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DOCKET NO. 614350

IN RE URBAN LLC	§	BEFORE THE
D/B/A REBAR	§	
PERMIT/LICENSE NOS. MB525561,	§	
LB525562	§	TEXAS ALCOHOLIC
	§	
BEXAR COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-0036)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 6th day of April 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge John H. Beeler. The hearing convened on December 13, 2005 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on March 6, 2006. This Proposal For Decision (attached hereto as Exhibit "A"), was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Transcripts, and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's renewal for the above-referenced permits and licenses be GRANTED.

This Order will become final and enforceable on April 27, 2006 unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all interested parties, by facsimile or U.S. Mail, as indicated below.

SIGNED this 6 day of April 2006.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

CG/bc

The Honorable John H. Beeler, AIJ
State Office of Administrative Hearings
VIA FAX (512) 475-4994

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URBAN LLC
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RESPONDENT
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VIA CERTIFIED MAIL/RRR NO. 7001 2510 0000 7274 1898

PROTESTANTS:

John M. Wilson
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San Antonio, Texas 78209
Via Regular Mail

Theodore R. Freeman
8123 Flamingo Dr.
San Antonio, Texas 78209
Via Regular Mail

Debbie Woelke
1903 Flamingo Dr.
San Antonio, Texas 78209
Via Regular Mail

Robin & Edward DeWeise III
1910 Flamingo Dr.
San Antonio, Texas 78209
Via Regular Mail

Jill Rigs
1914 Flamingo Dr.
San Antonio, Texas 78209
Via Regular Mail

Sally Van de Putte
1918 Flamingo Dr.
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Edward H. Jensen
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Christopher Gee
ATTORNEY FOR PETITIONER
TABC Legal Division

Licensing Division

DOCKET NO. 458-06-0036

TEXAS ALCOHOLIC BEVERAGE
COMMISSION, ET AL,
Protestants

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BEFORE THE STATE OFFICE

V.

OF

URBAN LLC, D/B/A REBAR,
Applicant
BEXAR COUNTY, TEXAS
TABC NO. 614350

ADMINISTRATIVE HEARINGS

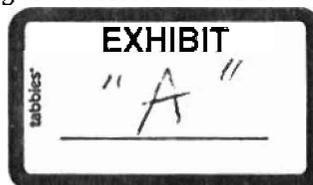
PROPOSAL FOR DECISION

Urban LLC, D/B/A Rebar (Applicant) filed renewal application with the Texas Alcoholic Beverage Commission (Commission or TABC) for Mixed Beverage Permit No. MB-525561 and Mixed Beverage Late Hours Permit LB-525562 for the premises located at 8134 Broadway in San Antonio, Bexar County, Texas. TABC protested the application and asserted that the permits should be denied based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. Specifically, Protestants allege that the premises may contribute to increased criminal activity and increased drinking problems such as driving while intoxicated and public intoxication, and has been subject to a large number of calls for service from the San Antonio Police Department.¹ The Administrative Law Judge (ALJ) recommends that the Commission grant Applicant the renewal permits.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

No contested issues of notice, jurisdiction, or venue were raised in this proceeding. Therefore, these matters are set out in the findings of fact and conclusions of law without further discussion here.

¹TABC was joined in the protest by several area residents. The residents, however, participated in the hearing only by giving public comment and testifying as witnesses for TABC.



On December 13, 2005, a public hearing was held before John H. Beeler, ALJ, in San Antonio, Bexar County, Texas. Protestants were represented by Christopher Gee, TABC attorney. Applicant was represented by attorney Raul V. Trevino. Evidence was received on December 13, and December 22, 2005. The record was left open through January 4, 2006, to allow the parties to file written closing arguments.

II. LEGAL STANDARDS AND APPLICABLE LAW

The Commission or Administrator may refuse to renew a permit if it has reasonable grounds to believe that the place or manner in which the applicant may conduct his business warrants the refusal based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8).

III. EVIDENCE

A. Protestants' Evidence

Protestants offered public comment and the testimony of several witnesses. All issues of concern discussed in the public comment portion of the hearing were repeated in the evidentiary portion. The testimony from the evidentiary portion of the hearing is summarized as follows:

John Wilson

Mr. Wilson lives about one hundred feet from Rebar on Flamingo Street. Cars regularly park in front of his home at night and noise from live music is disruptive in the evening and during the hours he tries to sleep. He has found beer bottles in his yard and somebody stole his bird bath. There are several other bars in area. He cannot play with his children out in front of his house because of the traffic.

Robin DeWees

Ms. DeWees lives on Flamingo Street near Rebar and is concerned about the type of clientele attracted by Rebar. She is also bothered by the noise from the bar, parking along the street in front of her house, trash, and people urinating in her front yard.

Jill Ripps

Ms. Ripps lives on Flamingo Street near Rebar and is concerned because three bars are in business at the end of her street and others are in the area. Broken windshields and noise are her biggest concerns.

Officer Nathan Sandoval

Officer Sandoval works as a police officer for the San Antonio Police Department and is familiar with Rebar. He has responded to calls at Rebar involving intoxicated individuals and parking problems. Additional parking spaces would alleviate some of the problems.

Officer David Bierman

Officer Bierman works as a police officer for the San Antonio Police Department and reviewed police reports concerning the Rebar location for the last year. His review revealed that there were 23 calls to the location during that time.

Officer Bornhauser

Officer Bornhauser works as a police officer for the San Antonio Police Department and responded to one call at Rebar in a backup capacity.

Officer Mike Field

Officer Field works as a police officer for the San Antonio Police Department, is familiar with Rebar, and has responded to calls from that location. On one occasion a fight was occurring

that involved several individuals. Also, he once heard loud music from the location but did not have a meter to determine whether the volume violated any law.

Detective Troy Marek

Detective Marek works as a vice squad officer for the San Antonio Police Department and went to Rebar to perform an inspection. While there he found several violations including failure to post a maximum capacity notice, improper storage of bottles, dirty bottles, and special drink price advertisements after 11:00 P.M..

Agent Mike Hodges

Agent Hodges is an enforcement agent for TACB and is familiar with Rebar. He has observed violations at the location and has met with the owner to suggest corrective measures. His experience with Rebar was in 2002.

Agent William Allen

Agent Allen is employed by TABC and has reviewed the police records concerning the location. He also conducted an investigation of Rebar because of the protest of the renewal of the permits. He noted that the bar had been cited for violations in the past, but that TABC had renewed it's permits after those violations. There have been numerous complaints about Rebar but he is not aware that the number is higher than for other licensed premises in Bexar County.

B. Applicant's Evidence and Contentions

Applicant offered the public comment and testimony of several witnesses. The public comment from residents and business owners of the neighborhood generally expressed that Rebar was an asset to the community and did not cause any significant problems. The testimony of witnesses is summarized as follows.

Crystal Long

Ms. Long is the administrator of a nursing home located on Flamingo Street and only one house from Rebar. She has never had any problems with Rebar. Parking and noise has not been a concern. None of the residents of her facility have complained about noise from the bar, and several of them frequent the bar. The proximity makes it possible for them to get to Rebar, and being there makes them feel that they are able to lead normal lives. These are elderly people and they feel safe at the bar.

Ms. Long has been the administrator at the nursing home since December of 2004, and has had many complaints from the same residents of the community who are now protesting the renewal of Rebar's permits. They have repeatedly blamed her staff for the problems of noise and trash that they are now attributing to Rebar. When she would mentioned to them that maybe the trash and noise was coming from Rebar they disagreed, saying that Rebar was not the problem.

There are many other bars, restaurants, and other businesses in the area. It is a busy commercial area. The protesting residents have tried to convince her to join the protest. She could not honestly join the protest because she is at her facility all hours of the day and had not observed the problems the Protestants have described.

Julia Zepeda

Ms. Zepeda lives on Flamingo Street and frequently walks around the neighborhood. She has lived in the neighborhood for nine years and has seen improvements to the area as a result of Rebar. Traffic has increased over the years due to Flamingo being a connecting street between two major roadways, not because of the bar.

Ms. Zamora has seen trash in the area but can not attribute it to Rebar. The owners of Rebar have been helpful in bettering the neighborhood. She has been to Rebar and has always felt comfortable and safe, even though she has been there as a single woman.

Donald Hardy

Mr. Hardy lives in the neighborhood and is the vice president of the neighborhood association. Prior to Rebar being opened, the building where Rebar now is was run down and in need of repair. There is a "scuzzy" bar in the immediate area, but it is not Rebar. He has been in Rebar twice and has always felt safe. There is traffic on Flamingo, but it is not attributable to Rebar. The area is much better as a result of the efforts of the owners of Rebar.

Paul Overstreet

Mr. Overstreet owns a business across Flamingo from Rebar. Prior to Rebar opening, the building was in disrepair and vagrants slept in and around it. Traffic was a problem well before Rebar opened. He has an empty area that Rebar could use for parking, and at present he allows Rebar to use his parking spaces at night. Criminal activity has actually gone down since Rebar opened.

Michael Martin

Mr. Martin is a musician who regularly performs at Rebar. The owners of Rebar follow the rules. On one occasion Edward Dewees approached him in the bar and told him that he guaranteed that he was going to get Rebar shut down.

Tom Potter

Mr. Potter is a manager of Rebar. The owners of Rebar have added parking to the premises to alleviate any past parking problems. Management always talks to performers to assure that noise will not be problem.

Edward Dewees used to frequent the bar but is no longer allowed on the premises. When told he was no longer welcomed, Mr. Dewees told him he would put Rebar out of business.

Greg Bickerstaff

Mr. Bickerstaff is a co-owner of Rebar. He tries to run an upscale business designed to attract professionals. Also, additional parking has been added and is now more than adequate for

the location. His employees clean up any trash around the bar and on Flamingo Street every evening and he contracts to have the same clean up done every morning, even though he does not believe the trash comes from Rebar. He has also hired a professional sound engineer to assure that noise is not a problem.

Lee Beekly

Mr. Beekly is a co-owner of Rebar. He tries to run a good business and address any problems neighbors make him aware of. He hires off duty police officers to provide security and has several on duty anytime the bar has live music. There are approximately 73 parking spaces available, which is sufficient for the capacity of the bar.

Edward DeWees has threatened him many times claiming that his main goal is to close the bar down. Mr. DeWees is not allowed in Rebar due to his behavior.

Rebar has not had a problem with TABC since a month after opening several years ago. Since that time, he has applied for and received other permits from TABC for other locations without incident.

IV. ANALYSIS

Protestants seek denial of Applicant's renewal permits on the basis of the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. Specifically, the Notice of Hearing in this matter alleges that the premises may contribute to increased criminal activity and increased drinking problems such as driving while intoxicated and public intoxication, and has been subject to a large number of calls for service from the San Antonio Police Department.

Rebar is located on a busy commercial street and is one of several alcohol related businesses in the area. While it may be true that traffic is heavy in this area, and there is a degree of trash and noise that could be a nuisance to residents of the adjoining neighborhood, no evidence was offered to show that the problems were the fault of Rebar. In addition, "noise" and "trash" were not included in the specific allegations Protestants alleged in the Notice of Hearing.

To prevail at the hearing, Protestants needed to show, “increased criminal activity and increased drinking problems” were occurring because of Rebar. Even assuming that the trash was the result of criminal littering, no connection to Rebar was shown. Testimony was offered concerning parking along Flamingo Street, but everyone seemed to agree that this was not illegal activity. The only issue left is whether Rebar “has been subject to a large number of calls for service from the San Antonio Police Department.” TABC agent William Allen testified for Protestants and stated that he had reviewed the police records for the location and could not state that the number of police calls to Rebar was higher than for other licensed premises in Bexar county.

Based on the above, the ALJ concludes that the allegations, as set out in the Notice of Hearing, were not proven

V. RECOMMENDATION

The ALJ recommends that Applicant’s renewal application for the permits be granted.

VI. FINDINGS OF FACT

1. Urban LLC, D/B/A Rebar (Applicant) filed an renewal application with the Texas Alcoholic Beverage Commission (Commission) for a Mixed Beverage Permit and Mixed Beverage Permit Late Hours permit for the premises located at 8134 Broadway in San Antonio, Bexar County, Texas.
2. The Texas Alcoholic Beverage Commission, joined by some residents of the area, protested the application asserting that the application should be denied based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency: specifically that the premises may contribute to increased criminal activity and increased drinking problems such as driving while intoxicated and public intoxication, and has been subject to a large number of calls for service from the San Antonio Police Department.
3. A Notice of Hearing dated October 6, 2005, was issued by Commission Staff notifying the parties that a hearing would be held on the application and informing the parties of the time, place, and nature of the hearing.
4. On December 13 and 22, 2004, a public hearing was held before Administrative Law Judge John H. Beeler in San Antonio, Texas. Staff appeared at the hearing, and was represented

by Christopher Gee, attorney. Applicant was represented by Raul V. Trevino. Evidence was received and the record remained open through January 4, 2006 for the filing of written closing arguments.

5. Rebar is located on a busy commercial street and is one of several alcohol related businesses in the area.
6. There was no evidence that trash and noise problems in the neighborhood were the associated with Rebar.
7. There was no evidence that Rebar has been subject to a larger number of calls for service than other licensed premises in Bexar County.

VII. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5, §§ 6.01 and 11.46(a)(8).
2. The State Office of Administrative Hearings has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was effected on all parties pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE § 155.55.
4. Granting of the renewal application would not contribute to increased criminal activity and increased drinking problems such as driving while intoxicated and public intoxication.
5. Issuance of the renewal permits will not adversely affect the general welfare, peace, or morals of the people or violate the public sense of decency. TEX. ALCO. BEV. CODE ANN. §11.46(a)(8).

6. The renewal application for a Mixed Beverage Permit and Mixed Beverage Late Hours Permit for the premises located at 8134 Broadway in San Antonio, Bexar County, Texas, should be granted.

SIGNED March 6 , 2006.



JOHN H. BEELER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



March 6, 2006

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

HAND DELIVERY

RE: Docket No. 458-06-0036; Texas Alcoholic Beverage Commission, Et. Al., Protestants v. Urban LLC, d/b/a Rebar, Applicant, Bexar County, Texas TABC No. 614350

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in cursive script, appearing to read "John H. Beeler".

John H. Beeler
Administrative Law Judge

JHB/sb
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA HAND DELIVERY**
Christopher Gee, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA HAND DELIVERY
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731
VIA HAND DELIVERY
Raul V. Trevino, Attorney, 315 S. Main, San Antonio, Texas 78204 - **VIA REGULAR MAIL**