

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

January 9, 2009

Alan Steen, Administrator
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

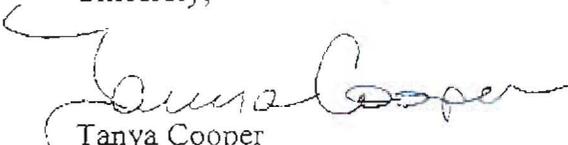
**Re: Docket No. 458-08-4008; Texas Alcoholic Beverage Commission,
Petitioner and Various Citizen Protestants v, Flags Beverage, Inc.
d/b/a Six Flags Over Texas, Applicant/Respondent
(TABC 576276)**

Dear Mr. Steen:

Enclosed please find the Proposal for Decision in the above-referenced case. It contains my recommendation and underlying rationale.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings, located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas 76116. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,


Tanya Cooper
Administrative Law Judge

TC/dd
attachments

DOCKET NO. 458-08-4008

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION, Petitioner, and	§	
VARIOUS PROTESTANTS,	§	
Protestants	§	
V.	§	OF
	§	
	§	
FLAGS BEVERAGE, INC. D/B/A	§	
SIX FLAGS OVER TEXAS,	§	
Applicant/Respondent	§	ADMINISTRATIVE HEARING

PROPOSAL FOR DECISION

Flags Beverage, Inc. d/b/a Six Flags Over Texas (Applicant/Respondent), seeks a mixed beverage permit, a mixed beverage late hours permit, a beverage cartage permit, and a caterer's permit for a premises located at 2201 Road to Six Flags, Arlington, Tarrant County, Texas, from the Texas Alcoholic Beverage Commission (the Commission). The Protestants, consisting of local area residents, concerned citizens, and elected officials, assert that the permits and certificate should be denied based upon the general welfare, peace, morals, and safety of the people. The Commission's staff (Staff) did not take a position concerning the application. This Proposal for Decision recommends that the permits and certificate be issued.

I. PROCEDURAL HISTORY

Commission Staff issued a notice of hearing on August 12, 2008, informing all parties that 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 began on October 14, 2008, in Fort Worth, Texas, with Tanya Cooper, an Administrative Law Judge (ALJ) with the State Office of

Administrative Hearings (SOAH), presiding.

Commission Staff appeared and was represented by Judith Kennison, a Commission Staff Attorney. Applicant appeared and was represented by Dee Kelly, Jr., attorney at law. Protestants, Mayor Robert N. Cluck and former Mayor Pro Tempore, Ron Wright, appeared and were represented by Kathleen Weisskopf, Assistant City Attorney for the City of Arlington. Another Protestant, Texas Sober, appeared and was represented by its president, Carl Fors. There were no challenges to the notice of hearing, jurisdiction, or venue for the hearing so those matters will only be discussed in the Findings of Fact and Conclusions of Law sections of this Proposal. The hearing concluded on October 16, 2008, and the record closed on December 12, 2008, after the parties submitted written arguments.

II. DISCUSSION

A. Applicable Law

The statutory foundation for the protest to this application is § 11.46(a)(8) of the Texas Alcoholic Beverage Code (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.

...

Numerous case decisions have further interpreted the above-cited Code provision holding

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 so as to justify a finding that the place or manner in which the applicant may conduct its business warrants a refusal of a permit.¹ There is no set formula to determine if a “place and manner” condition exists within a proposed licensed premises’ operations. Thus, great discretion is provided by legislative grant.²

B. Public Comment

On October 14, 2008, the ALJ convened a public hearing in this matter prior to taking evidence in this case. Several persons spoke against the issuance of the permits and certificate citing a number of safety, moral, and general public welfare concerns. One speaker summed up public opposition to these requested permits suggesting that “beer and Bugs Bunny” were a bad combination. The ALJ closed the public hearing on that same day.

C. Evidence

1. Physical Setting.

As described in the application, the proposed location for the licensed premises, Six Flags Over Texas (Six Flags), is within a designated “Entertainment District”³ in the City of Arlington, Tarrant County, Texas. Six Flags is an amusement park alongside an interstate highway in a commercial area. There are numerous businesses nearby, including an estimated 80 Commission-licensed premises. Two large sporting event venues either currently exist or are under construction nearby: The Ballpark, where professional baseball is played, and the new Dallas Cowboys’ Stadium

¹ *TABC v. Twenty Wings, LTD. et al*, 112 S.W.3d 647; *TABC v. Mikulenska*, 510 S.W.2d 616, and *Bavarian Props., Inc. v. TABC*, 870 S.W.2d 686.

² *TABC v. Jesus Rodriguez d/b/a La Gaviota Nite Club*, 2007 Tex. App. LEXIS 4276; and *Four Stars Food Mart, Inc. v. TABC*, 923 S.W.2d 266.

³ This area is also occasionally referred to as the “Festival District” during testimony in this case.

where professional football will be played upon the stadium's completion. The Ballpark currently serves alcoholic beverages to patrons, and it is anticipated that the Cowboy's stadium will apply for a Commission-issued permit since the team's management offers alcoholic beverages at its current venue, Texas Stadium, in Irving, Texas.

The City of Arlington's City Secretary and the Tarrant County Clerk certified Six Flag's location as being within a "wet area" for a mixed beverage permit. Also, the location is in compliance with City of Arlington's zoning and building occupancy regulations. From Commission Staff's review of this application, the proposed licensed premises is not within a restricted area surrounding a residence, school, church, day care, or social service facility. Based upon its review of the application, Commission Staff did not take a position concerning this application because it determined Applicant is a fully qualified applicant who proposes to operate a lawful business in a wet area and in compliance with the ordinances of the City of Arlington and orders of the Tarrant County Commissioner's Court.

2. Protestants' evidence.

Witnesses testifying on behalf of the Protestants included Mayor Robert Cluck, former City Councilman and Mayor Pre Tempore Ron Wright, and Sgt. R. Reed, from the City of Arlington; and Carl Fors, president of Texas Sober. Several exhibits were admitted into evidence, including the following: protest letters; maps of the immediate area surrounding the proposed licensed premises depicting traffic crash data; and various internet web site pages, including Six Flags park policies, job listings, and ride specifications. For clarity in discussion, the ALJ has grouped Protestants' concerns in the following categories associated with ride safety, children's safety, and traffic safety.

a. Alcohol Sales' Impact on Ride Safety.

Mayor Cluck, Mr. Wright, and Mr. Fors each expressed concerns that the judgment needed

to safely ride many of Six Flag's high thrill rides, such as the Titan,⁴ could be diminished if persons impaired by alcohol consumption were allowed on these rides. Mayor Cluck, a physician, opined that if individuals are intoxicated, they could choose to ride a park attraction that they would otherwise avoid. He said that the combination of a ride's effects and the alcohol in a person's system could cause a medical emergency event or vomiting that created a hazardous condition for themselves and other park attendees. Mayor Cluck said that a number of diseases are transmitted via exchange of bodily fluids; however, he conceded that the properties of vomit were less likely to be a factor in disease transmission due to its lack of infected organisms. Nevertheless, he continued to maintain that health hazards could be present if person engaged in the park's activities while under the influence of alcohol.

Mr. Fors also discussed the health hazards associated with ingesting alcoholic beverages and its association with regurgitation. He illustrated his concerns using a number of articles and studies addressing this topic.

Mr. Wright testified that he had observed intoxicated persons and that frequently these persons' judgment and motor skills were negatively impacted due to consuming alcoholic beverage. He opined that the lessening of those skills could lead to persons failing to observe or comply with safety precautions in place for some of the Six Flags rides; and thus, place themselves and others at risk.

When asked if he saw any differences between alcohol sales at Six Flags and The Ballpark (where numerous children were also in attendance), Mr. Wright said there was a significant difference. He pointed out that there was a difference between a venue where persons were merely spectators, such as being seated watching a baseball game, and a venue where persons were actually engaging in activities, such as riding park attractions. In Mr. Wright's opinion, the latter venue presented a host of dangers.

⁴ Other high thrill rides include: Batman the Ride, Mr. Freeze, Superman: Tower of Power, and Texas Giant. These rides range in maximum speed from 45 to 85 miles per hour and climb from 11 to 32.5 stories in height. Additional ride specifications are set out in Protestant's (City of Arlington) Exhibit 9.

b. Alcohol Sales' Impact on Children in the Area.

Mr. Wright focused much of his testimony toward the detrimental effects that sales and service of alcoholic beverages by Six Flags would have on children. Six Flags is a "family-oriented" amusement park, and Mr. Wright said that the park's primary patrons are persons less than 21 years of age. He stated that people who are drinking tend to become rowdy, which would detract from many other peoples' enjoyment at the park; and in some more extreme situations, could lead to bodily jeopardy. He further expressed concerns that unscrupulous adults might be able to easily supply minors with alcoholic beverages, if those individuals were able to purchase alcoholic beverages inside the park

Mr. Wright further noted from his observations that the bulk of Six Flags' employees are also younger than 21 years old. He opined that it would be difficult, at best, to expect a youthful employee to be able to deal with serious issues that are often associated with an intoxicated person. He also said it could be difficult for any younger Six Flags worker selling and serving alcoholic beverages to withstand pressure from peers to illegally sell beer to their underage friends.

Mayor Cluck also expressed concerns about the safety of children without immediate adult supervision being in contact with potentially intoxicated persons in the park. He opined that inebriated individuals might be more apt to make inappropriate sexual advances or other misconduct toward children under those circumstances.

Mr. Fors discussed that given the number of school-age children attending Six Flags as participants in public or private school-sanctioned field trips, it was an inappropriate setting to permit the sale and consumption of alcoholic beverages. He pointed out that prohibition of alcohol sales within 1,000 feet of a public or private school was provided for pursuant to Section 109.33 of the Code. He opined that the rationale behind that Code provision should be sufficient justification to deny the authorization of alcoholic beverage sales to Applicant in this instance as well.

c. Alcohol Sales' Impact on Traffic Safety.

Mr. Fors testified that alcohol consumption is the leading cause of traffic fatalities. He supported his statement by pointing to several studies citing the negative impact that alcohol sales had on traffic safety. Mr. Fors questioned why another licensed premises should be created that could possibly contribute to the already high number of impaired persons on the roadways due to the consumption of alcoholic beverage.

Mayor Cluck testified that Six Flags is located in close proximity to two heavily-traveled highways, Interstate 30 and Highway 360, in Arlington. He expressed concern that introducing alcoholic beverage sales could lead to increased vehicle-to-vehicle and vehicle-to-pedestrian accidents, especially at the park's closing time. Mr. Wright echoed these same concerns pointing to statistical data that revealed Six Flags has been in close proximity to the top accident-generating intersections in Arlington for a number of years.

Sgt. Reed, a member of the Arlington Police Department's traffic enforcement unit, furnished specific information in relation to the top crash locations in Arlington. Further, he was familiar with Six Flags' operations, having worked both in on-duty and off-duty capacities at the park. Over the years, he recalled having been dispatched to Six Flags for a variety of situations, including reports of theft, trespass, and minor in possession violations.

Sgt. Reed presented several maps depicting crash sites throughout Arlington. A cluster of reported crashes were within Arlington's Entertainment District, and the top crash site bordered Six Flags' property at Six Flags Drive and N. Watson Road.⁵ When asked if the City of Arlington had taken any steps to improve traffic conditions in the general area surrounding Six Flags, Sgt. Reed

⁵ Between 60 and 64 crashes at that intersection between June 1, 2007 and June 30, 2008, and 83 crashes occurred at that location in the years 2001 through 2006.

stated that increased patrols and red light cameras were being employed to curb traffic violations. Additionally, there was ongoing road construction of additional traffic lanes and exit ramps to handle the increased traffic volume in the area from persons attending football games in the Cowboys' new stadium.

Sgt. Reed testified that increased alcohol sales will increase the probability of impaired or intoxicated drivers in an already dangerous area. He noted that 75% of fatality traffic crashes in Arlington were related to driving while intoxicated offenses. Sgt. Reed was asked if the Ballpark, a venue having large attendance numbers and selling alcoholic beverage, contributed to the traffic accidents described above; he was not aware of any such relationship.

3. Applicant's evidence.

Witnesses testifying on behalf of Applicant included Arlington City Councilmember Mel LeBlanc, and Six Flags staff members John Bement, Bill Pugh, Cal Brim, and Steve Brown. Several exhibits were admitted into evidence, including numerous photographs of Six Flag's facility depicting areas where alcoholic beverages are proposed to be sold and served. Six Flags personnel testified that this application for Commission-issued permits was made due to patrons requesting that alcoholic beverage options be made available to them at the Six Flags venue. Each witness's testimony summarized below.

a. Hon. Mel LeBlanc.

Mr. LeBlanc testified the Six Flags venue is within his council district and that no action by the Arlington City Council had been made to oppose the current application before the Commission. According to Mr. LeBlanc, he felt that Six Flags management should be allowed to make a lawful business decision without that decision being elevated to a protest against the action due to moral and public safety concerns.

b. John Bement.

Mr. Bement, Six Flags Senior Vice-President of In-Park Services, testified that Six Flags Over Texas is an amusement park within group of 20 similarly-operated amusement park venues. Currently, 16 of the 20 parks make both alcoholic beverage and non-alcoholic beverage drink options available to park patrons. He noted that numerous other amusement park operations provide alcoholic beverage options to their patrons, including Disney World, Disneyland, Epcot Center, Universal Studios, and other Texas park venues such as the State Fair of Texas, Busch Sea World, Great Wolf Lodge, Schlitterbahn, and another amusement park operated by Applicant's management, Fiesta Texas.

Fiesta Texas is located in San Antonio. It has been operated under the same management as Applicant's park, Six Flags, for approximately 10 years. Fiesta Texas is an amusement park that features the same type of "high thrill factor" rides as Six Flags and also contains a water park similar to Applicant's Arlington water park, Hurricane Harbor. According to Mr. Bement, Fiesta Texas has the same basic attendance patterns as the Arlington venues. During the time Fiesta Texas has been under Applicant's management, it has not been cited by Commission Staff for any Code violations or faced any liability claims via its insurer for damages related to the sale or service of alcoholic beverage at the Fiesta Texas venue.

Mr. Bement said that the safety of Six Flags' patrons was of paramount concern to Applicant's management. He opined that Six Flags' current policies and procedures would be adequate to manage any guest's safety if the requested permits were granted; but added that if the Commission made any suggestions for supplementing existing measures, Applicant's management would attempt to implement those suggestions.

c. Bill Pugh.

Mr. Pugh is the Director of In-Park Services for the Six Flags Arlington venue. He described

the limited areas of the park where alcoholic beverage sales and consumption would be located⁶ and discussed the current policies and practices in place for this venue, including the Guest Code of Conduct, which all park patrons are required to observe.

In the event a park guest does not adhere to all Code of Conduct requirements, Mr. Pugh said that park security personnel is available to intervene and the guest may be ejected from the park; any park pass belonging to the guest could be revoked; or if necessary, assistance from Arlington police officers is sought. In specifically dealing with an intoxicated individual, Mr. Pugh stated current policies were in place to release the person to a family member, if one were available; alternative transportation might be provided to ensure an intoxicated person would not be leaving the park and drive an automobile; or in the event neither of the first two options were viable, Arlington police officers were called and the person would be taken into custody for public intoxication. According to Mr. Pugh, no intoxicated individual is simply allowed to leave the park's property.

Mr. Pugh testified that there have already been occasions when alcoholic beverages have been served in the park by private catering services. No problems have arisen from guests attending those functions due to the consumption of alcoholic beverages.

Mr. Pugh continued his testimony addressing security and personnel concerns raised by Protestants. He stated Six Flags employs approximately 150 security personnel, some of which are licensed peace officers. The park also employs a number of emergency medical personnel working under a medical director. These employees, along with ride attendants, are already trained to recognize intoxicated or otherwise impaired guests and take appropriate steps to deal with those types of issues.

Mr. Pugh stated that should these requested permits and certificate be granted, the park employees responsible for selling and serving alcoholic beverages will be eighteen years of age or

⁶ Sales and consumption of alcoholic beverage will be limited to six food service areas: All American Café, Casa de las Banderas, Dry Hole Charlie's, Gator McGee's, Johnny Rocket's, Papa John's, Big Bend Pavilion, the Westside catering area, and Music Mill Amphitheater

older and will have completed Commission-approved seller/serving training. Any employee failing to observe park policies concerning guest safety, including the sales of alcoholic beverages, is subject to termination. As an added measure to guest safety, Mr. Pugh further testified that alcoholic beverage sales in the park will be stopped at two hours prior to park closing.

Specifically addressing concerns about school children's exposure to alcoholic beverages, Mr. Pugh said that no protests had been received from any school districts concerning this application. He added, however, that on the days Six Flags specifically designated as "school activity" days, plans were that no alcoholic beverages would be served in the park.

Mr. Pugh noted that while persons under 21 years of age could lawfully consume alcoholic beverage if in the presence of their parent, guardian, or spouse, Six Flags' policy was that no sale of alcoholic beverage would be allowed to any person under 21 years of age. He explained that Six Flags' proposed alcoholic beverage service plan would be to sell only one alcoholic beverage to a person at a time; and that no sale would occur until the purchaser presented their valid picture ID confirming their age as 21 or over. If a person wished to purchase additional alcoholic beverages, they would be required to reenter the service line. Mr. Pugh opined that this service policy would adequately restrict alcoholic beverages sales and prevent overconsumption by a park guest

d. Cal Brim.

Mr. Brim is the Manager of Security and Guests Relations for the Six Flags amusement park. He testified in detail concerning park operations. He stated on a normal day there were 20 security officers in the park and four to six screeners positioned at the park's entrance to prevent any banned items from entering. Several Arlington Police Department officers are employed at the park. Two police officers were always on duty, with one officer in the park's parking lot and one officer inside the park. According to Mr. Brim, if a problem arises, security personnel can be at any point within a couple of minutes.

Mr. Brim stated that an intoxicated person cannot remain in the park under current policies and is ejected. According to Mr. Brim, if an intoxicated person can safely be released to a responsible party, the person is released. However, if the person cannot be safely released, the Arlington Police Department is called to handle the situation. Park medical personnel are also trained to deal with impaired individuals, irrespective of whether a person's impairment is due to alcohol ingestion, prescription medication or illegal drug reactions, illness, or reactions to Texas heat.

Mr. Brim did not anticipate any additional safety problems in park operations if alcoholic beverages were allowed to be sold. He based his opinion, in part, on the experiences security personnel had when alcoholic beverages were served at catered events in the park. These events had been managed without any incidents.

e. Steve Brown.

Mr. Brown is the Safety Manager for the Six Flags park in Arlington. One of his primary job responsibilities is to ensure the safety of park guests and employees. He testified in detail about safety measures employed in the park. He oversees approximately 50 staff members, including emergency medical technicians, nurses, and paramedics, who perform their activities pursuant to protocols established by the park's medical director, as well as, the City of Arlington's staff medical director. Mr. Brown stated that his staff is trained to deal with persons in altered mental states, which can include individuals under the influence of alcoholic beverages. Mr. Brown said his staff's first step in dealing with an impaired guest is to remove the person from the general park area to the park's First Aid Center. If the source of impairment is deemed to be alcohol-related, security personnel are called to handle the situation.

Mr. Brown specifically addressed concerns expressed by Protestants in relation to containment or clean-up of vomit. According to Mr. Brown, there are instances when park guests vomit. Any vomit in the park is cleaned up by park services personnel. In the event there is a

significant amount of blood with a person's vomit, OSHA rules dictate disposal of the vomit as a biohazard. Vomit clean-up procedures include use of an absorbent to absorb liquids, and the immediate area where the vomit was located is disinfected with a bleach solution.

Mr. Brown said that his staff maintained a two- to three-minute response time when called for assistance in the park. He stated that his current staff and policies were adequate to handle any situations that could arise if the requested permits were issued by the Commission.

III. ANALYSIS

In this instance, Applicant is fully qualified to obtain its requested Commission-issued permits and certificate.⁷ Applicant's location has been designated as "wet" through an Arlington-resident voter election. The Arlington City Secretary and Tarrant County Clerk certified Six Flag's location as being within a "wet area" for a mixed beverage permit in Arlington, Tarrant County, Texas. The Arlington City Council has zoned this location as an area for commercial entertainment activity; the area includes a large professional sporting venue (and a similar sporting venue is under construction nearby), restaurants, and bars where alcoholic beverages may be sold and served. Since Applicant has met these general criteria for securing a Commission-issued permit for alcoholic beverage sales at this location, the ALJ next examines the evidence in this case to determine if there are unusual conditions or a situation established so as to justify a finding that the place or manner in which Applicant may conduct its business warrants a refusal of a permit.

Protestants bear the burden of proof in establishing that Applicant's business operations create an unusual condition or situation that is contrary to the general welfare, peace, morals, and safety of the people and on the public sense of decency. The essence of Protestants' objections to

⁷ Commission Staff announced at the hearing that it took no position on the protest to this application. It found that Applicant met all criteria (distance requirements from churches, schools, etc.; business operated under an appropriate ownership structure; Applicant's principals passed criminal and general background checks; no fees, taxes, etc. were owed; Applicant posted a required surety bond; a premises suitable for conducting business as a licensed location is available; and Applicant has no history for engaging in violations of the Code) for securing a Commission-issued permit. See TEX. ALCO BEV. CODE ANN §§ 11.11, 11.46, and 11.49.

Applicant's request to sell and serve alcoholic beverages is that persons consuming the beverages at Applicant's park will have a detrimental impact on public safety, and in particular have a negative impact upon children and younger adult park guests. Some of Protestant's specific arguments against these requested permits and certificate are discussed below.

A. Ride Safety.

It is undisputed that some of the attractions featured at Six Flags are "high-thrill-factor" rides. Protestants contend that individuals impaired by the consumption of alcoholic beverage might participate in rides they should otherwise avoid or be incapable of compliance with ride safety precautions, thus creating a risk to themselves and others. Protestant's evidence consisted only of generalized testimony or documentary evidence discussing alcohol's negative effect upon a person's motor and mental skills. As a result, Protestant's evidence was insufficient to outweigh Applicant's proven track record for safe operation and time-tested, existing procedures for dealing with any impaired park guest, irrespective of the source or cause of said impairment.

B. Children and Guest Safety.

Protestants opined that Applicant's business, if combined with alcoholic beverage service and sales, would be harmful for children and younger adults to be exposed to. However, the ALJ finds the evidence was insufficient to support this contention. Applicant's proposed licensed premises is within the Arlington Independent School District; and neither that school district, nor any other district, has registered opposition to granting this application. Nevertheless, Six Flag's management stated it will offer a variety of special "school" days throughout its operating season when the sale and service of alcoholic beverage would be suspended. This practice would allow any school district that wanted to limit its children's exposure to alcoholic beverage sales and service to attend the park on those designated dates.

Further, Applicant pointed to numerous other venues, such as Disney World, Disneyland, Epcot Center, Universal Studios, and other Texas park venues such as the State Fair of Texas, Busch

Sea World, Great Wolf Lodge, and Schlitterbahn, that operate “family-friendly” amusement parks while selling and serving alcoholic beverages to their guests. Applicant’s management also has a successful history operating its own amusement park, Fiesta Texas, while serving alcoholic beverage to park guests. Accordingly, the ALJ believes that Protestants’ assertion concerning the risk to children is not a viable basis for denying Applicant’s requested permits.

Applicant’s evidence further showed that there have been instances where privately-catered functions served alcoholic beverages to function attendees at the Six Flags venue. No problems were encountered during these events and Six Flags personnel were able to effectively manage these guests. Applicant’s evidence also demonstrated that on occasion an impaired or intoxicated individual has been encountered at the Six Flags facility but Applicant’s existing policies and procedures give all Six Flags personnel, of any age, sufficient guidance to properly handle that type of situation should it arise. Consequently, the ALJ deems there is little demonstrated risk to the public, or specifically children or younger adults, should Applicant’s application be granted.

C. Traffic Safety or Criminal Activity.

The evidence showed that Applicant’s proposed licensed premises is near several of the top motor vehicle crash sites within the City of Arlington. It is also undisputed that traffic conditions can be heavy on the freeways and streets surrounding Applicant’s property. However, Protestant’s evidence was insufficient to establish that Applicant’s current or proposed operations are linked to any of these crashes. Moreover, Texas law does not require that an applicant for a Commission-issued permit select a location free of potential traffic hazards in order to qualify for a permit.⁸

The City of Arlington, recognizing that these conditions exist in the Entertainment District generally, is taking steps to ease traffic congestion in the area and increase overall public safety by constructing additional traffic lanes and needed access exits. Thus, this situation is not an unusual condition that should preclude Applicant from securing its requested permits and certificate.

⁸ *Kermit Concerned Citizens Comm. V. Colonial Food Stores, Inc.*, 650 S.W.2d 208.

Although Sgt. Reed testified he had responded to a variety of requests for service at Six Flags, no evidence was presented to suggest that any criminal conduct in the area was related to Applicant's operations, either currently or in the future. Neither the Arlington Police Department, nor Tarrant County Sheriff's Office, has entered into this proceeding to protest Applicant's request for a Commission-issued permit, which is specifically allowed for pursuant to the Code⁹ when a public official (i.e. the city's chief of police or county's sheriff where an Applicant's proposed licensed premises is located), deems issuance of an alcoholic beverage permit to any applicant is contrary to the public's interests. Consequently, the ALJ believes that Applicant's request for Commission-issued permits should not be denied upon this basis.

D. Conclusion.

Applicant has operated the amusement park where these Commission-issued permits and certificate are sought for several years, along with numerous other amusement parks similarly situated that serve alcoholic beverage choices, without any significant adverse effects. Applicant has existing procedures to effectively handle an intoxicated park guest should that situation arise. There was no evidence presented that Applicant has a history of operating this, or any of its parks, in violation of the Code.

This proposed licensed premises is located in an area designated as an "entertainment district" within the City of Arlington. There are several other Commission-authorized licensed premises nearby to the proposed premises. Applicant has met all zoning and building requirements imposed by the Arlington City Council. The area is designated "wet" for alcoholic beverage sales, pursuant to a vote of Arlington residents. The amusement park is along Interstate 30, with no residences, churches, or schools within the restricted area around this park.

⁹ TEX. ALCO. BEV. CODE ANN § 11.41.

Protestants' concerns, although understandable, do not rise to the level of an unusual condition or situation that justifies a finding that the place or manner in which the Applicant conducts business warrants a refusal of the permits and certificate sought based on the general welfare, health, peace morals, safety, and sense of decency of the people. Accordingly, based on the evidence in the record, the Protestants have failed to show, by a preponderance of the evidence, that Applicant's application should be denied.

IV. RECOMMENDATION

The ALJ recommends that Applicant be granted the permits and certificate sought in this application.

V. FINDINGS OF FACT

1. Flags Beverage Inc., d/b/a Six Flags Over Texas (Applicant/Respondent) has filed an application with the Texas Alcoholic Beverage Commission (Commission) 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 a premises located at 2201 Road to Six Flags, Arlington, Tarrant County, Texas.
2. Protests to the application were filed by concerned citizens and public officials based on the general welfare, health, peace, morals and safety of the people and on the public sense of decency.
3. A Notice of Hearing dated August 12, 2008, 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. On October 14, 2008, a hearing began before Administrative Law Judge Tanya Cooper in Fort Worth, Texas. Commission Staff appeared at the hearing through its Staff Attorney Judith Kennison, and took no position on the application. Applicant appeared and was represented by Dee Kelly, Jr., attorney at law. Protestants, Mayor Robert N. Cluck and former Mayor Pro Tempore, Ron Wright, appeared and were represented by Kathleen Weisskopf, Assistant City Attorney for the City of Arlington. Protestant, Texas Sober, appeared and was represented by its president, Carl Fors. The record closed on December 12, 2008, after the parties filed written arguments in this case.

SOAH DOCKET NO. 458-08-4008

PROPOSAL FOR DECISION

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5. Applicant has met all Commission requirements for holding the permits and certificate requested for the proposed licensed premises at this location.
6. No unusual conditions or situations exist that would warrant refusal of the permits.

VI. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage 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)(3). 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 does 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 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 2201 Road to Six Flags, Arlington, Tarrant County, Texas, should be granted.

SIGNED January 9, 2009.


TANYA COOPER

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS