



DOCKET NO. 458-02-3784

TEXAS ALCOHOLIC BEVERAGE
 COMMISSION, Petitioner, and THE
 FORT WORTH POLICE DEPARTMENT,
 FORT WORTH INDEPENDENT SCHOOL
 DISTRICT, AND CITY OF
 FORT WORTH, Protestants

§

BEFORE THE STATE OFFICE

V.

§

OF

3425 CLUB, INC.
 D/B/A 3425 CLUB, Applicant
 Tarrant County, Texas
 (TABC CASE NO. 600341)

§

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

3425 Club, Inc. d/b/a 3425 Club (Applicant), seeks a Mixed Beverage Permit and Mixed Beverage Late Hours Permit for a premises to be located at 3425 S. Grove Street, Fort Worth, Tarrant County, Texas, from the Texas Alcoholic Beverage Commission (the Commission). The Protestants, consisting of officials from the Fort Worth Police Department, the Fort Worth Independent School District, and the City of Fort Worth assert that the permits should be denied for safety, peace, and general public welfare concerns. The Commission's staff (Staff) did not take a position concerning 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 June 14, 2002, Applicant filed an original application for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit. The premises where this application is sought is located at 3425 S. Grove Street, Fort Worth, Tarrant County, Texas. Protests to the application were filed by the Fort Worth Police Department, the Fort Worth Independent School District, and the City of Fort Worth. The Protestants assert the application should be denied due to past incidents of criminal activity, noise, and litter on or near the premises and the proximity of the premises to a school in the area. The Protestants contend that the presence of this licensed premises would create a detrimental effect on the student population and the general welfare, morals, and safety of the public.

Staff issued a notice of hearing on July 29, 2002, 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 July 30, 2002, in Fort Worth, 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 Steven Swander, Attorney at Law. Protestants were represented at the hearing by Officer E. B. Adcock, Fort Worth Police Department, and Rita Rodriguez Utt, Attorney for the Fort Worth Independent School District. There were no challenges to the notice of hearing as provided, jurisdiction or venue. The hearing concluded on that date.

The record remained open in this matter until August 15, 2002, to provide the parties with an opportunity to supplement the record concerning the change of ownership in another licensed premises, Partners Club, and to submit proposed findings of fact and conclusions of law and other materials in support of their positions. The record in this matter closed at 5:00 p.m. in August 15, 2002, after receiving written supplemental materials from the parties.

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

The ALJ convened a public hearing in this matter prior to taking evidence in this case. No one spoke either for or against the application during the public comment portion of this proceeding.

C. Evidence

1. **Physical Setting.** The proposed location of 3425 Club is 3425 S. Grove Street, Fort Worth, Tarrant County, Texas. Grove Street is not a thru-street, and the proposed premises would be located near the end of the street. The property is owned by the Peters Living Trust, for which Applicant's president, Earl H. Peters, Sr., is the trustee.

The building located on the property at 3425 S. Grove Street was initially constructed to be a warehouse in 1962. The general character of the immediate area is commercial or light industrial and is zoned for industrial usage. However, the structure has never been used for any purpose other than as a location for the sale and consumption of alcoholic beverages. Bars, nightclubs, and dance halls have previously been authorized to sell alcoholic beverages from this location. One other bar is located in the general area. There are few residential neighbors to this property.

Approximately seven years ago, a church located next door to the premises at 3445 S. Grove Street. A public school, Worth Heights Elementary School, is also located near the premises at the corner of Butler and Interstate Highway 35 W Service Road. From the required method of calculating distances under the Code, the school is an acceptable distance, 1008 feet, from the proposed premises

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. It found no basis for denial of the requested permits. During the course of Staff's investigation, protests were received.

Staff presented numerous exhibits. These included, among other things, the application filed by Applicant with certificates of approval from the City Secretary of the City of Fort Worth, Tarrant County Clerk, and Tarrant County Judge and protest letters received by Staff from the Fort Worth Police Department and the Fort Worth Independent School District.

3. **The Protestants' Evidence.** The Protestants presented three witnesses at the hearing. Protestants' first witness was Rev. Vernon C. Jenkins, Jr., pastor of Eagles Nest Baptist Church. Rev. Jenkins testified that he has operated a church next door to the premises for the past seven years. During that time, three different bars

have been located at the premises. Most recently, a club named El Tenampa, was being operated by another person who had leased the facility from Mr. Peters.

Rev. Jenkins stated that up until El Tenampa closed there were numerous problems existing associated with parking, litter, drunken individuals, and incidents of property damage. According to Rev. Jenkins, there had been confrontations in the past with some of El Tenampa's Hispanic patrons, which he described as "unsavory". He confirmed that he had made several police reports concerning these matters to the Fort Worth Police Department.

Rev. Jenkins said that he has testified at other hearings protesting applications for alcoholic sales permits for this location. He acknowledged, however, that operation of a bar next to the church's property was a use which was permissible according to the regulations of the City of Fort Worth, since the sale of alcoholic beverages had been ongoing at the location prior to the establishment of his church.

Rev. Jenkins testified the Mr. Peters was aware of the problems his tenants were causing. Mr. Peters installed a fence between the parking lot of his property and the church's parking lot. Placing the fence between the two parking lots had, in Rev. Jenkins' opinion, reduced the number of parking problems. According to Rev. Jenkins, Mr. Peters had also agreed to put more security in place and assist with cleaning up the parking lot, but Rev. Jenkins opined that Mr. Peters had not followed through on those commitments.

Officer Edward Adcock, Fort Worth Police Department, testified next for the Protestants. He stated that he had protested four previous alcohol sales applications at that location. He stated that these protests were made due to the drain of police service which occurred due to persons which frequented the previous establishments at this location. Officer Adcock, testifying from police records dating from May 2001 to May 2002, stated that there had been 62 calls for service and 21 arrests made at the premises before it was closed. Additionally, during a previous protest concerning an application for a Wine and Beer Retailers Permit by another applicant (3425 Nite Club/Augustin Melendez), the Fort Worth Police Department had documented numerous arrests in the area for the time period from August 1, 2000, through August 1, 2001. Most of the arrests were for the offense of public intoxication.

Officer Adcock said that he had discussed problems at the premises several times with its owner, Mr. Peters. After one of these conversations, Mr. Peters removed his last tenant from the property because it was alleged that a drug-related robbery had occurred on the premises. Officer Adcock opined that other future operators of the premises, including Mr. Peters, could continue with the same pattern for allowing violations of the law to occur on the premises. He based this opinion on the long history of law violations that had occurred on or near the proposed premises.

During his testimony, Officer Adcock alleged that Mr. Peters was currently involved with operations of another licensed premises, Partners Club. Officer Adcock opined that Mr. Peters was participating in a subterfuge in the current operation of that premises, which should indicate that he would not fully comply with lawful operations at 3425 Club if a permit were to be granted via these proceedings.

Testifying next on behalf of the Protestants was Berty Magana. Ms. Magana is the principal of Worth Heights Elementary School and has worked in that capacity for eight years. She testified that the population of the area was largely Hispanic and could be characterized as poor given that 83% of the students at her school qualified for free lunch programs. She stated that the community was very close-knit and several efforts were ongoing to improve conditions in the neighborhood by securing grants for community projects. She felt that granting another alcoholic beverage sales permit for the proposed premises would not be consistent with or contribute to the goal of improving the overall conditions in the community.

Ms. Magana said that traffic was heavy near her school at the intersection of Ripy Street and the Interstate Highway 35W service road. Grove Street is a street which runs alongside the school's grounds. School activities are ongoing from approximately 8:30 a.m. until 6:00 p.m. There are athletic fields and adult activities which are occasionally held in the school's buildings in the evenings. The school's playground facilities are gated, but not fenced.

Ms. Magana expressed concern that renewed sales of alcoholic beverages at the proposed premises would lead to intoxicated drivers being on the roads near her school. She also opined that other crime in the area might increase. There were already incidents of criminal mischief: graffiti had been painted on portable school facilities and there had been thefts of equipment. When asked by Applicant's counsel, Ms. Magana acknowledged that Grove Street was not a thru-street, and that it would be unlikely that a school child should be walking in the area of the proposed premises at 7:00 p.m., when the club would start its operations.

In addition to witness testimony, the Protestants presented documentary evidence. Exhibits admitted on behalf of the Protestants included numerous photographs of the school grounds and the proposed premises at 3425 S. Grove Street.

4. The Applicant's Evidence.

Earl H. Peters, Sr. testified at the hearing. Mr. Peters discussed his plans for the proposed premises provided the permits requested from the Commission were granted. He testified that he would be changing the club's most recent format which during the 1990's had been frequented mostly by Hispanics, to one which would appeal to the growing numbers of Filipino residents in the Fort Worth area.

Mr. Peters stated that he has lived in Fort Worth since approximately 1969. He has owned and operated bars in this area, and has never had a license or permit suspended or been arrested. He denied having any interest in the licensed premises, Partners Club, stating that his interest had been sold. He acknowledged that the property where Partners Club is located, 2104 Jacksboro Highway, Fort Worth, Texas, is owned, as is the property at 3425 S. Grove Street, by a separate entity, Peters Living Trust.

Mr. Peters stated that the building at 3425 S. Grove Street had been built in 1962, and that it had always been used as a licensed premises selling alcoholic beverages. Mr. Peters operated a bar there from 1962 until his retirement in 1979. Since 1979, the premises had been leased to tenants who continued operating various clubs and bars at the location.

Problems with one previous tenant, the operator of El Tenampa, were acknowledged during Mr. Peter's testimony. Mr. Peters stated that upon learning about some of the details concerning the operator's activities, Mr. Peters evicted him from the premises on morals charges of his lease agreement.

Prior to Rev. Jenkins' church moving next door, Mr. Peters stated that he had rented the church's parking lot and kept it, along with his property, clean. He said that no houses were located in the area.

Mr. Peters stated that his proposed hours of operation would begin at 7:00 p.m. on Friday, Saturday, and Sunday evenings, and possibly Thursday, if business warranted an additional evening. The club would only admit persons 21 years of age or older. He has provided for an experienced wait staff, a DJ, karaoke, and would want to employ off-duty police officers for security purposes. After a complete change in decor and format, Mr. Peters did not envision that the former unsavory element that had frequented prior licensed premises would be present at the proposed establishment.

Applicant offered four exhibits during the hearing. These exhibits included:

- City of Fort Worth Certificate of Occupancy, indicating the land could be used as a lounge, issued to Earl H. Peters, Sr, Trustee for Peters Living Trust, on May 3, 2002;
- City of Fort Worth Alcohol Permit Location Verification showing premises, if used as a bar, was a legal non-conforming use as of April 30, 2002;
- City of Fort Worth Dance Hall fee receipt issued to 3425 Club, Inc. on May 10, 2002; and
- City of Fort Worth Code of Ordinances section relating to Dance Hall regulation.

Applicant also provided documentation concerning the ownership history of Partners Club in a post-hearing submission. A review of those documents shows that Mr. Peters was the initial incorporator of the corporation in August 2001. Agreements for Sell and Purchase for corporate stocks were submitted, along with Partner's Club, Inc.'s stock transfer ledger. These documents indicated that Mr. Peters had sold his interest in the corporation with the last transfer occurring on June 5, 2002.

D. Analysis, Conclusion, and Recommendation

Based on the evidence presented, the ALJ concludes the Protestants failed to demonstrate that the place or manner in which Applicant may conduct its business warrants refusal of the requested permits based on concerns for the general welfare, peace, morals, and safety of the people or that issuance of the permits would be contrary to the public sense of decency. As a result, the permits sought by Applicant from the Commission should be issued.

Sales of alcoholic beverages have been ongoing from this location since 1962. The premises is recognized by the City of Fort Worth as having a legal non-conforming use for operation of a lounge, bar, or dance hall including the sale and serving of alcoholic beverages for consumption on the property. The church which is located next door to the premises moved there after the use of the property had been established for selling and serving alcoholic beverages. The location is not within 1000 feet of the school, Worth Heights Elementary School.

Traffic concerns are minimal. The street (S. Grove Street) where the proposed premises is located is not a thru-street, and the premises would be near the end of the street. The general character of the neighborhood is commercial or light industrial. There is one other licensed premises nearby. No residences are in the immediate vicinity.

There was no evidence that issuance of the permits will produce harm to school children at Worth Heights. The testimony in this case supports that no person under 21 will be allowed on the premises during its hours of operation, which begin well after the majority of children will have left the general area. Ms. Magana, who is familiar with the neighborhood, thought it would be unlikely that any child would be walking on that section of Grove Street after 7:00 p.m., the time at which Mr. Peters stated 3425 Club would open.

Applicant's representative, Mr. Earl H. Peters, Sr., has operated licensed premises selling and serving alcoholic beverages in the past. He operated a club at this location prior to his retirement, but during the past few years the premises had been operated by tenants. Mr. Peters has never had any Commission-issued license or permit denied or suspended. He has no arrest record. No evidence was produced to

establish the Mr. Peters had been involved in subterfuge operations of other licensed premises as alluded to during Protestant's case.

The ALJ recognizes there have been several documented incidents of criminal activity on or near the premises, as well as calls to the Fort Worth Police Department for service to the area. There have also been some issues relating to parking problems, litter, and intoxicated persons near the premises which have been bothersome to Rev. Jenkins. However, these incidents were while the premises was legally under the control of others, not Applicant or Mr. Peters. If these problems were to reoccur, Mr. Peters envisions employing security personnel to properly control Applicant's business.

In summary, the ALJ was not persuaded that the call rate or number of offenses committed at the address were disproportionately high in comparison with other areas of a neighborhood similarly situated, or that these matters were solely attributable to the sale and consumption of alcohol from 3425 S. Grove Street. Applicant played no part in management of the licensed premises most recently operated at the location. Given that no evidence was produced to show Applicant or its representative, Mr. Peters, have a history of noncompliance with Code provisions, Commission regulations, or other relevant laws, Applicant should be given an opportunity to conduct business subject to the Commission's regulatory authority over this premises. The permit application of 3425 Club meets the Commission's requirements. Accordingly, the application should be granted.

IV. FINDINGS OF FACT

1. On June 14, 2002, 3425 Club, Inc. d/b/a 3425 Club (Applicant), filed an original application with the Texas Alcoholic Beverage Commission (the Commission) for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit for a premises located at 3425 S. Grove Street, Fort Worth, Tarrant County, Texas.
2. Protests to the application were filed by the City of Fort Worth, the Fort Worth Police Department, and the Fort Worth Independent School District (the Protestants) asserting that the application should be denied due to past incidents of criminal activity, noise, and litter on or near the premises and the negative impact that operation of a Commission-licensed premises would have upon the safety, peace, and general welfare of the public in that area.
3. On July 29, 2002, Commission's Staff issued a notice of hearing informing all parties that a hearing would be held on the application and the time, place, and nature of the hearing.
4. The hearing was held on July 30, 2002, in Fort Worth, Tarrant 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 Steven Swander, Attorney at Law. Protestants appeared and were represented by Rita Rodriguez Utt, an attorney for the Fort Worth Independent School District, and E.B. Adcock, a police officer with the Fort Worth Police Department. The hearing concluded on July 30, 2002. The record was closed on August 15, 2002, after receiving additional written submissions from the parties.

5. The location, 3425 S. Grove Street, Fort Worth, Texas, has been used commercially since approximately 1962 as a premises for the sale, service, and consumption of alcoholic beverages.
6. The neighborhood surrounding 3425 S. Grove Street is predominantly light industrial or commercial. There are few residents living nearby.
7. One other licensed premises for the sale of alcoholic beverages exists in close proximity to 3425 S. Grove Street.
8. An elementary school, Worth Heights, is nearby, but is not within 1000' of the proposed licensed premises.
9. A church is located next door to the proposed licensed premises, however, Applicant's location is recognized by the City of Fort Worth as having a valid non-conforming use because its use as a premises for selling, serving or consuming alcoholic beverages predates the church's location next door to the property.
10. Applicant plans to operate its premises with no person under 21 years of age being admitted. The format for the club will be changed to cater to a predominately Filipino clientele.
11. In the recent past, problems with criminal activity, including publically intoxicated persons, noise, litter, and loitering, have occurred on or near the licensed premises, and affected other persons in the immediate vicinity.
12. At those times, Applicant was not involved with the management or operation of the premises.
13. Applicant expressed an intention to employ security for the proposed licensed premises to effectively control problems listed in Finding of Fact No. 11, in the event they should begin to reoccur on the premises.
14. Applicant's representative, Earl H. Peters, Sr., has operated several bars in Fort Worth during his lifetime. Mr. Peters has previously held Commission-issued

licenses or permits which have never been suspended or canceled. He has no history of violating laws or rules associated with the operation of licensed premises, or any other law.

15. Applicant's proposed hours of operation for the licensed premises are Thursday through Sunday, 7:00 p.m. until 2:00 a.m., which are compatible with activities at the school and church, and will cause minimal interference with activities conducted at those locations.
16. Traffic on South Grove Street is light after school hours, therefore operations at the proposed licensed premises are unlikely to pose a greater threat of danger than traffic on any other similarly situated roadway.
17. Applicant has obtained all additional permits or certificates, namely a City of Fort Worth Certificate of Occupancy, City of Fort Worth Alcohol Permit Location Verification, and a City of Fort Worth Dance Hall Permit, which are needed for lawful operation of the proposed premises.
18. Applicant's application is valid on its face, containing all required certifications from the City of Fort Worth and Tarrant County officials.

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 and 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. Chapters 2001 and 2003, and 1 TEX. ADMIN. CODE §155.1 *et seq.*
3. No objections to the notice of hearing were raised by the parties.
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 upon the foregoing findings, a preponderance of the evidence shows that issuance of the requested permits is not contrary to local regulations pursuant to TEX. ALCO. BEV. CODE ANN. § 109.33.

- 6. Based on the foregoing findings and conclusions, the application of 3425 Club, Inc., d/b/a 3425 Club for a Mixed Beverage Permit and Mixed Beverage Late Hours Permit should be granted.

Signed this 24th day of September 2002.



TANYA COOPER, ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 600341

IN RE 3425 CLUB, INC.	§	BEFORE THE
D/B/A 3425 CLUB	§	
ORIGINAL APPLICATION MB & LB	§	
	§	TEXAS ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-3784)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 16th day of October 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Tanya Cooper. The hearing convened on July 30, 2002, and adjourned on July 30, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 24, 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 MB and LB be issued.

This Order will become final and enforceable on November 6, 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/or through the U.S. Mail, as indicated below.

SIGNED this the 16th day of October, 2002.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Tanya Cooper
Administrative Law Judge
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