

DOCKET NO. 597755

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
VS.	§	
	§	
ORIGINAL APPLICATION OF	§	OF
WILLIAM DARREL SHARP,	§	
SHARPIE'S WATERHOLE	§	
MB & LB	§	
BELL COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-1637)	§	ADMINISTRATIVE HEARINGS

ORDER

**CAME ON FOR CONSIDERATION** this 14th day of May, 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Suzan Moon Shinder. The hearing convened on March 11, 2002, and adjourned on the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 9, 2002. 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.

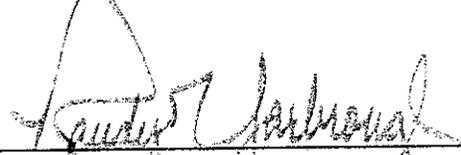
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the Original Application of William Darrel Sharp, d/b/a Sharpie's Waterhole, for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit be **GRANTED**.

**This Order will become final and enforceable on June 3, 2002**, 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.

WITNESS MY HAND AND SEAL OF OFFICE on this the 14<sup>th</sup> day of May, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

DAB/yt

William Darrel Sharp  
d/b/a Sharpie's Waterhole

**APPLICANT**

292 Cobblestone

Killeen, Texas 76542

**CERTIFIED MAIL NO. 7001 2510 0000 7278 7681**

Administrative Law Judge Beeler  
State Office of Administrative Hearings  
Waco, Texas

**VIA FACSIMILE: (254) 750-9380**

Mike Gentry, Chief of Police  
Harker Heights Police Department

**PROTESTANT**

**VIA FACSIMILE: (254) 699-6174**

Dewey A. Brackin

**ATTORNEY FOR PETITIONER**

Texas Alcoholic Beverage Commission

Legal Division

Waco District Office

Licensing Division

**DOCKET NO. 458-02-1637**

<b>TEXAS ALCOHOLIC BEVERAGE</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>COMMISSION</b>	<b>§</b>	
	<b>§</b>	
<b>VS.</b>	<b>§</b>	<b>OF</b>
	<b>§</b>	
	<b>§</b>	
<b>ORIGINAL APPLICATION OF</b>	<b>§</b>	
<b>WILLIAM DARREL SHARP</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>
<b>D/B/A SHARPIE'S WATERHOLE</b>	<b>§</b>	
<b>BELL COUNTY, TEXAS</b>	<b>§</b>	
<b>(TABC CASE NO. 597755)</b>	<b>§</b>	

**PROPOSAL FOR DECISION**

Michael Gentry, Chief of Police for Harker Heights (the Protestant), is protesting the application of William Darrel Sharp (the Applicant) for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit for the premises known as Sharpie's Waterhole, in Harker Heights, Bell County, Texas, on the grounds that the Applicant failed to answer or falsely or incorrectly answered a question in an original application, and on the grounds that the Applicant would conduct his business against the public's general welfare, health, peace, morals, safety, and sense of decency. The Texas Alcoholic Beverage Commission (the Commission) remained neutral in this case, having determined that the defect in the original application did not rise to a level that would justify denial, and determining that the Applicant had met all Commission requirements to hold the permits at the premises location. The Applicant asserted that he would operate the business within the bounds of the law and would establish procedures that would ensure safe and legal operation. This Proposal recommends that the Permits be granted.

**I. Procedural History, Notice, and Jurisdiction**

There are no contested issues of notice or jurisdiction, and these matters are set out in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing on the merits was convened on March 11, 2002, at 801 Austin Avenue, Suite 750, Waco, Texas, before Administrative Law Judge (ALJ) Suzan Shinder. The Commission appeared by its staff attorney, Dewey Brackin. The Protestant appeared, was admitted as a statutory

party protestant,<sup>1</sup> and represented himself. The Applicant appeared and represented himself. Evidence and argument were heard and the record closed the same day.

## II. The Statute

In pertinent part, Texas Alcoholic Beverage Code (Code) §§11.46(a)(4) and (8) state:

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 exists:

(4) the applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application;

(8) 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(.)

(Emphasis added.)

## III. The Evidence

The Commission's six exhibits<sup>2</sup> were admitted without objection, and the Commission called the Protestant and the Applicant as the only witnesses. The Protestant and the Applicant relied on their testimony and offered no additional evidence.

The Applicant's uncontested criminal history is as follows: in 1979, he was convicted for Driving While Intoxicated in Comal County, and served a one year probation<sup>3</sup>; in 1981, he was convicted for Driving While Intoxicated, he paid a fine and was given probation; in 1985, he was convicted for Public Intoxication in Bell County, and he paid a fine; and he was given three years

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<sup>1</sup>The Protestant was admitted as a statutory party pursuant to Code §11.41(a), which provides (in pertinent part) that if a protest against the issuance of a permit is made by the chief of police of the city in which the premises sought to be licensed, and it is found on a hearing that the issuance of the permit would be in conflict with the provisions of the code, the commission shall enter an order setting forth reasons for refusal.

<sup>2</sup>Commission's Exhibit No. 1 is the Applicant's original application; Commission's Exhibit No. 2 is the Applicant's letter to the Commission protesting issuance of a license to the Applicant; Commission's Exhibit No. 3 is an "Inter-Office Communication" by Commission agent, Daniel Garcia to B. Bond, Sergeant, Waco District; Commission's Exhibit No. 4 is a Texas Department of Public Safety criminal history of the Applicant; Commission's Exhibit No. 5 is a Texas Alcoholic Beverage Commission Affidavit, executed by the Applicant on October 25, 2001, and; Commission's Exhibit No. 6 is Harker Heights Police Department Offense/ Incident Report, dated January 5, 1992.

<sup>3</sup>Commission's Exhibit No. 5 and Applicant's testimony.

probation and fined \$1000.00, after pleading guilty of Aggravated Assault<sup>4</sup> for a 1992, incident that started inside the premises now known as "Sharpie's Waterhole" (the premises) and concluded across the driveway near the premises.<sup>5</sup> He successfully completed that probation, and has been off probation for more than five years.<sup>6</sup>

The Applicant admitted that he had inadvertently omitted the Public Intoxication conviction and the 1979 Driving While Intoxicated conviction from his criminal history on his original application.<sup>7</sup> The Protestant inferred that this might have been intentional on the Applicant's part. Although the Protestant was concerned about the nature of the Aggravated Assault conviction, neither he nor the Commission voiced any concerns about the nature or the number of the Applicant's other convictions.<sup>8</sup>

On October 9, 2001, the Harker Heights Commission office received the Applicant's original application<sup>9</sup> for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit for the premises doing business as Sharpie's Waterhole, at 524 East Veteran's Memorial Boulevard, Harker Heights, Bell County, Texas. The Applicant had a private licensing service prepare his "Personal History Sheet" for the application.<sup>10</sup> Agent Daniel Garcia entered the information listed on the Applicant's "Personal History Sheet" for a criminal history background investigation, eventually revealing that the above 1985 conviction for Public Intoxication and the 1979 conviction for Driving While Intoxicated had been omitted from the Applicant's "Personal History Sheet." At this time Agent Garcia contacted the Applicant and informed him that additional information was needed on his arrests.<sup>11</sup> On October 25, 2001, the Applicant sought to amend his original application by submitting to the Commission an affidavit admitting the 1985 conviction for Public Intoxication, and the 1979 conviction for Driving While Intoxicated.<sup>12</sup> The Applicant related that he forgot to include the 1979 Driving While Intoxicated conviction and that he did not realize that a Public Intoxication arrest rose to the level of a "conviction" that had to be listed.<sup>13</sup>

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<sup>4</sup>According to Commission's Exhibit No. 6 and the Applicant's testimony, the Applicant cut another man with a pocket knife.

<sup>5</sup>The Applicant paid a fine of \$1000.00, and successfully completed his probation.

<sup>6</sup>The Applicant's testimony and Commission's Exhibit No. 4.

<sup>7</sup>The Applicant's testimony.

<sup>8</sup>The Protestant's Testimony.

<sup>9</sup>Commission's Exhibit No. 3.

<sup>10</sup>Commission's Exhibit No. 1.

<sup>11</sup>Commission's Exhibit No. 3.

<sup>12</sup>Commission's Exhibit No. 1.

<sup>13</sup>The Applicant's Testimony.

The Applicant did not deny that he was guilty of Aggravated Assault, and because of his conviction, there will be no discussion of whether or not the Applicant was guilty of this crime. However, the "nature" of this crime was a large part of the basis for the protest in this case. There were no specific findings of fact regarding what occurred that evening, but a review of the testimony and the offense report<sup>14</sup> were somewhat revealing. In the offense report, witness accounts conflicted, and could have both supported and refuted theories of self-defense on the Applicant's part, dependent on which statement is believed. When reading these statements, one does not appear more credible than another.

According to the report, the incident occurred at approximately 12:30 a.m., on January 5, 1992. The twenty-four year-old victim and his thirty-one year-old friend were soldiers. The two young men, the Applicant (who was forty-eight years-old at the time), his wife, and his twenty year-old step-daughter, were inside the premises, and the men were all drinking heavily. A dispute arose over the attention one of the young men was paying to the Applicant's step-daughter. The dispute moved from inside the premises, across a driveway, and into the parking lot.

The Applicant stated the two men had been kicking him; he was an "old" man, the two other men were young; they came up behind him and knocked him down, and he felt he needed to "get them off of (him)," and; because of this, he used a "pocket knife" during the altercation. The physician who treated the victim described the wounds as "like scratches," and "not life threatening." In court, the two young men admitted that they were so intoxicated at the time, that they did not know where they were.<sup>15</sup> Although the victim may have had a number of stitches as a result of this incident, he was well enough the day after the assault to go to the police department and give a statement to one of the investigating officers.<sup>16</sup>

The Protestant had concerns that because of the Applicant's criminal history, specifically his conviction for Aggravated Assault for his actions on the premises in 1992, that the Applicant was not of good moral character; that he was without a good reputation for being a peaceful, law-abiding citizen in the community where he resides and would operate the business. The Protestant believed that the place and manner in which the Applicant would conduct his business warrants refusal of a permit based on the general welfare, health, peace, morals, and safety of the people in the community. Commission Agent Garcia reviewed the Protestant's concerns and the Applicant's history, and concluded that he could not determine whether sufficient facts existed to warrant a protest hearing.<sup>17</sup>

The Protestant stated that there is a high crime rate in Harker Heights, and a disproportionate amount of police services are directed to the area along Veteran's Memorial Boulevard, where there are a number of bars. In the 1 ½ to 2 mile length of road there have been approximately thirty permits issued. He believed that he had protested three of these permits in the last 2-3 years. The Protestant emphasized that if the Applicant's permits are granted, the police department would do

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<sup>14</sup>Commission's Exhibit No. 6.

<sup>15</sup>The Applicant's testimony.

<sup>16</sup>Commission's Exhibit No. 6.

<sup>17</sup>Commission's Exhibit No. 3.

everything that it could do, to work with the Applicant. He stated that most cases like the Applicant's (Aggravated Assault) that are probated, get a ten year probation; so, he had concerns about any case like this, that is approximately within that ten years. Even though the premises has not generated a lot of calls to the police department, he would not characterize it as one of the more "stellar, well-run" facilities.

The Applicant stated that he wanted to purchase the premises because it is an "old country club," for people of the Applicant's age group, who like country music and who like to dance, and there is no place like that in that area. His wife will retire at the end of this year, and running this club is something that they could do together. Prior to this he was a truck driver, and he hoped to be able to spend more time with his wife now, while continuing to work. The people who frequent the premises are thirty to seventy years old. He does not intend to cater to younger people, because he feels that this is "where your trouble is." He does not intend to tolerate young people coming in and starting trouble. He is aware that there are a lot of problems with "fake I.D.'s" in that area, and he requires premises-staff to get more than one form of identification if they have any doubts about a young person's age. He has been managing the premises for six months and has not had any trouble with anyone, and hasn't had to call the police. He doesn't drink alcohol anymore, stating that he learned his lesson years ago.

The premises shares a parking lot with several other bars. This general area is often referred to as "the waterhole," because the premises sign, stating "Waterhole," is one of the more prominent and long-standing signs in that location. As a result, there was no disagreement that some problem activities have likely been inaccurately attributed to the premises. The premises is one of the quieter bars in that location and caters to an older clientele.<sup>18</sup> Prior to this, the business was owned by Melvin Edward Downing. The principal in this case, William Darrel Sharp, has been managing the business since September of 2001, since which time there have been no requests for the police to respond to the premises.<sup>19</sup>

#### IV. Discussion

The Commission argued that the Commission would not have recommended denial of the license for the omission of the two convictions on the Applicant's application, but the Commission understood the Protestant's concerns, and felt that he should have his day in court. The Commission emphasized that the relevant sections of the Code appear to give wide discretion to the decision maker under these circumstances. While the Commission's argument reflected their neutral position, the Protestant made it clear that he had concerns about the nature of the Aggravated Assault, and the commonality of the premises location with the Applicant's Aggravated Assault. The Protestant was non-specific when he argued that the area in which the premises is located is "historically" a "problem bar area." Except for the 1992, assault, there were only conclusions and scant specific evidence to support this argument. The Protestant inferred that the Applicant's omission of two convictions on his application was an indication that the Applicant might be untrustworthy. However, neither the Protestant nor the Commission argued that they had concerns about the number or the nature of Applicant's other convictions.

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<sup>18</sup>The Protestant's and the Applicant's testimony.

<sup>19</sup>Commission's Exhibit No. 3 and the Applicant's testimony.

Much of the Protestant's evidence is speculative, and is primarily based on his discomfort with the fact that the 1992 assault perpetrated by the Applicant began in the same premises that is the subject of this case. Although the Protestant spoke in length about the 1992 assault, he was not able to relate any specific incidents or number of incidents on the premises since that time, and only spoke in very general terms. There was no evidence of a public reaction to the Applicant's intentions to seek these permits, therefore, there was no specific evidence that this would offend the sense of decency of the community. Except for this conclusion that the location of the premises and surrounding clubs is a "problem" area, the record does not otherwise reflect that these clubs are by their existence, in that place, injurious to their surroundings.

The Applicant argued that he seeks to maintain the premises in a lawful manner, and pledged that he would run the premises in a manner that would minimize the possibility of disruptive behavior. He expressed the desire to run the premises as a club that attracts an older, quieter clientele. His stated intentions have some credibility, since they are corroborated by his actions; he has been managing the premises since September, 2001, without significant incident.<sup>20</sup> Additionally, he successfully completed his probation for the Aggravated Assault, and has been off of probation for more than five years.

The Protestant's mostly non-specific concerns are not sufficient to establish that the Applicant will conduct business in a place or manner that is detrimental or offensive to the community. Even so, the Applicant's pledges, while admirable, do not outweigh the Protestant's concerns. The premises' effect on the community will be a function of how well the Applicant operates the premises.

Although there were no findings of fact from the court in the Applicant's Aggravated Assault case, it seems clear that all three men involved were highly intoxicated, involved in a dispute over a highly charged matter (the Applicant's step-daughter), and the victim's wounds were not life threatening. Although the Applicant had a weapon, it is noted that the other two men were significantly younger than the Applicant. Additionally, according to the Protestant, most probations for Aggravated Assault are for a period of ten years; however, in that the Applicant's probation was for a three year period, this suggests that the facts in his case did not warrant the longer probation. Finally, the Applicant's successful completion of his probation more than five years ago, his sobriety, and his manner of managing the premises for the last several months are the most compelling evidence that the Applicant will continue to manage the premises in a lawful manner. This outweighs the Protestant's more non-specific concerns.

Neither relevant Code section requires an Applicant's intentional action, but intent may be an aggravating or mitigating factor. The Applicant's incomplete answer on his application was not intentional; the incomplete answer was due to his reliance on someone else to fill out his application, and his own inadvertence and ignorance. This is more plausible because the Applicant freely listed the most serious offense (the Aggravated Assault) and the most recent offenses, and he swiftly sought to correct his errors.

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<sup>20</sup>The Applicant's testimony.

Given the nature of the Applicant's error on his application, and the evidence that the Applicant will continue to manage the premises in a lawful manner that is not detrimental or offensive to the community, refusal of these permits would be too harsh, and is not proposed.

### Findings of Fact

1. On October 9, 2001, the Harker Heights Commission office received the Applicant's original application for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit for the premises doing business as Sharpie's Waterhole, at 524 East Veteran's Memorial Boulevard, Harker Heights, Bell County, Texas.
2. The Applicant had a private licensing service prepare his "Personal History Sheet" for the application.
3. On September 6, 2001, Michael Gentry, the Chief of Police of Harker Heights Police Department (the Protestant), filed with the Commission a protest of the application described in Finding of Fact No. 1.
4. On January 30, 2002, the Commission issued a notice of hearing to the Applicant and the Protestant regarding a hearing on the protest.
5. The hearing on the merits was convened on March 11, 2002, at 801 Austin Avenue, Suite 750, Waco, Texas, before Administrative Law Judge (ALJ) Suzan Shinder. The Commission appeared by its staff attorney, Dewey Brackin. The Protestant appeared, was admitted as a statutory party protestant, and represented himself. The Applicant appeared and represented himself. Evidence and argument were heard and the record closed the same day.
6. The Applicant's criminal history is as follows: in 1979, he was convicted for Driving While Intoxicated in Comal County, and served one year probation; in 1981, he was convicted for Driving While Intoxicated, he paid a fine and was given probation; in 1985, he was convicted for Public Intoxication in Bell County, and he paid a fine, and; he was given three years probation and fined \$1000.00, after pleading guilty of Aggravated Assault for a 1992 incident.
7. The Applicant inadvertently omitted the conviction for Public Intoxication and the 1979 conviction for Driving While Intoxicated from his criminal history on his original application.
8. When this error was brought to his attention, he corrected it immediately.
9. The nature of the 1992 assault by the Applicant is as follows:
  - a. The Applicant was forty-eight years old. His victim and his victim's friend were twenty-four years-old and thirty-one years-old, respectively.
  - b. All three men were drinking heavily, and were involved in a dispute over the Applicant's step-daughter.

- c. The altercation started inside the premises, and moved across a driveway, and into the parking lot.
  - d. The victim's wounds were not life threatening.
10. The Applicant plead guilty to Aggravated Assault, was fined \$1000.00, and given three years probation, which he successfully served.
  11. Most probations for Aggravated Assault are for a length of ten years.
  12. The Applicant has been off of probation for more than five years.
  13. The Applicant believes that drinking alcohol was a source of problems for him, and as a result, he stopped drinking alcoholic beverages years ago.
  14. The premises is located in an area where there are many bars.
  15. Although the Protestant described this area as a "problem bar area" and stated that a disproportionate amount of police services are directed to this general area, he was unable to give any specifics.
  16. In the Protestant's recent memory, the premises has not generated a lot of calls to the police department.
  17. The Applicant has been managing the premises since September of 2001, since which time there have been no requests for the police to respond to the premises.
  18. The premises is one of the quieter bars in the group of bars in that location, and caters to an older clientele.
  19. The Applicant plans to manage the premises with his wife, when she retires next year.
  20. The Applicant is committed to operate this business in a law-abiding fashion, and pledges to run the premises in a manner that would minimize the possibility of disruptive behavior.
  21. The Applicant has already instituted some procedures to ensure this. For example, he requires that employees demand two forms of identification for a person who is suspected of being a minor.
  22. Granting the permits to the Applicant will not be a detriment to the premises or its surroundings; it will not worsen any problems that may already exist in this area.
  23. Given the nature of the Applicant's error on his application, and the evidence that the Applicant will continue to manage the premises in a lawful manner that is not detrimental or offensive to the community, refusal of these permits would be too harsh.

### Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV.CODE ANN. Subchapter B of Chapter 5.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Notice of the hearing was provided as required under the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. Based on the Findings of Fact, although the Applicant failed to answer or falsely or incorrectly answered a question in an original application, this inadvertent error, immediately corrected, should not prevent the granting of these permits, under TEX. ALCO. BEV.CODE ANN. 11.46(a)(4).
5. Based on the Findings of Fact, the place or manner in which Applicant will conduct its business will not be detrimental to the general welfare, health, peace, morals, and safety of the people, or the public sense of decency, under TEX. ALCO. BEV.CODE ANN. 11.46(a)(8).
6. Based on the Findings of Fact, and Conclusions of Law Nos. 4 and 5, the application of William Darrel Sharp d/b/a Sharpie's Waterhole for a Mixed Beverage Permit and a mixed Beverage Late Hours Permit should be granted.

Signed this 9th day of April, 2002.



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SUZAN MOON SHINDER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS