

CITY HALL

ROCKWALL, TEXAS

SPECIFIC USE PERMIT  
APPLICATION FOR ~~ZONING CHANGE~~

Case No. \_\_\_\_\_ Filing Fee \_\_\_\_\_ Date September 23, 1982

Applicant BEJAR, INC.

Mailing Address 400 South Goliad, Rockwall, Tx. Phone No. (214)-722-9501

LEGAL DESCRIPTION OF PROPERTY SOUGHT TO BE REZONED:  
(if additional space is needed for description, the description may be put on a separate sheet and attached hereto.)

The premises located at 400 South Goliad, Rockwall, Rockwall County, Texas, more particularly described in Exhibits A and A1, attached hereto and made a part hereof.

I hereby request that the above described property be ~~zoned~~ <sup>granted a specific use permit,</sup> pursuant to the ordinance passed by the City Council of Rockwall, Texas, on September 7, 1982. ~~xxxxxx District~~

~~Classification to~~ " \_\_\_\_\_ ~~xxxxxx District~~

The permit should be granted. ~~Classification~~ for the following reasons: (Attach separate sheet if necessary.) On September 17, 1982, Bejar, Inc. opened a fine dining oriental restaurant at 400 South Goliad, Rockwall, Texas. As an accessory to the restaurant, Bejar, Inc. intends to establish a private club for members only that will serve alcoholic beverages as do other better dining establishments in ~~2~~ Rockwall, Texas. Attached hereto as Exhibit "B" is the proposed decision of the Texas Alcoholic Beverage Commission "In re Club Bejar." Bejar, Inc. herewith applies for said specific use permit without prejudice to its right to contest the authority of the City of Rockwall to require ~~(ARE NOT)~~ <sup>(ARE)</sup> DEED RESTRICTIONS PERTAINING TO THE INTENDED USE OF THE PROPERTY. (see separate sheet)

STATUS OF APPLICANT: Owner \_\_\_\_\_ Tenant XX Prospective Purchaser X

I have attached hereto as Exhibit "A" a Plat showing the property which is the subject of this requested zoning change and have read the following note concerning the importance of my submitting to the City a sufficient legal description.

[Signature]  
Applicant  
[Signature]  
APPLICANT

NOTE: The legal description is used to publish notice of the required hearing and in the preparation of the final ordinance granting the zoning change. The description must be sufficient so as to allow a qualified surveyor to take the description and locate and mark off the tract on the ground. Each applicant should protect himself by having a surveyor or his attorney approve his legal description. Failure to do so by the applicant may result in delay in passage of the final ordinance or the ordinance being declared invalid at some later date because of an insufficient legal description.

(The following Certificate may be used by the applicant to give notice to the City of the sufficiency of the legal description, however, the same is not a requirement of the Application.)

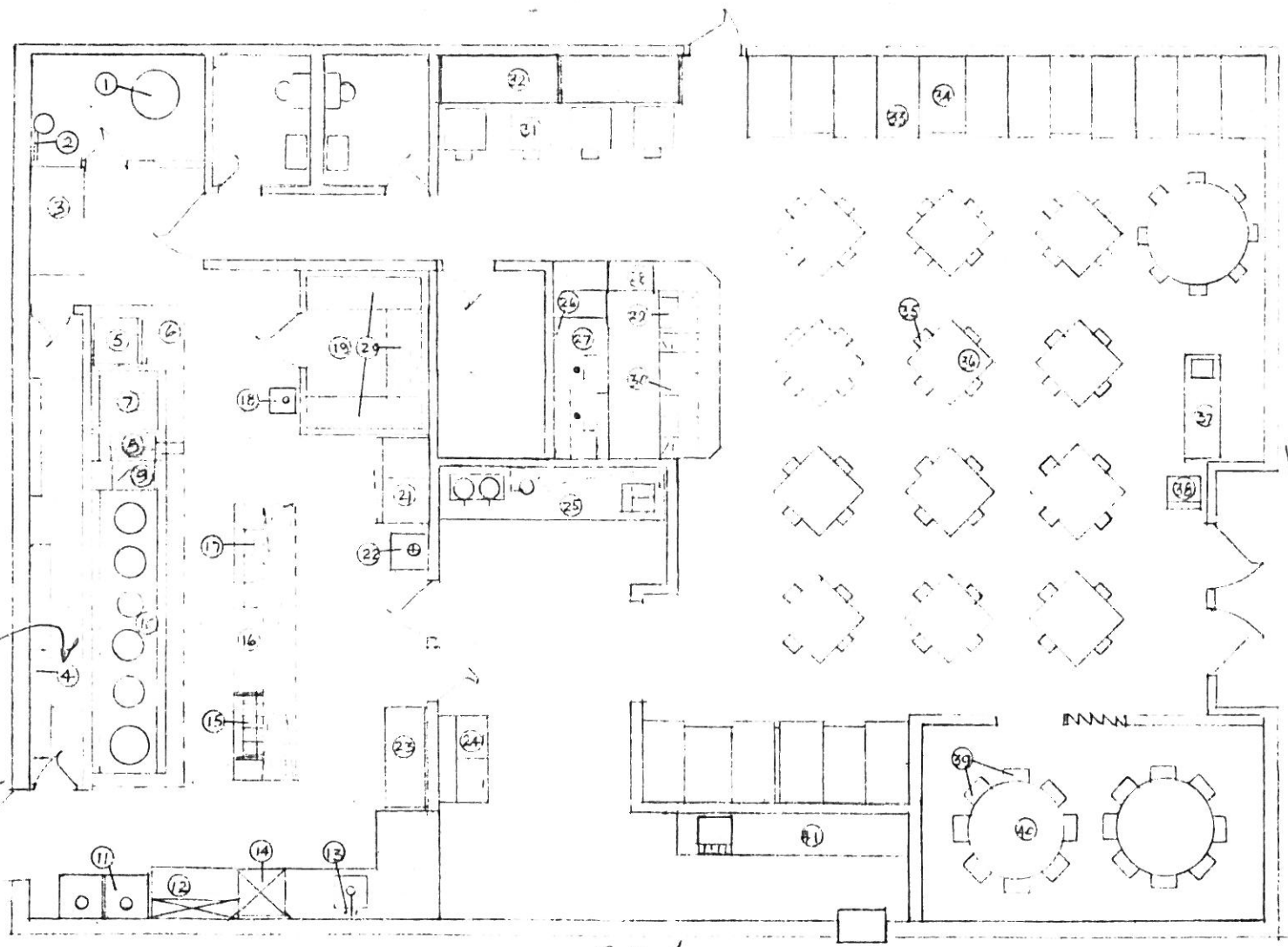
CERTIFICATE

I hereby certify that I have checked the legal description of the property described in this Application and the same describes the tract of land shown on the Plat attached hereto as Exhibit "A" and said description is sufficient to allow qualified surveyor to locate and mark off said tract on the ground.

[Signature]  
~~Surveyor~~ Attorney for Applicant  
(Mark out one.)

SCHEDULE

1. H.C. WATER HEATER
2. H.C. HOT WATER
3. H.C. CUPBOARD
4. STOVE
5. BISC. PAN
6. VENT. HOOD
7. BROILER
8. FRYSR
9. APPETIZER COUNTER
10. PANTRY
11. H.C. SINK
12. H.C. SINK, CUPBOARD
13. DISHWASHER
14. BENCHES, SEATED
15. SANDWICH BAR
16. WALL BENCHES
17. H.C. SINK
18. H.C. SINK
19. REFRIG.
20. UTILITY SINK
21. WORK TABLE
22. ICE MAKER
23. WAITRESS STA.
24. BACK BAR
25. BEER TAP
26. ICE
27. COCKTAIL UNIT
28. UNDERBAR SINK
29. TABLE, 24" X 30"
30. WALL BENCHES
31. BOOTH
32. TABLES, 30" X 42"
33. CHAIRS & TABLES
34. CASHIER STAND
35. MAITRE'D DESK
36. CHAIRS
37. TABLES, 54" RD.
38. TAKE-OUT TABLE



APPROVED

AK 7-9-82

must have  
min 36" open  
clearance in  
front of Elect.  
PANEL.

- FLOOR PLAN - 60'

BEING a tract of land situated in the B. F. Boydston Survey, Abstract No. 1, Rockwall County, Texas and also being a part of the J. W. Reese tract as recorded in Volume 43, Page 148 of the Deed Records of Rockwall County, Texas and being more particularly described as follows:

BEGINNING at an iron rod in the West R.O.W. line of Goliad Street (State Highway No. 205), said iron rod being the Northeast corner of Ridgeview No. 1 Addition to the City of Rockwall

THENCE South  $88^{\circ} 56' 19''$  West along the North line of said Ridgeview No. 1 Addition a distance of 236.0 ft. to a point for a corner;

THENCE North  $1^{\circ} 03' 41''$  West a distance of 155.64 ft. to a point for a corner;

THENCE North  $89^{\circ} 58' 31''$  East a distance of 46.45 ft. to a point for a corner and the beginning of a circular curve to the right having a central angle of  $30^{\circ}$ , a radius of 128.54 ft. and a tangent of 34.44 ft.;

THENCE along said circular curve to the right a distance of 67.30 ft. to the point of reverse curvature of a circular curve to the left having a central angle of  $31^{\circ} 31' 16''$ , a radius of 206.54 ft. and a tangent of 58.29 ft.;

THENCE along said circular curve to the left a distance of 113.63 ft. to a point for a corner in the West R.O.W. line of Goliad Street;

THENCE South  $10^{\circ} 17' 49''$  East along the West R.O.W. line of Goliad Street a distance of 108.26 ft. to the Point of Beginning and containing 0.6939 acres (30,266 sq. ft.) of land.

Bejars

400 S. Goliad

1. Richard Harris  
210 Glenn
2. Ted Cain  
206 Rockbrook
3. Hilltop Vlg. Joint Venture Ltd.  
Howard C. Zielke  
#2 Turtle Creek Vlg.  
Su. 200  
Dallas 75219
4. Texas Power & Light  
PO Box 226331  
Dallas 75226
5. Hunt Building Corp.  
PO Box 9368  
El Paso - 79984
6. Rocca Villa Ltd.  
% Ken Andrews Co.  
Box 495  
Seagoville 75159
7. Housing Authority  
PO Box 36
8. H.S.  
Pennington  
202 Kenway

Bejars cont.

9. Virgil E. Elam  
204 Kenway
10. Robert M. Burke  
206 Kenway
11. Eddie Thompson  
501 Rogers Way

BEFORE THE PLANNING AND ZONING COMMISSION  
CITY OF ROCKWALL, TEXAS


The Planning and Zoning Commission will hold a public hearing at 7:30  
o'clock P.M., on the 14th day of October, 1982, in  
the District Courtroom, Rockwall County Courthouse

Rockwall, Texas, on the request of Bejar's, Inc.  
for a Specific Use Permit for a Private Club as an Accessory Use  
to a restaurant in a General Retail District Classification

on the following described property:

400 South Goliad  
(See Attached Legal Description)

As an interested property owner, it is important that you attend this hearing or notify the Commission of your feeling in regard to the matter by returning the form below. In replying, please refer to Case No. 82-11

  
City of Rockwall, Texas

The following form may be filled out and mailed to the City Planning and Zoning Commission, 102 East Washington, Rockwall, Texas 75087.

Case No. 82-11

I am in favor of the request for the reasons listed below. \_\_\_\_\_

I am opposed to the request for the reasons listed below. \_\_\_\_\_

- 1.
- 2.
- 3.

Signature \_\_\_\_\_

Address \_\_\_\_\_

Check one item PLEASE and return the notice to this office IMMEDIATELY.

Thank you,  
City of Rockwall

BEFORE THE PLANNING AND ZONING COMMISSION  
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Julie Couch  
City of Rockwall, Texas

The following form may be filled out and mailed to the City Planning and Zoning Commission, 102 East Washington, Rockwall, Texas 75087.

Case No. 82-11

I am in favor of the request for the reasons listed below. ✓

I am opposed to the request for the reasons listed below. \_\_\_\_\_

- Not a hazard to city or neighborhood.
- Fine restaurants are expected to serve wine with dinner.
- It will be a private club with limited membership serving to consenting adults.

Signature J. Thompson

Address 501 Rogan Way

Check one item PLEASE and return the notice to this office IMMEDIATELY.

Thank you,  
City of Rockwall

The following form ~~was~~ filled out and mailed to the City Planning and Zoning Commission, 102 East Washington, Rockwall, Texas 75087.

Case No. 82-11

I am in favor of the request for the reasons listed below. \_\_\_\_\_

I am opposed to the request for the reasons listed below. X

1. We are opposed to alcohol in our neighborhood.
2. It would increase traffic in and about this area.
3. This I feel will increase the burden on police and fire protection.

Signature

Vigil J. Lane

Address 204 Kenway Dr., Rockwall

Check one item PLEASE and return the notice to this office IMMEDIATELY.

Thank you,  
City of Rockwall



PUBLIC NOTICE

The Planning and Zoning Commission of the City of Rockwall, Texas, will hold a public hearing at 7:30 o'clock P.M. on October 14, 1982, in the District Courtroom, Rockwall County Courthouse, Rockwall, Texas, to consider the following requests:

1. A request from First Texas Savings and Loan for a change in zoning from "PD" Planned Development and "SF-2" Single Family to "PD" Planned Development for the development of condominium, marina, retail and apartment uses, to be located on the west side of Lakeshore Drive. (See Location Map)
2. A request from Bejar's, Inc., for a Specific Use Permit for a private club as an accessory use to a restaurant at 400 South Goliad located at the intersection of Lake Meadows Drive and South Goliad.
3. A request from the City of Rockwall for a change in zoning from "MF-2" Multifamily to "PD" Planned Development for the development of condominium, apartment, marina, retail, restaurant and club facilities, office and recreational facilities to be located south of I-30 and west of FM-740 (See Location Map).
4. A request from Metro Petroleum Company for a Specific Use Permit for a propane motor fuel and bottle filling station to be located at the Gulf Station located on South Goliad at Interstate 30.

Lords Hour Bazaar  
BBQ Dinner/Auction  
November 6, 1982-Sat.  
10 a.m. Bazaar  
5:30-6:30 BBQ Dinner  
6:30 Auction  
First United  
Methodist Church  
Royse City, Texas  
\$4.00-Adults  
\$2.50-Children



**Martin  
James  
McCormick**

Marita and Martin McCormick of Rowlett announce the arrival of their son, Martin James McCormick. Born October 24, 1982, at 6:14 a.m., at Garland Memorial, he weighed 9 pounds 15½ ounces.

1-70  
OCCWALL TEXAS SUCCESS  
PAGE 10  
WALL COUNTY, TEXAS FRIDAY, NOVEMBER 5, 1982

SUP approved

11-22-82

~~James~~

to defects in description of five of nineteen locations listed in ordinance. *Id.*

7. — Hours of business, ordinances

Portions of municipal ordinance which fixed a different punishment for selling beer on Sunday between 1:00 o'clock a. m. and 1:00 o'clock p. m. and on Monday before 7:00 o'clock a. m. than that prescribed and prohibited by state law for the same acts, were void. *Young v. State* (1954) 160 Cr.R. 67, 267 S.W.2d 423.

Invalidity of portion of municipal ordinance fixing a different punishment for selling beer on Sunday between 1:00 o'clock a. m. and 1:00 o'clock p. m., and on Monday before 7:00 o'clock a. m., than that prescribed by state law for the same offense, rendered the entire ordinance, including that portion making unlawful the sale of beer from 1:00 o'clock p. m., until midnight on Sunday, invalid, since no portion could be preserved as valid without indulging in an unconstitutional attempt, by judicial construction, to re-write the ordinance. *Id.*

Vernon's Ann.P.C. (1925) art. 667—10½ (repealed) vested in cities the power to curtail the hours of sale as fixed by state law, and authorized an ordinance in so far as it prohibited the sale of beer from 1:00 o'clock p. m. to midnight on Sunday, a period otherwise approved for sale by state law. *Id.*

Ordinance which prohibited package stores within city limits from engaging in business on four specified holidays and which required that package stores close at 8:00 P.M. was invalid as being inconsistent with Liquor Control Act which permitted package stores to operate on such holidays and to remain open until 9:00 P.M. *Royer v. Ritter* (Civ.App.1975) 531 S.W.2d 448, error refused n. r. e.

In that cities have been granted the specific powers to collect fees from permit holders [Vernon's Ann.P.C. (1925) art. 666—15 (repealed)], to prohibit sale of liquor in residential areas or near churches [arts. 666—24, 666—25a (repealed)] to regulate sale of beer within corporate limits [art. 667—10½ (repealed)] and to adopt hours of sale for mixed beverages [art. 666—25(d) (repealed)], city did not have the authority to enact ordinance prohibiting package stores within city limits from engaging in business on four specified holidays and requiring that package stores close at certain time. *Id.*

Commissioners' Court of Ector County does not have power to establish closing hours for sale of beer in harmony with a contemplated ordinance having same effect to be passed by City Council of Odessa. *Op. Atty. Gen.* 1943, No. O-5191.

### § 109.33. Sales Near School, Church, or Hospital

The commissioners court of a county may enact regulations applicable in areas in the county outside an incorporated city or town, and the governing board of an incorporated city or town may enact regulations applicable in the city or town, prohibiting the sale of alcoholic beverages by a dealer whose place of business is within 300 feet of a church, public school, or public hospital. The measurement of the distance shall be along the property lines of the street fronts and from front door to front door, and in direct line across intersections.

#### Historical Note

##### Prior Law:

Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 25a, added by Acts 1937, 45th Leg., p. 1053, ch. 448, § 33.

Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 10.  
Vernon's Ann.P.C. (1925) art. 666—25a.

#### Library References

Intoxicating Liquors ↪162.

C.J.S. Intoxicating Liquors §§ 262, 263.

#### Notes of Decisions

In general 2  
Cancellation of permit 4  
Evidence 7  
Jurisdiction 5

Manner of measuring distances 3  
Presumptions and burden of proof 6  
Validity of prior laws 1

NRE

BANKNOTE CLUB AND STAN'S  
BOILERMAKER, Appellants,

v.

CITY OF DALLAS, Appellee.

No. 20306.

Court of Civil Appeals of Texas,  
Dallas.

Sept. 30, 1980.

Rehearing Denied Oct. 28, 1980.

Private establishments holding permits from Alcoholic Beverage Commission to sell alcoholic beverages brought an action in the 160th District Court, Dallas County, James A. Ellis, J., denied relief, and appeal was taken. The Court of Civil Appeals, Carver, J., held that in creating the Texas Alcoholic Beverage Code, the legislature only pre-empted the regulation of its permittees while engaged in the sale of alcoholic beverages, but left to regulation by local government of any other occupation which same permittee might choose to engage on the same premises, and, therefore, the local ordinances covering dance halls and theaters could be applied to the establishments holding liquor permits.

Affirmed.

### 1. Intoxicating Liquors ⇌ 11

Public policy accomplished by Alcoholic Beverage Code is "welfare, health, peace, temperance and safety of the people" but only insofar as the same may be affected by manufacture, sale, distribution, transportation and possession of alcoholic beverages, and, therefore, should people's "welfare" be affected by any other circumstance than "manufacture" et cetera of alcoholic beverages, then other statutes or city ordinances may address that additional circumstance without being "inconsistent" with Alcoholic Beverage Code. V.T.C.A., Alcoholic Beverage Code §§ 1.01 et seq., 1.03, 1.06; Vernon's Ann.St.Const. Art. 11, § 5.

See publication Words and Phrases for other judicial constructions and definitions.

### 2. Intoxicating Liquors ⇌ 11

Since there is no provision in Alcoholic Beverage Code addressing regulation of dance halls and theaters, nor was there anything in city ordinances addressing regulation of alcoholic beverages, city ordinances relative to dance halls and theaters were not inconsistent with Alcoholic Beverage Code, and, therefore, could be applied to private establishments operating under permits to sell alcoholic beverages. V.T.C.A., Alcoholic Beverage Code § 1.01 et seq.; Vernon's Ann.St.Const. Art. 11, § 5.

### 3. Intoxicating Liquors ⇌ 11

City ordinances governing dance halls and theaters could be applied to private establishments operating under permits to sell alcoholic beverages without imposing any obstruction, interference, or burden upon permittee in exercise of permit, and, therefore, were not "inconsistent" with Alcoholic Beverage Code. V.T.C.A., Alcoholic Beverage Code §§ 1.01 et seq., 11.38(c); Vernon's Ann.St.Const. Art. 11, § 5.

E. Eugene Palmer, Austin, for appellants.

Carroll R. Graham, Asst. City Atty., Dallas, for appellee.

Before AKIN, CARVER and STOREY,  
JJ.

CARVER, Justice.

Banknote Club, a private club holding a permit from the Texas Alcoholic Beverage Commission to sell alcoholic beverages, and Stan's Boilermaker, a public establishment also holding a permit to sell alcoholic beverages, sought an injunction to prevent the City of Dallas from applying to them regulatory city ordinances, with fees, relative to dance halls and theaters, on the ground that the state legislature had pre-empted the regulation of permittees to the exclusion of regulation by the City. The trial court denied relief. We affirm and hold that the legislature, in creating the Texas Alcoholic Beverage Code, only pre-empted the regulation of its permittees while engaged in

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the sale of alcoholic beverages but left to regulation by local government of any other occupation in which the same permittee might choose to engage on the same premises.

Neither party raises any factual dispute. The record reflects that the Banknote Club is a private club in the City of Dallas and currently holds a permit issued by the Texas Alcoholic Beverage Commission to dispense alcoholic beverages to its members under the statutory provisions of the Texas Alcoholic Beverage Code and under the regulations of the Commission created thereby. The record reflects that Stan's Boilermaker currently holds a mixed beverage permit, including late hours, and a beverage cartage permit under the same statutory and regulatory authorities. The Banknote Club has facilities and music to enable its members to dance while Stan's Boilermaker provides live entertainment to its patrons. The City of Dallas has provided since 1961 for the regulation, with fees, of "dance halls" in Chapter 14 of its ordinances and for the regulation, with fees, of "theaters" in Chapter 46 of its ordinances. Neither the City's authority to regulate these activities, nor the reasonableness of the regulations, nor the appropriateness of the fees are challenged. The Banknote Club and Stan's Boilermaker urge only that when the legislature passed the Texas Alcoholic Beverage Code, it pre-empted the field of regulation of permittees to the exclusion of any regulation by the City.

The permittees rely upon Tex.Const. art. XI § 5 which provides in pertinent part that "no charter or any ordinance passed under said charter shall contain any provision *inconsistent* with . . . the general laws enacted by the Legislature." (emphasis added) The permittees also rely on the Alcoholic Beverage Code § 1.06 and § 11.38(a) and (c) (Vernon 1978) which we quote in pertinent part as follows:

Section 1.06

Unless otherwise specifically provided by the terms of this code, the manufacture, sale, distribution, transportation, and possession of alcoholic beverages shall be

governed *exclusively* by the provisions of this code.

(emphasis added.)

Section 11.38(a) and (c):

(a) The governing body of a city or town may levy and collect a fee not to exceed one-half the state fee for each permit issued for premises located within the city or town. The commissioners court of a county may levy and collect a fee equal to one-half of the state fee for each permit issued for premises located within the county. *Those authorities may not levy or collect any other fee or tax from the permittee except general ad valorem taxes, the hotel occupancy tax levied under Chapter 63, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 1269j-4.1, Vernon's Texas Civil Statutes), and the local sales and use tax levied under the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes).* (emphasis added.)

(c) Nothing in this code shall be construed as a grant to any political subdivision of the authority to *regulate* permittees except by collecting the fees authorized in this section and exercising those powers granted to political subdivisions by other provisions of this code. (emphasis added.)

The permittees reason that chapters 14 and 46 of the Dallas City Code are "inconsistent" with the Alcoholic Beverage Code and thus fall within the ambit of this constitutional prohibition. The permittees urge that they were entitled to declaratory and injunctive relief to prevent the City from imposing its unconstitutional ordinances upon them. The City contends that their ordinances are not inconsistent with the Alcoholic Beverage Code because the Code does not seek to regulate dance halls or theaters, whether conducted by its permittees or any other citizen. We commend both parties and their counsel for narrowing the issue presented. We shall now determine whether the ordinances in question are "inconsistent" with the Code.

[1, 2] The public policy of the State is, in this instance, expressed directly in sec-

tion 1.03 of the Alcoholic Beverage Code: "This code is an exercise of the police power of the state for the protection of the welfare, health, peace, temperance, and safety of the people of the state. It shall be liberally construed to accomplish this purpose." We have previously set out section 1.06 of the Alcoholic Beverage Code and restate that section for its readily apparent relationship with section 1.03: "Unless otherwise specifically provided by the terms of this code, the manufacture, sale distribution and possession of alcoholic beverage shall be governed exclusively by the provisions of this code." The public policy accomplished by the Alcoholic Beverage Code is the "welfare, health, peace, temperance and safety of the people" but, only insofar as the same may be affected by the "manufacture, sale, distribution, transportation, and possession" of alcoholic beverages. Should the people's "welfare" et cetera be affected by any other circumstance than the "manufacture" et cetera of alcoholic beverages, then other statutes or city ordinances may address that additional circumstance without being "inconsistent" with the Alcoholic Beverage Code. The regulation of dance halls and theaters is a legitimate object of the city's ordinances. See *City of Dallas v. Stevens*, 310 S.W.2d 750 (Tex.Civ.App.—Dallas 1958, writ ref'd n. r. e.); *Bounty Ballroom v. Bain*, 211 S.W.2d 248 (Tex.Civ.App.—Amarillo 1948, writ ref'd). The welfare of the people protected by such ordinances is no less necessary in premises which may also dispense alcoholic beverages. We do not find any provisions in the Alcoholic Beverage Code addressing the regulation of dance halls and theaters nor do we find anything in the city's ordinances addressing the regulation of alcoholic beverages. Consequently, we conclude that the city's ordinances cannot be denied enforcement as being "inconsistent" with the Alcoholic Beverage Code and, thus, violative of that Code's exclusiveness or of the constitutional prohibition.

1. Tex.Rev.Civ.Stat. Ann. art. 5429b-2 (Vernon 1979).

[3] The permittees urge, however, that while there is a different purpose in the respective enactments, if the City's regulations obstruct, or interfere, or burden the permittees in the exercise of their permits, a fatal inconsistency exists. The permittees point out that section 11.38(c) of the Alcoholic Beverage Code anticipates and proscribes any obstruction, burden, or interference such as is imposed by the city's ordinances. Section 11.38(c), as previously quoted, prohibits the right of any political subdivision to "regulate permittees" yet, since the Alcoholic Beverage Code itself is limited to regulation of the manufacture, et cetera, of alcoholic beverages, the regulation of another activity or occupation conducted by the same permittee, does not amount to regulation of his occupation of manufacture, et cetera, of alcoholic beverages. It does not appear from the words chosen by the legislature that "the object sought to obtain"<sup>1</sup> in the passage of the Alcoholic Beverage Code was to excuse the permittee from the regulations or fees appertaining to any and all other occupations in which he might choose to engage, simultaneously with the occupation of dispensing alcoholic beverages. The consequences of the particular construction<sup>2</sup> urged by the permittees would, absurdly, excuse the permittee from city regulation related to zoning, construction, fire safety, rat infestation, and the washing of glasses between customers, to mention only a few, even if the permittee confined his occupation solely to the dispensing of alcoholic beverages. We find that a more "just and reasonable"<sup>3</sup> construction to be that the Alcoholic Beverage Code proscribes (1) any other regulation for engaging in the occupation of dispensing alcoholic beverages and (2) proscribes any other regulation as a condition to engage upon the occupation of dispensing alcoholic beverages. We hold that the ordinances of the City of Dallas regulating the occupation of conducting a dance hall or a theater, and imposing a fee or tax there-

2. *Id.*

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fore, do not assume an authority specifically denied by section 11.38(c) nor do such ordinances impose any obstruction, interference, or burden upon a permittee in the exercise of his permit.

Affirmed.



Yolanda Z. MARTINEZ, Appellant,

v.

Albert J. MARTINEZ, Appellee.

No. 16419.

Court of Civil Appeals of Texas,  
San Antonio.

Oct. 1, 1980.

In divorce proceeding, the Webb County Court, Emilio "Chita" Davila, J., granted divorce, appointed wife managing conservator of a child, provided for monthly child support payments by husband and made a division and partition of property, and wife appealed. The Court of Civil Appeals, Klingeman, J., held that: (1) husband's attorney, who was son-in-law of trial judge, was not a "party" within meaning of state constitutional provision and statute providing that no judge could sit in any cause wherein he could be interested or where either of the parties could be connected with him by affinity or consanguinity within the third degree; (2) trial judge was not disqualified, though it was asserted that attorney fees could have been awarded; (3) wife had waived her right to complain of trial judge's failure to file findings of fact and conclusions of law; and (4) refusal, after hearing, to grant new trial to wife, who had failed to appear at the trial, was not shown to be an abuse of discretion.

Judgment affirmed.

### 1. Judges ⇐45

Trial judge's son-in-law, who was attorney for husband in divorce proceeding, was not a "party" within meaning of state constitutional provision and statute providing that no judge was to sit in any case wherein he might be interested or where either of the parties could be connected with him by affinity or consanguinity within the third degree. Vernon's Ann.St. Const. Art. 5, § 11; Vernon's Ann.Civ.St. art. 15.

See publication Words and Phrases for other judicial constructions and definitions.

### 2. Judges ⇐45

In divorce proceeding in which no attorney fees were awarded, trial judge, whose son-in-law was attorney for the husband, was not disqualified, though it was asserted that attorney fees could have been awarded. Vernon's Ann.St.Const. Art. 5, § 11; Vernon's Ann.Civ.St. art. 15.

### 3. Divorce ⇐179

Wife waived her right to complain of failure of trial judge to file findings of fact and conclusions of law in divorce proceeding in which there was an absence of statement of facts where wife did not bring such failure to trial judge's attention within five days. Rules of Civil Procedure, Rules 296, 297.

### 4. Judgment ⇐143(2), 153(1)

Default judgment should be set aside and a new trial ordered in any case in which failure of defendant to answer before judgment has not been intentional or the result of conscious indifference on his part, but is due to mistake or accident provided that the motion for new trial sets up a meritorious defense and is filed at a time when the granting will occasion no delay or otherwise work an injury to the plaintiff.

### 5. Divorce ⇐186

Refusal, after a hearing, to grant new trial to wife, who had failed to appear at trial in divorce proceeding, was not shown to be an abuse of discretion, in light of fact that the motion for new trial did not ad-



*Bejars*



400 SOUTH GOLIAD  
ROCKWALL TEXAS, 75087  
722-9501 - 722-9502

The permit should be granted for the following reasons (con't):

such a specific use permit under the facts and circumstances herein. Applicant Bejar, Inc., herein renews its request as set forth in the correspondence attached as Exhibit "C." A floor plan of Bejar's is attached as Exhibit "D."

IN RE CLUB BEJAR

§ BEFORE THE

§

ROCKWALL COUNTY, TEXAS

§

§ TEXAS ALCOHOLIC BEVERAGE COMMISSION

PROPOSAL FOR DECISION

PREPARED BY HALLIE HUTTASH, HEARINGS EXAMINER

STATEMENT OF THE CASE

Hearing was held in the above styled and numbered cause on September 15, 1982.

Club Bejar has filed original applications for a Private Club Registration Permit, Private Club Late Hours Permit and Beverage Cartage Permit for the premises to be located at 400 S. Goliad, [MAIL: Route 4, Box 60 - 75087], Rockwall, Rockwall County, Texas.

Derwood Wimpee, County Judge of Rockwall County; and John M. Vance, Sheriff of Rockwall County, have filed a protest to the issuance of the above described applications.

Patrick Redman, attorney at law, represented the Texas Alcoholic Beverage Commission. William B. Lofland, attorney at law, represented the protestants. James C. Karger, attorney at law, represented the applicant.

After a careful examination of the evidence and matters officially noticed, the Hearings Examiner makes the following findings, conclusions, and recommendation:

FINDINGS OF FACT

1. That Club Bejar has filed original applications for a Private Club Registration Permit, Private Club Late Hours Permit and Beverage Cartage Permit for the premises to be located at 400 S. Goliad, [MAIL: Route 4, Box 60 - 75087], Rockwall, Rockwall County, Texas.
2. That Derwood Wimpee, County Judge of Rockwall County; and John M. Vance, Sheriff of Rockwall County, have filed a protest to the issuance of the above described applications.
3. That the City of Rockwall, Texas, is located northeast of Dallas near the intersection of state highways 205 and 66.
4. That Lake Ray Hubbard forms the eastern border of Rockwall.
5. That state highway 205 is also Goliad Street which runs north and south within the City of Rockwall.
6. That the proposed licensed premises is located in an area of the city zoned for "general retail."
7. That there are retail stores, apartments, and a nursing home nearby the proposed licensed premises.
8. That the premises in question has recently opened as a restaurant.
9. That the use of the private club permit applied for is intended only to facilitate the business of the restaurant so that patrons who are members may have alcoholic beverages with their meals if they desire.

10. That there are other private clubs in Rockwall County, which is dry for the sale of alcoholic beverages.

11. That there are no private clubs in the downtown area of the City of Rockwall.

12. That Goliad Street in Rockwall is heavily travelled.

13. That if the permit is granted, the hours that the private club will be open are from 11:00 a.m. until 2:00 p.m. and from 5:00 p.m. until 11:00 p.m. each day — the same hours which the restaurant is open.

14. That there presently are 204 members of the proposed club: most of these members live in Rockwall.

15. That Ricky C. Bejar, president of the proposed club, and Joan D. Bejar, secretary of the club, are the owners and operators of Bejars, the restaurant on the proposed licensed premises.

16. That the aforesaid Ricky and Joan Bejar have extensive experience in organizing and operating fine dining establishments.

17. That Joan Bejar will be the actual manager of the proposed club if the permits are granted.

18. That Joan Bejar intends to operate the club in a lawful and orderly manner.

19. That the proposed licensed premises is not unduly close to nearby churches and schools.

#### CONCLUSIONS OF LAW

1. That Club Bejar has filed original applications for a Private Club Registration Permit, Private Club Late Hours Permit and Beverage Cartage Permit for the premises to be located at 400 S. Goliad, [MAIL: Route 4, Box 60 - 75087], Rockwall, Rockwall County, Texas.

2. That Derwood Wimpee, County Judge of Rockwall County; and John M. Vance, Sheriff of Rockwall County, have filed a protest to the issuance of the above described applications.

3. That it has not been proved that the place or manner in which the applicant may conduct its business warrants the refusal of a permit.

#### RECOMMENDATION

The facts of this case do not indicate that there is anything unusual or dangerous about the location of the premises in question. The aforesaid Mr. & Mrs. Bejar appear to be responsible, law-abiding citizens, and the Hearings Examiner believes that the applicant club will be managed in an orderly and responsible manner.

For these reasons and because of the above findings and conclusions, the Hearings Examiner recommends that the applications in question be granted.

SIGNED AND ENTERED this 17th day of September, 1982.

  
\_\_\_\_\_  
Hallie Huttash, Hearings Examiner  
Texas Alcoholic Beverage Commission

HH:yt

MEMO

TO: Jesse Gilbert  
FROM: Larry King  
SUBJECT: Bejars Restaurant

Item #1

Mr. Jerry Newell contacted myself to ask if in a General Retail zoned area a restaurant could be operated. He also asked if I would send him a letter to that effect.

Enclosed is a copy of the letter and materials that Mr. Newell received. Mr. Newell said that he had a prospective buyer of the property that wanted to operate a restaurant at the present location. The information indicates that a restaurant was legal.

Item #2

I had a call from a lady in which I don't remember her name, that wanted to know if a private club could be operated in a General Retail zone. According to the zoning ordinance, on page 7 it indicated that a private club could be operated. She indicated that she was looking to buy a piece of property to operate a restaurant and wanted to have a private club within. I told her that to the best of my knowledge it would be allowed and had been allowed at Mr. Catfish, which was in a Commercial Zoned area.

Item #3

Mrs. Bejar was talking to Julie Couch and the subject came up about the private club. Julie informed her that a private club for the sale of alcoholic beverages was not presently allowed in a General Retail zone. Julie said that Planning and Zoning and City Council would have to make a determination of whether that type of use would be allowed.

That is presently where we stand at this time.

  
Larry King

## STATUS OF BEJAR'S RESTAURANT

1. The City currently has four private clubs in operation. Three of the clubs are located in Planned Development districts and the fourth one is located in a "C" Commercial District. Mr. Catfish was opened in 1976 and apparently the Staff at that time interpreted the Ordinance to allow private clubs for the sale of alcoholic beverages in that district.
2. Mrs. Bejar came to the City Hall to ask to be placed on the Agenda to meet with the City Council in order to introduce herself and her husband, and to explain their plans for their new restaurant and private club. Upon hearing "private club", the Zoning Ordinance was checked to insure that such a use is allowed in a General Retail District. Upon checking with the ordinance and reading the definition of a private club, it became apparent that the current ordinance did not address this use.
3. Under the provisions of Section 8-110 of the Zoning Ordinance, the decision was made to request a determination from the Planning and Zoning Commission and City Council as to which districts private clubs for the sale of alcoholic beverages would be allowed in, and if so, would a Specific Use Permit be required.
4. On August 12th, the Planning and Zoning Commission made a recommendation to the City Council that private clubs for the sale of alcoholic beverages be allowed with a Specific Use Permit.
5. On September 7th the Rockwall City Council approved a resolution making a determination that a private club with a Specific Use Permit would be allowed in a General Retail District. They made no decision as to whether or not the use would be allowed in the Commercial or Central Area Classifications, with or without a permit.
6. On September 23rd the Bejars submitted an application for a Specific Use Permit for a private club for the sale of alcoholic beverages in a General Retail District. On October 4th the Planning and Zoning Commission recommended approval of the request.
7. On October 14th the Planning and Zoning Commission also reaffirmed their recommendation that private clubs for the sale of alcoholic beverages be allowed in all Commercial Districts from General Retail on down with a Specific Use Permit.
8. The Council to date has not taken action on the other districts. They will hear the request for a Specific Use Permit from the Bejars on November 22nd.

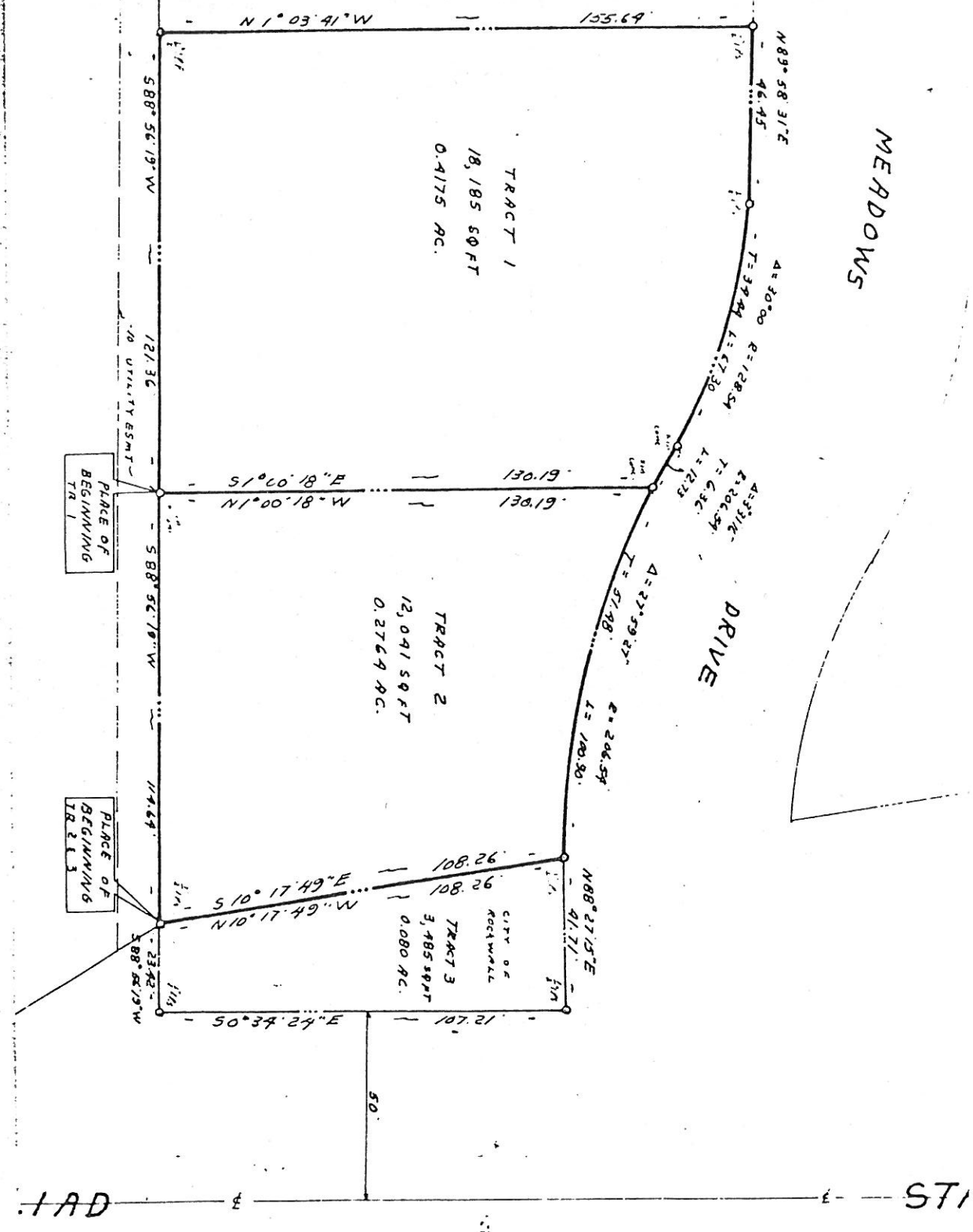
*Attachments sent were:*

- copies of P12 minutes Aug 12, Oct 14*
- copy of Council minutes Sept 7*
- copy of Resolution*
- copy of zoning ordinance*
- copies of all letters from Kargan*
- copy of letter from Bob Billard*

EXHIBIT "A1"

ROCK 9 VILLAGE

LAKE  
MEADOWS



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DOCKET NO. 151658

IN RE CLUB BEJAR  
ROCKWALL COUNTY, TEXAS

§ BEFORE THE  
§  
§  
§ TEXAS ALCOHOLIC BEVERAGE COMMISSION

PROPOSAL FOR DECISION

PREPARED BY HALLIE HUTTASH, HEARINGS EXAMINER

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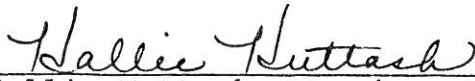
3. That it has not been proved that the place or manner in which the applicant may conduct its business warrants the refusal of a permit.

#### RECOMMENDATION

The facts of this case do not indicate that there is anything unusual or dangerous about the location of the premises in question. The aforesaid Mr. & Mrs. Bejar appear to be responsible, law-abiding citizens, and the Hearings Examiner believes that the applicant club will be managed in an orderly and responsible manner.

For these reasons and because of the above findings and conclusions, the Hearings Examiner recommends that the applications in question be granted.

SIGNED AND ENTERED this 17th day of September, 1982.

  
Hallie Huttash, Hearings Examiner  
Texas Alcoholic Beverage Commission

HH:yt



**James C. Karger**

Attorney at Law  
L.B. 121, South Tower  
Plaza of the Americas  
Dallas, Texas 75201

(214) 748-2278

September 21, 1982

Certified Mail - Return Receipt Requested

Mr. Jeff Gilbert  
City Administrator  
City of Rockwall  
102 East Washington  
Rockwall, Texas 75087

Re: Bejar's

Dear Mr. Gilbert:

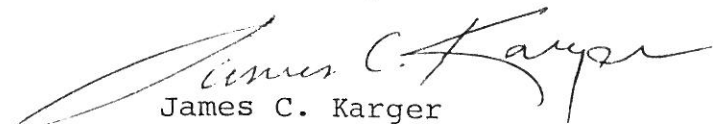
As you are aware, I represent Bejar's in their efforts to open a private club within their restaurant at 400 South Goliad, Rockwall, Texas. Enclosed please find the proposal for decision issued by the Texas Alcoholic Beverage Commission relative to Bejar's application for a liquor license. As you can see, the recommendation is that the application be granted.

In the belief that Bejar's may meet opposition from Rockwall's Planning and Zoning Commission, and perhaps from Rockwall's City Council, as a result of the recent ordinance requiring a special use permit for private clubs, I herewith request the following:

1. A copy of the minutes of the City Council meeting of September 7, 1982;
2. A copy of the minutes, if any, from the Planning and Zoning Commission meeting of August 12, 1982; and
3. The name and address and telephone number of the attorney who represents the City of Rockwall in municipal matters.

In addition, if the magnetic audio tape(s) of the aforementioned meetings have not been erased or destroyed, I request that they not be erased or destroyed as being relevant to future consideration by Rockwall's City Council and to litigation which may result from the Council's actions in this matter. Your cooperation is appreciated, and I remain hopeful that this matter can be resolved amicably.

Very truly yours,

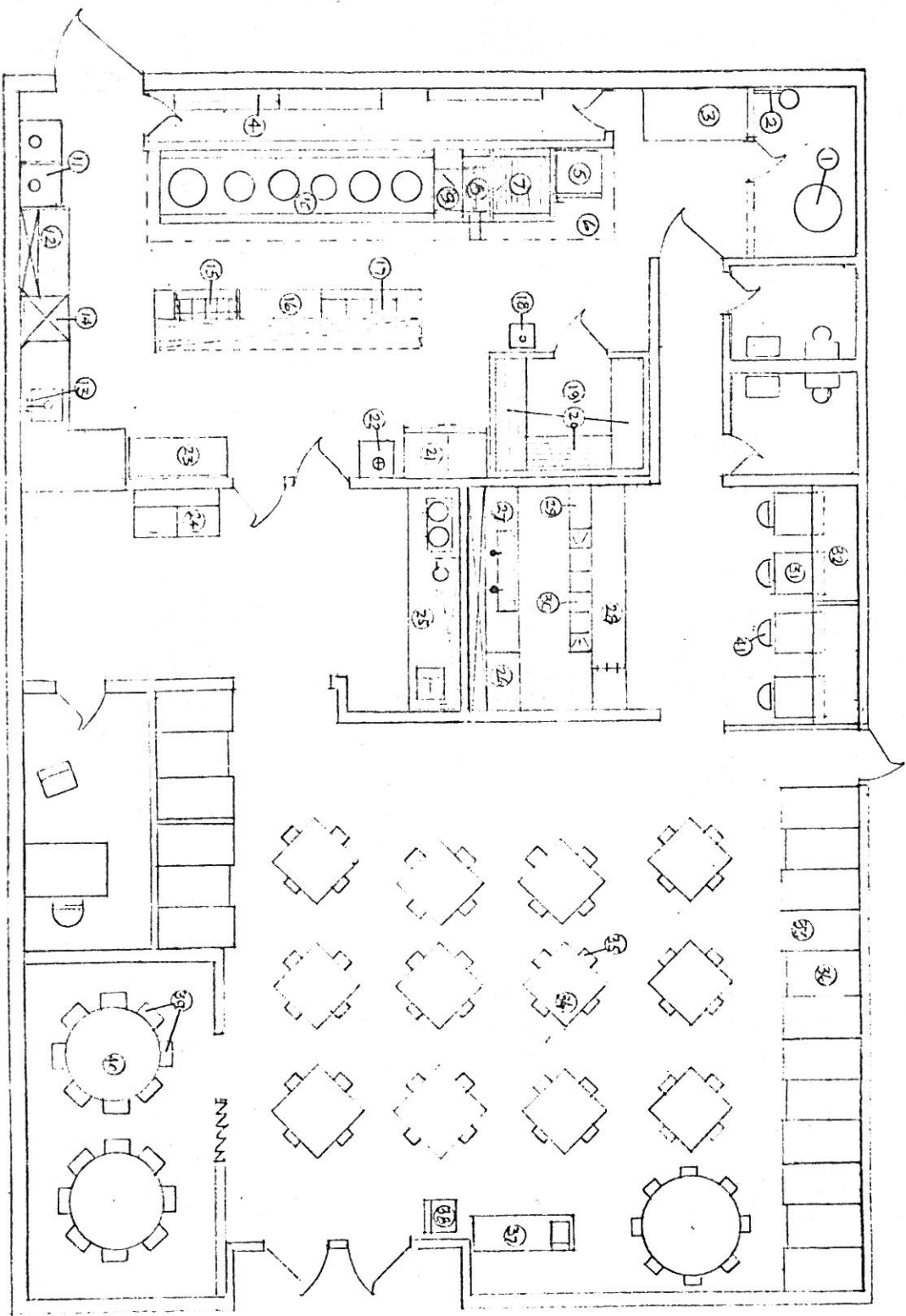
  
James C. Karger

Enclosure  
JCK:sk

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED, TO

- 1) Club Bejar  
10454-C Foxton  
Dallas, Texas 75238  
Certified Mail No. 957507
- 2) Derwood Wimpee  
County Judge  
Courthouse  
Rockwall, Texas 75087  
Certified Mail No. 957508
- 3) John M. Vance  
Sheriff  
Rockwall; Texas 75087  
Certified Mail No. 957509
- 4) James C. Karger  
Attorney at Law  
2222 S. Tower, Plaza of Americas  
Dallas, Texas 75201  
Certified Mail No. 957510
- 5) William B. Lofland  
105 E. Kaufman St.  
Rockwall, Texas 75087  
Certified Mail No. 957511

DATE MAILED: September 17, 1982



- 1. HOT WATER HEATER
- 2. FIRE EXT. SYSTEM
- 3. WORKTABLE
- 4. SHELVES
- 5. BROOD OVEN
- 6. VENT HOOD
- 7. BROILER
- 8. FRYER
- 9. FLOOR DRAIN
- 10. PANTRY
- 11. FLOOR SINK
- 12. DETERGENT, CLEAN
- 13. DISHWASHER
- 14. DISHTABLE, COILED
- 15. SANDWICH UNIT
- 16. WORKTABLE
- 17. HOT FOOD TABLE
- 18. HAND SINK
- 19. WALK-IN FREEZER
- 20. WALK-IN COOLER
- 21. REFRIG.
- 22. REFRIG.
- 23. REFRIG.
- 24. REFRIG.
- 25. REFRIG.
- 26. REFRIG.
- 27. REFRIG.
- 28. REFRIG.
- 29. COCKTAIL TAIL UNIT
- 30. DERBAR SINK
- 31. TABLE, 24" X 30"
- 32. TABLE, 30" X 30"
- 33. TABLE, 30" X 30"
- 34. TABLES
- 35. TABLES
- 36. \* 34 CHAIRS
- 37. CASHIER STAND
- 38. WAITER'S DESK
- 39. CHAIRS
- 40. TABLES, 24" X 30"
- 41. CHAIRS, UPH.

-FLOOR PLAN-

SCALE 1/8" = 1'-0"

BY: BAB'S CAFE  
 FOR: SUPERVISOR

7350-001-0010

CITY OF ROCKWALL  
BUILDING INSPECTION DEPT.

APPLICATION FOR BUILDING PERMIT

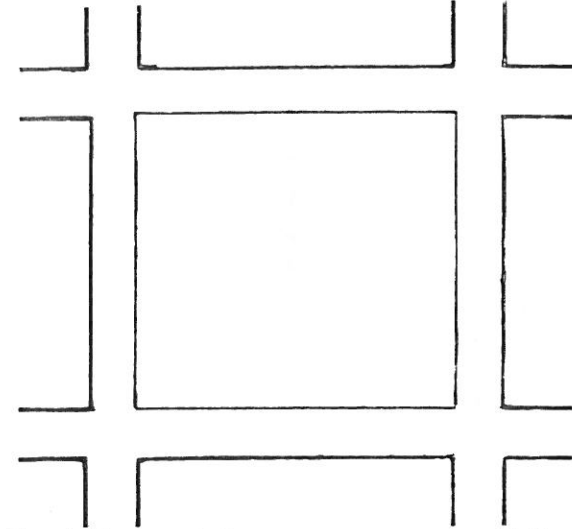
Lot 0.69 <sup>ac</sup> Block 3 <sup>TRACT</sup>  
Subdivision ROSA VILLA ADD. I  
Type Occupancy \_\_\_\_\_  
Zoning Dist. GENERAL RETAIL  
Street No. 400 S. SOLIAN

Permit No. 1184

Rockwall, Texas 7-8- 19 82

Application is hereby made to the Building inspector of the City of Rockwall, Texas, for a permit to construct a Renovate EXISTING RESTAURANT in accordance with plans and specifications submitted herewith, and in full conformity with provisions and regulations of all ordinances of the City of Rockwall. The location and salient features of said structure are as follows:

Owner of Ground \_\_\_\_\_ Address \_\_\_\_\_  
Owner of Building \_\_\_\_\_ Address \_\_\_\_\_  
Architect \_\_\_\_\_ Address \_\_\_\_\_  
Contractor BOB NIX Address 100 N. BIRMINGHAM



No. of Stories 1  
No. of Rooms 4  
Type of Construction IV  
Dimensions \_\_\_\_\_  
Materials of Foundation SLAB  
Materials of External Walls \_\_\_\_\_  
Is Sewer Available? YES  
% second hand materials to be used 0  
How many buildings to be removed? 0

Will there be Any Projections Over the Prop. Line? \_\_\_\_\_  
Living Area = \_\_\_\_\_  
Covered Area = \_\_\_\_\_  
Other Area = \_\_\_\_\_  
Total Footage = \_\_\_\_\_

Total Contract \$ \_\_\_\_\_ Estimated Cost \$ 5000.00 Permit Fee \$ 27.50

The undersigned hereby solemnly swears that the above statements concerning the above described structure are true and that \_\_\_\_\_ is the owner of said structure or has been authorized by the owner or owners to act as agent in procuring the permit herein requested.

The land or structure will be used only for the following purposes \_\_\_\_\_

I, We, understand that should said \_\_\_\_\_ be used or occupied in violation of this agreement or of the Zoning Ordinance, or of any building, fire, sanitary, or health laws or ordinances of the City of Rockwall, that I, We, shall be subject to penalty in accordance with the provisions of the Zoning Ordinance or other applicable regulations.

ACTION TAKEN:

Granted \_\_\_\_\_ Denied \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
(owner or lessee)  
Address \_\_\_\_\_

(APPENDIX FORM A)

Application No. 1184  
Building Permit No. 1184  
Date 9-16-82

1350-001-001  
APPLICATION FOR CERTIFICATE OF  
OCCUPANCY AND COMPLIANCE

Application is hereby made to the City of Rockwall, Texas, under provisions of the Zoning Ordinance to use and occupy the premises at 400 SO. GOLIAD  
(street no.) (street)

Lot No. 0.69 AC. Block TRACK 3 in the ROCA VILLA Addition of the City of Rockwall, Texas.

On the above described premises, it is desired to: Build a Building  ; Repair a Building  ;  
Alter or add to a building  ; Move in a structure  ; Occupy the land only  ; Occupy an existing  
structure  ; Occupy a Non-Conforming use  .

The land or structure will be used only for the following purposes RESTURANT (GENERAL RETAIL)

Applicant x Frady CBj  
Address \_\_\_\_\_

I, We, understand that should said STRUCTURE  
be used or occupied in violation of this agreement or of the Zoning Ordinance, or of any building, fire, sanitary, or health laws or ordinances of the City of Rockwall, that I, We, shall be subject to penalty in accordance with the provisions of the Zoning Ordinance or other applicable regulations.

ACTION TAKEN:

Granted \_\_\_\_\_ Denied \_\_\_\_\_ Date 9-16-82

CERTIFICATE NUMBER 1184 x Frady CBj  
(owner or lessee)

detach here

CERTIFICATE OF OCCUPANCY AND COMPLIANCE

Certificate No. 1184  
Date Issued 9-16-82

This is to certify:

That BEJAR'S FINE DINING located at 400 SO. GOLIAD  
(description of premises and structure) (street)

Lot 0.69 ACRES, Block TRACK III in the ROCA VILLA Addition to the City of Rockwall is authorized to be occupied as RESTURANT (GENERAL RETAIL) in accordance with the use specified on Application No. 1184 and in conformance with the Zoning Ordinance.

Keith Loyland  
Building Inspector

May 17, 1982

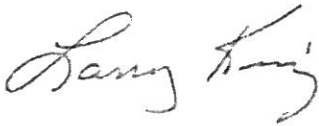
Jerry Newell  
607 Shoreview  
Rockwall, Texas 75087

Dear Mr. Newell:

This letter is in regards to your property on Lake Meadows Dr.  
Which is zoned General Retail.

Enclosed is a list of allowed uses that is legal within general  
retail zoned areas. If any further information is needed please  
contact us.

Thank You,

A handwritten signature in cursive script that reads "Larry King".

Larry King  
Building Official

EK:be  
Enclosure

ALFRED SALLINGER  
H. LOUIS NICHOLS  
LAWRENCE W. JACKSON  
TIM KIRK  
ROBERT L. DILLARD III  
ROBERT D. HEMPHILL  
ROBERT E. HAGER  
PETER G. SMITH

**SANER, JACK, SALLINGER & NICHOLS**  
ATTORNEYS AND COUNSELORS AT LAW  
1200 REPUBLIC NATIONAL BANK BUILDING  
DALLAS, TEXAS 75201

R. E. L. SANER (1871-1938)  
JNO. C. SANER (1874-1948)

(214) 742-5464

August 23, 1982

W. H. JACK  
ROBERT L. DILLARD, JR.  
OF COUNSEL

Mr. Jesse E. Gilbert  
City Administrator  
City of Rockwall  
102 East Washington  
Rockwall, Texas 75087

Dear Jess:

This will acknowledge your questions with regard to the right of the City to regulate or control private clubs in the City. By private clubs, we mean those licensed by the Alcoholic Beverage Commission of the State of Texas under Chapters 32 and 33 of the Alcoholic Beverage Code.

Generally, the Code, in Section 1.06 provides "Unless otherwise specifically provided by the terms of this Code, the manufacture, sale, distribution, transportation, and possession of alcoholic beverages shall be governed exclusively by the provisions of this Code." There are certain specific provisions of the Code which delegate authority to the City. One of these is found in Section 109.33 regarding sales near a school, church or hospital. I am enclosing a copy of that section with this letter. This regulation must be enacted in the form of an ordinance by the City in order to be effective.

Section 32.17 prescribes the hours a private club can operate. Chapter 33 provides for a late hours permit, but the City has no control over either the regular hours or the late hours which can be permitted under the Code.

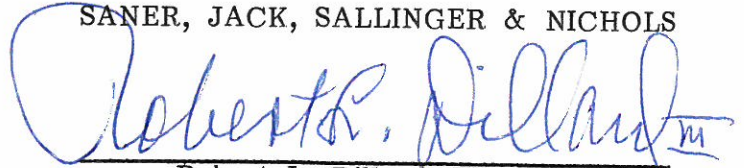
Other ordinances which regulate the premises or conduct on the premises of a private club are permitted so long as they are not inconsistent with the Alcoholic Beverage Code and they are enforceable if they place no obstruction, interference, or burden on the permittee in the exercise of his permit. See Banknote Club, et al vs. City of Dallas (copy enclosed).

In addition, as I related to you on the telephone any ordinance enacted by the City is presumed to be a valid exercise of its police or legislative power and would stand until successfully challenged in a court of competent jurisdiction. Also, if an application is made for a permit, the City has the right to oppose the application and to appear before the Alcoholic Beverage Commission and present evidence supporting some ground of refusal. These are listed in Section 11.46 of the Code.

I hope that this letter answers your general questions on this subject and that if you need anything further, you will let me know.

Very truly yours,

SANER, JACK, SALLINGER & NICHOLS

A handwritten signature in blue ink that reads "Robert L. Dillard, III". The signature is written in a cursive style with a large initial "R" and a small "m" at the end.

Robert L. Dillard, III

RLD:fm

Enclosure



**James C. Karger**

Attorney at Law  
L.B. 121, South Tower  
Plaza of the Americas  
Dallas, Texas 75201

(214) 748-2278

September 21, 1982

Certified Mail - Return Receipt Requested

Mr. Jeff Gilbert  
City Administrator  
City of Rockwall  
102 East Washington  
Rockwall, Texas 75087

Re: Bejar's

Dear Mr. Gilbert:


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Very truly yours,

  
James C. Karger

Enclosure  
JCK:sk

BROWN, THOMAS & KARGER

ATTORNEYS  
2222 SOUTH TOWER  
PLAZA OF THE AMERICAS  
DALLAS, TEXAS 75201

(214) 748-2278

October 26, 1982

Mr. Jess Gilbert  
City Administrator  
City of Rockwall  
102 East Washington  
Rockwall, Texas 75087

Re: Bejar's Inc.  
Specific Use Permit

Dear Mr. Gilbert:

In accordance with ¶20-22(d) of the City of Rockwall Code of Ordinances, the undersigned, on behalf of Bejar's Inc. request that the official action of the Planning and Zoning Commission on October 14, 1982 relative to the above "be forthwith certified to the City Council" and that the City Council "have the benefit of such report and recommendation" at its upcoming meeting on November 1, 1982. As you and the members of the Council are fully aware, Bejar's has heretofore elected to handle this matter in a manner clearly conducive to the City's interests and has complied with each and every ordinance and regulation throughout this process, as opposed to operating their private club at this time, which, in our opinion, would be permissible in light of the action by the State of Texas and earlier actions by the City of Rockwall. This has been done in part to avoid litigation expenses to our client. However, further delay by the Council in handling this matter will continue to be costly to Bejar's and ultimately to the City of Rockwall if litigation is necessary to vindicate their position. We thus request that this matter be handled without further delay at the next City Council meeting.

It is my understanding that you recommended to the Council that the matter be dealt with at the November 1, 1982 Council

Mr. Jess Gilbert  
October 26, 1982  
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meeting. If the matter will not be dealt with at that time, I request to be immediately notified of the reason for same in order that I may recommend to our client what their future course of action should include. We remain hopeful that the matter can be resolved in the best interest of all involved without the necessity of litigation. Your anticipated cooperation is appreciated.

Very truly yours,



James C. Karger

JCK/asr

**BROWN, THOMAS & KARGER**

ATTORNEYS  
2222 SOUTH TOWER  
PLAZA OF THE AMERICAS  
DALLAS, TEXAS 75201

(214) 748-2278

October 30, 1982

PERSONAL AND CONFIDENTIAL  
DELIVERED BY HAND

Mr. Jess Gilbert  
City Administrator  
City of Rockwall  
102 East Washington  
Rockwall, Texas 75087

Re: Bejar's, Inc.  
Application for  
Specific Use Permit

Dear Mr. Gilbert:

Since our correspondence to you dated October 28, 1982, we have had an opportunity to review with Bejar's accountant the financial damage to Bejar's that further delay in resolving this matter will cause. Our projections indicate that should the Specific Use Permit not be granted on or before the December, 1982 City Council meeting, which we understand will be held December 6, 1982, the Bejar's will be in serious jeopardy of losing their business. Presently, without the anticipated revenue from the sale of alcoholic beverages to the 300+ members of Club Bejar, Bejar's is presently losing approximately \$6,000 per month. As such, the undersigned, as representative of Bejar's, Inc., formally requests that notice of a hearing before the Council on the matter be published immediately. While we would normally request that a special meeting of the City Council be scheduled to consider the issue prior to the next regularly scheduled meeting, because this would result in a meeting the week of Thanksgiving, we request and herewith seek to have the matter heard and decided by the City Council on December 6, 1982. In this regard, the facts surrounding this matter should be well-known to each member of the Council. However, we are prepared to

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once again recite the facts to the Council at the earliest date possible.

We have been advised by our client that they continue to seek a solution to this problem outside the judicial system. I want to emphasize that, as members of your community, the Bejar's are most desirous of avoiding any dispute, and want to work with you to help build a prosperous Rockwall.

However, should the matter not be resolved forthwith or be resolved against Bejar's, then we have been instructed to file suit in federal district court. If this must be done, we will allege, and are confident of our ability to prove, the following non-inclusive causes of action:

- 1) Ordinance No. 72-2 of the City of Rockwall is unconstitutional and anti-competitive both facially and as applied;

- 2) As applied, the City has denied Bejar's due process and equal protection under the laws as required by the 14th Amendment to the Constitution of the United States;

- 3) Both on its face and as applied, the Ordinance violates the Sherman Antitrust Act;

- 4) The City of Rockwall, as a political subdivision of the State of Texas, has violated Article XI, §5 of the Texas Constitution and §11.38(c) of the Texas Alcoholic Beverage Code; and

- 5) By its actions, the City of Rockwall has lead Bejar's to believe that their plans to serve alcoholic beverages to their club members would not be problematical and Bejar's reasonably relied to their detriment on this representation, resulting in an estoppel.

We estimate that damages from said causes of action, taking into account the allowance of trebling under the Sherman Antitrust Act, will exceed one million dollars. Should the matter not be resolved on or before December 6, 1982, we anticipate filing the referenced federal suit on or before December 10, 1982.

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It is most important that the Council remember that the Bejar's have heretofore made every effort to work with the City of Rockwall in their attempt to bring fine dining to the area. The Bejar's wish to remain in this posture. However, the economics of the situation may soon dictate litigation as the only alternative to save their business. We remain hopeful that the City Council will act most expeditiously to favorably resolve this matter.

It is my understanding that the City has not engaged legal counsel to represent it in connection with the above-captioned matter. Should you elect to engage counsel, please have him contact the undersigned.

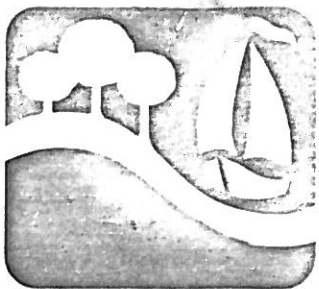
Very truly yours,



James C. Karger

JCK/tar

cc: Jess Gibert (by hand)



**CITY OF ROCKWALL**  
**"THE NEW HORIZON"**

November 15, 1982

Mr. Paul Davis  
Stephenson Davis Insurance Co.  
101 North Goliad  
Rockwall, Texas 75087

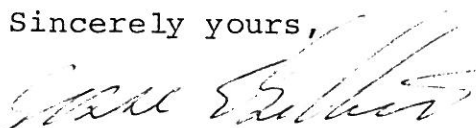
Subject: Bejar's, Inc.

Dear Mr. Davis:

Per the requirements for liability insurance I am forwarding a copy of a letter from Bejar's' attorney regarding their application for a Special Use Permit to serve alcoholic beverages.

If you have any questions, please don't hesitate to contact me.

Sincerely yours,

  
Jesse E. Gilbert  
City Administrator

Enclosure  
JEG/mmp

**CURTIS AND PARIS**  
ATTORNEYS AT LAW  
P. O. BOX 1256  
2708 WASHINGTON STREET  
GREENVILLE, TEXAS 75401

HAROLD F. CURTIS, JR.  
JACK L. PARIS, JR.

(214) 455-8113

November 17, 1982

Mr. Jesse E. Gilbert  
City Administrator  
City of Rockwall  
102 East Washington  
Rockwall, Texas 75087

Dear Jess:

You have requested my opinion on the question whether or not the City of Rockwall, a General Law city, possesses the power to regulate the location of private clubs as that term is defined by the Alcohol Beverage Code by adoption or enforcement of provisions of its zoning ordinance. This letter will afford such opinion.

The case of Messengale, et al, v. The City of Copperas Cove, et al, 520 S.W.2d 824 (Civ. App. - Waco, 1975, writ ref. n.r.e.) deals squarely with the question. There the Waco Court held:

"The City of Copperas Cove, not being a home rule city, must look to the general law for its authority to exercise municipal powers. The authority for the enactment of the ordinance in question is conferred upon Appellee City by Articles 1011a through 10111 and by Article 1015, subsections 1 and 9, Vernon's Annotated Civil Statutes. This being so, the ordinance in question is a valid exercise of the police power of the City which in no way conflicts with the Texas Liquor Control Act. Article 666-15e of said Act sets out the definition of a private club, how it shall be organized, prescribes regulations therefor, provides for permits, licensing fees, and penalties for violations. Said Article also provides that 'Such club shall own, lease or rent a building, or space in a building of such extent and character as in the judgment of the Texas Alcoholic Beverage Commission, is suitable and adequate for its members and their guests and shall provide regular food service adequate for its members and their guests.' But nowhere does said Article either expressly or impliedly



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require a city to permit a private club to operate in any area in which a restaurant is permitted to operate. Indeed, nothing in the Texas Liquor Control Act inhibits the zoning power of the City in question as conferred upon Appellee City by the general law."

Based upon this authority, which appears to be unchallenged, it is my opinion that the City of Rockwall, by the proper exercise of the zoning power, possesses the authority to regulate the location and operation of private clubs within its corporate limits.

It is my understanding that the principals in one of the cases before you related to this problem have also raised the objection that the ordinance in question may not have been uniformly enforced in the past. Messengale, et al v. The City of Copperas Cove, et al deals with this specific question and holds:

"The fact that the ordinance in question may not have been enforced against the V.F.W. or the Moose Lodge does not excuse compliance by Plaintiff-Appellants. The City cannot be estopped to enforce its valid zoning ordinance merely by the failure of some of its officers to do so on other occasions or in other instances. See Eckert v. Jacobs (Austin Tex. Civ. App. 1940) 142 S.W.2d 374, no writ history."

It is therefore also my opinion that the fact that Mr. Catfish is allowed to operate a private club in an area not possessing a special use permit does not excuse compliance with the ordinance by Bejar's or Banditos.

The question of the proper exercise of the zoning power is reserved. Messengale, et al, v. Copperas Cove also deals with the validity of the ordinance in question in that case to constitute a proper exercise of the police power. The ordinance in that case was substantially more detailed than is the ordinance which I have read adopted by your City Council. On the other hand, since it is uniformly held that a zoning ordinance, like all exercises of the legislative power of the City Council, must be presumed to be valid until established to be otherwise, I would suggest that the ordinance is enforceable in the two captioned instances until it is stricken by a court. The ground upon which the resolution amplifying the zoning ordinance to

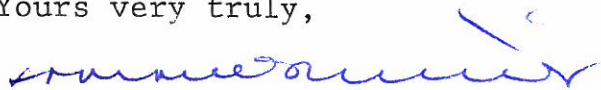
Mr. Jesse E. Gilbert  
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include private clubs might be attacked would probably be that it was void for unconstitutional vagueness. While this question is somewhat beyond the scope of the present opinion, it would be my view that at the earliest practicable opportunity the City Council should amplify the resolution which in turn amplifies the zoning ordinance at the very least by incorporating therein the definition of private club contained in the Alcohol Beverage Code. I would be pleased to discuss this with you in more detail.

It is my understanding that the City will deal with the Bejar's problem on November 22. I would appreciate a report on the outcome of that hearing, and also an opportunity to consult further with you with respect to the enforcement of the existing zoning ordinance in the Banditos case.

With kind regards and best wishes,

Yours very truly,



Harold F. Curtis, Jr.

HFC/eh