

TEXAS ALCOHOLIC BEVERAGE COMMISSION
COMMISSION MEETING
MONDAY, OCTOBER 23, 2000

The Texas Alcoholic Beverage Commission met on this date in Room 185 at 5806 Mesa Drive, Austin, Travis County, Texas. Members present: Allan Shivers, Jr., Chairman; John T. Steen, Jr., Member and Gail Madden, Member. Staff present: Doyne Bailey, Administrator; Randy Yarbrough, Assistant Administrator; Lou Bright, General Counsel; Jeannene Fox, Director of License & Compliance; Sam Smelser, Assistant Chief of Enforcement and Denise Hudson, Director of Resource Management. A memorial resolution was presented to Tom Spilman in memory of his father, Wade Spilman. Certificates of service were presented to Jeannene Fox, Director of License & Compliance and Clay Winder, Bryan Enforcement. Comment was received from: Phil Marrus, Attorney General's Office; Floyd Akers, New Braunfels City Attorney; Debbie Flume, New Braunfels City Council Member; Robert Kendrick, New Braunfels City Council Member; Juliet Watson, New Braunfels City Council Member; Betty Dunkin; Bob Krueger, former United States Senator; Mike Myers, McClanahan & Clearman; Kathleen Krueger, Citizens United to Save our Rivers; J. R. Felger, Felger's River Center; Paul Rich, Tourist Associated Businesses of Comal County; Eugene Palmer, Attorney; Ken Valentine; Mary Keller, Rockin R River Rides; Lynn Norvell; Cindy Ellison, Senator Judith Zaffirini's Office; Donna Welch and Celina Romero, Clark Thomas & Winters.

The agenda follows:

1:30 p.m. - Call to order.

1. Consider resolution in memory of Wade Spilman; discussion, comment, possible vote.
2. Recognition of agency employees with 20 or more years of service.
3. Approval of minutes of September 25, 2000 meeting; discussion, comment, possible vote.
4. Receive information from the Office of Attorney General regarding litigation support.
5. Administrator's report:
 - a. discussion of staff reports;
 - b. recognitions of achievement; and
 - c. discussion of management controls.
6. Receive information regarding cost of privatizing internal auditor function; discussion, comment, possible vote.
7. Consider repeal of 16 TAC §45.103 as published in 25 TexReg 7448 on August 11, 2000; discussion, comment, possible vote. (Regulations of "Happy Hour")
8. Consider adoption of new 16 TAC §45.103 as published in 25 TexReg 7448-7449 on August 11, 2000; discussion, comment, possible vote. (On-Premises Promotions)
9. Consider petition submitted by the City of New Braunfels, under §109.35, Alcoholic Beverage Code, requesting permission to prohibit the possession of open containers and public consumption of alcoholic beverages in the Central Business District as defined by the map attached to the petition; discussion, comment, possible vote.
10. Public comment.

Announcement of executive session:

11. Executive session:
 - a. the commission may go into executive session to consult with legal counsel regarding items 4, 7, 8 or 9 of this agenda pursuant to Texas Government Code, §551.071.

Continue open meeting.

12. Take action, including a vote if appropriate, on topics listed for discussion under executive session.
13. Adjourn.

The meeting was called to order at 1:34 p.m. by Chairman Shivers.

MR. SHIVERS: I will call this meeting of the Texas Alcoholic Beverage Commission to order. It's Monday, October 23, 2000. It's one thirty-four in the afternoon.

The first item of business is to consider a resolution in memory of our great friend, Wade Spilman. Do we have a motion to adopt this resolution?

MR. STEEN: I so move.

MR. SHIVERS: Mr. Steen, I will ask you to read the resolution, if you would?

MR. STEEN: All right.

“WHEREAS, Wade Spilman, a good friend, departed this life on September 5, 2000; and

“WHEREAS, Wade Spilman's life was one of service to his country, to the people of Texas, his clients and to all of his friends; and

“WHEREAS, Wade Spilman served his country during World War II as an infantry staff sergeant in the United States Army and survived serious illness and near starvation as a prisoner of war after his unit was overrun at the Battle of the Bulge; and

“WHEREAS, Wade Spilman received his law degree from the University of Texas at Austin in 1949 after lettering in tennis and being a member of the Texas Cowboys and Sigma Nu Fraternity; and

“WHEREAS, Wade Spilman practiced law in Hidalgo County with his close friend and former TABC Commission Member, Morris Atlas,

and then in Austin with the firm of McGinnis, Lochridge and Kilgore; and

“WHEREAS, while living in the Texas Valley, Wade Spilman served the area of South Texas as a member of the Texas Legislature; and

“WHEREAS, Wade Spilman represented many clients specializing in administrative and regulatory law, especially before the State Board of Insurance and the Texas Alcoholic Beverage Commission; and

“WHEREAS, through all of his accomplishments, trials and achievements, Wade Spilman never forgot his family, friends and love of Texas and honored each of these by his lifelong commitment to and demonstration of upright character and unimpeachable integrity; and

“WHEREAS, Wade Spilman’s sense of fair play and honesty lead many, both within government and outside, to call upon and rely on his quiet consistent counsel, including many commission members and staff of the Texas Alcoholic Beverage Commission.

“NOW, THEREFORE, BE IT RESOLVED that the Texas Alcoholic Beverage adopts this memorable resolution in honor of Wade Spilman offering our greatest admiration to a man who will forever be held in high regard by all who knew and worked with him; and

“BE IT FURTHER RESOLVED that a copy of this resolution be presented to Wade Spilman’s beloved wife, Arlette, along with our appreciation and expression of thanks for all of the kindnesses Wade Spilman offered this commission for many years.

MR. SHIVERS: Do you second the motion?

MS. MADDEN: Absolutely.

MR. SHIVERS: All in favor?

MR. STEEN: Aye.

MS. MADDEN: Aye.

MR. SHIVERS: Aye. Opposed?

Tom Spilman, are you here? Is your mother here?

MR. SPILMAN: She's not here.

MR. SHIVERS: Will you please give her our best?

MR. SPILMAN: I will. Thank you. We appreciate it.

MR. SHIVERS: I have two employees who have been with the commission for more than 20 years that I would like to recognize. The first lady, I know, is too young for this. Did you start in junior high school?

MS. FOX: Let's let everybody think that.

MR. SHIVERS: Jeannene Fox began her employment with the TABC on October 1, 1975 as an Auditor I in the headquarters auditing office. Jeannene transferred to the licensing department in January 1978 and served as assistant director and director of licensing. On two occasions, from August of 1991 until June of 1992 and again from September of 1993 until February of 1994, Jeannene served as acting administrator of this agency. She currently serves as the director of the licensing and compliance division. She is a graduate of the University of Texas at Austin and is still active as an advisor to Alpha Delta Pi Sorority. Congratulations.

MS. FOX: Thank you.

MR. SHIVERS: Clayton Winder joined the agency on October 15, 1980 and has been stationed at the Bryan office for the entire time. He became involved in teaching the Project SAVE program about five years ago and has done an outstanding job. He is the father of one daughter, Tara, and two sons, Dustin and Shaun, and the proud granddad of two grandsons and one granddaughter. Congratulations.

MR. WINDER: Thank you.

MR. SHIVERS: I'd like to ask for approval of the minutes of the last meeting which have been mailed to the commissioners. Are there any changes?

MS. MADDEN: So move approval.

MR. STEEN: Second.

MR. SHIVERS: All in favor?

MS. MADDEN: Aye.

MR. STEEN: Aye.

MR. SHIVERS: Aye. Opposed?

Number four - receive information from the Office of the Attorney General regarding litigation support. Is there a representative of the Attorney General's Office here, Mr. Bright?

MR. BRIGHT: There is. Mr. Chairman and Members, as you may know, one of the divisions of the Attorney General's Office that does a bit of our litigation business is the law enforcement defense division. Mr. Phil Marrus has recently been named the chief of that division and he asked to come out and meet you and let you know that he's your litigation lawyer. Phil is a fine man and a great lawyer. I know you will like him.

MR. SHIVERS: Mr. Marrus, welcome.

MR. MARRUS: That is only partly true. He told me he would break my arm if I didn't come out and say hello to you.

I'm glad to be here. I am Phil Marrus, and I've been with the AG's Office about 14 years now and recently had the good fortune to be named chief of the law enforcement defense division, and we do provide representation to the Texas Alcoholic Beverage Commission and glad to do so. I look forward to working with each of you and, hopefully, getting to know you a little bit better individually and collectively in the future. We appreciate the opportunity to be of service to you.

MR. SHIVERS: Thank you. We are happy to have you here. We appreciate it.

With my colleagues consent, I'm going to vary from our agenda and move item nine ahead of item five in recognition of the fact that the City of New Braunfels has a large delegation here, and I understand they have a city council meeting at six this evening. We will try to get you out of here in time to fight the weather and get back there.

With that, we will consider the petition submitted by the City of New Braunfels under Section 109.35 of the Alcoholic Beverage Code which is to request permission to prohibit the possession of open containers and public consumption of alcoholic beverages in the central business district as defined by the map attached to the petition. Mr. Bright?

MR. BRIGHT: Mr. Chairman and Members, here we are, at last, with the New Braunfels'

issue. As our agenda item indicates, this is a petition that is presented to you under Section 109.35 of our code. As I believe everyone in central Texas knows by now, that provision says that if the government of a city in this state determines that possession of open containers of alcoholic beverages and consumption thereof is a threat to the health and safety of their citizens, they may apply to you for an order banning those things within a central business district. They must supply a map describing that central business district. The law further says, of course, that you shall approve that application without further consideration, so long as you find that their application correctly describes their central business district.

One of the significant things about this statute, particularly in the context of this discussion, is that it provides you, in my judgment, with a relatively narrow scope of authority. It provides the city with a relatively larger scope of authority. For example, I do not believe that the statute allows you to consider yourself, and base your decision on, whether or not you think this is a good idea for the City of New Braunfels or whether you think alcoholic beverages do or do not help the health and safety or hurt the health and safety of the citizens.

Most particular to this discussion, I think, the law does not allow you to make a judgment about whether or not the City of New Braunfels' proposal is in accordance with other laws of the State of Texas. The reason that I bring that up is, as we all know, the city has designated, as their central business district, designated segments of the Guadalupe and Comal Rivers from bank-to-bank and in and on the waters thereof. Those are navigable streams.

Many of the commenters have argued to the agency, through me, about the State of Texas law, about whether or not the city has any authority to regulate on a navigable stream. The city, of course, asserts that it does. Other people assert that they do not. I bring that up because we've had these conversations and comments and discussions before you. It's my judgment that that debate and that discussion does not matter to your determination and that is because that language, "...shall approve without further consideration..." I think means that even if this proposal violates some other law - the Open Meetings Act, the Constitution - it is not within our purview to make that determination. The statute does not, for example, designate for you, or give within your purview, the right to determine independently what the central business district is, rather that is for the city council to do.

Our job here and our role, I think, is one thing and one thing only, and that

is to look at what the city proposes to be their central business district and determine whether or not that meets the definition given in the statute for a central business district. Of course, that definition constrains your lawful authority to act here so that you may approve the application from the city if you believe that those three elements in the central business district have been satisfied by what they have designated to you.

The first element, I think as everyone knows, is that a central business district must be compact and contiguous. You have arguments in front of you that this proposal is not compact or contiguous. Those arguments are based, in part, on what various commenters have found in the dictionary. They are based, in part, on what the supreme court has said in the context of voting districting cases. In at least one case, the supreme court has determined that a voting district that followed the contours of Interstate 85 was neither compact nor contiguous. It's my judgment that compact and contiguous is a pretty subjective term. It's like, I suppose, art or pornography. It's in the eye of the beholder. That's probably too subjective a basis to rest our decision on here today.

The second element is that the central business district must be of such a character that 90 percent of the land of that district must be zoned or used for commercial purposes. The bed of these streams is owned by the State of Texas in trust for the people, so I do not believe that the zones on the riverbanks extend into the bed of the river. I may be wrong about that, however. If I am wrong about that, if you will look at the map that's been provided to us, 90 percent of those riverbank zones are not commercial. The majority of it is residential. So, we have to consider whether or not the river is used for commercial purposes. Of course, the city has taken care to designate just those areas of the river in which tubing and rafting, and those kinds of activities, are common. The city, I think, will suggest that this river is used for commercial purposes because most of the people traveling down that river are doing so by some rented inner tube or raft or something like that. At one portion, the river is dammed, I believe, or partially dammed, so it forms a chute. You may travel through that chute one time for free but, if you get out, the city owns the land on the bank adjacent to that chute, and the city will charge you a fee to use that land to go through the chute again. The city argues, therefore, that the entire area is used for commercial purposes.

I can't make myself believe that. What I believe the clear meaning of this language is, and the clear state of affairs is, that that river is used for recreational purposes, and those purposes are not changed by the fact that people are renting conveyances to go down the river. The renting

transaction takes place on the bank, so I can't believe this segment of the river is used for commercial purposes.

The third element is that the central business district must be that area of the town that has historically been the primary location for the transaction of business within the town. If I don't think the river is used for commercial purposes, I can't make myself think this is the primary location in which they have transacted their business. Certainly, it is not where the citizens of New Braunfels, I don't believe, have decanted themselves into the river channel to transact the business of their lives.

Based on that reasoning, I recommend that you decline to approve their application to you. As we know, many folks have come from far away in inclement weather to tell you that I have strayed from the path of reason and justice and you need pay me no mind. Some, perhaps, will tell you that it is always prudent to follow the counsel of your lawyer. Please give them careful consideration.

MR. SHIVERS: We have a number of people who have signed up to speak on this issue. I will call on the city attorney of New Braunfels, Floyd Akers. Mr. Akers?

MR. AKERS: Thank you, Mr. Chairman. If you can give me just a short minute to set up, I have a video presentation.

MR. SHIVERS: Why don't you introduce yourself for the record, if you don't mind?

MR. AKERS: My name is Floyd Akers. I am the city attorney in New Braunfels, Texas.

MS. MADDEN: Could you tell us the subject matter of this video?

MR. AKERS: Yes, ma'am. The first purpose of the video is to show you the district, itself. We went ahead and shot it about a week ago, so you can kind of see what the area looks like that we are calling our central business district, so you can kind of get a clear idea of it. Then, we go in to show why we are here. We will show you the problems that are associated with our rivers. We will show you why it's a commercial district and we will show you how the drinking is causing all the problems on our rivers today.

MR. MADDEN: I hope you are not going to show anything lewd or anything like that.

MR. AKERS: I don't think too much of it's lewd. There is very little lewdness on the video. Unfortunately, we have a lot of lewdness going on on the rivers. That's one of our problems.

MR. SHIVERS: Be mindful this is an open meeting of a state agency. You will respect the dignity of the agency when you show this.

MR. AKERS: Absolutely.

This is the beginning of the Comal River. As you can see, it's very clear, you can see the beer cans all the way to the bottom of the river. This is where we start our business district on the Guadalupe River. That is a bar located right on the banks of the river. Right here to the left, you are going to see a bridge. That's an outfitter located right there. There is another outfitter. They rent tubes. They are located immediately adjacent to the water. You rent your tubes here. You get in the water and start tubing down the river. As you can see, there's restaurants and stuff up on this bluff and they advertise right down on the river.

This is the beginning on the other side, on the Comal, and this is right at the headwaters of another outfitter. This is a little river walk area. It's interesting because we are thinking about proposing a river walk for the entire Comal, much like they have in San Antonio. This is a little section we already have. As you can see, this is an outfitter that controls this property. It's called Landa Falls. You can't get in without paying a fee. These are some outfitters located across from our park. As you can see, they sell beer. This outfitter calls his, "The Beer Garden." What you do is you rent your tubes here and you walk across our park and you put in at the park. Sometimes the outfitters will pick you up at the end. This outfitter gives you a free tube for your cooler. We also rent tubes. The city, itself, rents tubes at the park. We have our tube chute, as Mr. Bright told you. That's it right there. You can get in on one side and it shoots you through that chute. That is a commercial operation actually located in the river. Although, I don't think for the commercial transaction purposes, you have to be in the river. Here, I can also show you that there are other bars and restaurants located on the banks of the river. That is Schlitterbahn on the left. If you are familiar with New Braunfels at all, that's a water park. There is another outfitter renting tubes out of that place right there. This is one of our last exits on the Comal. You can see it's kind of quiet and serene right now. That is Schlitterbahn right across the street, located right on the water. This is where the outfitters come and pick up. They are picking people up. This is part of the commercial transaction. This is the last exit on the Comal River where people get out. This is the last exit on the Guadalupe, or this is about as far as you can get down on the Guadalupe. Most people don't go farther than this. A few people do. That dam is kind of dangerous. There is a mill located right on the river using some of the water out of the river. It's kind of hard to

see here, but you can see beer cans at the bottom of the river, even though we've cleaned them up. Every year we do a cleanup, and we take out as many as 50,000 pounds of cans out of the river.

Here's what it looks like on every weekend during the summer. This is the beginning of our district. We are overrun with people. We are a small community, and our population doubles in size every summer. You can see all these tubes - every time you see a white mark on a tube, that's a rental. I would venture a guess that 99 percent of the people on this river are in rented tubes.

You can see the result of drinking and floating the river all day. You get a little intoxicated, and you start losing your balance. You start doing things you wouldn't normally do. It's a problem. Some people are risqué. Some people take inappropriate things on the river. Some people can't even stand up by the time they are done tubing the river. The rowdiness has just gotten out of hand. This is one of the exits after people have gotten out of the river. People are obviously drunk and inebriated by the time they get through. Some of these floats are very long. This is the type of thing that nobody wants their families to see where they go and try to enjoy themselves. These individuals aren't too polite to the camera. You can see this on the Comal. Once again, it's incredibly busy.

It's interesting to note that this summer, every weekend in our paper, there was a letter to the editor from somebody from out of town - Houston, Dallas, wherever - saying how they were never bringing their families back to the river because of the lewdness, and I think that's pretty significant when somebody from out of town will write a letter to a small town newspaper that nobody reads to basically complain about the problem.

Here's one of our biggest problems. Look at the beer bongs. This is a way to get as drunk as fast as you can. If it was just one or two people, that would be one thing. This is Mardi Gras. This is Mardi Gras in the City of New Braunfels every weekend. You can see they are having a great time. You can drink twice as fast if you've got one of these beer bongs. This guy has got a bag of wine. I guess it really doesn't matter what you drink out of. One of the problems with the introduction of alcohol is that you get behavior you wouldn't normally get. You get public nudity. You get lewdness. You get people risking their lives. You get trespassing. You get public urination, public defecation. Here's some of our park rangers trying to calm some people down. We try to do what we can. We've already banned glass and styrofoam containers or polyurethane containers. We've raised our fines. The minimum fine for littering is 200 dollars to

2,000 dollars. We arrest as many people as we can but, when our population doubles, it's kind of hard. It's not uncommon on a weekend in New Braunfels for there to be 50 arrests, plus, for MIP and for public intoxication, and then these people get on our roads after they get out of the river. That's another problem, of course.

As you can see, if you look at these tubes, they have all got white markings on them because they are all rentals. This is big business. For these outfitters, this is a multimillion dollar business, but for these rivers, there would be no outfitters. There would be no rentals of these tubes. These people are all under a contractual obligation to those outfitters. You have to bring those tubes back.

This individual is making himself a mixed drink. It's kind of nice to bring a bottle of vodka. You just mix your drink. He's in a rented tube. All the tubes behind him are all rented. If you will look on this video, it's easy to see, 99 percent of these are rented tubes. This is a glass bottle, which is prohibited. Individuals trespass onto private property with regularity and do whatever they want. There are rope swings and whatever. The party never ends, all day long down our rivers on the weekends. We have people getting as drunk as they possibly can get as fast as they can possibly get.

I guarantee you if you could float the river in San Antonio on the San Antonio River Walk, they would be before you, too, asking for this designation. We are hoping to have a San Antonio type river walk one day, but we can't do it with this type of behavior going on.

Once again, you can see the rented tubes. They've all got their beer. He realizes the camera is on him. He's cleaning up his act. This is one of the most dangerous aspects. People get intoxicated and start jumping off our bridges which is also against the law. We've had several individuals paralyzed from doing this. We try to stop them but it's pretty difficult. I personally have observed them...a police officer comes up and they get off and they don't jump. The minute the police officer is gone, they are right back jumping off the bridge. This is just one after another, people doing these beer bongs. This is college night. This is Mardi Gras. I don't know how else to explain it. You don't need to go to Bourbon Street. You can come to New Braunfels. Watch this guy's hand. He's got a beer bong and he's got his hand right there in the water and he's got a can in the water. You wonder what he's doing with that can in the water? He's getting drunk real quick. Where did that can go? Right to the bottom. Here's what it looks like at the bottom of our river, literally, thousands upon

thousands of beer cans falling into our rivers. Once again, here's a whole bottle of hard alcohol. The glass is illegal but, you know, hard alcohol, you can get drunk a little quicker. Here is the last exit. Remember that last exit shot I showed you a little while ago? This is what it looks like on a typical day. Look at the amount of beer that's being consumed on this river.

You wonder why we have problems and why we are coming to you for help. We need your help. It's ridiculous. We have parks people down there at all times trying to help with the situation. People are so drunk, they can't even get out of the river. They are testing our limits, believe me. The City of New Braunfels can take no more.

I will now go to a power point presentation, if that's all right. We didn't enter into this idea of banning alcohol on the river lightly. We are a town that likes to drink. We have Wurstfest coming up. It's a big party. It's a good time to come up to New Braunfels. So, banning alcohol is really one of the last things we wanted to do.

When we looked into it, we called Mr. Bright before we even drafted this ordinance and talked to him. We explained to him what our business was. Our business in New Braunfels is river, tourism and recreation. Recreation is a business in New Braunfels. It may not be a business on Town Lake here in Austin. It may not be a business in one of the parks in San Antonio. It may not be a business in Dallas, but it is a business, and it's our biggest business in New Braunfels. We discussed this. We talked about different ways to do it. Mr. Bright's initial reaction was, "Yes, you can do it. You shouldn't have any problem." We went forward with this proposal to bring it to you. That's why we are a little disappointed that now he's taken an opposite stand.

I can tell you how it came up to the city. It came up as an ordinance proposed by a councilman. That ordinance was rejected. Then, the citizens got involved. Within three days, they gathered some 3,000 signatures of registered voters. That may not sound like a lot of people when you are from a big city, but in New Braunfels, in our biggest turnout of any election we ever had, we only had 5,000 people vote. So, when you get 3,000 signatures of registered voters, that's pretty significant. People from 19 to 94 signed it. Police officers signed it. TABC officers signed that petition because they know what the problem's like. They know exactly what the problem's like. So, they brought this petition forward and, basically, put it on the ballot and said, "Give the citizens a chance to vote on this issue." At that point, the city council said, "You know what,

if the citizens are that concerned, we are going to enact it.”

What I'd like to do is go ahead and hand you a copy of the petition so you can see for yourself. May I approach?

MR. SHIVERS: We get the picture.

MR. AKERS: Okay. Essentially, these are the petitions that were signed by the citizens. So, when I got the first letter from Mr. Bright, basically rejecting our idea of our central business district, I started to analyze that letter from a lawyer's perspective. The first thing I noticed was it starts off with a legally inaccurate assumption. It states there at the very beginning of his letter, he says, "I believe that a city may regulate activities in or on a navigable stream only by virtue of specific statutory grant of authority as that given in 31.092 of the Natural Resources Code." That's just legally incorrect. That disagrees with what the State Constitution says and that disagrees with what the supreme court has said. Ironically, it was a TABC case that basically stood for the proposition that home rule cities possess full power of self government and look to the legislature, not for grants of power, but for limitations on their power. So, to limit us from doing anything, there has to be a specific statutory authority saying we can't do it. That's not what Mr. Bright puts in here. He says we are looking for grants of power, and then he cites 31.092 of the National Resource Code. All I can do is assume that that is a typo because there is no 31.092 of the National Resource Code. There is a 31.092 of the Parks and Wildlife Code, which I think is what he's probably referring to. So, I think it's probably just a typo on his part. That just says that we can regulate boating and swimming and that sort of thing, but it does not specifically abrogate our rights to do anything else on that river.

In fact, as we go on here, what we do agree on - Mr. Bright and the city both agree that the legislature was very clear in saying that TABC preempts all alcohol regulation by municipalities. The wording doesn't get any more clear than that. "It's the intent of the legislature that this code shall exclusively govern the regulation of alcoholic beverages in this state." So, Mr. Bright and the city do agree on that.

Now, we have the question before the commission. Essentially, if a municipality submits a petition for an order of the commission to prohibit possession of an open container or public consumption of alcoholic beverages in the central business district of a city and attaches a petition and a map, plat or diagram showing the central business district as it's to be covered by the prohibition, the commission shall approve and issue the

order unless the commission finds the map, plat or diagram improperly identifies the area. Our question to Mr. Bright is if we don't know where our business district is, who does? Who is better, I think, to say where our district is? Would it be in Gruene? Most people don't realize that Gruene is part of the City of New Braunfels. It's got the oldest dance hall in Texas, but I don't think it would be considered our historic business district. Is it the IH 35 corridor? Possibly. That's where we get most of our retail sales tax from, from that corridor. Is it the historic main plaza in the downtown district? You can make an argument, I suppose, but the fact of the matter is we have a Wal-Mart and Home Depot in town that bring in more sales tax revenue than that entire downtown district, so I wouldn't think it would be there, either. We have approximately 3,000 registered voters and the city council that said it was there, and we believe that's where it is. We know what our business is in New Braunfels.

This is the definition that we are keying on. Another disagreement we kind of have is that I believe this is really a fact issue. It's really not a legal question. It's a fact issue of where our business district is. Now, there is some collateral legal argument that can be made, but you want to look at the definition as being a compact and contiguous geographical area of a municipality of which at least 90 percent of the land is used - and we are using the "used" because we recognize zoning does not extend into the rivers - is used or zoned for commercial purposes and that area is the area that has historically been the primary location in the municipality where business has been transacted.

Mr. Bright has said he didn't want to make a decision based on the compact and contiguous language. I'm going to tell you why it is compact and contiguous, just to make this point. Without a doubt, our central river business district is contiguous. It forms a "y" shape and it touches. If there is another definition of contiguous, I don't know what it is. It's all connected. We don't have one over here and one over here. They connect at the confluence. The Comal is the shortest river in Texas, and it feeds into the Guadalupe River. Next, as far as being compact...

MR. STEEN: Mr. Akers, is that the map that you submitted?

MR. AKERS: Yes, sir.

MR. STEEN: The blue are the two rivers?

MR. AKERS: Yes, sir, and that's also the district.

MR. STEEN: It's just water?

MR. AKERS: It's just water in and on the banks. We did that on purpose. We didn't want to take in any businesses. We didn't want to take in the land of any businesses. We wanted the bars to continue to operate. We wanted the restaurants to continue to operate. We wanted people to be able to sit out on their deck, if it went by their house, and drink beer if they want. So, we drafted it very specifically. Is ours compact? The rivers, at their widest point, are only about 30 to 50 yards wide. You can throw a frisbee across them. The Comal River portion is about 15.9 acres. The Guadalupe River portion is about 70 acres, for a total of about 85 acres.

As a lawyer, we looked at precedence. I researched to see what you have done in the past. What other areas have you given the designation and how big are they? We looked at McAllen. McAllen's is 246.87 acres. That's a pretty big area. That's about three times the size of ours. If we are not compact, I don't think they are compact. We looked at San Angelo. Their's was 416 acres, about five times the size of ours. If we are not compact, surely, they are not compact. We looked at El Paso. El Paso didn't give me a scale, so we couldn't figure out exactly how big it was. But, as you can see, it's huge. It's a very big district.

Next, we get to the question that I think you are probably most concerned about, and that is if at least 90 percent of the land is used or zoned commercial? We believe that 100 percent of this district is used for commercial purposes. As we showed you in the video, both of the districts begin at a point where there's outfitters located. What is commercial activity? Does that mean that I have to stand in the water and hand you money? Absolutely not. In fact, as we get into this, it will show you that none of the districts mean that. In fact, we are specifically not allowed to put the district in a place where the money actually changes hands. Commercial activity - this is right out of Black's Law Dictionary - the term includes any type of business or activity that is carried on for profit - activity relating to or connected with trade, traffic and commerce in general. I can understand how the argument that this is recreation can be made. It is recreation, but it's not just recreation. In New Braunfels, recreation and commerce are intertwined. They are connected and you can't unconnect them.

MR. SHIVERS: Let me ask you a point for clarification?

MR. AKERS: Yes, sir?

MR. SHIVERS: Your district includes just the river between the banks?

MR. AKERS: Just the river between the banks.

MR. SHIVERS: Not the banks?

MR. AKERS: Absolutely - in and on the water.

MR. SHIVERS: All right.

MR. AKERS: What you do when you tube in New Braunfels is you contract for a tube. You sign a contract. You sign a release of liability that's about as long as your arm, and the reason you do that is because if you are injured while you are on the water, in the water, you can sue the outfitters. They have this and they have settled for hundreds of thousands of dollars. If you can be sued while you are in the water - you have an ongoing contractual relationship. They had a duty to warn you. That's a contractual relationship that cannot be denied. They settle these lawsuits. Why would they do that otherwise? If your tube goes flat, do you have a remedy? Absolutely you do, right in the middle of the water. If you don't bring that tube back, you will find out how much of a contractual relationship you have with those outfitters. You will either lose your car keys or you lose your deposit or you lose a driver's license, whatever the outfitter required you to leave as a deposit. Typically, it's 100 percent of the rental price. To say there's not commercial activity going on, I think, flies in the face of this definition that any type of activity that's carried on for profit.

I like to use the analogy of Schlitterbahn. Are you all familiar with what Schlitterbahn is? A water park. There is no difference between Schlitterbahn and the rivers, other than the rivers are public. Anybody can get on a river. You have to pay to get on Schlitterbahn. They give you a tube and you ride that conveyance system. That's all you are doing here in New Braunfels. You are paying an outfitter. You are getting on the river, and you are riding that conveyance system. Yes, you are recreating, but it is tied to commerce. Schlitterbahn and their companies made 24,000,000 dollars last year. The outfitters made millions of dollars. You can't tell me that tubing is not commerce on the rivers. As I showed you on the video, everybody - I bet you 99 percent of people are in rented tubes. Granted, there are some people in their own tubes, but it doesn't say that everybody has to be engaged in commerce. It says the area has to be used for commercial activity, and that whole area of that river is used from bank-to-bank, shore-to-shore, in and on the water, is used for commerce.

MR. STEEN: Mr. Akers, let me ask you a question.

MR. AKERS: Yes, sir?

MR. STEEN: I think it follows up on what Chairman Shivers was alluding to. It says at least 90 percent of the land is used or zoned commercial.

MR. AKERS: Yes, sir, and I can address that. In Texas, a property owner owns the land from the land to the sky. It's a basic legal principle. Whether your land is covered with water or whether you are travelling over the top of it - a better analogy would be if you have a neighbor who has a tree and that tree is hanging over your property, you can cut that branch off because it's hanging over your property. That tree is not on your land, but it's hanging over the air space of your property and, in Texas and the whole United States, you own the property from the earth to the sky, so when you are in that water, you are on state property. You are over it, you know - and by the same token, if I was in another business district that was located next to a building, say, and I jumped up into the air, would I not be violating the law while I'm up in the air? I don't think so. I would be violating the law if I had a beer in my hand. I think you can dispense with that argument simply on the fact just based on Texas law that you are on the land. You are over their land. You are in their space. You are on water space, in this case, and it's a unique application. We don't deny that. But there's no doubt about it, if that river was on private property, you'd be on private land. But it's not, it's public property. So, the basic premise is, no pay, no play. You've heard of no pass, no play? In New Braunfels, recreation is our business. It's our biggest business, and the two are intertwined.

This is one thing that I wanted to point out, because I think this kind of goes to your argument, as well. This goes to the transaction argument. Streets and sidewalks. For the code that you are looking at it says, "The commission's order may not prohibit the possession of an open container or the consumption of alcoholic beverages in motor vehicles, buildings not owned or controlled by the municipality, residential structures, or licensed premises located in the area of prohibition." What does that leave you? You can't ban alcohol in any of the buildings, and that's where the money changes hands. You can't ban it in the cars. You can't ban it in residential structures, so if we look at this map of McAllen again, you see those buildings, surely there's commerce being transacted in those buildings. The money does not change hands - I used to live in McAllen - money does not change hands out on the sidewalks, just as money does not change hands in our rivers.

MR. SHIVERS: You haven't been on South Congress.

MR. AKERS: Legal business. For the most part, money does not change hands. What's interesting here is that in every district that you have approved, you have a state road and a state right of way, which is state property. I think it's important to remember that the Comal River and the Guadalupe River is state property. State highways and state farm roads are also state property. Often, in a city, it also includes sidewalks as also state right of ways. You have included one of these in every district I've looked at. Sometimes you've got to look at them very carefully, like in the City of Jefferson, Austin Street is also Farm Road 134. If you are on Farm Road 134 and you are drinking, even though you are on state property, you are going to get arrested for drinking.

In the City of Claude, they've only got four streets in their district, and one of them is Texas 287. If you are in Claude and you are walking down 287, you are getting a ticket, just like you would in our river.

I will go back to McAllen one more time. Look at 10th Street. If I rent a carriage ride, and I pay somebody to take me in a carriage down 10th Street and I've got a beer in my hand, am I going to get a ticket? I tell you what, I've got a cousin who is a McAllen police officer and, yes, you are violating the law. You are on state property, sure, but you are going to get a ticket if you have an alcoholic beverage. Also, you grab US 83. In the past, this commission has banned alcohol on state property, on United States property, and in El Paso, they did I-10.

Now we get to, "...the area that has historically been the primary location in the municipality where business has been transacted." I find it interesting because when we look at the whole...even the first question which was, essentially, is it 100 percent used commercially? I looked at Mr. Bright's paper. There is no legal authority that he cites to define what a commercial transaction is. That bothers me because I know that commercial transaction can include if I am under contract as a lawyer. You are under an obligation when you sign a contract from place-to-place. The outfitters put you in the water. They pick you up and take you out and bring you back. That's a contract relationship, and they are obligated under that contract just as you are. That's why we've got the commercial activity taking place.

Has it historically been the primary location? This is from our most recent master plan. This is not something we devised for this hearing. This was done by 300 citizens last year who stated that approximately 60 to 70

percent of the city's sales tax revenues are derived from visitors and tourism. "It is imperative to enhance tourism promotion as a primary strategy in the overall economic development plan for New Braunfels. This would help create year-round tourism and lower New Braunfels dependence on summer tourism based on river flow conditions." Our tourism is linked to river flow conditions. No river flow, no tourism. No business, no money for New Braunfels. It's really that simple. The outfitters tried to buy water this year because the flows got so low. You don't think it affects their business? They tried to buy water from Canyon Reservoir.

One other thing we found that was kind of interesting as we were looking. New Braunfels is a very law-abiding community. We expect our visitors to abide by the law, and we abide by the law. It kind of disturbed us because we realized there are only two ways to ban alcohol in the State of Texas. You can either do it through a central business district or you can ban alcohol in the whole city or county, you can go dry. What struck us as odd was how come no other cities are doing this? They are just banning alcohol outright. I went ahead and made some copies for you because I thought you might be interested, if you would like to see them. I've made copies of the City of San Antonio's ordinances as they go to banning alcohol. They are all included here. I made a copy of the City of Austin's and a copy of the City of Dallas for you. I think it's interesting to note that in San Antonio you can't drink in Plaza Guadalupe. You can't drink in Cattleman's Square. You can't drink on any of the streets or sidewalks in downtown, and there's no central business district designation. They just banned it. And, you can't drink in most of the parks. Here in Austin, they designated six areas that you can't drink or possess alcohol. Six. We are asking for one. One of them is the shores of Town Lake, which I find interesting.

MR. SHIVERS: You notice they didn't come to us for a lot of that.

MR. AKERS: That is exactly right, they didn't come to you. We did, because we believe we have to. We are following the law.

MR. SHIVERS: I believe they did, too, but they ignored us.

MR. AKERS: The City of Dallas, also, they have banned it in almost all of downtown Dallas and didn't come to you for help. They banned it in all these parks. Almost every city in Texas has an alcohol ban in their parks with no legal authority to do so, from what I can tell and from what Mr. Bright can tell, because we discussed the issue. It seems to us that they are just doing it.

But, to get back to this issue, this is asking have we historically been the primary location in our municipality where business has been transacted? We looked back in our history, and we found this from the 1964 Master Plan. “An estimate can be attained that the total business generated by tourists in New Braunfels, and this figure totals 2,031,000 dollars and represents a sizeable portion of the city’s economy. It’s possible to assume that because of the physical characteristics of Comal County, the present attraction of the city, that tourist activities cannot help but increase.” Two million dollars may not sound like a lot but, in 1964, our entire city budget was only half a million dollars. As you can see, tourism is our business. Recreation is our business, and the two are intertwined. You can’t have one without the other in New Braunfels.

We went back a little further and went to our 1944 Master Plan to show you that this has historically been the area where we transact business. “New Braunfels is fortunate in possessing unique and abundant natural assets which may be adapted to extensive local and tourist use. With numerous springs and rivers, the tourist trade, especially when catered to, has become an extremely profitable business in itself.” This is our business. It’s been our business since the 40’s and it’s been our business...the whole town was founded on these rivers, with mills and other businesses located on these rivers. Our city is intertwined with these rivers. We can’t get away from them.

Then we went and we decided to look at the intent of this law. I’m almost done, and I apologize for the length. What is the purpose of the central business district law? I posed this question to Mr. Bright. I go, “Is it to protect the health and welfare of the citizens?” No, not really, because if it was, you could put up one of these districts anywhere, anywhere in town where there was a problem you would think. Really what it is is to protect the health and welfare of businesses. That’s why this is a central business district designation. Tourism and the rivers are our business and, once again, they are intertwined. You can’t disconnect them. The unabated abuse of all alcoholic beverages are killing our rivers and killing our business. Every weekend during the summer is chaos. I think the video showed that all too well. Public intoxication has led to public lewdness, public nudity, public urination and defecation, abusive language, fights and serious bodily injury. We had two people that were paralyzed this summer due to alcohol-related incidents.

You have the power. You have the legal authority. It is not illegal for you to give us this designation, no matter what you may believe. It is not illegal. You have the legal authority to give us this designation. You have

the clear and unambiguous facts before you. You have the common sense and the power to do what is legal, what is right and what is just and we hope that you will do that.

Also, from the City of New Braunfels is Councilman Robert Kendrick. He would like to come up and address some more of the historic aspects for you.

MR. KENDRICK: Actually, Debbie is coming next.

MS. FLUME: Sorry, Floyd, I'm next.

MR. SHIVERS: Let's have the lights, please.

Ms. Flume, would you identify yourself, please?

MR. FLUME: Debbie Flume. I represent City Council, District 3. My husband and I have two daughters. The oldest is a freshman at Texas A&M and the youngest is a junior at New Braunfels High School. I've been a resident of New Braunfels for the last 40 years.

My purpose for speaking is to give you a bit of history about our recent petition drive to ban alcohol on our rivers. On September 1st, the Friday preceding this past Labor Day Weekend, myself, as well as two other New Braunfels' residents, met at nine a.m. with our city attorney to discuss a possible petition. Upon leaving his office, the three of us agreed to go forward with a petition drive. We called a meeting for that evening, where we had 25 people in attendance. The following morning we converged on our city square at eight a.m. We held a press conference at 10 a.m., and we are off and running. We remained on that square until eight p.m. that evening. We returned the following morning, Sunday, at eight a.m. once again, and we remained through eight p.m. We returned Monday, Labor Day, at eight a.m. and once again remained through eight p.m.

MR. SHIVERS: I'm sorry, Ms. Flume. Could you repeat again where you were?

MS. FLUME: Our town square.

MR. SHIVERS: Is that the main plaza? Is that what you are talking about?

MS. FLUME: The plaza, yes sir.

MR. SHIVERS: All right. Thank you.

MS. FLUME: Without knowing exactly how many signatures we had collected, some of us returned Tuesday morning to obtain even more signatures from residents who might have been out of town. We needed 1,632 signatures in order to send the petition to city council. We obtained over 2,600 signatures. Please note this was in a three-day period. Our largest voter turnout, as Mr. Akers stated earlier, has only been 5,439 people. We had a record turnout for this petition drive. We accomplished this standing around the town square during record-breaking heat, temperatures topping 110 degrees all three days. Remember, these people came to us. We encountered thumbs up from those who truly cared, and we encountered obscene gestures and shouts from those who didn't, of which included a commercial ice company truck and a local beer distributor truck. People coming down to sign the petition came with pictures as well as stories. I learned about - quote - titty rock - and if you care to know more, I'll be happy to tell you after the meeting; about the disco ball where people are encouraged to strip. I saw pictures of two 14-year-old girls being arrested. When they were found, they were so drunk they did not know their names, they did not know where they were. They were naked, and they were being doused with beer and the guys around them were licking it off. I even had tourists stopping by with hopes that they, too, could sign, stating that if something wasn't done, they weren't coming back. In front of each of you is our petition which is the will of the people, and I pray that you are listening.

Now, I would like to introduce my fellow council member, Mr. Robert Kendrick. He will enlighten you on the history of our rivers.

MR. SHIVERS: Before Mr. Kendrick comes up, may I ask why did you choose the square as the location at which you gathered signatures for your petition?

MS. FLUME: Because it was such short notice. We only met the Friday before we decided to do this.

MR. SHIVERS: Why the city square?

MS. FLUME: Because we knew it was legal to be down there on the sidewalks. If we would have tried HEB or Wal-Mart, we would have had to get permission. This was just the simplest on the short notice.

MR. SHIVERS: Where a good number of citizens might come on any particular day?

MS. FLUME: Where they would know. The paper helped us and printed where they could come. Everybody knows where the plaza is.

MR. SHIVERS: Thank you. Mr. Kendrick?

MR. KENDRICK: I'm Robert Kendrick. I'm councilman from District 4 in New Braunfels. If I may approach you, I'd like to give you a couple of maps?

MR. SHIVERS: Sure.

MR. KENDRICK: I think on the screen up there is the same map. I think that's one of the two maps. I'm here to speak to the point of why we feel like the rivers are historically the center of our city's business.

Historically, the major businesses of New Braunfels have always located along our two rivers. New Braunfels was founded in 1845 by a group of German immigrant farmers because of the abundance of water from the two rivers that converged on the edge of the Edwards Aquifer. Prince Solms, the founder of New Braunfels, reported back to his German colonists on October 25, 1844 - quote - The area (referring to New Braunfels) offers excellent land, first rate cedar and oak forests and water power. Water power was one of the main considerations in his selection for the site for his new colony. He was obviously correct when he located his colony by the largest springs in the southwestern United States. By 1850, New Braunfels was the fourth largest town in Texas.

Initially, New Braunfels, an agricultural society, was dependent upon farm produce and its processing. As Roger Nuhn wrote in his book, *New Braunfels, Comal County* - quote - Slowly industry developed. Mills of every type sprung up along the rivers - unquote. In 1848, three years after the founding of New Braunfels, the Torrey Mill was built on the Comal River at the foot of Mill Street. It is still in existence today at the same location, having changed from Torrey Mill to Peter Faust Flour Mill to Dittlinger Rolling Mill and currently to Archer-Daniels-Midland Milling Company. About the same time, Friedrich George Holekamp also built a mill, a combination sawmill, gristmill and paper pulp mill at the foot of Garza Street on the other side of the Comal River. In 1854, another mill, Abel's Mill, was constructed on the Comal River. I apologize, I don't have the exact location on that one. In 1856, the Merriwether Gristmill, Sawmill and Cotton Gin was built on Comal Creek. Here, he dug the first canal connecting Comal Springs with Comal Creek to bring the important water power to his location. In 1859, George Landa purchased Merriwether's Mill and he added an ice plant, an electric plant and the Minnehaha Flour Company, which became quite famous. By 1860, the Comal River's water power was being used by a waterwheel to irrigate the adjacent farmland.

A few years later, in 1867, the Koestch Distillery, located downstream on the Comal River, was purchased and converted to New Braunfels Woolen Manufacturing Company. New Braunfels Woolen Manufacturing Company became the most prosperous weaver in the state and possibly the entire south, being able to generate up to 300 yards of cashmere wool per day.

The first seat of the colony's government was located in "The Lusty Stocking," a saloon and bawdy house located on the banks of the Comal River. Here, heated discussions were held on whether to name the new colony Comal Town or New Braunfels. It's obvious who won. Our first nursery was founded by Johann Joseph Locke on twenty acres along Comal Creek. The first Saengerfest - German for festival of song - was held in 1853 at Herman Seele's place along the banks of the Guadalupe River. Earlier, in 1850, our first July 4th celebration was held at the bend of the Comal River that is still referred to today as Camp Warneke.

As time passed, other uses of the rivers, the center of activity for the city, were constantly being invented. Water parades on boats and floats were common on Landa Lake for years. Bergfeld's Sanatorium, for the treatment of tuberculosis, was located on the banks of the Comal River at Gilbert Street. Comal Baths were located in the Comal River at the foot of Coll Street by the end of the 19th Century. Landa Park Golf Course, today, incorporates the Comal River into many of its famous holes.

Camp Warneke, perhaps the first tourist-oriented recreational spot in New Braunfels, was founded in 1918. It expanded from the original two cabins to a total of 103 cabins before it was sold to Schlitterbahn in 1991 for their new water park section. During the period between 1928 and 1946, the measured flow from Comal Springs, the source of the Comal River, was greater than the surface runoff of the 1,432 square miles drained by the entire Guadalupe River Basin. The original Schlitterbahn Water Park, dependent on this flow, was started on the old main course of the Comal River in 1979, across from Landa Park, which was the site of Holecamp's Mill at the foot of Garza Street.

Today, along the banks of the Comal River, starting at the old Merriwether Mill/Landa Mills/Minnehaha Flour, etc., is located the WurstHalle, the home of New Braunfels' well known annual Wurstfest celebration. In this same area is a river outfitter, the Circle Arts Theater, the old power plant building and hydroelectric generating facility. The LCRA Building, built in 1926, currently is being proposed as a new destination hotel, bringing the Comal River into its major space in the building. Further downstream,

when you reach the Prince Solms Park/Tube Chute area, the city rents tubes as do three other outfitters. Continuing down the Comal, after passing a restaurant site on one side of the river, the other side of the river has the newest section of our world-famous water park, Schlitterbahn. Currently, a study is being done to create a river walk - a Wasser Strasse - a joint venture between the city and Schlitterbahn. This walk will extend the entire length of the Comal River from the WurstHalle to the Garden Street Bridge, a length of over one mile of commercialization of the river, bringing life from the river into our historic downtown.

On our sister river, the Guadalupe, starting at the northern end of the proposed river district, there is located a low water bridge at Gruene's Crossing. In the 1870's this was a stagecoach stop, another gristmill and a dance hall. It is now one of the city's other commercial centers. Gruene, as it is commonly called, houses along the riverbank, restaurants, river outfitters, Gruene Hall, shopping, tourist accommodations and one of the two areas zoned C2-A, Central Business District, by our city planning commission. Floating down the Guadalupe, we approach the site of a proposed new 150 to 200-room hotel - quite large for New Braunfels - along the river's edge. Two campsites and another outfitter location are located where the river crosses under the Loop 337 Bridge. The Guadalupe Outpost, another hotel, is just on the other side of the 337 Bridge on the banks of the Guadalupe River.

Today, most of the original industry on the rivers is gone or has been modified into a new industry that floats upon the rivers and breathes new monies into our town coffers. That industry is tourism. Tourism, that according to the 1999 Comprehensive Master Plan, brings 60 to 70 percent of our sales tax dollars into our town. With all the historic and current river usage, it is easy to see why the Zoning District C-2A, Central Business District, has used the connecting linkage of our two rivers to tie our historic downtown business district, located close to the town square, with Gruene on the north and Highway 81 on the south.

MR. STEEN: Mr. Kendrick, could I interrupt you? Where is that town square on this map, the one where you got the petitions?

The area was pointed out to each member, using the maps as supplied earlier.

MR. KENDRICK: The Highway 81 location is the only other C-2A-zoned area in New Braunfels. These two central business districts are connected with the linear zone created by our rivers. A careful study of our current zoning maps and zoning ordinance will show you that the rivers have always been

considered a part of our central business district. Even though it is not legally possible for us to zone the rivers, which are state property, our rivers are, in fact, both currently and historically part of our central business district.

The citizens of New Braunfels, with the help of the Texas Legislature in 1936, created the first geographically defined Water Recreational District in Texas. That's located on your map, also. It would be on the map that's entitled, "Historical River Businesses." You will see the designation on the left. The specific goal of the Comal County Water Recreational District Number 1 was to keep weeds clear from the bottom of the Comal River. This district was identified as limited geographically to the area of the water, much as we are requesting today. The precedent has been set.

Further, quoting from *Design for Human Ecosystems*, by John T. Lyle - quote - The richest, most diverse communities of plants and animals in a region tend to cluster along river courses. Human beings are attracted to the edges of rivers as well. The river courses serve as tentacles of development. In more recent years, people have been more frequently drawn to rivers for recreation. Rivers have rarely been considered as ecological systems, and the results have been disastrous.

As Ferdinand Lindheimer, the father of Texas Botany and one of the original colonists of New Braunfels, wrote upon first seeing Comal Springs - quote - The natural basin, about 40 feet wide, was of incomparable clearness and, on its bottom aquatic plants of an emerald green color, formed a carpet - unquote.

Commissioners, please help New Braunfels return our river bottoms to their past condition, a carpet of emerald green color and not our present carpet of 53,000 pounds of aluminum beer cans annually. I plead with you to please help us, the citizens of New Braunfels, save our rivers for the benefit and enjoyment of future generations. Our economy depends on the river today as strongly as it did in the past. The economy of New Braunfels depends on your decision today. The first step is to ban alcohol. We need your help, support and understanding. Thank you.

MR. SHIVERS: Thank you, Mr. Kendrick. We have, it appears, 15 or 20 more speakers.

MR. KENDRICK: I'm sorry, I was supposed to introduce Ms. Watson.

MR. SHIVERS: Before Ms. Watson comes up, I have cards here representing 15 or 20 more speakers. The question that we really have to consider today is

this area, the river itself, the waters of the river, the compact and contiguous area in a central business district where business has historically been done, and do commercial transactions take place on the river? I don't want to cut off anybody's opportunity to speak. You came up here in this weather to speak to us today, but if you can confine your comments to those questions, it would help us get out of here this afternoon. We have quite a few other things on our agenda besides your petition. I know you are very interested in it. With that, Ms. Watson?

MS. WATSON: My name is Juliet Watson. I serve on the city council for the City of New Braunfels, District 6, to be exact. Our districts line up based on the river, and that's one of our drawing points, as well.

The river is the lifeblood of the City of New Braunfels. I realize the question is whether this is a business district or not? I think all of the speakers before me have said that it is. New Braunfels is known for its rivers. That's why people come. That's why they come to stay in hotels. That's why they spend money. They come to see the rivers. They want to see the rivers naturally. They want to see the rivers not polluted, not polluted with trash, not polluted with profanity, not polluted with vulgar behavior.

New Braunfels is an extremely conservative community. We are a town of family values, and we want to promote family entertainment. We don't want to have x-rated behavior. It's a commercial district. That's where people go. That's why people have paid to be there, to be on those rivers. Because of the alcohol, we have x-rated behavior.

We've brought people. We've invited them. My nephew is down there. My friends' kids are down there, and one of them comes up and says, "What's that?" It's a beer bong. I had no idea what it was. My nephews explained it to me because the people on the river explained exactly what it was. Do you want your 16-year-old or your 15-year-old learning things such as that or the language of a *Scar Face* movie? I don't know if you have seen that, but I remember the first time I saw it, I thought, "I can't get past the language." That's how it is on the river.

I noticed that Ms. Madden was concerned about the profanity or possibly what would be seen on the video. They censored it. It's much worse than that. We need help. It's not like this is just a new problem. It's an ongoing problem that we've had for years. When you look at the bottom of the river...I don't want to ban alcohol, but there's no other choice. How do we return the family values to our river? How do we invite people and

say, "Come at your own risk." It's no longer families. It's a bunch of wild parties that are very distasteful and concerning to citizens that care about those rivers, our community. It looks bad for our community. We are embarrassed, and we are asking you to do the right thing and to help us.

As far as the law and whether it is a business district, your own attorney, I heard him today say this is a subjective matter. You know what, I'm glad, because you get to make the decision. You can't base it on really one particular word in that law because it's subjective. You can do what's right. You can do what a conservative community wants - protection. We want to preserve those rivers for the rivers themselves and for the people. I beg of you and I plead with you to let us do that. Thank you.

MR. SHIVERS: Thank you. Kathleen Krueger?

MS. KRUEGER: Thank you, Commissioners, and I do respect the time factor here. My name is Kathleen Tobin-Krueger. I'm the co-chairman of the petition drive that Councilwoman Debbie Flume described.

While driving to Austin this morning, I was reminded of the last time I stood before a committee to plead an issue. It was in 1992 when I testified before the state legislature about the personal pain of suffering for eight years from the threats of a deranged stalker. I asked them that day to adopt an anti-stalking law in Texas. Later, I testified in Washington, before the U. S. Senate Judiciary Committee, to ask that a national anti-stalking law be enacted. I cannot claim that my feelings about the alcohol ban on our rivers carry the same emotions of life and death as I felt during those testimonies. But, I mention that experience simply to convey that I do not champion every cause that comes down the pike, but only those which I feel are urgently important to the safety and well-being of our citizens. It is my opinion that the alcohol ban is such a cause.

Deciding overnight to initiate a petition drive which, to be successful, needed the certified signatures of over 1,600 registered voters within a three-day deadline, was the hard part. The task seemed daunting. Standing with other volunteers on the main plaza in New Braunfels in 112 degree heat over Labor Day Weekend was the easy part because the citizens of New Braunfels came to us by the thousands. While a few hundred signatures were gathered in a direct door-to-door campaign, over 2,500 individuals came to us as we stood on the four corners of the square during those three days. The outpouring was unprecedented in our community. Among the signers were the elderly. Some too feeble even to exit their cars, and the young, some still in wet bathing suits, fresh out of

the rivers. There were families with small children. Businessmen in coats and ties, law enforcement officers still in uniform and even a tow truck operator who said he had encountered one too many drunk driving accidents. There were Hispanics, African Americans, German decedents of the town's founding families, but among them all ran a common thread - a deep concern about the community they loved and in which they lived and a strong wish that alcohol be banned on our city's rivers.

The community of New Braunfels has suffered for years and years and years from a degenerating environment on our two rivers that run through the heart of our town. Those of us who live and work in New Braunfels have thought long and hard about this. We believe that the single best solution to the disaster in our midst is the one we propose today. You have truly honored us by allowing our testimony today. After your decision, you will return to your communities and we will return to ours. I beseech you to please allow us to return to a community whose future can be made brighter, cleaner and safer for us and thousands of Texas visitors. History will confirm the wisdom of your decision, and generations to come will thank you for your vision. Thank you so much, Commissioners.

MR. SHIVERS: Thank you, Ms. Krueger. Betty Dunkin?

MS. DUNKIN: My name is Betty Dunkin. I will be brief. I had something to say, but I'm going to cut it short, basically, and yield my time to someone that may have something more important to give you. I did want to say that today the Comal and Guadalupe Rivers continue to provide nourishment, but they are in need of your help, as those before me have asked and pleaded. Let me again remind you that the Comal River is the shortest river in Texas and it does contain endangered species of fish and plant life. Because of the commercialism and the littering that is going on on the river, it is in danger of being destroyed. We need you to declare that our rivers are, indeed, a historical district; that they are now, and have forever been, a commercial central business district. I believe it is. The people that came with me today believe it is. The signatures on the petitions believe that it is, as our city council believes and they voted unanimously to declare it a central business district.

There is one person that has yet to be heard from. Although his voice has been silent for many years, he speaks to us in his writings and that is Prince Carl Solms, the founder of New Braunfels. This is his report back to Germany on March 27, 1845. It's his tenth report, and it is in reference to the Comal River. He says, "All over the country there are signs of large

and small groups of Indians who, on account of the good hunting and excellent water, occasionally pitched their nomad tents here. However, as soon as civilization comes near, they withdraw because the sound of the axe in the woods is annoying to them. Should some go astray and wander this way, I believe that the clatter of the mills on the river and the noise of the forges would scare them off. The Comal River is especially adapted for just such installation on account of its ever constant water supply.” He then goes on to say, “With the greatest vigilance and care and, yes, even by sacrificing my life, if it must be, I will guide the first settlement to success so that the world will know that unquestionably our people can quickly reach a state of well being here.” Then Thomas Jefferson wrote, in 1787, “The will of the people is the only legitimate foundation and to protect its free expression should be our first object.”

Now, I would like to introduce a gentleman that is experienced in the writing of legislation, and I’m proud to say that he has been a lifelong member of the New Braunfels community, and that is Senator Bob Krueger.

MR. SHIVERS: Senator?

MR. KRUEGER: Chairman Shivers, Commissioner Madden, Commissioner Steen, thank you very much. I rise in support of the voices you have already heard from the people of New Braunfels, my hometown, where I was born, was reared, where I went to school for 12 years and where I live now. I live on the Guadalupe, as I have since I was seven years old in the same house. We happen to be in that section of the Guadalupe that does not have any tubers passing us, so I don’t, in that sense, speak from anything personal. But, I do speak as one who knows that long after the rest of us who are now in New Braunfels, living there, are gone, those rivers will be the greatest treasure that our community has. They are indeed the lifeblood, commercially, as well as otherwise, of our community, and if that lifeblood is taken away or destroyed or if our stewardship is destroyed, corrupted, polluted, the whole town suffers.

I understand and you understand that New Braunfels is, as has been suggested, a law-abiding community. We wanted to do something to save our rivers because we want our community to be law-abiding. We wanted to come to the Texas Alcoholic Beverage Commission whether other communities did or not because we were told this was the proper way to proceed. There is something about this old 150, plus, year-old community that tries to follow the law. That’s what we are trying to do in being here. We have heard your counsel. Your counsel interprets our central business

district differently from the seven united unanimous members of the New Braunfels City Council and some 3,000 people. I understand that because attorneys are paid, among other things, to find different interpretations with one another, otherwise there would not be a need for more than one attorney, and we definitely have a need for more than one. I would also recognize that I have often referred to counsel when I served in the legislative body, when I served on the Texas Railroad Commission. We had counsel. We had attorneys, and I listened and I listened well, and I know how highly you respect Mr. Bright, and I understand the reasons for the high respect you grant him. I spoke with Mr. Bright just before this meeting and I asked, I said, "If the commission reaches their decision different from yours, that is a reasonable decision with regard to the central business district, would they in any way be violating the law?" If I understood correctly, the answer is, "No, if it is a reasonable decision in the definition of a central business district, they would not be in violation of the law." Have I restated you correctly?

MR. BRIGHT: Close enough. I believe the boundaries of your legal discretion here are tied by that definition. You must have some reason to believe that what they offer you meets the standards of that definition.

MR. KRUEGER: Thank you very much. Now, Madam and Mr. Commissioners, you have seen what the community of New Braunfels faces. You have heard what the New Braunfels community faces, although you haven't heard all of the obscenities from the river. What I suggest, however, is that you have heard from your counsel. You have heard also from our counsel. Counsel is exactly that. Counsel is counsel. Counsel is advice. Counsel, by definition, gives advice, but you are the individuals charged by the governor of our state with the responsibility of making the decision in light, not only, of terms like compact and contiguous, but in terms of the broad scope of the State of Texas.

It is your challenge, as commissioners, as when I was at the Texas Railroad Commission, I could hear what a counsel had to say, but I had to try to interpret it in terms of overall state energy policy or transportation policy or the needs of consumers, as well. In your case, it is the broad vision for which the governor has appointed you. It is to bring that to this understanding. It is to bring your judgment. It is to bring your understanding about the values of Texas. It is to bring your understanding as to how alcohol should be regulated in this state.

I'm one of those people who drinks alcohol. I understand the need for responsible uses of alcohol and so do you or you would not be in your

position. Here is a community trying to make possible the responsible use of alcohol in order to prevent death, in order to prevent serious injury, such as we've had, in order to prevent lewdness, in order to prevent who knows what might come in the future. A community trying to live up to the best traditions of Texas, and that is why we come to you. I, as a once and former commissioner, come to you and say, "Please, Commissioners, exercise your judgment."

Yes, you have counsel, you have advice, and I have no lack of respect for counsel and advice, but it is you who make the decision in terms of your overall responsibility. When the governor chose you, he chose you for your judgement. We understand his support of family values. He chose you because he wanted the state to have responsible alcohol policy. We can't have it without your help, and we have come to you because we are a law-abiding community, and I urge you to look not just to three words, but to look to the very large picture and the reasons for which you were placed in these very responsible positions.

That is the way in which we turn to you, and we thank you very much for giving us this opportunity, because we are people, as we showed by the petition, who respond to democracy. We are trying to act in both a law-abiding and a democratic fashion. The people of New Braunfels went and personally signed, and I might say that those almost 3,000 signatures are twice the number of votes that the mayor got and about five to 20 times the votes that any councilperson got, which is one reason we got a 7-0 vote out of the council at the end. You don't have to be real fancy with numbers to figure that one out. New Braunfels has done everything it can do.

It is now in your hands to protect those lives, to protect those people from being crippled, to protect those people from getting into fights, to protect the best that is in Texas, and we urge you to do so. We thank you very much.

MR. SHIVERS: Thank you, Senator. Mike Myers, McClanahan & Clearman?

MR. MYERS: Good afternoon. My name is Mike Myers. I am an attorney from Houston. I represent two citizens of New Braunfels, Stuart Hansmann and Tim Walker. They oppose the city's petition. We submitted a written objection last week. Essentially, we agree with what Mr. Bright found in his legal opinion. The petition should be denied. The area is not compact. It's not contiguous. That's obvious from the map. The city does not own the property nor does it control it. It's not the place where business

commerce is conducted. On that point, Mr. Bright makes a very good analogy that the highway is not the place where commerce is conducted simply because you rented a car and you drive it there. The analogies like that are legion. Your kitchen is not a place for commerce because that's where you eat the food you bought or where you prepare the food you bought. We could go on all day long with those analogies.

That said, my clients take no position over whether this is a good or bad idea. Maybe banning alcohol is a good idea, maybe it's not. Their concern, though, because they understand what is not good for New Braunfels, and that is an elected body sworn to uphold the law, that goes outside the scope of its legal abilities to accomplish an end that it wants, and that's what's happening here. The city council wants to prohibit alcohol. That's the end they want to achieve and they are here today to say, "Let us slide on the means we use to get there." They don't meet the plain language of the statute, and there are two reasons why it's pretty obvious that they are here. One is the video tape. Mr. Bright is correct in his interpretation of the statute, which is if the city correctly identified a central business district, this commission has no discretion and it must approve it, therefore, there was no need for this video other than to try and play on the sympathies and say, "We've got a problem here and we are trying to correct it, so let us reach the ends we want." There was no need for the video other than that because, if the petition was accurate, you have to approve it.

The other one is my client faxed me this last Friday. It's an excerpt from the *New Braunfels Herald*. We've heard a lot of talk about the city council's united that this is a big problem. That's not true. Three of the city councilmen say in this newspaper article they know that they don't meet the statute and this petition shouldn't even be here before you. The mayor of New Braunfels says it's common sense that they don't meet the plain language of the statute. I'll be brief here, but that's the point my clients want to make. Maybe this was a good idea, maybe it's not, but the way we are going at it is wrong. The city council has gone beyond the limits of its power. It's had to bend the plain language of the statute to get there. That's what alarms them, because if they are not checked here, where will they go next? That's why I ask you to deny the petition. Thank you.

MR. SHIVERS: Thank you. J. R. Felger?

MR. FELGER: My name is J. R. Felger. I'm a 44-year resident of New Braunfels, Texas and a business owner in New Braunfels for 25 years. I promise you,

councilmen, distinguished commissioners, members from New Braunfels, I'm going to keep this short and sweet as it's been promised so many times before. I don't want to hurt people in New Braunfels. I don't want people getting hurt on the rivers, but I also think it would be a very very sad day in New Braunfels when I can't float down the river with my wife, with my family, with my four children. I have three daughters, 11, 8, 6 and a four-year-old son. I don't go down the river and go get drunk and lewd and crude and rude and all these things that people say about everybody that goes down the river. I go down the river, my children take their gatorade and their juices and things like that, and I take a couple of cold beers. When I go back, I'm just fine. I just really think it would be a very sad day if the day comes that we have this problem where law-abiding citizens can't enjoy a cold beverage on our beautiful rivers, the Comal and Guadalupe Rivers.

As far as the central business district goes, ever since I was a little child, my grandfather said, "Let's go downtown. I've got to go pay my taxes down at the courthouse." I got my first driver's license right downtown. I registered to vote the first time right downtown in New Braunfels at the courthouse. I go down there today to pay my taxes down at the annex office right off the courthouse square. Apparently, the good people of New Braunfels know that that is our central business district. That's why they went there to get the petitions signed that they had on the city square, because everybody knows that downtown is downtown. That's where the gazebo is. That's all I've got to say. I thank you for your time.

MR. SHIVERS: Since you are an outfitter that rents inner tubes and since you've seen the video, one, do you think it's a problem and, two, if you do think it's a problem, do you have an alternative suggestion on how to control it?

MR. FELGER: I do believe that there was some problems there this summer and there have been problems in past summers. The only times we have the problems on the Comal River, like we had this year, is when the Guadalupe River is dry, then all the kids are generally on the upper Guadalupe River, for the most part, which isn't even in the city limits area. They all kind of merge themselves over to the Comal River. I take my children to the river, and I tell you what, I don't see people getting naked. It's like a lot of my friends have said before, "Where are they?" A lot of the guys are going, "Where are all these girls getting naked and stuff down the river?" I don't see it. If I did, I wouldn't take my children to the river.

As far as a solution to the problems that were out there this summer, we solved that problem on Labor Day Weekend where the people that were

spearheading the petition drives, things like that, they were all downtown on the city square in the central business district getting petitions, while our officers were settling the problem down on the river. They were arresting people. Arrest them. If they are breaking the law, take them to jail. That's the solution. There's those of us that are law-abiding citizens that want to go down the river and have a good time, and if we want to drink a cold beer and we are legally of age and we are doing everything properly, we ought to have that right.

MR. SHIVERS: Thank you.

MR. FELGER: Thank you, sir.

MR. SHIVERS: Paul Rich?

MR. RICH: Honorable Chairman and Commissioners, my name is Paul Rich. I am the vice-president of the Water-Oriented Recreational District which was created by the state legislature to preserve, protect the river, as well as implement safer recreational uses. I'm also the president of the Tourist Associated Businesses, TAB, a Comal County business coalition which represents about 60 businesses that are engaged in tourist-related businesses. We are the businesses the city claims they are trying to protect by enacting this ordinance.

It is our opinion that the ordinance would financially harm or destroy most of the tourist-related businesses within this community. We did not ask the city for this ordinance.

The true purpose of this ordinance is to limit public use of public domain, so that the residents that live along the river do not have to deal with incidents of unacceptable behavior. It is well known that rivers in our community have been tourist destinations for generations. It is our opinion the money the tourists spend in our community is distributed throughout various business locations around the entire community.

The city has not correctly identified the central business district. The zoning of the properties that borders the rivers is also an issue that pertains to the description within Section 109.35 of the code. The code clearly states that 90 percent of the land must be zoned or used for commercial purposes. A map, that we will have counsel show, clearly shows that up to 80 percent of the land is zoned residential and only 20 is zoned commercial. The majority of these commercially-zoned properties are owned by businesses and entities that are engaged in tourist-related

business, and it is our opinion that not one of these businesses has ever requested assistance from the city to protect their businesses from public behavior.

We realize that there are issues that need to be dealt with. The ordinance's main intention is to control undesirable behavior. We contend that there's laws in place to deal with these issues already. We also believe that this ordinance is the easy way out so the city does not have to provide necessary resources to enforce the current laws. No matter what happens, it's a matter of law enforcement. If they can't enforce what's on the books now, what makes them think that it will be any easier to enforce what comes next? We contend that when an area has a particular attraction, it becomes necessary for all levels of government to lend a hand to protect that attraction.

Austin has learned from 6th Street. San Antonio has learned to provide additional street and traffic control for Sea World, the River Walk and Fiesta Texas areas. When Dallas has entertainment venues, the police department assumes additional protective measures. Protection and law enforcement is the city's job. It's paid for by taxes imposed on users and businesses. New Braunfels is smaller, but responsibilities are still the same as in Dallas, San Antonio and Austin.

The citizens of New Braunfels need and demand the city leaders and city law enforcement officials to enforce the current laws on a continuous and consistent basis. The biggest deterrent to crime is the consistent show of law enforcement.

We thank the commissioners for allowing our presentation here today. We hope that you follow the code and the opinion of the TABC counsel and reject the request by the City of New Braunfels. The majority of Texans that use the public waterways do so responsibly, and it seems unreasonable to take that right away. It's individuals that violate the current laws that need to be punished, not the vast majority. Thank you.

MR. SHIVERS: Thank you, Mr. Rich. Gene Palmer?

MR. PALMER: May I please the commission? My name is Gene Palmer. I'm a lawyer in Austin, Texas. I represent the Tourist Associated Businesses, the organization that Mr. Rich, who preceded me, is an officer of. I will not dwell on things that have been said to you before.

I will say this, however, and I didn't have this in my mind when I came

here today. Lou Bright doesn't need to be defended by me or by anybody else...

MR. BRIGHT: Wait a minute, Gene. Maybe I do.

MR. PALMER: In most of my dealings with him, he and I have been adversaries and we have been very contentious adversaries, as you, Chairman Shivers, have observed once or twice. Nonetheless, Mr. Bright is a person of integrity who has never once misled me and I, for one, don't think he's misled anybody that's here today.

I would say simply to you that the state, of course, controls the rivers, and the state, through its legislature, determines exactly what happens on that river property. Similarly, in regulating alcoholic beverages, you are well aware that the Alcoholic Beverage Code specifies that regulation is vested in the state, not in home rule cities. The exceptions to that must be very carefully followed, and those exceptions are in the Alcoholic Beverage Code, and you are considering one here today.

I would say to you, please, that as you make your decision...I was reminded by what Mr. Krueger said, and I know, of course, that he is a person of great eloquence and a person who is a former professor of literature, and I'm reminded of a particular work called *Through the Looking Glass*. What he is asking you to do here today is what was said in that wonderful work by Lewis Carroll, and that is words say what I mean them to say. Unfortunately, when you are a public body, such as you are, they have a specific meaning that the legislature intended and I know that you will follow that meaning. I thank you very much and will be glad to respond to questions.

MR. SHIVERS: Thank you. Questions?

MR. STEEN: No.

MS. MADDEN: No.

MR. SHIVERS: Mary Keller?

MS. KELLER: My name is Mary Keller. I am a lawyer in Austin, Texas. I represent Rockin R River Rides. It's been a long afternoon. I will make it short. You have been ably advised by your counsel, Lou Bright, about the meaning of statute 109.35.

Just to fill in the background to that statute, it was adopted by the legislature in 1993. The original bill that was introduced included unilateral authority by a home rule city to ban alcohol in public places. Public places were defined to mean sidewalks, malls, streets, parking lots. It did not include rivers, beaches or lakes, but it was very broad authority for local authorities. As the legislature started to look at the bill and it went through its process, as you are familiar with it, the bill, finally, as it left the house, included a referral to the TABC, but it still included public places. By the time the bill finally got out of the senate and was adopted by a committee, the public places had been substituted for central business district.

To me, in reading the legislative history, it's obvious that the legislature, over the course of studying this, decided that the authority to be placed in a local government was to be very very narrow and very limited in its scope because you are taking basically legal behavior and making it criminal, and the legislature was concerned that the authority to do that be very narrowly circumscribed.

Mr. Bright has commented on the requirements of 109.35 with eloquence, but I will just refer to one specific part of it. The central business district of a locality is only one. The statute says the city may designate as the central business district a place that is historically used to transact business. The City of New Braunfels has a zoning ordinance and, in the zoning ordinance, they have designated as the central business district, their historical downtown. This is the only part of New Braunfels that the City of New Braunfels could come to this commission and ask to have an alcohol ban.

The chairman has asked, "What can we do about this as an alternative to a ban under 109.35?" What I would say to the commission is there are many many citizens who are here today, including the businesses, the citizens and the city council, who are very interested in finding a solution. It is my understanding that there is a River Activities Committee that has been set up by the city council. It is a seven-member committee. I think with these good citizens working together, there are solutions to this problem that include vigorous law enforcement, education and other kinds of methods of outreach that do not include an unlawful request to this honorable body to provide a ban that is not authorized by statute. Thank you very much.

MR. SHIVERS: Thank you, Ms. Keller. Ken Valentine?

MR. VALENTINE: My name is Ken Valentine. I am a resident of the City of New Braunfels. I am the vice chairman of this newly-appointed River Activities Committee. I want to keep my comments short. I don't have anything to add to the compact and contiguous debate that we are having here today.

Basically, the New Braunfels City Council appointed a citizen's River Activities Committee charged with developing solutions to the various issues that you have seen here today. Mayor Williams said in the *San Antonio Express News* that if the TABC does, in fact, reject this ban, then the work of the River Activities Committee, charged with addressing these issues, becomes much more important, and those comments were also offered by our chairman of the Greater New Braunfels Chamber of Commerce, Mr. Michael Meeks.

I am the vice-chairman of this group, but let me share with you some issues that we have. I want to share with you the profiles of the people - the seven members of this committee. Two members are employed by the New Braunfels major water park, Schlitterbahn and New Braunfels General Store. One member is employed by a multi-location beer retailer. One member is employed by a river outfitter, and three of the members are home owners, and I am a home owner. The three to four business majority will certainly make developing novel solutions - that I just heard, it will make developing those solutions very difficult.

We have heard this before...I would also like to pick up on something she said, and some of my colleagues here may not agree with this. If you can't grant the entire petition today, for the Guadalupe and the Comal central business district, I would like you to express some flexibility and agility in government with what you can do by declaring only the Comal River, which is probably only 150 to 200 yards from the grandstand where the petition was signed. Set that up as a no alcohol place, where you can't consume alcohol, then maybe you can help us or maybe we will have to go to the state legislature to get work on the Guadalupe River. We need help. Thank you very much.

MR. SHIVERS: Thank you, sir. Lynn Norvell?

MS. NOVELL: My name is Lynn Norvell and I, too, am a resident. My children are the fifth generation and, as Mr. Kendrick mentioned, the New Braunfels Woolen Manufacturing Company, my family's property is currently on that piece of land on the river. They made blankets for the confederate army, so we go a long way back.

Please don't be fooled about...money is always at the bottom of things and this, too, a lot of the arguments you've heard from some of the attorneys, it comes down to money. We have tried many solutions over the years. I am 53 years old, and we've been fighting this battle for a long time. Only with the help of these council people that you have heard from today, have we gotten anywhere strongly trying to do something about this issue.

A lot of the film that you saw up there today, I took. I sat at the deck of my family's home for a month this summer, every Saturday and Sunday, and I watched the activity that has gone on. It has truly been censored. I made the presentation at the city council meeting in New Braunfels, and it had to be censored before it could be seen because our council meetings are put on television. If we can't have this activity seen by you folks here and by the people in the homes of New Braunfels, why in the world can we have it floating down the rivers through the center of our town?

If we question where the business district is, the business district is where the action is. Do not think that the action is not on that river? The action is there. These outfitters make a whole lot of money renting those inner tubes to these people that float by our houses and float by the businesses on that river. That is a very profitable business district to a lot of these people in this room today.

We do not want to stop people floating down the river. We do not want to stop tourism in the City of New Braunfels. We want to bring families back to the rivers. We want to respect the rivers. You saw the film where the cans are under the rivers. I have spoken to the head of the biology department several times at Southwest Texas. If we do not preserve this river, it is going to die. We have high nitrogen levels from - you can imagine - from all the people that are in the river, from a lot of the drinking.

We have to take care of the rivers, and I will end by saying the original statement. He said the river is in trust for the people. I urge you to be statesmen and preserve the river for the generations to come way beyond us. If we don't do something to preserve these rivers today, they are not going to be here. Thank you.

MR. SHIVERS: Thank you. Cindy Ellison, representing Senator Zaffirini.

MS. ELLISON: Commissioners, good afternoon. For the record, my name is Cindy Ellison. I am a legislative aide to Senator Judith Zaffirini. Senator Zaffirini is a leader in the fight to prevent alcohol abuse, and she's always

been a strong supporter of the Alcoholic Beverage Commission. She was in 1993, when you underwent sunset review. She will be again in 2005 when you undergo sunset review. Currently, she is a member of the Sunset Advisory Commission.

You've got a copy of her letter. Next session, we hope to work with you on priorities like preventing young kids from crossing international bridges into Mexico and returning drunk. The residents have a copy of her letter, too, and I won't read it, but we just think we've made a good case for proving that commerce and recreation are intertwined in New Braunfels, and that historically the rivers are a central business district. Senator Zaffirini recognized this when she sponsored legislation regarding a Water-Oriented Recreation District. This legislation recognizes that this is a central business district that needs extra help with law enforcement.

I just wanted to tell you that you can count on Senator Zaffirini to continue to use her seniority in the legislature to back you up in fighting alcohol abuse and in promoting local priorities like banning alcohol on the Comal and Guadalupe Rivers. Thanks.

MR. SHIVERS: Thank you. Donna Welch?

MS. WELCH: My name is Donna Welch, and I live in New Braunfels. Would you mind if I hand you this?

MR. SHIVERS: Not at all.

MS. WELCH: I'd like to share with you some information that Doctor Marilyn McDonald and I collected this summer, which relates to the commercial business district designation of our rivers. On the weekends of July 8th and July 15th, we gathered statistics at the last public exit to the Comal River. We sat in the sweltering heat collecting data on tubes exiting the river and on shuttle pickups. We actually have this information broken down by the hour and by specific outfitter for Friday afternoon, July 7th, Saturday afternoon, July 8th and Saturday afternoon, July 15th in a report.

Please direct your attention to Table 1 of the paper you just received. I have listed the outfitters and the number of their tubes exiting the river during the combined 12 hours that we observed the exit. Column 1 lists the outfitters; Column 2 shows the tubes exiting the river on Friday, July 7th, from two to six p.m.; Column 3, the tubes exiting on Saturday, July 8th, from 12 to four p.m.; Column 4, the tubes on Saturday, July 15th, two to six p.m.

The last two columns show the totals for each outfitter and their percent of the total tubes in red. I'd like you to especially notice the personally-owned row in blue near the bottom of this first table. Note that of the 6,093 tubes exiting the river during those 12 hours, only 293 of them, or 4.8 percent, were personally-owned. This means that 95.2 percent of all tubes exiting the river at the last public exit on those three days were commercially-owned. Based on extrapolation of this data, we determined that more than 5,000 tubers exited the Comal River on Saturdays this summer, again with 95.2 percent of them in a commercial tube, getting in a commercial shuttle.

Table 2 on the paper you received shows the shuttle pickups at the last public exit of the Comal River. As you know, customers of the outfitters are shuttled to and from the river. The Corner Tubes, RB, Landa Falls and Prince Solms Tube Chutes all contract with Comal Rapid Transit to provide shuttle services. I've also enclosed a few pictures of the last public exit and the congestion to show the number of people that are there.

My second and last point concerning the commercial or central business district designation of the rivers relates to a conversation I had with a representative of the Texas Municipal League in July. The gentleman was an investigator for the insurance pool of the Texas Municipal League. He was in New Braunfels to investigate a law suit that had been filed by a woman, a customer of one of the outfitters, who had fallen at the last public exit and badly broken her leg in more than one place. In fact, she required an ambulance to actually get her out of there. I happened to be on the street gathering trash and beer cans left by the tubers when he stopped to ask me about the last public exit. He voluntarily told me that he had been to the city municipal building to speak with the staff there and to the specific outfitters office to research the problem. He was shocked and surprised that the City of New Braunfels was not requiring outfitters to have an indemnity bond to cover their customers' use of public property. He said that each outfitter should have a representative at the exit to insure that their customers - and I quote - customers - exited the water's edge without incident. This gentleman, representing the Texas Municipal League, considered the tubers to be customers from entrance to exit of the river. Although my information only relates to the Comal River, it is also relevant to the Guadalupe River.

My point to all of this information is that the Comal and the Guadalupe Rivers are central business of New Braunfels. This uniqueness is the reason so many people come to our city. We need your help to bring back decent folk, families and to help us protect our citizens, our river and our

heritage. Please help us.

MR. SHIVERS: Thank you. Celina Romero?

MS. ROMERO: Good afternoon, Commissioners. My name is Celina Romero. I'm with the law firm of Clark, Thomas & Winters. I represent the Texas River Trips. They own and operate a rafting business on the Comal and Guadalupe Rivers.

My background is in water law and, in addition to that, I have also spent some time being a general counsel for a major state agency, similar to what Mr. Lou Bright is faced with here today in terms of advising you on the scope of your authority and your jurisdiction.

I want to recognize that it is undisputed that these rivers are important natural resources for the City of New Braunfels, and that they contribute tremendously to the city's culture and to its tourism industry. However, because it provides that kind of industry for that city, the activity that takes place on the rivers does not become a commercial activity. In my mind, you have heard a lot of things said to you today, pro and con, about whether or not you ought to designate the waters and these rivers as central business districts. None stand so clear in my mind as that one itself, which is that commerce, itself, is not conducted on the waters. That is the only part of the city that is brought to you under this petition. These are state waters, and they are owned in trust for the people of the State of Texas, and the city has no ability to regulate this activity in this way on these waters. I would be glad to answer any questions you might have.

MR. SHIVERS: Thank you.

MS. ROMERO: Thank you.

MR. SHIVERS: Ms. Ellison, may I ask you a question?

MS. ELLISON: Certainly.

MR. SHIVERS: We have a letter from Senator Zaffirini in our books. Does she believe that under the statute we have the authority to do what the city asks us to do or is she just strongly supporting their efforts to control activity on their river?

MS. ELLISON: I believe she would say that you have the authority to do what the city is asking and that local regulation of alcoholic beverages is paramount.

MR. SHIVERS: Are you saying that she says the legislative intent of Section 109.35 gives us the latitude to do this?

MS. ELLISON: Yes, sir, health and safety of the residents, that's right. She was there in 1993 when that legislation was passed.

MR. SHIVERS: Her letter doesn't make that quite clear, that's the reason for my question.

MS. ELLISON: I'm glad I could clarify.

MR. SHIVERS: Thank you.

MR. STEEN: I have a question for Mr. Akers.

MR. AKERS: Yes, sir?

MR. STEEN: I'm looking at these two maps that were provided us by Councilman Kendrick. I see the area where the town square is. Is it at one point pretty close to the Comal River?

MR. AKERS: Yes, sir, it's probably within 200 yards.

MR. STEEN: In your thinking on how to approach this, why didn't you include that area within this central business district?

MR. AKERS: Quite frankly, our downtown may have been a center where people gather. It's got a lot of closed businesses down there right now. There are the utilities located down there. The courthouse is located down there. There is really not a whole lot of businesses located down there, and I think I tried to make the point earlier that we have a Wal-Mart and a Home Depot in town that are far from our town square, and they bring in more sales tax dollars than all of our downtown district. So, we don't really feel that that is our primary location that we do business in New Braunfels. I mean, it's just an old area of town. It's the town square. People gather there to meet and whatnot, but it's really not a business district anymore like it used to be.

MR. STEEN: Why couldn't you have included it?

MR. AKERS: The other thing we didn't want to do is we didn't want to prohibit people from drinking on those streets and those sidewalks. Right there in that town square we have a festival every year called Wassailfest and it's coming up, actually, in December. You are welcome to come, but we do

serve alcoholic beverages as part of the festivities. You get some wassail and there's some alcoholic beverages in there. They are down around the town square and it's set up with bands and whatnot. That's not an area that we wanted to include because we want to continue to have those kind of city functions in the town square. It's more of a meeting place than a commercial place.

MR. STEEN: What about the two areas that you designated by zoning to be central business districts?

MR. AKERS: I can address that. That was done in 1987. We had a second set of zoning laws in place. There's only two areas in town right now that are called central business districts under our new classification. One of them is Ryan's Steakhouse, which is located within a stone's throw of the Guadalupe River, and the other one is actually a residential neighborhood in Gruene. I can't really speak to why they did that. It was a new area that we...that's a new zoning classification since 1987. We never had a central business district before then. That's why we called this district central business river district so we wouldn't get confused with that. That zoning has never really been used in New Braunfels, to be perfectly honest with you. It's only one business and really more of a residential area.

MR. STEEN: What is that zoning classification? What does it mean?

MR. AKERS: It just means that it limits the types of activities that you can do there, like you can have a restaurant there, you can have certain commercial activities there. If you notice on our zoning maps, and we went ahead and submitted our zoning maps, because I think you will see we have a lot of zoning adjacent to the river that is commercial. We probably have five different types of commercial districts. Some say you can build all the way up to the property line. Some say you have to be farther back. Some say you can have heavy industry. Some say you can have retail. To be perfectly honest, right off the top of my head, I couldn't even tell you because we use that central business district classification so rarely. Like I said, it's Ryan's Steakhouse, one business, and then on the other side it's predominately, I think, 90 percent residential.

MR. STEEN: You gave me a reason for not including the town square, but why didn't you include any land?

MR. AKERS: Because we didn't want to affect people's rights upon the land. As you saw, when I showed you the video, there's a lot of bars. There's a lot of restaurants. There's a lot of other just residents, along the river, as well,

and we didn't want to prohibit people from standing out in their yard and drinking a beer, you know. That river is where the commerce takes place. That's where the commercial activity takes place. Those people aren't allowed on most of the property adjacent to the river, and so we narrowly defined that. We did that specifically. We didn't want people going up on the property and we didn't want our laws affecting people on the property. We are not against drinking.

MR. SHIVERS: I'm not a lawyer, but it seems to me under this section of the code, you could have included a broader area of land, even including residences and these businesses, and prohibited open containers outside without applying them to residences. The code specifically excludes buildings not owned or controlled by the city, residential structures, licensed premises.

MR. AKERS: It excludes the structures...I'm sorry.

MR. SHIVERS: 6th Street, in downtown Austin, has an open container ban. It doesn't affect the businesses that are located there or the private residences.

MR. AKERS: Right. I agree that it wouldn't affect the structures, themselves, but if you are actually out in your yard, you are not in a structure. We were afraid the people sitting out on their decks, people sitting out in their back yard, people sitting out on property that was zoned...and it was just to be as cautious as possible, to be perfectly honest with you, because we did not want to affect those businesses or those residences at all.

MR. SHIVERS: Chief Smelser, have we ever enforced an open container ban against residents on 6th Street for sitting on their patios or roof?

MR. SMELSER: Not to my knowledge, sir.

MR. SHIVERS: Thank you. Do you have any questions, Ms. Madden?

MS. MADDEN: A lady had mentioned earlier that you all had explored some other options and some other solutions. Could you give us a rundown of some of those?

MR. AKERS: The city has looked at several options. This has been a problem for years in New Braunfels. Our biggest concern, of course, is law enforcement. The problem is we are a town of 40,000 that becomes a town of 80,000 on the weekends, and to have that presence of law enforcement that you need is problematic. It's financially strapping to the city, and it's also a problem in that these people are in the water. A police officer risks drowning or drowning an arrestee in trying to apprehend these suspects or

these individuals who are breaking the law. It's not the easiest thing to get to. If you were walking down 6th Street, I can go ahead and grab that guy and arrest him, but I can't just jump in the water and grab a guy without risking my life as a police officer or the arrestee's life. It's very difficult to enforce these laws on the river.

MS. MADDEN: It's my understanding that during peak times, holidays like July the 4th and things like that, there is kind of a coalition of enforcement between the TABC and DPS and Parks and Wildlife that do help you all out. Is that true? That's my understanding. Is that correct?

MR. AKERS: Sometimes we get additional officers. Sometimes TABC sends down additional officers. Sometimes the state police come down. It's just not nearly enough. We have some 60 to 70 police officers in New Braunfels now. We don't double that on any weekend, and we need to double or triple that to take care of the problems that you are looking at. There is no way. Our budget for police officers now is 4,000,000 dollars. We take that up to 12,000,000 dollars, well, we only have a city budget of 20,000,000 dollars. It's just not financially possible for us to do so. We can't tax anymore. We are limited to what we can tax. We've looked at those options about enacting additional sales taxes. We can't do that under state law. This is it. This is our remedy.

MR. SHIVERS: I am not unsympathetic to your problem. Your town population obviously doubles. You have a lot of drinking, littering. It brings a real problem for you. You also have a great benefit from all the tourism, and I know that's important, too. By designating only the river, itself, as the central business district, you give me a problem with Section 109.35(d), which you referred to, Mr. Akers, in your presentation - the land is used or zoned for commercial purposes. It seems to me it is a stretch to believe that the commerce takes place on the river. The transaction, exchange of funds for goods or services, takes place on the land. You didn't designate the land. I think it's a stretch to consider the river, where people take their beer that they buy on the land, their tubes that they rent on the land and to put them on the river, and consider the river a place where commercial activity takes place. I'm not sure we have the authority to do what you want us to do. I understand that you'd like us to do it and I'd like to be helpful, but I don't believe we have the legislative authority to do this.

I know Ms. Ellison has said Senator Zaffirini believes we have legislative authority to do it, and I have great respect for Senator Zaffirini. I wish she would have bright-lined it in her letter and said, "In my opinion, you have the absolute authority to do precisely what the City of New Braunfels

wants you to do and this is exactly what we meant when we passed Section 109.35(d).”

MS. ELLISON: She'll back you up, sir.

MR. SHIVERS: Will she get 20 other members to back me up?

MS. MADDEN: I want to commend the grassroots effort of consensus building through the formal petition of signatures. That is democracy at work, and I think that's really commendable.

I agree with the chairman, and I'm also listening to our wise counsel, Mr. Bright. This is one of those tough decisions where you feel so badly for the community, but I just don't see our commission as a judicial panel that oversees city councils. We want to be responsive to you. We don't want to be insensitive to what you are going through because, obviously, you are going through a lot as a community. We would like to serve as a resource, and we would also like to help you enforce existing laws.

MR. SHIVERS: Mr. Steen?

MR. STEEN: One of the things about this commission, there are only three of us, so we can't talk to one another, except in an open forum like this. I think I'm getting an idea of how the other two commissioners feel about this, but we do have to remember that we are dealing with just a very narrow issue as a commission. That's whether or not the map improperly identifies the central business district. We've heard the arguments on both sides. On the point about being compact and contiguous, I think even our counsel says that's subjective. That's something that you can argue about. I don't think that's decisive.

I think you all have made a pretty good case. Your city council has said by 7-0 vote the rivers have been historically the primary location in your municipality where business has been transacted. I can accept that. I guess what I'm having trouble with is this part that says that at least 90 percent of the land is used or zoned for commercial purposes. I can even accept the argument that Mr. Akers presented about the commercial activity on the river, but it does say, "land." I think it is a stretch to talk about land underneath the water. I guess that's what you were saying.

We're sympathetic to what you are trying to do. I just have a suggestion, and I'd like to hear from the other commissioners on this, if you could go back to the drawing board and come back to us again, if you could include

some land in this so that we could, indeed, find that 90 percent of the land...it doesn't have to be a big tract, as I would read it. I'm just throwing that out as an alternative to us voting today and you possibly getting turned down on this.

Incidentally, I think Mr. Bright does a great job, also. There were some things said about him that I think are unfair. I think he's a straight shooter. He always does a great job for us, and I took a little bit of offense that some of you were trying to portray him as having the black hat in all of this. He's someone, I think, that's sympathetic to what you're trying to do, and we are all trying to find a solution. Mr. Bright?

MR. BRIGHT: If you can't blame a lawyer, Mr. Steen, then what good is life? That's what we're here for and proud to be here for it. I'm sorry, I was horsing around and lost your question.

MR. STEEN: What's troubling me is that part that says at least 90 percent - and I emphasize - of the land is used or zoned for commercial purposes. What they have done is their central business district is all water.

MR. BRIGHT: I suppose the question that lies out there is what avenues lie open for the city council to designate some area of their town that is zoned or used commercially that would include and involve the river as a part of that district, much like when cities have come to us in the past, they have designated city blocks that include and involve the streets and sidewalks in there. I can't tell you immediately what the answer to that question would be. Obviously, we'd have to look at it and look at the character of the land and the character of the zoning or the use of that land in that area.

I know, from talking to people, particularly to the people who are opposed to this idea, one of the arguments that would be presented to that would be to say that the city might be able to designate some area of the land as a central business district, they could not include therein the channels of those rivers. That would be by reference to all that water law that you've heard us speak about today. My gut reaction to that is that that would be a question beyond our purview. That is, that it is not within the scope of authority granted to you by the legislature to determine what Texas water law says. So, that may be a possibility. There are other possibilities, including law enforcement resources, perhaps other structure of ordinances, which I'm certainly no expert on, but I can't believe that this many people convinced that they have this serious a problem can't come up with something good to do about this. It can't be much of a hill for high steppers like us.

MR. SHIVERS: Thank you. Do I understand we will not have a motion to approve this petition?

MR. STEEN: Mr. Akers, could you speak to that?

MR. SHIVERS: Do any of us want to make a motion on approving this petition?

MR. AKERS: Yes, Mr. Steen. I certainly meant no disrespect to Mr. Bright. I certainly hope you didn't take it that way. I do happen to disagree with some of his arguments, because I do represent the City of New Braunfels. I do definitely respect him, and he's always been very helpful every time I called, and we do appreciate that in New Braunfels, and I certainly didn't want to give that impression.

We'd be more than happy to go back to the drawing board - I think we can see the way you are going today - to withdraw this request and take it back to the city council to see if they want to take some other course and pursue some other avenue or if they want to redraw this district and come back to you. I think that would be a decision for the city council. The entire city council is not here. They are a seven-member body. They would have to make that decision. I certainly don't think we'd be opposed to withdrawing our petition and looking at it again.

MR. SHIVERS: Mr. Akers, I don't think we are going to act on your petition today.

MR. AKERS; Thank you very much.

MR. SHIVERS: We thank you for your presentation. Let me say something to the outfitters. Tourism is vitally important to your community as it has been pointed out today by all sides in this. You need to be part of the solution with your customers. You can go a long way toward insisting that they respect a clean and beautiful community that's a jewel in central Texas. If you don't take a hand in helping your fellow citizens control this problem, you will kill the goose that laid the golden egg. It's ultimately going to affect your own businesses.

I'm going to ask Chief Smelser to visit with Chief Hamilton and see what resources the TABC can add on selected periods when you have particularly busy weekends. You will be amazed how many TABC officers we can concentrate in your area. We can't do it on a constant basis, but on selective opportunities, unannounced, we can make quite a presence. We also want to work with the Comal County Sheriff's Office and the New Braunfels City Police. If your police chief and sheriff will

contact Chief Smelser or Chief Hamilton, we will be happy to do what we can to find other solutions in the meantime for you.

MR. STEEN: Before we leave this, I would like to maybe put my fellow commissioners on the spot a little bit, and ask them if, under other circumstances, you could see where you might approve this if they go back to the drawing board and come forward with a different plan?

MR. SHIVERS: Sure, if they give us a petition that we think complies with the code and the problems that we've identified that we have with the restrictions in the code, I think so, yes. I'm happy to help cities do whatever they want to do within their city, but it has to fall within the restrictions we have to live with.

MR. STEEN: If they included some land and these rivers, what would you think of that?

MR. SHIVERS: I share your view. I think what they want to call a central business district is subjective. That's their decision. New Braunfels has businesses all over a very broad area. I don't know that you can define it the way it's been pointed out, to find a small and compact central business district. They've got places out on I-35, north of town, south of town, west of town. I gather from what Mr. Akers said, there are intense business activities and sales tax collections all over the city, so I am going to leave it to the good citizens to tell me what the central business district is, as long as the lines they draw are compact and contiguous and don't look like they have been gerrymandered.

MR. STEEN: I just know if you go back to work on it, you want to have the feeling you can come back here and we would be receptive to something new or different.

MR. SHIVERS: My definition of a commercial transaction is where the money changes hands, then I'm not a lawyer. Thank you.

We will go back to item five. The administrator's monthly reports have been supplied to the commission. Do you have anything to add to that, Mr. Bailey?

MR. BAILEY: No, sir.

MR. SHIVERS: Do you have any questions?

MR. STEEN: No.

MS. MADDEN: No.

MR. SHIVERS: Number six - let's put that to last.

Number seven - repeal 16 TAC §45.103 as published in 25 TexReg 7448 on August 11, 2000. This is Regulation of "Happy Hour." Is there a motion?

MS. MADDEN: I so move.

MR. SHIVERS: Is there a second?

MR. STEEN: Second.

MR. SHIVERS: Any discussion?

MR. STEEN: I was the one that asked that this be deferred. In the meantime, I've had a discussion with Mr. Bright and read the materials, and I'm supportive of it.

MR. SHIVERS: All in favor?

MS. MADDEN: Aye.

MR. STEEN: Aye.

MR. SHIVERS: Aye.

Number eight - consider adoption of new 16 TAC §45.103 as published in 25 TexReg 7448-7449 on August 11, 2000. This is On-Premises Promotions. Is there a motion?

MS. MADDEN: So moved.

MR. STEEN: Second, and same comments as on item number seven.

MR. SHIVERS: All in favor?

MS. MADDEN: Aye.

MR. STEEN: Aye.

MR. SHIVERS: Aye. Opposed? Good.

Number six - this is the internal auditor. Do we want to make a decision on this or do we want to defer it? What's your pleasure?

MR. BAILEY: Mr. Chairman, I'm sorry, I was a little behind and Mr. Bright's out of the room. That last one that you voted on has two amendments, so you would want to include those in your vote.

MR. SHIVERS: Number eight?

MR. BRIGHT: Mr. Chairman and Members, number seven and number eight are actually the same issue. Is that where we are?

MR. YARBROUGH: We've done seven, the repeal. We need the amendments on the adoption.

MR. SHIVERS: We just adopted both of those. Do we need to do something else?

MR. BRIGHT: Yes, sir. On item number eight, we are asking you to adopt the new version of the happy hour rule. We are asking you to adopt it with two changes to the rule from the version that we published. The first change is in paragraph (d), and we ask that you change the reference paragraph (c)(9) to (c)(7).

MR. SHIVERS: Which does what? Is that just a change in designation?

MR. BRIGHT: Yes, sir. What paragraph (d) does is exempt private parties from the provisions of the happy hour rule. We think that (8), (9), (10) and (11) should still apply to those private parties - drinking contests, irresponsible behavior by the retailer, that kind of thing.

The second change that we would ask you to add to this rule when you adopt it is in paragraph (e)(3), which refers to the ability of the retailer to serve a bottle of wine to a single consumer, and we would ask that you add the phrase, "...during the sale or service of a meal to the consumer." That conforms that practice with Section 28.10(b) of our code and, as you may remember, that's the section that says in mixed beverage establishments you can't take the alcoholic beverages away with you unless it is a partially-consumed bottle of wine that has been served to you during the course of serving food.

MR. SHIVERS: With no objection from my colleagues, we will rescind our previous vote on number eight and approve 16 TAC §45.103 as amended. All in favor, say aye.

MS. MADDEN: Aye.

MR. STEEN: Aye.

MR. SHIVERS: Aye. Opposed? Does that clean us up, Mr. Bright?

MR. BRIGHT: Yes, sir, I believe it does.

MR. SHIVERS: Thank you very much.

Number six? Do we want to do the auditor today or do you want...

MS. MADDEN: I personally think this has been on the agenda many months, and we heard the presentations last month. We've read their qualifications. We had the staff do the appropriate reference checks, and I'm ready to make a motion if my colleagues will allow me to do that.

MR. SHIVERS: I will entertain a motion.

MS. MADDEN: Unless you want some more discussion?

MR. SHIVERS: I will entertain a motion and then we can talk about it.

MS. MADDEN: I recommend that we hire the firm of Jansen and Gregorczyk as our contract internal auditors, and that we would direct Mr. Bailey to work out a fair and just compensation package that is within the range of his proposal. The reason I do that is because, after hearing his presentation and reading his qualifications and his references, I think he is the most qualified.

MR. SHIVERS: Mr. Steen?

MR. STEEN: I will second.

MR. SHIVERS: Any discussion?

MR. STEEN: What does the staff think? Mr. Bailey, what is your opinion on this?

MR. BAILEY: Like I said to several people privately, I was very pleased with all the people who applied. The background checks that we did indicated all of these people were capable of doing the job and easy to work with. I think Ms. Madden's recommendation is excellent. We will contact him soon and start working out some details so that they can be available to you.

MR. SHIVERS: Ms. Hudson, so you have anything to add?

MS. HUDSON: No, sir.

MR. STEEN: Who was it, again, that checked the references on the staff?

MR. BAILEY: Charlie Kerr and Gene Bowman made those phone calls.

MR. STEEN: Was that Gene Bowman that provided the report?

MR. BAILEY: Yes, they did it together.

MR. STEEN: I thought that was very good work. I just want to say I appreciate it.

MR. SHIVERS: I'll be interested in watching our actual expenses on this compared to an internal auditor. I'm yet to be convinced we are going to save any money by going this route, but I think it's a worthy experiment.

MS. MADDEN: I do, too. I want to thank Mr. Steen for his recommendation of having reference checks, because I thought that was an important thing to do, and I appreciate your saying that at the last meeting. It helped me.

MR. SHIVERS: We all want to save money. If we can save money, we want to do it. Hopefully this will and give us the coverage we need.

MS. MADDEN: Time will tell.

MR. SHIVERS: With the cancellation clauses we have in this contract, I think we are well protected.

All in favor?

MS. MADDEN: Aye.

MR. STEEN: Aye.

MR. SHIVERS: Aye. Opposed?

I think we've had considerable public comments. I don't think we need any more unless somebody just feels the unbridled urge to speak to us today. No? Good.

Motion to adjourn?

MR. STEEN: So moved.

MR. SHIVERS: We are adjourned at three fifty-seven.