

**DOCKET NO. 598865**

IN RE P.I.A. PRIVATE CLUB INC.	§	BEFORE THE
D/B/A WINGSTOP	§	
ORIGINAL APPLICATION NB, PE & FB	§	
	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-2505)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 9th day of July 2002, 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 and adjourned on April 26, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 7, 2002. 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.

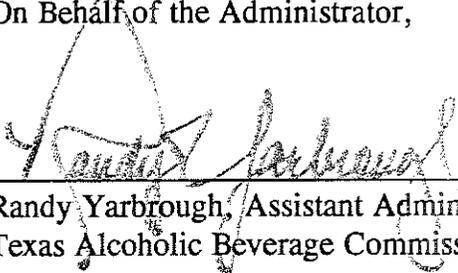
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the Original Application for an NB, PE and FB is hereby **GRANTED**.

**This Order will become final and enforceable on July 30, 2002**, 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 9th day of July, 2002.

On Behalf of the Administrator,

  
\_\_\_\_\_  
Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Jerry Van Hamme  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FACSIMILE (214) 956-8611

P.I.A. PRIVATE CLUB INC.  
D/B/A WINGSTOP  
RESPONDENT  
3128 Forest Ln., Ste. 251  
Dallas, Texas 75234-7726  
CERTIFIED MAIL NO. 7001 2510 0000 7278 8268

Timothy E. Griffith  
ATTORNEY FOR PETITIONER  
TABC Legal Section

Licensing Division  
Dallas District Office



Restaurants. 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, and finds, that the place or manner in which the applicant may conduct its business warrants a refusal based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8); 16 TEX. ADMIN. CODE § 31.1(a)(3).

## **III. EVIDENCE**

### **A. PETITIONER'S EVIDENCE**

On January 7, 2002, Respondent filed an original application with the Commission for a Private Club Beer and Wine Permit, a Beverage Cartage Permit, and a Food and Beverage Certificate. By letter dated February 12, 2002, Protestants submitted a complaint to the Commission, alleging that granting the application could cause crime to increase in the neighborhood, reduce property values, increase the availability of alcohol to minors, and increase the likelihood that "gentlemen's clubs" and other sexually oriented businesses would locate to the neighborhood.

On February 20, 2002, Agent Anthony Keel, an Agent for the Commission, initiated an investigation based on Protestants' complaint. Agent Keel found that a business licensed by the Commission is approximately five doors from Respondent's location in the same shopping mall, that four other licensed premises are in very close proximity to Respondent's location, and that a search of the Dallas Police Department "Calls for Service" to Respondent's address over a 12-month period did not show any useable information regarding alcohol-related incidents or problems relating to minors. Agent Keel concluded he was unable to determine that sufficient facts existed to protest Respondent's applications.

### **A. PROTESTANTS' EVIDENCE**

#### **1. Thomas Hines**

Thomas Hines testified that Respondent's late operating hours – 4:00 p.m. to midnight -- along with its limited menu, alcohol availability, and "fast-food" format, would make it likely to attract late-night customers, including minors. Under-age customers congregating in Respondent's parking lot at night and drinking alcohol purchased from Respondent's establishment could lead to problems.

In addition, Respondent is located in a strip mall with inadequate lighting. The mall consists of two separate buildings situated at right angles to one another in an "L" shaped arrangement. The two buildings, however, do not physically abut one another; they are separated by a portion of the parking lot. This parking lot area, being located between the two buildings and partially screened

by one of them, is not readily observable from the street. It is also poorly lighted. Respondent is located near the end of one building, close to this portion of the parking lot. It is foreseeable that this parking area could become a gathering place for Respondent's late-night, under-age, alcohol-consuming customers.

In addition, although there are other establishments in the neighborhood licensed by the Commission, Respondent is significantly different from these. Licensees, such as the nearby "El Fenix" and the "Two Guys From Italy" restaurant, do not operate "fast-food" formats and do not stay open as late as Respondent. Respondent therefore represents a different kind of neighbor, and a less desirable neighbor, than the existing licensed establishments.

## **2. Cathy Smith**

Cathy Smith, Secretary for the Northwest Dallas Improvement League, testified that the protest filed by the officers and directors of the improvement league represent the wishes of the more than 2000 homeowner members of the League. The League has worked diligently for many years to protect and improve the neighborhood, and is therefore opposed to the introduction of any businesses into the area that may encourage crime or prostitution, or otherwise have a negative effect on the neighborhood.

## **C. RESPONDENT'S EVIDENCE**

### **1. Michael Foster**

Michael Foster, Vice President for Wingstop Restaurants, testified that he is in charge of new store openings, and is responsible for training and inspecting franchise locations. He characterized Wingstop restaurants as family restaurants with high standards, and testified they do not emphasize alcohol sales, as evident both by Wingstop company policies and the amount of beer sales actually generated at Wingstop stores.

Wingstop company policy is set forth in, among other things, the "Atmosphere Guidelines" (Resp. Ex. No. 8), which are written rules applicable to all Wingstop locations. Under these guidelines, advertising in Wingstop stores is limited solely to an area on the side of the beer and soft drink cooler, and beer advertising is specifically limited to no more than ten percent of the printable space of that area. No advertising for alcoholic beverages appears on the walls or at the tables. In addition, menus, which are prepared according to company policy, do not even list alcoholic beverages as being available at the restaurant. (Resp. Ex. No. 7).

Regarding actual beer sales, the income statement for the 12 months ended December 31, 2001, for a Wingstop restaurant presently operated by the corporate officers of Respondent (Resp. Ex. No. 5), show that beer sales at this location constituted only 3.62 percent of total sales of the store. For all 55 Wingstop stores, beer sales as a percent of net sales for Saturday, April 20, 2002, (Saturday traditionally being the stores' busiest night) ranged from zero to 14 percent, with 44 of the

55 stores showing beer sales of five percent or less. Only three stores had beer sales in excess of ten percent. (Resp. Ex. No. 6).

He further testified that Wingstop restaurants are not "fast-food" establishments. "The Wingstop Story" (Resp. Ex. No. 9), a document that is part of the company policies, describes Wingstop restaurants as "quick service-casual dining" establishments. Wingstops differ from "fast-food" restaurants, according to Mr. Foster, in that Wingstops do not have drive-through windows, and the food is not prepared until the order is received. "Fast food" locations offer drive-through windows, and usually prepare the food in advance of the order.

**2. Pam McWhorter**

Pam McWhorter, owner of two Wingstop franchises and co-president of the Wingstop franchisee association, testified that in the four years she has owned her Wingstop stores she has encountered no crime or prostitution problems related to her establishment. Her customers tend to be families, with beer sales constituting only four to five percent of total sales. In her opinion, her stores have not contributed to the deterioration of the neighborhoods where they are located.

**3. Joe Hoing**

Joe Hoing, owner of a Wingstop franchise for approximately three and one half years and a recent co-president of the Wingstop franchisee association, testified that he has observed no problems relating to crime, prostitution, or teenage loitering at his store. All alcohol sold at his store is consumed on-premises, as required by law, and alcohol sales average only three to five percent of total sales. He further testified that the average age of his customers is from the early to mid-thirties.

**4. Tracy Henry**

Tracy Henry, a corporate officer and owner of Respondent, owns two other Wingstop stores. She testified that in the two and one-half years she has owned these stores she has had no alcohol-related citations from the Commission or any other disciplinary problems. She testified that alcohol sales are not emphasized at these locations, and that, accordingly, alcohol sales average only approximately three and one-half percent of total sales. Although most of her business is take-out, her stores are family-friendly, with high-chairs on the premises for small children. The stores do not have beer signs on the walls, do not advertise alcoholic beverages at the tables, and do not have the general appearance or atmosphere of a bar. She estimated that the average age of her customers is in their mid-thirties, and that she has encountered no problems regarding alcohol sales to minors or with minors loitering at her stores.

She emphasized that under the terms of her agreement with the Wingstop organization she is responsible to ensure that her stores abide by all rules, regulations, and laws of the State concerning sales of alcohol. She also testified that, pursuant to this agreement, sales of alcohol may

not be advertised in any manner without the permission of the Wingstop corporation, and sales of alcohol are not to be emphasized at the stores.

She further testified that, like the Protestants, she was concerned about the lack of lighting in the parking lot of the shopping mall where Respondent is located. She therefore had the landlord install additional lights in the parking lot for safety reasons.

#### **IV. ANALYSIS**

The evidence does not show that Wingstop restaurants cater to underage drinkers, or that Wingstop restaurants constitute a late-night gathering place for minors. The evidence does not show that Wingstop restaurants emphasize the sale of alcoholic beverages at their stores, or that the decor or environment either creates or encourages a bar-type atmosphere. The evidence likewise does not show that existing Wingstop restaurants have either caused or contributed to the deterioration of their surrounding neighborhoods, or have facilitated the introduction of alcohol-related or sexually oriented businesses into those areas.

The evidence further does not show that the owners or officers of Respondent have been the subject of any past disciplinary actions by the Commission that make them unfit, unqualified, or in any other way ineligible to be granted the requested application; or that Respondent's location is characterized by either past or present activity, criminal or otherwise, that warrants denying Respondent's application.

The evidence does show that Respondent, if granted the application, would operate in a manner consistent with other Wingstop restaurants and would abide by the same corporate policies. Accordingly, the evidence shows that Respondent, like the other Wingstop locations, would neither cause nor contribute to the deterioration the general welfare, health, peace, morals, and safety of the surrounding neighborhood or public sense of decency.

#### **V. RECOMMENDATION**

The ALJ recommends that Respondent's application for a Private Club Beer and Wine Permit, Beverage Cartage Permit, and Food and Beverage Certificate be granted.

#### **FINDINGS OF FACT**

1. All parties received notice of the hearing, all parties appeared at the hearing, and no objection was made to jurisdiction, venue, or notice.
2. On January 7, 2002, Respondent, PIA Private Club, Inc., d/b/a Wingstop, 3128 Forest Lane, Suite 251, Dallas, Dallas County, Texas, filed an original application with the Commission for a Private Club Beer and Wine Permit, a Beverage Cartage Permit, and a Food and Beverage Certificate.

3. By letter dated February 12, 2002, Protestants submitted a complaint to the Commission requesting that the permits and certificate not be issued to Respondent. Protestants complained that granting this application would likely result in increased crime in the neighborhood, the reduction of property values, an increase in the availability of alcohol to minors, and the increased likelihood of "gentlemen's clubs" and other sexually oriented businesses moving into the neighborhood.
4. On February 20, 2002, Agent Anthony Keel, an Agent for the Commission, initiated an investigation. Agent Keel found that a business licensed by the Commission exists approximately five doors from Respondent's location in the same shopping center, that four other licensed premises are in very close proximity to Respondent's location, and that a search of Dallas Police Department "Calls for Service" at the address where Respondent is located for the preceding 12-month period did not show any useable information regarding alcohol-related incidents or problems associated with minors. Agent Keel concluded he was unable to determine that sufficient facts existed to protest Respondent's applications.
5. The Commission notified Respondent by letter dated March 13, 2002, that a protest had been received by the Commission, and on April 10, 2002, an Order Setting Hearing was sent by SOAH to the parties setting this matter for hearing on April 26, 2002.
6. On April 26, 2002, public comments were accepted and an evidentiary hearing held before Jerry Van Hamme, SOAH ALJ, at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. Staff was represented by its attorney, Timothy Griffith. Protestants were represented by Thomas Hines, President of the Northwest Dallas Improvement League. Respondent was represented by Michael Foster, Vice President of Wingstop Restaurants. The record was closed on that date.
7. Respondent is required to abide by Wingstop corporate policies. In accordance with these policies, Respondent, if granted the application, will not conduct itself as a bar, will not advertise itself as a bar, and will not exhibit the characteristics of a bar. It will not cater to underage drinkers and will not allow or encourage consumption of alcohol by minors. Alcohol sales will not be emphasized, advertising of alcoholic beverages will be deliberately limited, and alcoholic beverages will not be listed on the menu.
8. The sale of alcohol at existing Wingstop restaurants do not lead to or facilitate an increase of crime in the neighborhood; the introduction of dance halls, "gentlemen's clubs," or other sexually oriented businesses into the neighborhood; a decrease in neighboring property values; or the deterioration of the general welfare, health, peace, morals, or safety of the community. Based on this record Respondent, if its application is granted, will likewise not lead to or facilitate any of these activities or problems.
9. The owners and officers of Respondent have no past Commission violations that prevent Respondent's application from being approved. The address where Respondent is located

has no past Commission violations that prevent Respondent's application from being approved.

**CONCLUSIONS OF LAW**

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. Subchapter B of ch. 5, §§ 6.01 and 11.61. 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, under TEX. GOV'T CODE ANN. §2003.021.
2. No reasonable grounds exist to believe that the place or manner in which Respondent will conduct its business warrants a refusal of Respondent's application based on the general welfare, health, peace, morals, and safety of the people or the public sense of decency. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8), 16 TEX. ADMIN. CODE § 31.1(a)(3).
3. Based on the foregoing Findings and Conclusions, Respondent's application should be granted.

SIGNED this 7 day of June, 2002.

  
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JERRY VAN HAMME  
Administrative Law Judge  
State Office of Administrative Hearings