

**DOCKET NO. 614355**

IN RE CLUB MESSINA, LLC	§	BEFORE THE
D/B/A CLUB MESSINA	§	
ORIGINAL APPLICATION MB & LB	§	
	§	TEXAS ALCOHOLIC
	§	
BEXAR COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-6444)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 14th day of September, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge John Beeler. The hearing convened on June 14, 2005 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 August 11, 2005. 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.

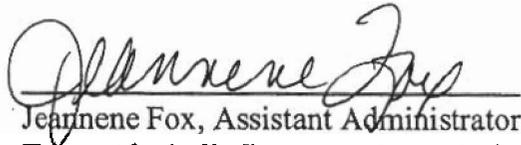
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's original application for a MB and LB be **GRANTED**.

**This Order will become final and enforceable on October 5, 2005** 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** this 14th day of September, 2005

On Behalf of the Administrator,

  
Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

CG/bc

The Honorable John Beeler  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FAX (210) 308-6854**

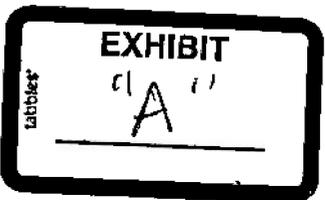
Club Messina, LLC  
d/b/a Club Messina  
**RESPONDENT**  
119 Eads  
San Antonio, Texas 78210-4860  
**VIA CM/RRR NO. 7005 0390 0005 7550 2958**

**PROTESTANTS:**  
Augustin G. Beltran and Maria C. Beltran  
459 East Mitchell Street  
San Antonio, Texas 78210  
**VIA Regular Mail**

Christopher Gee  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

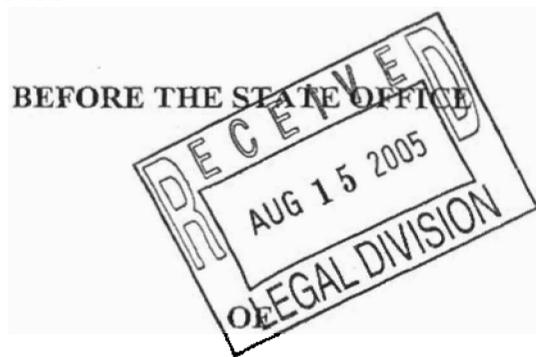
Licensing Division

San Antonio District Office



DOCKET NO. 458-05-6466

TEXAS ALCOHOLIC BEVERAGE COMMISSION §  
 & §  
 AUGUSTIN AND MARIA BELTRAN, §  
 and ROOSEVELT PARK §  
 NEIGHBORHOOD ASSOCIATION, §  
 PROTESTANTS §  
 v. §  
 CLUB MESSINA, LLC, §  
 D/B/A CLUB MESSINA, APPLICANT §  
 BEXAR COUNTY, TEXAS §  
 TABC NO. 6114355 §



ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Club Messina, LLC, D/B/A Club Messina (Applicant) filed an application with the Texas Alcoholic Beverage Commission (Commission) for a Mixed Beverage Permit and Mixed Beverage Late Hours Permit for the premises located at 306 E. Mitchell in San Antonio, Bexar County, Texas. Augustin and Maria Beltran and Roosevelt Park Neighborhood Association (Protestants) protested the application and asserted that the permits should be denied based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. Specifically, Protestants allege that a previous permittee at the location was cited for three violations of the Texas Alcoholic Beverage Code (the Code) including an Aggravated Breach of the Peace that resulted in a death on the premises, and that granting the permits would contribute to increased criminal activity, drinking-related problems such as driving while intoxicated, and public intoxication. The Commission's staff (Staff) took no position concerning the allegations. **The Administrative Law Judge (ALJ)** recommends that the Commission grant Respondent the requested permits.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

No contested issues of notice, jurisdiction, or venue were raised in this proceeding.

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PROPOSAL FOR DECISION

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Therefore, these matters are set out in the findings of fact and conclusions of law without further discussion here.

On June 14, 2005, a public hearing was held before John H. Beeler, ALJ, in San Antonio, Bexar County, Texas. Staff was represented by Christopher Gee, attorney. Maria Beltran, President of Roosevelt Park Neighborhood, Association appeared for Protestants *pro se*.<sup>1</sup> Evidence was received and the record closed that same day.

## II. LEGAL STANDARDS AND APPLICABLE LAW

The Commission or Administrator may refuse to issue an original permit if it has reasonable grounds to believe that the place or manner in which the applicant may conduct his business warrants the refusal based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8).

## III. EVIDENCE

### A. Staff's Evidence and Contentions

Staff presented no evidence to protest the issuance of the permits and took no position on this matter. Staff contended in its Notice of Hearing that Applicant met all Commission requirements for holding the permits at the premises, Applicant properly posted or published all required notices, and Applicant complied with all applicable Texas Alcoholic Beverage Code requirements.

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<sup>1</sup> Roosevelt Park Neighborhood Association is not currently recognized as an official neighborhood by the City of San Antonio.

**B. Protestants' Evidence and Contentions**

Protestants offered the testimony of Maria Beltran. Ms. Beltran lives in general area of the premises and feels that a bar is not the type of business she would like to see open there. There are other bars and alcohol related businesses in the area and one more would cause problems. In fact, the area has the reputation of having bars and prostitution, and it is not unusual to hear guns shots at night. There is a substance rehabilitation facility in the area and the premises would be a temptation to the people seeking treatment there. There is also a juvenile detention center and juvenile probation office in the area.

**C. Applicant's Evidence and Contentions**

Applicant offered the testimony of James Dodd, the owner of Club Messina, LLC, and photographs of the premises. He has the same concerns about the neighborhood as does Ms. Beltran but does not believe the premises will contribute to the problem. The building is now vacant and having a well run business would benefit the surrounding area. He has no connection to the previous licensee. He will work to assure that problems such as prostitution do not occur on or around the premises.

**D. Other Evidence**

All parties agreed that the ALJ should see the premises and surrounding area. The ALJ made a site visit which is discussed in the analysis below.

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#### IV. ANALYSIS

The test for denying permits on the basis of the general welfare, health, peace, morals, and safety of the area is that some unusual condition or situation must be shown to justify a finding that the place or manner in which the applicant may conduct his business warrants a refusal of the permit. Texas Alcoholic Beverage Commission v. Jack E. Mikulenka d/b/a Frigate Club, 510 S.W.2d 616, 619 (Tex.App.-- San Antonio 1974). Such unusual conditions include, for example, a "sexually-themed" business located in a primarily residential neighborhood, Texas Alcoholic Beverage Commission v. Twenty Wings, LTD and TWI XXV, Inc., Judy Hall, Director, as Partners d/b/a Hooters, 112 S.W.3d 647 (Tex.App.--Ft. Worth 2003); a history of an juvenile and pervasive amount of criminal activity in the location for which the permit had been requested, Texas Alcoholic Beverage Commission v. Carlos Sanchez, d/b/a Tierra Caliente Bar and Grill, 96 S.W.3d 489 (Tex.App.--Austin 2002); or a location where the only exit from the premises was onto a frontage road at the "gore area," the triangular section between a freeway exit ramp and the service road striped with white paint and designed to keep cars from moving off the exit ramp too soon or from moving from the service road into the exit lane too quickly, Bavarian Properties, Inc. v. Texas Alcoholic Beverage Commission, 870 S.W.2d 686 (Tex.App.-- Fort Worth 1994);

In the instant case, Protestant failed to demonstrate that any unusual condition or situation exists that would warrant refusal of the permit. The premises are located in an area that already has other alcohol-related businesses. Applicant has no connection to the previous licensee so the violations that occurred in the past do not reflect on Applicant. No evidence was offered that would tend to establish that crime in the area would increase if the permits were granted. Further, an inspection of the area revealed that the substance rehabilitation facility, juvenile detention center, and juvenile probation office are a significant distance from the premises.

## V. RECOMMENDATION

The ALJ recommends that Respondent's application for the permit be granted.

## VI. FINDINGS OF FACT

1. Club Messina, LLC, D/B/A Club Messina (Applicant) filed an application with the Texas Alcoholic Beverage Commission (Commission) for a Mixed Beverage Permit and Mixed Beverage Permit Late Hours permit for the premises located at 306 E. Mitchell in San Antonio, Bexar County, Texas.
2. A protest to the application was filed by Augustin and Maria Beltran and Roosevelt Park Homeowners Association asserting that the application should be denied based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.
3. A Notice of Hearing dated May 26, 2005, was issued by Commission Staff notifying the parties that a hearing would be held on the application and informing the parties of the time, place, and nature of the hearing.
4. On June 14, 2004, a public hearing was held before Administrative Law Judge John H. Beeler in San Antonio, Texas. Staff appeared at the hearing, took no position, and was represented by Christopher Gee, attorney. Protestant was represented by Maria Beltran, and Applicant was represented by James Dodd. Evidence was received and the record closed that same day.
5. Applicant has met all Commission requirements for holding the permits and certificate at the premises location.
6. No unusual conditions or situations exist that would warrant refusal of the permit.

## VII. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5, §§ 6.01 and 11.46(a)(8).
2. The State Office of Administrative Hearings has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law

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PROPOSAL FOR DECISION

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pursuant to TEX. GOV'T CODE ANN. ch. 2003.

3. Proper and timely notice of the hearing was effected on all parties pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE § 155.55.
4. Issuance of the requested permit and certificate will not 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. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8).
5. The application for a Mixed Beverage Permit and Mixed Beverage Late Hours Permit for the premises located at 306 E. Mitchell in San Antonio, Bexar County, Texas, should be granted.

SIGNED August//, 2005.



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**JOHN H. BEELER**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

8/20

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

August 11, 2005



Alan Steen  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

RE: Docket No. 458-05-6466 TABC vs CLUB MESSINA ; DN-614355

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

John Beeler  
Administrative Law Judge

JB/il  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA HAND DELIVERY**  
Christopher G. Gee, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731  
Gayle Gordon, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731  
Augustin G. and Maria C. Beltran, 459 East Mitchell Street, San Antonio, TX 78210