

**DOCKET NO. 592456**

IN RE GRANBURY ENTERTAINMENT, INC.	§	BEFORE THE
D/B/A THE LONGHORN	§	
ORIGINAL APPLICATION N & PE	§	TEXAS ALCOHOLIC
	§	
HOOD COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-01-1852)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 10th day of April, 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Tanya Cooper. The hearing convened and adjourned on February 16, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on March 14, 2001. This Proposal For Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Transcripts, and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

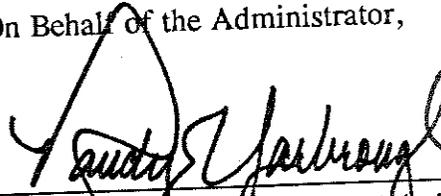
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the Original Application of Granbury Entertainment, Inc. d/b/a The Longhorn, for a Private Club Registration Permit and Beverage Cartage Permit be **GRANTED**.

**This Order will become final and enforceable on May 1, 2001**, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

WITNESS MY HAND AND SEAL OF OFFICE on this the 10th day of April, 2001.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Tanya Cooper  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FACSIMILE (817) 337-3706

Eric Wayne Burrow, President  
Granbury Entertainment, Inc.  
D/b/a The Longhorn  
**RESPONDENT**  
2607 Sunrise Bay Court  
Granbury, Texas 76049-1629  
**CERTIFIED MAIL NO. 7000 1530 0003 1927 2763**

Ken and Cathy Cogdill  
3212 Sunrise Bay Court  
Granbury, Texas 76049

Timothy E. Griffith  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Fort Worth District Office  
Licensing Division

## DOCKET NO. 458-01-1852

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE
COMMISSION, PETITIONER	§	
	§	
VARIOUS CITIZEN PROTESTANTS,	§	STATE OFFICE OF
PROTESTANTS	§	
	§	
V.	§	
	§	
GRANBURY ENTERTAINMENT, INC.	§	ADMINISTRATIVE HEARINGS
D/B/A THE LONGHORN, APPLICANT	§	
(TABC CASE NO. 592456)		

**PROPOSAL FOR DECISION**

Granbury Entertainment, Inc., d/b/a The Longhorn (Applicant or The Longhorn), seeks a Private Club Registration Permit and a Beverage Cartage Permit for a premises to be located at 2607 Sunrise Bay Court, Granbury, Hood County, Texas, from the Texas Alcoholic Beverage Commission (the Commission). The Protestants, consisting of individual residents of a neighborhood near where the proposed premises is to be located and other concerned citizens, assert that the permits should be denied for safety, peace, and general public welfare concerns. The Commission's staff (Staff) is not opposed to the application; it found no basis existed for denial of the requested permits. This proposal for decision recommends the permits be issued.

**I. PROCEDURAL HISTORY**

On November 1, 2000, Applicant filed an original application for a Private Club Registration Permit<sup>1</sup> and a Beverage Cartage Permit.<sup>2</sup> The premises for which this application is sought is located at 2607 Sunrise Bay Court, Granbury, Hood County, Texas. Protests to the application were filed by residents of the neighborhood near 2607 Sunrise Bay Court and other interested citizens. The Protestants assert the application should be denied due to concerns relating to traffic safety and the

<sup>1</sup> Pursuant to §32.01 of the Texas Alcoholic Beverage Code, "[a] private club registration permit authorizes alcoholic beverages belonging to members of the club to be:

- (1) stored, possessed, and mixed on the club premises; and
- (2) served for on-premises consumption only to members of the club and their families and guests, by drink or in sealed, unsoaked, or broken containers of any legal size."

<sup>2</sup> Pursuant to §44.01 of the Texas Alcoholic Beverage Code, "[a] beverage cartage permit authorizes the holder of a mixed beverage or private club registration permit to transfer alcoholic beverages from the place of purchase to the licensed premises as provided in this code."

premises' proximity to where children are regularly present. The Protestants contend that the presence of this licensed premises would create a detrimental effect on the public welfare, morals, and safety.

Staff issued a notice of hearing on January 31, 2001, informing all parties a hearing would be held on the application, as required by § 2001.052 of the Administrative Procedure Act, TEX. GOV'T CODE ANN. Chapter 2001. The hearing was held on February 16, 2001, in Granbury, Texas, before Tanya Cooper, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH). Staff appeared and was represented by Timothy E. Griffith, Commission Staff Attorney. Applicant appeared and was represented by Eric Wayne Burrow, President of Granbury Entertainment, Inc. Kennie Cogdill represented the Protestants. The hearing was concluded and the record closed on that same day.

## II. JURISDICTION

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

## III. DISCUSSION

### A. Applicable Law

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

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

...

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

### B. Public Comment

Over twenty members of the public attended the hearing offering their comments regarding the application both for and against the application. Several

persons opposed to the application cited economic, moral, and safety concerns regarding the application. Persons speaking in favor of the application cited issues associated with reasonable use of private property. One person speaking in favor of the application noted the premises would be closest to his residence and that he did not object to its operation.

### C. Evidence

1. **Physical Setting.** The proposed location of The Longhorn is 2607 Sunrise Bay Court, Granbury, Hood County, Texas, near the corner of Sunrise Bay Court and FM 4. This business is situated on a two-acre commercial tract of land. In the immediate area, there are fifteen other businesses. These businesses include a convenience store, video rental store, self-storage business, grocery store, automotive store, and restaurant. The Longhorn would be the closest of these commercial business to a residential subdivision, Sunrise Bay, and the back of the premises can be viewed from a public boat ramp accessing Lake Granbury.

Sunrise Bay Court is a dead-end street servicing the residential area, Sunrise Bay. FM 4 is a busy roadway extending from Granbury to Thorp Springs. Another roadway extending from FM 4 near Sunrise Bay Court is Oak Trail Drive. Oak Trail Drive is the major access thoroughfare for another much larger residential subdivision, Oak Trail Shores.

2. **The Staff's Evidence.** The Staff took no position regarding issuance of the requested permits. Upon receiving Applicant's application, Staff conducted an investigation of the application's contents. This investigation was conducted by Agent Roy Sturdivant. During the course of Agent Sturdivant's investigation, a protest was received.

Agent Sturdivant testified he has been employed by the Texas Alcoholic Beverage Commission for approximately eighteen years. During that time, he has investigated numerous application protests.

One area of concern that was raised both in Protestants' letters to Commission's staff and during the hearing related to traffic safety. Agent Sturdivant stated that he had investigated this concern with the Texas Department of Public Safety (DPS) when it was brought to his attention. He found that DPS records showed 37 traffic accidents had occurred in the general area of the licensed premises in the past two years. However, at the conclusion of his investigation in this instance, he stated that he had determined there was insufficient evidence to warrant a protest of this application.

In addition to Agent Sturdivant's testimony, Staff presented several exhibits. These included, among other things, the application filed by Applicant and eighteen protest letters from citizens.

**3. The Protestants' Evidence.** The Protestants consisted of residents of Sunrise Bay and other interested citizens. The major area of concern demonstrated throughout the evidence presented by Protestants was that a premises selling and serving alcoholic beverages would be detrimental to the community given its proximity to a residential neighborhood and location on a limited access road near a high traffic area.

One witness, Kennie Cogdill, testified on behalf of the Protestants at the hearing. Mr. Cogdill is a resident of Sunrise Bay. In his testimony, he described the area for the proposed premises at the corner of FM 4 and Sunrise Bay Court.

According to Mr. Cogdill, this corner is the school bus stop and mail drop. Children must walk past The Longhorn each day to catch the school bus and go home after school. Residents must stop at this location to obtain their mail. A public boat ramp accessing Lake Granbury is nearby and is considered a public park. He estimated that the nearest home was within fifty feet of the premises.

Mr. Cogdill further described the congested conditions on FM 4. Eleven traffic accidents had occurred on the section of roadway near the Oak Trail Shores subdivision in the past year according to information provided to him by the DPS. Mr. Cogdill said that persons traveling on this roadway generally must "pray for their lives" under the existing conditions and opined that the addition of a premises serving alcoholic beverages could only increase this danger.

Mr. Cogdill expressed concerns regarding the type of clientele that could be attracted to The Longhorn. The Longhorn would also be near Oak Trail Shores which was characterized as a neighborhood having a high crime rate. Mr. Cogdill opined that the availability of alcohol at The Longhorn might result in higher criminal activity spreading from this neighborhood into the Sunrise Bay subdivision.

In addition to Mr. Cogdill's testimony, he presented documentary evidence, including a letter from the First Baptist Church in Granbury protesting the application, maps of the area, traffic count records of the Texas Department of Transportation, and photographs depicting commercial businesses and residences in the area.

**4. The Applicant's Evidence.** Eric Burrow, President of Granbury Entertainment, Inc., testified at the hearing. Mr. Burrow described his property at the corner of FM 4 and Sunrise Bay Court. This tract has commercial activities presently ongoing on the property. One business currently operated at this location by Mr. Burrow is a convenience store. This business does not sell alcoholic beverages since this location is within a "dry" precinct; however, Mr. Burrow testified that another licensed premises, a private club, is located within approximately one mile of his property.

Mr. Burrow stated that he derives his livelihood from the businesses located on this property and that it was his intention to maintain each business he operated there in a proper manner to preserve his investments. He plans to offer music, both live and from a jukebox, at The Longhorn for dancing. Additionally, satellite television for watching games would be available for club members. His primary focus would be to attract an older crowd as club members at The Longhorn.

The building where The Longhorn would be located is approximately three thousand square feet and has seating capacity for one hundred ten persons. Parking is sufficient given the tract is approximately two acres. Noise would not be a problem in Mr. Burrow's opinion because the building is well insulated, has no windows, and the doors to the property would remain closed at all times.

Mr. Burrow addressed some of Protestants' concerns during his testimony. He conceded that, at present, The Longhorn would be the last commercial business nearest residences in Sunrise Bay, but stated that whether The Longhorn was a licensed premises or not, some commercial use would be made of the property. Mr. Burrow pointed out that the residence which is closest to the building is approximately one hundred fifty feet away. This residence is currently occupied by an employee of Mr. Burrow.

In reference to increased traffic concerns, Sunrise Bay Court is a "No-Outlet" street and is clearly marked. Mr. Burrow opined that persons leaving from The Longhorn would have no purpose in driving into the residential subdivision so traffic should not increase on Sunrise Bay Court beyond his property. Mr. Burrow testified that he had discussed his plans for this property with Hood County's sheriff and that no concerns had been raised by this official to the proposed premises at this location.

One exhibit was offered by Applicant. In this exhibit, several photographs of the proposed premises were included showing both the inside of the building and the surrounding area outside the building.

#### **D. Analysis, Conclusion, and Recommendation**

All of the persons offering public comment to the ALJ and the witnesses testifying at the hearing showed sincerity and conviction in the way they expressed their opinions. It is admirable that so many members of a community would take an active role in seeking to safeguard the public welfare; applications for alcoholic beverage permits and licenses certainly merit such intense scrutiny. Based on the evidence, however, the ALJ concludes the Protestants failed to demonstrate the issuance of the requested permits would be inconsistent with the public's safety or contrary to the public's general welfare, peace, morals, and public sense of decency.

The ALJ recognizes there is considerable traffic on FM 4 and that several traffic accidents have occurred on this roadway. Protestant's evidence shows FM 4 carries

a moderate amount of traffic as compared to other roadways in the area. FM 51 carries a slightly lesser amount of traffic than FM 4, while roadways such as U.S. Highway 377 and State Highway 144 have significantly greater traffic levels. No evidence was produced to show what number, if any, of the traffic accidents that have occurred on FM 4 may have been alcohol related. Although the occurrence of even a single collision or incidence of DWI on public roadway is not acceptable, the ALJ was not persuaded that the sale and consumption of alcohol subject to the provisions of the Texas Alcoholic Beverage Code and Commission's regulatory authority on the premises of The Longhorn would be inconsistent with the public's safety.

While there are residences on Sunrise Bay Court, The Longhorn is situated on a commercial tract; and as Mr. Burrow testified, some commercial use will be made of the property where the proposed premises has been constructed. The ALJ agrees with Mr. Burrow's assessment that it is unlikely that any patrons of The Longhorn will travel into the residential area beyond the premises and increase traffic in the neighborhood. Nor does the ALJ believe that the proposed premises will necessarily attract persons seeking to engage in criminal activity.

The ALJ was further not persuaded that the issuance of the requested permits would be detrimental to the safety or welfare of the children in the area. No evidence was presented to show that The Longhorn was within established distance requirements of any church, public school, day-care center, child-care center, or public hospital.<sup>3</sup> Despite a school bus stop being located nearby, children generally travel to and from school at hours of the day when The Longhorn is likely to be closed. And while children may play in the public boat ramp area behind the premises, the purpose of the boat ramp is to provide access for boaters on the lake rather than for use as a public park or playground. Mr. Burrow expressly stated that no one under the age of twenty-one will be permitted inside the premises. Because of these factors, the ALJ does not find issuance of the requested private club permit or beverage cartage permit would be contrary to the general welfare of the public, or specifically, children in the area.

Based upon the evidence and this analysis, the application of The Longhorn for a Private Club Registration Permit and a Beverage Cartage Permit meets the Commission's requirements. Accordingly, the application should be granted.

#### IV. FINDINGS OF FACT

1. Granbury Entertainment, Inc., d/b/a The Longhorn (Applicant or The Longhorn) filed an original application with the Texas Alcoholic Beverage Commission (the Commission) for a Private Club Registration Permit and a Beverage Cartage

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<sup>3</sup>TEX. ALCO. BEV. CODE ANN. §§ 109.33 and 109.331.

Permit for a premises located at 2607 Sunrise Bay Court, Granbury, Hood County, Texas.

2. Protests to the application were filed by residents of the subdivision, Sunrise Bay, and other interested citizens (the Protestants) asserting that the application should be denied due to traffic safety issues and the general detrimental impact the sale of alcoholic beverage would have on the public, particularly the children, residing in the area.
3. On January 31, 2001, Commission's 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.
4. The hearing was held on February 16, 2001, in Granbury, Hood County, Texas, before Tanya Cooper, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH). Commission's Staff appeared and was represented by Timothy E. Griffith, Staff Attorney. Applicant appeared and was represented by Eric Wayne Burrow, President of Granbury Entertainment, Inc. Protestants appeared and were represented by Kennie Cogdill. The hearing concluded on February 16, 2001, and the record was closed on that date.
5. The Longhorn is located on a two-acre commercial tract of land at the corner of Sunrise Bay Court and FM 4, in an unincorporated area of Hood County, Texas.
6. Sunrise Bay Court is a "No-Outlet" street leading into a residential subdivision, Sunrise Bay; while FM 4 is a moderately traveled roadway leading from Granbury to Thorp Springs.
7. In the immediate area of The Longhorn, there are fifteen other businesses, including a convenience store, video rental store, self-storage business, grocery store, automotive store, and restaurant.
8. The nearest residence is between fifty and one hundred fifty feet from The Longhorn and occupied by an employee of Applicant's president, Eric Wayne Burrow.
9. There are no churches, public schools, day-care centers, child-care centers, or public hospitals within distance requirements established pursuant to statute near The Longhorn.
10. Applicant plans to operate The Longhorn to attract an older clientele. No one under twenty-one will be allowed to enter the premises.

11. The Longhorn will feature music for dancing and satellite television for watching games.
12. The Longhorn's building is adequate for the proposed activities. It is approximately three thousand square feet, with a seating capacity for one hundred ten persons, sufficient parking surrounds the building, and it is well insulated to prevent noise from music or television from being bothersome.
13. FM 4 is a paved farm-to-market road; although traffic accidents may have occurred on this roadway, no evidence was produced to establish that this area was more dangerous than any other similar roadway.

**V. CONCLUSIONS OF LAW**

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Chapter 5 and §§ 6.01 and 11.61. TEX ALCO. BEV. CODE ANN. § 1.01 *et seq.*
2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. Chapter 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Based on the foregoing findings, a preponderance of the evidence shows that issuance of the requested permits will not adversely affect the safety of the public, nor will it adversely affect the general welfare, peace, or morals of the people or violate the public sense of decency, pursuant to TEX. ALCO. BEV. CODE ANN. §11.46(a)(8).
5. Based on the foregoing findings and conclusions, the application of Granbury Entertainment, Inc., d/b/a The Longhorn for a Private Club Registration Permit and Beverage Cartage Permit should be granted.

Signed this 14<sup>th</sup> day of March, 2001.



TANYA COOPER

ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS