

DOCKET NO. 458-98-1464

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	OF
	§	
THE WATER TROUGH, INC. (TABC NO. 579425)	§	ADMINISTRATIVE HEARINGS
	§	

PROPOSAL FOR DECISION

The Water Trough, Inc.(Applicant), submitted an application for private club registration, beverage cartage and food and beverage permits for premises located on County Road 348 in Concan, Uvalde County, Texas. Some residents of the neighborhood and surrounding areas where the Applicant is located and the Sheriff of Uvalde County (Protestants) contested the issuance of the permits because the place and manner in which the Applicant would conduct business would be contrary to the general welfare, peace, and safety of the citizenry. Staff of the Texas Alcoholic Beverage Commission (Staff) remained neutral in the case, having determined that Applicant met all of the technical requirements to obtain the permits. The Administrative Law Judge recommends that the permits be granted, because the Protestants failed to prove the Applicants would conduct business in violation of the law.

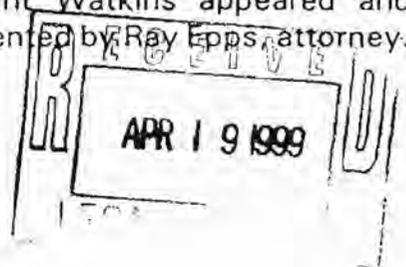
I.

PROCEDURAL HISTORY, NOTICE & JURISDICTION

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, these matters are set out in the proposed findings of fact and conclusions of law without further discussion here.

On September 10, 1998, a prehearing conference was held before Barbara C. Marquardt, Administrative Law Judge (ALJ), in this matter at the Uvalde County Courthouse. Beaumont Watkins, Sheriff of Uvalde County, was admitted as a statutory party Protestant at the prehearing conference. On September 29, 1998, the ALJ issued an order admitting the following three citizen protest groups as Protestants in the proceeding: residents of Real County, Texas, residents of Concan, Texas, and residents of Utopia, Texas.

On January 20, 1999, a public hearing was convened at the Uvalde County Courthouse, Main and Getty Street, Uvalde, Texas 78801. The Applicant was represented by William C. Dufour, attorney. Staff was represented by Gayle Gordon, an attorney for the Legal Division. Sheriff Beaumont Watkins appeared and represented himself. The Citizen Protestants were represented by Ray Epps, attorney.



The hearing reconvened on January 21, 1999, and then recessed. The record remained open until February 25, 1999, for receipt of proposed findings of fact and conclusions of law, and it closed on that date.

On March 29, 1999, the ALJ entered an order granting Applicant's motion to dismiss/special exception to the charge that the application was a subterfuge in violation of TEX. ALCO. BEV. CODE ANN.(Code) Chapter 32 and §109.53. The ALJ had carried the motion with the hearing to determine whether evidence would be presented to support a subterfuge finding; a review of the record, as well as the parties' post hearing arguments, supported Applicant's position.

II. REASONS FOR DECISION

A. The Legal Issue.

The Protestants asserted that the application should be denied because the Applicant would conduct business in violation of Code §11.46(a)(8), which provides that the administrator may refuse to issue permits if there are reasonable grounds to believe that the following circumstances exist:

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

In Texas Alcoholic Beverage Commission v. Mikulenka, 510 S.W.2d 616 (Tex. Civ. App. - San Antonio 1974, no writ), the court held the fact that a large number of area residents protest the issuance of permits is not of itself sufficient reason to deny the application of an otherwise qualified applicant. Some unusual condition or situation must be shown so as to justify a finding that the place or manner in which the business may be conducted warrants refusal of a permit. *Accord*: Simonton Gin, Inc., 616 S.W.2d 274 (Tex. Civ. App. - Houston [1st Dist.] 1981, no writ) [mere conclusions about possible traffic hazards or potential loud noise and disturbances insufficient to support denial]; and Dienst v. Texas Alcoholic Beverage Commission, 536 S.W.2d 667, 669 (Tex. Civ. App. - Corpus Christi 1976, no writ) [unusual traffic safety condition supports denial of permit].

Therefore, the issue in this case is whether Protestants proved that some unusual condition or situation will exist if the application is granted, justifying a finding that the place or manner in which the club will operate will violate the above-referenced statutory provision.

B. The Evidence.

The Protestants argued that if the permits issued, the dangerous and congested traffic situation that exists already on County Road 348 during the summer vacation season would be greatly exacerbated. However, Protestants' evidence amounted to general speculation, while the Applicant presented convincing evidence by a civil engineer that there is nothing unusually dangerous about the location of Applicant's restaurant or the configuration of County Road 348 generally. The evidence will be summarized in this order: (1) background, (2) the Applicant, (3) conditions on County Road 348, (4) law enforcement's concerns, (5) EMS testimony, and (6) testimony of area residents.

1. **Background.** The Frio River runs through a picturesque area of Texas Hill Country known locally as the Rio Frio Canyon. It is a resort area in the summer season, which runs from Memorial Day in May through mid September. In season, tourists come in great numbers to swim and tube down the Frio River, and they stay in campgrounds, cabins and vacation homes throughout the area. The rental bed (including cabins, RV slots and campsites) capacity in the Concan area was about 2,300 four years ago, and it has increased by between 100 and 200 since then. In addition to hunters who patronize the area in the off season, there has been an increase in the number of organized groups coming then, including bird watchers and china painters. The parties all characterize their territory as a family vacation area.

The Applicant's restaurant, in which it plans to operate a private club known as the Water Trough that serves alcoholic beverages, is located in Concan, Texas.¹ Concan is a small community of about 300 residents, located on the Frio River about 22 miles north of Uvalde at the intersection of U.S. Highway 83 and State Highway 127. While most of Uvalde County permits the sale of alcohol, Precinct 3 in the northern part of the county, where Concan is located, is "dry." Utopia, which is another small town in Precinct 3 of Uvalde County, is located about 25 miles northeast of Concan. Some nine miles north of Concan along U.S. Highway 83 are Garner State Park and the border of Real County. The small town of Leakey is about ten miles further north along U.S. Highway 83 in Real County, and all of Real County is "dry." There are family-oriented campgrounds for miles up and down U.S. Highway 83 on both sides in this general area.

Despite the fact that the Frio Canyon area is "dry," there is significant alcohol consumption in the area during the summer season for two main reasons. First, it is common for people to bring alcohol onto their campsites. Second, people come to the Frio River to go tubing; commonly, they float down the river with ice chests full of beer that they drink.

¹See Attachment A, which is a map depicting Applicant's location on County Road 348.

2. The Applicant. The Applicant's restaurant, House Pasture Cattle Company, is located on the east side of County Road 348, about 3.5 miles north of its intersection with Highway 127. It first opened in May 1998. In the off season, the restaurant is open on weekends only; from May through September, it is open every day of the week. On summer evenings, they serve from 200 to 400 guests. It is the only high caliber restaurant in the area; several witnesses testified that one would have to travel to San Antonio, some 100 miles away, to find comparable restaurants.

The restaurant building is about 6,000 square feet in size. Guests enter the main dining area first, and the bar area (about 20 by 30 feet, or 600 square feet) is at one side, accessed by two doors. The kitchen area is about as large as the main dining area - about 30 by 40 feet. There is also a large party room at the back. The restaurant has a dance slab outside and a large parking lot. Ingress and egress from the parking lot are directly onto County Road 348.

The Applicant, Water Trough, Inc., filed its application for permits on May 15, 1998. At the time of the hearing, over 50 people had become members of the Water Trough, Inc. The majority of the restaurant's clientele in summertime are tourists staying in the campgrounds and vacation property in the Concan area. Only a small percentage of its summertime customers are from Leakey, Utopia or Uvalde. The Applicant does not have customers from the groups who tube down the river or just drive through County Road 348 for the day. (T. 254)

If the permits are granted, only guests aged 21 or older will be permitted to enter the restaurant's bar area. Minors will only be admitted if accompanied by a parent. (T. 253) All of the employees who handle alcohol will be required to be seller-server trained by the TABC as a condition of employment. Thus, they will have learned about identifying people's ages and intoxication levels. The Applicant plans to keep its premises safe. On nights last summer when the restaurant hired entertainers, they also hired off duty commissioned peace officers to patrol and monitor the parking lot area.

3. County Road 348 Conditions. Royal Abrahamson, a consulting civil engineer for 38 years with 15 years of experience as a traffic engineer for the City of Amarillo, testified on behalf of the Applicant.

Mr. Abrahamson inspected and measured County Road 348 and compared it to other, similar roads he has viewed in the western United States. Contrary to the testimony put on by the witnesses for the Protestants, he testified that County Road 348 is not narrow (meaning eight feet or less per lane), and it is not winding; it has curves in it.

County Road 348 (also known as River Road) is 5.5 miles long, and it runs north from State Highway 127, crosses the Frio River twice, and eventually loops around and intersects with U.S. Highway 83. The road has six curves and, in addition to the two river crossings, crosses Shut-In Creek towards the south end of the road and Bear Creek at the road's north end. The road is paved for most of its length, but at the Bear Creek crossing it is gravel. Except for the one-lane gravel crossing at Bear Creek, the road has two lanes, but there is no center stripe.² The concrete portion of the low water crossing at Shut-In Creek is wider than the two-lane road running on both sides of it.

Mr. Abrahamson measured the traveled portion of the road in half a dozen places and found it was 20.5 feet wide, which is the same size as State Highway 127. (T. 297) As mentioned above, the exception to this width is the one-lane gravel crossing at Bear Creek, where the bridge is eight feet or less wide. The road has shoulders that primarily consist of gravel and grass; however, there are portions that have paved shoulders, including both sides of the Shut-In Creek crossing and the first river crossing.

Traveling 348 from the southern end of the road to the Applicant's restaurant, Mr. Abrahamson found the sight distances in both directions were adequate. The distance visibility around the curves varies between 500 and 1,000 feet. At the entrance/exit from the restaurant parking lot there are wide shoulders on the road in both directions, giving drivers adequate sight distance. In fact, half of a mile before the restaurant the area is fairly wide-open. (T. 284-285) There is nothing unusual at the restaurant parking lot entrance/exit that would cause a problem for drivers coming in or leaving the establishment. (T. 307)

The following businesses are located along County Road 348: Bee's Camp, Frio Country Store, Frio Country (campground), River Oaks Resort, Cypress Bend (campground), House Pasture Restaurant, and Seven Bluff Cabins. (App. Ex. 2) Additionally, independent vendors set up stands (e.g., barbecue stands) along the road during the summer season. There are also quite a few private residences along 348, whose driveways intersect the road. The major area in which one can see houses from the road is between 127 and the second crossing. From the second crossing to the restaurant location, the number of residential homes greatly decreases.

Generally, the speed limit on the road is 30 miles per hour, but there are a couple of curves within half of a mile from Highway 127 (thus, two or three miles away from Applicant's restaurant) where the posted advisory speeds are 20 miles per hour. It is not possible to speed across the second crossing, where traffic often backs up in the summer months. Moreover, when cars reach the northern portion of the

²Mr. Abrahamson testified it would be safer if the road had a center stripe.

road, which is gravel, the gravel slows them down, as does the one-lane bridge. That is also the location where between 70 and 80 vehicles belonging to floaters will be parked along the side of the road, adding to the congestion and further slowing down traffic in the summer months.

Mr. Abrahamson has traveled to similar resort areas in other parts of the country, including the Snake River in Wyoming and the Green River area coming out of Utah. They are similar to the County Road 348 situation, in that they have rivers that vacationers raft, two-lane roadways and businesses operating along the roads - some of which serve alcohol. In Mr. Abrahamson's opinion, there is nothing about County Road 348 that would adversely affect the safety of the public traveling it, other than the one narrow bridge at the north end. It is not a dangerous road.

Furthermore, in Mr. Abrahamson's opinion, one cannot conclude that granting permits to the Applicant will expose people traveling County Road 348 to any unnecessary risk to their health and safety. (T. 283) In fact, Mr. Abrahamson is making arrangements to bring his boy scout troop down to the Concan area.

4. Evidence from Law Enforcement Officials.

a. **Uvalde County Sheriff.** Beaumont Watkins, who has been the Sheriff of Uvalde County since 1993, was admitted as a statutory party pursuant to Code §11.41(a).³ Sheriff Watkins' testimony was very general, amounting to an opinion that granting the permits will negatively affect safety on County Road 348 and will require him to increase the presence of law enforcement in the area.

Sheriff Watkins considers County Road 348 to be a narrow, winding road. In his opinion, additional alcohol consumption in the area would increase the possibility of car accidents, leading to property damage and injuries, because alcohol consumption impairs a person's driving ability.

As to the ability of the Uvalde County Sheriff's Office to carry out its duties in the Concan area, Sheriff Watkins testified he currently has one deputy who lives on County Road 348⁴ and is assigned to patrol it and other areas in the County when needed. When the resident deputy is off duty, Sheriff Watkins has deputies assigned to other parts of the county respond to calls in Concan. Additionally, the Sheriff has

³The statute provides, in pertinent part: "When a person applies for a permit, the commission or administrator shall give due consideration to the recommendations of the . . . sheriff of the county in which the premises sought to be licensed are located. . . ." (Emphasis added.)

⁴According to one area resident, the presence of Deputy Cook on County Road 348 is a helpful deterrent to crime. When he is home, his official sheriff's office car is visible and apparent from the road. (T. 220)

needed. When the resident deputy is off duty, Sheriff Watkins has deputies assigned to other parts of the county respond to calls in Concan. Additionally, the Sheriff has reserve officers whom he can send to the area when necessary - usually on major holidays and summer weekends. The reserve officers are certified peace officer volunteers who work without pay; the County only reimburses them for gas, equipment and car expenses.

b. Real County Sheriff. Although not a statutory party, James Earl Brice, the Sheriff of Real County for over 12 years, also testified on behalf of the Protestants. The town of Leakey is headquarters for Sheriff Brice and one of the two deputies in his office. Sheriff Brice testified that his office calls on the Uvalde Sheriff's office and they call on his office for assistance, particularly for the Concan area and points north of that like Garner State Park. In 1998 his office answered alcohol-related calls twice in Uvalde County - one involving people in Garner State Park, and the other involving a family disturbance in a private residence.

In Sheriff Brice's opinion, granting the contested permits would increase the danger of driving along County Road 348, thus increasing the frequency of emergency calls his office would need to answer. Also, because more people who have been drinking at Applicant's club will be on the highways in Real County, Sheriff Brice testified he expects that will increase the workload of his three-person office and might require him to hire additional staff.

5. EMS Testimony. The Concan area is served by four EMS groups: Uvalde EMS, Sabinal EMS (located 22 or 23 miles south of Concan along Highway 127), Utopia EMS and Leakey EMS. Two witnesses testified about the potential impact the permits would have on the emergency medical service functions in the Concan area. However, the testimony in favor of the Applicant by Cynthia King, the Supervisor of the Uvalde EMS, was more credible than the testimony from a volunteer for the Utopia EMS.

According to Ms. King, the designated 911 area for her unit includes Concan. Thus, emergency calls from Concan and County Road 348 normally are referred to the Uvalde EMS, which has five certified ambulances, 14 paid employees and 20 volunteers. Ms. King, who has supervised Uvalde EMS since 1996, testified it has never asked Utopia EMS to respond to an emergency in the Concan area. They had 32 calls to the Concan area in 1998. Of the 20 that were trauma calls, about half involved alcohol in some way. Some of the other 12 also were alcohol-related. (T. 182)

An extension of Uvalde EMS, Inc. will be established in the Concan area in 1999, because of its distance from Uvalde; *i.e.*, the new unit will speed up response time to Concan. The Concan EMS will be staffed by about seven volunteers, and the class to train them began on February 5, 1999. There is an ambulance already in

In Ms. King's opinion, whether or not the permits are granted, EMS can expect more calls from the Concan area, because every year their call ratio has gone up. She did concede that adding more alcohol availability would be likely to increase emergency calls, "as in anywhere." (T. 186)

Protestants presented testimony from Gary Davis, a Utopia resident and a volunteer for the Utopia EMS. The Utopia EMS has two ambulances that cover a service area made up of parts of five counties and 2,400 square miles in roughly a 35-mile radius from Utopia, including the northern part of Uvalde County and Garner State Park. While Mr. Davis testified the Utopia EMS answers calls in the Concan area and on County Road 348, particularly in the summer months, he was unable to testify whether any of the accidents they have responded to there were alcohol-related. (T. 50)

6. **Area Residents.** There was testimony from residents both supporting and protesting the application. Because none of their testimony supports the proposition that an unusually dangerous situation will be created if the permits are granted, it will only be summarized briefly in the proposal for decision.

a. **Protesting Residents.**⁵ Robby Rogers resides at and helps manage Bee's Camp on County Road 348, which consists of about 17 acres fronting the south side of the Frio River, between 1.2 and 1.3 miles from Applicant's restaurant. The camp has everything except cabins for tent and recreation vehicle campers: RV hookups, electricity, shelters, and a pavilion. Primarily their guests are families with children, but they have some single campers.

Ms. Rogers described the traffic on County Road 348 during the summer season as "generally non stop." To give an estimate of the volume of people on it in the summer months, Ms. Rogers testified her camp alone has from 700 to 1,000 on a weekend. There are several other, larger campgrounds on the road, including Frio Country and River Oaks. In fact, because of the huge influx of people, some of the campgrounds employ off-duty police officers to patrol their property and keep the visitors in order. Bee's Camp hires a security guard during the season. While Bee's Camp has "very strict rules," they permit campers to bring alcohol onto the campground. (T. 92)

Ms. Rogers, who has lived on County Road 348 for most of her life, testified there have been numerous accidents on the road. The use of alcohol by campground visitors and river tubers has caused a significant amount of disturbance in the area. In her opinion, granting the permits to the Applicant will make the situation much worse. Already, she believes the area is dangerous because of too many people and

⁵Reverend Jimmy Linn, the Pastor of the Utopia Baptist Church, also testified for Protestants.

too much alcohol, which is the reason for her security guard and the off-duty peace officers hired by other businesses. By reviewing public records concerning alcohol-related charges in Precinct 3 of Uvalde County (which includes Garner State Park, Concan and Utopia) in 1998, Ms. Rogers found there were 146, including 101 charges of minor in possession, plus public intoxication, and consumption of alcohol.

When asked why it is described as a family area, if there are so many alcohol-related problems, Ms. Rogers stated: "Because we are trying to get it back under control before it gets too much more out of the control. And this is one way to do it." (T. 103) Customers are telling her because of the way the area is changing, they are not coming back. She stated:

We have a family oriented area that we are trying to keep up at Concan. That is predominantly what we want for our area to be like. We don't want it to end up like New Braunfels and have to deal with it like New Braunfels, you know, deals with theirs. . . . But the problem is is that we have a lot of people coming up there with very young children. . . . A lot of the drinking and the fights and the accidents and so forth it is going on. And if we don't start getting control of this now, then we're going to end up just being like New Braunfels is. . . . (T. 105)

b. **Supportive Residents.**⁶ Ruth Webb, who has lived in Concan for the past 40 years, is the Secretary of the Applicant's club. She owns property in Concan; travels County Road 348 most days; and has eaten in Applicant's restaurant many times. She testified that County Road 348 is a safe road. The speed limit on County Road 348 is 30, and she does not believe granting the permits will increase the danger along the road. In Ms. Webb's opinion, granting permits to Applicant's restaurant will mean people can go to the restaurant, drink in a controlled environment and then return to their camps, rather than traveling to a distant area and possibly drinking too much before making the return drive to their camps.

Curtis Granberry, a Concan resident for eight years, lives on County Road 348 about two miles from the House Pasture Restaurant. He is familiar with Applicant's restaurant, and by paying \$20, he became a preliminary member of the Water Trough club. He is not concerned that issuing the permits will make traveling along County Road 348 less safe. He does not find the road to be narrow, crooked or dangerous. In fact, he walks along the road during the summer. (T. 222)

⁶John Graves, who lives on a private road that runs off County Road 348 about 200 yards south of Applicant's restaurant, also testified in support of Applicant.

C. Analysis & Conclusion.

As described at the outset of the Evidence section of the proposal for decision, the Protestants' evidence that Applicant's club would endanger people who travel on County Road 348 and area highways was speculative. The protest by the Uvalde County Sheriff was also based on speculation. Applicant proved that the road is not unusually dangerous, and, in particular, that the area where restaurant patrons enter and exit onto the road has wide shoulders and adequate sight distance in both directions. While the road becomes very congested in the summer season, issuing permits to the Applicant will not greatly exacerbate the situation.

The Protestants simply failed to prove the type of unusual condition or situation required to support refusal of a permit under TEX. ALCO. BEV. CODE ANN. §11.46(a)(8). Texas Alcoholic Beverage Commission v. Mikulenska, *supra*. Therefore, the ALJ recommends that the application be granted.

III.
PROPOSED FINDINGS OF FACT

1. Service of proper and timely notice of the hearing was effected upon the parties.
2. On May 15, 1998, Water Trough, Inc. (Applicant), filed its application for private club registration, beverage cartage and food and beverage permits for premises located on the east side of County Road 348, 3.5 miles from its intersection with State Highway 127, Concan, Uvalde County, Texas.
3. Staff of the Texas Alcoholic Beverage Commission (TABC) determined that Applicant met all of the technical requirements to obtain the permits.
4. **The Protest.**
 - a. Beaumont Watkins, Sheriff of Uvalde County, was admitted as a statutory party Protestant at the prehearing conference on September 10, 1998.
 - b. On September 29, 1998, three citizen groups were admitted as Protestants in the proceeding: residents of Real County, Texas, residents of Concan, Texas, and residents of Utopia, Texas.
 - c. The testimony by the referenced Protestants amounted to mere speculation that granting the permits would cause three problems: (1) requiring the Sheriff's Office to dispatch more law enforcement personnel to patrol the County Road 348 area; (2) making driving conditions on County Road 348 very dangerous; and (3) further eroding the area's reputation as a desirable family vacation spot.

5. The Applicant.

- a. The Applicant's restaurant, House Pasture Cattle Company, first opened in May 1998.
- b. In the off season, the restaurant is open on weekends only; from May through September, it is open every day of the week. On summer evenings, they serve from 200 to 400 guests.
- c. It is the only high caliber restaurant in the area; one would have to travel to San Antonio to find comparable restaurants.
- d. The majority of the restaurant's clientele in summertime are tourists staying at the campgrounds and vacation property in the Concan area.
- e. If the permits are granted, only guests aged 21 or older will be permitted to enter the restaurant's bar area. Minors will only be admitted if accompanied by a parent.
- f. All of the employees who handle alcohol will be required to be seller-server trained by the TABC as a condition of employment; thus, they will know how to identify people's ages and intoxication levels.
- g. The Applicant keeps its premises safe. On nights last summer when the restaurant hired entertainers, they also hired off duty commissioned peace officers to patrol and monitor the parking lot area.

6. County Road 348.

- a. The Applicant's restaurant is located on the east side of County Road 348, about 3.5 miles north of its intersection with Highway 127. For all of the reasons set out in the findings hereafter, neither County Road 348 in general, nor the entrance/exit from Applicant's parking lot onto it, are dangerous.
- b. County Road 348 is 5.5 miles long, and it runs north from State Highway 127, crosses the Frio River twice, and eventually loops around and intersects with U.S. Highway 83.
- c. The road has six curves and, in addition to the two river crossings, crosses Shut-In Creek towards the south end of the road and Bear Creek at the road's north end.

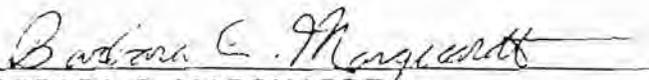
- d. The road is paved for most of its length, but at the Bear Creek crossing it is gravel. Except for the one-lane gravel crossing at Bear Creek, the road has two lanes, but there is no center stripe.
- e. The concrete portion of the low water crossing at Shut-In Creek is wider than the two-lane road running on both sides of it.
- f. The traveled portion of the road is 20.5 feet wide, which is the same size as State Highway 127; however, the exception to this width is the one-lane gravel crossing at Bear Creek, where the bridge is eight feet or less wide.
- g. The road has shoulders that primarily consist of gravel and grass; however, there are portions that have paved shoulders, including both sides of the Shut-In Creek crossing and the first river crossing.
- h. The sight distances in both directions on the road are adequate, as are the distance visibilities around the curves, which vary between 500 and 1,000 feet.
- i. At the entrance/exit from the restaurant parking lot there are wide shoulders on the road in both directions, giving drivers adequate sight distance.
- j. There is nothing unusual at the restaurant parking lot entrance/exit that would cause a problem for drivers coming into or leaving the establishment.
- k. Although the road is rural in nature, there are at least seven permanent businesses on it, and in the summer independent vendors set up stands (*e.g.*, barbecue stands) along the road.
- l. There are also quite a few private residences along County Road 348, whose driveways intersect the road, with the majority of the residences located between State Highway 127 and the second crossing.
- m. It is very unlikely that vehicles could exceed the speed limit on the road, which is 30 miles per hour, with posted advisory speeds of 20 miles per hour at the couple of curves within half of a mile from Highway 127.
 - (1) It is not possible to speed across the second crossing, where traffic often backs up in the summer months.

- (2) Moreover, when cars reach the northern portion of the road, which is gravel, the gravel slows them down, as does the one-lane bridge.
7. As referenced in Findings 5 and 6, the reasons for the protest referenced in Finding 4c are erroneous.

IV.
PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §11.46(a) (Vernon 1999).
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T. CODE ANN. §§2003.021(b) and 2003.042(5) (Vernon 1999).
3. As referenced in Finding 1, the parties received proper and timely notice of the hearing pursuant to TEX. GOV'T. CODE ANN. §2001.051 (Vernon 1999).
4. Pursuant to TEX. ALCO. BEV. CODE ANN. §11.41(a), the Administrator shall give due consideration to the recommendation of the Sheriff of Uvalde County referenced in Finding 4c.
5. Based on Findings 5-7, the Protestants failed to prove the type of unusual condition or situation required to support refusal of a permit under TEX. ALCO. BEV. CODE ANN. §11.46(a)(8). Texas Alcoholic Beverage Commission v. Mikulenka, supra.
6. For the foregoing reasons, the application should be granted.

SIGNED this 19th day of April, 1999.



BARBARA C. MARQUARDT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

