

DOCKET NO. 624792

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Jurisdictional Petitioner	§	BEFORE THE TEXAS
	§	
	§	
MARGARET POISSANT AND D. HENRY, Protestants	§	
	§	
	§	
V.	§	
	§	
	§	
ORIGINAL APPLICATION OF 5102 SHG & T, LLC, D/B/A TROIA AND GALWAY, Respondent	§	ALCOHOLIC
	§	
PERMITS SOUGHT: MB, LB, PE	§	
	§	
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-14-3640)	§	
	§	
	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 16 day of April, 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 Rex A. Shaver presiding. The hearing convened on July 11, 2014 and the SOAH record closed on July 25, 2014. 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. No exceptions were filed.

After review and due consideration of the Proposal for Decision, 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.

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 original application for permits be **GRANTED**.

This Order will become **final and enforceable** on the 11 day of May , 2015, unless a Motion for Rehearing is filed by the 10 day of May , 2015.

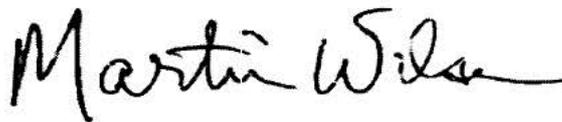
SIGNED this the 16 day of April , 2015, at Austin, Texas.



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 16 day of April , 2015.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Rex A. Shaver
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, TX 77018
VIA FACSIMILE: (512) 322-2061

Clyde Burleson

ATTORNEY FOR RESPONDENT/APPLICANT

1533 W. Alabama, Suite 100

Houston, TX 77006

VIA FIRST CLASS MAIL, CMRRR # 7012 0470 0001 3300 6527

Margaret Poissant

PROTESTANT

800 Sawyer Street

Houston, TX 77007

VIA FIRST CLASS MAIL, CMRRR# 7012 0470 0001 3300 6534

Derek Henry

PROTESTANT

5115 Nett Street

Houston, TX 77007

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Sandra Patton

ATTORNEY FOR PETITIONER

TABC Legal Division

VIA E-MAIL: sandra.patton@tabc.texas.gov

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge
September 18, 2014

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SEP 18 2014

TABC HOUSTON
LEGAL DEPT.

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

VIA REGULAR MAIL

RE: SOAH Docket No. 458-14-3640; Texas Alcoholic Beverage Commission vs. 5102 SHG & T, LLC d/b/a Troia & Galway

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.

Sincerely,

A handwritten signature in black ink that reads "Rex A. Shaver".

Rex A. Shaver
Administrative Law Judge

RAS/mr
Enclosure

- xc Sandra Patton, Texas Alcoholic Beverage Commission, 427 W. 20th Street, Suite 600, Houston, TX 77008 - **VIA REGULAR MAIL**
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - **VIA REGULAR MAIL**
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - **VIA REGULAR MAIL**
Clyde Burleson, Attorney at Law, 1522 W. Alabama, Suite 100, Houston, TX 77006 - **VIA REGULAR MAIL**
Margaret Poissant, Protestant, 800 Sawyer Street, Houston, TX 77007 - **VIA REGULAR MAIL**
Derek Henry, Protestant, 5115 Nett Street, Houston, TX 77007 - **VIA REGULAR MAIL**

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SEP 19 2014

TABC HOUSTON
LEGAL DEPT.

represented by attorney Clyde Burlison. Protestant Ms. Poissant appeared. Protestant Mr. Henry failed to appear. There were no contested issues of notice, jurisdiction, or venue in this proceeding. Therefore, those matters are set out in the proposed Findings of Fact and Conclusions of Law without further discussion here. The hearing concluded on July 11, 2014, and to allow filing of additional documents, the record remained open until July 25, 2014.

II. DISCUSSION

A. **Applicable Law**

Protestants have alleged the following grounds for the protest:

The place or manner in which Respondent or Respondent's agent, servant, or employee, conducts his business warrants the refusal and/or cancellation or suspension of Respondent's permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency in violation of Texas Alcoholic Beverage Code § 11.46(a)(8).

B. **Summary of Public Comment Pursuant to TABC Code § 5.435(a)**

Public comment was made by Ana Olivarez Levinson, Elizabeth O'Conner, Jenny Diaz, Angela Aguirre, Donna Shepherd, and Ms. Poissant. The public comments consisted of concerns that the manner in which Respondent would conduct his business posed a threat to the general welfare, health, peace, and safety of the people in the neighborhood. The public comments expressed fear that if Respondent was granted the requested permits it would cause a continuation of problems being experienced in the neighborhood. These problems consisted of: (1) heavy vehicle and foot traffic; (2) illegally parked vehicles; (3) trash and condoms on lawns and in the streets; (4) an increase in crime in the neighborhood; and (5) amplified music that disturbs the resident's quiet enjoyment of their homes.

C. Testimony

Ms. Levinson testified that in addition to the fears voiced by the Protestants, her family experienced a particular problem caused by illegal parking. A family member uses a ramp to move an electric wheel chair into and out of the home. She has found vehicles blocking her driveway or the wheelchair ramp to the home. She also expressed her fear that an emergency vehicle might be unable to respond to her home because of parked vehicles on the narrow streets.

Ms. O'Connor testified that she has heard gun shots in the neighborhood. She believes that vandalism has increased in the neighborhood with vehicle windows being broken, stolen lawn ornaments, and a household pet being shot by an unknown person. She and her husband are reluctant to leave the house at night because of the noises. Ms. O'Connor's husband goes to work in the early morning and has difficulty sleeping because of the noise from neighborhood bars.

Ms. Diaz testified that she has lived two blocks from 5102 Washington Ave. for 25 years. She stated that she and her children have observed persons having sex in parked vehicles. She has had unknown persons knock at her door at night. She has had parked vehicles block her driveway. She has observed broken bottles on the sidewalk and street, and she fears the broken glass might harm automobile tires or cause injury to her or her pets.

Ms. Aguirre testified that she is a student at Lamar High School and is 17 years old. She lives one block from 5102 Washington Ave. There is currently a bar operating at that address. Noise from the current premises sometimes continues until 3 or 4 a.m. and may continue under Applicant's management.

Ms. Shepherd testified that when she was notified of Applicant's original application, she made a search of public records for information concerning Shahab Hashemi, the person who signed the application as manager of the business. Her investigation revealed that Mr. Hashemi was a participant in several limited liability corporations and partnerships holding TABC permits. Ms. Shepherd stated that she found many assumed name certificates filed by

Mr. Hashemi and that several of the certificates had lapsed for non-payment of required fees. Ms. Shepherd related that recent City of Houston Health Department inspections had found deficiencies in food preparation and waste disposal at the 5102 Washington Avenue business. Ms. Shepherd related an increase in traffic accidents in the area.

Ms. Poissant testified that she had complaints in addition to the noise level and traffic congestion. She has observed illegal parking, and several automobile accidents. Ms. Poissant related that she has seen a patron vomiting after leaving 5102 Washington Avenue. On March 10, 2013, a man exposed himself to her. Ms. Poissant admitted that she was not able to confirm that the illegal parking and automobile accidents involved patrons at 5102 Washington Avenue. She related these incidents to show the problems being experienced by herself and her neighbors due to the many licensed premises in the area. She testified that the police do not follow up on her many noise complaints. She has installed double pane windows in an attempt to reduce the noise level in her home. In her opinion, the increased traffic also poses a threat to children at a nearby day care.

Mr. Hashemi testified he acquired Pub Heights at 5102 Washington Avenue in April of 2014. He then made an original application on behalf of SHG & T, LLC, for a mixed beverage permit and an associated late hours permit at that street address. While Pub Heights operated as a nightclub with a dance floor, he intends to operate Troia & Galway as a sports bar. He has hired sound engineers to install television screens and speakers. He asked the engineers to pay particular attention to reducing noise complaints from neighbors. The business plan is to draw the 30-to-40-year-old crowd by increasing prices for food and beverages and thereby driving away the younger crowd. Off-duty Houston Police Department (HPD) officers will be hired for special events. All employees will receive TABC seller/server training. He has purchased additional trash dumpsters. The trash dumpsters will be emptied four times per week.

Sergeant Michael Donato testified that he is a police officer with the (HPD) in the Central Division, which includes 5102 Washington Avenue, the address for which this original application is made. He is not aware of any HPD investigations centering on that address. Sgt. Donato testified that Mr. Hashemi is approved by HPD as an employer of off-duty HPD

officers for second jobs as security.

III. ANALYSIS

Testimony and public comment established that persons living in the area around the 5100 block of Washington Avenue experience traffic and parking problem, late night noise and trash in the street and in yards. The testimony and evidence confirm that there are four other businesses holding TABC permits in close proximity to 5102 Washington Avenue.

While testimony established that on some occasions the noise complained of was coming from loudspeakers at 5102 Washington Avenue, there was no evidence that the noise was of sufficient decibels to be in violation of city ordinances. The many problems outlined by the Protestants are serious and should be addressed by the relevant city departments and authorities. With the exception of the complaint about amplified music and the observation of a patron vomiting, there was no evidence that the problems complained of were the result of the manner in which Applicant conducts its business. If, in the future, Applicant should operate in a manner prohibited by law or regulations there are methods available to the offended neighbors by which they may compel compliance. No evidence was presented that the problems experienced in the neighborhood would be made worse by the manner in which Applicant will conduct his business should the permits be granted. As a result, the ALJ does not find the situation in this case warrants denial of the application for the requested permits. The application should be granted.

IV. FINDINGS OF FACT

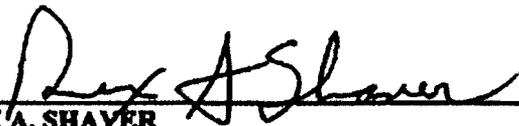
1. 5102 SHG & T, LLC d/b/a Troia & Galway (Applicant) has filed an original application with the Texas Alcoholic Beverage Commission (TABC) for a mixed beverage permit[MB], a mixed beverage late hours permit [LB], and a beverage cartage permit [PE], for a premises located at 5102 Washington Avenue, Houston, Harris County, Texas.
2. Protests to the application were filed by Margaret Poissant and Derek Henry based on the general welfare, health, peace, morals and safety of the people and on the public sense of decency.

3. A Notice of Hearing dated May 21, 2014, was issued by TABC Staff notifying all 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 July 11, 2014, a hearing began before ALJ Rex Shaver in Houston, Texas. TABC Staff appeared at the hearing through its Staff attorney Sandra Patton. Applicant appeared and was represented by attorney Clyde Burleson. Protestant Ms. Poissant appeared, however Protestant Mr. Henry failed to appear. The record remained open for the filing of exhibits until July 25, 2014, when the record was closed.
5. Protestants failed to provide sufficient evidence to show that the place or manner in which Applicant or Applicant's agent, servant, or employee would conduct his business would have an adverse effect on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.

V. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under Texas Alcoholic Beverage Code Chapters. 1 and 5 and §§ 6.01 and 11.41, 11.46 and 32.01.
2. The State Office of Administrative Hearings 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, pursuant to Texas Government Code Chapter 2003.
3. Proper and timely notice of the hearing was provided to all parties pursuant to the Administrative Procedure Act, Tex. Gov't Code §§ 2001.051 -.052.
4. A preponderance of the evidence fails to show that the original application should be denied pursuant to Texas Alcoholic Beverage Code § 11.46(a)(8).
5. Applicant's original application for a mixed beverage permit [MB], a mixed beverage late hours permit [LB], and a beverage cartage permit [PE] for a premises located at 5102 Washington Avenue, Houston, Harris County, Texas, should be granted.

SIGNED September 18, 2014.



REX A. SHAYER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS