

DOCKET NO. 564309

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
ORIGINAL APPLICATION OF BCS WINGS LTD. D/B/A HOOTERS	§	ALCOHOLIC
	§	
	§	
BRAZOS COUNTY, TEXAS (SOAH DOCKET NO. 458-07-3516)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 7 th day of January 2008, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge . The hearing convened on 18th day of December, 2006 and adjourned . The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on 09th day of February, 2007. The 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.

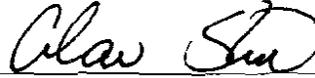
The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those 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 your original application for a mixed beverage permit, a mixed beverage late hours permit, and a beverage cartage permit, a caterer's permit, and a food and beverage certificate for the premises located at 3706 S. Texas Avenue, Bryan, Brazos County, Texas, are hereby GRANTED.

This Order will become final and enforceable on February 5, 2008, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by in the manner indicated below.

SIGNED this January 10, 2008, at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

The Honorable Penny A. Wilkov
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (512) 475-4994

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TABC Legal Section

Licensing Division
Enforcement Division

SOAH DOCKET NO. 458-07-3516

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
	§	
V.	§	OF
	§	
BCS WINGS, LTD.	§	
D/B/A HOOTERS,	§	
Respondent	§	ADMINISTRATIVE HEARING

PROPOSAL FOR DECISION

BCS Wings, LTD. d/b/a Hooters (Respondent or Applicant), has filed an original application with the Texas Alcoholic Beverage Commission (Commission or TABC) for a mixed beverage permit, a mixed beverage late hours permit, a beverage cartage permit, a caterer's permit, and a food and beverage certificate for the premises located at 3706 S. Texas Avenue, Bryan, Brazos County, Texas. A protest was filed by several local area residents and concerned citizens (Protestants) opposing the issuance of these permits based on the general welfare, health, peace, morals, and safety of the people and public sense of decency. The Commission's staff (Staff) took no formal position concerning the permits. This proposal for decision recommends that the permits be issued.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

No contested issues of notice or jurisdiction were raised in this proceeding. Therefore, these matters are set out in the findings of fact and conclusions of law without further discussion here.

The hearing on the merits convened on September 20, 2007, before Administrative Law Judge (ALJ) Penny A. Wilkov at the State of Office of Administrative Hearings (SOAH), 801 Austin Avenue, Suite 750, Waco, Texas. Protestants appeared *pro se* and were represented by their spokesperson, Ms. Cindy Seaton. Applicant appeared and was represented by Attorney John B. Gessner. TABC appeared and was represented by Staff Attorney W. Michael Cady. After submission of written closing arguments, the record closed on October 12, 2007.

II. DISCUSSION

A. Background

Texas Wings, Inc., is the franchisee with the right to use the Hooters trademark in Texas. BCS Wings, Inc., was incorporated as the Applicant to manage the Bryan, Texas, location. Hooters is the ninth largest casual dining restaurant chain in America; currently there are 42 Texas locations. Each restaurant typically has an average sales breakdown as follows: 18%-28% of the total revenue is from alcohol sales, 3% from merchandise, and the remaining 69%-79% from food sales.¹

On May 10, 2007, Respondent filed an original application with the TABC for a mixed beverage permit, a mixed beverage late hours permit, a beverage cartage permit, a caterer's permit, and a food and beverage certificate (permits) for the premises located at 3706 S. Texas Avenue, Bryan, Brazos County, Texas.² The application indicated that required notices were posted, sent, and published in compliance with TEX. ALCO. BEV. CODE ANN. § 11.39.³ On June 5, 2007, the TABC notified Respondent that a protest had been filed against the issuance of the application,⁴ with more than 100 citizens signing a petition, sending an e-mail, or writing a letter opposing the application.⁵

¹ Tr. at 232-234, testimony of John Crowder, founding partner of Hooters in Texas.

² TABC Exhibit 2.

³ TABC Exhibit 2.

⁴ *Id.*

⁵ Protestant's Exhibit 6.

B. Legal Standards

The applicable statutory provision for the application protest is TEX. ALCO. BEV. CODE ANN § 11.46(a), providing that the Commission may refuse to issue a permit if reasonable grounds exist to believe that:

sufficient

(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.

C. Summary of Disputed Issue and Conclusion

Precedent has established that in order to deny an alcoholic beverage permit to a fully qualified applicant who proposes to operate a lawful business in a wet area and in compliance with the zoning ordinances of the city, some unusual condition or situation must be shown to justify a finding that the place or manner in which the Applicant may conduct its business warrants a refusal of a permit.⁶ Protestants maintain that due to the nature of Applicant's business there are various unusual conditions or situations warranting denial of the permits, generally summarized as follows: an unsuitable location, lack of public sense of decency and moral standards, safety and security issues, and traffic and parking difficulties. Have the Protestants proved that an unusual condition or situation exists sufficient to justify denial of the permits?

Protestants did not prove that Applicant may operate his business in a way that endangers the general welfare, health, peace, morals, and safety of the people and public sense of decency.

⁶ *Texas Alcoholic Beverage Commission v. Mikulenska*, 510 S.W.2d 616 (Tex.Civ.App.-San Antonio 1974, no writ); *Elliot v. Dawson*, 473 S.W.2d 668 (Tex.Civ.App.-Houston [1st Dist.] 1971, no writ); *Smith v. Cove Area Citizens Committee*, 345 S.W.2d 850 (Tex.Civ.App.-Austin 1961, writ ref'd n.r.e.).

III. EVIDENCE, ARGUMENT, AND ANALYSIS

A. TABC

TABC Staff took no formal position on the application in this case but offered the Notice of Hearing,⁷ a list of violations for other Hooters' locations,⁸ and a copy of Respondent's application.⁹

B. Unsuitable Location

1. Background

Applicant has purchased a corner lot in a "strip" shopping center, on a busy commercial road that extends from Bryan to College Station, Texas. According to TABC Agent Kuykendall, there were two relevant measurements he compiled in response to the protest letters: the distance from the proposed location to schools and to the residential neighborhood. His measurement showed that the planned location was 261 feet from the nearest school, a day care center, Tiny Tots, which was recently closed. The second measurement was 101 feet to the nearest residence, located at 603 East North Avenue. From Commission Staff's review of this application, the proposed licensed premises was not within restricted areas surrounding a residence, school, church, day care or social service facility.

⁷ TABC Exh. 1

⁸ TABC Exh. 2

⁹ TABC Exh. 3

2. Protestants

Protestants objected to the location for several reasons: the negative impact of the restaurant on the neighborhood, the proximity of the location to schools in the area, and the potential unsuitability of outdoor advertising.

John Gardner, who owns an Apple computer reseller business within a block of the proposed location, testified that Hooters will adversely impact the area. According to Mr. Gardner, because Hooter's customer appeal is based on a sex appeal and alcohol combination, the restaurant would downgrade the surrounding commercial area. The lack of a "buffer zone" between the neighborhood houses and the business was cited as a major factor in potentially destroying the area's ambiance.¹⁰

Dr. Tracey Scasta, an Optometrist, testified that there are several townhouses directly behind the center housing young families or college students who would be exposed to alcohol-related offenses.¹¹ Since Texas A & M University (TAMU) is located a few miles away, she foresaw that college students would be targeted as customers. According to Dr. Scasta, Bryan and College Station has a high percentage of underage drinkers based on the student population.¹²

Alma Villarreal, the TAMU Equal Opportunity Coordinator, related that the proposed location is near a very old established and quiet neighborhood. Ms. Villarreal testified that in her opinion there were already too many bars in Bryan.

¹⁰ Tr. at 52.

¹¹ Tr. at 67-68.

¹² Tr. at 107-108.

Cindy Seaton, a Realtor, testified that there are numerous schools in the area that would be affected. She was familiar with three day care centers that are within two-tenths of a mile from the proposed location and five families in the area who home-school their children.¹³ Most disconcerting, however, was the restaurant's proximity to the home-school that she runs in her backyard, located just 75 feet from the proposed location. She testified that from the restaurant, her children's playscape is visible through the chain link fence that surrounds her property. Also, twice a week other home school students walk to her music class or piano lesson. Her concern was that the sexual nature of the business would adversely impact the community's family atmosphere and property values.

Ms. Seaton recommended that Hooters consider an alternate location close to the entertainment district with other nightclubs and restaurants. In that area, there are fewer churches, schools, and residences and it is closer to TAMU.

Lastly, Ms. Seaton testified that in the event that the permit is granted, she requested a limitation on the signage and installation of either a privacy fence or landscaping surrounding the restaurant, particularly on the Northeast and Southeast corner.

3. Respondent

Respondent countered that the site selection was carefully analyzed, the restaurant would favorably impact other businesses, and the outdoor advertising would be appropriate.

John Crowder, a Texas Hooters' founding partner, participated in the site selection for the Bryan location. According to Mr. Crowder, the Bryan Director of Business Development had been

¹³ Tr. at 124-125.

trying to recruit Hooters to Bryan for the past 10 years.¹⁴ In scouting the location, population, traffic counts, economic make-up of the city, and commercial viability were considered along with whether the land is zoned commercial and in a wet area, permitting alcohol sales.¹⁵ Mr. Crowder testified that he also spoke to city officials and considered employment centers in the area and distance to the college. The reason that Bryan was chosen over College Station was the central location and, according to Mr. Crowder, Bryan did a better job at courting their business. The Bryan location is four miles from TAMU.

A 5,400-square-foot restaurant is planned for the center along with four other restaurants: a Japanese steak house, a French restaurant, a seafood restaurant, and Pyro's restaurant; all applying for TABC licenses. Mr. Crowder testified that the five restaurants and the upper echelon businesses that it attracts are going to enhance the neighborhood and increase property values. He stated that once a successful restaurant like Hooters moves in, it creates a "restaurant row" of successful businesses. He estimated that 2.73 million dollars has been spent so far on the project and the developer has spent 7 million dollars.

Mr. Crowder refuted that the area had a quaint, charming, and leisurely ambiance, pointing out that nearby businesses include a tattoo parlor, a head shop, and a car repair shop.¹⁶ Across the street is a pawn shop, a mattress store, a barber shop, and Patsy's Bar, in a center with 30% vacancy. On the issue of outdoor advertising, Mr. Crowder testified that the restaurant will only have a monument sign, as opposed to a billboard or pole sign, with the word "Hooters" and an owl. Respondent pointed out that Ms. Seaton can see neon lights from other area businesses.

¹⁴ Tr. at 238.

¹⁵ Tr. at 231-232.

¹⁶ Tr. at 238-239.

Cindy Skufca is the former Regional Manager of six restaurants in the Hooters chain and current Regional Marketing Manager of sixteen restaurants.¹⁷ She related that the Bryan location has met all zoning and building requirements.¹⁸ As for the advertising, Ms Skufca testified that the chain uses an outdoor sign with the word "Hooters" and an owl.

Ryan Pruitt, a Regional Manager for three Hooters restaurants, in Lubbock, Odessa, and Amarillo, testified that those restaurants are in similarly-sized, conservative communities. Although the Lubbock location is near churches, schools, and day cares, he has never received a complaint.

Brooke Trevino, the Waco General Manager, testified by video deposition that the Hooter Girls are mostly college students motivated by the restaurant's tuition reimbursement program.¹⁹ She indicated that the Waco location has, likewise, never received a complaint from nearby residents.

4. Analysis

Protestors have not established by the preponderant evidence that denial is warranted based on the general welfare or peace of the citizens. Rather, the evidence reflected that a careful search was made for a location that was commercially viable, centrally located, and compatible with the character and nature of the surrounding area.

The area chosen is a busy commercial area housing a head shop, pawn shop, mattress store, bar, and gas station in an area with extensive vacancies. The restaurant may, in fact, improve the

¹⁷ Tr. At 163.

¹⁸ Tr. at 181.

¹⁹ Brooke E. Trevino's video deposition. Tr. at 9.

area by attracting successful businesses, such as the four leased restaurants. Few residents appeared at the hearing to protest the application and the restaurant does not appear as controversial as portrayed, particularly where demographically similar locations have existed without contention.

Lastly, since Ms. Seaton agreed that she could see the neon lights from other businesses in the area, the planned outdoor sign was not shown as inappropriate or unsuitable.

C. Public Sense of Decency and Moral Standards

1. Background

The primary controversy revolves around alcohol service in conjunction with the Hooters Girl uniform: a Lycra tank top, dolphin shorts, brown belted pouch, panty hose, non-skid safety shoes, slouch athletic socks, and a nametag.²⁰

2. Protestants

Protestants objected to Applicant's lack of morals and public sense of decency, claiming the Hooters website portrayed soft-pornographic images and a sexually-charged atmosphere. They claimed that alcohol increased the victimization risk and the advertising would be offensive.

Mr. Gardner testified that he visited the Hooters website, which he conceded was the corporate website and not Applicant's website. He considered it soft-pornography. Although he agreed there was no nudity, Mr. Gardner opined that the business model did not meet community

²⁰ Respondent's Exhibit 2.

decency and moral standards. He disapproved of the scantily-clad waitresses and the restaurant name, which is an obvious slang term for a portion of the female anatomy.

Dr. Scasta objected to Hooters because the high percentage of college females in the community. With 45,000 TAMU students, there could be an increase in sexual victimization, particularly where alcohol was involved. She noted that the restaurant would be staffed and frequented by college students. Dr. Scasta relied on a Department of Justice study that she found on the internet entitled, "The Sexual Victimization of Women," that concluded that many college women will likely encounter stalking or coerced sexual conduct during any academic year.²¹ Although Dr. Shasta acknowledged that the study was ten-years-old and was not conducted in the Bryan area, she pointed out that Hooters' focus is to objectify and exploit women, increasing the possibility of victimization for other women in the community.²²

Lastly, Ms. Seaton did not want to discuss sexual innuendo with small children, occasioned by the restaurant's image. She also did not want to see sexually-harassing billboards or newspaper ads adverse to moral values.

3. Respondent

Respondent challenged the assertion that the restaurant was indecent or lacked moral values, pointing to its employee policies and contributions to local charitable and educational activities.

Ms. Skufca discussed the employee handbook which contains a non-harassment, educational assistance, and open-door resolution policies; each designed to insure employee satisfaction and

²¹ Bonnie S. Fisher, "The Sexual Victimization of Women," December 2000. <Http: www.ncjrs.gov/pdffiles .>

²² Tr. 81-85.

adherence to procedures.²³ Ms. Skufca explained the strict uniform guide given to the staff: shorts must be properly fitted, shirts must cover the midriff and be tucked into the shorts, and no modifications are tolerated.²⁴ Prior to shift start, each manager conducts a uniform inspection, known as a “jump start,” to check for uniform infractions.²⁵ There is also an appearance standard given to employees detailing appropriate undergarments and proper fit.²⁶ Further, according to Ms. Scufka, each location donates to local charities, such as high school sports programs, Special Olympics, and breast cancer.

Mr. Pruitt testified that the Hooter Girls are mostly college students, taking advantage of the tuition reimbursement program. He testified that the Lubbock location raised over \$33,000.00 for charities last year.

Since the uniform is no more risqué than the cheerleaders at Baylor University, it does not violate community standards, according to Ms. Trevino.²⁷ Besides, Hooter Girls are trained to report touching or verbal comments to a manager, are not exploited, devalued, objectified, or subject to any increased risk of sexual assault.²⁸ She also testified that the outdoor signage is not offensive.

Mr. Crowder testified that the Hooters girl is a “keystone waitress,” part of the trademark, and exempt from EEOC discrimination. To Mr. Crowder’s knowledge, no sexual assault has been reported in Texas involving the restaurant.

²³ Tr. at 165-171.

²⁴ Petitioner’s Exhibit 4.

²⁵ Tr. at 177.

²⁶ Petitioner’s Exhibit 6.

²⁷ Brooke E. Trevino’s video deposition, Tr. at 23.

²⁸ Brooke E. Trevino’s video deposition, Tr. at 16.

4. Analysis

The preponderant evidence has not established that refusal is warranted based on morals and the public sense of decency. The Hooters Girl uniform offers no more exposure than a bathing suit, athletic outfit, or cheerleader uniform. The evidence did not show that nudity or any sexual activity occurs on the premises. In fact, children are often in the restaurant with their families. Further, no evidence was presented to show Applicant's business created any increase in criminal activity, including sex-related crimes or alcohol-related crimes.

Since Applicant is vigilant about training regarding uniforms and about harassment, it appears that the concern that the Hooters Girl will be subject to sexual victimization is no greater than the general college population. Although a person may feel personally offended by the Hooters website, it does not affect the operation of the Applicant's premises.

Lastly, it was not demonstrated that Bryan's standards of morality or decency are unusual or unique compared to other Hooters locations.

D. Safety and Security Issues

1. Protestants

Protestants asserted that the business would attract sexual miscreants and underage drinkers and increase the likelihood of sexual assault.

In particular, according to Dr. Scasta, the sexual environment combined with alcohol may lead sex offenders to victimize unescorted females who frequent strip center businesses such as Creative Nail, Allure Salon, or Brazos Blind and Drapery. She pointed out that sex offenders are

not monitored in the community with global positioning systems, leaving the citizens to rely on the police for protection.²⁹ Further, Dr. Scasta postulated that sexual victimization of the Hooters girls would not be reported because they would feel they invited it by the way they dressed.³⁰

Alma Villarreal related that since there are between 11 to 17 sexual predators in the neighborhood, the restaurant “may incite them to provoke problems.”³¹

Area resident, Ms. Seaton, would not feel safe in her home knowing that “someone could be ready to act out pent-up sexual aggression,” since Hooters caters to addictive sexual behavior.³² The restaurant posed a safety risk, according to Ms. Seaton, by inciting sex offenders and because underage drinking is an issue when college students are the targeted customers.

2. Respondent

Applicant responded that the restaurant had adequate safety and security policies and a responsible alcohol policy.

Ms. Skufca discussed the Hooters safety and security policies: employees must close the back door; report suspicious activity; cover their Hooters Girl uniform during entry and exit; escort employees to their vehicles; and empty trash with another employee. The restaurant also has a responsible alcohol policy, with requirements for checking identification and not serving intoxicated customers. Each server must attend training, including additional training relating to the operation

²⁹ Tr. at 76.

³⁰ Tr. at 102-103.

³¹ Tr. at 112.

³² Tr. at 130.

of the bar.³³ Further, Ms. Skufca disagreed that Hooters Girls are exploited or exposed to an increase risk of being victimized by rape or stalking, stressing that jogging shorts and tank tops are similar to gym clothes or a cheerleader's costume.

Mr. Pruitt testified that security is the highest priority. He explained that Hooters has more security and alcohol training than his former employers, Johnny Carino's or Applebees restaurants.³⁴ Mr. Pruitt characterized the Hooters Girls as an integral part of the business, like a cheerleader or the girl-next-door, creating service, fun, and atmosphere.

The parking lot is well-lit and extra security is on hand, according to Ms. Trevino, and these same measures will be employed in Bryan. Ms. Trevino characterized the typical Hooters Girl as the clean-cut, girl-next-door type.

John Crowder testified that if security is an issue, they will use security guards. Security cameras are also clearly visible inside and outside of the restaurant.

3. Analysis

The preponderant evidence did not establish that refusal is warranted based on the safety or security of the employees, patrons, or the citizens. First, it is clear that Hooter's has implemented procedures that insure the safety of its employees and patrons. The restaurant's security measures are prudent and cautious, considering the security cameras, parking lot precautions, and employee safety and alcohol service training. Second, no scientific or expert testimony was proffered to demonstrate that miscreants would congregate at the venue, particularly when community-supervised

³³ Petitioner's Exhibit 3.

³⁴ Tr. at 209-211.

sex offenders are prohibited from being where alcohol is sold or served.³⁵ Further, the Hooter's uniform would no more invite sexual assault than a bathing suit or athletic outfit.

Additionally, the preponderant evidence did not support that Hooters would attract or encourage underage drinking. The evidence, instead, showed that Hooters engages in appropriate seller-server training to identify minors.

E. Traffic and Parking Difficulties

1. Protestants

Protestants allege that parking and traffic will impact the safety of the area residents.

Ms. Villarreal testified that traffic will get noisy in the neighborhood. She is also concerned with the "peeling out," and the sirens occasioned by the drunkenness. Similarly, Ms. Seaton suggested building the restaurant near existing restaurants and clubs so deliveries for food service and retail would not be disruptive to the neighborhood.

2. Respondent

John Crowder testified that the City requires that the restaurant have 68 parking spaces but the site will have 84 spaces. Further, the Bryan Planning Department issued a statement that the site would not negatively impact the intended traffic flow for Texas Avenue, according to Mr. Crowder.

³⁵ See TEX. CRIM. PROC. CODE §42.12 (11).

3. Analysis

The traffic and parking issues are insufficient to warrant denial of the permits. In a solid commercial area such as Texas Avenue, and with four other additional planned restaurants, the parking and traffic attributable to all five restaurants may impact the area but not to a degree warranting permit denial.

F. Violation History

According to TABC staff, Agent Kuykendall and Sergeant Steel reviewed the violation history of the various Texas Hooter locations and determined that the violations do not rise to a level that would require denial of the Bryan permit.³⁶ According to the investigators, the Bryan location is in compliance with State law. Additionally, the TABC offered the testimony of Victor Kuykendall, a TABC enforcement agent. Agent Kuykendall testified that there was nothing in the violation history of other Hooters' locations that would prevent the granting of the application at this location by statute and that the TABC was not opposed to granting the application.³⁷

Under these circumstances, violations at other Hooters locations do not serve as an impediment to the issuance of the permits at this location.

³⁶ Tr. at 221.

³⁷ Tr. at 26-27.

G. Conclusion and Recommendation

Protestants did not prove that Applicant may operate his business in a way that endangers the general welfare, health, peace, morals, and safety of the people and public sense of decency and therefore, the ALJ concludes that the allegations, as set out in the Notice of Hearing, were not proven.

The ALJ recommends that Applicant's original application for the permits be granted.

IV. FINDINGS OF FACT

1. On May 10, 2007, BCS Wings, LTD. d/b/a Hooters (Respondent or Applicant), filed an original application with the Texas Alcoholic Beverage Commission (Commission or TABC) for a mixed beverage permit, a mixed beverage late hours permit, a beverage cartage permit, a caterer's permit, and a food and beverage certificate for the premises located at 3706 S. Texas Avenue, Bryan, Brazos County, Texas.
2. On June 5, 2007, the TABC notified Respondent that a protest had been filed by several local area residents and concerned citizens (Protestants) opposing the issuance of these permits based on the general welfare, health, peace, morals, and safety of the people and public sense of decency.
3. A Notice of Hearing dated August 10, 2007, was issued by Commission Staff 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 on the merits convened on September 20, 2007, before Administrative Law Judge (ALJ) Penny A. Wilkov at the State of Office of Administrative Hearings (SOAH), 801 Austin Avenue, Suite 750, Waco, Texas. Protestants appeared *pro se* and were represented by their spokesperson, Ms. Cindy Seaton. Applicant appeared and was represented by Attorney John B. Gessner. TABC appeared and was represented by Staff Attorney W. Michael Cady. After submission of written closing arguments, the record closed on October 12, 2007.
5. The Commission's staff (Staff) took no formal position concerning the permits.

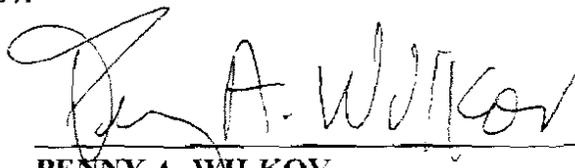
6. Applicant has met all Commission requirements for holding the permits and certificate requested for the premises at this location as demonstrated by the following:
 - a. Applicant's restaurant is located in a regional shopping center;
 - b. Applicant has met all zoning and building requirements imposed by the Bryan City Council;
 - c. Several other Commission-authorized licensed premises are planned nearby to the proposed premises;
 - d. The area is designated "wet" for alcoholic beverage sales, pursuant to a vote of Bryan residents; and
 - e. There are no residences, churches, or schools within the restricted area around the proposed licensed premises.

7. No unusual conditions or situations exist that would warrant refusal of the permits as demonstrated by the following:
 - a. Insufficient evidence was presented to establish that denial is warranted based on the general welfare or peace of the citizens; instead, the evidence showed that the site selection was carefully and correctly analyzed; the restaurant would favorably impact other businesses; and the outdoor advertising would be appropriate;
 - b. Insufficient evidence was presented to establish that denial is warranted based on a lack of public sense of decency or moral standards: the Hooters Girl uniform offers no more exposure than a bathing suit, athletic outfit, or cheerleader uniform; Applicant is vigilant about training regarding uniforms and about harassment; and no evidence was presented to show Applicant's business created any criminal activity, including sex-related crimes or alcohol-related crimes;
 - c. Insufficient evidence was presented that refusal is warranted based on the safety or security of the employees, patrons, or the citizens: Applicant has implemented procedures that insure the safety of the employees and patrons; security measures are prudent and cautious; no evidence was proffered to demonstrate that sex offenders would frequent the restaurant; and the preponderant evidence did not support that Hooters would attract or encourage underage drinking;
 - d. Insufficient evidence was presented that denial is warranted based on traffic and parking issues since the site will not significantly increase the traffic flow on Texas Avenue, a busy commercial street; and
 - e. Insufficient evidence was presented that the violation history of other Hooters' locations would impact the granting of the application at the Bryan location.

V. CONCLUSIONS OF LAW

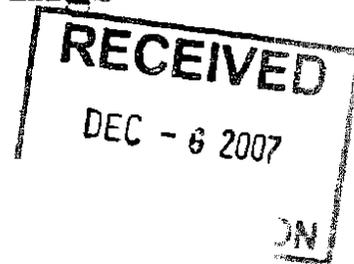
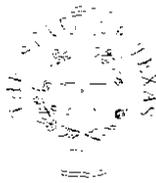
1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. chs. 5, 11, 28, 29, 31, and 44, and §§ 6.01 and 11.46(a)(8). TEX. ALCO. BEV. CODE ANN. § 1.01 *et seq.*
2. The State Office of Administrative Hearings has jurisdiction over all matters 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. ch. 2003.
3. Proper and timely notice of the hearing was provided to all parties pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE § 155.55.
4. Issuance of the requested permits and certificate 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. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8).
5. Applicant's application for mixed beverage permit, a mixed beverage late hours permit, a beverage cartage permit, a caterer's permit, and a food and beverage certificate for the premises located at 3706 S. Texas Avenue, Bryan, Brazos County, Texas, should be granted.

SIGNED December 6, 2007.



**PENNY A. WILKOV
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

December 6, 2007

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

HAND DELIVERY

RE: Docket No. 458-07-3516; Texas Alcoholic Beverage Commission v. BCS Wings, LTD. d/b/a Hooters

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink that reads "Penny A. Wilkov". The signature is written in a cursive style with a large, looping initial "P".

Penny A. Wilkov
Administrative Law Judge

PAW/ap
Enclosure

- xc W. Michael Cady, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA HAND DELIVERY
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA HAND DELIVERY
Cindy Seaton, Protestants, 719 Lazy Lane, Bryan, TX 77802 - **VIA REGULAR MAIL**
John B. Gessner, Attorney, 10864 Audelia, Suite 9464, Dallas, TX 75238 - **VIA REGULAR MAIL**