

DOCKET NO. 604925

IN RE THE RENDEZVOUS	§	BEFORE THE
PERMIT/LICENSE NOS. N-475382,	§	
NL475383, PE475384	§	TEXAS ALCOHOLIC
	§	
BRAZORIA COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-2005)	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 16th day of June, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge. The hearing convened on March 26, 2004, and adjourned on March 26, 2004. The Administrative Law Judge Roshunda Pringle made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 27, 2004. 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. 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.

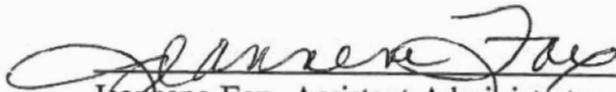
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the above described permits and/or licenses are hereby **GRANTED**.

This Order will become final and enforceable on July 7, 2004, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

SIGNED on this 16th day of June, 2004, at Austin, Texas.

On Behalf of the Administrator,



Jeanhene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

LT/bc

The Honorable Roshunda Pringle
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (713) 812-1001

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Licensing Division

Brazoria Outpost

SOAH DOCKET NO. 458-04-2005

IN RE THE SUPPLEMENTAL
APPLICATION OF THE RENDEZVOUS,
N, NL, PE

HARRIS COUNTY, TEXAS
(TABC CASE NO. 604925)

§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Rendezvous, (Applicant) filed a supplemental application with the Texas Alcoholic Beverage Commission (Commission) for a Private Club registration permit, a Beverage Cartage permit, and a Private Club Late Hours permit for premises located at 1419 N. Gordon, Street, Alvin, Brazoria County, Texas. Numerous citizens of Brazoria County, the Mayor of the City of Alvin, and the City of Alvin Police Department filed a protest to the issuance of the permits based on general welfare, health, peace, moral, and safety concerns. The Commission's staff (Staff) remained neutral on the supplemental application.

After considering the arguments and evidence presented by the parties, the Administrative Law Judge (ALJ) finds that there is insufficient basis for denying the application and recommends that the permits be issued.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

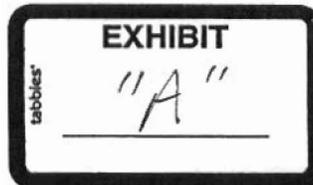
There are no contested issues of notice or jurisdiction in this proceeding. Therefore, these matters are set out in the proposed findings of fact and conclusions of law without further discussion here.

On March 26, 2004, a public hearing was convened on this matter in Houston, Harris County, Texas, before Administrative Law Judge Roshunda Pringle. The Applicant was represented by Ron Monshaugen, attorney. Staff was represented by Lindy To, attorney. The Protestants were represented by Wayne Revack, attorney, Bobbi Kacz, City Attorney for Alvin; and Debbie Greenleaf, attorney. The hearing concluded on March 26, 2004, and the record closed the same day.

II. DISCUSSION AND ANALYSIS

A. Applicable Law.

Protestants challenge the application on the basis of §§ 11.46(a) (8) of the Texas Alcoholic Beverage Code (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. Arguments and Evidence.

1. Protestants' Case.

The Protestants, who have the burden of proof, oppose issuance of the supplemental permits for the following reasons:

a.) When the premises previously had been permitted or licensed with an alcoholic beverage permit, the following problems occurred: littering of beer bottles and trash, burning tire marks on neighboring parking lots, trespassing and illegal parking on neighboring parking lots, abandoned cars left on neighboring parking lots, unruly crowds, loud music and noise, and numerous response calls for disturbances at the club that caused the Alvin Police Department to be overtaxed and placed the residents of the community at a risk.

b.) The Rendezvous will attract the same crowd that will litter, loiter, and illegally park, creating an unsafe environment for the community. The community will be detrimentally affected by the loud music and noise from the business. In addition, the numerous calls for service will create an undue burden for the Alvin Police Department and create a detriment to the safety of the community.

The Protestants' testimony mainly consisted of complaints and incidents involving the previous premise owner and not the Applicant.

2. Applicant's Case.

The Applicant argues that the proposed establishment will benefit the community and will not negatively impact the community. A Private Club Registration permit, a Private Club Late Hours permit, and a Beverage Carthage permit was issued to the Applicant on August 11, 2000, for the premises located at 110 Highway 6 East, Alvin, Brazoria County, Texas. The application that is the subject of this protest is a supplemental application for change of address to 1419 N. Gordon, Alvin, Brazoria County, Texas.

In support of its case, Applicant presented the testimony of one witness and fourteen exhibits.

Applicant's witness was the president of the Rendezvous Club, John Klein. Mr. Klein testified that the club is presently operating in a hotel at 110 Highway 6 East, Alvin, Texas. TABC exhibit 1 showed the Applicant had no violation history with TABC at the previous location. The evidence further showed that the Applicant has met all Commission requirements to hold the permits at the premises located at 1419 N. Gordon Street, Alvin, Texas.

Mr. Klein discussed renovation plans to the building and the surrounding property that will address the concerns raised by the Protestants. The Applicant proposes to erect a fence that will extend to the street to prevent its patrons from driving onto neighboring property and will address the concerns of littering, illegal parking, and trespassing. In addition, the Applicant intends to create additional parking at the back of the building to sufficiently accommodate patrons and to also create a safer manner of exiting the property. In support of the proposed renovation, Applicant offered exhibit 14, a plat showing the proposed changes to the entire property. Mr. Klein also discussed plans that addressed issues not raised by the Protestants, such as lighting, staff qualifications, and training. Mr. Klein testified that the Rendezvous' patrons are private members of the club and that membership would remain a requirement at the new location. In Mr. Klein's opinion, the requirement will address the Protestants' concerns regarding unruly crowds, loud music and noise, and police calls.

Finally, Mr. Klein testified that he would conduct his business in a lawful and peaceable manner.

C. Analysis.

Protestants did not offer any persuasive evidence that the Rendezvous would have an adverse effect on the general welfare, peace, morals, and safety of the community. It was clear and undisputed by evidence from both sides that Protestants' testimony mainly consisted of complaints and incidents involving the previous premise owner and not the Applicant. Although Protestants' evidence raised serious concerns, it failed to show that the Applicant would conduct his business in the same type manner as the previous owner and for the same type patrons.

Applicant's witness and data show that the granting of the supplemental permits would benefit the general welfare of the people and community. Applicants' proposed plans to revive an old building and the surrounding property addressed most, if not all, of the concerns raised by the Protestants. Most convincingly, Applicant's evidence showed that the Rendezvous will be patronized by a different type of patrons. Presently, the only patrons are private members of the club. The evidence clearly showed that club membership will still be a requirement at the new location. The Protestants described the previous patrons as mostly "bikers" and "motorcycle riders".

Applicant testified that they would have better control of alcoholic consumption on the premises if the permits are granted.

III. CONCLUSION

The evidence does not establish that the place or manner in which the Applicant may conduct business warrants the refusal of a permit based on the general welfare, peace, morals, and safety of the people.

IV. FINDINGS OF FACT

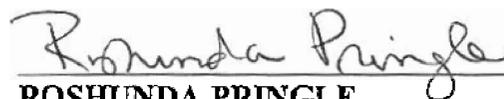
1. The Rendezvous (Applicant), filed a supplemental application with the Texas Alcoholic Beverage Commission (the Commission) for a Private Club registration permit, a Beverage Cartage permit, and a Private Club Late Hours permit for premises located at 1419 N. Gordon Street, Alvin, Brazoria County, Texas.
2. Protests to the application were filed by residents of the area where the premises are located.
3. Not less than ten days prior to the hearing, the Commission's Staff issued a notice of hearing notifying all parties that a hearing would be held on the supplemental application and informing the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction for the hearing, and the statutes and rules included.
4. The hearing was held on March 26, 2004, in Houston, Harris County, Texas, before Roshunda Pringle, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH). The Applicant was represented by Ron Monshaugen, attorney. The Staff appeared and was represented by Lindy To, attorney. The Protestants were represented by Wayne Revack, attorney; Bobbi Kacz, City Attorney for Alvin; and Debbie Greenleaf, attorney. The hearing concluded on March 26, 2004, and the record closed the same day.
5. The requested supplemental permits are for the business establishment of a Private Club in Alvin, Texas, at premises located at 1419 N. Gordon Street.
6. The Applicant has no violation history with TABC.
7. The Applicant's proposed renovation plans address the concerns raised by the Protestants.
8. The Applicant plans to erect a fence that will extend to the street to prevent its patrons from driving onto neighboring property.

9. The Applicant plans to create additional parking at the back of the building to sufficiently accommodate patrons.
10. The patrons are private members of the club, and membership will remain a requirement at the new location.
11. The Applicant's club will be patronized by a different type of patrons.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Chapters 1 and 5 and §§ 6.01, 11.41, 11.46, and 32.01.
2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. Chapter 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.
4. Based on the foregoing findings of fact, a preponderance of the evidence shows that issuance of the requested supplemental permits will not adversely affect the safety of the public, the general welfare, peace, or morals of the people, nor violate the public sense of decency. TEX. ALCO. BEV. CODE ANN. §11.46.
5. Based on the foregoing findings of fact, there is insufficient evidence to deny the supplemental permits on the basis of TEX. ALCO. BEV. CODE ANN. §§ 11.46(a) (8).
6. Based on the foregoing findings and conclusions, the supplemental application of The Rendezvous should be granted.

Signed May 27, 2004.



ROSHUNDA PRINGLE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS