

TABC DOCKET NO. 586113

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE STATE OFFICE
	§	
	§	
HARRIS COUNTY COMMISSIONER EL FRANCO LEE, COUNCIL MEMBER JARVIS JOHNSON, MICHELLE COLLIER, KASHMERE GARDENS SUPER NEIGHBORHOOD COUNCIL, Protestants	§	
	§	
VS.	§	
	§	
TIFFANY MICHELLE MCLAUGHLIN D/B/A VIP LOUNGE, Respondent (MB, LB)	§	OF
	§	
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-09-5049)	§	ADMINISTRATIVE HEARINGS

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION this 28th day of October, 2009, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Don Smith. The hearing convened on July 31, 2009 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 24, 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 the Original Application of Tiffany Michelle McLaughlin d/b/a VIP Lounge 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 November 23, 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 28th day of October, 2009,
at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

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

Sherman E. Anderson
ATTORNEY FOR RESPONDENT
12929 South Main
Houston, Texas 77035
VIA FACSIMILE: (713) 721-6383

Tiffany Michelle McLaughlin
d/b/a Vip Lounge
RESPONDENT
3822 Cavalcade Street
Houston, Texas 77026
VIA REGULAR MAIL

El Franco Lee
Harris County Commissioner
PROTESTANT
1001 Preston Avenue, Suite 950
Houston, Texas 77002
VIA U. S. FIRST CLASS MAIL

Council Member Jarvis Johnson
District B
PROTESTANT
900 Bagby, 1st Floor
Houston, Texas 77002
VIA U. S. FIRST CLASS MAIL

Michelle Collier
PROTESTANT
3314 Calvalcade
Houston, Texas 77026
VIA U. S. FIRST CLASS MAIL

Kashmere Gardens Super Neighborhood Council
Jeremy Ratcliff, President
PROTESTANT
3601 Crandon
Houston, Texas 77026
VIA U. S. FIRST CLASS MAIL

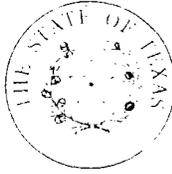
Ramona M. Perry
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Houston Enforcement Office

RMP/aa

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

September 24, 2009

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

VIA REGULAR MAIL

RE: Docket No. 458-09-5049; The Original Application of Tiffany Michelle McLaughlin d/b/a VIP Lounge

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,

A handwritten signature in cursive script, appearing to read "Don Smith".

Don Smith
Administrative Law Judge

DS/rlm
Enclosure

xc: 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**
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**
Sherman Anderson, 12929 South Main, Houston, TX 77035 -**VIA REGULAR MAIL**

RECEIVED

SEP 28 2009

**TABC HOUSTON
LEGAL**

2020 North Loop West, Suite 111 ♦ Houston, Texas 77018

(713) 957-0010 Fax (713) 812-1001

<http://www.soah.state.tx.us>

SOAH DOCKET NO. 458-09-5049

IN RE THE ORIGINAL APPLICATION	§	BEFORE THE STATE OFFICE
OF TIFFANY MICHELLE	§	
MCLAUGHLIN D/B/A VIP LOUNGE,	§	OF
Applicant	§	
HARRIS COUNTY, TEXAS	§	
(TABC CASE NO. 586113)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Tiffany Michelle McLaughlin d/b/a VIP Lounge (Applicant or VIP Lounge) has applied to the Texas Alcoholic Beverage Commission (Commission or TABC) for a mixed beverage permit and mixed beverage late hours permit for premises located at 3822 Cavalcade, Houston, Harris County, Texas. Harris County Commissioner El Franco Lee, Houston Council Member Jarvis Johnson, Michelle Collier, and Kashmere Gardens Super Neighborhood Council (Protestants) filed a protest to the issuance of the permits based upon concerns for the general welfare, health, peace, morals, and safety of the people in the community. 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 July 31, 2009, a public hearing was convened on this matter at the State Office of Administrative Hearings (SOAH) in Houston, Harris County, Texas, before ALJ Don Smith. Protestant Jeremy Ratcliff, President of the Kashmere Gardens Super Neighborhood Council, was the only Protestant at the hearing and presented Protestants' case. Applicant was represented

by Sherman E. Anderson, attorney. Staff was represented by Ramona Perry, attorney. The hearing concluded on July 31, 2009, and the record closed the same day.

II. DISCUSSION AND ANALYSIS

A. Applicable Law

Protestants challenge the application on the basis of TEX. ALCO BEV. CODE ANN. § 11.46(a), 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.

B. Evidence

Protestants, who have the burden of proof, oppose issuance of the permits because the area of Kashmere Gardens is saturated by bars. Kashmere Gardens' residents are trying to transform the area back into a residential neighborhood, explained Mr. Ratcliff. The VIP Lounge will be a sports bar located on a major thoroughfare through Kashmere Gardens, and across from the Harris County Annex where the Kashmere Gardens Super Neighborhood Council meets.

Mr. Ratcliff expressed concerns about the number of bars in the area, whether the VIP Lounge has sufficient parking, and security. Mr. Ratcliff presented an aerial photo of the many bars in Kashmere Gardens, and testified to the general concerns of yet another bar opening in the area. The aerial photo shows that Applicant's location has adequate parking and only allows the

vehicles to enter and exit onto Cavalcade, a busy street, and not into the residential area. Mr. Ratcliff did not present any evidence that Applicant needs security.

The letters presented from Commissioner Lee and City Council Member Johnson oppose the “renewal of a liquor license for VIP Lounge.” The letters also express concern that Applicant may have an extensive history of violent activities. Staff acknowledged that Applicant has filed an original application and does not have any known history of violent activities.

Mr. Ratcliff and staff stated that Protestants and TABC had discussed the matters concerning Applicant’s original application, and further stated there is not any specific evidence against Applicant. What Protestants are opposed to is another bar opening in the area of Kashmere Gardens.

C. Analysis

Protestants, who are attempting to protect their neighborhood, did not present any evidence that the place or manner in which the applicant may conduct her business warrants the refusal of the permits based on the general welfare, peace, morals, and safety of the people and on the public sense of decency.

Kashmere Gardens may be an area with many bars, but Applicant has gained approval from the City of Houston and Harris County to open her bar. The City and County certificates are signed and attached to the original application. There is no complaint that Applicant’s original application for a mixed beverage permit and mixed beverage late hours permit is not in compliance with the law.

The protest letters from Commissioner Lee and City Council Member Johnson do not apply to Applicant. The letters express opposition to the renewal of a liquor license for VIP Lounge. Applicant is not filing a renewal application. Applicant is filing an original application,

and no evidence was submitted that Applicant has any history that adversely affects the community.

Based on the above analysis, TABC should issue Applicant's permits.

III. FINDINGS OF FACT

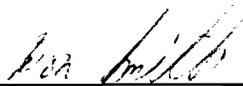
1. Tiffany Michelle McLaughlin d/b/a VIP Lounge (Applicant) filed an original application (the application) with the Texas Alcoholic Beverage Commission (the Commission) on April 27, 2009, for a mixed beverage permit and mixed beverage late hours permit for premises located at 3822 Cavalcade Street, Houston, Harris County, Texas.
2. Protests to the application were filed by Harris County Commissioner El Franco Lee, Houston Council Member Jarvis Johnson, resident Michelle Collier, and Kashmere Gardens Super Neighborhood Council (Protestants).
3. The Commission's Staff issued a notice of hearing on July 2, 2009.
4. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
5. The hearing was held on July 31, 2009, in Houston, Harris County, Texas, before Don Smith, an Administrative Law Judge with the State Office of Administrative Hearings (SOAH). Applicant was represented by Sherman E. Anderson, attorney. Staff was represented by Ramona Perry. Protestants were represented by Jeremy Ratcliff, President of Kashmere Gardens Super Neighborhood Council. The hearing concluded on July 31, 2009, and the record closed the same day.
6. The proposed premises at 3822 Cavalcade Street are on a major thoroughfare through the Kashmere Gardens neighborhood in Houston, Harris County, Texas.
7. Applicant's location has adequate parking and only allows vehicles to enter from and exit onto Cavalcade.
8. Applicant does not have a history of violent activities.

9. The City of Houston and Harris County have approved Applicant's request to open a bar at 3822 Cavalcade, Houston, Harris County, Texas.
10. The place or manner in which Applicant may conduct her business will not adversely affect the general welfare, peace, morals, and safety of the people and the public sense of decency.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO BEV. CODE ANN. chapters 1 and 5 and §§ 6.01, 11.41, 11.46, and 32.01.
2. SOAH 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. chapter 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Based on the foregoing findings of fact, issuance of the requested permits will not adversely affect the safety of the public, the general welfare, peace, and morals of the people, and violate the public sense of decency, as described in TEX. ALCO. BEV. CODE ANN. § 11.46.
5. Based on the foregoing findings and conclusions, the application of Tiffany Michelle McLaughlin d/b/a VIP Lounge should be granted.

SIGNED on September 24, 2009.



DON SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS