

TG

DOCKET NO. 504304

IN RE DAVID NOAH JR., ET AL.	§	BEFORE THE
D/B/A CITY LIMITS SALOON	§	
ORIGINAL APPLICATION MB	§	
	§	TEXAS ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-0972)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 16th day of March 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Tanya Cooper. The hearing convened on February 3, 2006 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on February 22, 2006. This 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. As of this date no exceptions have been filed.

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

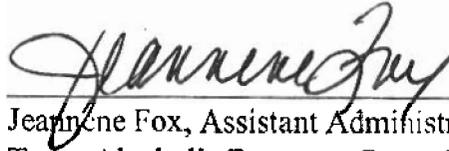
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the Original Application for a Mixed Beverage Permit, for the above-referenced Applicant be **GRANTED**.

This Order will become final and enforceable on April 5, 2006, 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 U.S. Mail as indicated below.

SIGNED on this 16th day of March 2006.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Tanya Cooper
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (817) 731-1964

David Noah Jr., et al.
d/b/a City Limits Saloon
RESPONDENT
5085 East FM 1187
Burleson, Texas 76128
CM/RRR NO. 7001 2510 0000 7274 2109

Robert Hedge
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Burleson, Texas 76028
Regular Mail

Danny and Kim Ikeler
4995 Oak Grove Rendon Road
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Rendon Forest Assembly of God
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Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Fort Worth District Office

Licensing Division

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



February 22, 2006

Alan Steen, Administrator
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

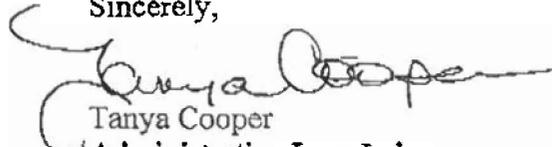
RE: **Docket No. 458-06-0972; Texas Alcoholic Beverage Commission, Petitioner, and Various Other Citizen Protestants vs David Noah, Jr. et al d/b/a City Limits Saloon, Applicant (TABC Case No. 504304)**

Dear Mr. Steen:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Timothy Griffith, attorney for Texas Alcoholic Beverage Commission, Steven H. Swander, attorney for Respondent, and Kim Ikeler, Protestant. Davis Noah, Jr. *et al*, d/b/a City Limits Saloon (Applicant), seeks a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit for a premises to be located at 5085 E. FM 1187, Burleson, Tarrant County, Texas, from the Texas Alcoholic Beverage Commission (the Commission). The Protestants, consisting of local area residents, assert that the permits should be denied for general welfare, peace, morals, and safety of the people. The Commission's staff (Staff) did not take a position concerning the application; it found no basis existed for denial of the requested permits. This proposal for decision recommends the permits be issued.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings, located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas 76116. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,


Tanya Cooper
Administrative Law Judge



TC/ds
attachments

Steven H. Swander, Attorney for Respondent, VIA FACSIMILE 817/338-0249; Kim Ikeler, 4995 Oak Grove Rendon Road, Burleson, Texas 76028, VIA REGULAR MAIL; Timothy Griffith, TABC Staff Attorney, VIA FACSIMILE 214/678-4001

SOAH DOCKET NO. 458-06-0972



**TEXAS ALCOHOLIC BEVERAGE
COMMISSION, Petitioner, and VARIOUS
OTHER CITIZEN PROTESTANTS,
Protestants**

BEFORE THE STATE OFFICE

V.

OF

**DAVID NOAH, JR., ET AL, D/B/A CITY
LIMITS SALOON, Applicant**

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Davis Noah, Jr., *et al*, d/b/a City Limits Saloon (Applicant), seeks a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit for a premises to be located at 5085 E. FM 1187, Burleson, Tarrant County, Texas, from the Texas Alcoholic Beverage Commission (the Commission). The Protestants, consisting of local area residents, assert that the permits should be denied for general welfare, peace, morals, and safety of the people. The Commission's staff (Staff) did not take a position concerning the application; it found no basis existed for denial of the requested permits. This proposal for decision recommends the permits be issued.

I. PROCEDURAL HISTORY

On July 12, 2005, Applicant filed an original application for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit. The proposed licensed premises would be located at 5085 E. FM 1187, Burleson, Tarrant County, Texas. The Protestants to the application assert that it should be denied due to issues related to traffic safety, noise, damage to property values, and the potential for attracting unsavory individuals to the neighborhood. The Protestants contend that the presence of this licensed premises in their area would create a detrimental effect to the general welfare, morals, and safety of the public.

Staff issued a notice of hearing on January 6, 2006, informing all parties that a hearing would be held on the application, as required by § 2001.052 of the Administrative Procedure Act, TEX. GOV'T CODE ANN. Chapter 2001. The hearing was held on February 3, 2006, in Fort Worth, Texas, before Tanya Cooper, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH). Staff appeared and was represented by Jerry McClain and Timothy E. Griffith, Commission Staff Attorneys. Applicant appeared and was represented by Steve Swander, Attorney at Law. Protestants appeared and were represented at the hearing by Kim Ikeler, a resident near the proposed licensed premises. There were no challenges to the notice of hearing or venue for the hearing. The hearing concluded, and the record closed on February 3, 2006.

II. JURISDICTION

The Commission has jurisdiction and authority over this matter pursuant to Chapter 5, 11, 28, and 29, and §§ 6.01 and 11.61 of the Texas Alcoholic Beverage Code (the Code). TEX. ALCO. BEV. CODE ANN. § 1.01 *et seq.* SOAH has authority to conduct a hearing in this matter and make recommendations to the Commission, including the issuance of a proposal for decision containing findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. Chapter 2003 and § 5.43 of the Code.

III. DISCUSSION

A. Applicable Law

The statutory foundation for the protest to this application is § 11.46(a)(8) of the Code, which provides:

The commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that any of the following circumstances exist:

...

(8) the place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, peace, morals, and safety of the people and on the public sense of decency.

B. Public Comment

The ALJ convened a public hearing in this matter prior to taking evidence in this case. Four persons spoke during the public hearing outlining their observations concerning the application. Concerns relating to this application focused on the proposed licensed premises' proximity to homes; noise created by the licensed premises' operation into early morning hours; and the safety of residents and the general public due to patrons from the proposed licensed premises engaging in criminal activity, such as public intoxication, disorderly conduct, or driving while intoxicated. After all persons wishing to speak were given an opportunity to be heard, the ALJ closed the public hearing.

C. Evidence

1. Physical Setting. From a review of the application and undisputed witness testimony, the proposed location for the licensed premises, City Limits Saloon, is within in an unincorporated area of Tarrant County, Texas. There are commercial businesses (donut shop, insurance agency, tattoo parlor, spice manufacturing business, log cabin home sales office) mixed with residential properties. Other Commission-licensed premises are currently located in the area. The proposed licensed premises is accessed from an improved roadway, Oak Grove Rendon Road, and FM 1187. A traffic light is being installed at the intersection of FM 1187 and Oak Grove Rendon Road by the Texas Department of Transportation, which will control the traffic flow of vehicles passing, entering, and exiting from Applicant's property.

The building located on the property is a large, metal structure. The total square footage of the building is approximately 5000 square feet. Of that total area, approximately 3200 square feet is currently being converted from an auction sale facility into the proposed licensed premises by

Applicant. The remaining area within the building is currently used as a warehouse and a residence for one of Applicant's family members. There is parking space available on three sides of the building for patrons' use.

2. The Staff's Evidence. The Staff took no position regarding issuance of the requested permits. Upon receiving Applicant's application, Staff conducted an investigation of the application's contents. It found no basis for denial of the requested permits. During the course of Staff's investigation, protests to the application were received from surrounding neighbors.

Staff presented several exhibits at the hearing. These items included the application filed by Applicant with certificates of approval from the Tarrant County Clerk, Staff's report after its review of the application, and protest letters received by Staff from individual citizens.

Agent Yvette Price, a Commission employee with several years experience that includes investigating application protests for Commission-issued licenses or permits, found no basis for the Commission's denial of the permits sought in this application. She noted in her report that no criminal or administrative history of violations exists for the Applicant or the proposed location, that proper notice of the application was posted, and that a physical inspection of the premises found that Applicant's facility was acceptable. Agent Price testified that the building's exterior was plain, but the interior of the premises was nicely decorated. She saw that other commercial businesses were located across FM 1187 from the proposed licensed premises and that another licensed premises, Hoot's, was located nearby.

3. The Protestants' Evidence. The Protestants presented three witnesses at the hearing, Kim Ikeler, Robert Hedge, and Danny Ikeler. Two exhibits were admitted into evidence for the Protestants.

Kim Ikeler testified that she is concerned about a number of things in relation to Applicant's request for a TABC-issued permit for the sale of alcoholic beverages and late hours operation permit. She stated that her home was across the road (Oak Grove Rendon Road) from the proposed licensed

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premises and located approximately 100' from the rear of the premises' building. In her opinion, the proposed licensed premises did not look like a place where "nice" people would go, as had been represented to her by Applicant.

According to Mrs. Ikeler, traffic could present a problem if Applicant is granted its requested permits. Applicant's patrons would actually enter the licensed premises from her street, Oak Grove Rendon Road. She said that the installation of a traffic light at the intersection of Oak Grove Rendon Road and FM 1187 was good, but noted that there had been many accidents on FM 1187 prior to the decision to install a traffic signal and some of these accidents had been very serious. Traffic from Applicant's business would only add to this problem in Mrs. Ikeler's assessment.

Mrs. Ikeler said that her property's value would be subjected to a negative impact by the operation of a licensed premises on Applicant's property. She opined that should she desire to sell her property, no one would likely want it due to its proximity to a bar. Additional noise would be created by trash being deposited in the dumpster after Applicant's business closed diminishing the quiet of her neighborhood. This dumpster is currently behind Applicant's business and in clear view of her home.

Mrs. Ikeler further testified that she has doubts about Applicant's character. According to Mrs. Ikeler, when Applicant started an auction business on its property years earlier, she was told that a fence would be erected to screen the back of Applicant's property from view of Mrs. Ikeler's home. Mrs. Ikeler said that to date, no fence had been constructed on Applicant's property. Mrs. Ikeler also said that representations had previously been made to her that alcohol sales would not be made on Applicant's property. Based on these instances, Mrs. Ikeler said that she had little faith that Applicant would abide by any promises that might be made in relation to the operation of a licensed premises.

Mrs. Ikeler acknowledged that there were other commercial businesses nearby, including Hoot's, another licensed premises. According to Mrs. Ikeler, Hoot's is approximately .2 miles from Applicant's proposed licensed premises and also has residences located behind it. Mrs. Ikeler stated

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she was concerned about the moral effects that businesses such as Hoot's and Applicant's proposed licensed premises would have on children in the neighborhood. She said that there were 14 children under the age of 17 who resided nearby. Mrs. Ikeler opined that no child should have to live with a bar in the neighborhood, which exposed them to the possibility of fights and other inappropriate activities associated with consumption of alcoholic beverages.

Robert Hedge testified that Applicant's property and business is close to his home as well. His home is located next door to the Ikelers' home. He cited two major concerns with Applicant's proposed operations: increased noise and the negative impact that another licensed premises could have on the neighborhood's overall safety.

Mr. Hedge stated that he has two sons, ages 5 and 7, and was concerned about the late night activity on Applicant's property should the Commission issue the permits requested. Mr. Hedge said that he was also told a fence was going to be constructed when Applicant began building on the property, but no fence had been constructed. According to Mr. Hedge, he could see the back of Applicant's building and the west side of the building from his property.

Mr. Hedge said he was concerned about the hours of operation for the proposed licensed premises. He had heard that the bar might open early in the afternoon on Friday and Saturday. If that were the case, it would limit his family's use of their property's front yard since he would not feel comfortable with his children playing there while Applicant's bar was open.

Danny Ikeler testified the operation of a licensed premises on Applicant's property will negatively impact the quiet of his neighborhood. He stated that he already often hears noise from activities ongoing on Applicant's property while he inside his home's living room. In his opinion, the amount of noise will increase if Applicant is granted the permits requested. Mr. Ikeler said that car doors will be slamming as persons enter and leave the bar. People will be talking while walking to and from their cars to the bar. Trash disposed of after the bar closes late at night will be hitting the dumpster as Applicant cleans up from the bar's operations.

Mr. Ikeler testified that allowing a bar on Applicant's property would disrupt the peace of the neighborhood and have a negative moral impact. He opined that businesses selling alcoholic beverage may be frequented by "undesirable" people, and that would not be a good influence on the children in the neighborhood. According to Mr. Ikeler, merely because Applicant has represented that it will have and enforce a dress code, it would not be a deterrent to persons becoming intoxicated while at the proposed licensed premises. A bar's presence in this area would mean that children might not be safe playing in their front yards with the possibility of being struck by an intoxicated driver.

Mr. Ikeler testified that the roadway (FM 1187) was dangerous in this area because of two hills that limited the ability to see approaching traffic. He estimated that a driver's reaction time from one direction was particularly short due to it being approximately 100 feet from the top of one hill to the intersection of FM 1187 and Oak Grove Rendon Road, and the speed limit on FM 1187 was 55 miles per hour in that area. He agreed that widening the road and constructing a left-turn lane was helpful, but in his opinion, the intersection was still a hazardous one and adding persons who have been drinking alcoholic beverage and driving would not improve the situation.

Mr. Ikeler said he was aware that another licensed premises, Hoot's, was nearby. However, in his opinion, several factors distinguished Hoot's from Applicant's proposed licensed premises. According to Mr. Ikeler, Hoot's is located on several acres with vegetation surrounding it so that sound was precluded from traveling as far away from it. Mr. Ikeler said that residences near Hoot's were over 300 feet from Hoot's building; and thus, the situation was different from the proximity of his home to Applicant's proposed licensed premises.

4. The Applicant's Evidence. David Noah, Jr. and Teresa Noah are partners in the operation of Applicant's business, City Limits Saloon. Mr. Noah testified that he and Mrs. Noah are the owners of the property where the proposed licensed premises is to be located. In addition to this property, Mr. Noah said they also own property to the west of the proposed licensed premises where they intend to build a home. Mr. Noah characterized the area as a mixture of businesses and residences.

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Mr. Noah said that he has worked in the construction business for several years, while Mrs. Noah's background was in marketing, product development, and real estate. Mr. Noah said that he and Mrs. Noah, who are each auctioneers, initially built the building on their property as an auction house. When he and Mrs. Noah began developing a business plan for converting the building's auction space (approximately 3200 square feet a 5000 square foot building) into a licensed premises, he upgraded the building's sound system and constructed insulated doors to prevent sound from being heard outside the structure. He had conducted sound checks and found that the sound from activities inside the building was not audible outside. Mr. Noah said that the building also includes warehouse space where he stores tools, supplies, and equipment used in his construction business and an efficiency apartment where Mrs. Noah's father lives.

Mr. Noah acknowledged that traffic could be difficult at times on FM 1187. The speed limit on that roadway is 55 miles per hour. Mr. Noah said that the Texas Department of Transportation set up a traffic-counter check at the intersection of FM 1187 and Oak Grove Rendon Road and determined that a traffic signal was warranted at the intersection. Mr. Noah agreed that the visibility concern Mr. Ikeler discussed in his testimony did exist; but, in Mr. Noah's opinion, the visibility was better at night because headlights from approaching traffic could be spotted prior to oncoming traffic cresting the hill.

According to Mr. Noah, he planned to operate the proposed licensed premises on Friday and Saturday from 6:00 or 7:00 p.m. until 2:00 a.m., and occasionally on other days for private functions. The target market for the proposed licensed premises was upscale couples by offering dancing, with a spacious dance floor, and interactive games, such a pool, darts, and video games. The total occupancy load for the proposed licensed premises is estimated to be 100 people, which is less than the number of persons who previously attended auctions on his property. He plans to employ trained staff, including security personnel, and believes the business will be successful since there is a lack of competition in the area for this type of entertainment. Mr. Noah said that a bar, Hoot's, is located approximately .8 of a mile away, but that it catered to a different type of clientele. Mr. Noah characterized Hoot's patrons as a more "blue collar" crowd that stopped there after work.

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Mr. Noah testified that this area is located in an unincorporated portion of Tarrant County. There is no zoning in place; consequently, everything from a manufacturing plant to a residence is acceptable. He noted that a tattoo parlor was across FM 1187 and within 300 feet of his property.

Mr. Noah addressed some concerns raised during the public comment portion of the hearing and by the Ikelers and Mr. Hedge in their testimony. He agreed that a fence to screen the view of the rear of his property from the Ikelers' front yard was a good idea, and said that he was exploring ways to construct the fence in order to preclude patron's headlights from shining against the Ikelers' windows. He admitted that he had not considered that persons in the parking lot might be a source of noise, but opined that security personnel could periodically walk through the area to curb any such problems.

Mr. Noah completed his testimony stating that he and Mrs. Noah had been working full-time on developing this business since July 2005. They were in the process of securing a food service certificate, and said that to his knowledge, there was no reason that they should be denied any required permit. Mr. Noah said it was his intention to operate the licensed premises within all laws and regulations imposed and enforced by the Commission.

Teresa Noah testified that she is presently interviewing prospective employees for the proposed licensed premises. These employees will include servers, bartenders, and security personnel. She said that she will work full-time at the business as its music director and co-manager. She felt that little marketing would be needed at the early stages of the business since many people in the neighborhood had expressed their interest in coming to the proposed licensed premises once it opens.

Mrs. Noah said that she recalled some early discussions with neighbors, including the Ikelers, about fencing the back of her property and had sent a letter to neighbors discussing the plans for the property owned with her husband (See Protestant's Exhibit 2). She said that several factors had intervened and delayed the fence's construction, including its cost. In concluding her testimony, Mrs. Noah expressed her desire to work with neighbors to resolve any concerns or issues that

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develop during the course of the proposed licensed premises' operation.

D. Analysis, Conclusion, and Recommendation

Based on the evidence presented, the ALJ concludes the Protestants failed to demonstrate that the place or manner in which Applicant may conduct its business warrants refusal of the requested permits based on concerns for the general welfare, peace, morals, and safety of the people or that issuance of the permits would be contrary to the public sense of decency.¹ As a result, the permits sought by Applicant from the Commission should be issued.

Sales of alcoholic beverages and late hours operations have been approved for this area (*i.e.* "wet" area) as demonstrated by the certifications from the Tarrant County Clerk. No zoning regulations are in existence to preclude commercial activities, including Commission-licensed establishments. Other alcoholic beverage retailers are located in the area, but the evidence did not suggest that the area is overly saturated with Commission-licensed establishments. Staff, after an investigation of this application, found no basis for denial of the requested permits. There are no Commission records showing a history of criminal or administrative violations existing for this Applicant or the location.

Traffic concerns are not unduly hazardous.² City Limits Saloon patrons will access and leave the business on Oak Grove Rendon Road, which is less-heavily traveled than FM 1187.

¹ 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. Brantley d/b/a Boots & Saddle Club v. Texas Alcoholic Beverage Commission, 1 S.W.3d 343, (Tex.App--Texarkana 1999). The concept is determined on a case by case basis. However, established case law holds that in order to deny a permit to a fully qualified applicant who proposes to operate a lawful business in a wet area and in compliance with the zoning ordinances, unusual conditions or situations must be shown so as to justify a finding that the place and manner in which the applicant may conduct his business warrants a refusal of a permit. *See Dienst v. Texas Alcoholic Beverage Commission*, 536 S.W.2d 667 (Tex. Civ.App--Corpus Cristi 1976), Texas Alcoholic Beverage Commission v. Mikulenka, 510 S.W.2d 616 (Tex.Civ.App--San Antonio 1974).

² In Kermit Concerned Citizens Committee v. Colonial Food Stores, Inc. 650 S.W.2d 208 (Tex.Civ.App.--El Paso 1983), the Court held that there was no requirement that an applicant correct existing traffic conditions in order to be eligible for a TABC-issued license, and there was no requirement that an applicant select a location virtually free of traffic hazards in order to qualify for a TABC-issued license.

Patrons will then travel a short distance on Oak Grove Rendon Road before entering onto FM 1187. The intersection of FM 1187 and Oak Grove Rendon Road has been made safer by the Texas Department of Transportation constructing a left-turn lane, and a traffic signal is scheduled to be installed. Applicant's property has sufficient for off-road parking for its customers so vehicles should not be parked along any roadway.

There was no evidence that issuance of the permits will produce an increase in the incidence of intoxicated drivers. The ALJ recognizes that the proposed licensed premises is in close proximity to residences; however, Applicant, has expressed an intention to operate this proposed premises within State laws and regulations of the Commission. These laws and regulations impose a responsibility on any TABC license- or permit-holder to avoid over-serving any person. Specific steps to prevent intoxication-related violations from occurring include Applicant's stated intention to hire only personnel that have received Commission-approved training as alcoholic beverage sellers and servers. Applicant will also employ security employees. There is no evidence to suggest that Applicant will be unable to properly control this premises since there is no history for creating or allowing criminal conduct to be ongoing on this property.

One of the major objections to this application concerned the proposed hours for operation of the licensed premises. The noise incidental from its business operations was feared to disturb the neighbors' peace in the area. The ALJ believes that there are some steps Applicant should undertake in order to be a better neighbor to the residents near the proposed licensed premises.

First, Applicant should carry through on its earlier plans to erect a fence to screen the back of its property from the residents across the street. The fence's construction should not only control the view of the premises and preclude headlights from striking neighbors' windows, but it should also absorb sounds, such as car doors shutting and people's conversation ongoing on Applicant's parking lot, to any extent reasonably possible. Second, Applicant should utilize its security personnel to politely encourage its patrons to be on their way from the licensed premises if not they are not inside enjoying the entertainment provided at Applicant's business. Lastly, Applicant should work with its waste disposal provider to relocate the licensed premises' dumpster in order to reduce

the noise associated with dropping trash into the dumpster.

In summary, given that insufficient evidence was produced to show Applicant or the proposed premises' location have a history of noncompliance with Code provisions, Commission regulations, or any other laws, Applicant should be given an opportunity to conduct its business subject to the Commission's regulatory authority over this premises. No unusual conditions or situations were established that would warrant denial of Applicant's request. Accordingly, the application should be granted.

IV. FINDINGS OF FACT

1. On July 12, 2005, David Noah, Jr., *et al*, d/b/a City Limits Saloon (Applicant), filed an original application with the Texas Alcoholic Beverage Commission (the Commission) for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit for a premises located at 5085 E. FM 1187, Burleson, Tarrant County, Texas.
2. Protests to the application were filed by various local citizens (the Protestants) asserting that the application should be denied due to unsafe traffic conditions, prospective late closing hours in a residential area, proximity to children in the area, potential incidents of criminal activity and noise on or near the premises and the negative impact that operation of a Commission-licensed premises would have upon the safety, peace, and general welfare of the public in that area.
3. On January 6, 2006, Commission's Staff issued a notice of hearing informing all parties that a hearing would be held on the application and the time, place, and nature of the hearing.
4. The hearing was held on February 3, 2006, in Fort Worth, Tarrant County, Texas, before Tanya Cooper, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH). Commission's Staff appeared and was represented by Jerry McClain and Timothy E. Griffith, Staff Attorneys. Applicant appeared and was represented by Steve Swander, Attorney at Law. The Protestants appeared and were represented by Kim Ikeler, a resident of the neighborhood where Applicant's proposed licensed premises is located. The hearing concluded and the record closed on that same date.
5. Applicant's application contains all required certifications from Tarrant County officials evidencing that the planned use of its premises as the TABC-licensed premises is permitted.
6. The location, 5085 E. FM 1187, Burleson, Tarrant County, Texas, is in an unincorporated area of Tarrant County where commercial activity, including establishments engaged in the sale, service, and consumption of alcoholic beverages, is permitted.

7. The neighborhood surrounding the proposed licensed premises is mixed with other businesses, including another TABC-licensed premises, a tattoo parlor, a donut shop, and an insurance agency, as well as residences.
8. Applicant's property is sufficiently large to accommodate its proposed occupancy load, which is 100 persons, and provide for off-street parking for its customers' use.
9. FM 1187 carries a significant amount of traffic; however, traffic concerns are mitigated due to the entrance of Applicant's proposed licensed premises being from Oak Grove Rendon Road as opposed to the main-thoroughfare, FM 1187, the construction of a turning lane on FM 1187, and the pending installation of a traffic signal light at the intersection of FM 1187 and Oak Grove Rendon Road.
10. Applicant and the proposed location have no criminal or administrative history for violations of the law or regulations associated with the operation of a licensed premises, as maintained by the Commission.
11. Insufficient evidence was produced to show Applicant's operation of a licensed premises on its property may result in undue loud noise, unsafe traffic conditions, or promote criminal activity due to the existence of any unusual conditions or situations on the proposed licensed premises or the surrounding neighborhood.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (the Commission) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Chapters 5, 11, 28, and 29, and §§ 6.01 and 11.46(a)(8). TEX. ALCO. BEV. CODE ANN. § 1.01 *et seq.*
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 TEX. GOV'T CODE ANN. Chapters 2001 and 2003, and 1 TEX. ADMIN. CODE §155.1 *et seq.*
3. The parties received adequate notice of the proceedings and the hearing as required by TEX. GOV'T CODE ANN. Chapter 2001.
4. Based on the foregoing findings, a preponderance of the evidence does not show that issuance of the requested permits will adversely affect the safety of the public, nor will it adversely affect the general welfare, peace, or morals of the people or violate the public sense of decency, pursuant to TEX. ALCO. BEV. CODE ANN. §11.46(a)(8).
5. This application meets all requirements for issuance by the Commission. TEX. ALCO. BEV. CODE Chapters 11, 28, and 29.

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6. The application of David Noah, Jr., *et al*, d/b/a City Limits Saloon for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit should be granted.

SIGNED February 22, 2006.



TANYA COOPER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS

6777 Camp Bowie Blvd.
Ft. Worth, Texas 76116
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SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION

CASE: David John, Jr. et al d/b/a City Limits Saloon

DOCKET NUMBER: 458-06-0972

AGENCY CASE NO: 504304

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DATE: February 22, 2006

SOAH Docket No. 458-06-0972
TABC vs. David Noah Jr., et al
d/b/a City Limits Saloon

FROM: Diana Dupre', Administrative Tech

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Message: Attached is the Proposal for Decision for the above reference docket number.

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