

DOCKET NO. 580538

TEXAS ALCOHOLIC BEVERAGE
COMMISSION, **Jurisdictional Petitioner**

BEFORE THE TEXAS

HIGHLAND HILLS NEIGHBORHOOD
ASSOCIATION,
STATE REPRESENTATIVE MARC VEASEY,
CITY COUNCIL MEMBER KATHLEEN
HICKS,
COMMISSIONER ROY C. BROOKS,
HIGHLAND HILLS CHURCH OF CHRIST,
EAST SAINT PAUL BAPTIST CHURCH,
NRP GROUP, LLC,
JESSIE & NANNIE KEMP,
ROBERT & LAURA MEEKS,
REVEREND CARL NEALY,
RENNY ROSAS, **Protestants**

ALCOHOLIC

VS.

ORIGINAL APPLICATION OF
EF CORP
D/B/A ESCAPADE 2001, **Respondent**
(MB, LB)

TARRANT COUNTY, TEXAS
(SOAH DOCKET NO. 458-09-0896)

BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION this 8th day of June 2009, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Tanya A. Cooper. The hearing began on December 19, 2008. The hearing concluded on February 11, 2009 and the record closed on April 17, 2009. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 27, 2009. This 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. Exceptions were filed to which the Administrative Law Judge replied and recommended that no changes be made to the Proposal for Decision.

The Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision 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 EF CORP D/B/A ESCAPADE 2001, for the issuance for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit be **GRANTED**.

This Order will become final and enforceable on July 2, 2009, unless a Motion for Rehearing is filed before that date.

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

SIGNED this the 8th day of June, 2009, at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

Hon. Tanya Cooper
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
6777 Camp Bowie Blvd., Suite 400
Fort Worth, Texas 76116
VIA FACSIMILE (817) 377-3706

Timothy E. Griffith
ATTORNEY FOR RESPONDENT
101 East Park Blvd., Suite 600
Plano, TX 75074
VIA FACSIMILE (469) 742-9521

EF Corp.
d/b/a Escapade 2001
RESPONDENT
P.O. Box 540427
Dallas, Texas 75354-0427
VIA REGULAR MAIL

Highland Hills Neighborhood Association
PROTESTANT
c/o John L. Gamboa
ATTORNEY FOR PROTESTANT
2501 Parkview Drive, Suite 405
Fort Worth, TX 76102
VIA FACSIMILE (817) 885-8504

State Representative Marc Veasey
House District 95
PROTESTANT
1120 S. Freeway, Suite 121
Fort Worth, TX 76104
VIA FACSIMILE (817) 339-9352

Fort Worth City Council Member District 8
Kathleen Hicks, PROTESTANT
1000 Throckmorton Street
Fort Worth, Texas 76102
VIA FACSIMILE (817) 392-6187

Tarrant County Commissioner Precinct No. 1
Roy C Brooks, PROTESTANT
6551 Granbury Road
Fort Worth, Texas 76133
VIA FACSIMILE (817) 370-4503

Highland Hills Church of Christ
c/o Louis Howard, Church Leader
PROTESTANT
1121 Oaks Grove Road
Fort Worth, TX 76134
VIA FACSIMILE (817) 568-9187

East Saint Paul Baptist Church
c/o L.S. Wilson, Senior Pastor
PROTESTANT
5300 Oak Grove Road, West
Fort Worth, TX 76134
VIA FACSIMILE (817) 293-6527

NRP Group, LLC
c/o Daniel B. Markson, Senior VP Development
PROTESTANT
111 Soledad, Suite 1220
San Antonio, TX 78205
VIA FACSIMILE (210) 487-7880

Jessie & Nannie Kemp
PROTESTANT
1421 Glasgow
Fort Worth, TX 76134
VIA REGULAR MAIL

Robert & Laura Meeks
PROTESTANT
5640 Conlin Drive
Fort Worth, TX 76134
VIA REGULAR MAIL

Reverend Carl Nealy
PROTESTANT
2612 Creekwood Ln.
Fort Worth, TX 76132
VIA REGULAR MAIL

Renny Rosas
PROTESTANT
P.O. Box 1481
Fort Worth, TX 76101
VIA REGULAR MAIL

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Dallas District Office

TABC Staff appeared and was represented by Sandra Patton, a TABC Staff Attorney. Applicant appeared and was represented by attorneys Wade Bingham, Steve Swander, and Timothy Griffith. Protestants appeared and were represented by an attorney, John Gamboa. 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 February 11, 2009, and the record closed on April 17, 2009, 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

SOAH DOCKET NO. 458-09-0896

PROPOSAL FOR DECISION

PAGE 3

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 December 19, 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, citing a number of safety, moral, and general public welfare concerns. The ALJ closed the public hearing on that same day.

C. Evidence

1. Physical Setting.

The proposed location for the licensed premises, Escapade 2001, is within a commercial and industrial area that is generally bounded by a major interstate highway to the north, and a railroad track and utility transmission easement to the south and west. Other businesses, Sam's Club Warehouse and a Roadway trucking facility, are in the immediate area. Beyond the railway and utility lines is a large public park with a community center and athletic facilities, and the residential neighborhood, Highland Hills. Residents affiliated with the Highland Hills Neighborhood Association are Protestants to this application. In addition to residences, there are churches, convenience stores, and other smaller businesses, including a small nightclub in the neighborhood.³ Sam's Club and a Valero convenience store in the Highland Hills neighborhood currently hold TABC-issued permits for the sale of alcoholic beverages.

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 business has been in the neighborhood for an estimated 30 years; it does not sell alcoholic beverages.

Applicant's building is a large structure, designed and built to house a dance club. Two large paved parking lots are available for Applicant's patrons, one of which is currently fenced, and plans exist for fencing the second lot.

The City of Fort Worth's City Secretary and the Tarrant County Clerk certified Applicant's location as being within a "wet area" for a mixed beverage permit. Also, the location is in compliance with the City of Fort Worth's zoning and building occupancy regulations. From TABC 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, TABC 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 Fort Worth and orders of the Tarrant County Commissioner's Court.

2. Protestants' evidence.

Witnesses testifying on behalf of the Protestants included Eunice Givens, Steve Rodriguez, Norma Rodriguez, Robin Rodriguez, Juan Rodriguez, and Renny Rosas. One exhibit was admitted into evidence, a copy of information derived from the Dallas Escapade 2001's internet website.

Ms. Givens, a 40-year resident of the Highland Hills neighborhood, testified that Applicant's business was not going to be an asset to the community. She opined that the place Applicant selected for its proposed licensed premises was inappropriate for the area, which she characterized as largely residential with families that would not be patronizing Applicant's business. Ms. Givens testified there had already been problematic operations at Applicant's business when it opened on a few occasions, either allowing persons to bring their own alcoholic beverages to the club or giving alcoholic beverages away to patrons without charge. On those instances, there were noise and traffic issues. Ms. Givens said she had also protested the Valero convenience store's application to sell alcoholic beverages, but added at least the convenience store sold other items, in addition to

SOAH DOCKET NO. 458-09-0896

PROPOSAL FOR DECISION

PAGE 5

alcoholic beverages, that were of value to persons in the surrounding community.

Norma Rodriguez, Robin Rodriguez, Juan Rodriguez, and Steve Rodriguez attended Applicant's business on the limited occasions when the business opened either with free alcoholic beverages supplied to patrons or allowing patrons to bring their own alcoholic beverages. Steve Rodriguez had been asked by Renny Rosas to visit Applicant's business and "scope out" the club's operations. Steve Rodriguez, in turn, asked his family members, all of whom live in the Dallas area and have attended the Dallas Escapade 2001 club, to go to the new Fort Worth club.

All of these witnesses described crowded, and somewhat chaotic, conditions both inside the proposed licensed premises and on the premises' parking lot on the nights they attended the club. Most people were having a good time, but some appeared intoxicated. Other problematic issues were noted by the Rodriguez's, such as the traffic access to the premises, a lack of observable security personnel, high noise levels, and other types of disorderly conduct. On one occasion, Juan Rodriguez observed some handcuffed, intoxicated men being removed from the premises by police officers. Robin Rodriguez described watching some "sexy" ladies and men dance contests; and although these contests were risqué, according to Ms. Rodriguez, the contests were not as raunchy as the similar contests she had observed at Escapade Dallas, such as the "banana" contest.⁴

Mr. Rosas, a community organizer, testified he was asked by Fort Worth City Council member, Kathleen Hicks, to become involved in protesting Applicant's TABC-issued permits. According to Mr. Rosas, Applicant's Dallas operation had a bad reputation and was not a good fit for the community where it was being located. However, Ms. Rosas acknowledged that Applicant had not been contacted about Protestants' intentions to protest this application until after Applicant had completed its building's construction.

When Mr. Rosas learned Applicant was opening without first securing its TABC-issued permits, he went to the proposed licensed premises to observe its operations on opening night.

⁴ The "banana" contest is depicted in Protestant's Exhibit 5, an internet webpage printout from Escapade 2001 Dallas' web site. The contest involves a female eating a banana held in a male's crouch, without using her hands.

SOAH DOCKET NO. 458-09-0896

PROPOSAL FOR DECISION

PAGE 6

According to Mr. Rosas, there was traffic congestion and generalized chaos in the premises' parking lots. He observed TABC agents arresting intoxicated persons. And as he attempted to investigate matters further, he was ordered off the property by Applicant's representatives. He acknowledged asking Steve Rodriguez to go to Applicant's business on later occasions to observe its operations because he had been banned from the premises.

Mr. Rosas, a Fort Worth resident, was asked if he had ever protested other TABC licensed-premises applications. He said that he assisted his sister with an application protest in another part of Fort Worth, but denied having ever protested applications for two of Applicant's competitors, OK Corral and Club Babalonia, which are located relatively near his residence. He further acknowledged having worked with OK Corral's owner on several promotional activities and opined that OK Corral's operations could not be used as a comparable operation to Applicant's business activities

3. Applicant's evidence.

Witnesses testifying on behalf of Applicant included Dario Ferdows, Gilberto Torrez and Michael Coker. Several exhibits were admitted into evidence, including numerous photographs of Applicant's facility depicting areas where alcoholic beverages are proposed to be sold and served. Applicant's evidence is summarized below.

Dario Ferdows is the owner of Applicant. He testified that he grew up in the nightclub business, having worked in other family-owned operations beginning as a valet and working up to managing the Escapade 2001 club in Dallas. The Dallas Escapade location is three times the size of the proposed Fort Worth location, which is the subject of this hearing. According to Mr. Ferdows, none of the licensed premises that he has been involved with managing has ever been cited by TABC Staff for any Code violations.

With respect to the Fort Worth club, Mr. Ferdows said he had researched the market and personally selected the location. The property met all of his criteria due to its proximity to highway

SOAH DOCKET NO. 458-09-0896

PROPOSAL FOR DECISION

PAGE 7

access, price, size, zoning, and ability to meet all TABC and City of Fort Worth regulations. Mr. Ferdows said he met with the landowner and TABC officials, posted the required signage for notice of application for TABC-issued permits, and after being told there had only been one inquiry to TABC Staff about the proposed permit, he purchased the property. Construction of the building commenced and was completed in August 2008. At this point, Mr. Ferdows said he learned from TABC Staff that a protest to the application had been filed. Mr. Ferdows said he attempted to contact some of the Protestants, and he finally got a meeting with several of them. However, he said it was clear during their meeting that Protestants were not interested in working with him to resolve their concerns.

Mr. Ferdows said the cost of the building was approximately \$5 million. Some of the costs were attributable to making the building a good fit for its surroundings. Added attention was paid to containing sound inside the building, traffic flow, and security measures, such as fencing the property and installing appropriate lighting and cameras. He testified that approximately 58 people will be employed by Applicant when the club is fully operational; and tax revenues from Applicant's operations with TABC-issued permits are projected to be \$620,000 annually.

Mr. Ferdows conceded that the "sexy chica" dance was a standard contest in many clubs throughout Texas, and he did not plan to eliminate it from attractions at the Fort Worth club. However, he testified that the "banana" contest, which was a major source of opposition by Protestants and depicted on the Dallas Escapade's internet website, was not a standard activity and would not occur again in any of his operations. Mr. Ferdows said that he had employed a photographer to promote Dallas Escapade activities on the internet. This employee organized the "banana" dance and displayed photographs from the event without permission. Mr. Ferdows said he was unaware of the photographs' existence until shown the materials by Protestants. Mr. Ferdows stated upon learning about the website contents, the employee was fired and the site was taken down.

Gilberto Torrez, a former FBI agent with several years of security experience, testified he inspected the proposed licensed premises to determine what, if any, impact Applicant's operations

SOAH DOCKET NO. 458-09-0896

PROPOSAL FOR DECISION

PAGE 8

might have on the surrounding area. He observed that there was a significant natural and man-made barrier between Applicant's property and the Highland Hills' neighborhood and park. These obstacles included an earthen berm, barbed wire fence, electric transmission lines, railroad tracks, brush, and low spots containing water making access difficult, if not impossible, to move directly between the areas on foot. In order to access the two areas in a motor vehicle, one must drive out of the immediate area traveling approximately 1.7 miles around to reach the other side of the berm area via several other roadways. Mr. Torrez said he also compared neighborhood access between one of Applicant's nearest competitors (OK Corral), and found there was easy, direct access between OK Corral and its surrounding areas either by walking or driving.

Mr. Torrez said that he also reviewed Applicant's security plan and characterized it as being superior to some governmental plans. There is only one way into and out of the proposed licensed premises. In addition to the natural barriers discussed above, a portion of Applicant's property is fenced. There are numerous cameras to monitor activities on the property; and Applicant will have adequate staff with communication capabilities to manage the premises safely. In Mr. Torrez's assessment, Applicant had not scrimped on any security details that would act as a deterrent to individuals who might seek to engage inappropriate and dangerous conduct.

Michael Coker is a land use and planning consultant. He possesses many years of experience in land use and was retained by Applicant to evaluate the site for this proposed licensed premises. Mr. Coker stated that the property had a zoning use ("J"/medium industrial) that allowed night clubs, along with many other uses, including metal fabrication, assembly plants, and slaughter/packing houses. Further, the property's location had been previously voted "wet" for alcoholic beverage sales by the area residents. No residences, churches, or schools are within the restricted area around Applicant's proposed licensed premises.

Mr. Coker said from his analysis of the property, Applicant's proposed operations would have little impact on surrounding areas, including the Highland Hills neighborhood. He, however, conceded that he did not interview any of the area's residents. Instead, he based his opinion on several other factors, such as access points between the areas and sound levels. Mr. Coker testified

SOAH DOCKET NO. 458-09-0896

PROPOSAL FOR DECISION

PAGE 9

the physical barriers between Applicant's property and the community (public park and residences), included a berm and utility right-of-way that acted as both a sound and access buffer.

Mr. Coker said that he had been inside Applicant's building, and the building appeared to be well constructed with attention to appropriate installation of insulation to contain sound. Sound studies were conducted by Mr. Coker's company, which revealed that Applicant's operations produced considerably less noise than the train using the tracks between Applicant's property and the Highland Hills neighborhood. Traffic was confined to a dead-end street ending in Applicant's property. The buffer area between Applicant's property and the city park precludes walking from Applicant's property, so there would be little or no opportunity for persons to enter the neighborhood to commit crimes or violent acts. Further, Mr. Coker noted that since the hours of Applicant's operations and those of the park and community center were different, he saw no basis for determining that Applicant's operation would negatively impact the public facilities' operations.

III. ANALYSIS

In this instance, Applicant is fully qualified to obtain its requested TABC-issued permits.⁵ Applicant's location has been designated as "wet" through a Fort Worth-resident voter election. The Fort Worth City Secretary and Tarrant County Clerk certified Applicant's location as being within a "wet area" for a mixed beverage permit in Fort Worth, Tarrant County, Texas. The Fort Worth City Council has zoned this location as an area where commercial activity is permitted; the area presently includes a large commercial trucking firm and wholesale warehouse store. Since Applicant has met these general criteria for securing a TABC-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

⁵ TABC 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.; the business is 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 TABC-issued permit. See TEX. ALCO. BEV. CODE ANN. §§ 11.11, 11.46, and 11.49.

Applicant may conduct its business warrants 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 Applicant's request to sell and serve alcoholic beverages is that persons consuming the beverages at Applicant's business will have a detrimental impact on public safety and the quality of life for persons residing in the area. Some of Protestant's specific arguments against these requested permits are discussed below.

A. Place of Operation.

Protestants contend that individuals impaired by the consumption of alcoholic beverages at Applicant's premises pose a threat to the safety and enjoyment of the adjoining neighborhood. Both Mr. Torrez and Mr. Coker testified convincingly that numerous natural and man-made barriers exist between Applicant's property and the neighborhood and park. These barriers bar vehicular traffic and make foot traffic exceedingly difficult. Consequently, the ALJ believes that any impact on residents of the area and users of the Highland Hills' community center and park would be negligible.

The potential of excessive noise being created by Applicant's operation was also expressed as a concern by Protestants to the peaceful enjoyment of their neighborhood. However, the evidence showed Applicant has taken steps during the construction process of its building to adequately insulate it and preclude excessive noise from being heard outside the building. Sound testing under simulated operating conditions was performed by Mr. Coker's staff, and the level of sound was found to be below recognized tolerances.

Protestant's evidence consisted mainly of testimony generally discussing the negative effect alcoholic beverage sales by Applicant would bring to the Highland Hills neighborhood and the community as a whole. However, other licensed premises for the sale of alcoholic beverages exist in

or near the area, and no correlation was made between those TABC-permitted sales outlets and any overall decline in the living environment. Further, no evidence was presented from any law enforcement officers,⁶ "first-responder" firefighters, emergency medical personnel, or highway design and construction engineers showing that Applicant's operations would create traffic congestion or other public safety concerns in the future should these requested permits be granted. Moreover, Texas law does not require that an applicant for a TABC-issued permit select a location free of potential traffic hazards in order to qualify for a permit.⁷ As a result, Protestant's evidence was insufficient to establish that the place where Applicant seeks to sell alcoholic beverages through TABC-issued permits is unsuitable and warrants denial of Applicant's permit requests.

B. Manner of Operation.

Protestants opined that Applicant's operations are unwholesome, and are otherwise an incompatible fit with the area. Protestant's evidence on these points was mainly provided via persons sent by Mr. Rosas to observe and report activities ongoing at Applicant's business on some limited occasions when the club was opened "BYOB"⁸ or giving alcoholic beverages away. Protestants also presented contents derived from a website depicting activities, some of which could be characterized as lewd, at another licensed premises managed by Applicant's owner. However, the ALJ finds that this evidence, when weighed against other evidence, is insufficient to determine that Applicant's requested permits should be denied.

The evidence showed that other TABC-issued licensed premises exist in the area. These alcoholic beverage outlets include Applicant's main competitor, a convenience store, and a wholesale warehouse store. In addition to these TABC-licensed premises, a BYOB nightclub has existed for many years in the Highland Hills neighborhood. These operations exist without causing

⁶ TEX. ALCO. BEV. CODE ANN. § 11.41.

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

⁸ "BYOB" means "bring your own bottle" and is a term commonly associated with businesses that allow customers or patrons to bring their own alcoholic beverages for consumption while engaging in activities featured by said business, and is a situation unregulated by TABC Staff.

SOAH DOCKET NO. 458-09-0896

PROPOSAL FOR DECISION

PAGE 12

notable decline in the neighborhood or in the Fort Worth community as a whole.

While the testimony from members of the Rodriguez family noted some operational problems at Applicant's proposed licensed premises, the ALJ agrees with Applicant's owner, Mr. Ferdows, that some of these issues were to be expected with any new operation; and in fact, would be lessened if Applicant's premises were operating within the purview of TABC Staff.

Residential area security, traffic, parking difficulties, intoxicated persons, and the presence of minors at the premises were the chief concerns cited by Protestants as reasons to deny these permits. However, TABC-issued permits offer more security and control over the existing club's activities. With TABC-issued permits, TABC Staff can conduct inspections, investigations, and regulate alcoholic beverage service to minors, excessive consumption, and criminal activity, if any of these situations should occur. Further, Applicant's staff will be required to attend training to learn applicable laws and regulations for sales and service of alcoholic beverages.

Lastly, Mr. Ferdows has demonstrated his ability to operate a licensed premises successfully under the provisions of the Texas Alcoholic Beverage Code. He manages a similar business in Dallas. No evidence was produced to show that the Dallas premises has any history of engaging in or allowing Code violations at that location. And while some of the dance contests and activities cited by Protestants as being inappropriate are of questionable taste, they do not rise to the level of prohibited activities. Mr. Ferdows acknowledged in his testimony that the most offensive of these contests, the "banana" contest, would not be held in this proposed licensed premises or any other premises managed by him. His testimony that the event was organized by one of his employees at the Dallas Escapade, but that it had been held without his permission, was credible. Consequently, the ALJ believes that Applicant's request for TABC-issued permits should not be denied upon this basis.

C. Conclusion.

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 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 requested permits should be denied.

IV. RECOMMENDATION

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

V. FINDINGS OF FACT

- 1 E.F. Corp. d/b/a Escapade 2001 (Applicant/Respondent) has filed an application with the Texas Alcoholic Beverage Commission (TABC) for a mixed beverage permit and a mixed beverage late hours permit for a premises located at 2495 S. Campus Court, Fort Worth, Tarrant County, Texas.
2. Protests to the application were filed by concerned citizens 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 October 22, 2008, was issued by TABC 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 December 19, 2008, a hearing began before Administrative Law Judge Tanya Cooper in Fort Worth, Texas. TABC Staff appeared at the hearing through its Staff Attorney Sandra Patton, but took no position on the application. Applicant appeared and was represented by its attorneys, Wade Bingham, Steve Swander, and Timothy Griffith. Protestants appeared and were represented by their attorney, John Gamboa. The record closed on April 17, 2009, after the parties filed written arguments in this case.
5. Applicant has met all TABC requirements for holding the permits 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. TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. chs. 5, 11, 28, and 29, 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 § 155.401.
4. Issuance of the requested permits 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 and a mixed beverage late hours permit for the premises located at 2495 S. Campus Court, Fort Worth, Tarrant County, Texas, should be granted.

SIGNED April 27, 2009.


TANYA COOPER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS

FT. WORTH OFFICE
6777 Camp Bowie Blvd Suite 400
Fort Worth, Texas 76116
Phone: (817) 731-1733
Fax: (817) 377-3706

SERVICE LIST

AGENCY: Alcoholic Beverage Commission, Texas (TABC)
STYLE/CASE: ESCAPADE CLUB CORP / ESCAPADE 2001
SOAH DOCKET NUMBER: 458-09-0896
REFERRING AGENCY CASE: 580538

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

ADMINISTRATIVE LAW JUDGE
ALJ TANYA COOPER

REPRESENTATIVE / ADDRESS**PARTIES**

TIMOTHY GRIFFITH
ATTORNEY AT LAW
101 E. PARK BLVD., SUITE 600
PLANO, TX 75074
(214) 585-2383 (PH)
(469) 742-9521 (FAX)

RESPONDENT

JOHN L. GAMBOA
ATTORNEY AT LAW
ACUFF & GAMBOA, LLP
2501 PARKVIEW DRIVE, SUITE 405
FORT WORTH, TX 76102
(817) 885-8500 (PH)
(817) 885-8504 (FAX)

PROTESTANT

SANDRA K. PATTON
ATTORNEY
TEXAS ALCOHOLIC BEVERAGE COMMISSION
420 WEST 20TH STREET, 600
HOUSTON, TX 77008
(713) 426-7900 (PH)
(713) 426-7900 (WK)
(713) 426-7965 (FAX)

TEXAS ALCOHOLIC BEVERAGE COMMISSION

SOAH DOCKET NO. 458-09-0896

PROPOSAL FOR DECISION

PAGE 13

condition or situation that justifies a finding that the place or manner in which the Applicant conducts business warrants a refusal of the permits 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 requested permits should be denied.

IV. RECOMMENDATION

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

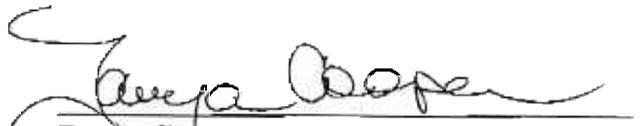
V. FINDINGS OF FACT

1. E.F. Corp. d/b/a Escapade 2001 (Applicant/Respondent) has filed an application with the Texas Alcoholic Beverage Commission (TABC) for a mixed beverage permit and a mixed beverage late hours permit for a premises located at 2495 S. Campus Court, Fort Worth, Tarrant County, Texas.
2. Protests to the application were filed by concerned citizens 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 October 22, 2008, was issued by TABC 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 December 19, 2008, a hearing began before Administrative Law Judge Tanya Cooper in Fort Worth, Texas. TABC Staff appeared at the hearing through its Staff Attorney Sandra Patton, but took no position on the application. Applicant appeared and was represented by its attorneys, Wade Bingham, Steve Swander, and Timothy Griffith. Protestants appeared and were represented by their attorney, John Gamboa. The record closed on April 17, 2009, after the parties filed written arguments in this case.
5. Applicant has met all TABC requirements for holding the permits 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. TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. chs. 5, 11, 28, and 29, 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 § 155.401.
4. Issuance of the requested permits 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 and a mixed beverage late hours permit for the premises located at 2495 S. Campus Court, Fort Worth, Tarrant County, Texas, should be granted.

SIGNED April 27, 2009.


TANYA COOPER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS**FT. WORTH OFFICE**

6777 Camp Bowie Blvd Suite 400

Fort Worth, Texas 76116

Phone: (817) 731-1733

Fax: (817) 377-3706

SERVICE LIST

AGENCY: Alcoholic Beverage Commission, Texas (TABC)
STYLE/CASE: ESCAPADE CLUB CORP / ESCAPADE 2001
SOAH DOCKET NUMBER: 458-09-0896
REFERRING AGENCY CASE: 580538

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

ADMINISTRATIVE LAW JUDGE**ALJ TANYA COOPER****REPRESENTATIVE / ADDRESS****PARTIES**

TIMOTHY GRIFFITH
 ATTORNEY AT LAW
 101 E. PARK BLVD., SUITE 600
 PLANO, TX 75074
 (214) 585-2383 (PH)
 (469) 742-9521 (FAX)

RESPONDENT

JOHN L. GAMBOA
 ATTORNEY AT LAW
 ACUFF & GAMBOA, LLP
 2501 PARKVIEW DRIVE, SUITE 405
 FORT WORTH, TX 76102
 (817) 885-8500 (PH)
 (817) 885-8504 (FAX)

PROTESTANT

SANDRA K. PATTON
 ATTORNEY
 TEXAS ALCOHOLIC BEVERAGE COMMISSION
 420 WEST 20TH STREET, 600
 HOUSTON, TX 77008
 (713) 426-7900 (PH)
 (713) 426-7900 (WK)
 (713) 426-7965 (FAX)

TEXAS ALCOHOLIC BEVERAGE COMMISSION

STEVEN H. SWANDER
ATTORNEY AT LAW
505 MAIN STREET, SUITE 250
FORT WORTH, TX 76102

RESPONDENT

cc: Docket Clerk, State Office of Administrative Hearings
LOU BRIGHT GENERAL COUNSEL, TABC, Fax No. 512-206-3498