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BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Application for a)	
Package Store (PS))	
License by:)	FINAL
)	FINDINGS OF FACT,
True Value Oil Company)	CONCLUSIONS OF LAW,
BINGO GAS)	AND ORDER
4220 Brooks Lake Road)	
Brooks, Oregon 97305)	
- - - - -)	
Marion County)	

A hearing in the above matter was held on the 16th day of June, 1981, at the Labor and Industries Building, Salem, Oregon, before Hearings Examiner Rollin Goodale. The Applicant appeared in person and was represented by Donald W. McCann, Attorney at Law. The Commission was not represented by legal counsel. The Commission having considered the record of the hearing, the Proposed Order of the Hearings Examiner, Exceptions to the Proposed Order of the Hearings Examiner, and the entirety of the Criteria for the Issuance and Maintenance of Licenses and applicable statutes and regulations, enters the following:

FINDINGS OF FACT

1. The True Value Oil Company, Inc., a Nevada corporation authorized to do business in the State of Oregon (Applicant), seeks a Package Store (PS) license in the trade name of BINGO GAS, 4220 Brooks Lake Road, Brooks, Oregon.

2. The Commission license staff committee has recommended that the Applicant's application be refused citing the following: ORS 471.295(1) (there are sufficient licensed

premises; OAR 845 05-025(1) (an adverse recommendation by the governing body); OAR 845 05-025(9) (the applicant seeks a PS license at an outlet which sells petroleum products and does not or will not maintain a wide variety of grocery items).

3. The premises consists of a 60 foot by 35 foot, one-story metal and concrete structure including a gas and diesel station with a short order cafe, grocery sections, two rest-rooms, and adequate parking for 30 vehicles.

4. The premises is located at the I-5 freeway interchange area at the southwest intersection of Brooks Lake Road in Marion County.

5. The convenience grocery facility, gas station and cafe are open 24 hours a day and employs 20 people.

6. The Applicant's convenience grocery has an average monthly inventory valued at \$15,000.

7. The Applicant's convenience grocery has gross sales per month of \$10,000 to \$20,000 excluding cigarette sales of \$4,500 per month.

8. The store's inventory includes: milk, bakery items, snack foods, cookies, ice cream bars and donuts. The premises has no meat, produce or canned food items but has paperback books, toiletry items, pop and medical supplies.

9. A substantial percentage (over 50 percent) of the Applicant's customers are freeway travelers. Only about 10 to 15 percent of the customers are local residents.

10. Most of the Applicant's store customers are truckers. Truckers many times spend the night in the parking area.

11. The gas station sells approximately 7,000 gallons per day.

12. There are many requests for beer each day.

13. The distance to the nearest premises with similar privileges are as follows:

<u>OUTLET AND TYPE OF LICENSE</u>	<u>DISTANCE AND DIRECTION FROM BINGO GAS</u>	<u>HOURS OF OPERATION</u>
Brooks Market (PS)	1.1 miles east	not known
Western Gentry (RMB)	1.1 miles east	11:00 a.m.-2:30 a.m.
V & V Market (PS)	3.2 miles SE	not known
Hitching Post (RMB)	1.8 miles SW	7 days a week
7-11 Store (PS)	4.6 miles SW	not known
Frey's Thriftway (PS)	5.3 miles south	not known

14. The travelers and truckers do not wish to drive to the nearest premises (Brooks Market) 1.1 miles to the east, or when it is closed, to the nearest tavern (Western Gentry) 1.1 miles to the east.

15. On July 11, 1980, Randal Franke, chairman of the Marion County Board of Commissioners advised the OLCC as follows:

"We have received and considered an application for a package store liquor license for premises located at 4220 Brooks Lake Road, Brooks, Oregon, having been submitted by True Value Oil Company, Inc. dba Bingo Gas."

"An investigation reveals the property is located in an area which is currently zoned ID (Interchange District). Permitted uses in an ID zone do not include this type of activity. Therefore, we cannot approve the application."

(Commission's Exhibit B.)

16. On July 17, 1980, the County Commission of Marion County recommended that the license be denied. (Commission's Exhibit A.)

17. The Applicant, True Value Oil Company, Inc. applied to the officials of Marion County for a conditional use permit to operate a convenience grocery store on the property (4220 Brooks Lake Road, near Brooks, Oregon).

18. On February 18, 1981, a public hearing was duly held before the Marion County Hearings Officer Wallace W. Lein, empowered to grant conditional uses that are listed in the zoning ordinance as pertaining to the Applicant's application seeking to legitimize a use that has been going on on the property since 1977 involving primarily the sale of gas, diesel and automotive products with an accessory fast food facility and convenience grocery store.

19. On March 6, 1981, Marion County Hearings Officer Wallace W. Lien entered Findings of Fact and Conclusions pertaining to the use of the Applicant's property interest including the "convenience grocery store" and entered the following Order, Notice, Effective Date and Appealed Rights.

Order

It is hereby found that the applicant has met its burden of proving the criteria found in MCZO Chapter 150 and 119.070, and therefore it is hereby ordered that the application for a conditional use permit is GRANTED subject to the following conditions:

1. Stop signs shall be installed at all access points from the applicant's property to Brooks Lake Road (Country Road 609).
2. No new access points onto Brooks Lake Road shall be created without first obtaining the approval of the Marion County Public Works Department and the State Highway Division.

Notice

Notice is hereby given that this conditional use shall be effective only when exercised within 6 months from the effective date of this order.

Effective Date

The application approved herein shall become effective on the 17th day of March, 1981 (10 days after the mailing of this order) unless the Marion County Board of Commissioners, on their own motion or by appeal timely filed, is asked to review this order. In case of Board review, this order shall be stayed, and shall be subject to such final action as is taken by the Board.

VIII. Appeal Rights

An appeal of this decision may be taken by anyone aggrieved or affected by this order. An appeal must be filed with the Marion County Clerk by 5:00 p.m. on the 16th day of March, 1981 (within 10 days of the mailing of this order).

The appeal must be in writing, filed in duplicate and must state wherein this order fails to conform to the provisions of the applicable ordinance.

DATED this 6th day of March, 1981, at Salem, Oregon

(Applicant's Exhibit #2.)

20. The Applicant has established stop signs and complied with the conditions set out in the Order.

21. There has been no appeal of the Hearings Officer's Order within the time period required in the Order and the Order's effective date is March 17, 1981.

22. On September 28, 1981, the Marion County Board of Commissioners formally considered the application and has recommended issuance of a Package Store license to the Applicant.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The following criteria will be given sufficient consideration so that a license will not be issued unless good

cause which outweighs the criteria involved is shown by the applicant:

An adverse recommendation by the governing body of the appropriate city or county, after due consideration. The recommendation may be disregarded by the Commission if the body has failed to give to the applicant and to interested members of the public both reasonable notice of the proceedings at which the application was considered and reasonable opportunity to be heard. . OAR 845 05-025(1).

Though the Marion county Board of Commissioners initially recommended the denial of the license and its chairman advised the OLCC that the Board of Commissioners had received the application of the True Value Oil Company dba Bingo Gas, that the permitted uses in the ID zone do not include this type of activity, a Public Hearing was held before the Marion County Hearings Officer who granted the Applicant's application for a conditional use which included a convenience grocery store at the site of the application, 4220 Brooks Lake Road, Brooks, Oregon, subject to conditions and prescribed time period for an appeal. The Applicant has complied with the conditions and the Appeals Rights have expired. In view of the fact and circumstances and the lawful right of the Hearings Officer to reverse the Board of Commissioners (subject to appeal which time has expired) the Board of Commissioners may be deemed to have approved the Hearings Officer's Order granting the Conditional use permit which included the operation of a convenience grocery store at the site of the application. Furthermore, the Marion County Board of Commissioners formally reconsidered and

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approved the application on September 28, 1981. This criteria, therefore, should be given no weight against the issuance of the license to the Applicant.

2. The following criteria will be given sufficient consideration so that a license will not be issued unless good cause which outweighs the criteria involved is shown by the applicant:

The applicant seeks a Package Store license at an outlet which sells petroleum products and does not or will not maintain a wide variety of grocery items. For purposes of this rule, "wide variety" means an inventory at cost to the applicant of not less than \$5,000. For good cause shown, the Commission may disregard this criterion for licenses which were originally issued prior to August 29, 1979, the effective date of this rule. OAR 845 05-025(9).

In the instant matter, the Applicant has demonstrated that its convenience grocery store has an average monthly inventory valued at \$15,000 and that the average monthly sales range from \$10,000 to \$20,000. However, the Applicant's inventory does not constitute a "wide variety" of grocery items. A wide variety of grocery items means a wide variety of articles for human consumption which are customarily served as food or substances entering into the preparation of foods in the home. Such foods include peanut butter, bread, butter, beans, corn, beets, meats and other foods found to satisfy the ordinary eating habits of the general public; and not merely a relatively large inventory of snack items to satisfy the needs of truckers and freeway

travelers. Therefore this criteria should weigh heavily against the application for license.

ULTIMATE CONCLUSIONS OF LAW

The application by the True Value Oil Company, Inc. for a PS license at the site of the Bingo Gas is not demanded by public interest and convenience as the Applicant's grocery store does not provide a wide variety of grocery items. Furthermore, the Applicant has not shown good cause for issuance of a Package Store license at the site of the location. ORS 471.295(1).

From the foregoing Findings of Fact and Conclusions of Law the following Order is therefore entered:

FINAL ORDER

That the application for a Package Store (PS) license by the True Value Oil Company, Inc., dba Bingo Gas, 4220 Brooks Lake Road, Brooks, Oregon be DENIED.

It is further ordered that due notice of such action, stating the reasons therefore, be given as provided by law.

Dated this 18th day of November, 1981.



C. Dean Smith
Administrator
OREGON LIQUOR CONTROL COMMISSION

NOTICE: You are entitled to Judicial Review of this order. Judicial Review may be obtained by filing a Petition for Review within 60 days from the service of this Order. Judicial Review is pursuant to the Provisions of ORS Chapter 183.