

DOCKET NO. 513617

ORIGINAL APPLICATION FOR
ODESSA WINGS LTD.
d/b/a Buffalo Wild Wings

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BEFORE THE TEXAS

ALCOHOLIC

ECTOR COUNTY, TEXAS
(SOAH DOCKET NO. 458-07-2335)

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 3rd day of December 2007, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Brian Phillips. The hearing convened on May 8, 2007, 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 June 5, 2007. 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.

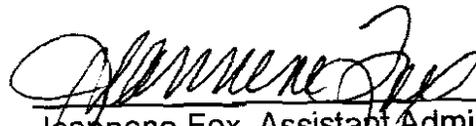
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that **Respondent's original application is granted.**

This Order will become final and enforceable on December 27, 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 3 day of December, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

JF/dn

The Honorable Brian Phillips
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
VIA FACSIMILE: 806-792-0149

Michael Carper
ATTORNEY FOR RESPONDENT
VIA FACSIMILE: 806-747-8411

ODESSA WINGS LTD.
RESPONDENT
d/b/a Buffalo Wild Wings
4241 N. Grand Ave.
Odessa, TX 79762
VIA REGULAR MAIL

Johnny & Donna Spencer
PROTESTANTS
4301 Ridgedale
Odessa, TX 79762
VIA REGULAR MAIL

Judith Kennison
ATTORNEY FOR PETITIONER
VIA FACSIMILE: 214-678-4050

Licensing Division

Odessa District Office

of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

II. HEARING AND EVIDENCE

On May 8, 2007, a hearing was convened before Judge B. L. Phillips, at the State Office of Administrative Hearings, 8212 Ithaca, Suite W3, Lubbock, Lubbock County, Texas. Petitioner was represented by Barbara Moore, attorney, who appeared by telephone. Protestants appeared and represented themselves. Respondent appeared and was represented by Michael Carper, attorney. The record closed the same day.

III. LEGAL STANDARDS AND APPLICABLE LAW

Pursuant to the Code § 11.44, no permit or license may be issued for or transferred to a premises if the Commission has initiated action to cancel or suspend a permit or license at the same premises.

IV. EVIDENCE

A. Documentary Evidence

The Judge admitted into evidence Petitioner's exhibits, including the Notice of Hearing issued in the case, and the TABC file regarding the Original Application Protest. Respondent's exhibits in support of the original application and Respondent's fitness to hold the proposed permit were also admitted.

B. Rene Carrasco, TABC Agent

Agent Carrasco testified that he conducted the protest investigation into Respondent's original application and compiled the protest package that was admitted into evidence at the hearing. He looked at police reports to evaluate any serious public safety concerns and found that Respondent could not have prevented any of the incidents that were mentioned in the reports. Agent Carrasco met with the Protestants who expressed their dissatisfaction with Respondent's operation. He determined that none of the neighbors of the Protestants wanted to join the protest and concluded that there was not enough evidence for the Commission to join the protest.

C. Johnny Spencer

Mr. Spencer testified that he observed fighting, urinating, marijuana smoking and sexual activity in the parking lot controlled by Respondent. He also complained about beer bottles left by patrons, and stated that a window on his home was broken after he complained about the parking lot violations.

D. Charles Wimett, General Manager of Buffalo Wild Wings

Mr. Wimett is the general manager of Buffalo Wild Wings in Odessa. He testified using photos taken of the establishment to show that the Protestants had no basis for their complaints. The photos show the outside of the licensed premises, including measures taken to accommodate the complaints made against the establishment by Protestants.

V. ANALYSIS

The evidence did not show that Commission has initiated any action to cancel or suspend a permit or license at the same premises or that there was any basis for the allegations made against Respondent in the notice of hearing. Furthermore, the testimony was that the Commission did not

have enough evidence to join any protest against the original application for a permit made by Respondent. The only other evidence in support of the protest was the testimony of Mr. Spencer, one of the Protestants herein, in the form of general allegations against the manner in which Respondent controls the area in and around the licensed premises. His testimony did not show in any way that the allegations involved matters that Respondent had control over. The evidence provided by Agent Carrasco supports a finding that any problems experienced by Respondent were not under Respondent's control. The evidence does not support a finding that a protest against the issuance of this permit is valid.

VI. PROPOSED FINDINGS OF FACT

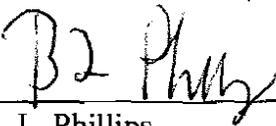
1. Odessa Wings Ltd d/b/a Buffalo Wilds Wings, Ector County, Texas, filed an original application for a mixed beverage, mixed beverage late hours, and a food and beverage permit for the premises located at 4241 N. Grandview Avenue, Odessa, Ector County, Texas.
2. Respondent received proper and timely notice of the hearing from the Staff of the Texas Alcoholic Beverage Commission (TABC) in a notice of hearing dated April 25, 2007.
3. The hearing on the merits convened May 8, 2007, at the State Office of Administrative Hearings (SOAH), 8212 Ithaca, Suite W3, Lubbock, Lubbock County, Texas. The TABC was represented by Barbara Moore, attorney. The Protestants appeared and represented themselves. The Respondent appeared and was represented by Michael Carper, attorney. The record closed on the same day.
4. TABC received a protest against the issuance of the permits and determined that insufficient facts existed to warrant TABC joining the protest action.
5. There is no evidence that the TABC has initiated an action to cancel or suspend the current permit holder at the location of the licensed premises.
6. Respondent has either taken adequate measures to respond to or did not have control over the nuisance issues brought up by Protestants.

VII. PROPOSED CONCLUSIONS OF LAW

1. The TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 61.71, and 61.73.

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. Notice of the hearing was provided as required by the TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Based upon Findings of Fact No. 4-6, the TABC and Protestants did not prove the allegations made against Respondent in the protest action.
5. Based on the foregoing, the Administrative Law Judge recommends that Respondent's Application for a Mixed Beverage, Food and Beverage Certificate, and Mixed Beverage Late Hours Permit be granted.

SIGNED: June ^{4th} 5, 2007



B. L. Phillips
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS