

DOCKET NO. 599794

IN RE DIAMONDS & PEARLS  
PRIVATE CLUB, INC.  
ORIGINAL APPLICATION N, NL & PE

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BEFORE THE

TEXAS ALCOHOLIC

LAMAR COUNTY, TEXAS  
(SOAH DOCKET NO. 458-02-3171)

BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 15th day of August 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Monica M. Branch. The hearing convened and adjourned on June 20, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 22, 2002. This Proposal For Decision (attached hereto as Exhibit "A"), was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

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

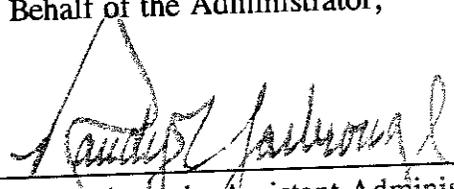
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the Original Application for a Private Club Registration Permit, a Private Club Late Hours Permit, and a Beverage Cartage Permit for the above-captioned applicant be GRANTED.

**This Order will become final and enforceable on September 5, 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 or through the U.S. Mail, as indicated below.

**SIGNED** this the 15th day of August, 2002.

On Behalf of the Administrator,

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

TEG/bc

The Honorable Monica M. Branch  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FAX (817) 377-3706

**DIAMONDS & PEARLS PRIVATE CLUB, INC.**  
**RESPONDENT**  
419 Elice Court  
Dallas, TX 75233-1631  
**CERTIFIED MAIL NO. 7001 2510 0000 7276 5863**

Dorothy Woods  
616 West Provine Street  
Paris, Texas 75460  
**CERTIFIED MAIL NO. 7001 2510 0000 7276 5856**

Ivanita Roland  
601 North Cedar Apt. 520  
Lansing, MI 48912  
**CERTIFIED MAIL NO. 7001 2510 0000 7276 5849**

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

Licensing Division  
Dallas District Office

DOCKET NO. 458-02-3171

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION, PETITIONER,  
DOROTHY WOODS AND IVANITA ROLLAND,  
PROTESTANTS

VS.

DIAMONDS & PEARLS PRIVATE CLUB, INC.,  
RESPONDENT  
LAMAR COUNTY, TEXAS  
TABC CASE NO. 599794

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

Diamonds & Pearls Private Club, Inc. (Respondent) has applied for a Private Club Registration Permit, Private Club Late Hours Permit, and Beverage Cartage Permit. Dorothy Woods and Ivanita Rolland (Protestants) protest issuance of these permits, alleging that Respondent will operate its business in a place or manner which warrants the refusal of the permits based upon the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) takes no formal position on the matter. This proposal for decision recommends issuance of the permits.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. chs. 5 and 11. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

On June 3, 2002, Petitioner issued its Notice of Hearing, directed to Respondent at 4119 Elice Court, Dallas, Texas 75233-1631. On June 20, 2002, a hearing convened before SOAH ALJ Monica Branch at 6333 Forest Park Road, Suite 150A, Dallas, Dallas County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent appeared through its President, Leo Thomas. Protestants did not appear and were not represented at the hearing. After presentation of evidence, the record closed on June 20, 2002.

**II. LEGAL STANDARDS AND APPLICABLE LAW**

TABC may refuse issuance of a permit if "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," pursuant to TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8).

### III. EVIDENCE AND PARTIES' CONTENTIONS

On May 10, 2002, Respondent filed an original application with TABC for a Private Club Registration Permit, Private Club Late Hours Permit, and Beverage Cartage Permit for the premises located at 725 N.W. 7<sup>th</sup> Street, Paris, Lamar County, Texas. Protestants filed letters with TABC containing the following allegations: Respondent's business is within 100 feet of a church and across the street from a housing authority; the owners of Respondent's business have not made themselves known; and Respondent's business will be detrimental to the health, safety, and welfare of the public, with the potential for littering and loitering by patrons after hours, a potential increase in traffic noise and noise generally, and a potential lack of parking. Protestants did not offer any evidence in support of these allegations at the hearing.

Regarding the allegation that Respondent's business is within 100 feet of a church, Mr. Thomas testified that city officials in Paris, Texas had determined that Respondent's business is not within 300 feet of any church.

Regarding the allegation that the owners of Respondent's business have not made themselves known, the application discloses the identity of Respondent's ownership. This information was also published in the local newspaper, as indicated in the attachment to the application.

Finally, regarding the allegation that Respondent's business will operate in a manner detrimental to the health, safety, and welfare of the public, Mr. Thomas adequately addressed these concerns in his testimony. Mr. Thomas indicated that he had consulted with Chief Carl Lewis of the Paris Police Department to avoid potential problems with the community. The walls of Respondent's business had been double insulated to reduce noise. Respondent's business has adequate parking for its members. Respondent has also arranged for officers with the Paris Police Department to be on the premises to escort away individuals who are not members of the club and individuals who attempt to loiter in the parking lot after hours.

### IV. ANALYSIS

Protestants' allegations are unsupported by the evidence offered at the hearing. Respondent has met all legal requirements for issuance of the permits. Respondent has also taken steps to avoid detrimental effects on the community caused by issuance of the permits.

## V. RECOMMENDATION

The ALJ recommends that Respondent's original application for a Private Club Registration Permit, Private Club Late Hours Permit, and Beverage Cartage Permit for the premises located at 725 N.W. 7<sup>th</sup> Street, Paris, Lamar County, Texas, be granted.

## VI. PROPOSED FINDINGS OF FACT

1. Respondent, Diamonds & Pearls Private Club, Inc., filed an application with the Texas Alcoholic Beverage Commission (TABC) for a Private Club Registration Permit, Private Club Late Hours Permit, and Beverage Cartage Permit for the premises located at 725 N.W. 7<sup>th</sup> Street, Paris, Lamar County, Texas.
2. Dorothy Woods and Ivanita Rolland (Protestants) filed protest letters with TABC, alleging that Respondent's business is within 100 feet of a church and across the street from a housing authority; the owners of Respondent's business have not made themselves known; and Respondent's business will be detrimental to the health, safety, and welfare of the public, with the potential for littering and loitering by patrons after hours, a potential increase in traffic noise and noise generally, and a potential lack of parking.
3. Respondent's business is not within 300 feet of any church.
4. Respondent disclosed the identity of its ownership in its application to TABC, as well as in a local newspaper publication.
5. Respondent has taken measures to prevent detrimental effects of the operation of its business on the community; including double insulating the walls for noise reduction, providing for adequate parking, and arranging for officers with the Paris Police Department to work security.
6. The evidence fails to support the Protestants' allegations.
7. On June 3, 2002, Petitioner issued its Notice of Hearing, directed to Respondent at 4119 Elice Court, Dallas, Texas 75233-1631.
8. On June 20, 2002, a hearing convened before SOAH ALJ Monica Branch at 6333 Forest Park Road, Suite 150A, Dallas, Dallas County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent appeared through its President, Leo Thomas. Protestants did not appear and were not represented at the hearing. After presentation of evidence, the record closed on June 20, 2002.

## VII. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding, pursuant to TEX. ALCO. BEV. CODE ANN. chs. 5 and 11.
2. SOAH has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed 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 upon Respondent, pursuant to TEX. GOV'T CODE ANN. ch. 2001.
4. Based upon the Proposed Findings of Fact and TEX. ALCO. BEV. CODE ANN. ch. 11, Respondent's application for a Private Club Registration Permit, Private Club Late Hours Permit, and Beverage Cartage Permit should be granted.

SIGNED on this the 22nd day of July, 2002.

*Monica Branch*

MONICA BRANCH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS