

TABC DOCKET NO. 588525

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Jurisdictional Petitioner	§	BEFORE THE TEXAS
	§	
	§	
PATRICIA GUAJARDO, VILLAGE DEL MAR CONDO ASSOCIATION, AND DANIEL RYAN, Protestants	§	
	§	
	§	
VS.	§	ALCOHOLIC
	§	
ORIGINAL APPLICATION OF STINGRAY ALLEY, LLC D/B/A STINGRAY ALLEY (MB, LB & FB), Respondent	§	
	§	
	§	
WEBB COUNTY, TEXAS (SOAH DOCKET NO. 458-10-2007)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this the 23 day of September, 2010, the above-styled and numbered cause.

After proper notice was given, a hearing in the above matter was conducted on February 26, 2010 by the State Office of Administrative Hearings, with Administrative Law Judge Donald B. Dailey presiding. The Administrative Law Judge made and filed a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law on April 29, 2009. The 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. No Exceptions or Replies were filed.

In his discussion in the Proposal for Decision, the Administrative Law Judge recommended that the application for the requested permits be granted, but that “the issuance of the permits be conditioned on Stingray Alley entering into a written agreement with the [Texas Alcoholic Beverage] Commission” that imposes certain restrictions. The Texas Alcoholic Beverage Commission was a neutral party in this proceeding. The recommendation to grant the application is reflected in the Findings of Fact and Conclusions of Law. The recommendation to require an agreement imposing restrictions is not reflected in the Findings of Fact and Conclusions of Law.

On July 22, 2010, Petitioner Texas Alcoholic Beverage Commission filed “Petitioner’s Motion for Entry of the Order Proposal for Decision (PFD) Without Agreement”. Petitioner’s attorney represented in that Motion that the attorney for

Respondent agreed with the Motion and that the Protestants had been notified of the Motion. No further pleadings were filed subsequent to that Motion.

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. Petitioner's Motion for Entry of the Order Proposal for Decision (PFD) Without Agreement is granted. All other motions, requests for entry of Proposed Findings of Fact and Conclusions of Law, and any other requests for general or specific relief submitted by any party that are not specifically adopted herein are denied.

IT IS THEREFORE ORDERED that the application of Stingray Alley, LLC D/B/A Stingray Alley for a Mixed Beverage Permit, a Mixed Beverage Late Hours Permit and a Food and Beverage Certificate be **GRANTED**.

This Order will become final and enforceable on the 18 day of October, 2010, unless a Motion for Rehearing is filed **before** that date.

SIGNED on the 23 day of September, 2010,
at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that service shall be made upon all parties in the manner indicated below on this the 23 day of September, 2010.



Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission

Donald B. Dailey
Administrative Law Judge
State Office of Administrative Hearings
Texas Department of Transportation
Conference Room
1817 Bob Bullock Loop (Loop 20)
Laredo, Texas 78043
VIA FACSIMILE: (210) 308-6854

Daniel Ryan
PROTESTANT
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VIA U.S. FIRST CLASS MAIL

Patricia Guajardo
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Shelia Lindsey
ATTORNEY FOR PETITIONER
Texas Alcoholic Beverage Commission

Licensing Division

Agent Torres
Laredo Enforcement Division

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

RECEIVED

MAY 04 2010

**TABC HOUSTON
LEGAL**

April 29, 2009

Mr. Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Post Office Box 13127
Austin, Texas 78711-3127

BY FIRST CLASS MAIL

RE: SOAH Docket No. 458-10-2007; TABC Docket No. 588525; Texas Alcoholic Beverage Commission v. Stingray Alley, LLC, d/b/a Stingray Alley, Permit Nos. MB, LB, &FB

Greetings Mr. Steen:

Enclosed is 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.

Yours truly,

A handwritten signature in black ink, appearing to read "Donald B. Dailey".

Donald B. Dailey
Administrative Law Judge

DBD/dbd
Enclosure

xc: Ms. Sheila Lindsey, Staff Attorney, Texas Alcoholic Beverage Commission, 427 West Twentieth Street, Suite 600, Houston, Texas 77008 - **BY FACSIMILE: 713-426-7965**

xc: Mr. Daniel Ryan, Ms. Patricia Guajardo, and Village Del Mar Condo Assoc., 110 Martingale Lane, Laredo, Texas 78041 - **BY FIRST CLASS MAIL**

xc: Mr. Ronald A. Monshaugen, Monshaugen & Van Huff, 1225 North Loop West, Suite 640, Houston, Texas 77008 - **BY FACSIMILE: 713-880-5297**

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SOAH DOCKET NUMBER 458-10-2007

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COM'N.,	§	
Jurisdictional Petitioner,	§	
AND	§	
PATRICIA GUAJARDO, VILLAGE	§	
DEL MAR CONDO ASSOCIATION,	§	
AND DANIEL RYAN,	§	
Protestants	§	OF
V.	§	
ORIGINAL APPLICATION OF	§	
STINGRAY ALLEY, LLC, D/B/A/	§	
STINGRAY ALLEY,	§	
Respondent	§	
WEBB COUNTY, TEXAS	§	
(TABC DOCKET NUMBER 588525)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Stingray Alley, LLC, doing business as Stingray Alley (Stingray Alley) applied to the Texas Alcoholic Beverage Commission (the Commission) for a mixed beverage permit, a mixed beverage late hours permit, and a food and beverage certificate for its premises at 6919 Springfield Avenue, Laredo, Texas. Daniel Ryan, Patricia Guajardo, and Village Del Mar Condo Association (Protestants) filed protests against issuance of the permits. The Commission took a neutral position. The Administrative Law Judge (ALJ) recommends that Stingray Alley be granted the requested permits.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Notice and jurisdiction are not contested. On February 26, 2010, a protest hearing was held in Laredo, Texas, before ALJ Donald B. Dailey. Stingray Alley was represented by attorney Ronald Monshaugen. Protestants Daniel Ryan and Patricia Guajardo represented themselves and Village Del Mar Condo Association. The Commission was represented by staff attorney Shelia A. Lindsey.

Previously, on December 9, 2008, a protest hearing was held in Laredo, Texas, before ALJ Dailey, on Stingray Alley's first application for permits for the 6919 Springfield location. On February 2, 2009, a Proposal for Decision was submitted that recommended denial of the requested permits. On March 25, 2009, an Order Modifying Proposal for Decision was issued by Alan Steen, Administrator for the Commission, that granted a mixed beverage permit and a food and beverage certificate, but denied a mixed beverage late hours permit. On April 7, 2009, Mr. Ryan filed a motion for rehearing. Among other arguments, Mr. Ryan alleged that Stingray Alley had submitted false information as to available parking at the protest hearing. On May 11, 2009, Administrator Steen issued a new order that withdrew his previous order and refused Stingray Alley application for permits without prejudice to resubmit a new application. On or about June 17, 2009, Stingray Alley's submitted a new application.

II. PARTY POSITIONS

The Commission took a neutral position. In the First Amended Notice of Hearing, Ms. Lindsey recited that Stingray Alley had met all requirements of the Texas Alcoholic Beverage Code and the Commission to obtain the requested permits and that the Commission had no independent evidence to protest the requested permits.

In that notice, Protestants' position was stated as follows: Stingray Alley will violate TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8) by creating a substantial strain on residents of the neighborhood and exacerbating existing conditions and problems in the following areas: parking, traffic hazards, litter, moral indecency, vandalism, violence, and strain on law enforcement. Also, Stingray Alley's building is inadequate and Stingray Alley has or will violate city codes and ordinances, contrary to TEX. ALCO. BEV. CODE ANN. § 11.46(a)(12). In addition, [the owners of] Stingray Alley are not of good moral character or the reputation of [the owners of Stingray Alley] for being peaceable, law abiding citizens in the community where they resides is bad, contrary to TEX. ALCO. BEV. CODE ANN. § 11.46(a)(6).

III. APPLICABLE LAW

Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.46(a), the Commission may refuse to issue an original permit if it has reasonable grounds to believe and finds that any of the following circumstances exist:

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

(8) 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 the public sense of decency;

(12) applicant does not provide an adequate building available at the address for which the permit is sought before conducting any activity authorized by the permit.

To deny a permit to a fully qualified applicant who proposes to operate a lawful business in a wet area and in compliance with all applicable zoning requirements, some unusual condition or situation must be shown so as to justify a finding that the place or manner in which the applicant may conduct his business warrants a refusal of a permit. *Texas Alcoholic Beverage Com'n. v. Twenty Wings, Ltd.*, 112 S.W.3d 647 (Tex. App. – Fort Worth 2003); *Texas Alcoholic Beverage Com'n. v. Mikulenska*, 510 S.W.2d 616 (Tex. App. – San Antonio 1974, no writ).

IV. SUMMARY OF EVIDENCE PRESENTED

A. The Application

Stingray Alley's licensing application reflects the following. Stingray Alley is a limited liability company. Rosa Trevino is the managing member, and her spouse, Victor Trevino, is the only other member. Stingray Alley leases its space from Napali Enterprises, LLC, the owner of the property where Stingray Alley is located. Stingray Alley is managed by Mrs. Trevino. She has been employed as Tesoro Medical Care's office manager since April 1984. Stingray Alley's hours of operation are 11 a.m. to 11 p.m. Both the City Secretary of the City of Laredo and the County Clerk

of Webb County certified that Stingray Alley is in a "wet" area and that sale of mixed beverages is authorized between midnight and 2 a. m. Also, no schools are within 1000 feet of Stingray Alley, and no churches are within 300 feet.

B. The Development of Stingray Alley

The photographs, plats, other documentation, and the testimony of the witnesses indicate the following. Stingray Alley is located at the corner of Springfield Avenue and West Village Boulevard in Laredo, Texas. Abutting Stingray Alley on the east are the Village Del Mar Condominiums. Farther to the east are the Cambridge Place Condominiums. Immediately across West Village from Stingray Alley and to the east of Springfield is Regency Square shopping center, which contains two licensed premises: Agave Azul and Limasol. Across West Village to the northeast are the Las Fuentes Condominiums. Farther to the northeast are the La Mansion Condominiums. Both of the foregoing condominium developments abut Regency Square. To the northwest of Stingray Alley and diagonally across the intersection of Springfield and West Village is Del Mar Plaza shopping center, which contains one licensed premises: Cosmos. (Agave Azul, Limasol, and Cosmos will be referred to hereafter as the nearby premises.) To the west of Stingray Alley, across Springfield, are office buildings. To the south of Stingray Alley is a 3-story office building (Park Place Tower). Beyond the condominiums to the south is the Regency Park Subdivision of single family homes. Both Springfield and West Village have center turn lanes and one through lane going each way, leaving no room for curb parking. Signs indicating speed bumps and tow-away zones have been installed on West Village. Signs indicating no parking have been posted on Martingale.

Stingray Alley is located on the second floor of a 2-story building (Tesoro Building), which was built sometime before 2006 on a one-acre lot. Dr. and Mrs. Trevino applied for a zoning change to allow the Tesoro Building to be used as a bar-nightclub, which was denied by the Planning and Zoning Commission of the City of Laredo in April 2006. Dr. Trevino entered into a "Parking and Easement Agreement" with the owners Park Place Tower in May 2006. Park Place Tower is on a nine-tenths of an acre lot. Dr. Trevino obtained non-exclusive use of Park Place Tower's parking lot from 6:30 p.m. to 2:30 a.m.

An architectural firm drafted remodeling plans for the Tesoro Building in August 2006. The plans provided for remodeling the second floor into a restaurant. From portions of the 5,959 square feet of interior space, the plans called for building a kitchen, a room for freezers, two bar areas, restrooms, storage rooms, space for air conditioners, a front lobby, and an inside stairway to the first floor. In addition, the plans called for building three outside steel decks: one on the front of the building facing West Village, one on the side facing the Village Del Mar Condominiums, and one on the back facing Park Place Tower. The front deck is about 1750 square feet including a stairway and elevator. The side deck is about 1750 square feet including an emergency stairway. The back deck is about 730 square feet including an emergency stairway. The side deck has no roof, awning, or other shade from the sun. A small part of the front deck and part of the back deck are covered by the overhang of the original building. The side deck is about 75 feet from the property line for the Village Del Mar Condominiums.

A site map accompanying the remodeling plans shows a parking lot with about 23 spaces for the Tesoro Building. No provision was made for additional parking; rather, the site map indicates that parking would be shared with Park Place Tower "as per owner agreement."

Extracts from the zoning ordinances of the City of Laredo indicate that the off-street parking requirements are 18 spaces for every 1000 square feet of dining floor area for high-turnover midday sit-down restaurants, 13 spaces for every 1000 square feet of dining floor area for low-turnover evening hour sit-down restaurants, and one space for every three seats or 100 square feet of floor space, whichever is greater, for nightclubs and bars. Two commercial businesses may jointly use parking spaces when their hours of operation do not normally overlap.

Mrs. Trevino was issued a building permit to remodel the second floor of the Tesoro Building for personal and company use in September 2006. The notation "bar and grill on the second floor only" is lined out. By virtue of a Commercial Lease Agreement dated September 19, 2007, Napali Enterprises obtained the right to use the parking spaces at 205 West Village. The lease does not specify the number of parking spaces available.

A City of Laredo building inspector calculated the dining floor area of Stingray Alley at about

3600 square feet in a memorandum dated March 24, 2008. Using the low-turnover evening hour sit-down restaurant category, the inspector calculated the occupancy load at 240 people and the required number of parking spaces at 45, with 25 in existence. The parking for the first floor medical office area was described as "To be determined."

Inspections on Stingray Alley started in March 2008 and are documented on a City of Laredo form. The first version indicates that 25 parking spaces existed. Rather than checking off the box for parking, the notation "pending" was written in. The second version has additional boxes checked and more signatures dated in April and May 2008; however, the parking box has been circled but not checked. A third version has the parking box checked off with an illegible notation written in after "pending." Also, a notation "occ load 250" was added.

The City of Laredo granted Mrs. Trevino an occupancy certificate for an occupancy load of 83 on July 1, 2008. The city revoked the certificate on July 21, 2008. Among the reasons given for the revocation were the lack of a screening fence between Stingray Alley and the adjoining residential property, the lack of a sidewalk along West Village, and the need for 98 additional parking spaces, which could be off-premises as long as Mrs. Trevino had an ownership interest. The City of Laredo granted Mrs. Trevino a new occupancy certificate for an occupancy load of 81 on August 26, 2008.

Dr. Trevino lost the right to park vehicles on Park Place Tower property pursuant to an Amended and Restated Easements Agreement signed by Dr. Trevino, as the Managing Member of Napali Enterprises on September 2, 2008. A handwritten notation on the building inspector's memorandum, dated September 12, 2008, reduced the dining area to 1250 square feet. Stingray Alley obtained a new lease for 70 off-street parking spaces at 205 West Village in February 2010. Dr. Trevino acquired ownership of that property prior to the second protest hearing.

A floor plan of Stingray Alley has 12 dining tables drawn on it. Also, considerable floor space is designated for a live music area, a stage, two bars, and two video game areas. In interior photographs of Stingray Alley, at least 12 standard height, square, pedestal dining tables with four chairs each can be seen. The tables are moveable and the chairs are a lightweight, stackable type.

The photographs show that Stingray Alley has at least one bar area with at least two bar height, round, wooden, pedestal tables with three bar stools each and two more regular height dining tables with at least two chairs each. Also, what might be an elevated large booth that might seat 12 persons has been constructed, which may be in the area designated as a stage in the floor plan. Stingray Alley has a kitchen with a stainless steel stove, stainless steel grills, stainless steel refrigerators, and other cooking equipment.

The décor is in keeping with sports car racing. On the ceiling, a racetrack has been painted and model racing cars affixed. The exterior of the booth area is decorated with shiny hubcaps. The walls are decorated with a black-and-white-checked strip (as on a car race finishing flag) and various automotive pictures and labels. The bar has a "Margaritaville" neon sign. The roof support columns and walls have flat screen televisions attached to them.

Exterior photographs of Stingray Alley show that the front deck is set up with four standard height dining tables with umbrellas and four chairs each. Additional bar height, round, metal, pedestal tables with three bar stools each can be seen on the front deck, also. Older photographs taken before the first protest hearing show at least seven of the bar height, metal, pedestal tables on the front deck, at least six on the side deck, and about four standard height, square, pedestal dining tables without any chairs on the back deck. A ground level gate has been built by the front stairs and front elevator to restrict ingress and egress to the main entrance of Stingray Alley. However, no ground floor gates restrict ingress and egress by the stairways on the side or back decks. The decks and stairways are all constructed of bare steel. The stairways do not appear to have any sound deadening surfacing. The deck surfacing cannot be seen.

Stingray Alley's main parking lot on the side of the building has about 24 straight-in parking spaces. The parking spaces have been restriped to extend the spaces onto a raised sidewalk. A steel pipe, lockable gate has been installed across the entry/exit. A sign has been erected which says, "Stingray Alley employee and patrons parking only." Also, a wooden fence has been erected between Stingray Alley's main parking lot and Village Del Mar Condominiums. Underneath the back deck about four parking spaces are available, some of which are angled spaces between steel support columns. Underneath the side deck about five parking spaces are available, which are either

underneath the deck or behind a tree. Access to the back and side parking spaces is through the main parking lot. Stingray Alley has 33 on-site parking spaces although only 29 are required, according to a letter dated June 19, 2009, from Ruben E. Salinas, a building official for the City of Laredo, to Alan Steen, the Administrator for the Commission.

On the front side of Stingray Alley, a retaining wall has been built, which has allowed construction of a sidewalk along the street. Photographs and videotape taken by Mr. Ryan in the early morning hours of Sunday, October 18, 2009, show vehicles parked with their passenger side tires on the sidewalk along West Village in front of Stingray Alley. Other after midnight photographs and videotape show Stingray Alley's parking lot with cars parked in it and women in high heels and short dresses walking across the street from the north toward Stingray Alley's parking lot. Videotape taken by Stingray Alley in the early morning hours of Sunday, February 28, 2010, show no vehicles parked on the sidewalk along West Village in front of Stingray Alley or any vehicles in Stingray Alley's parking lot. A metal gate between Stingray Alley's main parking area and the main parking area for Park Place Tower blocks access from Stingray Alley's parking lot to Park Place Tower's parking lot and vice versa.

C. Summary of Eddie Torres' Testimony

Agent Torres testified as follows. He has 25 years experience as an agent with the Commission. When he has visited premises that serve alcohol between 11 p.m. and 2 a.m., he has not seen many people dining; rather, such premises operate mainly as bars. Four bars are located one block away from Stingray Alley. Those establishments have become a major gathering area for late night social drinking. When he has been at Agave Azul and Limasol between 11 p.m. and 2 a.m., they were operating mainly as bars. Since Laredo enacted its no indoor smoking ordinance, most places where alcoholic beverages are served have put in outdoor patios. As a result, patrons gather outside, and more noise is generated outside.

Agent Torres has been in Stingray Alley. It is set up with a kitchen, tables, and chairs, which is consistent with operating as a restaurant. It has a small stage, which is consistent with operating as a nightclub. Mrs. Trevino says the stage is for karaoke. The table and chairs are moveable, except

for a customer waiting area or booth.

The patrons of the nearby premises bar hop from one place to another. Due to the proximity of Stingray Alley to the nearby premises, their patrons could conveniently walk to Stingray Alley. Granting permits to Stingray Alley could result in its operating in the same manner as the nearby premises late at night and in the early morning hours. Granting permits to Stingray Alley could result in additional late night social drinking there which could increase late night noise from the decks, traffic congestion, and other problems for the residents in the neighborhood. Ultimately, the owners of Stingray Alley have control over who they serve at their premises. At this point, how the owners of Stingray Alley will operate their business is conjecture.

D. Summary of Ruben Salinas' Testimony

Mr. Salinas testified as follows. He has been a building official for the City of Laredo for over 30 years. He issues occupancy certificates. Occupancy level is calculated based on the nature of the use of the premises and the amount of space being so used. In the case of Stingray Alley, the nature of the use is sit-down restaurant. The occupancy level is the net area so used divided by 15. The required parking is calculated by dividing the net area in use by 1000 and multiplying the product by 18.

The outdoor decks at Stingray Alley were not included in the dining area used in computing the number of parking spaces required by Stingray Alley. Using the decks for dining area is not consistent with Stingray Alley's certificate of occupancy. If Stingray Alley uses the decks for dining, then it does not have adequate parking. He agreed that some of the photographs show people dining on the decks. Therefore, he concluded that Stingray Alley may be in violation of its certificate of occupancy.

Stingray Alley has a certificate of occupancy for a restaurant. When he inspected Stingray Alley, he saw three couples dining. The decks had no tables on them. If Stingray Alley closes off part of the interior area designated for dining, it can use an equivalent area outside on the decks for dining. Mrs. Trevino asked if building multistoried parking would be permissible, and he told her

that it was. Stingray Alley has been told that leasing parking spaces on adjacent property is not a permissible means of meeting parking requirements. If the Trevinos purchased property within 300 feet of Stingray Alley, parking on such property could be used to meet parking requirements. If they purchased property further away, they would need a variance to use it for parking.

E. Summary of Gene Belmares' Testimony

Mr. Belmares testified as follows. He has been the elected representative for Laredo City Council District VI since 2002. Stingray Alley is in his district. In the last six years in his district, some restaurants, that is, businesses with more than half of their receipts from the sale of food, have transformed into defacto nightclubs, that is, businesses with more than half of their receipts from the sale of alcohol. Two nightclubs are located near Stingray Alley, but they are in a B-4 zoned area, which allows nightclubs. One restaurant located near Stingray Alley has become a defacto nightclub, which is located in a B-3 zoned area, where nightclubs are not allowed. One other restaurant located near Stingray Alley in the B-3 zoned area is on the cusp of being a defacto nightclub. Stingray Alley is in a B-1 zoned area, which allows restaurants, but not nightclubs. The combination of the legitimate nightclubs and the defacto nightclubs has led to parking and traffic congestion. Due to reports of numerous accidents, a guardrail was erected on a curve on West Village about 600 feet from Stingray Alley.

The city has enacted an ordinance prohibiting indoor smoking. As an unintended result, outdoor patios have become common at restaurants and nightclubs. Some have set up their outdoor areas with speakers and televisions. The outdoor patios have generated complaints from citizens about noise, littering, loud arguments, bottle throwing, and fights. The Laredo police department has not aggressively enforced parking restrictions. The city inspectors from the building, health, and fire departments do not typically work after regular hours; however, they sometimes do sting operations in the evenings.

F. Summary of Alfredo Santos' Testimony

Mr. Santos testified as follows. He lives on Brand Street in the Regency Park subdivision.

He is the president of the Regency Park Homeowners Association. Stingray Alley is about two blocks to the north of the subdivision. From the existing nightclubs that are further away than Stingray Alley, the subdivision has experienced problems with people driving into the neighborhood at high speeds, crashing into walls, and running over mailboxes. The association has employed a private security service. One of their jobs is to monitor traffic from the nightclubs.

Since some bars in the area of the subdivision closed, the area has been calm. Since the guardrail was installed, several accidents have occurred at that curve. In the daytime, when he passes by the building in which Stingray Alley is located, he sees patients for the clinic and diners for the restaurant. The traffic is light and the area is calm. He sees hardly any cars when the clinic is closed. He believes that the consequences of granting the requested permits to Stingray Alley will be bad.

G. Summary of Patricia Guajardo's Testimony

Ms. Guajardo testified as follows. She has lived at 110 Martingale Lane for the last five and a half years. She is president of the Village Del Mar Condominiums Homeowners Association. She has been authorized by the membership of the association to protest the requested permits. Stingray Alley's parking lot is located about 30 feet from her backdoor.

The nearby premises generate numerous problems for the neighborhood such as loud noise, illegal parking, traffic, litter, and drunks. At 2 a.m., she has heard loud talking, honking horns, and squealing tires. The city has been ineffective in dealing with these problems. After the guardrail was installed, she has noticed that it has been damaged. She has seen one vehicle that went over the guardrail and hit a fence. She believes that Stingray Alley will become another nightclub and will make the above problems worse in the neighborhood.

She regularly passes by the Tesoro Building. She does not see much activity at Stingray Alley at lunchtime. When the clinic is open at night, the building's parking lot is full, and she hears some noise from the parking lot. In the last year, she has seen patrons of the nearby premises using the parking lot of the Tesoro Building, resulting in much noise and other problems. After Stingray Alley installed a gate across the entrance to their parking lot, the situation became much better.

A fence has been erected between the Tesoro Building and the Village Del Mar Condominiums, but it has not blocked the noise. At about 10:15 p.m. for the last six months, she regularly hears someone in Stingray Alley's parking lot generating loud, disturbing noise by revving the engine of a vehicle.

H. Summary of Daniel Ryan's Testimony

Mr. Ryan testified as follows. He has lived at 110 Martingale for the last 11 years. His condominium unit is six units away from West Village. His unit is directly behind Park Place Tower.

The photographs and videotape that he took accurately depict the amount of activity on a typical Saturday night and Sunday morning around Stingray Alley. The amount of activity is tranquil compared to the amount of activity that occurs on a holiday weekend. Since Stingray Alley opened as a restaurant, he has heard a vehicle revving its engine, creating noise like a rocket launching as it leaves Stingray Alley, which he has found disruptive. Since it is operating only as a restaurant, Stingray Alley closes early. If Stingray Alley obtains permits and has more customers, he expects more cars and more disruption.

By his calculation, 339 off-street parking spaces are legally available to the patrons of the nearby premises in the two shopping centers where they are located. Also, at the business center to the east of Stingray Alley, which is owned by the same person who owns the above shopping centers, another 51 off-street spaces are legally available to the patrons of the nearby premises. In addition, at a business center further to the east of Stingray Alley, another 50 spaces are used by the patrons of the nearby premises. The only businesses open at night are the nearby premises. The patrons of the nearby premises park in fire zones and no-parking zones on Springfield, on West Village in front of and across the street from Stingray Alley, and on West Village and Martingale in front of the Village Del Mar condominium buildings. About 36 spaces are available in Stingray Alley's parking lot. The owners of Park Place Tower do not allow patrons of the nearby premises to park in their parking lot.

At the first protest hearing, Stingray Alley submitted a contract purporting to show that it had leased parking spaces on Park Place Tower's property from the owners of Park Place Tower. After the hearing, he learned from the owners of Park Place Tower that the submitted contract had been replaced by a new contract that did not lease any parking spaces to Stingray Alley. He believes that Stingray Alley's introduction of the obsolete contract was not the result of miscommunication or accident, but an intentional deception. On one occasion, while standing on the sidewalk in front of Park Place Tower, Mrs. Trevino became agitated and hysterical and yelled at him.

I. Summary of Victor D. Trevino's Testimony

Dr. Trevino testified as follows. He is a medical doctor. He has been practicing medicine in Laredo for 25 years. His wife is the personnel manager for his medical practice. Stingray Alley opened about six months before the hearing. The motif is that of a sports restaurant. It has a full kitchen. It is operating without alcoholic beverage permits as a soft restaurant.

Stingray Alley has all the on-site parking required by the certificate of occupancy. In addition, it can use the parking at the property he acquired at 205 West Village. The additional parking was obtained to ease the concerns of the neighbors. Such additional parking is located 200 yards from Stingray Alley, which is not within the required distance for zoning purposes.

Dr. Trevino understands that Stingray Alley must continue to operate primarily as a restaurant, even if the requested permits are granted. It will continue to be a soft restaurant. He will not be active in its management. His wife will be operating Stingray Alley. A late hours permit will allow it to sell alcohol until 2 a.m. more or less. Stingray Alley will operate like several other Laredo restaurants that cater to late night diners from 11 p.m. until 2 a.m. What happens when a person comes in at those late hours wanting only to drink depends on the approach of the owners. If the owners want to cater to a drinking, partying environment, then that environment will exist. If the owners want to have a different setting, then the result will be different.

Dr. Trevino is aware that use of space on the outside decks must be offset by reducing the amount of inside space in use. The photographs Mr. Ryan took show only one table in use, which

amounts to about a 10-foot by 10-foot area of deck space being used for dining. The other tables not in use do not count. In order to be in compliance with the certificate of occupancy, a 10-foot by 10-foot area of interior space is cordoned off inside the premises with yellow rope, using the one-foot by one-foot floor tiles as a guide.

Stingray Alley did present an expired lease for additional parking spaces at the first protest hearing. However, Stingray Alley did not need those parking spaces because it already had sufficient on-site parking. Also, Stingray Alley had another valid lease for additional parking spaces at another location. His wife confused the expired lease with that valid lease. She is not fluent in English, which may have caused her confusion. Also, their attorney at the time, on whom they were relying, made mistakes.

Originally, his wife wanted to operate a restaurant. Their attorney at the time suggested asking for a zoning change. They decided to make it a full-service restaurant serving alcoholic beverages. So they applied for the zoning change, but their application was denied. The building had already been built out for use as a restaurant. He agreed that the zoning change request was voted down in April 2006 and that the original building permit to remodel the second floor was issued in August 2006. However, he claimed that the installation of the structural steel and major construction was done before the zoning change request was made.

V. ANALYSIS

A. Occupancy Level and Parking

Protestants make the following arguments. Stingray Alley lacks adequate parking. The decks were not included as part of the dining space in computing the parking space requirements. By using the decks for dining, Stingray Alley is already in violation of city zoning requirements. If granting Stingray Alley the requested permits results in more customers, then Stingray Alley will be further out of compliance with parking requirements. Stingray Alley points out that it has a certificate of occupancy.

occupancy and parking can be evaluated. In that connection, consideration of how the parking and occupancy levels at Stingray Alley have evolved is helpful. The Parking and Easement Agreement from May 2006 and the original plans for Stingray Alley from August 2006 clearly establish that additional off-premises parking in Park Place Tower's parking lot was an integral part of the remodeling of the second floor of the Tesoro Building into Stingray Alley. The initial assessment by a city building inspector in May 2008 indicated that Stingray Alley had a dining area of 3600 square feet (not counting the open bar area), which produced an occupancy load of 240 and a requirement for 45 parking spaces. However, the inspector noted that Stingray Alley had only 25 on-site parking spaces. As a result, the "pending" notation appeared on the city's inspection check-off sheet next to the box for parking.

The loss of the right to park on Park Place Tower property in September 2008 doomed the original work-around of the on-site parking problem. However, a simpler solution was adopted. On September 18, 2008, 3600 square feet of dining area was reduced to 1250 square feet of dining area. On a second floor with about 6000 square feet of remodeled interior space and about 3000 square feet of exterior deck space, 7750 square feet are now something other than dining space. In other words, only about 14 percent of the floor and deck space of Stingray Alley is eligible for use as dining area.

Mr. Salinas indicated that erecting multi-story parking would be a permissible way for Stingray Alley to solve its on-site parking problem. Mrs. Trevino's inquiry into multi-story parking is a tacit admission that Stingray Alley cannot use all its available floor space, given its very limited on-site parking.

In view of the undisputed testimony that Stingray Alley's current volume of business is low, the evidence does not support a conclusion that it lacks adequate on-site parking. Ms. Guajardo testified that, when Dr. Trevino holds a night clinic, the Tesoro Building parking lot is full. However, Protestants offered no evidence that, at the present time, Stingray Alley's customers and Dr. Trevino's patients combine to overflow the Tesoro Building's on-site parking and add to the parking problems caused by the nearby premises. In the ALJ's opinion, Protestants have not established by a preponderance of the evidence that Stingray Alley is not in compliance with its

requirements for on-site parking.

Mr. Ryan produced photographs indicating that, at the present time, at least four tables with umbrellas are set up for dining on Stingray Alley's front deck. Mr. Salinas testified that the decks were not included in computing the dining area at Stingray Alley. Therefore, using the decks for dining is inconsistent with Stingray Alley's Certificate of Occupancy. When shown the photographs of people dining on Stingray Alley's front deck, Mr. Salinas said that Stingray Alley might be in violation of its Certificate of Occupancy.

However, Protestants produced no evidence of how much interior floor space was being used at the time the exterior photographs were taken. Also, Dr. Trevino testified that he realized that to use the decks for dining area, an equivalent portion of the interior dining area has to be closed, which is done with yellow rope, using the one-foot by one-foot floor tiles as a guide. Mr. Salinas endorsed that procedure. Equipping the front deck with outdoor tables and awnings does, at least, indicate an intent by Stingray Alley to use the front deck for dining, not as a nightclub outdoor smoking area. Also, since the deck is visible to persons passing on adjacent streets, equipping the front deck with outdoor dining tables and awnings conveys an impression to potential bar-hoppers that Stingray Alley is a restaurant, not a nightclub.

The ALJ finds Dr. Trevino's method of estimating the square footage being used on the front deck, that is, counting only the tables at which customers are actually seated, questionable. Certainly, the photographs showing the tables with umbrellas set up for use for dining on Stingray Alley's front deck and the large amount of floor space available inside Stingray Alley is sufficient to raise a reasonable suspicion that Stingray Alley is not in compliance with the applicable zoning ordinances as to occupancy level and parking and may be even less in compliance if allowed the privilege of selling alcoholic beverages in the late evening and early morning hours. However, Dr. Trevino gave sworn testimony in public in front of a large audience of his supporters, which the ALJ finds credible, that Stingray Alley is cognizant of the limited amount of space it can use for dining and is taking concrete steps to comply with those limits. Further, Protestants produced no evidence that Stingray Alley was using all or even any of its interior dining space at the time the photographs of the tables on the front deck were taken. In the ALJ's opinion, Protestants have not established by

a preponderance of the evidence that Stingray Alley is not in compliance with the limitations on its use of floor space for dining area.

B. Restaurant or Nightclub Masquerading as a Restaurant

Protestants make the following arguments. Stingray Alley's neighborhood is already overrun with bars whose patrons overflow the legal parking spaces available to them and illegally park all over the neighborhood. The patrons of the bars create other problems for the neighborhood such as noise and litter. Adding another bar will make matters worse. People will act the same way at Stingray Alley as they do at the nearby premises. More crashes will occur at the curve where the guardrail has been erected. The disturbing noise now coming from Stingray Alley's parking lot during late night hours will increase and continue into the early morning hours. Stingray Alley did not explain how it will continue to operate as a restaurant when persons who only want to drink enter its location. Laredo's smoking ordinance has resulted in the patrons of the nearby premises taking their party activities outside. Stingray Alley's decks will increase the noise problem. The neighborhood cannot absorb any more bars. The City of Laredo has been ineffective in enforcing its parking ordinances, and the Commission has too few agents in the area to effectively enforce Alcoholic Beverage Code requirements.

"The courts have established that the location and surroundings of a proposed business can be proper grounds for refusal of a license based on general welfare." *Brantley v. Texas Alcoholic Beverage Commission*, 1 S.W.3d 343 (Tex. App. – Texarkana 1999, no pet.). An inquiry into the circumstances at the location where an applicant proposes to operate is pertinent. If an applicant is denied a permit because of special circumstances having to do with its location, that denial is a recognition of the reality that the applicant will not be operating in a vacuum, but rather in relation to its particular surroundings. Therefore, the evidence presented by Protestants about the situation in Stingray Alley's neighborhood is pertinent.

The preponderance of the evidence at this hearing, as at the first hearing, establishes that the patrons of the nearby premises are still subjecting residents in the neighborhood of Stingray Alley to late night and early morning noise such as squealing tires, honking horns, and loud talking. Persons

in the neighborhood of Stingray Alley have, also, been subjected to unsightly litter, illegally parked vehicles, and traffic congestion. Furthermore, the preponderance of the evidence indicates that law enforcement has not had a significant impact on the foregoing problems in the neighborhood of Stingray Alley.

The plans and photographs in evidence confirm Protestants' argument that Stingray Alley could easily be operated as a nightclub masquerading as a restaurant. Stingray Alley has several thousand square feet available to use for karaoke, recorded music played by disk jockeys, live music played by bands, dancing, or standing around socializing, drinking, and/or smoking into the early morning hours.

In fact, Stingray Alley has the potential to be a much greater nuisance in the neighborhood than the nearby premises. First, the available floor space at Stingray Alley poses a considerable concern. Stingray Alley has 3000 square feet of exterior deck space, which was not, according to Mr. Salinas, used in computing Stingray Alley's occupancy load, which in turn was an occupancy load as a restaurant, not a nightclub. Used as a restaurant only, the city inspector initially came up with an occupancy load of 250 for Stingray Alley. Operated as a nightclub, an occupancy level of at least 500 is a reasonable estimate of the number of persons Stingray Alley could accommodate. Given that Stingray Alley has nowhere near the amount of off-street parking needed to accommodate such a crowd, and given that all the legal and illegal parking space is already taken up by the patrons of the nearby premises, the additional parking, traffic, and other problems that would be caused by Stingray Alley using all its space to operate as a nightclub would create an unusual condition sufficient to deny the requested permits.

Second, not only does Stingray Alley have 3000 square feet of exterior deck space, but also such space is elevated space. The deck facing Village Del Mar Condominiums is about 100 feet away from the back wall of some of those condominium units. The other two decks are partially visible from Village Del Mar Condominiums. Given that the condominiums are 2-story structures and Stingray Alley is on the second floor, the fence between them provides little in the way of effective screening. Photographs taken by Mr. Ryan prior to the first hearing show 20 or more of the small round metal bar tables with three stools each on the side deck. Some of those same tables and

stools are visible in photographs taken by Mr. Ryan prior to the second hearing. Obviously, those tables and stools are best adapted for use by a nightclub, not a low volume, sit-down, “soft” restaurant. Those tables and chairs could be used by patrons to sit outside on the decks as they smoked, drank, danced, watched big screen televisions, or just socialized into the early morning hours. Both the front deck and the side deck not only could accommodate many patrons, but also a small, live bar band. Also, all three decks have plenty of wall and floor space for large music speakers, large flat screen televisions, large projection televisions, or all of the foregoing. Given the high volume of noise that could be generated into the early morning hours by the live or recorded music, televised sporting events, the large number of partying patrons and/or cheering sports fans that could easily be accommodated on the exterior decks of Stingray Alley, and given the close proximity of Stingray Alley to numerous residences, the noise problems that would be caused by Stingray Alley operating as a nightclub and using all its elevated deck space would create an unusual condition sufficient to deny the requested permits.

The preponderance of the evidence presented at the second protest hearing establishes that, in short order, Stingray Alley could transform from a “soft” restaurant to a big, noisy nightclub. The aerial photographs suggest that Stingray Alley has as much or more floor space as the two nearby premises in Regency Square. Therefore, it is a reasonable deduction that Stingray Alley’s operation as a nightclub could increase by half the illegal parking, traffic congestion, noise, and the other problems in the neighborhood associated with the nearby premises.

Stingray Alley did not present any persuasive evidence that the presence of the nearby premises has not had a significant negative impact on the general welfare, health, peace, and safety of the people in the adjacent neighborhood. Further, Stingray Alley did not present any evidence that indicated that it could not be operated as a large, noisy nightclub. Rather, Stingray Alley argues that presuming that it will not operate in compliance with all Commission requirements is inappropriate, citing *In re the Simonton Gin, Inc.*, 616 S.W.2d 274, 276 (Tex. Civ. App. – Houston [1st Dist.] 1981, no writ), which held that “[i]t is common knowledge that establishments of this type can be loud and offensive to those nearby but it is not necessary that they be such.” Also, as at the first hearing, Stingray Alley seeks to differentiate itself from the nearby premises, that is, Stingray Alley will remain, as Dr. Trevino put it, a “soft” restaurant, not become a big, noisy nightclub. Further,

Stingray Alley claims that its management can deal with its patrons to insure that they are not noisy. Stingray Alley pointed out that, in the six months in which it has been open for business, the only problem claimed by Mr. Ryan and Ms. Guajardo is one noisy motor vehicle, which is a problem Stingray Alley can easily correct. Finally, Stingray Alley argues that the concerns expressed by Protestants are mere speculation and conjecture.

The preponderance of the evidence at the second hearing establishes that, at the present time, Stingray Alley fits into the category of a low-volume, sit-down restaurant, open from 11 a.m. to 11 p.m. The ALJ does not presume that Stingray Alley will become a large, noisy nightclub. Rather, the ALJ has examined the record of the hearing to determine whether the preponderance of the evidence establishes that, if granted the privilege of selling alcohol into the early morning hours, Stingray Alley may operate as a large, noisy nightclub such that, given the conditions in the neighborhood in which it has chosen to operate, granting it the requested permits will create an unusual condition that is a proper basis for refusal of the requested permits based on the general welfare, health, peace, and safety of the neighboring residents.

At the second hearing, the person who operates Stingray Alley now and who will continue to operate it, Mrs. Trevino, did not testify. Rather than attempting to overcome the language problem that was apparent at the first hearing, Stingray Alley chose to present Dr. Trevino. However, Dr. Trevino said that he is not now and will not be active in the management of Stingray Alley. No evidence was offered as to what extent Dr. Trevino has observed or otherwise familiarized himself with the day-to-day operations of Stingray Alley. Dr. Trevino provided no details as to the actual day-to-day operations of Stingray Alley.

In addition, Dr. Trevino did not offer much in the way of concrete evidence to support his claim that Stingray Alley will continue to operate as a "soft" restaurant, if the requested permits are granted. For example, when asked how management would deal with persons who come to Stingray Alley late at night or early in the morning and who only want to be served an alcoholic beverage, Dr. Trevino did not give a direct answer. Rather, he indicated that Stingray Alley would not cater to late-night/early morning partying. Dr. Trevino did not say, for example, that if a person enters Stingray Alley and is not interested in looking at the menu, that person will be refused service.

Even though Dr. Trevino said that Stingray Alley recognizes the limits it faces as to dining space, he did not say that, in light of those limits, Stingray Alley will not be using the deck facing the Village Del Mar Condominiums. Dr. Trevino did not say that almost all of the front deck and back deck will be closed or cordoned off and that only a small portion of the deck space will be available to smokers and/or diners after 11:00 p.m. Dr. Trevino did not describe Stingray Alley's procedures, if it has any, for insuring that it does and will not exceed its occupancy load. Dr. Trevino did not explain how Stingray Alley plans to limit the use of its very small amount of on-site parking to Stingray Alley customers only late at night and early in the morning. Dr. Trevino did not explain how Stingray Alley plans to keep its customers from misbehaving in Stingray Alley's parking lot as the patrons of the nearby premises have when they had access to Stingray Alley's parking lot.

Some of the testimony that Dr. Trevino did offer further weakened rather than rehabilitated Stingray Alley's history of providing inaccurate testimony. As mentioned above, the ALJ finds Dr. Trevino's estimate as to the actual amount of exterior deck space being used by Stingray Alley questionable. Further, Dr. Trevino's testimony about the sequence of events in 2006 is inconsistent with the documentation and is not believable. However, the burden of proof is not on Stingray Alley. Even if Stingray Alley had offered no testimony or evidence, such omission would not be an appropriate basis for denying Stingray Alley the requested permits.

The ALJ gives great weight to the testimony of Agent Torres, who has long experience. Agent Torres said that, at the nearby premises in the late night and early morning hours, the primary activity is drinking, not dining. Agent Torres said that Stingray Alley is within a convenient walk for the bar hopping patrons of the nearby premises. In reasonable probability, if and when Stingray Alley is able to turn on the "Margaritaville" neon sign shown in one of their photographs, patrons of the nearby premises will be hopping into Stingray Alley's elevator and some may be clanging up the metal stairs in high heels. Mrs. Trevino may have every intention of continuing to operate a "soft" restaurant. However, if Stingray Alley has a plan for dealing with that likely scenario so as to avoid becoming a nightclub masquerading as a restaurant, it was not presented at the protest hearing.

On the other hand, Protestants did not offer any persuasive evidence that indicates to the ALJ

that Stingray Alley intends to operate as a nightclub masquerading as a sports restaurant. No evidence was presented that Dr. Trevino or Mrs. Trevino is now or ever has been associated with any premises that was operated as a nightclub. No evidence was offered that Dr. Trevino or Mrs. Trevino has any financial interest in the nearby premises. Dr. Trevino was not asked about what plans Stingray Alley has for the many bar tables and chairs shown in the photographs taken before the first hearing, but only a few of which are visible in the photographs taken before the second hearing. Dr. Trevino was not asked about what plans Stingray Alley has for all the space that Stingray Alley cannot use as dining space. No evidence was offered by Protestants that demonstrates that Stingray Alley is actually using more floor space for dining than its certificate allows or that Stingray Alley has exceeded its occupancy load since it has opened. In other words, no persuasive evidence was offered that indicates that Stingray Alley is operating contrary to how it claims to be operating, so as to support an inference that it will not operate in the future as it claims it will operate. No photographs or other evidence was offered that large speakers, projection televisions, or flat screen televisions have been set up on any of the decks. Agent Torres did not testify to any observations that indicated to him that Stingray Alley was likely to be operated as a nightclub in the late evening and early morning hours.

Protestants point out that the Trevinos originally applied for a zoning change to operate a bar/nightclub as circumstantial evidence that they still want to do so to “cash in” on the local nightclub scene. Further, Protestants claim that Mrs. Trevino perjured herself at the first hearing with regard to her claims about the additional parking available to Stingray Alley. Therefore, Protestants argue that the claims and promises made on behalf of Stingray Alley are not credible.

Certainly, the Trevinos having applied for a zoning change to allow Stingray Alley to operate as a nightclub, Stingray Alley having been designed and built in such a manner as to be easily adapted to use as a large nightclub, and the inaccurate information as to extra parking provided by Stingray Alley at the first hearing is sufficient to raise a reasonable suspicion that Stingray Alley will become a nightclub masquerading as a restaurant. However, Stingray Alley is now operating as a low volume, sit-down restaurant. Also, the ALJ finds credible Dr. Trevino’s sworn testimony in public in front of a large audience of his supporters that Stingray Alley will continue to operate as a “soft” restaurant. Considering the record as a whole, in the ALJ’s opinion, Protestants have failed to

establish by a preponderance of the evidence that Stingray Alley may be operated in the manner of a large, noisy nightclub masquerading as a restaurant so as to warrant the refusal of the requested permits based on the general welfare, health, peace, and safety of the neighborhood in which Stingray Alley is located.

C. Other Issues

While Stingray Alley provided inaccurate information as to available off-site parking at the first hearing, and while Dr. Trevino's testimony as to the square footage of dining space being used on the front deck and the chronology of events when the application for a zoning change was made are of questionable accuracy, the ALJ does not find that any inaccurate information was provided with an intent to deceive the ALJ or the Commission. No other evidence was presented that the Trevinos are not of good moral character. Further, no evidence was presented that either Dr. Trevino or Mrs. Trevino has a bad reputation for peaceable, law-abiding conduct. Rather, Protestants conceded that Dr. Trevino's reputation in the community is good.

As to the adequacy of the building in which Stingray Alley is located, it has been inspected by agents of the Commission and found to be adequate to meet the Commission's requirements for a restaurant serving alcohol such as kitchen large enough to prepare eight entrees. Protestants presented no evidence to the contrary.

D. Recommendation

The ALJ recommends that Stingray Alley be granted the requested permits. However, the ALJ recommends that issuance of the permits be conditioned on Stingray Alley entering into a written agreement with the Commission precluding use of the deck facing the Village Del Mar Condominiums at any time of the day or night as a dining area, smoking area, or for any purpose whatsoever, other than an emergency exit. Also, the ALJ recommends that issuance of the permits be conditioned on Stingray Alley entering into a written agreement with the Commission precluding use of the front deck and the back deck after 11 p.m., except for as small an area as required to comply with Laredo's no indoor smoking ordinance, which area shall be located on either deck as far

from the Village Del Mar Condominiums as possible, which area will not be furnished with tables and chairs of any sort, and onto which area neither food nor beverages of any sort may be taken by the patrons of Stingray Alley or served by the staff of Stingray Alley.

VI. FINDINGS OF FACT

1. Stingray Alley, LLC, through its Managing Member Rosa Trevino, doing business as Stingray Alley (Stingray Alley), filed an original application with the Texas Alcoholic Beverage Commission (the Commission) for a mixed beverage permit, a mixed beverage late hours permit, and a food and beverage certificate for a restaurant operating on the second floor of the building located at 6919 Springfield Avenue, Laredo, Webb County, Texas.
2. Protests to the application were filed by Daniel Ryan and Patricia Guajardo, residents of property in the neighborhood of Stingray Alley, and the Village Del Mar Condo Association, who are collectively referred to as Protestants.
3. On January 27, 2010, the Commission 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 the matters asserted.
4. On February 26, 2010, a public hearing was convened in Laredo, Texas, before Administrative Law Judge Donald B. Dailey. Stingray Alley was represented by attorney Ronald Monshaugen. Protestants Daniel Ryan and Patricia Guajardo appeared on their own behalf and on behalf of the Village Del Mar Condo Association. The Commission was represented by staff attorney Shelia A. Lindsey.
5. The property on which Stingray Alley is located is a commercially zoned one-acre lot at the intersection of Springfield Avenue and West Village Boulevard. The building in which Stingray Alley is located in a 2-story commercial building (Tesoro Building), the first floor of which is an existing medical clinic, and the second floor of which has been remodeled by Stingray Alley to be a restaurant.
6. Stingray Alley is in an area zoned for restaurants, that is, businesses whose receipts are more than half from the sale of food. Stingray Alley is not in an area zoned for nightclubs and bars, that is, businesses whose receipts are more than half from the sale of alcoholic beverages.
7. Abutting Stingray Alley on the east are the Village Del Mar Condominiums. The nearest condominium residences are about 100 feet from Stingray Alley. Abutting Stingray Alley to the south is a 3-story office building (Park Place Tower). Further to the east are the Cambridge Place Condominiums. Near Stingray Alley to the northeast are the Las Fuentes Condominiums and the La Mansion Condominiums. Beyond the condominiums is Regency Park, a subdivision of single family homes. Across Springfield to the west of Stingray Alley is a business center. Across West Village to the north of Stingray Alley is the Regency Square shopping center. Across Springfield and West Village to the northwest of Stingray

Alley is the Del Mar Plaza shopping center.

8. Three premises licensed for the on-premises sale of alcoholic beverages are located nearby Stingray Alley. One, named Cosmos, is located in Del Mar Plaza, in an area zoned for nightclubs. Two, named Agave Azul and Limasol, are located in Regency Square, in an area that is zoned for restaurants, but not nightclubs. Together, those premises are a major gathering area in Laredo for social drinking, not dining, in the late night and early morning hours.
9. The patrons of Cosmos, Agave Azul, and Limasol bar hop from one place to another. Stingray Alley is within walking distance of those establishments.
10. Since Laredo enacted its no indoor smoking ordinance, most premises where alcoholic beverages are served have put in outdoor patios, some with speakers and televisions. As a result, patrons gather outside and more noise, litter, and other problems occur outside.
11. The City of Laredo has installed a guardrail at a curve on West Village, which is about 600 feet from Stingray Alley, due to the number of reported traffic accidents at that corner.
12. In the late night and early morning hours on some nights, the patrons of Cosmos, Agave Azul, and Limasol produce excessive noise such as honking horns, squealing tires, and loud talking; unsightly litter; and property damage such as broken fences and mailboxes.
13. In the late night and early morning hours on some nights, the patrons Cosmos, Agave Azul, and Limasol fill up the legal parking available in Regency Square shopping center, Del Mar Plaza shopping center, and the other nearby business centers, which consists of about 440 spaces.
14. No on-street parking is available on West Village or Springfield where they abut the Tesoro Building lot or in front of the Village Del Mar Condominiums. In the late night and early morning hours on some nights, the patrons Cosmos, Agave Azul, and Limasol park illegally along West Village, Springfield, and in front of the Village Del Mar Condominiums. The City of Laredo has not aggressively enforced its parking ordinances.
15. The patrons Cosmos, Agave Azul, and Limasol have parked in Stingray Alley's main parking lot, when it was open in the late night and early morning hours on some nights within the last year. The parking lot for Stingray Alley is now equipped with a gate which can be used to prevent vehicular access to the parking lot.
16. In the late night hours in the last six months, unknown persons in Stingray Alley's parking lot have produced excessive noise that unreasonably disturbs nearby residents.
17. Stingray Alley has on-site parking for about 33 vehicles. The main parking lot contains 24 spaces. An additional four spaces are available under or near the back deck. An additional five spaces are available under or near the side deck.
18. Stingray Alley has three exterior decks. The total deck space is about 3,000 square feet. The

side deck faces the Village Del Mar Condominiums. The back deck faces Park Place Tower. The front deck faces West Village. The front deck is equipped with at least four dining tables and at least 16 chairs, which are suitable for use for dining. The side deck has no roof covering. The other two decks have partial roof covering. Each deck includes bare metal stairways. The front deck includes an elevator.

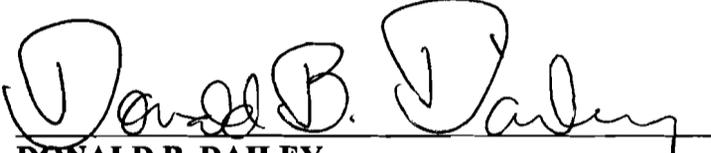
19. Stingray Alley contains an interior restaurant dining area with at least 12 easily movable dining tables and at least 48 stackable chairs and at least one bar area with at least two bar tables and six chairs. A portion of the interior space is taken up by a kitchen, bathrooms, storage areas, mechanical areas, and an interior stairway. Flat screen televisions are mounted on columns supporting the roof. The interior floor space is about 6,000 square feet. Stingray Alley comprises a total of about 9,000 square feet.
20. In March 2008, the City of Laredo calculated the dining space at Stingray Alley at about 3600 square feet, the occupancy load at 240, the required on-site parking at 45 spaces, and the available on-site parking at 25.
21. In August 2008, Stingray Alley received a certificate of occupancy as a restaurant for an occupancy load of 81 from the City of Laredo. Stingray Alley is in compliance with all applicable zoning requirements. The City of Laredo did not include the outside decks in calculating the occupancy level of Stingray Alley.
22. In September 2008, the City of Laredo recalculated the dining space at Stingray Alley at 1250 square feet. If interior dining area is closed off, an equivalent amount of exterior dining area may be opened up.
23. Stingray Alley is suitable for nightclub operations in the late evening and early morning hours accommodating 240 or more occupants.
24. In April 2006, Dr. and Mrs. Trevino applied for, but were refused, a zoning change to allow Stingray Alley to be operated as a nightclub/bar.
25. Since about August 2009, Stingray Alley has been opened for business as a restaurant. Its hours of operation are from 11 a.m. to 11 p.m. Its volume of customers is low.
26. Stingray Alley has closed off interior dining space in order to open up an equivalent amount of exterior dining space.

VII. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. TEX. ALCO. BEV. CODE ANN. chs. 1 and 5 and §§ 6.01, 11.41, 11.46, and 32.01.
2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law. TEX. GOV'T. CODE ANN. ch. 2003.

3. Proper and timely notice of the hearing was provided. TEX. GOV'T. CODE ANN. §§ 2001.051 and 2001.052.
4. Stingray Alley's owners are not of bad moral character and their reputation for being peaceable, law-abiding citizens in the community where they reside is not bad. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(6).
5. The place or manner in which Stingray Alley plans to conduct its business does not warrant refusal of the requested permits based on the general welfare, health, peace, morals, safety of the people, or the public sense of decency. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8).
6. Stingray Alley has provided an adequate building at the address for which the permits are sought for conducting any activity authorized by the requested permits. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(12).
7. Based on the foregoing findings and conclusions, the application of Stingray Alley for a mixed beverage permit, a mixed beverage late hours permit, and a food and beverage certificate should be granted.

SIGNED April 29, 2010.


DONALD B. DAILEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARING