

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

SIGNED this the 22nd day of
January 2009 at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

Honorable Judge Rex Shaver
Administrative Law Judge
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, Texas 77018
VIA FACSIMILE (713) 812-1001

Gary J. Siller
ATTORNEY FOR RESPONDENT
1401 McKinney Street., Suite 2200
Houston, Texas 77010
VIA FACSIMILE: (713) 951-5660

Houston Beach Bums L.L.C.
RESPONDENT
d/b/a Houston Beach Bums LLC
3410 FM 2920 #10
Spring, Texas 77388
VIA U.S. FIRST CLASS MAIL

Dianne King
PROTESTANT
3411 Keygate Dr.
Spring, Texas 77388
VIA U.S. FIRST CLASS MAIL

Shelia A. Lindsey
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Houston District Office

SAL/aa



SOAH DOCKET NO. 458-09-3762

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION, Petitioner	§	
	§	
DIANNE KING ON BEHALF OF	§	
DOVE MEADOWS RESIDENTS	§	
Protestants	§	OF
	§	
VS.	§	
	§	
HOUSTON BEACH BUMS L. L. C. D/B/A	§	
HOUSTON BEACH BUMS	§	
PERMIT/LICENSE NO(s)	§	
MB681241, PE & LB	§	
	§	
HARRIS COUNTY, TEXAS	§	ADMINISTRATIVE HEARINGS
(TABC CASE NO. 582893)	§	

PROPOSAL FOR DECISION

Houston Beach Bums L.L.C. (Applicant), the holder of a Mixed Beverage Permit, a Beverage Cartage Permit and a Mixed Beverage Late Hours Permit, has applied to the Texas Alcoholic Beverage Commission (Commission) for a renewal of those permits for a premises located at 3410 FM 2920, Suite 10, Spring, Harris County, Texas and whose mailing address is the same. Numerous residents of the Dove Meadows subdivision filed a protest to the issuance of the renewal permits based on the assertion that the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad. The Commission’s staff (Staff) remained neutral on the application.

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

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

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

On October 2, 2008, a public hearing was convened on this matter in Houston, Texas, before Administrative Law Judge Rex Shaver. The Houston Beach Bums LLC (Applicant) was represented by attorneys, Carolyn Douglas and Gary Siller. Staff was represented by Shelia Lindsey, attorney. The protesting citizens (Protestants) were represented by their citizen-representative, Dianne King. The hearing concluded and the record closed that same day.

II. DISCUSSION AND ANALYSIS

A. Applicable Law

Protestants challenge the application on the basis of § 11.46(a)(6) of the Texas Alcoholic Beverage Code, which provides that the commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that:

(6) the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad.

Both the Notice of Hearing and Amended Notice of hearing set forth only § 11.46(a)(6) of the Texas Alcoholic Beverage Code as the basis of the protest. In a protest hearing, the burden is on the protestants to show by a preponderance of the evidence that the permit(s) should not be issued.

B. Arguments and Evidence

1. Protestants' Case

The several people who reside in homes near to the premises appeared and gave both testimony and comment concerning the level of noise generated by the amplified music system in use

at the premises. There was also testimony and comment that the patrons of the establishment produced loud noise when sitting outside on a deck area. The noise of automobiles and motorcycles coming and going from the parking lot were a source of concern to some of the persons giving testimony and comment.

No person giving testimony or comment provided any evidence that the applicant is not of good moral character or his reputation for being a peaceable law-abiding citizen in the community where he resides is bad.

2. Applicant's Case

The Applicant argues that the none of the Protestants gave any evidence that the application should be denied pursuant to § 11.46(a)(6) of the Texas Alcoholic Beverage Code. The Applicant presented the testimony of its representative and part owner, Sheila Anderson. Her testimony set out the efforts of the applicant to be a good neighbor. She pointed out that the TABC had not joined in this protest and that she had never received a complaint from the Dove Meadows Home Owners Association. Applicant contends that the Protestants do not know the applicants reputation in the community and the renewal application should be granted.

C. Analysis

Protestants challenged the renewal application on the basis of § 11.46(a)(6) of the Texas Alcoholic Beverage Code, which provides that the commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that:

(6) the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad.

The ALJ understands the concerns raised by Protestants regarding the problems that may be associated with noise levels from the premises. While those concerns are legitimate reasons for citizens to successfully protest a renewal application it is not so in this case because the sole basis of

this protest was the moral character and reputation of the applicant. No witness gave any testimony touching on the moral character or reputation of the applicant. No local officials appeared at the hearing in opposition to the application. The ALJ cannot conclude on the record before him that the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad.

III. CONCLUSION

The evidence does not establish that the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad. Because the applicant appears to have met all other requirements for the issuance of the permits, and there is no basis for denying the renewal application, the ALJ recommends that the renewal application be granted and the requested permits be issued. In support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

IV. FINDINGS OF FACT

1. Houston Beach Burns LLC filed a renewal application with the Texas Alcoholic Beverage Commission (the Commission) for renewal of its Mixed Beverage Permit, MB-68124, which includes the Beverage Cartage Permit and Mixed Beverage Late Hours Permit for a premises located at 3410 FM 2920, Suite 10, Spring, Harris County, Texas 77388.
2. Protests to the application were filed by residents of the area where the club is located.
3. On May 4, 2009, the Commission's Staff issued a notice of hearing informing the parties of the time, date, and location of the hearing on the application; the applicable rules and statutes involved; and a short, plain statement of the matters asserted.
4. On July 31, 2009, the Commission's Staff issued an amended notice of hearing informing the parties of the time, date, and location of the hearing on the application; the applicable rules and statutes involved; and a short, plain statement of the matters asserted.
5. On October 2, 2009, a public hearing was convened on this matter at the offices of the State Office of Administrative Hearings, 2020 N. Loop West, suite 111, in Houston, Texas, before Administrative Law Judge Rex A. Shaver. The Applicant was represented by its attorney Gary Siller, Staff was represented by Sheila Lindsey, attorney. The protesting citizens

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

November 19, 2009

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

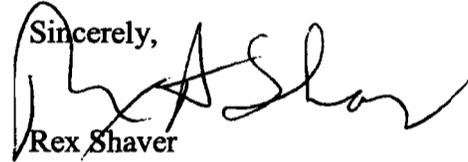
VIA REGULAR MAIL

RE: Docket No. 458-09-3762; Texas Alcoholic Beverage Commission vs. Houston Beach Bums L.L.C. d/b/a Houston Beach Bums

Dear Mr. Steen:

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

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

Sincerely,

Rex Shaver
Administrative Law Judge

RAS/mr
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- VIA REGULAR MAIL
Shelia Lindsey, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W 20th Street, Suite 600, Houston, TX 77008- VIA REGULAR MAIL
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- VIA REGULAR MAIL
Gary Siller and Carolyn Douglas, Attorneys at Law, 1401 McKinney Street, Suite 2200, Houston, Texas 77010 - VIA REGULAR MAIL
Dianne King, Dove Meadows Homeowners Association, 3411 Keygate Drive, Spring, Texas 77388 - VIA REGULAR MAIL

2020 North Loop West, Suite 111 ♦ Houston, Texas 77018
(713) 957-0010 Fax (713) 812-1001
<http://www.soah.state.tx.us>