

**DOCKET NO. 625628**

<b>TEXAS ALCOHOLIC BEVERAGE</b>	§	<b>BEFORE THE TEXAS</b>
<b>COMMISSION, Jurisdictional Petitioner</b>	§	
	§	
<b>BOB FLORSHEIM, CHRIS HILL, RON</b>	§	
<b>KELLEY, MIKE ROSS, PARKSIDE RIDGE</b>	§	
<b>HOMEOWNERS' ASSOCATION, AND</b>	§	
<b>OTHER CONCERNED CITIZENS,</b>	§	
<b>Protestants</b>	§	
<b>V.</b>		
	§	
<b>SUPPLEMENTAL APPLICATION FOR</b>	§	<b>ALCOHOLIC</b>
<b>CHANGE OF LOCATION OF TRUE</b>		
<b>SPIRITS LLC, D/B/A</b>		
<b>TRUE SPIRITS, Respondent</b>	§	
	§	
<b>PERMIT NOS. P732080, LP, PS, E, and</b>	§	
<b>BF 732081</b>	§	
	§	
	§	
<b>COLLIN COUNTY, TEXAS</b>	§	
<b>(SOAH DOCKET NO. 458-14-4490)</b>	§	
	§	<b>BEVERAGE COMMISSION</b>

**ORDER**

**CAME ON FOR CONSIDERATION** this 19th day of February, 2015, the above-styled and numbered cause.

After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge D.A. Berger presiding. The hearing convened on August 14, 2014 and the SOAH record closed on the same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on September 18, 2014. The Proposal for Decision was properly served on all parties, who were given an opportunity to file exceptions and replies as part of the record herein. Protestants filed exceptions to the Proposal for Decision on October 1, 2014. Respondent filed a reply to the Protestants' exceptions on October 14, 2014. Petitioner filed a reply to the Protestants' exceptions on October 15, 2014. The Administrative Law Judge filed a Recommendation Concerning Protestants' Exceptions on October 21, 2014, recommending that the exceptions be denied and that no changes be made to the Proposal for Decision.

After review and due consideration of the Proposal for Decision, Petitioners' Exceptions, the responses thereto filed by Respondent and Jurisdictional Petitioner, and the Administrative Law Judge's October 21, 2014 Recommendation, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision, and incorporate those Findings of Fact and Conclusions of Law into this Order as if such were fully set out and separately stated herein.

The Commission received an October 21, 2014 email request from Renee Robbins on behalf of herself and her husband Greg Robbins (named Protestants) withdrawing their protest and asking that the Commission "strike our name from any further communication on this matter". To honor their request, their names have been removed from the heading and from the service list for this Order.

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

**IT IS THEREFORE ORDERED** that Respondent's application to relocate its business be **GRANTED**.

This Order will become **final and enforceable** on the 17th day of March, 2015, **unless a Motion for Rehearing is filed by the 16th day of March, 2015.**

**SIGNED** this the 19th day of February, 2015, 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 19th day of February, 2015.



---

Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

D.A. Berger  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street, Suite 502  
Austin, TX 78701  
**VIA FACSIMILE: (512) 322-2061**

True Spirits, LLC  
d/b/a True Spirits  
**RESPONDENT/APPLICANT**  
8525 Ferndale, Suite 204  
Dallas, TX 75238  
**VIA FIRST CLASS MAIL, CMRRR # 70120470000133006404**

Jeffrey Cook  
**ATTORNEY FOR RESPONDENT**  
Sullivan & Cook, LLC  
2301 Cedar Springs Road, Suite 200  
Dallas, Texas 75201-7837  
**VIA FIRST CLASS MAIL, CMRRR#70120470000133006411**

Bob Florsheim  
**PROTESTANT**  
6408 Glenhollow Drive  
Plano, TX 75093  
**VIA FIRST CLASS MAIL, CMRRR # 70120470000133006428**

Chris Hill  
**PROTESTANT**  
3804 Braewood Circle  
Plano, TX 75093  
**VIA FIRST CLASS MAIL, CMRRR#70120470000133006435**

Ron Kelley

**PROTESTANT**

5821 Westmont Drive

Plano, TX 75093

***VIA FIRST CLASS MAIL, CMRRR#70120470000133006442***

Mike Ross

**PROTESTANT**

3929 Morningside Drive

Plano, TX 75093

***VIA FIRST CLASS MAIL, CMRRR#70120470000133006459***

Brian Newman

**PROTESTANT**

6621 Crawley Drive

Plano, TX 75093

***VIA FIRST CLASS MAIL, CMRRR#70120470000133006466***

Shelia Lindsey

**ATTORNEY FOR PETITIONER**

TABC Legal Division

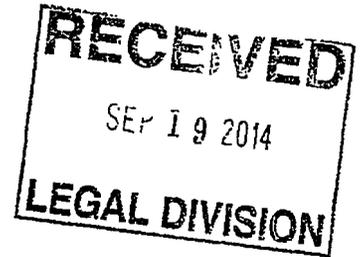
***VIA E-MAIL: [Shelia.lindsey@tabc.texas.gov](mailto:Shelia.lindsey@tabc.texas.gov)***

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

September 18, 2014



Sherry Cook  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

VIA INTERAGENCY MAIL

**RE: SOAH Docket No. 458-14-4490; TABC Docket No. 625328  
Bob Florshein, Chris Hill, Ron Kelley, Mike Ross, Gregg and Renee  
Robbins, Parkside Ridge Homeowners Association, and Other  
Concerned Citizens v. True Spirits, LLC d/b/a True Spirits**

Dear Ms. Cook:

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 § 155.507(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in black ink that reads "D. A. Berger".

D. A. BERGER  
ADMINISTRATIVE LAW JUDGE

DAB/cat  
Enclosure

xc Lisa Crissman, Licensing Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL  
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL  
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL (with 1 Hearing CD)  
True Spirits, LLC, 8525 Ferndale, Suite 204, Dallas, TX 75238 - VIA REGULAR MAIL  
Bob Florshein, 6408 Glenhollow Drive, Plano, TX 75093 - VIA REGULAR MAIL  
Chris Hill, 3804 Braewood Circle, Plano, TX 75093 - VIA REGULAR MAIL  
Ron Kelley, 5821 Westmont Drive, Plano, TX 75093 - VIA REGULAR MAIL  
Mike Ross, 3929 Morningside Drive, Plano, TX 75093 - VIA REGULAR MAIL  
Brian Newman, Parkside Ridge Homeowners Association, 6621 Crawley Drive, Plano, TX 75093 - VIA REGULAR MAIL  
Renee & Gregg Robbins, 6333 Willowdale Drive, Plano, TX 75093 - VIA REGULAR MAIL



## I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under Texas Alcoholic Beverage Code, chapter 5 and § 11.43. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to Texas Government Code, chapter 2003.

On July 25, 2014, Petitioner issued its notice of hearing, directed to both Respondent and Protestants. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted, as required by Texas Government Code § 2001.052.

On August 14, 2014, a hearing convened before ALJ David A. Berger at the SOAH field office located at 6333 Forest Park Road, Suite 150-A, Dallas, Texas 75235, Dallas County, Texas. Lisa D. Chrissman, TABC Staff Attorney, appeared on behalf of Petitioner and offered, without objection, Petitioner's Exhibits 1 through 5. Petitioner's participation in the hearing was limited to offering the aforementioned exhibits. Twenty-eight Protestants appeared *pro se* and offered comments for the record.<sup>1</sup> At the hearing Protestants offered, without objection, Protestants' Exhibits 1(A)-(C), 2-7, 9(A)-(D), 10-12, and 14(A)-(C) as evidence. Respondent appeared and was represented by its attorney, Jeff Cook. Respondent offered and admitted Respondent's Exhibits 1-20 as evidence at the hearing. The record closed on August 14, 2014.

## II. APPLICABLE LAW

Pursuant to Texas Alcoholic Beverage Code § 11.46(a)(8), Texas Alcoholic Beverage Commission (TABC) may refuse to renew a permit if it has reasonable grounds to believe that the following circumstance exists:

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<sup>1</sup> The hearing room was at maximum capacity and numerous individuals were turned away. Twenty-eight Protestants spoke on the record. Additional Protestants were present to offer support to the protest but chose not to speak.

[T]he 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.

### III. EVIDENCE

Respondent holds a Package Store, Local Cartage, Local Distributor's, and Package Store Tasting Permit, 345599, issued by TABC, for the premises located at 2425 West Parker Road, Hebron, Denton County, Texas, 75010.<sup>2</sup> The permit was originally issued on September 22, 2013, and is valid through September 21, 2015.<sup>3</sup> On December 17, 2013, the City of Plano, Texas, approved Respondent's proposed location at the Midway Hills Shopping Center location at 3401 Midway Road, City of Plano, Collin County, Texas, 75093, and issued Package Store Permit 1094, and Beer Retail Dealer's Off-Premise License 1098.<sup>4</sup> On December 18, 2013, Respondent filed an application with TABC to relocate its business and permits to a vacant free-standing building<sup>5</sup> at the front of the Midway Hills Shopping Center.<sup>6</sup>

TABC began receiving protests from concerned private citizens regarding Respondent's relocation application in February 2014. From February 2, 2014, through May 11, 2014, TABC received 324 protests.<sup>7</sup> The main concerns expressed by the Protestants are: (1) that the new proposed location is too close to a school and/or a church; (2) that the store will cause traffic problems that will pose an unacceptable risk to pedestrians and bicyclists; (3) that a package store in a residential neighborhood will attract crime, loitering, and panhandling; (4) that neighborhood teenagers will be tempted to make unlawful purchases of alcohol; and (5) the presence of a package store in a residential neighborhood will adversely impact the

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<sup>2</sup> TABC Ex. 1

<sup>3</sup> *Id.*

<sup>4</sup> Respondent Ex. 3.

<sup>5</sup> Respondent's proposed location was formally a Chase Bank branch and has been sitting vacant for over two years.

<sup>6</sup> TABC Ex. 1 (Application).

<sup>7</sup> In their public comments several Protestants stated that 324 protests had been filed; however, TABC Ex. 1 contains 290 protest forms or emails stating opposition to Respondent's application.

character of the neighborhood and residential property values.<sup>8</sup> On February 5, 2014, TABC Agent Tony Browning initiated an investigation based on the protests.

#### **TABC Investigation:**

During the protest investigation, Agent Browning visited and photographed the proposed location, communicated via email and telephone with several Protestants, and on February 20, 2014, met with local residents at Prestonwood Baptist Church to explain and answer questions about the protest process. Agent Browning noted that in the same shopping center as Respondent's proposed new location, there is a CVS Drug Store that has a Beer Retail Dealer's Off-Premise License.<sup>9</sup>

As part of his investigation, Agent Browning liaised with the Plano Police Department to obtain information concerning the Protestants' fears of increased traffic and criminal activity. Plano Police Department records revealed that in the preceding twelve months there had only been two traffic accidents at or near the Respondent's proposed new location. Agent Browning found no evidence that Respondent's relocation would increase traffic. Plano Police Department records also showed that for the preceding twelve months it had only received two calls for services at the shopping center, a traffic stop and a request for a building check. Agent Browning found no evidence that approval of Respondent's relocation request would increase crime, loitering, panhandling, or entice minors to illegally purchase alcohol.<sup>10</sup>

On May 11, 2014, Agent Browning issued his report. Based on the results of Agent Browning's investigation, TABC did not join the Protestants' challenge to Respondent's relocation application.<sup>11</sup>

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<sup>8</sup> TABC Ex. 1; Respondent Ex. 2.

<sup>9</sup> TABC Ex. 1 at 7 (Investigation Report).

<sup>10</sup> *Id.* at 5-6.

<sup>11</sup> TABC Notice of Protest, June 17, 2014: "After investigation by the Commission's Field Operations Division and review by the Legal Services Division, it has been determined that the Commission will not join in the protest against your original application for the permits at the above-referenced location."

**Protestants' Public Comments:**

During the hearing, the Protestants were given an opportunity to be heard and voice their concerns on the record. The following is a summary of the Protestants' public comments:

David Coke:

The proposed location for Respondent's package store is vastly different from Respondent's current location. There are open fields at the current location. The new location is in a residential neighborhood.<sup>12</sup> Approval of the application to relocate Respondent's business would adversely impact the character of the neighborhood, property values, and the moral values of the residents. The building for the new location is not fit for a liquor store. Respondent should find a more suitable location to relocate.

Bryan Sterling:

Mr. Sterling has been a resident of the neighborhood for eight years. He is President of the Parkwood Estates Homeowners' Association (HOA) which consists of over ninety single-family residences. The HOA Board unanimously opposes Respondent's application to relocate. Thirty-one percent of the HOA's residents filed formal protests with TABC. Residents are especially concerned because Respondent hosts alcohol tastings in his store put on by distributors.<sup>13</sup> Mr. Sterling stressed that Respondent's relocation application may meet the letter of the law, but just because something might be legal it does not necessarily make it right.

Benjamin Epperson:

Mr. Epperson is a resident of the neighborhood surrounding Respondent's proposed location. He grew up in the Dallas suburb of Lake Highlands. He moved to Plano to escape

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<sup>12</sup> Protestants Exs. 1A, 1B, and 1C clearly reflect this is a residential neighborhood.

<sup>13</sup> Protestants Ex. 4 at 3 (undated social media posts): "They have samplings all the time. I love this place!!!" and "It's always a good thing when you can walk into a liquor store and walk out a little buzzed. Yup. It's like that."

liquor stores. Mr. Epperson objects to Respondent's relocation application because the proposed new location is in close proximity to residences.

Rhonda France:

Ms. France stated she is very concerned that there is a school bus stop near Respondent's proposed location and, if the relocation application is approved, children riding school buses will pass directly in front of a liquor store.<sup>14</sup> Ms. France was involved with a previous successful protest against one of Respondent's other locations. Ms. France noted that Respondent's current location is next to a church, but that does not pose a problem because that church is "independent."

Representative (Elect) Matt Shaheen, Texas House District 66<sup>15</sup>:

Representative (Elect) Shaheen appeared at the hearing to voice his support for the Protestors and his opposition to Respondent's relocation application. Representative (Elect) Shaheen opined that the relocation of Respondent's package store would be detrimental to the "decency" of the family neighborhood, that a package store is contrary to the character of the neighborhood, that panhandlers and drunk drivers would be attracted to Respondent's new location, and that a package store would drive away existing and established businesses.

Mike Ross:

Mr. Ross is a forty-year resident of Plano, Texas, and has lived in the neighborhood of Respondent's proposed location for eight years. Mr. Ross stated that all of the other retail stores in the Midway Hills Shopping Center fit the character of the surrounding residential neighborhood.<sup>16</sup> Respondent's package store business would not fit in with the mix of existing

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<sup>14</sup> Respondent Ex. 2 at 7 (TABC Investigation Report). Respondent's proposed location in the Midway Hills Shopping Center is approximately one mile from the nearest school.

<sup>15</sup> Mr. Shaheen was elected to represent Texas House District 66 in November 2013. He will take his seat in the Texas House of Representatives when the 84<sup>th</sup> Texas Legislature convenes on January 13, 2015.

<sup>16</sup> Protestants Ex. 1C – Aerial Photo of Midways Hills Shopping Center. Respondent's proposed location is highlighted red. The existing businesses are:

businesses. Mr. Ross stressed that the area is residential and densely populated. Respondent's proposed location is a short distance from the Arbor Hill Nature Preserve<sup>17</sup> and the Coyote Creek Park. Mr. Ross highlighted that the other commercial tenants of Midway Hills Shopping Center also oppose Respondent's relocation.<sup>18</sup> Mr. Ross believes the current family atmosphere of Midway Hills Shopping Center will be lost if a package store moves in. Mr. Ross stated that most of the current businesses have been in the Midway Hills Shopping Center for over ten years. Mr. Ross is very concerned that a package store will increase traffic in the surrounding area and that the in-store tastings will pose a risk of impaired drivers leaving Respondent's business.

Mark Bradley:

Mr. Bradley has lived in the area of Respondent's proposed new location for eighteen months. He owns the house that is directly across the street from Respondent's proposed new location.<sup>19</sup> Mr. Bradley opposes Respondent's request to relocate his package store.

Sarah Bitter:

Ms. Bitter is a long-time resident of the neighborhood and she is very concerned for the safety of her four children if Respondent's relocation request is approved. Ms. Bitter shared

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- |                            |                                |
|----------------------------|--------------------------------|
| 1. Papa John's Pizza       | 12. Planet Scrubs              |
| 2. Kid-to-Kid Clothing     | 13. A.K. Chiropractic          |
| 3. Texas Endoscopy         | 14. State Farm Insurance       |
| 4. J's Donuts              | 15. Tailor and Shoe Repair     |
| 5. Closet Revival Clothing | 16. #1 Perfect Nails           |
| 6. Sola Salons-Haircuts    | 17. Tom's Cleaners             |
| 7. First Eye Care          | 18. Greater Therapy Centers    |
| 8. Plano Therapy Center    | 19. Fino's Italian Bistro      |
| 9. Pediatric Specialists   | 20. Dental Office              |
| 10. Omega Crossfit         | 21. Le Peep Grill              |
| 11. Pet Care Center / Vet. | 22. CVS (beer and wine permit) |

<sup>17</sup> Protestants Ex. 1B reflecting location of Midway Hills Shopping Center, and locations of a nearby library, four hospitals, golf course, retirement community, college, and Arbor Hills Nature Preserve.

<sup>18</sup> Protestants Ex. 7, five merchant letters voicing opposition.

<sup>19</sup> Protestants Ex. 1C – Mr. Bradley's home is marked as being two-hundred feet from Respondent's proposed new location. Mr. Bradley's front door faces the main entrance to the proposed location.

that her children can walk to CVS, the nature preserve, and J's Donuts without crossing a major street. If Respondent's request is approved her children would have to walk in front of a liquor store to go to the donut shop. Ms. Bitter is very concerned because the Midway Hills Shopping Center parking lot is consistently full of children. If Respondent's relocation request is approved its customers, many of whom will have participated in alcohol tastings, will be driving away through a parking lot full of children. Ms. Bitter does not want the increased traffic in her neighborhood. Respondent's proposed store front faces a jogging path. Residents walk their dogs in front of the proposed location. Ms. Bitter stated she was involved in a prior successful protest against Respondent at another location. In that protest there were eighty Protestants. Ms. Bitter requested that the ALJ consider that there are approximately 360 Protestants against Respondent's current relocation request.

Vince Bove:

Mr. Bove has been a Plano, Texas resident since 1993. Mr. Bove asked that the ALJ consider the newness of the Plano ordinance<sup>20</sup> and requested that the decision in the present case be used as a precedent for future zoning decisions.

Katrina Parker:

Ms. Parker has lived in the neighborhood for two years. She has a two-year-old daughter. Ms. Parker stated that she has experience with "beggars," and that based on her experience if Respondent's relocation application is approved, pawn shops, payday loan stores, and other such businesses will be attracted to the Midway Hills Shopping Center. Ms. Parker emphasized the proposed location is a formula for "winos with no money + teenagers with no I.D.'s = a tempting alliance."

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<sup>20</sup> See TABC Local Option Petition and Election Results, available at <http://www.tabc.state.tx.us/cgi-bin/loper2013.pl> (last visited Sep. 5, 2014) (notating Plano local election for off premises sales of all alcoholic beverages passed on May 11, 2013).

Mike Jackson:

Mr. Jackson spoke and stated that he purchased his home because of the original zoning. When he selected his home he did so based upon his perception of neighborhood safety. Mr. Jackson requested that the decision on Respondent's relocation application be based on what is best for all of the existing commercial and residential occupants in the neighborhood.

Jenna Curtis:

Ms. Curtis has been a neighborhood resident for seventeen years. She walks in the Midways Hills Shopping Center and around the neighborhood every evening. Her house is located on Oak Hollow Drive and is separated from Respondent's proposed location by an alley.<sup>21</sup> Ms. Curtis opposes Respondent's relocation application.

Laura Sweeny:

Ms. Sweeny has resided in the neighborhood for eleven years. She moved to her present neighborhood after there was a murder and adult businesses started coming into her old neighborhood. Ms. Sweeny requested that Respondent's relocation application be denied in order to maintain the integrity of her neighborhood. Ms. Sweeny noted that one of the nearby hospitals has a drug treatment and alcohol rehabilitation in-patient treatment facility. That hospital is within walking distance to Respondent's proposed location. Ms. Sweeny shared that her brother was an alcoholic and drug abuser who died at age thirty-nine. Ms. Sweeny said her brother walked to a liquor store every day until he died. Ms. Sweeny stressed, "Not in my backyard" when voicing her opposition to Respondent's relocation application. Ms. Sweeny indicated that approval of Respondent's application would impede her ability to walk to the stores in the Midway Hills Shopping Center.

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<sup>21</sup> Protestants Ex. 1C – Ms. Curtis' backdoor is four-hundred feet from the rear entrance to Respondent's proposed location but is separated by another row of stores; there is no direct line of sight from Ms. Curtis' home to Respondent's proposed location.

Clay Curtis:

Mr. Curtis succinctly stated approval of Respondent's relocation application will destroy the surrounding neighborhood and, if the application is approved, he will mobilize to get the zoning changed.

Ann Toppett:

Ms. Toppett lives in the neighborhood. She jogs and her son rides his bicycle in the neighborhood. If Respondent's relocation application is approved she will no longer feel safe walking and jogging in the area. Ms. Toppett emphasized that Respondent's proposed location is in a residential neighborhood that just happens to have a strip shopping center. If the application is approved, Respondent's store would be the second largest business in the Midway Hills Shopping Center and would be in the very front of the shopping center facing Midway Road.<sup>22</sup>

Paige Mims, City Attorney, Plano, Texas.<sup>23</sup>

City Attorney Mims spoke on the record to state that the City of Plano could not take an official position on the protest.<sup>24</sup> Ms. Mims encouraged the protestors to contact her office prior to contacting their elected representatives.

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<sup>22</sup> Protestants Ex. 1C.

<sup>23</sup> See City of Plano Staff Directory, available at <http://www.plano.gov/directory.aspx?EID=209> (last visited Sep. 5, 2014).

<sup>24</sup> See Respondent Ex. 2, ¶ 5 (TABC Investigation Report):

"City and County Ordinances—Out of 187 protestants [at the time of the report] 8 are stating that the location violates city and county ordinances, but after investigation I could not find any violations. The City of Plano held an election on May 11, 2013 and was certified by the clerk on May 28<sup>th</sup> 2013 allowing this area zoned for this type location. Results of the election for Liquor Sales in Plano revealed that 12,325 citizens were for it and 6,542 were against it. The outcome was 66% for and 34% against."

David Taylor:

Mr. Taylor spoke and stated that in the neighborhood there is a high concentration of children. If Respondent's relocation application is approved, he will consider selling his house and leaving the neighborhood because of safety concerns. Mr. Taylor correctly noted that "safety" and "public sense of decency" are statutory grounds for denying the Respondent's application.<sup>25</sup> Mr. Taylor further noted that the Protestants merely had to show that there are "reasonable grounds" to believe approval of Respondent's application would impact safety and/or the public sense of decency. Mr. Taylor argued that the "reasonable grounds" burden of proof is less than a preponderance of the evidence.<sup>26</sup>

Tony Borino:

Mr. Borino moved into the neighborhood two weeks prior to the protest hearing. His home backs up to Respondent's proposed location. Mr. Borino stated that city-designated bicycle routes are within one-quarter mile on all four sides of the Midway Hills Shopping Center. He is a cyclist and is concerned cycling will be less safe if Respondent's application is approved. Mr. Borino has shopped at Respondent's current location and observed there are always alcohol product tastings being offered. Mr. Borino stated the tastings are "just not safe."<sup>27</sup> Mr. Borino also noted Respondent was operating at its current location before the adjacent church moved in. Mr. Borino expressed his concern that if Respondent's relocation

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<sup>25</sup> See Tex. Alco. Bev. Code Ann. § 11.46(a)(8).

<sup>26</sup> But see 16 Tex. Admin. Code §37.2(b) ("All notices and pleadings in a contested case shall comply with the provisions of Texas Government Code, Chapter 2001, Subchapters C, D, and F and the rules of procedure adopted by the State Office of Administrative Hearings in Title 1, Texas Administrative Code, Chapter 155."); 1 Tex. Admin. Code § 155.427 (addressing factors for determining the burden of-proof); *Granek-v. Tex. State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005) ("... we continue to hold that the proper standard of proof in agency factual determinations is preponderance of the evidence."); Ronald L. Beal, TEXAS ADMINISTRATIVE PRACTICE AND PROCEDURE (Jun. 2013) § 7-4: "... APA contested case proceedings are civil in nature and that no doctrine is more firmly established than that the issues of fact are determined by a preponderance of the evidence standard of proof."

<sup>27</sup> See Protestants Ex. 4.

application is approved it will drive the existing businesses out of the Midway Hills Shopping Center, leaving a void for undesirable businesses to occupy.<sup>28</sup>

Bob Steinweg:

Mr. Steinweg concisely noted that Respondent's relocation application may meet the technical requirements of the law, but approval of the application will adversely impact the neighborhood.

Bill Blythe:

Mr. Blythe moved to Plano to escape Dallas liquor stores and bars. If Respondent's relocation application is approved he will feel threatened and will be very concerned for the small children in the neighborhood.

Dave Harrison:

Mr. Harrison is the owner of the strip center where Respondent's package store is currently located. Mr. Harrison stated that there has been no panhandling or loitering, and no evidence supporting Protestants' stated concerns at Respondent's current location. Mr. Harrison observed that the church adjacent to Respondent's current location has a school, and the Arbor Hills Nature Preserve is closer to the present location.

Greg True:

Mr. True is one of the owners and the manager of True Spirits. He is a deacon in his church and a family man. He stressed that he is responsible and that there are "no issues at my store."<sup>29</sup> Mr. True indicated that he is seeking customers in the neighborhood of the Midway

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<sup>28</sup> *But see* Protestants Ex. 7, consisting of letters of opposition from five of twenty-two merchants in the Midway Hills Shopping Center, none of which threaten to relocate their stores.

<sup>29</sup> TABC Ex. 1 (Permit History). Respondent has a history of two administrative violations: (1) failure to pay local fees/tax, resolved with a warning December 7, 2009; and (2) "Place or Manner, Miscellaneous" violation committed on June 6, 2014, resolution pending. The Place or Manner "violation" is the current protest. *See* TABC Complaint

Hills Shopping Center and that he is not seeking “low-end” customers. Addressing the tastings, Mr. True stated that they are done by the distributors and customers are limited to one-quarter ounce of alcohol per taste.<sup>30</sup>

Harley Bares:

Mr. Bares lives within three hundred yards of Respondent’s proposed location. Mr. Bares stated, “We don’t want it there.”

Bob Florshein:

Mr. Florshein has lived in the neighborhood for four years. He is a retired police officer. He was forced to move out of his previous home when a check cashing store and an adult novelty business moved into the neighborhood. Mr. Florshein noted that every vehicular accident he worked as a police officer involved alcohol.

Guy Burgoon:

Mr. Burgoon stated his opposition to Respondent’s application for relocation. He lives in the neighborhood and believes that the possibility of a bad outcome is too high of a risk to justify approving Respondent’s application.

Chris Hill:

Mr. Hill lives two blocks north of the Midway Hills Shopping Center. He has owned his home for sixteen years. He has coached children at the nearby Coyote Park for fifteen years. He has safety concerns and believes the Midway Hills Shopping Center is inappropriate for a package store. Mr. Hill read Mr. Welch’s comments from his 2009 interview with the

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Investigation Results, available at <https://www.tabc.state.tx.us/PublicInquiry/ComplaintInvestigationResults.aspx> (last visited Sep. 5, 2014).

<sup>30</sup> Mr. True’s comment that “customers are limited to one-quarter ounce of alcohol per taste” was inaccurate. *See* Tex. Alco. Bev. Code § 52.01(d)(1): Sample portions at a product tasting are limited to one-half ounce for distilled spirits.

Dallas Morning News.<sup>31</sup> Mr. Hill stated that he used to be a True Spirits customer but he is now boycotting the store. He is very concerned about the tastings. Mr. Hill reported that while shopping at True Spirits he would be offered up to five or six shots of alcohol. Mr. Hill is extremely concerned that Respondent's proposed location has a drive-through.<sup>32</sup> Mr. Hill said he spoke to the building inspector who informed him that if Respondent were to apply to use the drive-through the application would be approved. Mr. Hill also expressed his safety and traffic concerns with large delivery trucks at Respondent's proposed location.

Tom Welch:

Mr. Welch is the Respondent and the principal owner of True Spirits. He stated he has been in business for five years with no violations.<sup>33</sup> There have not been any parking lot accidents at any of his stores. He has applied with TABC to relocate his permit to the Midway Hills Shopping Center because his current store location is no longer profitable. Mr. Welch noted that CVS is located in the same shopping center and it sells beer and wine.<sup>34</sup> CVS is open on Sundays and anyone, regardless of age, can walk into CVS. Plano held a lawful election and approved the zoning for the sale of alcohol within the city limits. The owner of the Midway Hills Shopping Center supports his application.

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<sup>31</sup> Protestants Ex. 10:

"HEBRON—This tiny town in southern Denton County has become a magnet for liquor stores after a controversial Denton County alcohol election last May.

True Spirits opened first. Majestic Fine Wines & Spirits will be next. 'Usually, these liquor stores are like termites,' said Tom Welch, owner of True Spirits. 'If you get one, you get a bunch.'" Dianne Sols, Dallas Morning News, Dec. 1, 2009.

<sup>32</sup> See Protestants Ex. 9-10 (side-by-side photographs depicting the vacant bank drive-through which is Respondent's proposed location in the Midway Hills Shopping Center).

<sup>33</sup> But see TABC Ex. 1 (Permit History).

<sup>34</sup> Respondent Ex. 2 at 2 (TABC Investigation): "Location History—The location is a front building that stands alone in the front part of the shopping center next to a CVS which is licensed and regulated by TABC. The location has been vacant for approximately 2 years and was a bank in the past."

#### IV. ANALYSIS

Having considered the evidence, the ALJ finds insufficient grounds to demonstrate that the place or manner in which Respondent may conduct its business warrants denial of the permits based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.

As indicated by Agent Browning's report of his investigation, and TABC Exhibit 1, Respondent has a history of compliance with TABC. Respondent was warned in 2009 for late payment of local fees or taxes. There was no evidence presented that Respondent has ever sold alcohol to minors, conducted his business in a manner that would allow a breach of the peace, been involved with narcotic violations, sold or served alcohol to intoxicated persons, permitted an intoxicated employee on its premises, permitted any type of public lewdness, created excessive noise or maintained unsanitary premises, or violated any city codes related to health, safety, and welfare.<sup>35</sup>

The issue of retail package stores within the city limits of Plano was put to the voters and passed on May 11, 2013. Respondent's proposed location has been zoned for a package store, and he has obtained the necessary permits from the City of Plano.<sup>36</sup> After reviewing the relevant information obtained from the Plano Police Department, Agent Browning concluded that the Protestants' concerns about increased traffic, increased criminal activity, noise, loitering, and the sale of alcohol to minors were unwarranted and not supported by the evidence.

The ALJ finds that insufficient evidence exists to show the place or manner in which Respondent may conduct his business warrants denial of his application to relocate his business to the Midway Hills Shopping Center, based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. The ALJ recommends approval of Respondent's application.

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<sup>35</sup> Tex. Alco. Bev. Code § 34.2, Schedule of Sanctions and Penalties for Health, Safety, and Welfare Violations.

<sup>36</sup> Respondent Ex. 3.

## V. FINDINGS OF FACT

1. True Spirits LLC, d/b/a True Spirits (Respondent) holds a Package Store, Local Cartage, Local Distributor's, and Package Store Tasting Permit, 345599, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 2425 West Parker Road, Hebron, Denton County, Texas, 75010.
2. The permit was issued on September 22, 2013, and is valid through September 21, 2015.
3. On December 17, 2013, the City of Plano, Texas, approved Respondent's proposed Midway Hills Shopping Center location at 3401 Midway Road, City of Plano, Collin County, Texas, 75093 and issued Package Store Permit 1094, and Beer Retail Dealer's Off-Premise License 1098.
4. On December 18, 2013, Respondent filed an application with the TABC to relocate its business and permits to the Midway Hills Shopping Center at 3401 Midway Road, City of Plano, Collin County, Texas, 75093.
5. TABC began receiving protests from concerned private citizens regarding Respondent's relocation application in February 2014.
6. From February 2, 2014, through May 11, 2014, TABC received 324 protests.
7. As grounds for protest, the Protestants allege: (1) that the new proposed Midway Hills Shopping Center location is too close to a school and/or a church; (2) that the store will cause traffic problems that will pose an unacceptable risk to pedestrians and bicyclers; (3) that a package store in a residential neighborhood will attract crime, loitering, and panhandling; (4) that neighborhood teenagers will be tempted to make unlawful purchases of alcohol; and (5) the presence of a package store in a residential neighborhood will adversely impact the character of the neighborhood and residential property values.
8. On February 5, 2014, TABC Agent Tony Browning initiated an investigation based on the protests.
9. During the course of Agent Browning's investigation, he visited and photographed the proposed location, communicated via email and telephone with several Protestants, and on February 20, 2014, he met with local residents at Prestonwood Baptist Church to explain and answer questions about the protest process.
10. Agent Browning liaised with the Plano Police Department to obtain information concerning the Protestants' fears of increased traffic and criminal activity.

11. Plano Police Department records revealed that in the preceding twelve months there had only been two traffic accidents at or near the Respondent's proposed Midway Hills Shopping Center location. Agent Browning found no evidence that Respondent's relocation would increase traffic.
12. Plano Police Department records provided no evidence that approval of Respondent's relocation request would increase crime, loitering, panhandling, or entice minors to illegally purchase alcohol.
13. Within the Midway Hills Shopping Center, there is a CVS Drug Store that has a Beer Retail Dealer's Off-Premise License.
14. Based on the results of Agent Browning's investigation, TABC did not join the Protestants' challenge to Respondent's relocation application.
15. With the exception of one warning for the late payment of local taxes or fees, Respondent has no history of TABC violations.
16. There is insufficient evidence to demonstrate that the place or manner in which Respondent may conduct its business warrants denial of its relocation application based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.
17. On July 25, 2014, Petitioner issued its notice of hearing, directed to both Respondent and Protestants.
18. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
19. On August 14, 2014, a hearing convened before Administrative Law Judge David A. Berger at the State Office of Administrative Hearings field office located at 6333 Forest Park Road, Suite 150-A, Dallas, Texas 75235, Dallas County, Texas.
20. Lisa D. Chrissman, TABC Staff Attorney, appeared on behalf of Petitioner, twenty-eight Protestants appeared *pro se* and offered comments for the record, and Respondent appeared and was represented by its attorney, Jeff Cook.
21. The record closed on August 14, 2014.

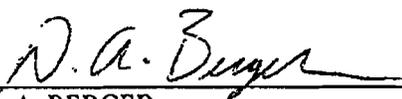
## VI. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter. Tex. Alco. Bev. Code, ch.5 and § 11.43.
2. SOAH has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code, ch. 2003.
3. Respondent and Protestant received proper notice of the hearing. Tex. Gov't Code § 2001.052.
4. Protestants failed to show by a preponderance of the evidence that there are reasonable grounds to deny Respondent's relocation application based upon the manner in which Respondent may conduct its business based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. Tex. Alco. Bev. Code § 11.46(a)(8).

## VII. RECOMMENDATION

Respondent's application to relocate its business to the Midway Hills Shopping Center located at 3401 Midway Road, City of Plano, Collin County, Texas, should be granted.

**SIGNED September 18, 2014.**

  
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D. A. BERGER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS