

DOCKET NO. 594611

TEXAS ALCOHOLIC BEVERAGE	§	
COMMISSION, Petitioner	§	
	§	
KAUFMAN COUNTY SHERIFF OFFICE	§	
and CRANDALL POLICE DEPARTMENT,	§	
Protestants	§	BEFORE THE TEXAS
	§	
VS.	§	ALCOHOLIC BEVERAGE
	§	
NITRO ALLEY SOCIAL CLUB	§	COMMISSION
D/B/A NITRO ALLEY, Respondent	§	
	§	
	§	
KAUFMAN COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-10-5395)	§	

**ORDER**

**CAME ON FOR CONSIDERATION** this 13<sup>th</sup> day of January, 2011, the above-styled and numbered cause.

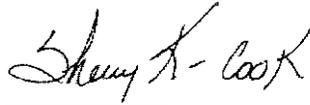
After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge Jerry Van Hamme presiding. The hearing convened on August 16, 2010 and the SOAH record was closed the same day. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on October 11, 2010. The 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.

After review and due consideration of the Proposal for Decision, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision, and incorporate those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All other motions, requests for entry of Proposed Findings of Fact and Conclusions of Law, and any other requests for general or specific relief submitted by any party that are not specifically adopted herein, are denied.

**IT IS THEREFORE ORDERED** that the Original Application of Nitro Alley Social Club d/b/a Nitro Alley for the issuance of a Private Club Beer and Wine Permit and a Beverage Cartage Permit be **GRANTED**.

This Order will become final and enforceable on the 8<sup>th</sup> day of February, 2011 unless a Motion for Rehearing is filed **before** that date.

SIGNED this the 13<sup>th</sup> day of January, 2011, at Austin, Texas.



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Sherry K-Cook, Assistant Administrator  
Texas Alcoholic Beverage Commission

### CERTIFICATE OF SERVICE

I certify that the persons listed below were served with a copy of this Order in the manner indicated below on this the 13<sup>th</sup> day of January, 2011.



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Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

Administrative Law Judge  
State Office of Administrative Hearings  
Dallas, TX  
**VIA FACSIMILE: (512) 322-0471**

Nitro Alley Social Club Inc.  
d/b/a Nitro Alley  
**APPLICANT**  
P.O. Box 889  
Crandall, TX 75114  
**VIA REGULAR MAIL**

Lori Hale  
**PROTESTANT**  
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Crandall, TX 75114  
**VIA REGULAR MAIL**

Anthony Wayne & Jill Lemmond  
**PROTESTANTS**  
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Kaufman, TX 75142  
**VIA REGULAR MAIL**

Karla Dugan  
**PROTESTANT**  
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*VIA REGULAR MAIL*

Jackie & Jordan Sechrist  
Jimmy Sechrist  
**PROTESTANTS**  
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*VIA REGULAR MAIL*

David A. Byrnes  
Sheriff, Kaufman County Sheriff's Office  
**PROTESTANT**  
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*VIA REGULAR MAIL*

Dean Winters  
Chief of Police, Crandall PD  
**PROTESTANT**  
112. S. Main  
P.O. Box 911  
Crandall, TX 75114  
*VIA REGULAR MAIL*

Markus & Carol Dees  
**PROTESTANTS**  
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Floyd & Helen Garrison  
**PROTESTANTS**  
29 Oak Creek Drive  
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Theresa Finn  
**PROTESTANT**  
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Tomas & Stephanie Armendarez  
**PROTESTANTS**  
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Bonnie Lee  
**PROTESTANT**  
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Lisa McLain  
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Dwight Webster  
**PROTESTANT**  
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Karen King  
**PROTESTANT**  
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***VIA REGULAR MAIL***

Stephen Watson  
**PROTESTANT**  
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*VIA REGULAR MAIL*

P. Hanna  
**PROTESTANT**  
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Crandall, TX 75114  
*VIA REGULAR MAIL*

Danny & Patti Brock  
**PROTESTANTS**  
1912 CR 4106  
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*VIA REGULAR MAIL*

Matthew M. Clark  
**ATTORNEY FOR PETITIONER**

Licensing Division

Lt. Jeff Gladden  
Dallas District Office



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

On August 16, 2010, a public hearing was held before Jerry Van Hamme, ALJ, at the State Office of Administrative Hearings (SOAH), 6333 Forest Park Road, Suite 150-A, Dallas, Texas. Staff was represented by Matthew Clark, attorney. Protestants Dean Winters, Crandall Police Department; Kaufman County Sheriff David Byrnes; and Bonnie Lee, Kaufman County resident, appeared *pro se*. Applicant's Officers Sammy Lattner and Sandy Scherer appeared *pro se*. The record was closed on that date.

**II. LEGAL STANDARDS AND APPLICABLE LAW**

The Commission may refuse to issue an original permit if it has reasonable grounds to believe that the place or manner in which Applicant may conduct its 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 offered Applicant's application for a Private Club Beer and Wine permit and Beverage Cartage permit into evidence.

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**B. Protestant's Evidence and Contentions**

**1. Officer Dean Winters**

Officer Dean Winters, Crandall Police Department, testified that the City of Crandall was protesting Applicant's application because the permits requested by Applicant would authorize Applicant to sell alcoholic beverages at a local race track. The race track generates a great amount of traffic on nearby narrow, unlighted county roads. Accidents already occur on those roads. Selling alcoholic beverages at the race track would, in Officer Winters' opinion, increase the number of intoxicated drivers on the roads and, because some drivers get lost leaving the race track and drive through Crandall neighborhoods, make driving more hazardous for city residents.

**2. Sheriff David Byrne**

David Byrne, Kaufman County Sheriff, testified that residents near the race track are concerned that granting Applicant's permits would negatively affect the quality of life in the area. In addition, the county roads around the race track, notably CR 4104, are substandard roadways which would become even more dangerous if the number of intoxicated drivers leaving the race track increased.

**3. Bonnie Lee**

Bonnie Lee, a resident in the area, testified that the roads near the race track are narrow and it is easy for drivers unfamiliar with the area to become lost, a problem which will become worse if the race track is allowed to sell alcoholic beverages and the number of intoxicated drivers increases. In her experience, she has seen too many people leave sporting events who should not be allowed to walk, yet alone drive.

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**C. Applicant's Evidence and Contentions****1. Sammy Lattner**

Sammy Lattner, President of Nitro Alley Social Club, Inc., testified that patrons at the race track are currently allowed to take their own alcoholic beverages to the track, and, as such, the amount, nature, and consumption of alcohol beverages is presently not regulated. However, if the requested permits are granted, Applicant would no longer allow patrons to bring their own alcoholic beverages to the race track. The sale of alcoholic beverages would be limited to beer, alone, and sales would be restricted to a designated private club area. He testified he does not anticipate that granting the permits will cause any traffic problems, and, whatever the condition the county roads may be in, Applicant should not be denied the permits because of substandard roadways over which Applicant has no control.

**IV. ANALYSIS**

Protestants challenge Applicant's application on the basis of the general welfare, health, peace, morals, safety of the people, and the public sense of decency. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(6). To deny a permit on such basis "some unusual conditions or situations must be shown so as to justify a finding that the place or manner in which the applicant may conduct his business warrants a refusal of a permit." Dicant v. Texas Alcoholic Beverage Commission, 536 S.W.2d 667, 669 (Tex. Civ. App. — Corpus Christi 1976, no writ). See also: Texas Alcoholic Beverage Commission v. Jack E. Mikulanka d/b/a Frigate Club, 510 S.W.2d 616, 619 (Tex. App. — San Antonio 1974, no writ); 650 S.W.2d 208; Kermit Concerned Citizens Committee v. Colonial Food Stores, Inc., 650 S.W.2d 208, 210 (Tex. App.—El Paso 1983, no writ).

Such unusual conditions include, for example, where the mayor, chief of police, sheriff, and property owners from three subdivisions opposed the permits on the grounds that granting the

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permits would create a probable traffic hazard, Dienst v. Texas Alcoholic Beverage Commission, 536 S.W.2d 667 (Tex. Civ. App. — Corpus Christi 1976, no writ); where the mayor, chief of police, sheriff, members of the board of a nearby public school, and nearby property owners and church members opposed the permits on the grounds that granting the permits would increase traffic congestion and negatively change the nature of the neighborhood, Helms d/b/a The Thirsty Turtle v. Texas Alcoholic Beverage Commission, 700 S.W.2d 607 (Tex. App. — Corpus Christi 1985, no writ); and where a potential traffic hazard existed because the establishment's premises exited onto a frontage road at the roadway's "gore area," Bavarian Properties, Inc. v. Texas Alcoholic Beverage Commission, 870 S.W.2d 686 (Tex. App. — Fort Worth 1994, writ denied).

The evidence in the instant case does not show that granting Applicant's permits will negatively affect the existing nature of the neighborhoods. No evidence was presented showing that traffic patterns will change as a result of the permits, the amount of traffic will increase, the volume of traffic will exceed the roadways' capacities, or that traffic congestion will occur. Likewise, the evidence does not show that the number of intoxicated drivers will increase. Race track patrons may already take alcoholic beverages to the track. No evidence was presented showing that the anticipated sales of alcoholic beverages resulting from these permits will increase the amount of alcohol consumption at the race track or the number of intoxicated drivers on the roads.

A general misgiving regarding the desirability of alcohol consumption in a neighborhood and a concern about alcohol-related accidents is certainly understandable, but such concerns, alone, do not constitute an "unusual condition or situation" that justifies a finding that the place or manner in which the applicant may conduct its business warrants a refusal of a permit. See: Dienst v. Texas Alcoholic Beverage Commission, at 669. Absent a showing that Applicant has conducted, or may reasonably be expected to conduct, its premises in a manner that is unhealthy, immoral, unsafe, indecent, or inimical to the general welfare of the population, the evidence fails to show that Applicant's permits in the instant case should be denied.

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## V. RECOMMENDATION

The ALJ recommends that Applicant's application for a Private Club Beer and Wine Permit and Beverage Cartage Permit for Nitro Alley, 8055 W. Highway 175, Crandall, Kaufman County, Texas, be granted.

## VI. FINDINGS OF FACT

1. Nitro Alley, 8055 W. Highway 175, Crandall, Kaufman County, Texas, filed an original application for a Private Club Beer and Wine Permit and Beverage Cartage Permit with the Commission. The mailing address for Applicant is P.O. Box 899, Crandall, Texas.
2. Applicant has met all Commission requirements to hold the permits at the premise location and has complied with all Commission requirements.
3. A protest was filed by the Sheriff of Kaufman County, Texas; the City of Crandall, Kaufman County, Texas; and individual residents of Crandall. The protest was based on concerns regarding the general welfare, health, peace, morals, and safety of the people, and on the public sense of decency.
4. By letter dated June 30, 2010, Staff informed Applicant of the protest.
5. A Notice of Hearing dated July 23, 2010, was issued by the Staff informing the parties of the nature of the hearing, the statutes and rules involved, and the legal authorities under which the hearing was to be held.
6. An Order Setting Hearing & Establishing Requirements for Participation was issued by SOAH on August 8, 2010, informing the parties of the time and place of the hearing.
7. On August 16, 2010, a public hearing was held before Jerry Van Hamme, ALJ, at the State Office of Administrative Hearings (SOAH), 6333 Forest Park Road, Suite 150-A, Dallas, Texas. Staff was represented by Matthew Clark, attorney. Protestants Dean Winters, Crandall Police Department; Kaufman County Sheriff David Byrnes; and Bonnie Lee, Kaufman County resident, appeared *pro se*. Applicant's Officers Sammy Latner and Sandy Scherer appeared *pro se*. The record was closed on that date.
8. Granting Applicant's permits would not create traffic congestion or traffic hazards in the area.
9. Granting Applicant's permits would cause Applicant to prohibit patrons from bringing their

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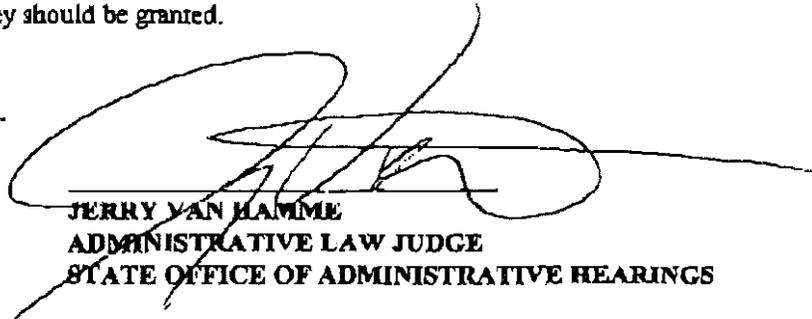
own alcoholic beverages to the race track. The sale of alcoholic beverages at the race track would be limited to beer, alone, and sales would be restricted to a designated private club area.

10. Granting Applicant's permit would not negatively change or affect existing neighborhoods.
11. No unusual condition or situation exists to warrant refusing Applicant's request for these permits.

#### VII. CONCLUSIONS OF LAW

1. The 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 pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was affected on all parties pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE § 155.401.
4. Granting Applicant's request for a Private Club Beer and Wine Permit and Beverage Cartage Permit will not adversely affect the general welfare, health, peace, morals, safety of the people, and the public sense of decency. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8).
5. Applicant's application for a Private Club Beer and Wine Permit and Beverage Cartage Permit for Nitro Alley should be granted.

SIGNED October 11, 2010.



JERRY VAN HAMME  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS