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I. Introduction

EGAM Corporation d/b/a Escapade 2001 - Arlington (Respondent or EGAM) holds Mixed Beverage Permit MB443287 and Mixed Beverage Late Hours Permit LB443288. EGAM operates a nightclub called Escapade 2001 - Arlington (the club or Escapade 2001), in Arlington, Tarrant County, Texas. EGAM's permits were due to expire on December 10, 2001. On November 7, 2001, EGAM filed an application to renew. Larry Nix, the owner of All Seasons RV Park, a neighbor of Escapade 2001, and Dr. Theron Bowman, Arlington Police Chief, protested renewal of the permits. After an investigation, the Staff of the Texas Alcoholic Beverage Commission (Staff) joined in the protests.

Mr. Nix protested on the basis of the noise generated by Escapade 2001. Chief Bowman protested on behalf of the Arlington Police Department (APD) on the basis of the number of calls for service at the club, the number and type of arrests made at the club, and the inordinate use of police resources to monitor the club.

This proposal finds (1) that there are reasonable grounds to believe the place or manner in which EGAM conducts its business warrants refusal of the permits; and (2) the chief of police of the city in which the premises are located recommended against renewal of the permits. The Administrative Law Judge (ALJ) recommends the permits not be renewed.

II. Jurisdiction and Procedural History

On November 7, 2001, EGAM filed an application to renew Mixed Beverage Permit MB443287 and Mixed Beverage Late Hours Permit LB443288.¹ On February 25, 2002, Staff informed Respondent that the Texas Alcoholic Beverage Commission (TABC) had received a protest against renewing the permits. The matter was referred to the State Office of Administrative Hearings (SOAH). The case was set for hearing on July 24, 2002. On July 12, 2002, EGAM filed a Motion for Continuance. The Motion was granted, and the case was reset for hearing on October 17, 2002. On October 7, 2002, EGAM filed its second Motion for Continuance. The second Motion was granted, and the case was reset for hearing on December 12, 2002. On December 6, 2002, EGAM filed its Attorney's Motion to Withdraw and for Continuance (its third such motion). The third Motion was granted, and the case was reset for hearing on February 20, 2003.

On February 20, 2003, a public hearing was convened before ALJ Robert F. Jones Jr., at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Staff was represented by Timothy E. Griffith, an attorney with the TABC Legal Division. Protestant Larry Nix appeared *pro se*. Protestant Theron Bowman appeared through Arlington Assistant City Attorneys Sim W. Goodall and Ursula Monroe Patterson. Respondent appeared through its President Merhdad Behimehr and its counsel, Don E. Walden and James W. Lee III. The hearing ended on February 21, 2003. The record was closed on May 9, 2003.

¹ T.A.B.C. Exhibit 3, *Renewal Application*.

Notice and jurisdiction were not contested issues, and those matters are addressed only in the Findings of Fact and Conclusions of Law.

III. Background

Escapade 2001 is located at 2811 South Cooper Street, Arlington, Tarrant County, Texas.² South Cooper street runs roughly north and south. The club building is located in the center of the north side of a large rectangular parking lot. The lot extends east from South Cooper Street. Parking for patrons is provided to the east, south, and west of the club building. The entrance to the All Seasons RV Park is located at 2715 South Cooper Street, a short distance north of the entrance to Escapade 2001. An office building guards the entrance drive to the park, which extends further to the east from Cooper Street than does the club's parking lot. A mobile home for the park's night manager is located east of the office on the entry road. Spaces for large recreational vehicles (RVs) are provided along the entry road. The distance between the manager's mobile home and the back of the club to its south is approximately 170 feet. Five rows of spaces for trailers, campers, and the like are located further east and south of the entry road. As a consequence, the western most space on the most southern row is approximately 310 feet from the club. Most of the property line between the park and the club is fenced. The fence is a six-foot chain link. The corner where the east-west fence and the north-south fence should intersect is not fenced because of a creek bed. The gap is several hundred feet wide. A row of trees is located between the back of the club and the entry road.³

Escapade 2001 has room for approximately 1,000 patrons, and is the largest club in west Arlington, but not the largest in the city.⁴ It was described as having "a loud atmosphere, club-type atmosphere."⁵ The club, which opened in December 1998, is a disco establishment, caters to a Hispanic clientele, and plays Hispanic music.⁶

IV. Discussion and Analysis

A. The Noise Complaints

1. The Governing Law

The TABC may refuse to renew a permit if it has "reasonable grounds to believe" and finds that "the place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the

² *Renewal Application.*

³ *See Exhibit LN-1; Tr. Vol. 1, pp. 76-77; 85-86; 171-74.*

⁴ *Tr. Vol. 1, p. 96. The largest club in the city is called Cowboys, which has room for 2,000 patrons. Id.*

⁵ *Tr. Vol. 1, p. 118.*

⁶ *Tr. Vol. 2, pp. 46-48.*

public sense of decency."⁷ Under TABC regulation, a permittee violates §11.46(a)(8), if "any disorderly conduct or related offenses described in Chapter 42 of the Texas Penal Code"⁸ is committed:

- (1) by the licensee or permittee in the course of conducting his/her alcoholic beverage business; or
- (2) by any person on the licensee or permittee's licensed premises; and
- (3) the licensee or permittee knew or, in the exercise of reasonable care, should have known of the offense or the likelihood of its occurrence and failed to take reasonable steps to prevent the offense.⁹

As relevant to the noise complaints described below, the Texas Penal Code states:

§ 42.01. Disorderly Conduct

(a) A person commits an offense if he intentionally or knowingly:

- (5) makes unreasonable noise in a public place . . . or in or near a private residence that he has no right to occupy;

(c) For purposes of this section:

- (1) an act is deemed to occur in a public place or near a private residence if it produces its offensive or proscribed consequences in the public place or near a private residence; and
- (2) a noise is *presumed* to be unreasonable *if* the noise exceeds a decibel level of 85 *after* the person making the noise receives notice from a magistrate or peace officer that the noise is a public nuisance.¹⁰

⁷ TEX. ALCO. BEV. CODE ANN. (the Code) §11.46(a)(8)(Vernon 2003).

⁸ 16 TEX. ADMIN. CODE § 35.31(a) & (c)(11).

⁹ 16 TEX. ADMIN. CODE § 35.31(b).

¹⁰ TEX. PENAL CODE ANN. § 42.01(Vernon 2003)(*emphasis supplied*).

2. Protestant's Evidence

a. Larry Nix

Mr. Nix's company purchased the All Seasons RV Park (the RV Park) in July 2000. It is next door and adjacent to Escapade 2001. The RV Park rents spaces to the public on a daily, weekly, or monthly basis. Its customers are visitors, tourists, or transient workers, or anyone who needs a spot for a trailer or recreational vehicle.¹¹ The RV Park's big business days are Friday, Saturday, and Sunday, the same days that Escapade 2001 is busy.¹² The average tenant rents for three or four months.¹³ The RV Park is zoned appropriately for its business, and has a current special use permit.¹⁴

Mr. Nix stated "the biggest problem we have is noise." The noise from the club building is mainly the bass beat of the drums in the music being played. Mr. Nix testified, "You can tell when the songs change. It's that pronounced."¹⁵ After hours, there have been drag races in the parking lot, radios playing, horns honking, partying, and tires squealing. This activity and noise wake up the RV Park's tenants and they leave the next morning because of it.¹⁶

Mr. Nix stated he brought these problems to the club's management, Mr. Behimehr, in September or October 2000. According to Mr. Nix, Mr. Mehrdad stated "it wasn't his problem, it was our problem, he had a business to run."¹⁷ As a consequence, Mr. Nix instructed his night managers and all tenants to call 911 if they had a problem.¹⁸

This has effected Mr. Nix's business negatively. He testified that the RV PARK community is "tight-knit" and talk about the places they have stayed. Word has gotten into that community that the RV Park has a noise problem, and people avoid All Seasons RV Park.¹⁹ He cannot put a dollar amount on the injury, but stated:

There is a direct correlation between sites that we could have rented and sites that we may have rented that we are not renting simply because of the noise coming from the

¹¹ Tr. Vol. 1, pp. 52-53.

¹² Tr. Vol. 1, pp. 67-68.

¹³ Tr. Vol. 1, p. 80.

¹⁴ Tr. Vol. 1, p. 54.

¹⁵ Tr. Vol. 1, p. 59.

¹⁶ Tr. Vol. 1, pp. 55-57.

¹⁷ Tr. Vol. 1, p. 57.

¹⁸ Tr. Vol. 1, p. 58.

¹⁹ Tr. Vol. 1, p. 60.

club next door.²⁰

In his protest letter to the APD and Arlington City Council, dated December 4, 2001, Mr. Nix described the noise as:

the "constant 'Thump, Thump, Thump' of the bass drums, the crash of beer bottles going into the dumpster at various times during the night, the drag racing and power stalls in the parking lot after closing, the occasional parking lot bar fight - complete with screaming and the impromptu tailgate parties after closing time are all problems."²¹

b. Charlotte Barnett

Charlotte Barnett lived as a night manager at the RV Park from February 2001 to October 2002.²² She lived in the mobile home behind the park office and adjacent to the club.²³ Ms. Barnett testified the noise levels on Friday, Saturday, and Sunday nights was "very disturbing," she testified she would turn on noisy appliances in the mobile home to create a "dull lull" or masking noise to allow sleep. She described the:

boom, boom, boom, boom, boom of . . . the music itself. And it was just almost an underlying feeling rather than just the noise of it. I mean you could hear it, but it was just like under your feet, just boom, boom, boom you know.²⁴

Ms. Barnett described the "boom, boom, boom" as creating a vibration in the mobile home floor, and shaking windows and walls in RVs.²⁵ The noise would start at 9:00 p.m. and continue to 3:00 or 4:00 a.m. She called 911 often.²⁶ Residents complained about trespassers, screams and shouting, the cars in the parking lot, screeching tires, car alarms, and beer bottles being emptied into dumpsters.²⁷ Ms. Barnett's handwritten statement reflected her frustration in making numerous calls to the club and to the police seeking a reduction in the level of the music from the club.²⁸

²⁰ Tr. Vol. 1, p. 68.

²¹ Exhibit A-082.

²² Tr. Vol. 1, p. 166.

²³ Tr. Vol. 1, p. 167.

²⁴ Tr. Vol. 1, p. 167.

²⁵ Tr. Vol. 1, p. 171.

²⁶ Tr. Vol. 1, pp. 167-68.

²⁷ Tr. Vol. 1, pp. 168-69.

²⁸ T.A.B.C. Exhibit 5.

Ms. Barnett stated that when she moved out in October 2002, "things weren't so bad then." However, in the "last few months its become a problem again." There was a period of six to eight months when she "could tell they were trying to improve."²⁹

c. Doug Winkler

Doug Winkler is an expert in acoustic analysis hired by Mr. Nix to analyze the sound coming from Escapade 2001.³⁰ Mr. Winkler set up a microphone in the open air on the property line between the club and All Seasons RV Park. He measured the sound pressure levels from 11:30 p.m. on November 23, 2001, until 1:30 a.m. on November 24, 2001.³¹ The information gathered was recorded onto the hard drive of his computer, and as the tests were run, he made notes as to what was occurring (such as wind, music noise, tire noise, etc.).³² During the test run strong gusty winds at times obscured the noise from the club.³³

Mr. Winkler made his measurements in decibels (dB). A dB is a measure of change in sound pressure from ambient pressure.³⁴ The sound level in a room with "typical HVAC system and fluorescent lighting" would be 75 or 76 dB.³⁵ Decibels are logarithmic. An increase of three dB makes a sound twice as loud. A sound at 73 dB is twice as loud as a sound at 70 dB. A tire squeal measured at 88 dB, where ambient sound is 70 dB, is 64 times as loud as a tire squeal at 70 dB.³⁶

Mr. Winkler's analysis distinguished between ambient sound and impulse sound. Ambient noise is background noise, which is continuous and filtered out by the brain. Impulse noise can be the same level in dB as the ambient noise, but the brain focuses on it and hears it as louder than ambient noise.³⁷ Music is an impulse sound. A bass sound can be at the same dB level as the ambient levels but still discernable. If the impulse noise is very high above the ambient level, it can be "extremely annoying . . . compared to an increase like wind noise or wind gust for a long period of

²⁹ Tr. Vol. 1, p. 170. Lisa Lane, the current night manager for the RV Park, has had experiences similar to Ms. Barnett. Since she did not live in the park prior to October 2002, her testimony concerning noise from Escapade 2001 is not relevant to the renewal petition. Her experiences are very similar to Ms. Barnett's, and Ms. Lane has called the police to make loud music complaints to APD in late 2002.

³⁰ Tr. Vol. 2, pp. 4-5.

³¹ Tr. Vol. 2, p. 5.

³² Tr. Vol. 2, pp.6; 14-17; 30-32.

³³ Tr. Vol. 2, p. 9.

³⁴ Tr. Vol. 2, p. 7.

³⁵ Tr. Vol. 2, p. 7.

³⁶ Tr. Vol. 2, p. 39.

³⁷ Tr. Vol. 2, pp. 7-8.

time."³⁸ Mr. Winkler noted that thin walls, windows, and the sort, are "transparent to [a low bass noise] pressure wave. It just goes right through it." As a consequence, "its a very complicated setup to get good isolation on a wall from a lower bass."³⁹ He stated that a night club would need "good heavy doors, very solid walls," or "very thick walls" to create sound isolation to reduce migrating sound. The club would also have to keep "their volume at a reasonable level" and keep the doors closed.⁴⁰ *Id.* p. 37. "Sound isolation" refers to the effectiveness of a wall as a barrier to sound. Mr. Winkler does not consider Escapade 2001 to be isolated for sound.⁴¹

Mr. Winkler concluded that the club was clearly audible at the property line, and the noise intruded into the trailer he was using for the test. He could tell when songs started and ended. He could hear the disc jockey in the club. He stated it would be difficult to carry on a conversation at the trailer and to sleep.⁴² Mr. Winkler stated that people complaining about noise and leaving the RV Park would be consistent with his findings. He found the noise unreasonable for a home, hotel, or resting environment. He opined that noise that causes walls and floors to vibrate and interfere with sleeping, conversing, or watching television would be unreasonable.⁴³

Mr. Winkler stated that APD officers with hand held sound meters would not get results similar to his because a hand-held meter records an average reading over a second or two of time, and does not work fast enough to register impulses of music over shorter periods of time. Mr. Winkler's instruments could distinguish changes in fractions of a second. His more sophisticated and calibrated equipment, as well as a trained operator such as himself, is needed to make a meaningful analysis.⁴⁴

A synopsis of Mr. Winkler's analysis⁴⁵ is set out in this chart:

Time Interval (Minute Number)	Noise Level (in dB)	Noise Source (peaks occurred)
1	77	impulse (3)

³⁸ Tr. Vol. 2, pp. 8-9.

³⁹ Tr. Vol. 2, p. 13.

⁴⁰ Tr. Vol. 2, p. 37.

⁴¹ Tr. Vol. 2, pp. 37-38; 41.

⁴² Tr. Vol. 2, pp. 15-16.

⁴³ Tr. Vol. 2, pp. 17-18.

⁴⁴ Tr. Vol. 2, pp. 18-19.

⁴⁵ See T.A.B.C. Exhibit 6. Mr. Winkler went through his printed analysis page by page and identified the source of the noise reflected in the logs. If anything could have been interpreted as wind, he marked as wind. Tr. Vol. 2, pp. 79; 81-86.

Time Interval (Minute Number)	Noise Level (in dB)	Noise Source (peaks occurred)
1	89	impulse (1)
2	77	music (1)
3	85	music (6)
4	84	music (1)
5	80	music (2)
6	83	impulse or music (1)
8	78-80	music (4)
9	80-84	music (2)
10	78	music (1)
11	78-80	music (8)
12	84-86	music (3)
13	78-80	music (4)
14	83-84	music (3)
15	78-80	music (5)
15	80	music (4)
15	80-85	music (9)
15	87	music (1)
16	80-83	music (5)
17	75-80	music (21)
17	80-85	music (7)
17	90	music (1)
18	78-85	music (5)
19	75 ⁴⁶	music:(30)
20	80 ⁴⁷	music:(60)

⁴⁶ Mr. Winkler identified these fast pulses as bass notes.

⁴⁷ Mr. Winkler identified these fast pulses as bass notes.

Time Interval (Minute Number)	Noise Level (in dB)	Noise Source (peaks occurred)
20	86	music (2)
21	80 ⁴⁸	music:(45)
21	85	music (1)
22	78-80	music (11)
25	78-80	music (8)
26	80	impulse (1)
26	84	impulse (1)
29	83-85	music (15)
29	85-90	music (2)
29	90-95	music (5)
30	82-84	impulse (2)
32	83-85	music (18)
32	85-90	music (11)
32	90-95	music (5)
33	85-90	music (6)
35	86	music (1)
35	88	music (1)
40	88	music (1)
41	80	music (7)
41	95	impulse (2)
41	88	impulse (2)
42	78	music (2)
43	76-78 ⁴⁹	music: (64)
57	92-94	impulse (2)

⁴⁸ Mr. Winkler identified these fast pulses as bass notes

⁴⁹ Mr. Winkler identified these fast pulses as bass notes.

Time Interval (Minute Number)	Noise Level (in dB)	Noise Source (peaks occurred)
57	83	music (1)
58	78-80	music (6)
58	80-83	music (2)
59	77-80	music (12)
73	75-80	music (18)
73	80-85	music (9)
73	86	music (1)
74	75-80	music (18)
74	80-85	music (3)
74	90-93	music (2)
75	75-80	music (60)
75	80-83	music (5)
76	75-80	music (18)
78	75-80	music (14)
78	80-85	music (8)

3. TABC's Evidence

TABC Agent Nathan Curry received the protests regarding Escapade 2001, on November 28, 2001. The initial protest was by Larry Nix, of the All Seasons RV Park.⁵⁰ Agent Curry conducted an investigation, relying on information supplied to him by Mr. Nix, and upon his own personal observations.⁵¹ As a result of his investigation, Agent Curry recommended that the TABC join in the protest against the renewal of Escapade 2001's permit.⁵² Mr. Curry relied on copies of letters⁵³

⁵⁰ Tr. Vol. 1, p.17; T.A.B.C. Exhibit 5, November 25, 2001, Nix Protest Letter

⁵¹ Tr. Vol. 1, pp. 18-19.

⁵² Tr. Vol. 1, p. 20.

⁵³ The ALJ has reviewed his rulings with respect to the park residents' letters in T.A.B.C. Exhibit 5. The ALJ has concluded the letters, aside from those written by Mr. Nix and Ms. Barrett, are not admissible to prove the matters asserted in them. They are admissible to prove the resident's state of mind as they left, *i.e.*, their dissatisfaction, and what

collected by Mr. Nix and his employees from former residents of the All Seasons RV Park.⁵⁴ Agent Curry also spoke to Mr. Nix and persons resident at All Seasons RV Park during his investigation. The main complaint was the noise generated by the club.⁵⁵

Agent Curry made a personal investigation of the noise. He testified it was "beyond the level of merely irritating. It was – disruptive."⁵⁶ He went to the location and made sound measurements on several occasions using a handheld decibel meter.⁵⁷ He stood on the All Seasons RV Park property at the property line between the RV Park and Escapade 2001.⁵⁸ Agent Curry's measurements, taken on December 2, 29, and 30, 2001, and January 12, 2002, recorded measurements between 70 and 77 dB.⁵⁹

Agent Curry testified that under the Texas Penal Code noise levels are "unreasonable" at 85 dB. He noted that under TABC standards, a violation occurs "when it becomes noisy,"⁶⁰ there being no explicit decibel reading or threshold stated in the Code. The standard is "whether it's disruptive or offensive to public decency."⁶¹ In Agent Curry's opinion, EGAM should have known about the noise problem, because Mr. Behimehr was notified about the problem, and it went on for an extensive period of time afterward.⁶²

Agent Curry testified "it is my opinion that the conduct of the permittee was a violation of the place or manner statute of the Alcoholic Beverage Code."⁶³ Agent Curry's report cited § 11.46(a)(8), 16 TEX. ADMIN. CODE § 35.31, and Tex. Penal Code Ann. § 42.01 as a basis for the protest.⁶⁴

they say its cause was. The Staff asserted the letters were admissible to prove the truth of the matters asserted within them, *i.e.*, that the park residents move out because of the noise from the club. The ALJ must reject that conclusion.

⁵⁴ TABC Exhibit 5; Tr. Vol. 1, pp. 21; 60-61; 183.

⁵⁵ Tr. Vol. 1, p. 27.

⁵⁶ Tr. Vol. 1, p. 27.

⁵⁷ Tr. Vol. 1, p. 28.

⁵⁸ Tr. Vol. 1, p. 30.

⁵⁹ TABC Exhibit 6; Tr. Vol. 1, pp. 28-30.

⁶⁰ Tr. Vol. 1, pp. 30-31.

⁶¹ Tr. Vol. 1, p. 47.

⁶² Tr. Vol. 1, pp. 50-51. "Cure" would not be a defense. *Id.*

⁶³ Tr. Vol. 1, p. 40.

⁶⁴ Tr. Vol. 1, pp. 41-43.

4. APD's Evidence

Escapade 2001 is located in the west patrol district of Arlington. Sergeant John K. Marsh, APD, was in charge of a special unit in the west patrol district side of Arlington called H-E-A-T (for Hot Spot Enforcement and Assistance Team).⁶⁵ Sgt. Marsh's H-E-A-T was involved in operations at Escapade 2001. Sgt. Marsh always entered the club during directed patrols or a major operation at Escapade 2001.⁶⁶ He described the club as "so loud and so packed that I didn't spend a whole lot of time in there because it was a waste of our time if only four or five of us were in there." Sgt. Marsh observed noise in the front of the club when the doors were opened, and stated "there was some times in the back when the doors were open in the back that the music was really, really loud."⁶⁷ He was not aware of any disorderly conduct arrests at Escapade 2001 for noise level violations greater than 85 dB. Sgt. Marsh stated he could not testify that conditions at the club changed. He said, "they were pretty bad for the first year, year and a half." He concluded "from my first direct patrol to that last operation I was involved in, I didn't see a whole lot of improvement. I wouldn't say it was worse. About the same."⁶⁸

Lieutenant John B. Miller, APD, was the commander of patrol over the APD west district from December 1999 to April 2002.⁶⁹ *Id.* p. 136. Lt. Miller testified that no noise citations have been written by APD to Escapade 2001. Lt. Miller opined that the Escapade 2001 situation stayed about the same, "it comes and goes and fluctuates," during his tenure in the west district.⁷⁰

5. EGAM's Evidence

Mehrdad Behimehr is a shareholder and President of EGAM Corporation. He manages the nightly operations of Escapade 2001.⁷¹ Mr. Behimehr is familiar with the noise concerns raised by Mr. Nix.⁷² Mr. Behimehr stated that the level of sound used by his club is appropriate to the disco style of club, and if "the music is too low, they can't dance."⁷³ He told the APD "that's noise, normal

⁶⁵ Tr. Vol. 1, pp. 92-93.

⁶⁶ Tr. Vol. 1, pp. 92-93.

⁶⁷ Tr. Vol. 1, p. 96.

⁶⁸ Tr. Vol. 1, p. 101.

⁶⁹ Tr. Vol. 1, p. 136.

⁷⁰ Tr. Vol. 1, pp. 151-52.

⁷¹ Tr. Vol. 2, pp. 46-48.

⁷² Tr. Vol. 2, p. 61.

⁷³ Tr. Vol. 2, p. 72.

noise for nightclub."⁷⁴

6. Arguments and Analysis

a. Mr. Nix

Mr. Nix notes that the RV Park has lost thousands of dollars in revenue because customers have left after noisy nights at Escapade 2001. He anticipates additional losses as word of mouth in the RV Park community steers potential guests away. Mr. Nix cites Mr. Winkler's testimony as showing 103 instances in which the dB readings exceeded 80, 34 instances in excess of 85 dB, and 6 in excess on 90 dB. He also emphasized Mr. Winkler's statement that dB readings increase logarithmically. He repeated Agent Curry's opinion that the noise from Escapade 2001 was a nuisance even though it did not reach 85 dB during Curry's measurements. Mr. Nix argues that Mr. Behimehr has made it clear that he will not do anything further to alleviate the noise levels.

Mr. Nix asks that the permits not be renewed.

b. TABC

The Staff argues that the evidence shows the club is noisy and disorderly, that it attracts noisy and disorderly patrons, that its has caused loss of revenue for the RV Park, that it causes adverse effects on the peace and health of surrounding residents, and is a public nuisance. Staff urges that these are violations of §§ 11.46(a)(8), 11.61(b)(2), (7), and (9). Staff further argues mere "offensive noise" is a violation of the Code.⁷⁵

Staff contends that EGAM was aware of the noise complaint, because it was brought to Mr. Behimehr's attention by Mr. Nix and the APD. Staff further asserts that any "cure" claimed by EGAM is not a defense. The inquiry is whether the violation occurred during the existence of the permit.

Staff requests that the permits not be renewed.

c. APD

The APD examines the terms of § 42.01 of the Penal Code. The statute is violated if the

⁷⁴ Tr. Vol. 2, p. 57.

⁷⁵ The Staff cites § 101.62 of the Code, which states no "permittee, on premises under his control, may maintain or permit a radio, television, amplifier, piano, phonograph, music machine, orchestra, band, singer, speaker, entertainer, or other device or person that produces, amplifies, or projects music or other sound that is loud, vociferous, vulgar, indecent, lewd, or otherwise offensive to persons on or near the licensed premises." Section 101.62 was not specifically cited in the Notice of Hearing as a basis for the protest. See T.A.B.C. Exhibit 1.

accused "makes unreasonable noise in a public place . . . or in or near a private residence that he has no right to occupy." TEX. PENAL CODE ANN. § 42.01(a)(5). The later portion of the section does not establish 85 dB as a predicate for disorderly conduct or unreasonable noise, it merely establishes the terms of a presumption. APD urges that a review of the evidence demonstrates that the noise coming from Escapade 2001 was unreasonable and a breach of the peace. Noise that vibrates walls and floors, which appliances were turned on to mask, and that makes conversation or sleep impossible" infringes upon the health and safety and peace of the public."

APD requests that the permits not be renewed.

d. EGAM

Respondent argues that the only objective measure to apply is that provided in § 42.01 of the Penal Code. EGAM reads the section to say that before a noise can be considered "unreasonable" (whether it is presumed to be so or not) the person making the noise must first receive "notice from a magistrate or peace officer that the noise is a public nuisance." Since no evidence was introduced proving EGAM received such a notice, Respondent argues that § 42.01 is inapplicable, and there is no objective standard to be applied to the noise issue.

EGAM notes that the RV Park is located within commercially zoned area. Since each of the residents at the RV Park chose to reside there, EGAM argues that their complaints should be discounted.

EGAM argues that Mr. Nix's loss of business not a reason to refuse to renew EGAM's permits, and that the evidence demonstrated that only the RV Park (and no other business) was allegedly effected.

EGAM asserts that no noise complaint has been established to justify non-renewal of its permits.

e. Analysis

EGAM has misread § 42.01 of the Penal Code. The offense is described in subsection (a)(5), that is making "unreasonable noise in a public place . . . or in or near a private residence that he has no right to occupy." Subsection (c)(2) describes a presumption on unreasonability. It has two conditions: noise is *presumed* to be unreasonable (1) *if* the noise exceeds a decibel level of 85, (2) *after* the person making the noise receives notice from a magistrate or peace officer that the noise is a public nuisance." TEX. PENAL CODE ANN. § 42.01(c)(2). Noise can be "unreasonable" without a magistrate or peace officer giving notice of a public nuisance.

The record contains both subjective and objective evidence of the level of noise coming from Escapade 2001. Mr. Nix, Ms. Barnett, Ms. Lane, Mr. Winkler, Agent Curry, and Sgt. Marsh all testified to the "boom, boom, boom" of the intrusive noise from the club. Mr. Winkler was able to pinpoint the heavy bass sound on his sound analysis. The bass notes were in the 75 to 80 dB range. Other music was much louder. Mr. Winkler's sound level measurements show numerous instances

in which the music levels at a distance of 170 feet reached or exceeded 80, 85, and 90 dB. The noise was disruptive of the lawful use of the adjoining property, the All Seasons RV Park. An action is "unreasonable" if it exceeds the bounds of reason or moderation, or if it is extreme or excessive. *Merriam Webster's Collegiate Dictionary* (10th Ed. 1995). The evidence demonstrates the extreme and excessive nature of the noise from the club.

The evidence is undisputed that the music at Escapade 2001 is provided by EGAM. Mr. Behimehr testified the club is a disco, and he plays the music at these levels for the benefit of his customers. Both Mr. Nix and Mr. Behimehr agreed that the noise concerns were brought to EGAM's attention in September or October 2000. The noise complaints continued unabated up to and past November 7, 2001, the date EGAM filed its renewal application. Although Mr. Winkler only recorded measurements on one night,⁷⁶ the testimony of Ms. Barnett, allows the ALJ the inference that what Mr. Winkler recorded was the common experience of a business night at Escapade 2001 in the months leading up to November 2001. During the period leading to the filing of the renewal, EGAM did nothing to alleviate the noise coming from the club. The improvements to the club building occurred in 2002, after the renewal application was filed.⁷⁷

EGAM argues that the commercial and industrial zoning of the area should in some fashion insulate it from noise complaints by persons who chose to reside (albeit temporarily) in the area. The Code provisions governing this matter make no reference to zoning laws. The Code evidences an interest in regulated premises being operated with some reasonable restraint, independent of zoning. § 1.46(a)(8) makes "the place or manner in which the applicant may conduct his business" a basis for non-renewal. This provision is an exercise of police power "for the protection of the welfare, health, peace, temperance, and safety of the people of the state." It is to be liberally construed.⁷⁸ The zoning in which Escapade 2001 and All Seasons RV Park do business is not relevant to this case.

EGAM argues that Mr. Nix's loss of business is not a lawful ground for canceling Respondent's permits. The ALJ agrees. Mr. Nix's loss of business is, however, evidence of the intrusiveness of the sound coming from Escapade 2001, and one measure of its unreasonableness.

EGAM also urges that the evidence demonstrated that only the RV Park (and no other business) was allegedly affected. The ALJ agrees. However the Code does not require that all businesses or persons operating or residing around the premises be effected.

The ALJ concludes that there are reasonable grounds to believe that manner in which EGAM conducts its business at Escapade 2001 warrants the refusal to renew Mixed Beverage Permit MB443287 and Mixed Beverage Late Hours Permit LB443288 based on the general welfare, health,

⁷⁶ Mr. Winkler actually attempted to take measurements June or August 2002, but the information did not record on his hard drive. He testified that his observations that evening in 2002 were "very, very similar" to November 2001. Tr. Vol. 2, p. 6.

⁷⁷ See Tr., Vol. 2, pp. 61-64.

⁷⁸ § 1.03 of the Code.

peace, morals, and safety of the people and on the public sense of decency. EGAM committed disorderly conduct during the life of the permits, because it made unreasonable noise in a public place in or near the All Seasons RV Park, a place which contains private residences that EGAM has no right to occupy. EGAM created the music noise in the course of conducting its alcoholic beverage business and knew of the noise complaints and failed to take reasonable steps to avoid the level of noise that drew complaints.

The ALJ recommends that the Commission deny EGAM renewal of Mixed Beverage Permit MB443287 and Mixed Beverage Late Hours Permit LB443288 because of its violation of §11.46(a)(8) of the Code.

B. Recommendation of Public Official

1. The Governing Law

§ 11.41(a) of the Code states

When a person applies for a permit, the commission or administrator may give due consideration to the recommendations of the . . . chief of police . . . of the city or town in which the premises sought to be licensed are located If a protest against the issuance of a permit is made to the commission by any of these officers and it is found on a hearing or finding of facts that the issuance of the permit would be in conflict with the provisions of this code, the commission or administrator shall enter an order setting forth the reasons for refusal.

2. Chief Bowman's Complaint

On December 4, 2001, Dr. Theron L. Bowman, Police Chief, APD, sent a protest letter to the TABC.⁷⁹ The letter makes the protest of Escapade 2001's permit renewal on behalf of the APD. In support of his protest, Chief Bowman cited the following APD statistics:

- In 2000, Escapade 2001 had 37 DWI arrests (the highest in Arlington) and 31 public intoxication arrests (third highest in the city).
- From January to August 2001, Escapade had 21 DWI arrests (the highest in Arlington) and 31 public intoxication arrests (second highest in the city).
- Special enforcement actions at Escapade 2001, between April 27 and November 10, 2001, has resulted in 93 arrests:

Chief Bowman also stated that Escapade 2001 is located on South Cooper Street, "a major north/south roadway traveled by a large number of citizens and visitors in Arlington, Texas." His

⁷⁹ Exhibit A-001.

concern was that club patrons would leave the premises in an intoxicated state and cause a major accident. Exhibit A-001. Chief Bowman concluded that "because the applicant has not demonstrated responsible management, I request denial of the permits."⁸⁰

The ALJ recommends that the Commission find Chief Bowman has recommended that the Commission deny EGAM renewal of Mixed Beverage Permit MB443287 and Mixed Beverage Late Hours Permit LB443288, and has stated his reasons therefore.

The Commission should find Chief Bowman's recommendation to the Commission is entitled to due consideration under § 11.41(a) of the Code.

C. Use Of Police Resources

1. The Governing Law

As noted above, the TABC may refuse to renew a permit if it has "reasonable grounds to believe" and finds that "the place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency." §11.46(a)(8) of the Code.

Generally, to deny a permit to a qualified applicant to operate a lawful business in a wet area, 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. Mikulenska*, 510 S.W.2d 616, 619 (Tex.Civ.App.--San Antonio 1974, no writ); *Elliott v. Dawson*, 473 S.W.2d 668, 670 (Tex.Civ.App.--Houston [1 Dist.] 1971, no writ).

The Code does not define how the place or manner in which a business might be operated would jeopardize the general welfare, health, peace, morals, or sense of decency of the people, giving the TABC discretion in making this decision. There is no "set formula." *Brantley v. Texas Alcoholic Beverage Com'n*, 1 S.W.3d 343, 347 (Tex.App.--Texarkana 1999, no writ); *see, e.g., Helms v. Texas Alcoholic Beverage Com'n*, 700 S.W.2d 607, 611 (Tex.App.--Corpus Christi 1985, no writ); *Ex parte Velasco*, 225 S.W.2d 921, 923 (Tex.Civ.App.-Eastland 1949, no writ).

2. APD's Evidence

a. Sergeant Lee Shetler

Sgt. Shetler is a patrol supervisor assigned to the west "sector" in Arlington. Escapade 2001 was a part of Sgt. Shetler's responsibility from the date it opened in 1999 until January 2003, when he changed job responsibilities.⁸¹

⁸⁰ Exhibit A-001.

⁸¹ Tr. Vol. 1, pp. 114-15.

In the summer of 1999, Sgt. Shetler heard reports from his patrol officers who worked the midnight shift of increased calls to Escapade 2001. This was reflected in the call reports. Sgt. Shetler met with the club manager, Mr. Behimehr, in the summer of 1999, and "spoke with him briefly about what my concerns were." Sgt. Shetler directed Officer Johnson, who was assigned to that beat, to pay "close attention to the club and to go by and make periodic bar checks." Sgt. Shetler stated that APD received a variety, a "gamut," of calls: disturbances, suspicious persons, vehicle burglary, thefts, assaults, and calls for assistance from the club itself.⁸²

On May 26, 2001, Sgt. Shetler headed an operation at Escapade 2001 in which 31 adults were arrested and three juveniles were detained. The arrests were for public intoxication, urinating in public, and controlled substance violations. Some of the arrest took place inside the club. Two bartenders were arrested for sale of alcohol to minors. A 14-year old female was found passed out in the restroom in the club. Sgt. Shetler saw persons he considered to be intoxicated in the club, who were being served alcohol. Sgt. Shetler believed the persons were intoxicated "from their demeanor, the way they would walk, staggering across the floor, sloshing of beer. Just close enough to them, and could certainly tell through their facial expressions, bloodshot eyes, that they did appear to be intoxicated."⁸³

Sgt. Shetler wrote a memorandum to his superiors concerning police activity at Escapade 2001.⁸⁴ The memo was written in the course of organizing an operation at Escapade 2001, which took place on September 15, 2001. The memo detailed the results of earlier operations: on April 27, 2001, 19 arrests had been made, and on May 26, 2001, 36 arrests had been made. Sgt. Shetler further reported that from June 1, 2001 to September 1, 2001 there had been 46 calls for service⁸⁵ at Escapade 2001.⁸⁶

On September 15, 2001, Sgt. Shetler conducted an operation at Escapade 2001 in which 41 adults were arrested and some juveniles were detained. The arrests were for public intoxication, urinating in public, open container violations, and "minors in possession, DWI, things of that nature."⁸⁷

Sgt. Shetler testified that he met with Mr. Behimehr and Mr. Lee (EGAM's attorney) "on

⁸² Tr. Vol. 1, pp. 115-16.

⁸³ Tr. Vol. 1, pp. 117-19.

⁸⁴ Exhibit A-084.

⁸⁵ Sgt. Shetler testified that a call for service does not mean a crime has been committed. Tr. Vol. 1, pp. 124-25.

⁸⁶ Exhibit A-084; *see also* Exhibit A-090. The details of the arrests and calls were not contradicted by EGAM and appear in the Findings of Fact. They will not be recited here.

⁸⁷ Tr., Vol. 1, p. 118. A memorandum written by Lt. Miller broke down the activity as 34 arrests and 41 charges. Exhibit A-087. The details of the arrests were not contradicted by EGAM and appear in the Findings of Fact. They will not be recited here.

more than one occasion." APD had a meeting with EGAM's principals and the city's attorney. APD offered a class for the clubs employees. EGAM principals accepted the idea of classes, but never followed through. APD offered to evaluate the Escapade 2001 parking lot, with respect reducing violations and enhancing enforcement. Sgt. Shetler stated that violations occurred throughout the parking lot.⁸⁸

Sgt. Shetler stated that when the club first opened Tarrant County Sheriff's deputies worked there off-duty. Sgt. Shetler understood that in the last part of 2002 one officer was posted at the front door, and that others might have patrolled the parking lot.⁸⁹ *Id.* p. 121.

Sgt. Shetler opined that Escapade 2001 was a "threat to the health, safety and welfare of the people of the area or in the club." Patrons leaving the club intoxicated have been arrested for DWI. There have been assaults.⁹⁰ Sgt. Shetler was not able to express an opinion on whether the situation at Escapade 2001 has improved since 2001.⁹¹

b. Sergeant John K. Marsh

As described above, Sgt. Marsh was in charge the H-E-A-T⁹² unit in the west patrol district side of Arlington. Sgt. Marsh's H-E-A-T was involved in operations at Escapade 2001. He explained that "any time a location . . . gets to the point where its causing us problems . . . [*i.e.*,] just a lot of calls⁹³ being generated from that location" the H-E-A-T would be assigned to that location. Escapade 2001 was such a site.⁹⁴

Sgt. Marsh conducted three or four "directed patrols" and was involved in two "major operations" at Escapade 2001. A "directed patrol" involved Sgt. Marsh and the four members of H-E-A-T focusing on the club during a shift. The H-E-A-T would concentrate on the parking lot at Escapade 2001. Sgt. Marsh personally observed public intoxication, urinating in public, and drug arrests. He indicated some persons arrived at the location intoxicated, but the "majority" were observed leaving the club in a state of "stumbling" intoxication. In the early directed patrols, Sgt. Marsh testified that each H-E-A-T member would make an arrest in the first ten minutes, process

⁸⁸ Tr., Vol. 1, pp. 119-21.

⁸⁹ Tr., Vol. 1, p. 121.

⁹⁰ Tr., Vol. 1, pp. 121-22.

⁹¹ Tr., Vol. 1, pp. 126-27.

⁹² H-E-A-T for Hot Spot Enforcement and Assistance Team. Tr. Vol. 1, pp. 92-93.

⁹³ Sgt. Marsh agreed that a call for service does not mean a crime has been committed. Tr. Vol. 1, pp. 98-99.

⁹⁴ Tr. Vol. 1, pp. 93-94.

the arrestees, and return. He stated, "it took some time to get it to where it slowed up a bit."⁹⁵ Sgt. Marsh indicated that he would not call the TABC for offenses in the parking lot such as public intoxication and urinating in public; those were offenses the APD could and should handle.⁹⁶ Sgt. Marsh was not aware of any of the drug arrests involving the active participation or acquiescence of Escapade 2001 employees.⁹⁷ Sgt. Marsh's first directed patrol at Escapade 2001 was in September 2000. Sgt. Marsh was in charge of the H-E-A-T in the west patrol district until January 2003.⁹⁸

Sgt. Marsh testified that Escapade 2001 was the largest club in the west patrol district, but not the largest in Arlington.⁹⁹ Escapade 2001 was always high on the monthly statistics for calls for service. The club is normally open on three nights a week, Friday through Sunday. Saturday was the busiest night at the club and the night most operations were conducted.¹⁰⁰

As noted above, Sgt. Marsh stated he could not testify that conditions at the club changed. He said, "they were pretty bad for the first year, year and a half." He concluded "from my first direct patrol to that last operation I was involved in, I didn't see a whole lot of improvement. I wouldn't say it was worse. About the same."¹⁰¹

Sgt. Marsh indicated he spoke to Merhdad Behimehr when he went into the club, and that Mr. Behimehr "knew what my concerns were early on. I told him."¹⁰² Sgt. Marsh stated that he believed, based on how he "read" Mr. Behimehr, that Mr. Behimehr was sincere, early on, about addressing police concerns. As the police repeated direct patrols and operations, he became "frazzled" and had video cameras taping the police activity, and had less time to talk.¹⁰³

c. Lieutenant John B. Miller

Lt. Miller was the commander of patrol over the APD west district from December 1999 to

⁹⁵ Tr. Vol. 1, pp. 94-95. Sgt. Marsh described "intoxicated individuals sitting out in the cars, just a bunch of loitering." "Traffic was bad. A lot of intoxicated people. Those two together do not mix well." *Id.* p. 104.

⁹⁶ Tr. Vol. 1, pp. 102.

⁹⁷ Tr. Vol. 1, pp. 105.

⁹⁸ Tr. Vol. 1, p. 100.

⁹⁹ Tr. Vol. 1, p. 100.

¹⁰⁰ Tr. Vol. 1, p. 97.

¹⁰¹ Tr. Vol. 1, p. 97.

¹⁰² Tr. Vol. 1, pp. 108.

¹⁰³ Tr. Vol. 1, pp. 109.

April 2002.¹⁰⁴ He testified that Escapade 2001 was considered a "hot spot." Two major operations were conducted at the location under his command. During these operations, he observed individuals arrested for public intoxication.¹⁰⁵ Lt. Miller stated that the operations and spot checks would turn up drugs or drug paraphernalia, especially in the restrooms.¹⁰⁶ Lt. Miller stated that certain of the arrests made at the club were forwarded to TABC, especially, sales to intoxicated persons, and minors intoxicated on the premises, or in possession of alcohol.¹⁰⁷

Lt. Miller has observed security at the club. He has seen two security officers in the parking lot in a "jeep . . . that has a yellow light on it."¹⁰⁸ He could not gauge the effectiveness of the security. Lt. Miller stated that the club management would videotape the APD officers, and he received the impression that the management felt they were being singled out for enforcement. Lt. Miller denied this.¹⁰⁹

Lt. Miller testified that APD had offered training to the Escapade 2001 employees. The management did not follow up and request the sessions.¹¹⁰

Lt. Miller opined that the Escapade 2001 situation stayed about the same, "it comes and goes and fluctuates," during his tenure in the west district.¹¹¹

d. Lieutenant James Hawthorne

Lt. Hawthorne is the current shift commander in the west district, Sector S, evening shift. He commanded a special operation at the club in September 2002.¹¹² Lt. Hawthorne indicated that "delivery [of narcotics the ALJ surmises] is still some problem in the parking lot."¹¹³ During the operation in September 2002, he observed public intoxication, public urinating, and a fight.¹¹⁴

¹⁰⁴ Tr. Vol. 1, p. 136.

¹⁰⁵ Tr. Vol. 1, p. 137.

¹⁰⁶ Tr. Vol. 1, p. 141.

¹⁰⁷ Tr. Vol. 1, p. 140.

¹⁰⁸ Tr. Vol. 1, pp. 138-39.

¹⁰⁹ Tr. Vol. 1, p. 139.

¹¹⁰ Tr. Vol. 1, p. 141-42.

¹¹¹ Tr. Vol. 1, p. 152.

¹¹² Tr. Vol. 2, pp. 88-89.

¹¹³ Tr. Vol. 2, p. 89.

¹¹⁴ Tr. Vol. 2, p. 94.

e. APD Memoranda and Records

In a November 16, 2001 memorandum to Deputy Chief Inker, Lt. Miller described the resources used in policing Escapade 2001. The memo concerned the five special enforcement operations, at Escapade 2001 between April 27 and November 10, 2001. Lt. Miller reported that the five operations involved 97 officers, supervisors, jailers, and PSA's. They involved 445 manhours. Salary costs were \$13,109.00. He reported the Escapade 2001 location had 277 calls for service from January 1, 2001 to November 12, 2001, 121 arrests, and 171 charges.¹¹⁵

Lt. Miller documented two meetings with Mr. Behimehr, one after the second operation and one on September 26, 2001. The first meeting was inconclusive. (He notes he was requested by Mr. Lee as EGAM's attorney to contact only Mr. Lee, and Lt. Miller has 'had no further contact' with Mr. Behimehr) The second took place with Mr. Behimehr and Mr. Lee. Lt. Miller recorded that APD offered classes to Escapade 2001 workers, but that Mr. Behimehr and Mr. Lee never requested them.¹¹⁶

In a September 19, 2001, memorandum to Deputy Chief Inker, Lt. Miller documented the APD resources used in the April 27 and May 26 operations. The April 27 operation employed 12 officers, and 3 jailers. The May 26 operation employed 24 officers, 6 supervisors, 5 jailers, and 1 PSA.¹¹⁷ The September 15, 2001 operation employed 14 officers, 4 supervisors, 4 jailers, and 2 PSAs.¹¹⁸

During the period September 20, 2001 to December 31, 2001, Call for Service Information sheets for the Escapade 2001 location documented 11 reports for assault (1); fighting (2); public intoxication (3); public urination (1); and vehicle theft (4).¹¹⁹

"Cowboys" is an Arlington bar approximately twice as large as Escapade 2001, and is open six or seven nights a week.¹²⁰ For the period November 2001 to October 2002, Escapade 2001 had 35 DWIs and 14 public intoxication arrests. Cowboys had 15 DWIs and 58 public intoxication arrests.¹²¹ Lt. Miller testified that APD attributes a DWI to a club if the arrestee tells police he had been drinking at that club. If the arrestee mentions two or more clubs each receives a DWI tally. It

¹¹⁵ Exhibit A-083.

¹¹⁶ Exhibit A-083.

¹¹⁷ The ALJ is uncertain of the meaning of the term "PSA." It was not defined in the record.

¹¹⁸ Exhibit A-087.

¹¹⁹ Exhibit A-103.

¹²⁰ Tr. Vol. 1, pp. 97; 143-44.

¹²¹ Tr. Vol. 1, p. 143; Exhibit A-514 (Exhibit A-514 was also referred to in the record as Exhibit A-510).

does not differentiate where the arrestee became intoxicated,¹²²

The other APD exhibits (after eliminating duplicated documents) show 180 Arrest Reports, 56 Citations, 33 Significant Offense Reports, 36 Routine Offense Reports, 3 Offense Reports, and 8 Miscellaneous Reports, in 2000 and 2001.¹²³

3. TABC's Evidence

Agent Curry testified concerning the information he received from the APD, which is also reflected in his report:

- 60 public intoxication arrest (14 involving minors)
- 6 minors in possession
- 4 sales to an intoxicated person
- 8 assaults
- 6 narcotics possession or delivery offenses (some evidence suggesting Escapade 2001 employees had knowledge of activity)¹²⁴

The APD information was, according to Agent Curry's report, for activity from January 1, 2001 to December 2, 2001.¹²⁵

Agent Curry testified "it is my opinion that the conduct of the permittee was a violation of the place or manner statute of the Alcoholic Beverage Code."¹²⁶ Agent Curry's report cites § 11.46(a)(8) as the basis for the protest.¹²⁷

4. Protestant's Evidence

Mr. Nix or his managers or tenants have witnessed what he considered violations of public decency, namely public urination and public intoxication. Occasionally, these acts have been

¹²² Tr. Vol. 1, pp. 97; 144-46.

¹²³ See generally Exhibits A-002 through A-513. Sgt. Marsh testified that an "arrest report" is "a report that cites probable cause for an arrest that has occurred." Tr. Vol. 1, p. 111. A "routine offense report" is "an offense report from a particular party and no arrest has occurred." It would concern "major offenses." *Id.* p. 112. A "citation" is a ticket. *Id.* A "miscellaneous report" is an "incident report." "The officer thinks that a situation or an incident has occurred that is worthy of documenting, but may not meet elements of a particular offense." *Id.*

¹²⁴ TABC Exhibit 4; Tr. Vol. 1, pp. 37-38.

¹²⁵ TABC Exhibit 6.

¹²⁶ Tr. Vol. 1, p. 40.

¹²⁷ TABC Exhibit 4.

committed on the RV Park property.¹²⁸

5. EGAM's Evidence

a. Mr. Mehrdad Behimehr

Mr. Behimehr complained that the APD began harassing his customers in on or after May 2001.¹²⁹ As a result, Mr. Behimehr and Mr. Lee had two meetings with the APD and a city attorney. After the first meeting, according to Mr. Behimehr, the harassment accelerated, causing a 30 to 40 percent drop in the club's business.¹³⁰ He later testified that the officers who had caused him to seek the meeting were to be "banned."¹³¹ To protect himself, Mr. Behimehr began taping APD directed patrols and operations. There was a second meeting, at which Lt. Miller was present. According to Mr. Behimehr, APD stated they were going to send a Spanish speaking officer to the club to train the bouncers.¹³²

Mr. Behimehr stated that all of his servers are TABC certified. He tried to have off-duty police officers or deputies as security at the club, but the Tarrant County Sheriff decided that deputies could not work off-duty in clubs, and he lost the deputies he had hired. He had an officer from the Tarrant County Community college for a while. He hired officers from the Grand Prairie Marshal's office.¹³³ He then hired Chris Matthews, current Chief of Police for the City of Walnut Springs, Texas.¹³⁴ Mr. Behimehr testified that Chief Matthews works very hard. He thinks the level of harassment has gone down because Chief Matthews is ex-APD.¹³⁵

Mr. Behimehr stated that Escapade 2001 has not had an administrative action against it. The charges against the two bartenders who were arrested were dropped.¹³⁶ Mr. Behimehr stated he has had no complaints from the local beat officers in the last few months. They continue to visit Escapade 2001 once a week.¹³⁷

¹²⁸ Tr. Vol. 1, pp. 66-67.

¹²⁹ Tr. Vol. 2, p. 49.

¹³⁰ Tr. Vol. 2, pp. 50-51.

¹³¹ Tr. Vol. 2, pp. 57-58.

¹³² Tr. Vol. 2, pp. 58-59.

¹³³ Tr. Vol. 2, pp. 51-55.

¹³⁴ Tr. Vol. 2, p. 56.

¹³⁵ Tr. Vol. 2, p. 61.

¹³⁶ Tr. Vol. 2, pp. 64-65.

¹³⁷ Tr. Vol. 2, p. 67.

b. Chief Chris Matthews

Chief Chris Matthews is a former officer with APD. Chief Matthews works as a security consultant and officer for Escapade 2001.¹³⁸ He has worked for them for one year. He met Mr. Behimehr of Escapade 2001 through some Grand Prairie City Marshals who were working at the club part time.¹³⁹

Chief Matthews testified the clientele at the club are of Hispanic origin and do not understand Texas laws. For example, he explained that in this culture spinning tires on a vehicle is a form of greeting or salutation. To alleviate this, the security at Escapade 2001, after being trained by Chief Matthews, now direct traffic in the parking lot, and require people to leave at closing. The vehicle's are slowed down by speed bumps in the lot. Chief Matthews suggested that the rear doors be insulated and Mr. Behimehr "enclosed the doors with an outside wall door and its insulated."¹⁴⁰ Chief Matthews testified that Mr. Behimehr told him to fix things; Chief Matthews makes suggestions, and they are done.¹⁴¹

Chief Matthews states that APD no longer conducts directed patrols at the club, and that APD is "very happy with the changes." Chief Matthews averred that James Hawthorn, "the shift commander," told him "things are a lot better there, that they don't get nearly the calls they use to."¹⁴²

Chief Matthews indicated the last time he spoke to an APD officer was "last Sunday on a noise complaint."¹⁴³ Chief Matthews asserts that no noise complaints have lead to a violation.¹⁴⁴

c. The Molly Childs Letter

On May 22, 2002, Molly A. Childs, Assistant Police Legal Advisor, wrote a letter to EGAM

¹³⁸ Tr. Vol. 1, p. 187

¹³⁹ Tr. Vol. 1, p. 189.

¹⁴⁰ Tr. Vol. 1, pp. 190-91.

¹⁴¹ Tr. Vol. 1, p. 192.

¹⁴² Tr. Vol. 1, pp. 193-94. Lt. Hawthorne denied having a conversation with Chief Matthews in which he informed Chief Matthews he was happy with the operation of the club. Tr. Vol. 2, p. 90. Lt. Hawthorne described Chief Matthews reputation to be an officer that skirted the wrong side of the line on searches. His conduct was inappropriate and he was not trustworthy. *Id.* p. 91. Sgt. Marsh stated he knows Chief Matthews, but "every time I've been on-site, he has not been there." Tr. Vol. 1, pp. 109-10. Sgt. Marsh stated that Mr. Matthews was an ex-APD officer that "had issues with us." Sgt. Marsh stated he liked Mr. Matthews and believed he would be a dependable officer. *Id.*

¹⁴³ Tr. Vol. 1, p. 196. That would have been February 16, 2003.

¹⁴⁴ Tr. Vol. 1, p. 197.

and Mr. Lee, on behalf of the Arlington Nuisance Abatement Team (the NAT).¹⁴⁵ The letter cited a "substantial decline in the criminal activity" at Escapade 2001 during March to May 2002. She stated "it seems management, agents, or employees of the business have taken a more proactive stance in addressing the concerns that brought the business of the [NAT]. We will continue to monitor the business, and hope the [*sic*] this trend will continue."¹⁴⁶

Lt. Miller testified that the Childs Letter dealt with "nuisance abatement," and concerned drug offenses rather than alcohol offenses.¹⁴⁷

6. Arguments and Analysis

a. APD

APD argues that Escapade 2001 is only open three nights a week but has violations and calls for service that equal or exceed those associated with Cowboys, a much larger club open seven days a week. APD argues that EGAM has demonstrated irresponsible management. A 14 year old female was found unconscious in the club's ladies room. Drug paraphernalia is found in the restrooms. The evidence shows the "nature of the activity that police respond to, [and describes] the extraordinary drain on police resources and [illustrates] the basis for the Chief of Police's recommendation."

APD is called to Escapade 2001 regarding assaults, disorderly conduct, unlawful carrying of weapons, drug possession, minors in possession of alcohol, thefts, and robberies. These offenses are all threats to the "health, peace, and safety of the public." The Childs Letter deals with the NAT, which operates under the authority of Chapter 125 of the Texas Civil Practice and Remedies Code. The letter documents the problems that APD had to face at Escapade 2001. The letter only cites a decline, not an elimination of the problem. APD argues EGAM's prior conduct warrants non-renewal of EGAM's permits.

APD points out that, through the course of this case, a hearing was delayed three times at EGAM's request. EGAM used that period of time, according to APD, to institute changes which lead to the Childs Letter. APD cites this as a cynical and unfair manipulation of the system: using the delay to claim there is not current problem, and to urge that non-renewal is not justified. Chief Matthews was not hired until February 2002. APD argues that it took until then for EGAM to begin to remediate its problems. APD argues that the past is a good indicator of how Escapade 2001 was run, and how it might be run in the future if it receives a renewal.

APD request renewal of the permits be denied.

¹⁴⁵ The NAT is composed of staff from Arlington's Housing Authority, Code Enforcement, City Attorney's Office, APD, and Fire Department.

¹⁴⁶ Respondent's Exhibit 4.

¹⁴⁷ Tr. Vol. 1, pp. 152-53.

b. TABC

TABC argues that the evidence demonstrates that EGAM did not have control of its premises. The club attracted disorderly and noisy persons. Its staff sold alcohol to persons to the point of public intoxication. As a result, the area surrounding the club was subjected to public urination and unsafe streets. Escapade 2001's operation required substantial police activity, led to a depletion of police resources, and had an adverse effect on the peace and health of the city.

Staff requested that the permits not be renewed.

c. Mr. Nix

Mr. Nix notes that the evidence indicates that Chief Matthews was not always in charge of the situation at Escapade 2001.

Mr. Nix asks that the permits not be renewed.

d. EGAM

EGAM states that the persons who are attracted to its business are not a basis for non-renewal. The Code penalizes for the manner in which EGAM conducts its business, not for its patrons. EGAM states that APD and TABC did not prove illegal conduct at its premises, but merely offered "hearsay statements consisting largely of police reports generated by calls made to [APD]." EGAM insists that APD and TABC failed to prove that "(1) the criminal conduct actually occurred, *and* (2) it resulted from the negligence of the applicant." EGAM argues that TABC rule 16 TAC § 35.31 in conjunction with § 11.46(8) of the Code requires proof that some prohibited activity was committed. The rule further requires proof of EGAM's employees's negligence or acquiescence. EGAM argues that the Childs Letter contradicts APD's argument that "excessive criminal activity occurs at Escapade."

EGAM asserts that police activity does not justify non-renewal of its permits.

e. Analysis

The TABC rule, 30 TAC § 35.31, "does not constitute the exclusive means by which §11.46(a)(8) . . . may be violated." 30 TAC § 35.31(d). As noted above, 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."

The evidence consists not only of calls for service, but direct testimony of APD officers who were personally a part of and conducted directed patrols or substantial operations at the Escapade 2001 premises. Numerous officers and jailers were rallied at substantial expense to arrest droves of publically intoxicated Escapade 2001 patrons. Public urination was a common sight at the club. Thefts and burglaries were rife.

EGAM complains that it should not be penalized for its patron's actions, noting that other venues attract their share of the rowdy or uncivilized. The evidence demonstrates that EGAM did little to stop sales to intoxicated persons, little to discourage the presence of intoxicated persons on its premises, and until the spring of 2002, little to discourage use of its parking lot as a urinal. The calls for service and high numbers of arrests show a high use of police resources. They substantiate EGAM's manner of operation business, which affected the public health, safety, and general welfare. The call lists and the other evidence demonstrate that either EGAM operates its business oblivious to disturbances, assaults, and other problems, or will not take steps to alleviate these problems unless forced to do so.

The ALJ finds that the excessive drain on police resources demonstrated in the evidence constitutes an "unusual condition" which justifies "a finding that the place or manner in which the applicant may conduct his business warrants a refusal of a permit."

The ALJ recommends that the Commission deny EGAM renewal of Mixed Beverage Permit MB443287 and Mixed Beverage Late Hours Permit LB443288 because of its violation of §11.46(a)(8) of the Code.

V. Findings of Fact

1. EGAM Corporation d/b/a Escapade 2001 - Arlington (Respondent or EGAM) holds Mixed Beverage Permit MB443287 and Mixed Beverage Late Hours Permit LB443288.
2. EGAM operates a nightclub called Escapade 2001 - Arlington (the club or Escapade 2001), in Arlington, Tarrant County, Texas.
3. Escapade 2001 is located at 2811 South Cooper Street, Arlington, Tarrant County, Texas.
4. EGAM's permits were due to expire on December 10, 2001.
5. On November 7, 2001, EGAM filed an application to renew.
6. EGAM Respondent is legally qualified to receive a Mixed Beverage Permit and Mixed Beverage Late Hours Permit.
7. Escapade 2001 has room for approximately 1,000 patrons, and is the largest club in west Arlington, but not the largest in the city.
8. The club, which opened in December 1998, is a disco establishment, and caters to a Hispanic clientele, and plays Hispanic music.
9. Larry Nix, the owner of All Seasons RV Park, a neighbor of Escapade 2001, and Dr. Theron Bowman, Arlington Police Chief, protested renewal of the permits.

10. After an investigation, the Staff of the Texas Alcoholic Beverage Commission (Staff) joined in the protests.
11. South Cooper street runs roughly north and south. The club building is located in center of the north side of a large rectangular parking lot. The lot extends east from South Cooper Street. Parking for patrons is provided to the east, south, and west of the club building.
12. The entrance to the All Seasons RV Park (the RV Park) is located at 2715 South Cooper Street, a short distance north of the entrance to Escapade 2001.
13. A mobile home for the park's night manager is located on the entry road to the RV Park. The distance between the manager's mobile home and the back of the club to its south is approximately 170 feet.
14. Five rows of spaces for trailers, campers, and the like are located further east and south of the entry road to the RV Park.
15. The western most space on the most southern row is approximately 310 feet from the club.
16. Most of the property line between the park and the club is fenced. The fence is a six-foot chain link. The corner where the east-west fence and the north-south fence should intersect is not fenced, because of a creek bed. The gap is several hundred feet wide.
17. A row of trees is located between the back of the club and the entry road.
18. Mr. Nix's company purchased the RV Park in July 2000.
19. The RV Park rents spaces to on a daily, weekly, or monthly basis. Its customers are visitors, tourists, or transient workers, or anyone who needs a spot for a trailer or recreational vehicle.
20. The RV Park's big business days are Friday, Saturday, and Sunday, the same days that Escapade 2001 is busy.
21. Noise from Escapade 2001 drives the RV Park's customers away
22. Mehrdad Behimehr is a shareholder and President of EGAM Corporation. He manages the operation of Escapade 2001.
23. Mr. Nix brought the noise problem to Mr. Behimehr in September or October 2000.
24. Mr. Behimer declined to deal with the noise problem raised by Mr. Nix.
25. Charlotte Barnett lived as a night manager at the RV Park from February 2001 to October 2002, in the mobile home behind the park office and adjacent to the club.

26. The noise levels on Friday, Saturday, and Sunday nights were very disturbing to Ms. Barnett.
27. Ms. Barnett turned on noisy appliances in the mobile home to mask the club's noise to allow sleep.
28. The music from the club created a vibration in Ms. Barnett's mobile home floor, and shook windows and walls in RVs.
29. The noise would start at 9:00 p.m. and continue to 3:00 or 4:00 a.m.
30. Doug Winkler was qualified as an expert in acoustic analysis.
31. Mr. Winkler was hired by Mr. Nix to make an analysis of the sound coming from Escapade 2001.
32. Mr. Winkler measured the sound pressure levels from 11:30 p.m. on November 23, 2001, until 1:30 a.m. on November 24, 2001.
33. The club was clearly audible at the property line, and the noise intruded into the trailer Mr. Winkler was using.
34. People complaining about noise and leaving the RV Park would be consistent with Mr. Winkler's findings.
35. The noise from Escapade 2001 was unreasonable for a home, hotel, or resting environment.
36. Noise that causes walls and floors to vibrate and interfere with sleeping, conversing, or watching television is unreasonable.
37. The music levels at a distance of 170 feet reached or exceeded 80, 85, and 90 decibels.
38. The noise as disruptive.
39. The noise from the club was clearly audible at the property line between Escapade 2001 and the RV Park.
40. The noise from Escapade 2001 was unreasonable.
41. EGAM made unreasonable noise in a public place in or near the All Seasons RV Park , a place which contains private residences that EGAM has no right to occupy.
42. EGAM created the music noise in the course of conducting its alcoholic beverage business.
43. EGAM knew of the noise complaints and failed to take reasonable steps to avoid the level

of noise that drew complaints.

44. The unreasonable noise from Escapade 2001 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
45. On December 4, 2001, Dr. Theron L. Bowman, Police Chief, Arlington Police Department (APD), sent a protest letter to the TABC on behalf of the APD.
46. In support of his protest, Chief Bowman cited the following:
 - a. In 2000, Escapade 2001 had 37 DWI arrests (the highest in Arlington) and 31 public intoxication arrests (third highest in the city).
 - b. From January to August 2001, Escapade had 21 DWI arrests (the highest in Arlington) and 31 public intoxication arrests (second highest in the city).
 - c. Special enforcement actions at Escapade 2001, between April 27 and November 10, 2001, resulted in 93 arrests.
 - d. Club patrons could leave the premises in an intoxicated state and cause a major accident on South Cooper Street.
47. Chief Bowman's protest is entitled to due consideration by the TABC.
48. Sergeant Lee Shetler is a patrol supervisor assigned to the west "sector" in Arlington. Escapade 2001 was a part of Sgt. Shetler's responsibility from the date it opened in 1999 until January 2003.
49. APD received a variety of calls regarding disturbances, suspicious persons, vehicle burglary, thefts, assaults, and calls for assistance from the club itself.
50. On May 26, 2001, Sgt. Shetler headed an operation at Escapade 2001 in which 36 adults were arrested and three juveniles were detained for the following offenses:
 - a. 19 for public intoxication
 - b. 1 for drugs
 - c. 2 for DWI
 - d. 1 for DUIAM(driving under the influence of alcohol-minor)
 - e. 4 for minors in possession
 - f. 2 for sales to intoxicated persons
 - g. 5 for urinating in public
 - h. 2 for miscellaneous offenses
51. Some of the May 26, 2001, arrests took place inside the club.
52. Two bartenders were arrested for sale of alcohol to minors on May 26, 2001

53. A 14 year old female was found passed out in the restroom in the club on May 26, 2001.
54. Intoxicated persons were being served alcohol on May 26, 2001.
55. On April 27, 2001, 19 arrests were made at Escapade 2001 for the following offenses:
 - a. 15 for public intoxication (one arrestee was in possession of cocaine);
 - b. 2 for sales to intoxicated persons; and
 - c. 2 for urinating in public
56. From June 1, 2001 to September 1, 2001 there were 46 calls for service at Escapade 2001 for the following offenses:
 - a. 3 for disturbances
 - b. 6 for traffic stops
 - c. 1 for misdemeanor warrant
 - d. 3 for directed patrols
 - e. 1 for assault
 - f. 1 for minor accident
 - g. 3 for theft reports
 - h. 1 for concealed weapon
 - i. 8 for investigative calls
 - j. 2 for vehicle burglaries
 - k. 8 for public intoxication
 - l. 1 for missing person
 - m. 1 to meet complainant
 - n. 1 for aggravated assault
 - o. 2 bar checks
 - p. 1 BOLO (an acronym, Be On the Look Out)
 - q. 2 for loud disturbances
 - r. 1 for vehicle theft
57. On September 15, 2001, Sgt. Shetler conducted an operation at Escapade 2001 in which adults were arrested and some juveniles were detained for the following offenses:
 - a. 25 for public intoxication
 - b. 5 for open containers
 - c. 1 for drugs
 - d. 1 for DWI
 - e. 1 for tampering with government document
 - f. 4 for minors in possession
 - g. 4 for urinating in public
58. Sergeant John K. Marsh was in charge of a special unit in the west patrol district side of Arlington called H-E-A-T (Hot Spot Enforcement and Assistance Team).

59. Sgt. Marsh's H-E-A-T was involved in operations at Escapade 2001.
60. H-E-A-T was assigned to any location which had a large number of service calls.
61. Sgt. Marsh conducted three or four "directed patrols" involving himself and four H-E-A-T members and was involved in two "major operations" at Escapade 2001.
62. Sgt. Marsh's first directed patrol at Escapade 2001 was in September 2000. Sgt. Marsh was in charge of the H-E-A-T in the west patrol district until January 2003.
63. The H-E-A-T concentrated on the parking lot at Escapade 2001.
64. Sgt. Marsh personally observed public intoxication, urinating in public, and drug arrests.
65. Sgt. Marsh observed that while some persons arrived at Escapade 2001 intoxicated, the majority of patrons arrested for public intoxication left the club drunk.
66. In the early directed patrols, Sgt. Marsh testified that each H-E-A-T member would make an arrest in the first 10 minutes, process the arrestees, and return.
67. Lieutenant John B. Miller was the commander of patrol over the APD west district from December 1999 to April 2002.
68. Lt. Miller described Escapade 2001 as a "hot spot."
69. Lt. Miller commanded two major operations at Escapade 2001.
70. Lt. Miller observed individuals arrested for public intoxication.
71. Lt. Miller's operations turned up drugs or drug paraphernalia, especially in the Escapade 2001 restrooms.
72. Lieutenant James Hawthorne is a shift commander in the west district.
73. Lt. Hawthorne commanded a special operation at the club in September 2002.
74. Lt. Hawthorne observed public intoxication, public urinating, and a fight during the operation at Escapade 2001 in September 2002.
75. The five special enforcement operations at Escapade 2001 between April 27 and November 10, 2001, involved 97 officers, supervisors, jailers, and PSA's, and cost \$13,109.00 in salary.
76. The April 27, 2001 operation employed 12 officers, and 3 jailers.

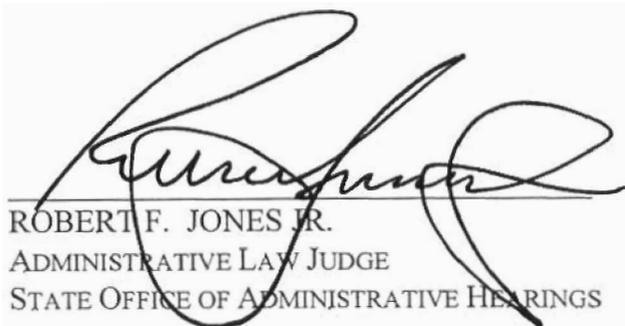
77. The May 26, 2001 operation employed 24 officers, 6 supervisors, 5 jailers, and 1 PSA.
78. The September 15, 2001 operation employed 14 officers, 4 supervisors, 4 jailers, and 2 PSAs.
79. From September 20, 2001 to December 31, 2001, there were 11 calls for service at the Escapade 2001 location for the following complaints:
 - a. 1 for assault
 - b. 2 for fighting
 - c. 3 for public intoxication
 - d. 1 for public urination
 - e. 4 for vehicle theft
80. From November 2001 to October 2002, Escapade 2001 had 35 DWI arrests and 14 public intoxication arrests.
81. Cowboys is a club in Arlington which is larger than Escapade 2001 and open seven days a week.
82. From November 2001 to October 2002, Cowboys had 15 DWI arrests and 58 public intoxication arrests.
83. In 2000 and 2001, Escapade 2001 generated 180 Arrest Reports, 56 Citations, 33 Significant Offense Reports, 36 Routine Offense Reports, 3 Offense Reports, and 8 Miscellaneous Reports.
84. The calls for service and arrests at Escapade 2001 show a high use of police resources.
85. Escapade 2001 is a scene of disturbances, assaults, and drug problems.
86. The high use of police resources by Escapade 2001 is an "unusual condition or situation" which justifies non-renewal of EGAM's permits.
87. On June 6, 2002, Staff issued a notice of hearing 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, of the legal authority and jurisdiction under which the hearing was to be held, giving reference to the particular sections of the statutes and rules involved, and including a short, plain statement of the matters asserted.
88. On February 20, 2003, a public hearing was convened before ALJ Robert F. Jones Jr., at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Staff was represented by Timothy E. Griffith, an attorney with the TABC Legal Division. Protestant Larry Nix appeared *pro se*. Protestant Theron Bowman appeared through Arlington Assistant City Attorneys Sim W. Goodall and Ursula Monroe Patterson. Respondent appeared through

its President Merhdad Behimehr and its counsel, Don E. Walden and James W. Lee III. The hearing ended on February 21, 2003. The record was closed on May 9, 2003.

VI. Conclusions of Law

1. TABC has jurisdiction over this matter pursuant to Chapter 5 of the Texas Alcoholic Beverage Code (the Code).
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2003).
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052 (Vernon 2003).
4. Based on the foregoing findings, issuance of the requested permits will adversely affect the general welfare, peace, or morals of the people or violate the public sense of decency, pursuant to § 11.46(a)(8) of the Code.
5. Based on the foregoing findings and conclusions, the application of EGAM Corporation d/b/a Escapade 2001 - Arlington (Respondent or EGAM) to renew Mixed Beverage Permit MB443287 and Mixed Beverage Late Hours Permit LB443288 should be denied.

SIGNED July 8, 2003.



ROBERT F. JONES JR.
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 598459

IN RE EGAM CORPORATION	§	BEFORE THE
D/B/A ESCAPADE 2001 - ARLINGTON	§	
PERMIT NOS. MB443287, LB443288	§	
	§	TEXAS ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-3173)	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 7th day of August 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Robert F. Jones, Jr.. The hearing convened on February 20, 2003, and adjourned on February 20, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 8, 2003. This Proposal For Decision (**attached hereto as Exhibit "A"**), was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. Exceptions were filed.

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

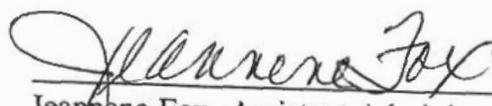
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the renewal for Permit Nos. MB443287 and LB443288 are hereby **DENIED**.

This Order will become final and enforceable on August 28, 2003, unless a Motion for Rehearing is filed before that date.

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

SIGNED this 7th day of August, 2003.

On Behalf of the Administrator,


Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/bc

The Honorable Robert F. Jones, Jr.
Administrative Law Judge
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