



## II. DISCUSSION AND ANALYSIS

### A. Applicable Law.

Protestants challenge the application on the basis of §§ 11.46(a)(6) and (8) of the Texas Alcoholic Beverage Code (Code), which provide:

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; and

...

(12) the applicant does not provide an adequate building available at the address for which the permit is sought before conducting any activity authorized by the permit;

### B. Arguments and Evidence.

#### 1. Protestants' Case.

The Protestants, who have the burden of proof, oppose issuance of the permits for two reasons. Specifically, Protestants contend that the issuance of the permits will (1) not be consistent with the standards of the community for appropriate uses of the industrial park area due to inadequate parking accommodations; and (2) result in criminal activity that will affect the peace and serenity of the community.<sup>1</sup>

The Protestants called several witnesses whose testimony is summarized below.

#### John Riojas

Mr. Riojas is employed by the San Antonio Police Department and testified that, in relation to the Casino Club, he compiled data concerning crime statistics based upon geographical proximity to sexually oriented businesses (SOBs), specifically those involving human display. (A summary of his findings was admitted as Protestant's Exhibit No. 1 and will be discussed below.) The data was obtained from San Antonio Police Department crime reports. The study revealed that sexual

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<sup>1</sup> Protestants originally alleged that the establishment of the SOB would violate San Antonio zoning regulations, but did not pursue that argument, thus it will not be addressed in this Proposal for Decision.

and narcotic crime rates were higher in areas in close proximity to SOBs. When, however, other types of crime are taken into account, the crime rates are similar. Differences in management styles can also effect the amount of crime occurring at or near the premises.

Patrick Michalec

Mr. Michalec is employed as a vice detective with the San Antonio Police Department and has been a police officer for 28 years. In his experience he has found that SOBs tend to have higher crime rates than other types of businesses. Also, lack of adequate parking at a business of this sort could result in altercations in the area around the premises.

Don Freiling

Mr. Freiling manages commercial properties in close proximity to the proposed licensed premises. He has spoken to several prospective tenants who decided not to lease property after discovering that a SOB was being planned in the area

William Grant, Jr.

Mr. Grant is employed as a zoning planner for the City of San Antonio. He is responsible for processing applications for SOBs to be operated within the city limits of San Antonio. A certificate of occupancy has been issued for the Casino Club and it provides for a maximum of 600 persons. According to city regulations, 300 parking spaces would be required for the facility. Several inspections are made before a certificate of occupancy is issued and he knows of no conditions or situations that would warrant denial of the application.

**2. Applicant's Case.**

The Applicant argues that the location of the proposed establishment is entirely appropriate and will not negatively impact the community in the manner alleged by Protestants. Applicant notes that there is adequate parking if street parking and the parking facilities of another business are considered. The other business has entered into a contract with Applicant to share parking lots.

In support of its case, Applicant presented the testimony several witnesses including the Casino Club manager who testified that the parking situation has been addressed through an agreement with another business in the complex.

**C. Analysis.**

Even though the Protestants challenged the application on numerous grounds, they presented evidence on only two grounds at the hearing. First, Protestants presented evidence that the permits would not be in keeping with the general welfare, peace, morals, and safety of the community.

Second, they presented evidence regarding the lack of After considering this evidence, the ALJ concludes that it does not establish a legitimate basis for denying the permits. Protestants' witnesses and documentary evidence failed to establish that any of their concerns are merited. Applicant's witnesses established that parking would not be a problem and that the City of San Antonio has already reviewed and approved the parking facilities.

**1. Protection of the Community's General Welfare, Morals and Public Sense of Decency.**

Protestants argue that a SOB establishment serving alcohol is not in keeping with the community's purposes for the area and with the general morals and welfare of the community. However, the data provided by Protestants does not support that argument. The data shows crime statistics for areas in close proximity to bars, restaurants, and SOBs, but there is no pattern that demonstrates that the SOB would result in more crime. Further, the City of San Antonio has already determined that the location is appropriate for a SOB.

**2. Parking.**

Protestants argue that the premises will have inadequate parking that could result in traffic congestion and altercations. The evidence provided by Applicant, however, demonstrated that plenty of parking is available. Again, the City of San Antonio has inspected the area and granted the certificate of occupancy indicating that parking is adequate.

**III. CONCLUSION**

The evidence does not establish (1) that the place or manner in which the Applicant may conduct 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; or (2) parking is inadequate.

**IV. FINDINGS OF FACT**

1. Spiros Partners, Ltd, d/b/a Casino Club (Applicant), filed an original application with the Texas Alcoholic Beverage Commission (the Commission) for a Mixed beverage Permit, a Mixed Beverage Late Hours permit, and a Beverage Cartage Permit for a premises located at 5418 Brewster Drive, San Antonio, Bexar County, Texas.
2. Protests to the application were filed by residents of the area where the premises is located.

3. 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 November 7, 2002, in San Antonio, Bexar County, Texas, before John H. Beeler, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH). The Applicant was represented by Wade Bingaman, attorney. Commission Staff appeared and was represented by Dewey Brackin, attorney. The protesting citizens (Protestants) were represented by their attorney, Habib H. Erkan, Jr. The hearing concluded on November 7, 2002, and the record closed the same day.
5. The requested permits are for the business establishment of The Casino Club a sexually orientated business (SOB) which is new to the area and has not yet opened.
6. The establishment of the SOB will not result in more crime in the area.
7. The Casino Club has adequate parking facilities.

#### V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN., Chapters 1 and 5 and §§ 6.01, 11.41, 11.46, and 32.01.
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 of fact, a preponderance of the evidence shows that issuance of the requested permits will not adversely affect the safety of the public, the general welfare, peace, or morals of the people, nor violate the public sense of decency, in violation of TEX. ALCO. BEV. CODE ANN. §11.46.
5. Based on the foregoing findings of fact, there is insufficient evidence to deny the permits on the basis of TEX. ALCO. BEV. CODE ANN. §§ 11.46(a) (8)

6. Based on the foregoing findings and conclusions, the application of The Casino Club should be granted.

Signed this 6<sup>th</sup> day of January, 2003.

  
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**JOHN H. BEELER**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

DOCKET NO. 601305

IN RE SPIROS PARTNERS LTD.	§	BEFORE THE
D/B/A CASINO CLUB	§	
ORIGINAL APPLICATION MB, LB & PE	§	
	§	TEXAS ALCOHOLIC
	§	
BEXAR COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-0453)	§	BEVERAGE COMMISSION

ORDER

**CAME ON FOR CONSIDERATION** this 31<sup>st</sup> day of January 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge John H. Beeler. The hearing convened on November 7, 2002, and adjourned on November 7, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on January 6, 2003. 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.

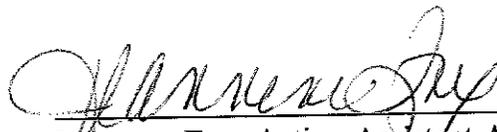
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the Original Application for an MB, LB, & PE are hereby **GRANTED**.

**This Order will become final and enforceable on February 21, 2003**, 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 31<sup>st</sup> day of January, 2003.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator  
Texas Alcoholic Beverage Commission

/bc

The Honorable John H. Beeler  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FAX (512) 475-4994

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