage Permit for the Rockin D Saloon and Dance, 1958 FM 315 South, Chandler, Henderson County, Texas. The sheriff of Henderson County; representatives of the Park Side Shores, Point Royal, Forest Grove, and Waterwood Subdivision property owners associations; representatives from West Lake Baptist Church, Lake Palestine United Methodist Church, and the West Side Volunteer Fire Department; and individual residents of the neighborhoods where Applicant's establishment is located (Protestants), 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, and that Applicant is not of good moral character or that Applicant's reputation for being a peaceable law-abiding citizen in the community is bad. The Commission's staff (Staff) took the position that the Commission has no independent evidence to protest the issuance of the permits. The Administrative Law Judge (ALJ) recommends that the requested permits not be granted by the Commission.

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.

On July 5, 2005, a public hearing was held before Jerry Van Hamme, ALJ, at the University of Texas at Tyler, Robert R. Muntz Library, Room 401, 3900 University Blvd., Tyler, Texas. Staff was represented by Gayle Gordon, attorney. Applicant was represented by Richard T. Wilbanks, III, attorney. Protestants appeared *pro se*. The record was closed on that date.

II. LEGAL STANDARDS AND APPLICABLE LAW

The Commission may refuse to issue an original permit if it has reasonable grounds to believe that the place or manner in which Applicant may conduct its business warrants the refusal based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency, or that Applicant is not of good moral character or that Applicant's reputation for being a peaceable, law-abiding citizen in the community where Applicant resides is bad. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(6) & (8).

III. EVIDENCE

A. Staff's Evidence and Contentions

Staff presented Applicant's application for a Private Club Registration Permit and a Beverage Cartage Permit. Staff also presented a petition and 87 letters received by the Commission from persons opposing Applicant's application. The opposition letters were offered as documents in the Commission's files, but were not offered for the truth of the matters asserted in them. Staff contends that Applicant has met all Commission requirements for holding the permits at the premises location,

that Applicant properly posted or published all required notices, and that Applicant complied with all applicable Texas Alcoholic Beverage Code requirements.

B. Protestant's Evidence and Contentions

1. J.R. "Ronny" Brownlow

J.R. "Ronny" Brownlow, sheriff of Henderson County, Texas, testified that FM 315 is a two-way road with no shoulders and has a significant, and increasing, number of traffic accidents on it. He testified that when construction of nearby FM 3506 is completed, it will intersect with FM 315 approximately three or four miles from Applicant's location, and, by connecting SH 155 and SH 31, will increase the amount of traffic on FM 315 to a level beyond what he believes FM 315 was designed to handle. This increase in traffic, coupled with the increase in the number of alcohol-impaired drivers he believes will result from Applicant's establishment, will, based on his experience as County Sheriff and as a prior highway patrol officer, cause traffic safety on FM 315 to become worse. In addition, he testified that patrons leaving Applicant's location have a sight restriction entering onto FM 315. Although the fence that borders Applicant's location and runs parallel to FM 315 is approximately 50 feet from the roadway and leaves room for about three vehicles to line up in the driveway between the edge of the roadway and the fence, patrons exiting Applicant's location have an obstructed view of oncoming traffic until they reach the front of the line, right next to the roadway.

2. Debbie Bernard

Debbie Bernard testified as a representative of the officers of the Waterwood Subdivision Homeowner's Association. The subdivision is located approximately .3 of a mile from Applicant's location. The officers of the homeowner's association oppose Applicant's application because FM 315,

which runs directly in front of Applicant's location, is a heavily-used roadway that already has too much traffic, and granting Applicant's permits will make the present traffic problem worse. FM 315 has ditches on each side, not shoulders, and no turn lanes, so drivers have no room to avoid intoxicated drivers. If Applicant's permits are granted, traffic as a whole, she believes, will increase, and so will the number of alcohol-impaired drivers. In addition, a wooden fence built on Applicant's property and running parallel to FM 315 blocks the view of vehicles leaving Applicant's property from traffic already on FM 315, making the situation even more dangerous for vehicles driving past Applicant's location when Applicant's patrons would be leaving.

3. Eric Peyton

Eric Peyton, Senior Pastor of West Lake Baptist Church, testified that in his opinion the local area had experienced an increase in the use of alcohol and drug abuse. If granted the permits to sell alcoholic beverages, Applicant's establishment would, in his opinion, add to the already growing social problems in this area.

4. Don Thomas

Don Thomas, a member of the Westside Volunteer Fire Department and a "First Responder" to traffic accidents, testified that accidents already occur on FM 315 around the location of Applicant's establishment. He believes that if Applicant was granted the permits, the number of alcohol-related traffic accidents would increase on that roadway.

5. Jane Wilson

Jane Wilson, a resident in the area, presented a map and five photos showing Applicant's

establishment and its surrounding location. The photos showed a view of Applicant's establishment taken from the intersection of FM 315 and Big Eddy Road, where Applicant's establishment is located (Protestant Ex. 5A); a business located next to Applicant's establishment that shares the driveway access with Applicant's establishment to FM 315 (Protestant Ex. 5B); a photo of Applicant's wooden privacy fence taken from FM 315 (Protestant Ex. 5C); a view of Applicant's establishment taken from northbound FM 315 approaching Applicant's establishment from the south (Protestant Ex. 5D); and a view of southbound FM 315 taken from the intersection of FM 315 and Big Eddy Road directly across from the driveway of Applicant's establishment (Protestant Ex. 5E). The map, which was not drawn to scale, showed the relative locations of buildings located on FM 315 and driveways intersecting FM 315 from approximately one mile south of Applicant's location to approximately .7 mile north of it. A total of 60 driveways from residences and businesses face onto FM 315 within this distance, 36 within 1 mile south and 24 within .7 mile north of Applicant's location.

6. Ellen Wallace

Ellen Wallace, a member of the Park Side Shores Owners Association, which is located south of Applicant's establishment, testified that the traffic on FM 315 is already very congested, the bar ditches on each side of the highway represent a threat to impaired drivers, and that the volunteer fire department uses FM 315 to access all the subdivisions in the area. An increase in the number of alcohol-impaired drivers on the roadway would, in her opinion, threaten the fire department's ability to respond to emergencies in those subdivisions. In addition, many school buses use this roadway, and a "happy hour" at Applicant's establishment, with the resulting increase in expected alcohol-impaired drivers, could represent a danger to these children. She also testified that the 60 mile per hour speed limit on FM 315 constitutes a safety concern when coupled with the expected increase in the number of alcohol-impaired drivers.

7. Bruce Fowler

Bruce Fowler testified as a representative of the Forest Grove Property Owner's Association that the association was opposed to Applicant's permits because FM 315 is a two-lane, heavily-traveled, narrow roadway. There is also a 24-hour marina nearby which draws recreational vehicles and other traffic to FM 315 all hours of the day and night. Granting Applicant's permits, with its anticipated increase in the number of alcohol-impaired drivers on FM 315, would, in his opinion, represent a threat to the people who drive FM 315 during these late hours.

C. Applicant's Evidence and Contentions

1. Steven W. Hall

Steven Hall, the Area Engineer for the Texas Department of Transportation (TXDOT) in Tyler, Texas, testified that as Area Engineer he was responsible for the design, construction, and maintenance of state highways in Smith and Cherokee Counties, which includes the portion of FM 315 at issue in the hearing. He testified that in the 24 months prior to the hearing, neither the Tyler nor Athens district offices of TXDOT had received a written request by anyone requesting that the speed limit be lowered on that portion of FM 315 near Applicant's location, that no aerial photogrammetry had been conducted of FM 315 in the last five years, and that there were no current plans to resurface, widen, add shoulders, or install turn or de-acceleration lanes on FM 315 at this location. He further stated that TXDOT has no criteria for determining whether certain stretches of roadway are dangerous, other than as reflected by the speed limit, and that he had no personal knowledge whether FM 315 near Applicant's location is dangerous or not.

2. Misty Dykes

Misty Dykes testified that she, her husband, and her mother-in-law are co-officers of Applicant and co-applicants for the requested permits. She testified that Applicant, if granted the permits, would be open Monday through Friday from 10 a.m. to 12 a.m., Saturday from 10 a.m. to 1:00 a.m., and Sunday from 12 p.m. to 12 a.m. Applicant's establishment has a capacity for holding approximately 400 persons, but she anticipates few patrons during the day. She has no present plans for a "happy hour" and, therefore, does not anticipate that school busses should be impacted by traffic from Applicant's patrons. However, she testified that at closing time it could be possible that 200 - 300 vehicles might be leaving Applicant's parking lot and entering onto FM 315 at about the same time.

She agreed with Protestants that there is a traffic problem on FM 315, and that it is due, in part, to the highway having only two lanes and no shoulders. It is also due, in her opinion, to careless drivers, and she believes lowering the speed limit might help alleviate the problem. In support of her contention that FM 315 already has traffic problems, Applicant offered a video (Applicant's Ex. No. 6) showing traffic leaving the West Lake Baptist Church parking lot and entering onto FM 315. The video shows drivers pulling onto FM 315 in front of oncoming vehicles without stopping before entering the roadway. Misty Dykes, upon reviewing the video at the hearing, testified that vehicles pulling out from the church parking lot onto FM 315 in front of oncoming traffic forced the traffic on FM 315 to brake, and that vehicles often pull onto FM 315 without stopping. She further testified that this occurs every day, not just from the church parking lot but from many driveways on FM 315, and concluded that even if Applicant's patrons drove the same way, their driving would not constitute a different or extraordinary activity from what is already occurring and would not create an exceptional safety problem.

In addition, Ms. Dykes testified Applicant has met all Commission requirements for the permits, affirmed Applicant will obey all Commission rules to attempt to prevent intoxicated drivers from leaving Applicant's location, and stated she would endorse any changes TXDOT might propose

to make FM 315 safer.

3. Ronny Aldridge

Ronny Aldridge, a resident in the area, testified he is aware that accidents occur on FM 315. In his opinion, most of the accidents are caused by speeding and carelessness. He also believes that given the number of driveways, parking lots, entrances, and exits that already front onto FM 315, the additional number of vehicles associated with Applicant's establishment would not constitute an exceptional traffic safety issue. He further testified he anticipates being a patron of Applicant's location, and does not believe that increasing the number of impaired drivers on FM 315 would create a problem.

4. Floyd Limerick

Floyd Limerick, an 86 year-old resident who has lived in the area approximately 40 years, described the amount of traffic at around 6:00 p.m. on FM 315 as a "freeway." He also testified that in his opinion a person leaving Applicant's establishment after having consumed 3-4 drinks would not constitute a problem.

5. Patterson Ellis Wells

Patterson Ellis Wells, associate pastor of a Baptist church in Ben Wheeler, Texas, testified that in his opinion when the residents of east Texas had the opportunity to vote down "liquor by the drink" and failed to do so, they lost their opportunity to complain about establishments such as Applicant's. In his opinion, it is not proper to penalize Applicant for attempting to obtain permits that Applicant has a legal right to request.

IV. ANALYSIS

1. Applicant's Moral Character and Reputation, TEX. ALCO. BEV. CODE ANN. § 11.46(a)(6)

No evidence exists in the record showing that Applicant should be denied the requested permits based on Applicant not being of good moral character, or because Applicant's reputation for being a peaceable, law-abiding citizen in the community where Applicant resides is bad. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(6). Accordingly, that issue shall not be addressed further herein

2. General welfare, health, peace, morals, and safety, TEX. ALCO. BEV. CODE ANN. § 11.46(a)(6)

To deny permits on the basis of the general welfare, health, peace, morals, and safety of the area, some unusual condition or situation must be shown to justify a finding that the place or manner in which Applicant may conduct its business warrants a refusal of the permit. Texas Alcoholic Beverage Commission v. Jack E. Mikulenska d/b/a Frigate Club, 510 S.W.2d 616, 619 (Tex.App.--San Antonio 1974). Such unusual conditions include, for example, where the mayor, chief of police, sheriff, and property owners from three subdivisions opposed the permits on the grounds that granting the permits would create a probable increased traffic hazard, Dienst v. Texas Alcoholic Beverage Commission, 536 S.W.2d 667 (Tex.Civ.App 13 Dist., 1976); where the mayor, chief of police, sheriff, members of the board of a nearby public school, and nearby property owners and church members opposed the permits on the grounds that granting the permits would increase traffic congestion and increase the probability of persons driving under the influence of alcohol in the immediate area, Helms d/b/a The Thirsty Turtle v. Texas Alcoholic Beverage Commission, 700 S.W.2d 607 (Tex. App.--Corpus Christi 1985); and where potential traffic problems might arise from a premise's exit

being onto a frontage road at the "gore area," Bavarian Properties, Inc. v. Texas Alcoholic Beverage Commission, 870 S.W.2d 686 (Tex.App.-- Fort Worth, 1994).

In the instant case, the county sheriff, nearby property owners, representatives from four subdivisions, representatives from two churches, and a member of the volunteer fire department all testified in opposition to the permits. The opposition was based on the increased traffic Applicant's establishment would cause on an already over-burdened FM 315 and the anticipated increase in alcohol-impaired drivers.

The one thing Protestants and Applicant agreed about at the hearing is that the current traffic situation on FM 315 is bad. For the Protestants, Sheriff Brownlow testified that FM 315 is the scene of a significant and ever-growing number of traffic accidents, the amount of traffic on FM 315 will increase after FM 3506 is completed, FM 315 was not designed for this anticipated amount of traffic, and in his professional opinion adding additional drivers to FM 315, particularly alcohol-impaired drivers, would make a bad situation worse. Debbie Bernard testified that FM 315 is already too busy, has no turn lanes or shoulders, and an increase in traffic would make things worse. Don Thomas, a member and "First Responder" of the Westside Volunteer Fire Department, agreed that traffic accidents already occur on FM 315 and additional drivers, particularly alcohol-impaired drivers, would make the situation worse. Ellen Wallace, a member of the Park Side Shores Owners Association, testified that the traffic on FM 315 is already very congested, the bar ditches on each side of the roadway represent a threat to impaired drivers, and the 60 mile per hour speed limit on the roadway, when coupled with the anticipated increase in the number of alcohol-impaired drivers from Applicant's establishment, would constitute a safety concern. Bruce Fowler reiterated that FM 315 is a two-lane, heavily-used, narrow roadway, and testified that with a 24-hour marina nearby, drivers are on FM 315 24-hours a day. These drivers, in his opinion, would be placed at risk by alcohol-impaired drivers. And Jane Wilson presented a map of FM 315 showing the significant number of intersections, parking lots, and driveways, from which drivers already enter onto FM 315.

Applicant's evidence agreed with this analysis of FM 315. The number of already existing driveways and other forms of ingress onto FM 315 was highlighted in Applicant's video (Applicant's Ex. No. 6), which showed the nature and amount of traffic already using FM 315. In the words of Applicant's counsel, the video showed traffic in "many, many instances, doing what I feel like the court, or an observer of the video, would consider to be unsafe or negligent activity, and that that type of activity is what I have been trying to bring to the court's attention; that it's not just the impairment, there are many factors, and this is a major factor, is the number of driveways and people pulling out." Applicant's attorney's characterization of FM 315 as "unsafe" was endorsed by Misty Dykes who testified that traffic is a problem on FM 315, and that the problem is caused, in part, by the fact that FM 315 has only two lanes and no shoulders. Floyd Limerick, who has lived in the area approximately 40 years, described the traffic around 6:00 p.m. on FM 315 as a "freeway," and Ronny Aldridge, a resident of the area, testified that many accidents on FM 315 are caused by speeding and carelessness.

Accordingly, Applicant and Protestants agree that the amount of traffic, number of driveways, and narrow design of FM 315 is already causing traffic problems on this roadway. Both parties recognize that Applicant's establishment will add to the number of drivers on this roadway, particularly at Applicant's closing time, and there is no dispute in the record that some drivers leaving Applicant's establishment will be alcohol-impaired, even if Applicant's witnesses Aldredge and Limerick do not personally consider this to be a problem. The evidence in the record justifies a finding that granting the permits would make an already bad traffic situation worse, increase traffic congestion, increase the probability of persons driving under the influence of alcohol in the immediate area, and increase the probability of creating a traffic hazard. Accordingly, Protestants have shown, by a preponderance of the evidence, that the place or manner in which Applicant may conduct its business warrants a refusal of the requested permits on the basis of the general welfare, health, peace, morals, and safety of the area.

V. RECOMMENDATION

The ALJ recommends that Applicant's application for a Private Club Registration Permit and Beverage Cartage Permit for the Rockin D Saloon and Dance, 1958 FM 315 South, Chandler, Henderson County, Texas, be denied.

VI. FINDINGS OF FACT

1. The Rockin D Saloon and Dance (Applicant) filed an application with the Texas Alcoholic Beverage Commission (Commission) for a Private Club Registration Permit and Beverage Cartage Permit for the Rockin D Saloon and Dance, 1958 FM 315 South, Chandler, Henderson County, Texas.
2. Applicant has met all Commission requirements for obtaining the permits at the premises location.
3. Protests to the application were filed by the sheriff of Henderson County; representatives from the Park Side Shores, Point Royal, Forest Grove, and Waterwood Subdivision property owners associations; representatives from the West Side Fire Department, West Lake Baptist Church, and Lake Palestine United Methodist Church; and by individual residents of the neighborhood where Applicant's establishment is located.
4. The Commission received a petition and 87 protest letters from residents requesting that Applicant's application for permits be denied. Most protests referred to the negative effect on the traffic problems on FM 315 and the likelihood of an increase in alcohol-impaired drivers if the permits were granted.
5. A Notice of Hearing dated June 1, 2005, was issued by Staff notifying Applicant of the protests received against Applicant's application and informing the parties of the nature of the hearing, the statutes and rules involved, and the legal authorities under which the hearing was to be held.
6. An Order Setting Hearing & Establishing Requirements for Participation was issued by SOAH on June 17, 2005, informing the parties of the time and place of the hearing.

7. On July 5, 2005, a public hearing was held before Jerry Van Hamme, ALJ, at the University of Texas at Tyler, Robert R. Muntz Library, Room 401, 3900 University Blvd., Tyler, Texas. Staff was represented by Gayle Gordon, attorney. Applicant was represented by Richard T. Wilbanks, III, attorney. Protestants appeared *pro se*. The record was closed on that date.
8. Applicant's establishment is located on FM 315 at the intersection of FM 315 and Big Eddy Road.
9. FM 315 is a two-lane roadway with bar ditches on each side. It has no shoulders and no turn lanes in the vicinity of Applicant's establishment.
10. The Texas Department of Transportation (TXDOT) has no current plans to resurface, widen, add shoulders, or install turn or de-acceleration lanes on FM 315 at or near Applicant's location.
11. The present traffic on FM 315 is heavy. Traffic exists 24-hours a day due in part to a 24-hour marina located nearby that caters to recreational travelers.
12. Within .7 mile north of Applicant's location are 24 driveways from residences and business establishments that enter onto FM 315. Within 1 mile south of Applicant's location are 36 driveways from residences and business establishments that enter onto FM 315.
13. Traffic entering from driveways onto FM 315 is often heavy and represents a danger to oncoming traffic on FM 315, which is forced to slow or brake to avoid accidents.
14. The volume of traffic on FM 315 will increase when nearby FM 3506 is completed and intersects with FM 315 approximately three or four miles from Applicant's location.
15. Applicant's establishment can hold a capacity of 400 patrons. Its parking lot can hold at least 300 vehicles. Applicant's proposed hours of operation are Monday through Friday from 10 a.m. to 12 a.m., Saturday from 10 a.m. to 1:00 a.m., and Sunday from 12 p.m. to 12 a.m. At closing time, 200 to 300 vehicles may exit Applicant's parking lot onto FM 315 at about the same time.
16. Some drivers leaving Applicant's establishment and driving on FM 315 will be alcohol-

impaired.

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. If Applicant's permits are granted the increase in the amount of traffic and number of alcohol-impaired drivers on FM 315 will constitute a traffic hazard and a danger to the general public.
5. Issuance of the requested permits will adversely affect the safety of the public and the general welfare, peace, or morals of the people. TEX. ALCO. BEV. CODE ANN. §11.46(a)(8).
6. Applicant's application for a Private Club Registration Permit and Beverage Cartage Permit for the Rockin D Saloon and Dance, 1958 FM 315 South, Chandler, Henderson County, Texas, should be denied.

SIGNED September 2, 2005.



JERRY VAN HAMME

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS