

DOCKET NO. 622043

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Jurisdictional Petitioner	§	BEFORE THE TEXAS
	§	
	§	
WESTWOOD GROVE CIVIC ASSOCIATION, Protestants	§	
	§	
	§	
V.	§	
	§	
	§	
RENEWAL APPLICATION OF PUB HEIGHTS LLC, D/B/A EI8HT, Respondent	§	ALCOHOLIC
	§	
PERMITS MB702795, LB	§	
	§	
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-14-1762)	§	
	§	
	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 23rd day of April, 2015, 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 Rex A. Shaver presiding. The hearing convened on July 11, 2014 and the SOAH record closed on July 25, 2014. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on September 16, 2014. 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. No exceptions were 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 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 are denied unless specifically adopted herein.

IT IS THEREFORE ORDERED that Respondent's renewal application for the above permits and certificate be **GRANTED**.

This Order will become **final and enforceable** on the 19th day of May, 2015, **unless a Motion for Rehearing is filed by the 18th day of May, 2015.**

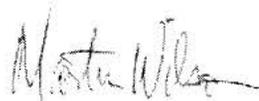
SIGNED this the 23rd day of April, 2015, at Austin, Texas.



Sherry K-Cook, Executive Director
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 23rd day of April, 2015.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Rex A. Shaver
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, TX 77018
VIA FACSIMILE: (512) 322-2061

Pub Heights, LLC

d/b/a Ei8ht

RESPONDENT/APPLICANT

33219 Forest West Dr.

Magnolia, TX 77354

VIA FIRST CLASS MAIL, CMRRR # 70120470000133009795

Clyde Burleson

ATTORNEY FOR RESPONDENT/APPLICANT

1533 W. Alabama, Suite 100

Houston, TX 77006

VIA FIRST CLASS MAIL, CMRRR # 70120470000133035282

Margaret Poissant

ATTORNEY FOR PROTESTANTS

5119 Nett Street

Houston, TX 77007

VIA FIRST CLASS MAIL, CMRRR#70120470000133035275

Sandra Patton

ATTORNEY FOR PETITIONER

TABC Legal Division

VIA E-MAIL: sandra.patton@tabc.texas.gov

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge
September 16, 2014

RECEIVED
SEP 17 2014
ADMINISTRATIVE
LEGAL

Sherry Cook
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA REGULAR MAIL

RE: SOAH Docket No. 458-14-1762; Texas Alcoholic Beverage Commission vs. Pub Heights LLC d/b/a Ei8ht

Dear Ms. Cook:

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 § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink that reads "Rex A. Shaver".

Rex A. Shaver
Administrative Law Judge

RAS/mr
Enclosure

xc Sandra Patton Texas Alcoholic Beverage Commission, 427 W. 20th Street, Suite 600, Houston, TX 77008 -
VIA REGULAR MAIL
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX
78731 - **VIA REGULAR MAIL**
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX
78731 - **VIA REGULAR MAIL**
Clyde Burleson, Attorney for Respondent, 1533 W. Alabama, Suite 100, Houston, TX 77006 - **VIA
REGULAR MAIL**
Margaret Poissant/Donna Sheperd, Westwood Grove Civic Association, 5119 Nett Street, Houston, TX
77007 - **VIA REGULAR MAIL**

DOCKET NO. 458-14-1762

TEXAS ALCOHOLIC BEVERAGE COMMISSION,	§	BEFORE THE STATE OFFICE
<i>Jurisdictional Petitioner</i>	§	
	§	
WESTWOOD GROVE CIVIC ASSOCIATION	§	
<i>Protestants</i>	§	
	§	OF
v.	§	
	§	
RENEWAL APPLICATION OF PUB HEIGHTS LLC, D/B/A EI8HT PERMIT NO(s). MB 702795, LB	§	
<i>Respondent</i>	§	
	§	
HARRIS COUNTY, TEXAS (TABC CASE NO. 622043)	§	ADMINISTRATIVE HEARING

PROPOSAL FOR DECISION

Pub Heights LLC d/b/a Ei8ht (Respondent or Applicant) submitted a renewal application (Application) for its mixed beverage permit and mixed beverage late hours permit from the Texas Alcoholic Beverage Commission (TABC or Commission) for the premises located at 5102 Washington Avenue, Houston, Harris County, Texas. Westwood Grove Civic Association (Westwood) protested the renewal application. The Commission’s Staff took no position regarding the renewal application. After considering the arguments and evidence presented by the parties, the Administrative Law Judge (ALJ) finds there is insufficient basis for denying the renewal of the permits and, therefore, recommends that the permits should be renewed.

I. PROCEDURAL HISTORY

On July 11, 2014, a public hearing was convened in this matter in Houston, Texas, before ALJ Rex Shaver. TABC appeared and was represented by Sandra Patton, staff attorney; however, the Staff took no position regarding the renewal application. Applicant appeared and was

represented by attorney Clyde Burleson. Protestant Westwood appeared and was represented by attorney Margaret Poissant, who also appeared as a Protestant. There were no contested issues of notice, jurisdiction, or venue in this proceeding. Therefore, those matters are set out in the proposed Findings of Fact and Conclusions of Law without further discussion here. The hearing concluded on July 11, 2014, and to allow filing of additional documents, the record remained open until July 25, 2014.

II. DISCUSSION

A. **Applicable Law**

Protestants have alleged the following grounds for the protest:

The place or manner in which Respondent or Respondent's agent, servant, or employee, conducts his business warrants the refusal and/or cancellation or suspension of Respondent's permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency in violation of Texas Alcoholic Beverage Code § 11.46(a)(8).

B. **Public Comment Pursuant to TABC Code § 5.4359(a)**

All the persons who provided public comments also testified under oath. All of the public comments contained similar complaints that Respondent's business was the cause or source of several problems in the immediate neighborhood. These problems consisted of: (1) heavy vehicle and foot traffic; (2) illegally parked vehicles; (3) trash and condoms on lawns and in the streets; (4) an increase in crime in the neighborhood; (5) loud noise and amplified music from Respondent's business, particularly the roof-top bar, such as loud laughter and conversation by patrons outside of bars in the area.

C. **Evidence**

Ana Olivarez Levinson testified that in addition to the complaints voiced by the Protestants,

her family was experiencing particular problems. Ms. Levinson lives with a family member who uses an electric wheelchair. Vehicles block her driveway or the wheelchair ramp to her home. Ms. Levinson also expressed her fear that an emergency vehicle might be unable to respond to her home because of parked vehicles on the narrow streets.

Elizabeth O'Connor testified that she has heard gun shots in the neighborhood. She believes that vandalism has increased in the neighborhood. A vehicle's windows were broken, lawn ornaments were stolen, and a household pet was shot by an unknown person. She and her husband are reluctant to leave the house because of the noises at night. Ms. O'Connor's husband goes to work in the early morning and has difficulty sleeping because of the noise from neighborhood bars.

Jenny Diaz testified that she has lived two blocks from 5102 Washington Avenue for 25 years. She stated that she and her children have observed persons having sex in parked vehicles. She has had unknown persons knock at her door at night. She has had parked vehicles block her driveway. She has observed broken bottles on the sidewalk and street, and she fears they may harm automobile tires or cause injury to her or her pets. Ms. Diaz testified that these things only became a problem five years ago when Respondent began operating.

Angela Aguirre lives one block from 5102 Washington Avenue. She is a student at Lamar High School and is 17 years old. Ms. Aguirre testified that she often walks near 5102 Washington Avenue and has observed yelling, cursing and fighting on the sidewalk near Respondent's business. On occasion, the noise continues until 3:00 or 4:00 a.m. In the opinion of Ms. Aguirre, crime in the neighborhood has increased, and she does not feel safe walking on the street.

Donna Shepherd testified that after Respondent began operation, the noise in the neighborhood became worse and lasted longer. This has caused her such a level of stress that she has sought medical treatment. Her lawn and fence have been damaged, and she presumes the damage was caused by patrons of the nearby bars.

Margaret Poissant testified that she had complaints in addition to the noise level and traffic congestion. She has observed illegal parking and several automobile accidents. She has seen patrons vomiting after leaving Respondent's establishment. In March of 2013, a person exposed himself to her. She has confirmed that, in some cases, the source of the loud music was from speakers at the Respondent's business. She testified that the police do not follow up on her many noise complaints. She has installed double pane windows in an attempt to reduce the noise level in her home. In her opinion, the increased traffic also poses a threat to children at a nearby day care.

Sergeant Michael Donato testified that he is a police officer with the Houston Police Department (HPD) in the Central Division, which includes 5102 Washington Avenue, the address of the license for which Respondent seeks renewal. Sergeant Donato related that in the past two years, the crime rate on Washington Avenue has decreased. He was not aware of any active criminal investigation of Respondent's place of business. In his opinion the complaints filed by Ms. Poissant were not always consistent with the facts. HPD has an Extra Job Division that completes a background check of prospective employers before authorizing an officer to work a second job. Respondent's is one of the businesses that is approved for officers' second jobs.

Richard Wills is the Regional Director of the TABC Coastal Bend area and all protests of licenses pass through his office. The Respondent's original application was approved in September of 2008. The violation history of Respondent does not include any dram shop or breach of the peace violations. TABC found no cause for denial of the renewal application.

III. ANALYSIS

Protestants complained of an increase in automobile and pedestrian traffic, trash being thrown onto lawns, and an increase of criminal activity in the neighborhood. Respondent's premises are located in a part of Washington Avenue with a high concentration of TABC licensed premises. While testimony established that on some occasions the noise complained of was coming from Respondent's loud speakers, no proof was given of any noise citation resulting in a fine against Respondent or its employees. No evidence was presented that the problems complained of were the

result of the manner in which Respondent conducts its business. No testimony linked Respondent's patrons or employees to the trash, traffic or criminal activity in the neighborhood.

With the exception of the complaint about amplified music and the observation of a patron vomiting, there was no evidence that the problems complained of were the result of the manner in which Respondent conducts its business. As a result, ALJ does not find the situation in this case warrants denial of the renewal application.

IV. FINDINGS OF FACT

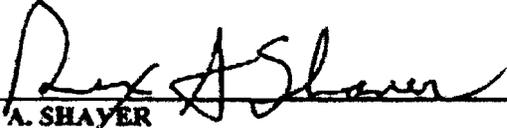
1. Pub Heights LLC d/b/a Ei8ht (Respondent/Applicant) has filed a renewal application with the Texas Alcoholic Beverage Commission (TABC) for its mixed beverage permit MB702795 and mixed beverage late hours permit for a premises located at 5102 Washington Avenue, Houston, Harris County, Texas.
2. Protests to the application were filed by the Westwood Grove Civic Association (Westwood), Margaret Poissant, and Donna Shepherd, based on the general welfare, health, peace, morals and safety of the people and on the public sense of decency.
3. A Notice of Hearing dated February 18, 2014, was issued by TABC Staff 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. On July 11, 2014, a hearing began before ALJ Rex Shaver in Houston, Texas. TABC Staff appeared at the hearing through its Staff Sandra Patton. Respondent appeared and was represented by attorney Clyde Burlison. Westwood appeared and was represented by Margaret Poissant. The record remained open until July 25, 2014 for filing of exhibits.
5. Respondent has allowed amplified music and noise at a volume that disturbed some nearby residents.
6. No proof of noise or music at a decibel level in excess of that allowed by law was presented.
7. None of the non-noise related allegations were proven to be the result of the manner in which the Respondent conducts its business.

V. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under Texas Alcoholic Beverage Code Chapters 5 and §§ 6.01 and 11.41, and 11.46.

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 Texas Government Code Chapter 2003.
3. Proper and timely notice of the hearing was provided to all parties pursuant to the Administrative Procedure Act, Tex. Gov't Code Section 2001.051-.052.
4. Based on Finding of Fact Nos. 6 and 7, a preponderance of the evidence fails to show that the renewal application should be denied pursuant to Texas Alcoholic Beverage Code § 11.46.
5. Respondent's renewal application for mixed beverage permit MB702795 and associated late hours permit should be granted.

SIGNED September 16, 2014.



REX A. SHAYER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS