

SOAH DOCKET NO. 582082

TEXAS ALCOHOLIC BEVERAGE COMMISSION, <b>Jurisdictional Petitioner</b>	§	BEFORE THE TEXAS
	§	
	§	
DWAINE CARAWAY, DALLAS CITY COUNCIL DISTRICT NO.4, <b>Protestant</b>	§	
	§	
	§	
VS	§	
	§	ALCOHOLIC
	§	
ORIGINAL APPLICATION OF CT'S REAL DEAL BAR-B-QUE SHACK PRIVATE CLUB INC.	§	
D/B/A CT'S REAL DEAL BAR-B-QUE (N, NL, FB, PE), <b>Respondent</b>	§	
	§	
	§	
DALLAS COUNTY, TEXAS (TABC CASE NO. 458-09-2050)	§	BEVERAGE COMMISSION

**ORDER ADOPTING PROPOSAL FOR DECISION**

**CAME ON FOR CONSIDERATION** this day, the above-styled and numbered cause

After proper notice was given, this case was heard by Administrative Law Judge Jerry Van Hamme. The hearing convened on March 31, 2009 and adjourned on April 1, 2009. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on May 28, 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. 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 adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, that 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 Respondent's original application is hereby **DENIED**.

This Order will become final and enforceable on July 16, 2009 unless a Motion for Rehearing is filed before that date.

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**DALLAS OFFICE**  
6333 Forest Park Road Suite 150a  
Dallas, Texas 75235  
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DATE: 05/28/2009  
NUMBER OF PAGES INCLUDING THIS COVER SHEET: 23  
REGARDING: PROPOSAL FOR DECISION  
DOCKET NUMBER: 458-09-2050

JUDGE JERRY VAN HAMME

**FAX TO:**

**FAX TO:**

NEAL MASSAND

(214) 462-6401

SANDRA K. PATTON (TEXAS ALCOHOLIC BEVERAGE COMMISSION)

ROBERT ABTAHI

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ALAN STEEN (TEXAS ALCOHOLIC BEVERAGE COMMISSION)

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**NOTE: IF ALL PAGES ARE NOT RECEIVED, PLEASE CONTACT LEIGH NOLAN(lda) (214) 956-8616**

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JABC ON 582082

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

May 28, 2009

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

**VIA FACSIMILE 512/206-3203**

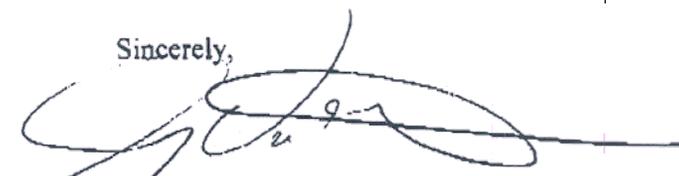
**RE: TEXAS ALCOHOLIC BEVERAGE COMMISSION VS.  
ORIGINAL APPLICATION OF CT'S REAL DEAL BAR-B-QUE SHACK  
PRIVATE CLUB, INC., D/B/A CT'S REAL DEAL BAR-B-QUE  
SOAH DOCKET NO. 458-09-2050**

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 § 155.507(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,



Jerry Van Hamme  
Administrative Law Judge

JVH/in  
Enclosure

Xc: Sandra Patton, Staff Attorney, Texas Alcoholic Beverage Commission, **VIA FACSIMILE 713/426/7965**  
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, **VIA FACSIMILE 512/206-3498**  
Robert Abtahi, Attorney for Protestant, **VIA FACSIMILE 214/670-0622**  
Neal Massand, Attorney for Respondent, **VIA FACIMILE 214/462-6401**

**DOCKET NO. 458-09-2050**

<b>TEXAS ALCOHOLIC BEVERAGE</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>COMMISSION,</b>	§	
<b>Jurisdictional Petitioner</b>	§	
	§	
<b>DWAINE CARAWAY,</b>	§	
<b>DALLAS CITY COUNCIL, DISTRICT 4,</b>	§	
<b>Protestant</b>	§	
	§	<b>OF</b>
<b>V.</b>	§	
	§	
<b>ORIGINAL APPLICATION OF</b>	§	
<b>CT'S REAL DEAL BAR-B-QUE SHACK</b>	§	
<b>PRIVATE CLUB, INC., D/B/A CT'S</b>	§	
<b>REAL DEAL BAR-B-QUE,</b>	§	
<b>Respondent</b>	§	
	§	
<b>DALLAS COUNTY, TEXAS</b>	§	
<b>(TABC CASE NO. 582082)</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

CT's Real Deal Bar-B-Que Shack Private Club, Inc. d/b/a CT's Real Deal Bar-B-Que (Respondent) filed an application with the Texas Alcoholic Beverage Commission (Commission) for a Private Club Registration Permit, Private Club Late Hours Permit, Food and Beverage Certificate, and Beverage Cartage Permit for CT's Real Deal Bar-B-Que, 2901 S. Lancaster Road, Dallas, Dallas County, Texas. Dwaine Caraway, Dallas City Councilmember, District 4, protested the application based on the general welfare, health, peace, morals, and safety of the people, and on the public sense of decency. The Commission staff (Staff) took the position that Respondent had met all Commission requirements for the permit and that the Commission was the jurisdictional petitioner only in this matter. The Administrative Law Judge (ALJ) recommends that the requested permits be denied by the Commission.

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## I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

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

On March 31 and April 1, 2009, a public hearing was held before Jerry Van Hamme, ALJ, State Office of Administrative Hearings, at the J. Erik Jonsson Central Library, 1515 Young Street, Dallas, Dallas County, Texas. Staff was represented by Sandra Patton, attorney. Protestant was represented by Robert B. Abtahi and Peter B. Haskell, attorneys. Respondent was represented by Darrell E. Jordan and Neal G. Massand, attorneys. The record was closed on April 1, 2009.

## II. LEGAL STANDARDS AND APPLICABLE LAW

The Commission or administrator may refuse to issue an original permit if it has reasonable grounds to believe and finds that the place or manner in which the applicant may conduct its business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8).

## III. EVIDENCE

### A. Staff's Evidence and Contentions

Staff offered into evidence Respondent's application for a Private Club Registration Permit, Private Club Late Hours Permit, Food and Beverage Certificate, and Beverage Cartage Permit for CT's Real Deal Bar-B-Que Shack and Private Club, Inc. d/b/a CT's Real Deal Bar-B-Que. (TABC Ex. No. 1). Clarette Toney is the President of CT's Real Deal Bar-B-Que Shack and Private Club, Inc. Respondent's other officers and directors are Jordan Blair, Secretary, and Mark Jones, Director. (TABC Ex. No. 1, p. 3). Corey Toney is the president of CT's Real Deal Bar-B-Que Shack (the

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Restaurant). (TABC Ex. No. 1, p. 85). Corey Toney is not affiliated with Respondent as either an officer or director. The Restaurant does not currently serve alcoholic beverages.

Staff took the position that Respondent had met all Commission requirements for the permits to be granted.

## **B. Public Comment**

### **1. Public comment in opposition to Respondent's application**

Public comment in opposition to Respondent's application was offered by the following speakers:

Steve Colmus, principal of KIPP Truth Academy, an open enrollment charter school for fifth through eighth grade students located approximately three blocks from Respondent's establishment, stated he believes businesses that sell alcoholic beverages see an increase in the amount of violence occurring around their establishments, and that because of the proximity of KIPP Truth Academy to Respondent's establishment, this would be detrimental to the students attending the Academy.

Eric Anderson, senior pastor of Grace Tabernacle Missionary Baptist Church, commented that his church is located near Respondent's establishment and that its mission is to oppose destructive influences and elevate society. He opposed Respondent's application because, in his opinion, alcohol does not elevate a society.

Roetta Crayton commented that she is associated with the Glenn Heights Neighborhood Association and is a registered nurse and retired 30-year employee of the Dallas Independent School District. She opposed Respondent's application to sell alcohol in the neighborhood because, in her opinion, alcohol does not elevate a community.

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Melba Williams, chairperson of the Corinth Neighborhood Association of ACORN, commented that granting Respondent's application would not be conducive to reducing crime in the neighborhood or making the area safer for residents.

Claudia Fowler stated she is associated with the Urban League of Greater Dallas and North Central Texas and is in opposition to the sale of alcoholic beverages in this neighborhood. In addition to the crime problem in the area, alcohol is frequently abused by young people, and young people walk past Respondent's location on their way to school.

Michael Davis, City Plan Commissioner for Dallas, District 4, commented that Respondent's establishment is located within the Lancaster Road Initiative, an effort intended to positively change the community. In his opinion, allowing the sale of alcoholic beverages in this area would not only fail to facilitate an upturn in the area, it would be like "throwing a grenade in an already unstable situation." Allowing the sale of alcoholic beverages at Respondent's location, in his opinion, would not be a catalyst for improving an unstable area such as this neighborhood.

Russell Eliston, a resident in the area, commented that he lives close enough to Respondent's establishment to see it from his backyard. He stated that this area of Dallas voted to be "dry," and that he believes Respondent's proposed sale of alcoholic beverages in an area that is primarily residential will lead to problems caused by intoxicated drivers.

Rev. Munoz, associate minister at Grace Tabernacle Missionary Baptist Church, commented that granting Respondent's application would have a detrimental affect on the neighborhood and would go against everything that is being done to rebuild lives and bring economic development to the area.

Fay Williams stated she worked in code enforcement for approximately 25 years, including as an assistant director, and that while she favored some compromise on the sale of alcoholic beverages in the area, she could not support Respondent's application for a late-night permit. In her

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experience, late-night permits do not create a good environment for the neighborhood, particularly a neighborhood like this one which is residential and composed mostly of retired senior citizens.

Tiffany Young, former member of the Park Board of the City of Dallas for District 4, stated she opposed Respondent's application.

Beverly Jones, Hattie Lacy, Patasha Starling, Betty Henderson, and Vernal McCall likewise spoke in opposition to Respondent's application.

## **2. Public comment in support of Respondent's application**

Public comment in support of Respondent's application was offered by the following speakers:

W. Floyd Lee, president of the homeowners association at Cedar Crest Village and the Highlands Village Association, stated that he lives approximately 1½ blocks from Respondent's location and would like to see this business built up, as well as others on Lancaster Avenue.

Henry Campbell, presiding judge in Lancaster, stated that Corey Toney has a good reputation, has invested in the community, and that granting Respondent's application would not negatively affect the area.

Ron Price, Dallas Board of Education, stated that he has great respect for Corey Toney, so much so he asked Mr. Toney to represent him in a recent bond program to raise money for Dallas schools. Mr. Price commented that Mr. Toney has invested in the school children in south Dallas and is a responsible and good businessperson. In his opinion, Respondent's application should be granted.

Dale Armstrong, a local pastor, commented that Corey Toney is supportive of the

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community, always complies with applicable requirements in his business dealings, is a good person, and that granting Respondent's application would not hurt the community.

Stephen Crear, Sr., commented that both Mr. Toney and Mr. Caraway were commendable men.

Daphne McKinney, K. Collins, Jr., Mr. Griffin, Lucinda Merchant, Patrick Edmond, and Roy Dabbs all stated they did not believe that granting Respondent's application would negatively affect the area.

### C. Protestant's Evidence and Contentions

#### Letters and Petitions

Protestant presented a letter from Dwaine Caraway, Dallas City Councilmember, District 4, (Protestant), stating that the City of Dallas is currently revitalizing the Lancaster Road corridor where Respondent's establishment is located. Granting Respondent's application would put the first alcohol-based business into that area, which, he stated, would result in harming the city's efforts to develop the area economically. (Protestant Ex. No. 1A).

Protestant presented a letter from Texas State Senator Royce West, District 23, expressing his opposition to Respondent's application. Senator West stated that Oak Cliff, where Respondent's establishment would be located, is a "dry" area, and that no other business in this area sells alcoholic beverages. In his opinion, the need to provide for safe communities and healthy families outweighs any benefits that may arise from introducing the sale of alcoholic beverages into the neighborhood. (Protestant Ex. No. 1B).

Protestant presented a letter from Dallas County Commissioner John Wiley Price who vociferously and vigorously opposed Respondent's application. He stated that granting this

application would pedestrians utilize the area and would cause additional problems related to the associated with alcohol (Protestant Neighborhood)

Protestant presented letter from Tarrant State Representative Barbara Mallory, Wylie District, opposing Respondent application. He stated that granting Respondent application would be counterproductive to the efforts made by the City of Dallas, the Dallas Police Department, and Dallas County over the past decade to lower crime and improve the economic and social development of the area. (Protestant Ex No. D)

Protestant further presented 29 page petition of approximately 445 signatures of persons opposing Respondent application. (Protestant Ex No. E). The expressed reasons for the signatories opposition is that the proximity of Respondent location with close proximity to churches and homes granting the application would negatively impact the development of the neighborhood, the safety of citizens and business in the area, and Respondent establishment would be operated in a manner contrary to the general welfare, health, peace, moral, and safety of the neighborhood.

#### LI RICHARD RIVA

Richard Rivas, Dallas Police Department (DPD) testified he is an 8-year veteran of the DPD and currently assigned to the South Central Division where Respondent establishment is located. He testified that a lot of offenses occur in the area around Respondent establishment including drug use, abandoned house used by drug dealers and prostitute 'bootleg house', beer alcohol being sold illegally, and neighborhood late-night foot traffic where people shop for their goods to steal to pawn the next morning to support the drug habits.

In his opinion, granting Respondent application would be a complete nightmare for the police in the area, and would hurt the DPD efforts to reduce crime in the community. Based on his experience, he opined that Respondent business would cause an increase in drunk and disorderly conduct and prostitution in the area, and given the shortage of parking spaces in Respondent parking lot, would

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create problems similar to those of Lower Greenville, with patrons parking in the neighborhood and urinating and defecating in public.

**3. Jonathan Shokrian**

Jonathan Shokrian testified he is the regional director for Califco, a real estate enterprise that owns residential and commercial properties nationwide, including the Crest Shopping Center at 2700 South Lancaster Road, Oak Cliff. The Crest Shopping Center is located approximately two blocks from Respondent's establishment.

In Mr. Shokrian's opinion this neighborhood is a high-crime area. To reduce crime, Califco expressly prohibits the sale of alcoholic beverages by any of its tenants in the shopping center. Of the more than twenty properties Califco owns nationwide, this is the only one in which Califco prohibits alcohol sales, because Crest Shopping Center is in a high crime area. Although this policy has caused him to turn away potential tenants, in his opinion the benefits of not allowing alcohol sales in the neighborhood offset any monetary losses. Because of the crime in the area, he is opposed to Respondent's application.

**4. Dwaine Caraway, Dallas City Council, District 4**

Dwaine Caraway, Dallas City Councilmember, District 4, testified that Respondent's establishment is located in his district. Respondent's establishment is located next to a residential area. Crime in this area includes theft, prostitution, bootleg houses, and drug houses. Residents live with bars on their doors because of the crime. The City of Dallas is trying to clean up this area and improve the quality of life for the residents. In his opinion, this is the wrong place for the sale of alcoholic beverages.

## 5. Jose Ruiz

Jose Ruiz, a code officer with the City of Dallas, testified that he oversees code enforcement in Respondent's area. His work is funded by a community development block grant from the Department of Housing and Urban Development (HUD). The purpose of the grant is to revitalize the neighborhood. He testified that Respondent's application is not appropriate for this location because it would negatively affect the safety and overall quality of life in the area. In particular, Bryan Elementary School and the KIIPP Truth Academy are in the vicinity of Respondent's location, the area around Respondent's location is more residential than commercial, the area has prostitution and abandoned houses used by drug addicts, and Respondent's premises are approximately 3/10ths of a mile from the Corinth Street Group Alcoholics Anonymous location. Furthermore, granting Respondent's application would run counter to the purpose of the community development block grant, which is intended to improve economic development in the area and make the area a better community for its residents.

## 6. Depositions

### a. Deposition of Jordan Blair

The deposition of Jordan Blair, who is listed in Respondent's application as the "Sec. Dir." and a member of Respondent's membership committee, was taken on March 27, 2009. (TABC Ex. No. 1, p. 3). When asked at his deposition what his title as officer and director of Respondent's business was, he stated he was on the membership committee, but did not know of any other roles he had. He likewise did not know how many members Respondent had, "guessed" he had the authority to approve membership applications, did not know if he had the authority to reject membership applications or not, and stated that the membership committee had met once to talk about the Restaurant but did not recall if any vote was taken at that meeting. He further stated that prior to his deposition, he had not voted on any member applications, had not looked at any membership applications (Protestant Ex. No. 26, p. 42-43), and did not know if he was ever elected secretary of

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Respondent. (Protestant Ex. No. 26, p. 49).

**b. Deposition of Clarette Toney**

Clarette Toney is Respondent's president. (TABC Ex. No. 1, p. 3). She testified at her deposition of March 27, 2009, that the purpose of Respondent is to serve alcohol to its members (Protestant Ex. No. 25, p. 51, line 15-24; p. 53 line 8-9) and that she was not certain what Jordan Blair's position or duties were with Respondent, although she thought he might be a vice president.

She further testified that her husband, Corey Toney, once owned an interest in a private club called the Gold Rush Private Club, Inc., but that he subsequently sold the name and contents of the club. She agreed that the sales agreement signed by her husband regarding that sale purported to sell the private club itself, but testified that the intent was merely to sell the name and contents of the club, not the private club *per se*, because a private club is owned by its members and cannot be sold by an individual. (Protestant Ex. No. 25, pp. 34-35).

**c. Deposition of Mark Anthony Jones**

Mark Jones testified at his deposition of March 27, 2009, that he is a director of Respondent and a member of the membership committee. However, he was not aware of his duties and had not personally reviewed any membership applications or voted on any members. (Protestant Ex. No. 21, p. 10, line 24 – p. 12, line 1). He likewise did not know what Jordan Blair's role was for Respondent. (Protestant Ex. No. 21, p. 16, lines 11-14).

**d. Deposition of Corey Toney**

Corey Toney stated at his deposition of March 27, 2009, that he did not know how many members Respondent has, who is on the membership committee, the duties of the membership committee, or the officers and directors of Respondent.

He further testified that [redacted] church pastored [redacted] nephew and brother meets twice a week at the restaurant [redacted] Sundays and Wednesdays. The church began meeting at the Restaurant approximately [redacted] weeks prior to the Marc [redacted] 2009 deposits. (Protestant Ex No. [redacted])

Concerning [redacted] in the [redacted] he testified that break-ins and thefts occurred at the Restaurant every day. (Protestant Ex No. 24, 42)

In addition, he testified he had [redacted] involvement with private club called the Gold Rush Private Club, Inc. and ultimately entered into a sale agreement to [redacted] and property of the club. Although the language in the sales agreement expressly stated he was selling the private club itself, he testified that [redacted] mistake by his failure to review the sales agreement adequately. (Protestant Ex No. [redacted] 4-22) He did not [redacted] the Gold Rush Private Club, Inc. itself, because private club cannot be sold. (Protestant Ex No. [redacted] line 12-

**E. Imps**

Dexter Simpson testified that [redacted] employee with the DPD for approximately [redacted] years before being appointed as the Tarrant County Alcohol Beverage [redacted] regional commander for the North Texas District. While with the Commission he spent approximately nine years in charge of the Enforcement Compliance Divisions. During his [redacted] years approximately 1000 permit and license and [redacted] involved with implementing statewide alcohol initiatives and policies.

**Gold Rush Private Club, Inc. - Subterfuge**

Mr. Simpson advised Corey Toney's involvement with the Gold Rush Private Club, Inc. The article of incorporation for Gold Rush Private Club, Inc. filed with the Texas Secretary of State on December 2, 2002, listed Corey Toney as director. (Protestant Ex No. 4C) According to

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Commission records, Mr. Toney was still an officer of Gold Rush Private Club, Inc. on October 27, 2008, when three violations were found there by Commission Staff. (Protestant Ex. No. 6A & 6B; Respondent Ex. No. 2).

Mr. Toney entered into a Bill of Sale/Agreement dated May 24, 2005, to sell "Gold Rush Private Club, Inc." (Protestant Ex. No. 17). The sales agreement stated that Mr. Toney was selling the private club itself. This, according to Mr. Simpson, is not possible. A private club is an association of members. It cannot be owned by an individual and therefore cannot be sold by an individual. That Mr. Toney "sold" the private club shows, in Mr. Simpson's opinion, that the Gold Rush Private Club, Inc., was a subterfuge. It was not actually operated as a private club, but instead operated for the financial benefit of Corey Toney.

In addition, since Mr. Toney was still listed in the Commission records as an officer of Gold Rush Private Club, Inc., on October 27, 2008, when three violations were found, this, according to Mr. Simpson, shows that Corey Toney has failed to abide by Commission regulations in the past. Accordingly, in Mr. Simpson's opinion, Mr. Toney's involvement with Respondent means that Respondent will not be run in accordance with Commission regulations any more so than the Gold Rush Private Club, Inc., was. Granting Respondent's application in this neighborhood, would, in Mr. Simpson's opinion, be "a travesty."

**b. Respondent as a Subterfuge**

Mr. Simpson likewise argued that just as the Gold Rush Private Club, Inc., had been a subterfuge, so too is Respondent's application. Respondent, in his opinion, is not a legitimate private club, but merely a money-making enterprise for Corey Toney. Mr. Simpson reached this conclusion based on the following facts:

- (1) He reviewed Clarette Toney's deposition and noted that, while a private club is usually organized for people with similar interests, Ms. Toney specifically stated in

her deposition that Respondent was organized for the purpose of serving alcoholic beverages. This, in Mr. Simpson's opinion, shows that Respondent's private club is actually intended to just be a bootleg house, designed for the sole purpose of generating money.

(2) He further testified that Clarette Toney as president of the private club should be aware of the positions and responsibilities of the other officers and directors of the private club. According to her deposition, however, she was unable to correctly identify Jordan Blair's position or his responsibilities in the private club.

(3) He also reviewed Jordan Blair's deposition and observed that, based on Mr. Blair's testimony, Mr. Blair knows nothing about the club and is incompetent to be on the membership committee.

(4) He likewise reviewed Mark Jones' deposition and, noting that Mr. Jones was not aware of Mr. Blair's role in the club, stated it would be inappropriate for a member of the membership committee, like Mr. Jones, to not know what Jordan Blair's role.

Given that the officers and directors are uninformed about, or incompetent to perform, their duties, it is apparent, according to Mr. Simpson, that the actual movant behind this application is Corey Toney, and that Respondent is merely a business enterprise for Corey Toney's financial benefit, not a legitimate private club.

**c. High Crime Area**

Mr. Simpson further testified that given the amount of break-ins at Respondent's location, which according to Mr. Toney occur daily, and the presence of bootleg houses in the neighborhood, this area has a serious crime problem. This, in Mr. Simpson's opinion, makes it an unsafe place for a private club with alcoholic beverages to be located.

**d. Church**

He further opined that churches and alcohol establishments should not be combined, and that the presence of a church meeting at the Restaurant is reason enough not to grant Respondent's

application.

**D Respondent's Evidentiary Contentions**

**Michael R**

Michael Romane, pre-Commission employee, testified he was hired to help prepare Respondent's application. He was present during the membership meeting and assisted Carlette Toney with formulating the articles of incorporation, bylaws, and the final application. He also testified that sale of private club, the Gold Rush Private Club, Inc. violate Commission rules.

**Carlette L. Toney**

Carlette Toney, the president of Respondent's Real Deal Bar-B-Que and Private Club, Inc. She testified that Respondent did not intend to be a night club restaurant and that the only thing he intends to offer on the premises is a gospel quartet. She further stated that despite advertising in a local paper to the contrary, he does not intend that Respondent will remain open 24 hours.

In addition, she testified that Michael R prepared Respondent's application for the Commission permits and that the reason she was not familiar with her duties as president when asked her deposition because had been approximately eight months since she had last reviewed the application documents.

Furthermore, she stated her accountant prepared the contract for the Gold Rush Private Club, Inc. so the contract mistakenly stated that they were leasing the private club itself that mistake was made by the accountant.

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### 3. Corey Toney

Corey Toney testified that he bought CT's Real Deal Bar-B-Que restaurant in March or April 2008, and opened for business in July 2008. He hired Mr. Romane in July 2008 to help his wife obtain the necessary alcohol permits for Respondent. He testified it is not his intention that Respondent should become a nightclub and believes that people have been misled to think otherwise. He agreed there was a lot of crime in the area before he opened the restaurant, including drugs.

He further testified that he operated and was president of the Gold Rush Private Club, Inc., from 2002 to May of 2005. No violations were found by Commission Staff during that time. He sold the contents and trade name of the Gold Rush Private Club, Inc., on May 24, 2005. He did not sell the private club itself because a private club cannot be sold, language in the Bill of Sale to the contrary notwithstanding. He resigned as an officer of the club and was voted out at a meeting on June 1, 2005. He was not aware that he was still listed on the Commission records as an officer and director until October or November 2008, when he was contacted by a Staff employee.

### 4. Jordan Blair

Jordan Blair testified he is Respondent's secretary and director of membership. He testified that any lack of familiarity with his obligations as an officer and director of this private club, which may have been apparent at the time of his deposition, arise from the fact that, as yet, Respondent's application has not been granted, and thus there is no private club within which he may exercise his duties.

## IV. ANALYSIS

Protestant argued that Respondent's application should be denied because the place in which Respondent may conduct its business warrants the refusal of the application based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. TEX.

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ALCO. BEV. CODE ANN. § 11.46(a)(8).

The appropriateness of a place for the proposed sale of alcoholic beverage sales was raised in *Brantley d/b/a Boots & Saddle Club v. Texas Alcoholic Beverage Commission*, 1 S.W.3d 343, 347 (Tex.App. — Texarkana 1999, no pet.). The appellate court noted that the location of the proposed sales was in a residential area across the street from the homes of eight families, near local schools, and in an area frequented by children. Concerned citizens, school officials, and a county commissioner all wrote letters opposing the issuance of the license on the grounds it would be detrimental to the general welfare of the community. Despite the fact that the applicant provided a petition with over 200 signatures in support of its application to sell alcoholic beverages, the appellate court affirmed the Commission's denial of the application based on the county judge's decision to deny the application, finding that the county judge's decision to deny the application based on these facts was reasonably supported by substantial evidence.

The appropriateness of a place was also challenged in *Texas Alcoholic Beverage Commission v. Sanchez, d/b/a Tierra Caliente Bar and Grill*, 96 S.W.3d 483 (Tex.App. — Austin, 2002, no pet.). The appellate court affirmed the county judge's denial of a permit and license based on the applicant's location where the Commission submitted an affidavit by the chief of police and testimony of a Commission agent and several law enforcement officials showing that there was an unacceptable amount of criminal activity at that location.

In the instant case, the evidence shows that the place where Respondent is located is a predominately residential area, with houses located directly behind Respondent. Respondent is also near two schools, the KIPP Truth Academy and Bryan Elementary School. School children walk past Respondent's premises on their way to school. The principal of KIPP Truth Academy commented at the hearing that he opposed Respondent's application because granting this application could result in an increase in crime in the area that would be detrimental to the children attending his school. In addition, 445 people signed a petition in opposition to Respondent's application based, in part, on Respondent being close to churches and schools.

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Letters in opposition to Respondent's application were received from Royce West, State Senator, District 23; Barbara Mallory Caraway, State Representative, District 110; John Wiley Price, Dallas County Commissioner; and Protestant Dwaine Caraway, Dallas City Councilmember, District 4.

Public comment in opposition to Respondent's application included Eric Anderson, senior pastor, Grace Tabernacle Missionary Baptist Church; Melba Williams, chairperson of the Corinth Neighborhood Association of ACORN; Michael Davis, Dallas City Plan Commissioner, District 4; Rev. Munoz, associate minister at Grace Tabernacle Missionary Baptist Church; and Tiffany Young, former member of the City of Dallas Park Board, District 4.

The evidence shows that Respondent is located in a high crime area. Lt. Richard Rivas, Dallas Police Department, testified that a "lot" of offenses occur in the area around Respondent's location. In 2008, Dallas police records show that 251 aggravated assaults, burglaries, thefts, and robberies were reported in Respondent's general neighborhood. (Protestant Ex. No. 7B). Of those, 126 occurred within 1000 feet of Respondent's address. (Protestant Ex. No. 7C). The neighborhood includes smoke houses, prostitution, and drug users. In Lt. Rivas' opinion, based on his 18 years of experience with DPD, granting this application in this neighborhood would be a "complete nightmare" for the Dallas police.

This concern was echoed by Jose Ruiz, a Dallas city code officer, who testified that drugs and prostitution exist in the area near Respondent's location. He further stated that a HUD community development block grant has been given to this area to revitalize it, but that Respondent's application, if approved, would actually run counter to the purpose of the grant.

The owner of the Crest Shopping Center, located approximately two blocks from Respondent's location, testified this is a high crime area. As a concerned business person, he, along with other citizens who made public comments, referred to crime in the area and noted that

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Respondent's application, if granted, could make things worse in the neighborhood. Corey Toney likewise testified that thefts occur at Respondent's location on a daily basis.

Based on the evidence in the record, the Protestant has shown that the place where Respondent is located is a high crime area, predominately residential, and close to schools and churches. Due to Respondent's location, the application is opposed by business people, neighboring residents, hundreds of petition signatories, representatives of civic organizations, city police, city code enforcement, and elected state, county, and local officials.

Based on the evidence in the record, the place in which Respondent may conduct its business warrants a refusal of Respondent's application based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.<sup>1</sup>

## V. RECOMMENDATION

The ALJ recommends that Respondent's application for a Private Club Registration Permit, Private Club Late Hours Permit, Food and Beverage Certificate, and Beverage Cartage Permit for CT's Real Deal Bar-B-Que Shack Private Club, Inc., d/b/a CT's Real Deal Bar-B-Que, 2901 S. Lancaster Road, Dallas, Dallas County, Texas, should be denied.

## VI. FINDINGS OF FACT

CT's Real Deal Bar-B-Que Shack Private Club, Inc., filed an application with the Texas Alcoholic Beverage Commission (Commission) for a Private Club Registration Permit, Private Club Late Hours Permit, Food and Beverage Certificate, and Beverage Cartage Permit for CT's Real Deal Bar-B-Que, 2901 S. Lancaster Road, Dallas, Dallas County, Texas.

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<sup>1</sup> Protestant also argued that Respondent's application should be denied because the manner in which Respondent may conduct its business warrants the refusal of the application. Given that the above finding regarding the place in which Respondent may conduct its business is dispositive of this matter, no discussion of Protestant's allegations concerning the manner in which Respondent may conduct its business shall be addressed herein.

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2. Respondent's premises are located in a predominately residential area, with houses located directly behind the premises.
3. Two schools are located in Respondent's vicinity. Children walk to school past Respondent's location.
4. Steve Colmus, principal of KIPP Truth Academy, an open enrollment charter school for fifth through eighth grade students located approximately three blocks from Respondent's establishment, requested that Respondent's permit not be granted.
5. Approximately 445 persons signed a 29-page petition requesting that Respondent's permit not be granted. The expressed reasons for the signatories' opposition was that the area is "dry," Respondent's location is within close proximity to several churches and schools, granting the application would negatively impact the economic development of citizens and businesses in the area, and Respondent's establishment would be operated in a place or manner contrary to the general welfare, health, peace, morals, and safety of the neighborhood.
6. Respondent's premises are located in a high crime area.
7. Thefts occur on Respondent's property on a daily basis, despite security precautions instituted by the owner of the property.
8. The neighborhood in which Respondent is located contains abandoned houses used by prostitutes and drug-users.
9. In 2008, 251 aggravated assaults, burglaries, thefts, and robberies were reported in Respondent's general neighborhood. Of those, 126 occurred within 1000 feet of Respondent's address.
10. The Crest Shopping Center, located approximately two blocks from Respondent's location, does not allow its tenants to sell alcoholic beverages because it is in a high crime area.
11. The area in which Respondent is located has received a Department of Housing and Urban Development community development block grant to revitalize the neighborhood. Granting Respondent's application would run counter to the purpose of this grant.
12. Granting Respondent's application would increase lewd conduct and prostitution in the area.
13. Granting Respondent's application would negatively affect the Dallas Police Department's efforts to reduce crime in the community.
14. Royce West, Texas State Senator, District 23, requested that Respondent's permit not be

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- granted.
15. Barbara Mallory Caraway, Texas State Representative, District 110, requested that Respondent's permit not be granted.
  16. John Wiley Price, Dallas County Commissioner, requested that Respondent's permit not be granted.
  17. Eric Anderson, Senior pastor of Grace Tabernacle Missionary Baptist Church, requested that Respondent's permit not be granted.
  18. Melba Williams, chairperson of the Corinth Neighborhood Association of ACORN, requested that Respondent's permit not be granted.
  19. Michael Davis, City Plan Commissioner for Dallas, District 4, requested that Respondent's permit not be granted.
  20. Rev. Munoz, associate minister at Grace Tabernacle Missionary Baptist Church, requested that Respondent's permit not be granted.
  21. Tiffany Young, former member of the Park Board of the City of Dallas for District 4, requested that Respondent's permit not be granted.
  22. A Notice of Hearing dated January 16, 2009, was issued by Staff notifying Respondent of the protests received against Respondent's application and informing the parties of the nature of the hearing, the statutes and rules involved, and the legal authorities under which the hearing was to be held.
  23. An Order Setting Location and Dates for Hearing, Order No. 5, was issued by SOAH on March 25, 2009, informing the parties of the time and place of the hearing.
  24. On March 31 and April 1, 2009, a public hearing was held before Jerry Van Hamme, ALJ, at the J. Erik Jonsson Central Library, 1515 Young Street, Dallas, Dallas County, Texas. Staff was represented by Sandra Patton, attorney. Protestant was represented by Robert B. Abtahi and Peter B. Haskell, attorneys. Respondent was represented by Darrell E. Jordan and Neal G. Massand, attorneys. The record was closed on April 1, 2009.

## VII. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5, §§ 6.01 and 11.46(a)(8).
2. The State Office of Administrative Hearings has jurisdiction to conduct the hearing in this

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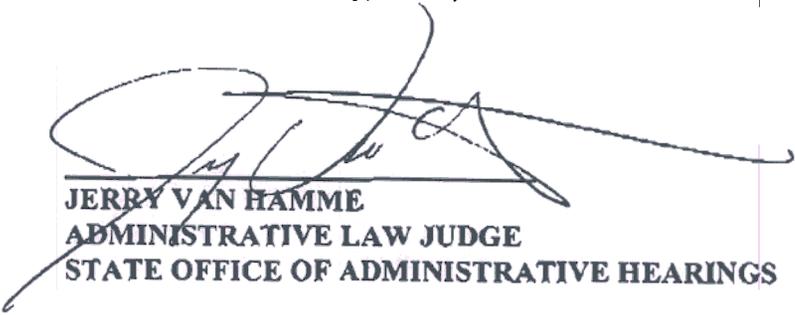
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matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.

3. Proper and timely notice of the hearing was effected on all parties pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE § 155.401.
4. The place in which Respondent will conduct its business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8).
5. Respondent's application with the Commission for a Private Club Registration Permit, Private Club Late Hours Permit, Food and Beverage Certificate, and Beverage Cartage Permit for CT's Real Deal Bar-B-Que Shack Private Club, Inc. d/b/a CT's Real Deal Bar-B-Que, 2901 S. Lancaster Road, Dallas, Dallas County, Texas, should be denied.

**SIGNED May 28, 2009.**



**JERRY VAN HAMME  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**