



Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein.

The modification to Conclusion of Law No. 1 corrects an error of law by removing citations to two sections of the Alcoholic Beverage Code that do not apply to this case.

**Conclusion of Law No. 1 is modified to read as follows:**

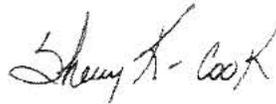
No. 1. The Commission has jurisdiction over this matter. Tex. Alco. Bev. Code chs. 1 and 5 and §§6.01 and 11.46.

All motions, requests for entry of Proposed Findings of Facts and Conclusions of Law, and any other requests for general or specific relief submitted by any party are denied, unless specifically adopted herein.

**IT IS THEREFORE ORDERED** that Respondent's application for renewal of Mixed Beverage Permit MB804044 and the accompanying Mixed Beverage Late Hours Permit is hereby **DENIED**.

This Order will become final and enforceable on the 13th day of January, 2015, unless a Motion for Rehearing is filed by the 12th day of January, 2015.

**SIGNED** this the 18th day of December, 2014, at Austin, Texas.



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Sherry K-Cook, Executive Director  
Texas Alcoholic Beverage Commission

**CERTIFICATE OF SERVICE**

I certify that the persons listed below were served with a copy of this Order in the manner indicated below on this the 18th day of December, 2014.



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Texas Alcoholic Beverage Commission

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SOAH DOCKET NUMBER 458-14-3616

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE STATE OFFICE
	§	
and	§	
	§	
LAS HACIENDAS TOWNHOMES PROPERTY OWNERS ASSOC., Protestant	§	
	§	
v.	§	OF
	§	
RENEWAL APPLICATION OF FOX HORN LLC d/b/a PHX, Respondent	§	
	§	
PERMIT NUMBER MB804844 BEXAR COUNTY, TEXAS (TABC CASE NUMBER 625005)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Fox Horn LLC, doing business as PHX, (Applicant), has applied to the Texas Alcoholic Beverage Commission (Commission) to renew a Mixed Beverage Permit for the premises located at 7959 Broadway, Suite 500, San Antonio, Texas. Las Haciendas Property Owners Association (Protestant) has filed a protest against renewal of the permit. The Administrative Law Judge (ALJ) recommends that renewal of the permit be denied.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Jurisdiction and notice were not contested. On July 11, 2014, a public hearing was convened at the hearing facility of the State Office of Administrative Hearings in San Antonio, Texas, before ALJ Donald B. Dailey. Protestant was represented by attorney Paul A. Fletcher. Applicant was represented by attorney Kenneth S. Saks. The Commission was represented by staff attorney David T. Duncan, Jr.

## II. APPLICABLE LAW

The Commission may refuse to issue a renewal permit if it has reasonable grounds to believe and finds that the place or manner in which the Applicant may conduct its business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and the public sense of decency. Tex. Alco. Bev. Code § 11.46(a)(8).

To deny a permit to a fully qualified applicant who proposes to operate a lawful business in a wet area and in compliance with all applicable zoning requirements, some unusual condition or situation must be shown so as to justify a finding that the place or manner in which the applicant may conduct his business warrants a refusal of a permit. *Texas Alcoholic Beverage Com'n. v. Twenty Wings, Ltd.*, 112 S.W.3d 647 (Tex. App. – Fort Worth 2003, pet. denied); *Texas Alcoholic Beverage Com'n. v. Mikulenska*, 510 S.W.2d 616 (Tex. App. – San Antonio 1974, no writ). In one case, the refusal to renew a permit was sustained where the substantial evidence indicated that the premises, among many other problems, generated excessive noise. *Garza v. Texas Alcoholic Beverage Com'n.*, 138 S.W.3d 609, 613 (Tex. App. – Houston [14<sup>th</sup> Dist.] 2004, no pet.).

## III. POSITIONS OF THE PARTIES<sup>1</sup>

### A. Protestant's Position

As Mr. Fletcher stated in his closing argument, "The club is too loud." Protestant makes several arguments to amplify this premise. Protestant's members are not persons of heightened sensibilities; they have not complained about other premises that have operating in the area without excessive noise. The decibel level of sound coming from PHX is above the level allowed by the San Antonio noise ordinance. The loud noise coming from inside PHX makes sleeping difficult. PHX's patrons' loud voices and their motor vehicles' loud sound systems generate additional excessive noise. No other business is open in the area late on Friday and Saturday nights, so all the noise is attributable to PHX. Applicant knows PHX is generating excessive noise on account of the number of noise complaints made to the San Antonio Police

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<sup>1</sup> The Commission took a neutral position on the application and the protest.

Department. However, Applicant has not taken steps to abate the excessive noise. For example, Applicant has not employed any expert to advise it on how to reduce the noise level from PHX. Applicant has not put in double-pane glass or built walls to block the excessive noise. In other words, Applicant has the means to reduce the noise, but has not done so.

#### **B. Applicant's Position**

Applicant argues that the police reports do nothing more than indicate the usual amount of incidents in the vicinity of PHX. Further, those reports do not establish the incidents are attributable to the operation of PHX. In other words, Protestants have failed to meet their required burden of showing an unusual condition exists that is attributable to PHX. Applicant has spent money to reduce the noise coming from PHX. Nevertheless, Protestants are subjecting Applicant to a trial by ambush in that they waited until the hearing to make known their complaints. Appellant cannot address problems of which it has not been made aware.

### **IV. THE SETTING**

From the photographs and the testimony of the witnesses, the setting for this contested case emerges as follows. PHX is one tenant at a rectangularly shaped commercial business center known as The Collection at Broadway and Sunset (the center), that is bounded by West Sunset Street to the north, Broadway Street to the east, and an alley to the west. Two structures lie to the south of PHX, which have different street numbers and may be separate properties from the center; one of those structures is directly south of PHX, the other is to the southeast. Between those two structures is a driveway with parking spaces on both sides. To the south of those two structures is West Terra Alta Street. On the other side of West Terra Alta are the Las Haciendas townhomes (the townhomes). On the other side of the alley and behind PHX is a large tract of vacant land that is being developed as a senior living center. The distance from PHX to the townhomes is about 50 yards. The area between PHX and the townhomes is landscaped with ground cover and trees.

The townhomes are located at the corner of West Terra Alta and Broadway. They consists of nine large-size and two medium-size structures. They include four structures that

abut West Terra Alta. At least two of the structures are three stories, with each structure containing two units on its north side. Each such unit has a two-car garage on the first floor, two sets of mostly glass French doors on the second floor, and two pairs of double windows on the third floor. An open frame metal fence marks the northern boundary of the townhomes.

PHX is a large one-story structure. The front door of PHX is on the northeast corner. PHX has an outdoor patio on the southeast corner, which is the portion of the premises closest to the townhomes. The patio has a metal roof and a masonry floor. On the north side of the patio is a brick wall. On the west side is a brick wall with large windows, two large sliding glass doors, and a standard door between the sliding glass doors. The doors lead to and from the interior of PHX. The south and east sides of the patio are open. The patio is furnished with chairs and coffee tables and enclosed by an open frame metal fence. The Certificate of Occupancy from the City of San Antonio specifies an "occupant load" of 380 and a patio occupancy of 20.

## V. SUMMARY OF THE TESTIMONY PRESENTED

### A. Diane Martinez

Ms. Martinez testified as follows. She is a medical doctor who practices psychiatry. She purchased her townhome in 2010. She had no problems with noise from the center until PHX opened. Her townhome bedroom windows face PHX. On Friday and Saturday nights, she hears excessive sound and feels the vibrations from PHX. As a result, she has difficulty sleeping on those nights. She uses earplugs and white noise. Sometimes those measures help and sometimes they do not. Even if she is able to sleep, her sleep is not restful.

The noise from PHX has given Ms. Martinez an understanding of why loud music is used for torture. The noise from PHX cannot be abated or controlled; it is unpredictable. The bass sound is the most invasive. The noise is demoralizing. As a medical doctor, she is aware that excessive sound can have an adverse effect on a person's autonomic nervous system in ways in which the person might not even be aware.

Ms. Martinez has called the police on account of the noise from PHX. She has hesitated

to do so and has felt guilty about doing so, since the noise is not an emergency and since the police have more important matters to handle. Since the noise from PHX is not an emergency, the police do not come promptly; therefore, the noise may have ceased by the time they arrive.

**B. Gabriela Font**

Ms. Font testified as follows. She has a medical degree from a university in Mexico; however, she is not practicing medicine. Rather, she described herself as a housewife. Her husband is a cardiologist. They have owned a townhome at Las Haciendas for 8 years. Their bedroom faces PHX. She had no problems with the bar that was previously located in the structure where PHX is now located. She can hear the noise from inside PHX. She can feel the vibrations from the bass, which is the most bothersome. The noise makes getting a good night's sleep difficult, which is a problem for her husband, who may be on call the next day.

**C. Sarah Hager**

Ms. Hager testified as follows. She and her husband have a townhome that is on West Terra Alta across from PHX. She has lived there for 6 years. The noise from PHX either keeps her up or wakes her up. Also, the noise keeps her children up. She can hear the disc jockey from her bedroom and make out what he is saying. She can feel the vibrations from the bass. The noise is unnerving. She has bought white noise machines. She moved her baby out of a bassinet in her bedroom to a bedroom further from the street earlier than planned on account of the noise. She has not wanted to call the police on account of the noise but has done so. Her husband once called PHX at about 2 a.m. on account of the noise.

**D. Dell Gibson**

Ms. Gibson testified as follows. She has been the property manager for the townhomes since August 2008. The townhome owners have complained to her about the music and crowd noise from PHX being too loud and preventing them from sleeping. She estimated PHX is about 50 yards from the townhomes. She has made four visits to PHX since May 25, 2014. She arrived between 1 a.m. and 2 a.m. The noise from PHX was loud when the middle patio door

was shut and very loud when it was opened.

On May 25 and June 5 of this year she took sound level readings from West Terra Alta between the townhomes and PHX. She had purchased a consumer decibel meter from an electronics retailer. The store employees showed her how to use the meter, and she read and followed the instructions. Also, she has previous employment experience in taking sound level readings. Some of the readings went into the seventies.

The center has about 250 parking spaces. On one visit she counted 54 empty spaces, which meant that PHX had about 200 customer vehicles in the parking lot. PHX has valet parking. Traffic was entering and leaving the parking lot constantly. The noise was very loud between 1:45 a.m. and 2:30 a.m. when PHX was closing. Vehicles lined up to pick up patrons from PHX. The drivers played loud music that she measured into the eighties.

On one visit to PHX she complained to an employee about the loud music, the crowd noise, and the property damage being done by the vehicles parked on West Terra Alta. She followed up with a letter. Later she noticed that the PHX patrons stopped parking on West Terra Alta. She has not been inside any of the townhomes late at night. So she does not know how much noise can be heard from PHX from inside the townhomes late at night.

**E. David Ewing**

Mr. Ewing testified as follows. He is the executive director of the company building a senior care facility behind PHX. The facility is expected to open in December 2015 and will include a "memory care unit." He accompanied Ms. Gibson on trips to the PHX area. When he has been near PHX late at night he has heard the bass noise. He is concerned the noise will agitate residents in the memory care unit.

**F. Jacqueline Barnes**

Ms. Barnes testified as follows. She has been an employee at PHX since January 2014 and a manager there since April 2014. She has received training and guidance concerning sound

from PHX. She checks to make sure the volume is not turned higher than a prescribed setting on the volume controls for the sound system. The volume settings for the sound system have not been changed since she became a manager in April. She believes PHX operates reasonably.

Customers can go out on the patio at any time, but she has never seen the patio crowded. Efforts have been made to keep the patio doors shut as much as possible. The speakers on the patio are not used. She does not know whether the glass doors are double-paned. A television has recently been installed on the patio. Starting at about 11 p.m. and ending at about 1:30 a.m., she walks out to the streets around PHX to check the sound level. She, too, has used a decibel meter. From the street adjacent to the townhomes she can barely hear the sound from PHX.

PHX provides valet parking. The valets move customers out of their vehicles as soon as possible and park the vehicles in the area nearest the townhomes. She has heard loud music from customer's vehicles, but the valets have been instructed to keep that music down. PHX has security employees stationed at the front doors. They help clear out the parking lot after PHX closes for the night.

#### **G. Priest Holmes**

Mr. Holmes testified as follows. He is a retired professional football player and chairman of the local chapter of a retired professional football players association. He is an officer in his homeowner's association and he sponsors a charity known as The Priest Holmes Foundation. He is in charge of PHX. In addition, PHX has a general manager, a bar manager, and a floor manager (Ms. Barnes).

He gutted and upgraded the premises where PHX is now located. A new disc jockey booth was installed and a sound system was installed. Each disc jockey has his own mixer, but the house sound system limits the volume the disc jockeys can produce. He regularly operates the sound system, trying for just the "right" sound. PHX generally operates only on Friday and Saturday but sometimes hosts special events.

He has tried to be a good neighbor. He has made modifications to address the noise

issue. As to the patio, the speakers are not used. He thought the glass doors were double paned, but he was not sure. The glass doors are not opened. He has made modifications to the patio to move the smoking area away from the townhomes. He has employed a person to stand by the middle patio door to keep it shut as much as possible and direct people to the smoking area. Inside PHX he has installed drapes to absorb sound.

He employs two security guards through an independent company to maintain security in the parking lot. The valet parking employees close off the West Terra Alta entrance to minimize traffic near the townhomes when PHX is open. On her own initiative, one of the managers directed the employees to reduce the number of trips they made out the back door to empty trash to cut down on noise escaping from the back door.

Without letting the PHX employees know he was present, he has walked the outside of the premises listening for any sound coming from PHX. He has done so between midnight and 1:45 a.m. He has not heard loud music coming from PHX that would amount to a nuisance.

#### **H. Linda Bruno**

Ms. Bruno testified as follows. She has been the property manager for the center for the last 15 years. The center has about 250 parking spaces, and PHX is free to use all of them. She has dealt with the previous license holders where PHX is now located and with other license holders in the center. No other tenants are open after midnight. Another tenant is a licensed premises, but it closes at 11 p.m. PHX has been open for about 2 years.

She has dealt personally with Mr. Holmes. He is a good tenant. He is responsive to requests from other tenants and from the owner of the center. When she has been at the center early in the morning after PHX has closed, she has not seen any trash or passed out drunks. PHX looks good on the inside. She has been to PHX twice. The last time was 4 or 5 months ago. While the music was loud inside, she did not find the sound level outside remarkably loud.

**I. Officer Berban**

Officer Berban is a San Antonio peace officer assigned to the SAFFE (San Antonio Fear Free Environment) unit for the area in which Protestant and Applicant are located. He was subpoenaed as a custodian of records. He searched the police records for the last 2 years and brought all the reports that he thought were relevant. He had no personal knowledge of the level of noise from PHX. He was aware of other licensed premises near PHX. In his experience, it is not unusual for customers to take some time to disperse from the parking lot after a nightclub closes. Also, a certain amount of crime, such as fights and thefts, is not unusual around nightclubs. In addition, sometimes people make unfounded complaints. For example, the department may receive a loud music complaint, but, when an officer arrives, no loud music is heard.

**J. Police Records, TABC Reports, and San Antonio Noise Ordinance**

The incident reports reflect a number of calls to the police complaining of loud music from the commercial center in general or PHX in particular. Also, the reports reflect calls on account of large crowds in the parking lot, intoxicated persons, threats, fights, and other disturbances, property damage to vehicles in the parking lot, passing counterfeit money, and other property crimes.

A report for April 26, 2013, indicates a call at 11:07 p.m. for loud music. The officer responded at 11:33 p.m., observed that the music was very loud, requested the music be lowered, and the manager did so. On a call for loud music made at 12:27 a.m. on March 8, 2014<sup>2</sup>, the responding officer contacted the manager at 12:39 a.m., and the manager agreed to turn the music down. On a call at 12:48 a.m. on March 15, the patrolling officer heard no loud music when he was in the parking lot at 1:05 a.m. On a call at midnight on April 6, the patrolling officer heard no loud music when he was in the parking lot at 12:15 a.m. On calls at 2:04 a.m. for loud music and at 2:22 a.m. for "bar across the street has patrons in the parking lot playing music very loudly from vehicles" on April 19, the officers arriving at 2:58 a.m. heard no loud music and found that the location "had been cleared by security." On a call at 12:39 a.m. on

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<sup>2</sup> All additional dates listed are for 2014 unless noted otherwise.

May 3, the patrolling officer could barely hear the music when he went by the location at 1:08 a.m. On a call at 12:38 a.m. on June 15, for "loud music . . . shaking C's bedroom," the officer responded and reported speaking to Shelia Bennett, who he identified as the manager of PHX. The officer did not report hearing loud music or requesting that the music be turned down. On a call at 12:05 a.m. on June 21, the patrolling officer heard no loud music when he was in the parking lot at 12:18 a.m. On a call at 12:43 a.m. on July 4, the patrolling officer "arrived and the music was not loud" at 12:53 a.m. Other calls were received on December 14, 2013 at 2:20 a.m., December 31, 2013 at 10:25 p.m., January 11 at 2:54 a.m., March 1 at 1:53 a.m., March 2 at 1:30 a.m., March 15 at 2:03 a.m., March 22 at 1:45 a.m., and April 5 at midnight and 2:36 a.m.

At about 1:08 a.m. on June 14, at the request of the SAAFE unit, on account of loud music complaints, two San Antonio police detectives went to the center with a decibel meter and took measurements. The officers reported that, when the rear door was closed, the decibel meter readings were within the range allowed by the San Antonio noise ordinance. However, when the rear door was opened, the decibel meter readings were higher than allowed by the ordinance. Those measurements were taken from the vacant lot behind PHX. When the officers stood at Suite 600 next to PHX, the officers observed that the readings only exceeded the amount allowed by the ordinance when the patio door was opened.

The TABC records reflect the following. Starting in about September 2005, a premises known as "Posh" began operated in the building where PHX is now located. Then in August 2007, a new licensee began operated a premises known as "Rush." In April 2012, Applicant began operation PHX. A restaurant in the business center has liquor license, going back to 2003.

The San Antonio noise ordinance prohibits noise exceeding 70 decibels on business zoned property when measured from property under separate ownership. Also, the ordinance prohibits vibration that is perceptible from an adjoining property.

## VI. ANALYSIS

Many important facts pertinent to the disposition of this case are not in dispute. The distance between PHX and the closest townhomes is about 50 yards. PHX is open on Friday and

Saturday night into the early morning hours. PHX can legally accommodate 380 patrons. PHX plays music using disc jockeys and a rack<sup>3</sup> of sound equipment. PHX has doors through which sound escapes when they are opened. PHX has an outdoor patio that faces the townhomes and is constructed of sound reflective materials. PHX patrons sometimes bring 200 or more vehicles to the parking lot, sometimes congregate in the parking lot after PHX closes, and sometimes play loud music from their vehicles as they arrive or depart.

Protestant has presented evidence that the sound from PHX is too loud in two ways. First, the music can be heard in the bedrooms of the townhomes, and, second, the music generates vibrations that can be felt in the bedrooms. Dr. Martinez, on Friday and Saturday nights, hears excessive noise and feels the vibrations from PHX. As a result she has difficulty sleeping on those nights, causing her to use earplugs and white noise. Sometimes those measures help and sometimes they do not. Even if she is able to sleep, her sleep is not restful. She finds the noise invasive, demoralizing, and possibly harmful to her health.

Ms. Font, who also has a medical degree, can hear the noise from inside PHX, which makes obtaining a good night's sleep difficult. She can feel the vibrations from the bass, which is the most bothersome. Ms. Hager can make out what the disc jockey at PHX is saying, and she can feel the vibrations from the bass. The noise from PHX either keeps her up or wakes her up, and keeps her children up. She finds noise unnerving. She has bought white noise machines and moved her baby out of a bassinet in her bedroom to a bedroom further from the street earlier than planned on account of the noise.

Ms. Gibson took decibel meter readings from the street between the townhomes and PHX that indicated the noise exceeded city ordinance limits. Also, she observed that the noise was loudest when the doors to PHX were open but loud even when they were closed. When he accompanied Ms. Gibson, Mr. Ewing noticed the bass noise from PHX. Police records show numerous late night noise complaints in the last year concerning PHX and the business center parking area and other complaints for disturbances and other criminal activity.

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<sup>3</sup> Although one photograph of PHX's sound rack was provided, no technical testimony was presented as to the details of PHX's sound system such as the wattage and number of the amplifiers or the size and number of the

On the other hand, Mr. Holmes and Ms. Barnes enumerated the many steps PHX has taken to address the amount of sound coming from PHX. Inside PHX, drapes have been installed to absorb sound. Ms. Barnes checks to make sure the volume is not turned higher than a prescribed setting on the volume controls for the house sound system. The security guards and valets move people out of their cars, through the front doors, and into the club as quickly as possible. The number of times the back door is opened to empty trash has been reduced. As to the patio, the speakers are not used, an attendant is employed to minimize the amount of time the middle patio door is open, and the smoking area has been moved further away from the townhomes. As to the parking area, the street entrance from West Terra Alta is closed when PHX is open to reduce traffic near the townhomes. The valets park cars in the area between the townhomes and PHX to reduce their patrons' presence near the townhomes, and the security guards clear patrons out of the parking area after closing.

Mr. Holmes has walked the perimeter of the premises after midnight without letting PHX employees know he was present and has not heard loud sound coming from PHX. Ms. Barnes has walked out to the streets around PHX to check the sound level. From the street adjacent to the townhomes, she has barely heard the sound from PHX. Ms. Bruno, who had been to PHX twice when it was open, did not find the music loud outside the nightclub.

Based on the testimony of Mr. Holmes and other evidence, the ALJ believes that Applicant has made genuine efforts to be a good neighbor and has made substantial efforts to ameliorate the noise emanating from PHX. Also, since Ms. Gibson and Mr. Ewing did not take any sound measurements or listen for sound from inside any of the townhomes, the ALJ does not consider their testimony to add significant weight to Protestant's case. Further, while the police reports show a certain amount of miscellaneous criminal activity in and around PHX, Protestant offered no testimony that such activity was causing the residents of the townhomes any problems or was unusual compared to criminal activity in the general area currently or compared to criminal activity before PHX opened. As to the calls to the police about loud music, in some respects the information in the reports helps Protestant's case, and in some respects the information helps Applicant's case. Further, the complaints are anonymous, hearsay within hearsay, and not particularly detailed. All in all, the ALJ does not consider the incident reports

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speakers in general or the sub-woofers in particular.

to add much weight to Protestant's case, either.

The testimony about the level of noise coming PHX that can be heard in the area of the townhouses is conflicting. After weighing such conflicting evidence, the ALJ considers the testimony of Dr. Martinez, Ms. Font, and Ms. Hager to be credible, persuasive, and decisive. To some extent, they were living at the townhomes in the years PHX's predecessors were in business, but they did have any complaints about PHX's predecessors. Their testimony establishes by a preponderance of the evidence that the amount of sound and vibration coming from PHX is unusual and is detrimental to the general welfare, health, and peace of the residents at the townhomes. After considering the testimony presented by the witnesses and the other admitted evidence, the ALJ recommends that Applicant's renewal application not be granted and that the requested permit not be reissued.

#### VII. FINDINGS OF FACT

1. Fox Horn LLC (Applicant) filed a renewal application with the Texas Alcoholic Beverage Commission (Commission) for a Mixed Beverage Permit for the premises known as PHX.
2. A protest to the application was filed by the Las Haciendas Townhomes Property Owners Association (Protestant).
3. On May 16, 2014, the Commission issued a Notice of Hearing informing the parties of the time, date, and location of the hearing on the application; the applicable rules and statutes involved; and the matters asserted.
4. On July 11, 2014, a public hearing was convened at the hearing facility of the State Office of Administrative Hearings (SOAH) in San Antonio, Texas, before Administrative Law Judge (ALJ) Donald B. Dailey. The Commission was represented by staff attorney David T. Duncan, Jr. Protestant was represented by attorney Paul A. Fletcher. Applicant was represented by attorney Kenneth S. Saks. The hearing concluded and the record closed on July 11, 2014.
5. PHX is located at Suite 500, 7959 Broadway, San Antonio, Texas, and is a tenant in of the Collection at Broadway and Sunset, a commercial business center (the center).
6. PHX has a legal occupancy capacity of 380. The center has about 250 parking spaces for customers, all of which are available for use by PHX patrons.
7. PHX has an outdoor patio on its southeast corner, which is roofed and open on two sides that face the townhomes and which is constructed of sound reflective materials.

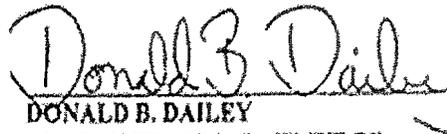
8. PHX is about 50 yards away from the nearest of the Las Haciendas townhomes (the townhomes), which are to the south of PHX.
9. Between PHX and the townhomes are two structures and a street. The two structures are separated by a portion of the center's parking lot.
10. PHX opens on Fridays and Saturdays, and closes at 2 a.m. PHX is the only business in the center open after midnight.
11. PHX employs security guards and parking valets.
12. Loud music, loud disc jockey commentary, and loud conversations in the late evening and early morning hours sometimes emanate from the interior and patio of PHX.
13. Loud music and loud conversations in the late evening and early morning hours sometimes emanate from PHX's patrons in the parking lot of the center and from PHX's patrons' vehicles as they operate their vehicles in the center's parking lot.
14. Applicant has made modifications to PHX to decrease the sound emanating from inside PHX such as installing drapes and limiting the volume of the house sound system.
15. Applicant has made modifications to PHX's outdoor patio to decrease the sound emanating from PHX such as keeping the sliding glass doors shut, hiring an attendant to keep the middle patio door shut as much as possible, and moving the smoking area further away from the townhomes.
16. Applicant has established procedures to decrease the loud music and loud conversations from the center parking lot such as closing the parking lot entrance from West Terra Alta.
17. Loud music, loud disc jockey commentary, and loud conversations from inside PHX sometimes can be distinctly heard as sound and felt as vibrations in the bedrooms of residents of the townhomes in the late evening and early morning hours on Fridays and Saturdays.
18. Loud music and loud conversations from the parking lot of the center generated by PHX patrons sometimes can be distinctly heard in the bedrooms of residents of the townhomes in the late evening and early morning hours on Fridays and Saturdays.
19. The loud music, loud disc jockey commentary, and loud conversations from inside PHX, from PHX's patio, and from the center's parking lot from PHX patrons causes residents of the townhomes difficulty in going to sleep, remaining asleep, and obtaining a good night's sleep.
20. The loud music, loud disc jockey commentary, and loud conversations from inside PHX, from PHX's patio, and from the center's parking lot from PHX patrons causes residents of the townhomes to seek relief by using earplugs and white noise machines.

21. The loud music, loud disc jockey commentary, and loud conversations from inside PHX, from PHX's patio, and from the center parking lot from PHX patrons penetrating the townhomes are unusually loud.
22. Applicant is fully qualified, operates a lawful business in a wet area, and is in compliance with all applicable requirements of the Commission.

### VIII. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. Tex. Alco. Bev. Code chs. 1 and 5 and §§ 6.01, 11.41, 11.46, and 32.01.
2. SOAH has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Proper and timely notice of the hearing was provided to the parties. Tex. Gov't Code §§ 2001.051 and 2001.052.
4. The manner in which Applicant conducts its business warrants refusal of the requested renewal of Applicant's mixed beverage permit based on the general welfare, health, and peace of the people. Tex. Alco. Bev. Code § 11.46(a)(8).

**SIGNED August 21, 2014.**



**DONALD B. DAILEY  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**