

TABC CASE NO. 588973

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
EAST DOWNTOWN NEIGHBORHOOD DISTRICT,	§	
KELLY FALLIN, MARCIA YIM,	§	
PATRICIA HIGH, JENNIFER GRANT,	§	
JOE R. MARTIN, CHRISTOPHER FIGAT,	§	
TRACEY TULLY, RUSSELL WAYNE BRYCE,	§	
JOHN CHAKALIS, NITZIA MENDOZA,	§	
STEVE MANGOLD, EMILY KAIN,	§	ALCOHOLIC
Protestants	§	
	§	
VS.	§	
	§	
DOTAN & ASSOCIATES LLC	§	
D/B/A NEXT	§	
PERMIT/LICENSE NO(s).	§	
MB601370, LB, Respondent	§	
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-10-1397)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION this 8/11 day of July, 2010, the above-styled and numbered cause.

The hearing in the above matter was conducted by the State Office of Administrative Hearings, Administrative Law Judge Stephen J. Burger, presiding. The hearing convened on February 12, 2010 and the record was closed on March 19, 2010. The Administrative Law Judge made and filed a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law on May 14, 2010. The time for filing and ruling on any Exceptions and Replies to the PFD has passed.

The matter is before the Administrator, Texas Alcoholic Beverage Commission for review, consideration and entry of the final agency decision.

It is Ordered that the Findings of Fact and Conclusions of Law made and entered into the Proposal for Decision by the Administrative Law Judge are adopted by the Administrator as the Findings of Fact and Conclusions of Law of the Texas Alcoholic Beverage Commission.

It is further Ordered that the sanctions and penalties found to be warranted by the findings and conclusions of the Administrative Law Judge are adopted by the Administrator as the sanctions and penalties of the Texas Alcoholic Beverage Commission.

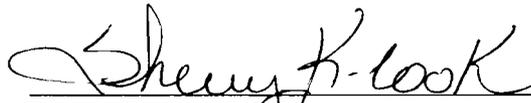
IT IS THEREFORE ORDERED that the Renewal Application of DOTAN & ASSOCIATES LLC D/B/A NEXT, for the issuance of a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit be **GRANTED**.

This is a Final Order of the Commission. The terms of this Order will be enforced without further notice to the Respondent on August 24th, 2010, 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 July, 2010, at Austin, Texas.

On Behalf of the Administrator,



Sherry K-Cook, Assistant Administrator
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that each party or person with an interest in the above matter has been notified of the agency order in the manner indicated below on July 3, 2010.



Alejandra Argueta
Texas Alcoholic Beverage Commission
Legal Division

ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 N. Loop West, Suite 111
Houston, Texas 77018
VIA FACSIMILE: (713) 812-1001

Dotan & Associates LLC
d/b/a Next
RESPONDENT
2020 McKinney
Houston, Texas 77003
VIA U.S. FIRST CLASS MAIL

Gary Cerasuolo
ATTORNEY FOR RESPONDENT
7500 San Felipe, Suite 410
Houston, Texas 77063
VIA FACSIMILE: (713) 782-6785

East Downtown Neighborhood District,
Attn: Wayne Magnum
PROTESTANT
9808 Hutchins Street
Houston, Texas 77003
VIA U.S. FIRST CLASS MAIL

Kelly Fallin
PROTESTANT
1409 St. Emanuel, #E
Houston, Texas 77003
VIA U.S. FIRST CLASS MAIL

Marcia Yim
PROTESTANT
2205 McKinney, #316
Houston, Texas 77003
VIA U.S. FIRST CLASS MAIL

Patricia High
PROTESTANT
2205 McKinney, #514
Houston, Texas 77003
VIA U.S. FIRST CLASS MAIL

Jennifer Grant
PROTESTANT
2205 McKinney, # 412
Houston, Texas 77003
VIA U.S. FIRST CLASS MAIL

Joe R. Martin
PROTESTANT
909 Texas Street, #202
Houston, Texas 77002
VIA U.S. FIRST CLASS MAIL

Christopher Figat
PROTESTANT
2205 McKinney, #303
Houston, Texas 77003
VIA U.S. FIRST CLASS MAIL

Tracey Tully
PROTESTANT
2205 McKinney, #516
Houston, Texas 77003
VIA U.S. FIRST CLASS MAIL

Russell Wayne Bryce
PROTESTANT
2205 McKinney, #503
Houston, Texas 77003
VIA U.S. FIRST CLASS MAIL

John Chakalis
PROTESTANT
2205 McKinney, #407
Houston, Texas 77003
VIA U.S. FIRST CLASS MAIL

Nitzia Mendoza
PROTESTANT
9814 Sagepike Drive
Houston, Texas 77089
VIA U.S. FIRST CLASS MAIL

Steve Mangold
PROTESTANT
2205 McKinney, #302
Houston, Texas 77003
VIA U.S. FIRST CLASS MAIL

Emily Kain
PROTESTANT
2205 McKinney, #512
Houston, Texas 77003
VIA U.S. FIRST CLASS MAIL

Ramona Perry
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Houston Enforcement Division

RMP/aa

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

RECEIVED

MAY 18 2010

**TABC HOUSTON
LEGAL**

May 14, 2010

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

VIA REGULAR MAIL

RE: Docket No. 458-10-1397; Texas Alcoholic Beverage Commission v. Dotan & Associates, LLC d/b/a Next

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, a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink that reads "S. J. Burger".

Stephen Burger
Administrative Law Judge

SB:rlm
Enclosure

cc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Ramona Perry, Texas Alcoholic Beverage Commission, 427 W 20th Street, Suite 600, Houston, TX 77008- **VIA REGULAR MAIL**
Emily Helm, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**
Gary Cerasuolo, 7500 San Felipe, Suite 410, Houston, TX 77063 -**VIA REGULAR MAIL**
Wyatt Magnum, East Downtown Neighborhood District, 908 Hutchins Street, Houston, TX 77003- **VIA REGULAR MAIL**

TEXAS ALCOHOLIC BEVERAGE §
COMMISSION, §
Petitioner §

BEFORE THE STATE OFFICE

EAST DOWNTOWN NEIGHBORHOOD §
DISTRICT, §
KELLY FALLIN, MARCIA YIM, §
PATRICIA HIGH, JENNIFER GRANT, §
JOE R. MARTIN, TRACEY TULLY, §
CHRISTOPHER FIGAT, EMILY KAIN, §
RUSSELL WAYNE BRYCE, JOHN §
CHAKALIS, NITZIA MENDOZA, §
STEVE MANGOLD, §
Protestants §

OF

V. §

DOTAN & ASSOCIATES, LLC §
D/B/A NEXT §
PERMIT/LICENSE NO(S). §
MB 601370, LB, §
Respondent §

HARRIS COUNTY, TEXAS §
(TABC CASE NO. 588973) §

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

East Downtown Neighborhood District, Kelly Fallin, Marcia Yim, Patricia High, Jennifer Grant, Joe R. Martin, Christopher Figat, Tracey Tully, Russell Wayne Bryce, John Chakalis, Nitzia Mendoza, Steve Mangold and Emily Kain (Protestants) filed a protest against the issuance of Dotan & Associates LLC's, d/b/a NEXT, (Respondent) renewal application for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit for the premises known as NEXT, located at 2020 McKinney, Houston, Harris County, Texas 77003. Protestants assert that the place and manner in which Respondent conducts business warrants non-renewal of Respondent's permits based on the general welfare, health, peace, morals, and safety of the people and on the

public sense of decency.¹ The Administrative Law Judge (ALJ) finds insufficient evidence that Protestants have proven Respondent's permits should not be renewed.

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 February 12, 2010, a public hearing was held before Stephen J. Burger, ALJ, in Houston, Harris County, Texas. The hearing was concluded and the record closed on March 19, 2010. Protestants appeared and were represented by Wyatt Magnum. The TABC was represented by attorney Ramona Perry. Respondent was represented by attorney Gary Cerasuolo.

II. LEGAL STANDARDS AND APPLICABLE LAW

The Commission or Administrator may refuse to issue a permit if it has reasonable grounds to believe that the place or manner in which the applicant may conduct his business warrants the refusal 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). Additionally, case law states that in order to deny a permit to a qualified applicant proposing to operate a lawful business in a wet area and in compliance with zoning laws, an unusual condition or situation must be shown. Kermit Concerned Citizens Committee v. Colonial Food Stores, Inc., 650 S.W.2d 208 (Tex. App. 8 Dist., 1983); In re Simonton Gin., Inc., Tex. Civ. App. 616 SW2d 274 (1981).

¹ The TABC asserts the Respondent has met all TABC requirements to hold the permits for its location. The TABC has no independent evidence to protest the permit's issuance.

III. DISCUSSION OF EVIDENCE AND ANALYSIS

A. Protestants' Case

The Protestants oppose renewal of Respondent's permits because they claim that Respondent's nightclub is detrimental to the general welfare, health, and peace of their community. Their testimony is briefly summarized below.

Wyatt Magnum lives in a townhouse at 908 Hutchins, which he moved to in December of 2007. He complains of the noise and numerous calls to police (approximately 300 from August 2005 to February 2010) because of the Respondent's nightclub. He also notes there was a murder at the nightclub on September 9, 2007, and he testified extensively about incidents he personally has experienced with the club, including being assaulted a block-and-a-half from the club on February 6, 2010. The assault occurred at 3:30 a.m., after he was awoken because of a fight outside his home. He also was arrested, unjustly in his opinion, by officers hired by the club because he was allegedly trespassing on club property.

His other concerns regarding the club include noise and fighting occurring around the club. He also stated that nearby residents have tried to work with the club regarding the noise and other problems, but the problems continue. He admits that the area had once been industrial (warehouses), but has now become residential. He was the second resident to move into the townhouse development, and townhouses continue to be constructed.

Mr. Magnum states there are no problems with the other clubs and venues nearby, and that NEXT's clientele is made up of 21-25 year-old "hip-hop" patrons.

Joe Martin offices at 909 Texas St., about eight blocks from NEXT, owns land in the area, and is affiliated with the East Downtown Management District. He is also a member of the Downtown Entertainment Association, which encourages downtown business. He is also a

former nightclub owner. He has heard about complaints regarding NEXT, including its loudspeakers outside the club; crowd management problems at its front door; and club flyers causing a litter problem. Within the past two weeks he has witnessed these problems, as well as traffic congestion and illegal parking in the area, although he does not know if the traffic problems are due solely to NEXT. He has spoken with NEXT management regarding the crowd problems and loud music and believes the problems are manageable.

Jennifer Grant resides in a loft at 2205 McKinney, #412, and moved there about three years ago. She lives on the fourth floor, and her balcony overlooks Hutchins and McKinney. Her home had formerly been a warehouse. NEXT is open Friday, Saturday, and Tuesday, and at about 1:30 – 2:00 a.m., she is awakened by the loud music from cars leaving NEXT. That is her major complaint against the club. She also notices that there are NEXT patrons fighting, screaming, and sometimes urinating after leaving the club. The noise continues until about 3:00 a.m. She states that these rowdy patrons are from NEXT, and not from other nearby clubs such as Warehouse Live or the DAT club. She has called the police about 25 to 50 times to complain about the noise and crowds. She has been threatened by patrons while standing on her balcony, and she no longer can venture there during that time period. The last time she heard loud music coming from the NEXT building was about six months ago.

Russell Bryce lives at 2205 McKinney, #503, the same loft building as Ms. Grant. He can see NEXT from his balcony, and notices its patrons park on McKinney and Hutchins. He has lived there about nine months, but may have to move because of the problems caused by NEXT. He can see patrons leave NEXT, and some hang around their vehicles, listening to their car stereo speakers, and sometimes opening their car's trunks to reveal speakers installed there. The patrons then drive around the area between 1:30 and 2:30 a.m. He has also seen fights in front of NEXT, and saw Mr. Wyatt assaulted. He testified that he likes the area during the daytime. He does not believe Warehouse Live and a club called Lucky's is the source of the night-time problems.

Patricia High has resided at 2205 McKinney, #514, since August 2007. There are 52 loft units in the building, and 49 are occupied. Her unit is at the corner of Hutchins and Walker. She has been awakened every weekend around 2:30 a.m. by the loud music and noise from the cars parked and driving around the area. She has also heard gunshots. She has called the Houston police department regarding her complaints.

B. Respondent's Case

Danny Do is a Houston Police Department (HPD) officer who also works at NEXT, and has since it opened. He is also the off-duty coordinator for the HPD, scheduling officers for clubs hiring officers for security. He works security for NEXT two nights a week, and NEXT employs a total of four to ten officers, with Saturday night having the most officers. Some of the officers patrol on bikes within a three block area. The first officer is there at 10:00 p.m. St. Emanuel Street is a main thoroughfare with a lot of traffic. Police try to control traffic on it as well as on McKinney and Hutchins, and they attempt to direct traffic away from the lofts and townhouses. Some of the traffic near NEXT is from other clubs in the area, and Officer Do estimates about 60% of traffic in the area is comprised of NEXT's patrons. The officers tell owners of parked cars to turn down their music when they come upon it. There is about one arrest per week at NEXT. He is aware of noise complaints, but none were verified. He was involved with the arrest of Mr. Wyatt, because Mr. Wyatt was drunk, and there had been a complaint from a NEXT employee. NEXT cleans up the area, including picking up its own flyers as well as flyers from other clubs.

John Caravello is the operating partner for Respondent and has overall control of NEXT. The club opened in August of 2005, and was in an area of abandoned warehouses. At that time, the nearby lofts mentioned earlier were not yet converted out of the empty warehouses. He believes the lofts and townhouses began to be built around 2006. Lucky's Bar opened soon thereafter. Other clubs or venues in the area are Club Big Yo, and Warehouse Live. Warehouse Live, when it has a concert, can accommodate 2,000 patrons. Lucky's Bar's clientele is

age 21-28, and it can accommodate about 1,000 patrons.

According to Mr. Caravello, NEXT has 100 parking spaces, and patrons can park in other nearby parking lots. Additionally, on-street parking is available on McKinney, Dallas, Lamar, St. Edward, and Hutchins. NEXT closes at 2:00 a.m., and they start closing about 1:30 a.m. Hired police get patrons out of the club, and direct traffic towards Chartres, away from the lofts and townhouses. The club can accommodate up to 700 patrons, and as many as eleven bouncers may be employed at one time. No loitering is allowed in the club's parking lot, and police handle traffic control until 3:00 a.m. Eight to ten HPD officers are on site, including officers on bicycles, who patrol on Chartres, Bastrop, Lamar, Rusk, and Dowling. Police are also inside the club. Patrons are checked for weapons at the door.

Mr. Caravello asserted that the club did have speakers on the patio, but they were removed 1½ years ago. Mr. Caravello has had meetings with local residents, representatives of the City of Houston and the TABC. He believes that NEXT is doing everything it can to address complaints from nearby residents, but it is never enough. He admits the club does not have a good relationship with nearby residents. Prior to 2007, NEXT had a predominately Asian clientele, but the murder that occurred in the club in 2007 prompted a change, and NEXT changed to a hip-hop music format.

The parties presented exhibits, which will be addressed in the ALJ's analysis.

C. Analysis

Protestants contend that the noise, traffic, and crime caused by NEXT arise to the level where it warrants denial of Respondent's permit renewal 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). Protestants must prove their case by a preponderance of the evidence.

Additionally, before a permit can be denied to a qualified applicant requesting to operate in a wet area and in compliance with all other laws, some unusual condition or situation must be shown to exist.

Respondent argues that their club has been open since 2005, before the nearby lofts and townhouses were built. Prior to that, the area had been occupied by commercial warehouses. Respondent contends that it has tried to mitigate the noise and traffic problems to the best of its ability, and that some of these problems are caused by the six to seven bars, clubs, and venues located in the surrounding area.

The evidence shows that NEXT is a nightclub in downtown Houston, Texas, that has been operating since 2005. Since 2007, NEXT's music format has been "hip-hop," and its clientele are ages 21 to about 25. It is open Tuesday, Friday, and Saturday from 10:30 p.m. to 2:00 a.m. As many as 700 people can patronize the club, and they can park not only in NEXT's parking lots, but also on the surrounding streets, unless prohibited by city no-parking signs. There is evidence that from shortly before closing until about 3:30, NEXT patrons leaving the club cause noise, from the patrons themselves as well as their car stereos, and cause traffic noise when leaving the area. There are about seven or eight bars, clubs, and/concert venues within two to ten blocks of NEXT, which contribute to some extent to the traffic and patron problems cited by Protestants.

During 2007, residents began to live in lofts and townhomes in the adjacent two blocks kitty-corner from the block where NEXT is located. The lofts and townhouses are in the blocks bordered by St. Emanuel, Walker, Bastrop, and McKinney streets. Protestants complain that from about 1:30 a.m. to 3:30 a.m., Tuesday, Friday, and Saturday, they are disturbed and awakened by loud music from cars; traffic noise from cars leaving the area as well as cruising the area; patrons occasionally urinating in public; occasional fights between patrons; and occasional verbal confrontations between Protestants and rowdy patrons leaving NEXT. Protestants also note the murder that occurred in NEXT in 2007, and an assault on one of the

Protestants. About 300 calls to police regarding the NEXT premises have been registered since 2005.

Respondent argues that they have provided extra security, including hiring off-duty police officers, to patrol inside the club and the nearby area. Respondent has removed the outdoor speakers, and it provides ample parking. Respondent also contends that some of the traffic problems and rowdy patrons making noise on the street are due not only to NEXT, but also due to nearby clubs and venues. Respondent also contends that it had been in operation about two years before the adjacent buildings were converted to residential lofts and townhouses, and that it has complied with all municipal and TABC requirements.

The ALJ, after considering all the evidence, finds that the main complaints of the Protestants concern the noise caused by the traffic and patrons of NEXT, (and other nearby bars) from about 1:30 a.m. to 3:30 a.m., around the closing time (2:00 a.m.) of the clubs. Protestants complain that there are rowdy patrons leaving NEXT and creating nuisances of themselves around closing time on streets close to where Protestants live.

The ALJ is sympathetic to the plight of the Protestants. However, because Respondent is qualified to operate its club in a wet area and is in compliance with all applicable laws and all TABC requirements, in addition to TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8) Protestants must also show that an unusual condition or situation exists before Respondent's permits are not renewed. In this case, the ALJ does not find an unusual condition or situation. Although most of Protestants complaints can be attributed to NEXT, approximately seven other clubs and bars are within two to ten blocks from NEXT and the Protestants, and the other clubs contribute somewhat to the problems cited by Protestants.

A review of the videos submitted does confirm the traffic and noisy patron problems on the streets adjacent to NEXT and Protestants' lofts and townhouses. However, in the ALJ's opinion, this is not unusual for a club such as NEXT. The videos also show police directing

traffic.

In reviewing the approximately 300 calls to police relating to NEXT's address, the ALJ notes that that number is over an approximate four-year period. This is only about six calls per month. Only about five of the 300 calls were related to public intoxication. Burglaries, thefts, assaults, fights, criminal mischief, profane language, and possession of controlled substances were some of the reported offenses. Additionally, it is unknown exactly which of these 300 calls were attributed solely to NEXT. However, even if they all were, the ALJ does not find that unusual for a downtown club that can entertain as many as 700 patrons.

Additionally, the evidence shows that Respondent was operating its club about two years before Protestants moved into the area. The area was a downtown, warehouse area, that residents have, since 2007, begun moving to and establishing private residences consisting of new lofts and townhouses. The ALJ does not believe that TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8) was intended to allow citizens to simply move to new residences next to an existing, legitimate, and law-abiding club in a downtown, warehouse area, complain about the club's usual noise and traffic, and thereby have the club's permit not renewed. This is re-enforced by the case law cited above stating that a protestant must prove that an unusual condition or situation must be shown before a qualified, lawful business in a wet area is forced to relinquish its liquor permit

The ALJ, after reviewing all the evidence, finds that the general welfare, health, peace, morals, and safety, and the public sense of decency of the surrounding residents does not warrant the nonrenewal of Respondent's permits. Renewing Respondent's permit would not cause an unusual condition or situation relating to the general welfare, peace, and safety of the surrounding residents.

IV. RECOMMENDATION

The ALJ recommends that Respondent's renewal permit application be granted.

V. FINDINGS OF FACT

1. Dotan & Associates LLC, d/b/a NEXT, (Respondent) filed a renewal application with the Texas Alcoholic Beverage Commission (TABC) for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit for the premises located at 2020 McKinney, Houston, Harris County, Texas.
2. The TABC (Petitioner) filed a Protest on behalf of East Downtown Neighborhood District, Kelly Fallin, Marcia Yim, Patricia High, Jennifer Grant, Joe R. Martin, Christopher Figat, Tracey Tully, Russell Wayne Bryce, John Chakalis, Nitzia Mendoza, Steve Mangold and Emily Kain (Protestants) protesting the renewal application, asserting that the application should be denied 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 November 25, 2009, was issued notifying the parties that a hearing would be held on the renewal application and informing the parties of the time, place, and nature of the hearing.
4. On February 12, 2010, and concluding on March 19, 2010, a public hearing was held before Administrative Law Judge (ALJ) Stephen J. Burger in Houston, Texas. The TABC appeared at the hearing, and was represented by Ramona Perry, attorney. Protestants were represented by Wyatt Magnum. Respondent was represented by Gary Cerasuolo, attorney.
5. Since August 2005, Respondent has operated a nightclub called NEXT in downtown Houston at the above-referenced address. Hours are 10:00 p.m. to 2:00 a.m., Tuesday, Friday, and Saturday.
6. In 2007, Respondent switched to a "hip-hop" format at NEXT.
7. There are approximately seven bars, nightclubs, and concert venues within approximately two to ten blocks of NEXT's location.
8. Respondent provides up to 10 off-duty police officers for security, both in the club and on the adjacent streets.
9. Respondent removed the loudspeakers from its patio about 1-1/2 years ago.
10. Protestants moved into lofts or townhouses beginning in 2007. The lofts and townhouses are located approximately within two blocks of NEXT.

11. Prior to 2007, the blocks where Protestants moved to were warehouses.
12. Protestants have experienced noise from vehicle traffic and from car stereo speakers, fights, screams, and general rowdiness from patrons of the surrounding bars and clubs, including patrons of NEXT, on streets surrounding their lofts and townhouses, from about 1:30 a.m. to 3:30 a.m.
13. From August 2005 to February 2010, there have been approximately 300 calls to police citing the NEXT address, including but not limited to reported burglaries, thefts, assaults, fights, criminal mischief, profane language, trespass, and public intoxication.
14. The place or manner in which Respondent conducts its business does not present an unusual condition or situation warranting a denial of Respondent's renewal permits.

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.
2. The State Office of Administrative Hearings has jurisdiction to conduct the hearing in this 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 affected on all parties pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001.051 and 2001.052; and 1 TEX. ADMIN. CODE § 155.501.
4. The place or manner in which Respondent conducts its business does not warrant the refusal of Respondent's permit renewals 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. The Respondent's renewal application for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit for the premises known as NEXT located at 2020 McKinney, Houston, Harris County, Texas, should be granted.

SIGNED May 14, 2010.



STEPHEN J. BURGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS