

DOCKET NO. 503159

**ORIGINAL APPLICATION FOR
LIZARDS BILLARDS CLUB
d/b/a Lizards Billards Club**

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§

BEFORE THE TEXAS

ALCOHOLIC

**DALLAS COUNTY, TEXAS
(SOAH DOCKET NO. 458-06-1782)**

BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 27th day of February 2007, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Jerry Van Hamme. The hearing convened on September 6, 2006, and closed on the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 1, 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.

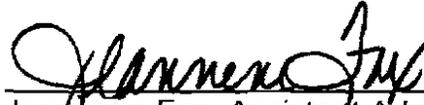
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that **Respondent's original application be denied**.

This Order will become final and enforceable on March 20, 2007, unless a Motion for Rehearing is filed **before** that date.

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

SIGNED on this 27th day of February 2007, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

JF/dn

The Honorable Jerry Van Hamme
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
VIA FACSIMILE: 214-956-8611

Lizards Billards Club
RESPONDENT
d/b/a Lizards Billards Club
1837 Elm Creek Dr.
Garland, TX 75040-9102
VIA Regular Mail

City of Garland
PROTESTANT
Jason Day
ATTORNEY FOR PROTESTANT
VIA FACSIMILE: 972-205-2389

Victoria Place Home Owners Association
PROTESTANT
Mary Wiggins
PRESIDENT OF HOME OWNERS ASSOCIATION
VIA FACSIMILE: 972-414-5584

Jerry McClain
ATTORNEY FOR PETITIONER
VIA FACSIMILE: 214-678-4050

Licensing Division

Dallas District Office

SOAH DOCKET NO. 458-06-1782

TEXAS ALCOHOLIC BEVERAGE COMMISSION,	§	BEFORE THE STATE OFFICE
	§	
	§	
VICTORIA PLACE HOME OWNERS ASSOCIATION,	§	
	§	OF
	§	
CITY OF GARLAND,	§	
Protestants	§	
V.	§	
	§	
LIZARD’S BILLIARDS CLUB,	§	
Respondent	§	
	§	
DALLAS COUNTY, TEXAS	§	
TABC CASE NO. 503159	§	
	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Lizard’s Billiards Club (Respondent) filed an application with the Texas Alcoholic Beverage Commission (Commission) for a Private Club Registration Permit and Beverage Cartage Permit for Lizards Billiards Club, 2376 Lavon Drive, Suite 106, Garland, Dallas County, Texas. The Texas Alcoholic Beverage Commission staff (Staff), the Victoria Place Homeowners Association (Association), and the City of Garland 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 sense of public decency. Respondent did not appear at the hearing and was not represented by counsel. The Administrative law Judge (ALJ) recommends that the Commission not grant Respondent the requested permits.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

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

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

On September 6, 2006, a public hearing was held before Jerry Van Hamme, ALJ, at the offices of the State Office of Administrative Hearings, 6333 Forest Park Road, Dallas, Texas. Staff was represented by Jerry McClain, attorney for the Commission. The Association was represented by its president, Mary Wiggins. The City of Garland was represented by Jason Day, attorney. Respondent did not appear and was not represented at the hearing. The hearing proceeded on a default basis, pursuant to 1 T EX. ADMIN. CODE § 155.55. Because the hearing proceeded on a default basis, the Staff's factual allegations are deemed admitted as true, and the ALJ has incorporated those allegations into the findings of fact without further discussion. The record was closed on that date.

II. LEGAL STANDARDS AND APPLICABLE LAW

A party may be defaulted for failing to appear at the hearing under 1 T EX. ADMIN. CODE § 155.55. Pursuant to 1 TEX. ADMIN. CODE § 155.27 a default proceeding requires a showing that proper notice under TEX. GOV'T. CODE ANN. Chapter 2001 and 1 TEX. ADMIN. CODE § 155.27 was provided to the defaulting party and that such notice included a disclosure, in at least twelve-point, bold-face type, that the factual allegations listed in the notice could be deemed admitted, and that the relief sought in the notice of hearing might be granted by default against the defaulting party that fails to appear at the hearing.

Pursuant to 1 TEX. ADMIN. CODE § 155.27(a), unless applicable law provides otherwise, an agency referring a contested case to SOAH shall provide notice to all parties in accordance with TEX. GOV'T. CODE ANN. § 2001.052, which states, in pertinent part, that a notice of hearing in a contested case must include:

- (1) a statement of the time, place, and nature of the hearing;

- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) a reference to the particular sections of the statutes and rules involved; and
- (4) a short, plain statement of the matters asserted.

The commission or administrator may refuse to issue an original permit if it has reasonable grounds to believe and finds that 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. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8).

III. ANALYSIS

As reflected in Findings of Fact numbers 5 - 7 the notice sent to Petitioner complied with TEX. GOV'T. CODE ANN. § 2001.052. The deemed findings show Respondent has operated its business in a way that warrants the refusal of the requested permits based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. Therefore, it is recommended that Respondent not be granted the requested permits.

IV. FINDINGS OF FACT

1. Lizards Billiards Club, 2376 Lavon Drive, Suite 106, Garland, Dallas County, Texas. (Respondent) filed an original application for a Private Club Registration Permit and Beverage Cartage Permit with the Texas Alcoholic Beverage Commission (Commission) on July 15, 2005.
2. Protestant City of Garland:
 - a. By letter dated August 8, 2005, the Chief of Police of the City of Garland filed a protest letter with the Commission protesting the issuance of the requested permits to Respondent.

- b. Between June 17, 2002, and September 27, 2004, the City of Garland Police Department made 91 calls for service to Respondent's establishment and filed charges on 60 separate offenses. The offenses included felony possession of marijuana, felony possession of cocaine, possession of dangerous drugs, alcohol beverage violations, fleeing/eluding the police, aggravated assault with a deadly weapon, and deadly conduct through discharging a firearm.
 - c. On October 1, 2004, the City of Garland Chief of Police certified Respondent as a "premises being used to conduct a criminal enterprise" in accordance with Garland City Ordinance § 51.09. This ordinance defines "a premises being used to conduct a criminal enterprise" as a premises that is, or is threatened to be, used by a person or persons engaged in organized criminal activity prohibited under Texas Penal Code § 71.02, or the premises has been, within a 12 month period, the site of three or more violations of federal, state, or local law in which arrests were made or convictions obtained, and that were aided, caused or encouraged by the owner or occupant of the premises.
 - d. Respondent knew of these offenses, and permitted, or failed to take reasonable steps to prevent, these offenses.
3. Protestant Staff:
- a. Staff requested records of police activity from the City of Garland concerning Respondent's establishment and a comparably sized establishment in the City of Garland that already had the alcohol permits Respondent was requesting.
 - b. From January 2003 to October 18, 2005, Respondent's establishment had more than three times the number of investigations by the Garland Police Department than the already-licensed, comparably sized establishment.
 - c. Respondent's establishment had 11 times the number of incidents relating to drug paraphernalia as the already-licensed establishment, seven times the number of incidents related to possession of marijuana under two ounces, three times the number of incidents related to narcotics, and a comparable number of incidents related to weapon offenses and warrants.
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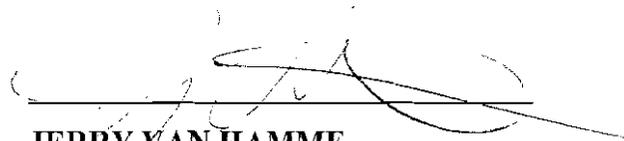
- d. The amount of criminal activity at Respondent's establishment is high for an establishment that does not sell alcoholic beverages, and the amount of drug activity is excessive.
 - e. The amount of criminal activity at Respondent's establishment will increase if Respondent is granted the requested permits.
 4. Protestant Victoria Place Homeowner's Association :
 - a. A protest letter dated July 6, 2005, from the Victoria Place Homeowner's Association protesting the issuance of the requested permits to Respondent was received by the Commission on July 25, 2005.
 - b. Respondent's establishment is located in a strip mall bordered on three sides by residential homes, including Victoria Place, which consists of 108 condos with many small children and young teenagers in residence.
 - c. Respondent's establishment generates late night noise and trash that negatively affects the neighborhood.
 - d. Granting the requested permits would increase Respondent's negative impact on the neighborhood.
 5. On May 5, 2006, Staff sent Respondent a Notice of Hearing by certified mail, return receipt requested, to Respondent's mailing address as listed in the Commission's records. The Notice of Hearing informed Respondent of the a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
 6. The Notice of Hearing also contained language in 12-point type stating that if Respondent failed to appear at the hearing the Staff's factual allegations could be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.
 7. On July 26, 2006, a Continuance Order was sent to Respondent's then-counsel of record informing Respondent of the time and date of the hearing.
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8. On September 6, 2006, a public hearing was held before Jerry Van Hamme, ALJ, at the offices of the State Office of Administrative Hearings, 6333 Forest Park Road, Dallas, Texas. Staff was represented by Jerry McClain, attorney for the Texas Alcoholic Beverage Commission (Commission). Victoria Place Homeowner's Association (Association) was represented by its president, Mary Wiggins. The City of Garland was represented by Jason Day, attorney. Respondent did not appear and was not represented at the hearing. The record was closed on the same day.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5, § 11.46(a)(8).
 2. SOAH has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.
 3. Based on Findings of Fact Nos. 2 - 4, Respondent violated TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8).
 4. Based on Findings of Fact Nos. 5 - 7, proper and timely notice of the hearing was effected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE § 155.55.
 5. Based on Finding of Fact No. 8, a default judgment should be entered against Respondent pursuant to 1 TEX. ADMIN. CODE § 155.55.
 6. Based on the foregoing findings and conclusions, the Commission is warranted in refusing to issue to Respondent the requested permits based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.
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SIGNED November 1, 2006.

A handwritten signature in black ink, appearing to read "Jerry Van Hamme", is written over a horizontal line.

**JERRY VAN HAMME
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

November 1, 2006

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78731

RE: Docket # 458-06-1782
TABC VS. Lizard's Billards Club

Dear Ms. Fox:

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Van Hamme", written over a horizontal line.

Jerry Van Hamme
Administrative Law Judge

JVH/sc
Enclosure

cc: Jerry McClain, Agency Council for Texas Alcoholic Beverage Commission, **Via Fax**, Lizard's Billards Club, Respondent, **Via Regular Mail**, Mary Wiggins, Protestant, **Via Fax**, Jason Day, Protestant's Attorney, **Via Fax**

