



## II. DISCUSSION AND ANALYSIS

### A. Applicable Law.

Protestants challenge the application on the basis of §§ 11.46(a)(6) and (8) of the Texas Alcoholic Beverage Code (Code), which provide:

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; and

### B. Arguments and Evidence.

#### 1. Protestants' Case.

The Protestants, who have the burden of proof, oppose issuance of the permits on the basis that loud noise and dangerous traffic pose a threat to the health, safety, and welfare of the neighborhood; that the health and welfare of the Protestants would be endangered due to the lack of control of activities, untenable noise, and public disturbances, including obscene language, lewd behavior, and urination in public; and that the issuance of the permits would be detrimental to the peace and serenity of the Protestants, in that the location of the proposed business is such that the citizens of Ector County will be adversely affected by the noise and by the disturbance created by people going to and coming from the establishment.

The Protestants did not call witnesses, but chose to express their concerns through public comment. Their comments are summarized below. After public comment, counsel for Applicant called several witnesses including some of the Protestants.

#### Bobbye Harris

Ms. Harris is a home owner living close to the premises. Playmates should be closed down because a sexually oriented business should not be allowed to operate so close to a residential area. Drunken patrons are a danger to the residents and the noise from the premises disturbs sleep. No other neighborhood in the City of Odessa has to coexist with a sexually oriented business. It is

inappropriate for children to have to play in backyards so close to Playmates. The business is offensive to public decency.

Ms. Harris has been awakened in the middle of the night by drunks and people who say they have been shot. She has seen scantily clad young women leaving the club. It is difficult to sleep because of the loud music.

Cheryl Turner

Ms. Turner is a home owner living directly behind and within 75 feet of the premises. She is regularly awoken at night by noise from the club. She often calls the police because of situations around the club.

Herbert Harris

Mr. Harris is a home owner living close to the premises. He has seen people urinate in front of his house and followed them back to Playmates. The location of the clubs results in a bad atmosphere for raising children.

James Masey

Mr. Masey is a home owner living close to the premises and agrees with the above comments.

Mary Ann Carrasco

Ms. Carrasco is a home owner living close to the premises. She is a light sleeper and has been awakened by slamming doors, fights, and gun shots. She has found drunk men in the alley and does not feel that the area is safe.

Virginia Donaldson

Ms. Donaldson is the president for the Permian Basin Citizens for Decency. That group is very upset about Playmates. Property values are lower because of the location of the club. Pornography is a problem and harmful to the community.

Lucille Hunnicutt

Ms. Hunnicutt agrees with the above comments. It is not fair the citizens have to pay the police to guard bad businesses that ruin women's and families' lives.

Clare Ruebush

Ms. Ruebush does not live anywhere near the premises, but all sexually oriented businesses should be closed down.

Leonard Ruebush

Mr. Ruebush is concerned with the cost of law enforcement associated with sexually oriented businesses. Men spend money at these types of businesses that should be spent on their families. As a result, the county then has to provide for the families. Crime rates drop in communities after sexually oriented businesses are closed.

Carlos Carrasco

Mr. Carrasco lives near the premises and agrees with above comments. He does not get enough sleep.

Olga Matta

Ms. Matta is offended by the business and by the city for allowing it to operate.

Concepcion Nunez

Sexually oriented businesses destroy people's lives and destroy couples. People around the area of the club should not have to endure the noise from the club.

Amber Pierce

Ms. Pierce is a teenager and worked at the club as a bartender last year. She witnessed minors being served alcohol and saw fights in the parking lot. Her friend worked there as a waitress while pregnant. The club served her alcohol and she suffered a miscarriage.

C. Bryan "Chuck" Lane

Mr. Lane has lived in Odessa most of his life and has observed the history of Odessa in relation to sexually oriented businesses. Playmates is the only such business that remains in the city limits. The club is a haven and a center for criminal activity, prostitution, and the sale and use of illegal drugs. Pornography and sexually oriented businesses have an effect on criminal activity, especially sex crimes. It also affects the city economically.

Joyce Shaver

Ms. Shaver lives in Odessa, but not near the premises. She is the daughter of an alcoholic and suffered as a result. Odessa should shut down Playmates because it results in violence.

Mildred Merrill

Ms. Merrill is a great-grandmother and is against sexually oriented businesses in the interest of children. There is a college in Odessa and parents would not want to send their children to a college in a city that has a sexually oriented business.

Terry Pierce

Mr. Pierce is a pastor of a church in Odessa. On various occasions he has returned to Odessa late at night and witnessed frightening and disturbing events around the clubs near Playmates. The club has always caused problems and will do so in the future. He has counselled families for years and has seen the damage that the club has caused.

**2. Applicant's Case.**

Applicant called the following witnesses and their testimony is summarized below.

Bobby Harris

The loud noise discussed above came from the club, not the nearby car wash.

Cheryl Turner

Her calls to the police were in relation to the car wash, not the club.

Mary Ann Carrasco

She has heard cars race away from the club.

Richard Percell

Mr. Percell is the president of Stathis, Inc. He has been an officer in the company that has been operating the club, and is now taking over the operation. There have been problems in the past and that is why he is taking over. He will operate the club to make a profit and knows that to do so he must follow all laws and be a good neighbor. He has changed the hours of the club to eliminate

daytime hours so that the club will not be open at times that might conflict with neighborhood activity. He has also implemented a policy that no one under 21 years of age will have access to the premises.

The city approved the sexually oriented business permit after extensive background checks and inspections. Police calls to the premises have averaged 2.8 per month which is very low for a bar. Additional security has been put in place, additional lighting installed, and the back of the club has been blocked off to isolate the club from the neighborhood. He has monitored noise levels on several occasions and found that the music played in the club is not audible outside. He has heard loud music being played in automobiles at the car wash and feels that is where the noise problems have come from.

Applicant offered a videotape of the area around the club demonstrating that even with the music in the club turned up to maximum volume, it can not be heard outside of the club. The tape shows the close proximity of the car wash and the noise that comes from the car wash. The tape also shows that there is no access to the premises from the back alley that separates the club from the neighborhood.

### **3. Analysis.**

Protestants challenged the application on the grounds that the noise, traffic, and activity of the patrons of the club pose a threat to the general welfare, peace, morals, and safety of the community. After considering this evidence, the ALJ concludes that it does not establish a legitimate basis for denying the permits. While it is understandable that the Protestants do not want a sexually orientated business so close to their neighborhood, that is not the issue to be addressed by the ALJ. The City of Odessa has enacted laws regulating where sexually oriented businesses can be located. The city has also granted Playmates a permit to operate at the location in question. Therefore, that issue has been settled by the city, and the only issue relevant here is whether the TABC permits should be issued.

Protestants' witnesses failed to establish that the permits should be denied. While there may be a noise problem in the area, it appears that the noise originates from a source other than the club. The video tape is persuasive here. Unless the tape was a fraud, it demonstrates that music played inside the club is inaudible from the neighborhood. Applicant even offered the Protestants the opportunity to verify that the tape was accurate, but they declined.

There may have been a problem in the past concerning traffic from the club exiting from the rear of the premises and traveling through the neighborhood. However, there is no longer a usable exit in the rear. Without an exit in the rear, the likelihood of vehicles leaving the club through the neighborhood is very low. While the club is located close to the neighborhood, it is isolated.

The ALJ sympathizes with the Protestants and understands that they do not want the business so close to their homes. However, no legal basis was established at the hearing to merit denial of the permits.

## II. FINDINGS OF FACT

1. Stathis, Inc., d/b/a Playmates (Applicant), filed an original application with the Texas Alcoholic Beverage Commission (the Commission) Mixed Beverage Permit and a Mixed Beverage Late Hours Permit for a premises located at 2337 E. 8<sup>th</sup> Street, Odessa, Ector County, Texas.
2. A protest to the application was filed by Citizens of Ector County (Protestants).
3. Commission's 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.
4. The hearing was held on December 3, 2002, in Odessa, Ector County, Texas, before John H. Beeler, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH). The Applicant was represented by Scott Tidwell, attorney. Commission Staff appeared and was represented by TABC investigator Dyer Lightfoot. Protestants appeared and designated Bobbye Harris as their party representative. The hearing concluded the same day and the record closed on January 8, 2003, after the filing of written closing arguments.
5. Music originating inside the club is inaudible from the neighborhood.
6. There is no longer an exit at the rear of the premises, therefore the premises are isolated from the neighborhood.

## III. 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 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, in violation of TEX. ALCO. BEV. CODE ANN. §11.46.
5. Based on the foregoing findings of fact, there is insufficient evidence to deny the permits on the basis of TEX. ALCO. BEV. CODE ANN. §§ 11.46(a) (8)
6. Based on the foregoing findings and conclusions, the application of Playmates should be granted.

**Signed this 10<sup>th</sup> day of March, 2003.**

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

**DOCKET NO. 602107**

IN RE ORIGINAL APPLICATION OF	§	BEFORE THE
STATHIS INC. D/B/A	§	
PLAYMATES	§	
MB & LB	§	TEXAS ALCOHOLIC
	§	
	§	
ECTOR COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-1043)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 3rd day of April, 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge John H. Beeler. The hearing convened on December 2, 2003, and adjourned January 8, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on March 10, 2003. 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 Respondent's original application be **GRANTED** and that the permits be **ISSUED**.

**This Order will become final and enforceable on APRIL 24, 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 and by mail as indicated below.

WITNESS MY HAND AND SEAL OF OFFICE on this the 3rd day of April, 2003.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

/vr

The Honorable John H. Beeler  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FACSIMILE (512) 475-4994

Scott Tidwell  
ATTORNEY FOR RESPONDENT  
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Stathis, Inc.  
d/b/a Playmates  
RESPONDENT  
2337 E. 8<sup>th</sup> Street  
Odessa, Texas 79761  
VIA REGULAR MAIL

Gayle Gordon  
ATTORNEY FOR PETITIONER  
TABC Legal Section

Regulatory Division  
Odessa District Office

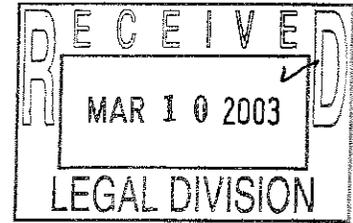
**PROTESTANTS:  
VIA REGULAR MAIL**

Bobbye Harris  
2538 E. 10<sup>th</sup> St  
Odessa, Tx. 79761  
Tel. (915) 337-3105

Cheryl Turner  
2556 E. 10<sup>th</sup> St  
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James Masey  
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# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

March 10, 2003

Mr. Rolando Garza, Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa, Suite 160  
Austin, Texas 78711

**HAND DELIVERY**

**RE: Docket No. 458-03-1043; Texas Alcoholic Beverage Commission & Citizens of Ector County v. Original Application of Stathis, Inc. d/b/a Playmates MB & LB Ector County Texas (TABC Case No. 602107)**

Dear Mr. Garza:

Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. A copy of the Proposal for Decision is being sent to Dyer Lightfoot, staff attorney representing the Texas Alcoholic Beverage Commission, to Scott Tidwell, attorney for Applicant, Stathis Inc. d/b/a Playmates, and to Bobbye Harris, Cheryl Turner, Juan C. Carrasco, and James Masey, protesting citizens. For reasons discussed in the Proposal for Decision, the Administrative Law Judge finds that there is an insufficient basis for denying the application and recommends that the permits be issued.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon 2000), each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. Exceptions and replies must be filed according to the time limits specified in TABC rules. A copy of any exceptions, briefs on exceptions, or reply must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,

  
John H. Beeler  
Administrative Law Judge

JHB/sb  
Enclosure

xc: Dyer Lightfoot, Staff Attorney, TABC, 5806 Mesa, Suite 160, Austin, Texas - **VIA HAND DELIVERY**  
Scott Tidwell, Attorney at Law, 4001 East 42<sup>nd</sup>, Suite 101, Odessa, Texas 79762 - **VIA REGULAR MAIL**  
Bobbye Harris, 2538 East 10<sup>th</sup> Street, Odessa, Texas 79761 - **VIA REGULAR MAIL**  
Cheryl Turner, 2556 East 10<sup>th</sup> Street, Odessa, Texas 79761 - **VIA REGULAR MAIL**  
James Masey, 2543 East 10<sup>th</sup> Street, Odessa, Texas 79761 - **VIA REGULAR MAIL**  
Rommel Corro, Docket Clerk, State Office of Administrative Hearings - **VIA HAND DELIVERY**