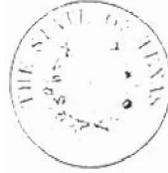


State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

September 27, 1999

Mr. Doyne Bailey, Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78711

HAND DELIVERY

RE: Docket No. 458-99-0900;RZZ, Inc. d/b/a Club R&R; TABC No. 582982

Dear Mr. Bailey:

Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. Copies of the Proposal for Decision are being sent to Gayle Gordon, counsel representing the Texas Alcoholic Beverage Commission, and to Don E. Walden, attorney for Respondent. For reasons discussed in the Proposal for Decision, I have recommended that the permits be canceled and the request to transfer the application to the 1324 Callaghan location should be denied.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon Supp. 1996), each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. Exceptions and replies must be filed according to the time limits specified in TABC rules. A copy of any exceptions, briefs on exceptions, or reply must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,

Sue Berkel
Administrative Law Judge

SB/es

Enclosures

cc: **Gayle Gordon, TABC, 5806 Mesa, Suite 160, Austin, Texas - VIA HAND DELIVERY**
Don E. Walden, 4408 Spicewood Springs Road, Ste. 304, Austin, TX 78759 - VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED NO. Z 332-923 704

Docketing, State Office of Administrative Hearings

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VIA CERTIFIED MAIL Z 332 923 710

DOCKET NO. 458-99-0900

TEXAS ALCOHOLIC BEVERAGE § BEFORE THE STATE OFFICE
COMMISSION, AND CULEBRA PARK, §
INGRAM HILLS, LOMA TERRACE, §
THUNDERBIRD HILLS, WESTERN §
PARK NEIGHBORHOOD §
ASSOCIATIONS, AND THE HOLY §
FAMILY CATHOLIC CHURCH, §
PROTESTANTS §
§
§
VS. § OF
§
RRZ INC. d/b/a CLUB R & R, PERMIT §
NOS. MB-262279 & LB-262280, §
BEXAR COUNTY, TEXAS § ADMINISTRATIVE HEARINGS
(TABC NO. 582982) §

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) and the Culebra Park Neighborhood Association, Thunderbird Hills Neighborhood Association, Ingram Hills Neighborhood Association, Loma Terrace Neighborhood Association, Western Park Neighborhood Association and the Holy Family Catholic Church, (hereinafter collectively called the Association) protest the transfer application of RRZ Inc. (RRZ) to transfer its permits to sell and serve alcohol from its old location at 306 E. Mitchell, San Antonio, Texas to its current location at 1324 Callaghan, San Antonio, Texas. In addition, TABC also seeks to cancel the permits. The Association and TABC protest RRZ's application because they allege that the place and manner in which Andy Vaquera, President of RRZ, conducts his business would be detrimental to the general welfare, health, peace, morals, and safety of the people in the community and the public sense of decency. This proposal finds that the permits should be canceled and the request to transfer the application to the 1324 Callaghan location should be denied.

I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

There was no challenge to notice or jurisdiction in this matter so those issues will be discussed only in the Findings of Fact and Conclusions of Law. The hearing began on July 28, 1999, continued onto July 29, 1999, and concluded on July 30, 1999, in the San Antonio office of the State Office of Administrative Hearings (SOAH) located at 1015 Jackson Keller, Suite 102B, San Antonio, Texas, 78213, with Administrative Law Judge (ALJ) Sue Berkel presiding. Gayle Gordon, TABC's General Counsel representing TABC, appeared along with TABC's representative Alfred Luna. Don Walden, representing RRZ,

appeared along with Andres Vaquera, President of RRZ. Lori Ann Erwin and Rosa Perez attended the hearing and represented the Association. The record remained open until August 18, 1999, for the receipt of written closing arguments.

II. INTRODUCTION

A. Overview of Case

Andres Vaquera, owns RRZ Inc., which does business as R & R. R & R was issued a mixed Beverage permit, no. MB262279 and a mixed beverage late hours permit, no. LB262280. R & R was located at 306 E. Mitchell in San Antonio Texas until December 28, 1998. During the latter part of 1998, the parking facility at the Mitchell location became insufficient to handle the crowds at R & R. In October of 1998, Mr. Vaquera entered into a five year lease with Garcia Properties to use a large building located at 1324 Callaghan Road for R & R. Mr. Vaquera picked this location because he wanted to stay on the south side of town and this strip center was the only area available with free parking. Mr. Vaquera did nothing to gage the neighborhood's reaction to the relocation of R & R. In November of 1998, Mr. Vaquera petitioned TABC to move the two mixed beverage permits to the 1324 Callaghan location. R & R has not yet opened for business at the 1324 Callaghan address due to this pending administrative action on R & R's application to transfer the permits to the 1324 Callaghan address. Mr. Vaquera also owns Tropical Productions Inc., which does business as Klub Tsunami. Klub Tsunami was issued mixed beverage permit MB433771 and mixed beverage late hours permit LB433772. There is some discussion below about Klub Tsunami because the problems which Klub Tsunami experienced are relevant to the ability of Andres Vaquera, the principal owner of both clubs, to manage R & R.

B. Legal Criteria

The burden of proof is on the party seeking the denial or cancelation of the license. TABC may deny an application to change the location of a permittee's place of business on any ground "for which an original application may be denied." TEX. ALCO. BEV. CODE ANN. (hereinafter referred to as "the Code") §11.08. An original application may be denied if "the place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency." §11.46 (a) (8) of the Code. In addition, TABC may cancel a permit if, after hearing, it is found that:

(7) the place or manner in which the permittee conducts his business warrants the cancellation or suspension of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. TEX. ALCO. BEV. CODE ANN. §11.61 (B) (7).

Case law provides some insight in applying the statutory criteria set out above. The fact that a large number of residents of an area object to an application for permits is not of itself sufficient reason to deny the application where an applicant is otherwise qualified. Tex. Alco. Bev. Com. V. Mikulenska, 510 S.W. 2d 616, 619 (Tex. App.-San Antonio, 1974, no writ). The location and surrounding area of a proposed bar are proper considerations in assessing whether to grant or deny a license. Helms v. Tex. Alco. Bev. Comm'n, 700 S. W. 2d 607 (Tex. App.- Corpus Christi 1985, no writ). Some unusual condition or situation must be shown to justify a finding that the place or manner in which an applicant may conduct business warrants refusal of a permit. Kermit Concerned Citizens Comm. v. Colonial Food Stores, Inc., 650 S. W. 2d 208, 210 (Tex. App.- El Paso 1983, no writ).

C. Public Comment

Pursuant to §5.435 of the Code, the hearing began with a public comment session. Daniel Ortiz, Administrative Director to San Antonio City Councilman Jose Jimenez, District 6, was the only member of the public to make comment. Mr. Ortiz commented that he has worked with the Neighborhood Associations and the business community for the last two and one half years in order to develop a better community. Towards that end, Councilman Jimenez's office conducted a survey to determine the preferred types of development in the community. The survey found that grocery stores, fast food restaurants and office operations were the most preferred businesses to locate in the neighborhood and that clubs which sold alcoholic beverages received no support from the community or from businesses in the area. Although the zoning laws would not prohibit the relocation of RRZ and it is lawful to sell alcohol in this area, Councilman Jimenez does oppose the transfer application of RRZ.

D. Stipulations

The parties entered into two stipulations. The parties stipulated that Culebra Park, Ingram Hills, Loma Terrace, Thunderbird Hills, Western Park Neighborhood Associations and the Holy Family Catholic Church are all parties called the Associations and will be represented by Lori Ann Erwin and Rosa Perez. Secondly, the parties stipulated that the Notice of Hearing and the First Amended Notice of Hearing were timely sent and received by all parties.

III. EVIDENCE PRESENTED AND DISCUSSION

A. The manner in which Andy Vaquera conducts its business warrants denial and cancellation

1. Evidence Presented

Mr. Vaquera has lived in San Antonio for the last 56 years and was a San Antonio police officer for 27 years. He had an excellent reputation as a police officer and numerous current members of the San Antonio police force testified as to his outstanding character. After retiring from the police force in January of 1996, Mr. Vaquera opened and managed two bars, R & R located on E. Mitchell Street and Klub Tsunami located on Fredericksburg Road in San Antonio. However, despite Mr. Vaquera's sterling reputation in the community, there was a great deal of testimony supporting the allegation that the manner in which Mr. Vaquera manages his clubs threatens the general welfare, health, peace, morals and safety of the people patronizing his establishments as well as those residing in neighboring communities.

On November 21, 1998, Carlos Herrera, his wife, Romona Herrera, his brother, Eddie Herrera, age 20, and some friends went to R & R. They danced and drank until closing time at 2:00 a.m. Joseph Torres was working as security at R & R that night. There are usually about 10 employees who work as security. Security forces or "bouncers" wear a distinctive dark colored shirt with the word "staff" printed on the shirt. Part of Mr. Torres' duties was to make sure that nobody left the club with any beverages. Carlos Herrera refused to give up his bottle of beer as he was leaving so Mr. Torres grabbed the bottle from him and pushed him out the door. Carlos collided with the group of patrons in front of him and they began pushing him and then kicking and punching him. A man then broke a beer bottle over Carlos' head and the number of people beating Carlos quickly increased. Eddie tried to help his brother get away from the mob which then began beating Eddie as well as Carlos. When Romona attempted to intervene on behalf of the brothers, she was choked and hit in the face by a man she identified as David Guzman, the floor manager at R & R. The brothers ran to their car in the parking lot but could not get into the vehicle. Carlos then hid under the car while Eddie was being choked at the front of the car. Carlos' friends and relatives then managed to get into the car which roared away with Eddie on the hood of the car. As the car left the parking lot, it ran over Carlos, killing him. Although there was testimony that several bouncers at R & R were observing the fight, nobody from R & R attempted to help the brothers or call the police.

There is some dispute about whether David Guzman, in fact, participated in the fight. Romona identified Mr. Guzman as the man that hit her and as one of the men hitting her husband but she also identified her assailant as a man who was between 5 feet 4 inches and 5 feet 8 inches. Although Joseph Torres testified that he observed David Guzman take off and hand him a bloodied security shirt that night, he also testified that Mr. Guzman is 6 feet 2 inches tall. Eddie Herrera did not believe that any of R & R's employees were involved in the fight, he felt that the patrons of R & R were the ones beating him and his brother. Sandra Cardenas observed a member of the security force come out of the club and watch the fight. She also saw him take off his security shirt but she did not observe him beat the brothers. Mr. Guzman, who had an outstanding felony warrant for possession of a controlled substance, did not testify and, in fact, disappeared shortly after this incident.

Officer Loyd Franklin, an abatement officer with the City of San Antonio, testified that he is responsible for checking establishments for code violations. He frequently handles calls at R & R which has a young (in their early 20s and 30s), Hispanic crowd. Officer Franklin testified that over the last two years, he has been to R & R numerous times for disturbances and he does not believe that the security force at the Club can control the fights. Officer Franklin, who is 6 feet 8 inches tall and weighs over 300 pounds, testified that he likes to break up fights which is why he makes a point to stop at R & R at closing time. Joseph Torres testified that he sees frequent minor fights at both R & R and Klub Tsunami.

However, several members of the San Antonio Police Department (SAPD) testified that they had patronized R & R and believed it was a safe club with a good reputation. They also testified that they had not witnessed any fights or violations of the law in R & R. All four of these officers were good friends of Andy Vaquera and had known him since their days in the SAPD together.

There was also evidence that the environment at Klub Tsunami is detrimental to the patrons of the club as well as to the surrounding community. On October 17, 1998, Detective Jesus Orta with the SAPD was dispatched to Klub Tsunami to investigate a complaint of minors consuming alcoholic beverages and intoxicated persons. Det. Orta observed young people drinking alcohol and noticed that some were on the verge of becoming intoxicated. Det. Orta approached Mr. Vaquera and questioned him about the complaints. Mr. Vaquera responded "If you go to any club at this time at night you'll get drunks...that's how I make my money."

On January 23, 1999, Shaun McDaniel arrived at Klub Tsunami at about 11:00 p.m. He and a friend were standing near a dance floor and observed a fight break out on the dance floor. Everyone was pushing and shoving. Mr. McDaniel was shoved but when he attempted to break up the fight a bouncer grabbed him around the neck and threw him to the ground. The bouncer, who was wearing a distinctive "staff" shirt, then picked Mr. McDaniel up by his shirt and pushed him out the door. Mr. McDaniel testified he had seen fights break out on four out of the six times he had been to Klub Tsunami. Mr. McDaniel felt that the way the security forces handled the fights worsened the situation at the club.

Brian Lawson, who had nothing to drink that night, accompanied Mr. McDaniel to Klub Tsunami. He witnessed a young man dancing on stage boxes who then jumped down and punched another man. After about three seconds, the bouncers came and grabbed Mr. McDaniel, who had not been involved in the fight. Mr. Lawson tapped the bouncer on the shoulder and told him that his friend was not one of the patrons who were fighting. Another bouncer then put Mr. Lawson in a choke hold which caused Mr. Lawson to pass out. The next thing Mr. Lawson remembers is that he woke up sprawled outside by the

club doors. Mr. Lawson's tendons were stretched so hard that they almost snapped and he also sustained a torn rotator cup.

Agent Alfred Luna testified on behalf of TABC. Agent Luna arrived at Klub Tsunami right after Mr. McDaniel was ejected from the bar. Agent Luna testified that he was approached by Mr. McDaniel in the parking lot and that there were several fights which had broken out near the door of the club. There were several police officers present who were attempting to control the scene. As Agent Luna was attempting to locate the bouncer that assaulted Mr. McDaniel, he was interrupted by another bouncer who said that a girl was getting raped near the bar and the security forces were not able to control the situation and needed assistance. Agent Luna found a girl with her skirt hiked up in front of a male who was mimicking sexual intercourse while four other males looked on. As soon as the four onlookers saw Agent Luna, they dispersed into the crowd but Agent Luna did take the girl and the remaining male outside to investigate the possible sexual assault. The club was very crowded and chaotic with several fights occurring outside. Agent Luna spoke with the head of security at Klub Tsunami in an attempt to locate the bouncer that assaulted Mr. McDaniel but felt that the staff at Klub Tsunami was not cooperating with his investigation.

Officer Edwin Turner with the SAPD testified that he had been patrolling the area around Klub Tsunami for the last three years. He receives a large number of calls to Klub Tsunami for a variety of offenses: minors in possession of alcohol, sex in the club, drinking in the parking lot, and assaults by bouncers. He has attempted to locate the bouncers who committed the assaults but the victims have difficulty remembering which bouncer hit them and the bouncers hide in the club. He is called to the club just about every weekend. Many times, Officer Turner has encountered upset customers who are ready to fight because they are intoxicated and furious about being thrown out of the bar. During the Christmas season Officer Turner was working undercover and on several occasions watched bartenders at Klub Tsunami serve patrons who were already intoxicated. When they left the bar, they were arrested for public intoxication.

Officer Turner testified that on Friday nights, the club is usually full of gang members and that Sundays are "Teen Night" with lots of young girls dressed in skimpy outfits. Teen Night was a big problem for the police because although the club was not selling alcohol to the teens, there are lots of fights and numerous minor in possession of alcohol and curfew violations. The club pushes the teens out the door at midnight and the community then has a large number of kids milling around the parking lot, many of whom are related to gangs in the area. Officer Turner testified that the reputation of Klub Tsunami is bad in the police community.

On October 24, 1998, Detective Troy Marek with S.A.P.D. was dispatched to Klub Tsunami to investigate a complaint that the club was a public nuisance. The police department had complained that their patrol units had to spend so much time at that bar

that they could not conduct their regular patrol duties. When Det. Marek arrived at the bar, he arrested an intoxicated person and Sgt. Roland Ortiz arrested the bartender who served an alcoholic beverage to the intoxicated person. Det. Marek then conducted an inspection of the bar. He approached Mr. Vaquera and told him that the city permits must be displayed. Mr. Vaquera then shouted obscenities at the Detective, ran outside the office and shouted the obscenities again, and then ran back inside the office and shouted the same obscenities at Det. Marek. There were many young people in the club who observed the owner yelling at the police. This conduct caused a breach of the peace and Det. Marek handcuffed Mr. Vaquera and ticketed him for disorderly conduct. The Class C misdemeanor was dismissed after Mr. Vaquera successfully completed probation and paid a \$120.00 fine.

Joseph Torres testified that his three years of martial arts experience qualified him to have his position in security. Mr. Torres conceded that part of his job is to try to calm down all of the intoxicated patrons at the club. Mr. Vaquera made David Guzman a floor manager because he was the tallest of all of the bouncers. Mr. Guzman got his job because of his unique tallness among Hispanics and his good reputation. Mr. Vaquera generally looks at a person's size and their reputation when deciding whether to hire an applicant as a bouncer. He does not offer any training for his security forces. Mr. Vaquera testified that he feels bad about the patrons fighting in his club and about Mr. Herrera's death, but explained that people are hard to control and that every profession has its downfalls. After the fatality at R & R, Mr. Vaquera hired a sergeant from PSR Security as his manager. However, he does use taxicabs to send home intoxicated drivers and the club will pay the cab fare, in fact, Mr. Vaquera testified as to one intoxicated woman that the club sent home in a cab. In addition, all of the servers at Mr. Vaquera's clubs are server trained. Mr. Vaquera has never seen a fight in his clubs although he is briefed about them when they occur.

2. Analysis

The evidence suggests that Mr. Vaquera is in the lucrative business of selling alcohol and that while he is concerned about making profits, he appears to be inattentive to the welfare of his club patrons and effect his business has on the surrounding community. **This attitude, which is reflected in the way he runs his business, is demonstrated, in part, by his admissions that there are "drunks" in any club late at night and that selling liquor is how he makes his money. It is also demonstrated by his failure to take any real corrective measures after the death of Carlos Herrera and by his testimony that while he is sorry about Mr. Herrera's death, every profession has its downfalls and people are hard to control. Mr. Vaquera's statements suggest a management philosophy that seems indifferent to the problems his clubs cause the surrounding communities by selling alcohol to young intoxicated people.**

This management philosophy has created a situation with a lot of young people in

Mr. Vaquera's bars spending a lot of money drinking a lot of alcohol. As these young people become intoxicated, many times they become unruly and aggressive. When the bar patrons become too unruly in the club they are ejected by the bouncers thus removing this dangerous element out of the club and onto the parking lot and the surrounding community. This creates many problems. The intoxicated patrons that were ejected continue to fight outside the club or they get into their cars and attempt to drive home. On Sunday nights roving gangs of teenagers roam the parking lot and the surrounding neighborhood. Not only are the patrons in danger, but the surrounding community is also put in danger by the patrons who might involve bystanders in their fight or have a car accident. Although Mr. Vaquera testified to a program that will send intoxicated patrons home in a cab paid for by the club, this apparently was done for only one intoxicated military woman. There was no evidence that the clubs sent any of the other intoxicated individuals home in a cab.

Mr. Vaquera's management philosophy is also reflected by the lack of training for the bouncers and the apparent acceptance of the way the bouncers handle intoxicated patrons at the club. If an intoxicated patron behaves in a way that creates a danger to himself or others by fighting in the club, the bouncers throw the intoxicated person out. They don't call him a cab or call the police or take steps to resolve the situation peacefully. The bouncers are apparently hired based on their size and their ability to fight as demonstrated by Mr. Guzman's size and Mr. Torres martial arts experience. The evidence also indicates that the bouncers' actions tend to aggravate the situation by handling people very roughly while ejecting them from the club and by getting involved in or by instigating the fights themselves.

Although there was some opinion testimony by Mr. Vaquera's friends that R & R was a safe club, those opinions do not negate the testimony of other witnesses who have observed violations of the law and fights in the club. In addition, although Mr. Vaquera testified that he instructed his bouncers to call the police when there are fights, those instructions are apparently not being carried out. As the owner and operator of these clubs, it is Mr. Vaquera's responsibility to make sure that his instructions are carried out. His failure to make sure that the bouncers call the police in the event of a disturbance at the club further evidence his indifferent and inattentive management style.

The manner in which an applicant has operated other licensed establishments may be considered as evidence of the way he is likely to run the establishment for which he is applying for a license. Tracker v. TABC, 474 S.W.2d 258 (Tex. Civ. App.-San Antonio, 1971, no writ). The manner in which Mr. Vaquera has operated R & R and Klub Tsunami has endangered the general welfare, health, peace, morals, and safety of the people patronizing those bars as well as the surrounding communities. There is no reason to think that Mr. Vaquera would change his management philosophy and, in fact, there was no evidence that Mr. Vaquera would do anything different if his application to transfer his permits is approved. Therefore the manner in which Mr. Vaquera would likely run R & R

if his applications to transfer are approved would endanger the general welfare, health, peace, morals, and safety of the people patronizing the bar as well as the surrounding communities.

B. The place where RRZ proposes to conduct its business warrants denial and cancellation

1. Evidence Presented

RRZ proposes to open up R & R, which would eventually hold 600 people, in a strip center located on the corner of Callaghan and Culebra in San Antonio, Texas. The strip center includes a ballroom which holds bingo sessions and quineceneras¹, a hair salon, food mart, and an office supplies store. A Jack in the Box, Burger Time, and a half way house are located across the street from the strip center. A large park is near the proposed site. Two large senior citizen apartment complexes are being built nearby on the corner of Callaghan and Ingram. These two buildings will house 200 - 300 low income senior citizens. The proposed location is in the middle of a highly populated residential area and is near an elementary, middle, and senior high school.

The character of the surrounding neighborhoods has changed in the last several years. At one time, the area was populated predominately by older residents but now young families and senior citizens primarily live in the area. Three years ago the area had been plagued by drive by shootings, stabbings, gangs, drugs, robberies and other crime. Through the efforts of the neighborhoods and the neighborhood associations, this area has been turned around. The area now has murals where graffiti was before. The Bexar County District Attorney's office was successful in obtaining a gang injunction prohibiting gang members from associating thereby creating a safety zone in the neighborhoods. As a result, many gang members have moved out of the neighborhood. All of the representatives of the neighborhood associations which made up the Associations and several of the officers who testified voiced their concern that allowing a large bar back into the area would be detrimental to the neighborhoods.

The representatives of the neighborhood associations testified that the proposed location is on a main artery which many of the residents in the surrounding neighborhoods would have to use in order to get to a grocery store, video store, gas station, or their place of employment. In addition, the close proximity of the ballroom and hair salon, which are in the same strip center as R & R, alarmed the representatives of the Association. They expressed concern for the safety of the senior citizens who used the ballroom for bingo and the families who used the ballroom for weddings and quineceneras. Many of these

¹ A quinecenera is a gathering where eligible young ladies are presented to the community for marriage. Quineceneras are derived from Spanish custom.

events would be held at night and patrons of R & R would share the same parking lot with those individuals using the ballroom. The likelihood of intoxicated drivers leaving R & R and driving through the surrounding neighborhoods also concerned the representatives of the Association. Rosa Perez, President of the Culebra Park Neighborhood Association, testified that the southern part of Callaghan Road has a dangerous curve which has resulted in numerous accidents and fatalities.

The proposed site on Callaghan was previously used as a bar called Texas Jams which was closed, in part, because several shootings took place there. A 17 year old had been shot and killed for doing graffiti at that location and a businessman, Eddie Garcia, was shot and killed by a patron of Texas Jams in an office located next to Texas Jams. Lori Erwin, President of Thunderbird Hills Neighborhood Association testified that Texas Jams created a nightmare for the surrounding neighborhoods and that one person was hit by a car and dragged down the road and killed. Ms. Perez testified that she would see a lot of police at Texas Jams and residents would try to avoid the area around it.

2. Analysis

The location and surrounding area of a proposed bar are proper considerations in assessing whether to grant or deny a license. Helms v. Tex. Alco. Bev. Comm'n, 700 S.W.2d 607, 611 (Tex. App.-Corpus Christi 1985, no writ). The fact that the bar will be noisy and disrupt the sleep of neighboring residents may be grounds for denial of an application. See, In re Simonton Gin, Inc., 616 S.W.2d 274, 276 (Tex. Civ. App.-Houston(1st) 1981, no writ). RRZ's application to transfer should be denied and RRZ's permits should be canceled because allowing R & R to open will have a negative effect on crime and traffic in the neighborhoods and will endanger the surrounding community's general welfare. Both of the Clubs owned by Mr. Vaquera attracted a large number of individuals who would become intoxicated and violent at the clubs. The residents in the neighborhoods represented by the Associations rightfully fear for their own safety as well as the safety of their children. This fear alters their behavior as illustrated by the testimony of the representatives of the Associations when they stated that they tried to avoid Texas Jam and would, in all likelihood, avoid the area of R & R if it was allowed to open.

Mr. Vaquera testified that the current occupancy of R & R is 200 but that after his expansion plans are completed the occupancy would jump to 600. This large number of patrons would dramatically increase the traffic in the surrounding neighborhoods. Causing an increase in traffic may be sufficient grounds for denying a permit. Dienst v. Tex. Alco. Bev. Comm'n, 536 S.W.2d 667 (Tex. Civ. App.-Corpus Christi 1976, no writ). Bavarian Properties, Inc. V. Tex. Alco. Bev. Comm'n 870 S.W. 2d 686 (Tex. App.-Ft.Worth 1994, no writ) involved the denial of a permit on a public safety issue. In upholding the denial, the court stated the Code should be liberally construed to accomplish the protection of the safety of the people. Even the location of a restaurant on a dangerous curve on a highway may be sufficient evidence to deny a license because it creates an increased safety

hazard. Tex. Alco. Bev. Comm'n v. Sierra, 784 S.W.2d 359 (Tex. 1990). Ms. Perez testified as to a dangerous curve on Callaghan Road near the proposed site which had resulted in traffic accidents.

In addition, this increase in traffic due to the number of patrons at R & R would endanger the surrounding neighborhoods because of the likely increase in the number of intoxicated drivers who would be driving after patronizing R & R. R & R is not a restaurant, it would serve primarily alcoholic beverages. Both Klub Tsunami and R & R have demonstrated histories of large numbers of young people patronizing the clubs and then becoming drunk, unruly, and violent. This clearly constitutes a threat to the general welfare, health, peace, morals, and safety of the people in the surrounding community.

It is also important to address the fragile nature of this community. It is one populated by a large number of children and elderly people, two groups of people least able to protect themselves from crime and violence. Children must walk by the proposed site for R & R to go to the park, the fast food restaurants and schools. In addition, a bar is an unwanted temptation for the residents of the half way house who are expected to live a clean and straight life so as to avoid returning to jail. A tremendous amount of energy and effort has been spent by members of this community to create a drug free, crime free, and gang free environment in which to raise their families. Allowing a large bar which has a history of violence to come into this neighborhood would be a tremendous setback for this community and would be inconsistent with the general direction in which this community wants to go.

The picture painted by the testimony is one of a bar which attracts young people who drink heavily. At closing time the patrons are thrust out the door with no regard as to whether they are able to make it home or whether they will be a threat to others. Numerous fights break out between patrons inside and outside of the Club. Because intoxicated individuals assaulting others endanger the public, any element that creates or encourages this type of behavior endangers the public. Clubs that have been owned and managed by Mr. Vaquera have created and encouraged this type of behavior and thus endanger the surrounding communities.

C. Recommendation

TABC and the Association proved by a preponderance of the evidence that the manner in which Andy Vaquera conducts his business warrants denial of the application to transfer as well as cancellation of the two mixed beverage permits. In addition, TABC and the Association proved by a preponderance of the evidence that the place where RRZ proposes to conduct its business warrants denial and cancellation. Therefore, the ALJ recommends that the application to transfer mixed beverage permit no. MB262279, and mixed beverage late hours permit no. LB262280, to the 1324 Callaghan location be denied and that the two permits be canceled.

IV. PROPOSED FINDINGS OF FACT

1. RRZ Inc. (RRZ) d/b/a R & R Bar and Grill (R & R) holds mixed beverage permit no. MB262279 and mixed beverage late hours permit no. LB262280, issued by the Texas Alcoholic Beverage Commission (TABC) for a club which was located at 306 E. Mitchell, San Antonio, Texas (R & R).
2. On October 21, 1998, Andy Vaquera, President of RRZ Inc. d/b/a R & R Bar and Grill filed an application to transfer his mixed beverage and late hours mixed beverage permits to 1324 Callaghan Road, San Antonio, Texas with TABC.
3. On May 25, 1999, a Cuelbra Park Neighborhood Association, Ingram Hills Neighborhood Association, Loma Terrace Neighborhood Association, Thunderbird Hills Neighborhood Association, Western Park Neighborhood Association and the Holy Family Catholic Church, which were aligned as one party called the Associations, filed a protest to RRZ's application to transfer his permits to the 1324 Callaghan Road location.
4. On July 8, 1999, TABC timely sent notice of the hearing by certified mail, return receipt requested, and facsimile to RRZ and by regular mail and facsimile to the Association. The notice of hearing and the amended notice of hearing timely informed the parties of the issues to be decided, the right to appear and be represented by counsel, the date and place of the hearing, and the statutes and rules involved.
5. The hearing was held on July 28, 29, and 30, 1999, at the State Office of Administrative Hearings (SOAH) located at 1015 Jackson Keller, Suite 102B, San Antonio, Texas with Administrative Law Judge (ALJ) Sue Berkel presiding. Gayle Gordon, TABC's General Counsel representing TABC, appeared along with TABC's representative Alfred Luna. Don Walden, representing RRZ, appeared along with Andres Vaquera, President of RRZ. Lori Ann Erwin and Rosa Perez attended the hearing and represented the Association. The record remained open until August 18, 1999, for the receipt of written closing arguments.

Manner in which Business is Conducted

6. On November 21, 1998, at about 2:00 a.m. Joseph Torres, a bouncer working at R & R, pushed Carlos Herrera, a patron of R & R, out the door of R & R causing Mr. Herrera to collide with other patrons leaving the R & R.
7. The patrons began to beat Carlos Herrera as well as Eddie and Romona Herrera, the brother and wife of Carlos, when Eddie and Romona intervened.

8. David Guzman, the floor manager on duty at R & R that night, participated in the fight by striking and choking Romona Herrera.
9. Eddie and Carlos Herrera ran to their car but could not get into the locked vehicle. Carlos hid under the car while Eddie was beaten in front of the car.
10. When Eddie's friends gained access to the car, they drove off running over and killing Carlos in the parking lot.
11. At no time during the altercation did any employee of R & R attempt to help the Herreras or attempt to call the police.
12. The bouncers at R & R and Klub Tsunami receive no job training and are hired primarily based on their large size and their ability to fight.
13. The assaults on Eddie, Carlos and Romona Herrera were breaches of the peace which were not beyond the control of R & R and which resulted, in part, from RRZ's failure to adequately supervise and train two employees, Joseph Torres and David Guzman.
14. R & R caters to a young Hispanic crowd and fights break out at R & R almost every weekend.
15. Andy Vaquera is also the President of Tropical Productions Inc. d/b/a Klub Tsunami located at 7959 Fredericksburg Road in San Antonio, Texas.
16. On October 17, 1998, Detective Jesus Orta was dispatched to Klub Tsunami to investigate a complaint of minors consuming alcoholic beverages and intoxicated persons. When Det. Orta attempted to speak to Mr. Vaquera about the alleged offenses Mr. Vaquera responded "you can go to any club at this time at night and get a drunk..that's how I make my money."
17. On October 24, 1998, Detective Troy Marek was dispatched to Klub Tsunami to investigate a complaint that the club was a public nuisance because the patrol officers spent so much time there that they were unable to attend to their regular patrol duties.
18. When Det. Marek arrived at Klub Tsunami, he arrested an intoxicated patron at the bar and Sgt. Roland Ortiz arrested the bartender at Klub Tsunami who served the intoxicated patron an alcoholic beverage.
19. When Det. Marek informed Mr. Vaquera that he must display all of his city permits, Mr. Vaquera shouted obscenities at Det. Marek on three separate occasions. Some of the young people in Club Tsunami observed Mr. Vaquera shout obscenities at Det. Marek

which caused a breach of the peace.

20. Det. Marek handcuffed Mr. Vaquera and issued him a ticket for disorderly conduct to which was dismissed after Mr. Vaquera completed his probation and paid a \$120.00 fine.

21. On January 23, 1999, Shaun McDaniel attempted to break up a fight which had erupted at Klub Tsunami, but he was grabbed by the neck, thrown to the ground and forcibly ejected from Klub Tsunami by a bouncer.

22. Brian Lawson, who accompanied Mr. McDaniel to Klub Tsunami on January 23, 1999, attempted to inform the bouncer assaulting Mr. McDaniel that Mr. McDaniel was not involved in the fight but the bouncer put a choke hold on him, which tore his rotator cap and stretched his tendons . Mr. Lawson passed out while in the choke hold and the bouncer then forcibly threw him out of the club.

23. On January 23, 1999, TABC Agent Alfred Luna arrived at Klub Tsunami and observed several fights erupting outside of the bar. Mr. McDaniel complained about the bouncer's behavior to Agent Luna who then attempted to locate the bouncers; he was not able to locate the bouncers who assaulted Mr. McDaniel because the staff at Klub Tsunami was not cooperative and because his investigation was interrupted by a possible sexual assault inside the club.

24. San Antonio Police Department Officer Edwin Turner has been dispatched to Klub Tsunami almost every weekend for the last three years to handle various complaints including minors in possession of alcohol, sex in the club, drinking in the parking lot, and assaults by bouncers. He has been unable to identify the bouncers who committed the assaults because they hid in the club and the victims have difficulty identifying who committed the assaults.

25. During the Christmas season, Officer Turner was part of a special undercover task force and observed bartenders at Klub Tsunami serve patrons who were already intoxicated.

26. Friday nights were "Teen Night" at Klub Tsunami and although the club did not sell alcohol to the teenagers, there were many fights and many complaints resulting in minor in possession of alcohol and curfew violations. At midnight when the club forced the teenagers out, large numbers of teens, many of whom belong to gangs, remained in the surrounding community.

27. Klub Tsunami has a bad reputation among the police community.

28. Although Mr. Vaquera instructed his employees to call the police when a

disturbance breaks out at the club, those instructions are not carried out by the bouncers, who choose instead to roughly eject any patrons causing problems.

29. Mr. Vaquera has failed to adequately train and supervise his staff at R & R and Klub Tsunami.

Place where RRZ Proposes to Conduct Business

30. The proposed location for R & R is at 1324 Callaghan Road in a strip center which includes a hair salon, food mart, office supplies store and a ballroom where bingo, weddings and quineceneras are held. All of these businesses share a parking lot.

31. The proposed location is across the street from a Burger Time, Jack in the Box, and half way house and is near a large senior citizen apartment complex, a park as well as an elementary school, a middle school and a senior high school.

32. There is a dangerous curve on Callaghan Road which is near the proposed site and which has been the scene of numerous traffic accidents.

33. Residents of the neighborhoods surrounding 1324 Callaghan are primarily of senior citizens and families with children.

34. Three years ago the neighborhoods making up the Associations were plagued with gang violence and crime, however, due to the efforts of the neighborhood associations and the District Attorney's Office obtaining a gang injunction the amount of crime and fear in the neighborhoods have reduced significantly.

35. 1324 Callaghan is on a main artery which many of the residents in the surrounding neighborhoods would have to use in order to get to a grocery store, video store, gas station, or place of employment.

36. "Texas Jams", a bar, previously located at 1324 Callaghan, was closed, in part, because several shootings took place there. The disturbances at Texas Jams created problems in the surrounding community and residents avoided the area.

37. R & R does not fit in with the highly residential area surrounding 1324 Callaghan Road.

38. The neighborhoods surrounding R & R at 306 East Mitchell as well as Klub Tsunami were endangered by the club patrons.

39. The residents of the neighborhoods represented by the Associations, as well as persons who would attend weddings, bingo games and quineceneras at the ballroom,

would be endangered if Mr. Vaquera is allowed to open up R & R at the 1324 Callaghan Road location.

40. R & R, which has a current capacity of 200 and an expected capacity of 600, would increase the traffic in the surrounding areas.

41. Mr. Vaquera signed a lease on the 1324 Callaghan property without attempting to gage the reaction of the surrounding community.

42. The proposed location for R & R would adversely impact the residents of the neighborhoods making up the Association.

PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter, pursuant to the TEX. ALCO. BEV. CODE ANN. §11.46.

2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon's 1999).

3. Proper and timely notice of the hearing was effected upon the parties, pursuant to TEX. GOV'T CODE ANN. ch. 2001 (Vernon's 1999) and TEX. ALCO. BEV. CODE ANN. §11.63.

4. TEX. ALCO. BEV. CODE ANN. ch. 32 allowed RRZ Inc. d/b/a R & R to file an application to transfer his mixed beverage late hours permit, no. LB262280 and its mixed beverage permit, no. MB262279 to a new location at 1324 Callaghan Road, San Antonio, Texas.

5. TEX. ALCO. BEV. CODE ANN. §11.41 allowed the Associations to file a protest to the application.

6. The Texas Alcoholic Beverage Commission may deny an application to transfer a club's permits and may cancel a club's permits if it has reasonable grounds to believe that the place or manner in which the applicant may conduct his business warrants the refusal based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. TEX. ALCO. BEV. CODE ANN. §§11.08, 11.46, and 11.61.

7. The place and manner in which Andy Vaquera may conduct its business at the 1324 Callaghan address warrants the refusal of the application to transfer based on the general

welfare, health, peace, morals and safety of the people and on the public sense of decency. TEX. ALCO. BEV. CODE ANN. §§11.08 and 11.46.

8. The place and manner in which Andy Vaquera has conducted his business in the past warrants the refusal of the application to transfer and the cancellation of the current permits based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. TEX. ALCO. BEV. CODE ANN. §§11.61, 11.46 and 11.08

9. Based on the foregoing Findings of Fact and Conclusions of Law, the application of RRZ Inc. to transfer its permits should be denied and its permits should be canceled.

Signed this 27th day of September, 1999.



Sue Berkel
Administrative Law Judge