

DOCKET NO. 575656

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION	§	
	§	
VS.	§	
	§	
ORIGINAL APPLICATION OF	§	
BOOTS & BUCKLES CLUB	§	
D/B/A BOOTS & BUCKLES CLUB	§	ALCOHOLIC
	§	
REAL COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-08-3163)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 5th day of August, 2008, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Craig R. Bennett. The hearing convened on the 13th day of June, 2008 and adjourned on the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on 26th day of June, 2008. 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.

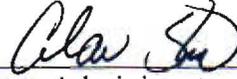
The Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those Findings 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 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 of Boots & Buckles Club for a Private Club Registration Permit, a Beverage Cartage Permit, and a Food and Beverage Certificate is **GRANTED**.

This Order will become **final and enforceable** on the 29th day of August, 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 5th day of August, 2008, at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

Barbara Nelson
RESPONDENT
Boots & Buckles Club
P.O. Box 709
Camp Wood, TX 78833
VIA REGULAR MAIL

Gary Jones
P. O. Box 251
Camp Wood, TX 78833
VIA REGULAR MAIL

Brian Garnett
P.O. Box 698
Camp Wood, TX 78833
VIA REGULAR MAIL

James Earl Brice
Real County Sheriff's Office
Leakey, TX 78873-0445
VIA REGULAR MAIL

Emily E. Helm
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

District Office District Office

EEH/cj

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

June 26, 2008



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

VIA HAND DELIVERY

RE: Docket No. 458-08-3163; Texas Alcoholic Beverage Commission, and Gary Jones and Brian Garnett, Representatives of Protesting Camp Wood Citizens vs. Boots & Buckles Club

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, appearing to read "Craig R. Bennett".

Craig R. Bennett
Administrative Law Judge

CRB/ls
Enclosure

xc ✓ Emily Helm, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA HAND DELIVERY

Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA HAND DELIVERY

Barbara Nelson, Boots & Buckles Club, P. O. Box 709, Camp Wood, TX 78833 - VIA REGULAR MAIL

Gary Jones, P. O. Box 251, Camp Wood, TX 78833 - VIA REGULAR MAIL

Brian Garnett, P. O. Box 698, Camp Wood, TX 78833 - VIA REGULAR MAIL

James Earl Brice, Real County Sheriff's Office, Lakey, TX 78873-0445 - VIA REGULAR MAIL

SOAH DOCKET NO. 458-08-3163

TEXAS ALCOHOLIC BEVERAGE COMMISSION, and	§	BEFORE THE STATE OFFICE
	§	
	§	
GARY JONES and BRIAN GARNETT, REPRESENTATIVES OF PROTESTING CAMP WOOD CITIZENS	§	
	§	OF
	§	
VS.	§	
	§	
BOOTS & BUCKLES CLUB (TABC CASE NO. 575656)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Boots & Buckles Club (Applicant) has applied to the Texas Alcoholic Beverage Commission (Commission) for a Private Club Registration Permit, a Beverage Cartage Permit, and a Food and Beverage Certificate for a premises located at 119 N. Nueces Street, Camp Wood, Real County, Texas.¹ Numerous citizens of Camp Wood and/or Real County filed a protest to the issuance of the permits based on general welfare, health, peace, moral, and safety concerns. The Commission's staff (Staff) remained neutral on the application.

After considering the arguments and evidence presented by the parties, the Administrative Law Judge (ALJ) finds that there is insufficient basis for denying the application and recommends that the permits be issued.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

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

¹ Boots & Buckles Club is the name of the business to be permitted. The application itself was filed by Barbara Jean Nelson, who is the proprietor of the intended business, on behalf of an unincorporated association of persons.

On June 13, 2008, a public hearing was convened on this matter in San Antonio, Texas, before Administrative Law Judge Craig R. Bennett. The Applicant was represented by Barbara Nelson and Ronald Gavlik. Staff was represented by Emily Helm, attorney. The protesting citizens (Protestants) were represented by their citizen-representatives, Gary Jones and Brian Garnett. The hearing concluded and the record closed that same day.

II. DISCUSSION AND ANALYSIS

A. Applicable Law

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

(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.

In a protest hearing, the burden is on the protestants to show by a preponderance of the evidence that the permit(s) should not be issued.

B. Arguments and Evidence

1. Protestants' Case

The Protestants oppose issuance of the permits because they allege that allowing a retail establishment that serves alcoholic beverages in their town will pose risks to the health and safety of the citizens of the community and/or the patrons of the establishment. Protestants' representatives each testified. Their testimony overlapped significantly and indicated a number of concerns if the permits are granted. Those concerns are outlined below.

Gary Jones testified that Camp Wood is a small town with a population of just over 800 people. The median household income is approximately half the state average. The community has suffered economic problems and is under a court-ordered plan for repayment of city creditors. The nearest hospital is approximately 40 miles away. The city has local emergency medical services (EMS), but those services are staffed by volunteers after 5:00 p.m. and on the weekends. The health care clinic in town is staffed by a physician's assistant, and not a licensed physician.

Brian Garnett testified that the area outside of Camp Wood is very scenic and has many winding roads that are used for sightseeing and motorcycle riding. He testified that many cyclists ride in the area and many deer are often on the roads. The local community has no taxi or bus service. Moreover, the city does not employ any law enforcement personnel. Rather, law enforcement needs are currently met by a county sheriff's deputy who spends part of his time patrolling the city.

Both Mr. Jones and Mr. Garnett expressed the belief that the Camp Wood community has many people who struggle with alcohol problems and are more susceptible to alcohol-related problems. They are concerned that adding an establishment that serves alcoholic beverages at retail will contribute to greater social and personal problems in the community.

Moreover, both Mr. Jones and Mr. Garnett opined that Camp Wood does not have the infrastructure to handle the health and safety issues that would arise from an establishment selling alcohol for consumption on premises. They contend that there will be significant numbers of people who will consume alcohol and then drive. They noted that many motorcyclists who like to ride the scenic, winding roads in the area would likely consume alcohol and then continue their riding--presenting the potential for an increase in serious accidents. Further, Mr. Jones and Mr. Garnett expressed concerns that the existence of a club serving alcohol would lead to an increased incidence of fights and other disturbances, for which law enforcement in the community is inadequate to handle.

For all of these reasons, Protestants argue that it will be detrimental to the community's health, safety and welfare, or adverse to the public sense of decency if the permits are granted in this case.

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 presented the testimony of Ronald Gavlik, who will be the manager of the club. His testimony and arguments are discussed below.

Mr. Gavlik noted that there are two establishments in the community that are permitted as package retailers and sell alcohol, and that there are two clubs/restaurants permitted to sell alcohol within approximately 20 miles of Camp Wood. Currently, Mr. Gavlik testified that people often buy alcohol from one of the package retailers and then go to public areas and drink, or stay in the car and drink while driving, without any limit on their consumption. This is more dangerous than the scenario that Applicant proposes, where people's consumption will be limited and dispensed only by a server. Moreover, Applicant intends to have a policy whereby it will guarantee a ride home to any members in the local area who are unable to drive safely after consuming alcohol at the club. This will help to limit the potential danger to the community from drinking and driving.

Mr. Gavlik testified that, because Applicant will run a private club, it will be able to be selective in who will be allowed to become members. Mr. Gavlik testified that Applicant has put too much effort into getting a license to risk getting closed down by allowing problem individuals to become members. He testified that, because Camp Wood is a small community, the bartenders and employees will be familiar with the people in the area and this will allow them to better monitor alcohol consumption patterns to help prevent intoxication and behavioral issues. Further, he testified that Applicant's intent is to run a club that provides high quality food and dancing, and not simply a "bar."

Mr. Gavlik also testified that he has been approached by many in the community who desire a dance club in town so they do not have to drive 20 miles to have a place where they can enjoy a nice dinner, along with dancing and drinks. He noted that the license application was submitted once they had 52 members join the private club. Currently, they have approximately 140 members. In his opinion, based upon these numbers and the comments he has heard, many in the community support the application.

He testified that there is a significant legal presence in the community, with a sheriff's deputy and a constable frequently present in town. Further, any medical needs could be amply met by the clinic in town and the EMS services that are provided. Therefore, he believed Protestants' concerns in this regard are unfounded.

Based on the testimony of Mr. Gavlik, Applicant contends that the granting of the permits in this case will not be contrary to the general welfare, peace, morals, and safety of the people or the public sense of decency.

C. Analysis

After considering the evidence, the ALJ concludes that there is not a justifiable basis for denying the permits. The record does not establish that the proposed club is inconsistent with the community's general morals or welfare. Rather, the evidence establishes that there are two package retailers licensed to sell alcohol in the Camp Wood community, and there are two retail clubs licensed to sell alcohol within 20 miles of Camp Wood. As such, alcoholic beverages are readily available already in the community. In fact, there is a reasonable basis to believe that it may be safer to have alcohol dispensed in a controlled atmosphere rather than have individuals purchasing it and driving around town drinking it in uncontrolled amounts, which is something that Protestants acknowledged happens currently in the community.

The ALJ understands the concerns raised by Protestants regarding the problems that may be associated with alcohol consumption, and the attendant strains that may put upon law enforcement or

medical services in a community from alcohol consumption. While those may be legitimate reasons for citizens to develop community standards favoring abstinence from alcoholic beverages, such a consensus cannot be said to have occurred in the Camp Wood community. No local officials appeared at the hearing in opposition to the application, and the Protestants did not present sufficient evidence establishing a community consensus against the application. Both of Protestants' representatives are pastors of local churches and undoubtedly represent significant groups of citizens. However, the ALJ cannot conclude on the record before him that they represent a community consensus regarding the application, so as to reflect the community's "public sense of decency." And, with the existence of two licensed retailers of alcoholic beverages already in Camp Wood, it does not appear the community has demonstrated a consensus of standards that would indicate the sale of alcohol is against the community's morals or public sense of decency.

Ultimately, the ALJ simply cannot conclude that the establishment proposed by Applicant presents any greater harm or is somehow more incompatible with the community's morals and general welfare than the package retailers that are already permitted to sell alcohol in the community. There was no evidence that the business's location was located in close proximity to other facilities which might be incompatible (such as a hospital, church, or school). Therefore, under the circumstances, the ALJ simply does not conclude that the place or manner in which the Applicant is expected to conduct business warrants the refusal of the requested permits based on the general welfare, peace, morals, and safety of the people and on the public sense of decency.

III. CONCLUSION

The evidence does not establish 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. Because the Applicant appears to have met all other requirements for the issuance of the permits, and there is no basis for denying the application, the ALJ recommends that the application be granted and the requested permits be issued. In support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

IV. FINDINGS OF FACT

1. Barbara Jean Nelson, on behalf of Boots & Buckles Club (Applicant), filed an original application with the Texas Alcoholic Beverage Commission (the Commission) for a Private Club Registration Permit, a Beverage Cartage Permit, and a Food and Beverage Certificate for a premises located at 119 N. Nueces Street, Camp Wood, Real County, Texas.
2. Protests to the application were filed by residents of the area where the premises is located.
3. On May 23, 2008, the Commission's Staff issued a notice of hearing informing the parties of the time, date, and location of the hearing on the application; the applicable rules and statutes involved; and a short, plain statement of the matters asserted.
4. On June 13, 2008, a public hearing was convened on this matter in San Antonio, Texas, before Administrative Law Judge Craig R. Bennett. The Applicant was represented by Barbara Jean Nelson and Ronald Gavlik. Staff was represented by Emily Helm, attorney. The protesting citizens (Protestants) were represented by their citizen-representatives, Gary Jones and Brian Garnett. The hearing concluded and the record closed that same day.
5. The requested permits are for the business establishment of Boots & Buckles Club, a private membership club which is new to the area.
6. Two other establishments in the community are permitted to sell alcohol as package retailers.
7. There was no evidence that the location for Boots & Buckles Club is located in close proximity to other facilities which might be incompatible with the sale of alcohol (such as a hospital, church, drug and alcohol treatment center, or school).
8. There is insufficient evidence to establish that the place or manner in which the Applicant intends to conduct business is incompatible with the general welfare, peace, morals, and safety of the people and on the public sense of decency.

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(a)(8).
5. Based on the foregoing findings and conclusions, the application of Boots & Buckles Club for a Private Club Registration Permit, a Beverage Cartage Permit, and a Food and Beverage Certificate should be granted.

Signed June 26, 2008.



CRAIG R. BENNETT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



John T. Steen, Jr.
Chairman-San Antonio

Jose Cuevas, Jr.
Member-Midland

Gail Madden
Member-Dallas

Alan Steen
Administrator

July 23, 2008

Mr. Alan Steen
Administrator
Texas Alcoholic Beverage Commission
P. O. Box 13127
Austin, Texas 78711-3127

*Re: TABC Docket No. 575656
SOAH Docket No. 458-08-3163
TABC v. Boots & Buckles Club d/b/a Boots & Buckles Club*

Dear Mr. Steen:

Enclosed please find a Proposal for Decision in the above-referenced case. Exceptions were not filed.

After your review, please inform this office of your decision. Should you wish to adopt the Proposal an Order is attached for your signature.

Thank you for your attention to this matter.

Yours truly,

Emily E. Helm
Attorney for Petitioner
Legal Division

EEH/cj
Enclosures

MESSAGE CONFIRMATION

08/06/2008 10:39
ID=TABC LEGAL

DATE	S,R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT
08/06	00'29"	5124754994	TX	03	OK 0000

08/06/2008 10:38 TABC LEGAL → 94754994

NO. 782 P01



Alan Steen
Administrator

John T. Steen, Jr.
Chairman-San Antonio

Jose Cuevas, Jr.
Member-Midland

Steven M. Weinberg, MD, JD
Member-Colleyville

FACSIMILE COVER SHEET

Date: August 6, 2008

To:	Fax No.	No. Of Pages (including cover page)
Craig R. Bennett Administrative Law Judge	(512) 475-4994	2
From:		
Emily E. Helm Attorney for Petitioner	(512) 206-3498	

SUBJECT: ORDER

BOOTS & BUCKLES CLUB d/b/a BOOTS & BUCKLES CLUB
TABC #575656
SOAH #458-08-3163



Alan Steen
Administrator

John T. Steen, Jr.
Chairman-San Antonio

Jose Cuevas, Jr.
Member-Midland

Steven M. Weinberg, MD, JD
Member-Colleyville

FACSIMILE COVER SHEET

Date: August 6, 2008

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<i>Craig R. Bennett Administrative Law Judge</i>	<i>(512) 475-4994</i>	<i>2</i>
<i>From:</i>		
<i>Emily E. Helm Attorney for Petitioner</i>	<i>(512) 206-3498</i>	

SUBJECT: ORDER

BOOTS & BUCKLES CLUB d/b/a BOOTS & BUCKLES CLUB
TABC #575656
SOAH #458-08-3163

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