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BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Application for a)	
Dispenser Class A (DA))	
License by:)	
)	FINAL
Mr. Steak, Inc.)	FINDINGS OF FACT,
MR. STEAK #650)	CONCLUSIONS OF LAW,
10505 SW Beaverton-Hillsdale Hwy.)	AND ORDER
Beaverton, OR 97005)	
- - - - -)	
Washington County)	

A hearing in the above matter was held on the 5th day of April, 1983, in Portland, Oregon, before Hearings Examiner Allen R. Scott. The Applicant appeared in person and was represented by John Wiley Gould, Attorney at Law. The Commission was represented by legal counsel. The Commission having considered the record of the hearing, 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. Applicant seeks a Dispenser Class A (DA) license at MR. STEAK #650. The premises presently holds a Restaurant (R) license.
2. The Commission's staff has recommended that the application be denied based upon OAR 845-05-030(1) (sufficient licensed premises in the area), OAR 845-05-040(1), 845-05-040(2), 845-05-040(3)(f) (lesser services, facilities and economic benefit), 845-05-040(2)(b) (not unique), and 845-05-040(2)(c) (failed to establish that the public is not being adequately served).

3. Applicant's premises is located on the Beaverton-Hillsdale Highway, just outside the city limits of Beaverton. The highway is a heavily developed urban thoroughfare.

4. Almost half of the customers at Applicant's premises come from less than three miles. Approximately 75 percent live within five miles of the premises.

5. The area within five miles of Applicant's premises contains many family residences. It also contains many business and commercial enterprises.

6. Applicant considers the premises to be a "family" dining establishment, as are Mr. Steak operations in general. Applicant hopes to maintain the family trade. However, probably because of the proximity of many commercial business establishments, Applicant obtains much of its business from adults unaccompanied by children. Applicant believes that a DA license will help to maintain and increase the adult business.

7. The premises is presently open from 7:00 a.m. to 9:00 p.m. (10:00 p.m. on Friday and Saturday), seven days a week. Breakfast, lunch and dinner are served.

8. The premises consists of two dining sections. If the DA license is granted, Applicant intends to install a moveable partition between the two portions. At 9:00 p.m. or 10:00 p.m., Applicant would close the partition and use the front portion of the premises as a lounge until midnight. The rear portion would be closed at this time, unless a banquet were underway. The premises would thus be closed to minors after the partition was closed.

9. Applicant intends that the front portion, when being operated as a lounge in the evening, would be a "show bar." Flaming drinks would be served. Applicant believes these are unusual in the area.

10. Applicant's dinner menu features steaks. Chicken and seafood dishes are also offered, as are salads and various side dishes. Most of the dinners are in the \$4.50 to \$7.50 price range. Applicant also offers a special steak menu which contains five items ranging in price from \$8.25 to \$11.95. When fresh seafood is available, Applicant also offers a seafood menu containing six dishes: razor clams, oysters, halibut, steamer clams, scampi and a combination plate.

11. The lunch menu contains steaks, seafood, burgers, salads and several entrees.

12. The breakfast menu contains traditional breakfast items, including 28 omeletes. Applicant began serving breakfast in October of 1982.

13. Sales at Applicant's premises have been as follows:

<u>MONTH</u>	<u>FOOD</u>	<u>BEER & WINE</u>	<u>TOTAL</u>
<u>1982</u>			
January	\$40,805	\$ 811	\$41,616
February	37,992	840	38,832
March	42,371	1,079	43,450
April	46,078	1,480	47,558
May	47,276	1,352	48,628
June	44,521	1,253	45,774
July	42,545	1,355	43,900
August	37,414	951	38,365
September	37,023	1,026	38,049
October	41,939	1,605	43,544
November	42,134	1,794	43,928
December	45,014	1,449	45,163
Average	42,093	1,141	43,234

<u>MONTH</u>	<u>FOOD</u>	<u>BEER & WINE</u>	<u>TOTAL</u>
<u>1983</u>			
January	\$46,930	\$1,356	\$48,286
February	41,747	1,310	43,056
Average	44,338	1,333	45,671

14. Dispenser outlets in Washington County have had the the following average monthly sales:

<u>FOOD</u>	<u>ALCOHOLIC BEVERAGE</u>	<u>TOTAL</u>
\$39,133	\$21,008	\$60,141

15. Applicant provided several predictions of sales if the license is granted, based upon several slightly different assumptions. They place Applicant's sales in the range of \$71,000 to \$76,000 per month if the license is granted.

16. Applicant considers his trading area to be a five mile radius of the premises. There are 32 DA outlets within this area. The average gross sales of food and alcoholic beverage at these premises has been \$78,764. Median gross sales at these premises has been \$59,779. The median is considerably lower than the average because there are a few premises among these 32 which have rather large sales, with five averaging more than \$150,000 per month.

17. Most of the 32 existing dispenser outlets within five miles of Applicant's premises differ in some significant way from Applicant's operation. Only a few serve breakfast. Approximately 12 feature ethnic food such as Chinese, Mexican or Italian. Others feature specialities, such as fish or barbequed food, which differ from Applicant's emphasis. Several

have something of a tavern atmosphere or attract a substantial "singles" crowd.

18. Washington County, which has a population of 253,800, presently has 90 DA and Dispenser Class B (DB) licenses committed and in operation.

19. The area within two miles of Applicant's premises has an approximate population of 50,000 and contains 23 dispenser premises.

20. The Commission presently has approximately 70 DA and DB licenses available for issuance. The Commission usually receives several applications for such licenses per month and has approximately 30 applications for such licenses pending.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The existence of sufficient licensed premises in the locality set out in an application shall weigh against granting the application. For purposes of this section, the applicant's community will be a 10-mile radius for dispenser licenses and a two-mile radius for other licenses, unless the applicant establishes that a substantial portion of the patronage of the premises is or would be from a larger or smaller area.

OAR 845-05-030(1).

The evidence does not establish that sufficient licensed premises exist in the community. Washington County is "under-subscribed" in relation to the statutory "quota." That is some indication that the area is not sufficiently served. Evidence was offered as to the number of premises within five miles of Applicant's restaurant, but nothing was offered which would establish that the number was sufficient or insufficient, in

relation to population or public need. The evidence does indicate that the area within two miles of Applicant's premises has fewer than one dispenser premises per 2,000 population.

The Commission concludes that this criterion is not a basis for denying the license.

2. An application for a dispenser license may be granted or denied on the basis of a comparison with other existing dispenser licenses in the same city or county or with other pending applications for such licenses anywhere in the state. OAR 845-05-040(1).

Unfavorable consideration may be given to an applicant if the applicant's premises will provide lesser services, facilities and economic benefit to the area or to the general public, as indicated by actual or reasonably projected number of patrons served, seating capacity, banquet facilities, hours of operation, number of employees, extent of investment in facilities, amenities or other such characteristics. Gross sales figures may be used as a basis for determining the number of patrons served.

OAR 845-05-040(3)(f).

Applicant's total average sales are now significantly below the average sales at existing premises in Washington County. They are also substantially below the average sales at premises within five miles, a geographical community which Applicant believes to be his trading area. It is noted, however, that Applicant's present food sales are above those of existing premises. Applicant's estimates of total sales if the license is granted would place its sales above the average for Washington County and approximately the same as the average for the trading community. These estimates predict an increase in total sales of approximately 70 percent. The Commission does not

consider these estimates to be particularly persuasive. It is noted, however, that Applicant provided evidence that median sales at existing premises within five miles is substantially less than the average, primarily because of the existence of several premises which have very large sales. Applicant argues that the median is a more significant figure to use in this context. The Commission tends to agree and concludes that Applicant's sales with the license will probably approach the median of \$59,779 for premises within the trade area. It may be concluded therefore that Applicant's premises will probably serve as many patrons as the majority of existing premises within five miles.

The evidence establishes that Applicant will use part of its premises as a banquet facility. It is noted, however, that Applicant indicates a reluctance to use this part of the premises for banquets during the busy part of the day. Thus, the banquet facility will probably not provide a significant service.

The Commission concludes that this criterion provides some basis for preference in granting the license.

3. Preference in licensing may be given to an applicant showing that the premises will provide dining service or atmosphere which is unique or substantially different in quality or type from that offered by other licensees within a 20-mile radius as indicated by menu, decor and amenities, entertainment or other such characteristics.

OAR 845-05-040(2)(b).

Applicant provided evidence that the area from which most of his trade comes is a five mile radius of the premises. That seems to be the relevant geographical area.

Applicant's premises is basically a moderately priced steak house, with, however, a more varied menu than this characterization would suggest. Applicant made no particular claim to having unusual decor. It is therefore not easy to accept the argument that the premises is different from many other premises in the locale. However, Applicant did provide credible evidence that many of the establishments within five miles differ in some respect: many feature different kinds of food from that offered by Applicant, others have a generally different atmosphere or style than Applicant's premises, and others are considerably more expensive. Applicant has therefore established that his premises, while not literally unique, is unusual in the trading area.

The Commission concludes that this criterion provides some basis for granting the license.

4. ORS 472.114 states as follows:

(1) It is the finding of the Legislative Assembly that ORS 471.030(2) does not require the Commission consistently to grant licenses to applicants which have the potential to do a larger gross business than other applicants.

(2) It is the intention of the Legislative Assembly, that in issuing Class "A" and "C" licenses authorized under ORS 472.110 and 472.113, the Commission shall recognize the importance of issuing licenses to otherwise qualified applicants located in rural and unincorporated areas and in incorporated areas with populations of less than 25,000.

(3) It is the intent of the Legislative Assembly that the Commission shall recognize the importance in licensing applicants described in subsection 2 of this section to also recognize those having seating capacities for 100 or fewer patrons.

Applicant's premises is located outside the city limits of Beaverton. It is therefore in an unincorporated area. There was debate in the hearing between counsel for the Commission and counsel for the Applicant as to whether an establishment has to be in an unincorporated area that is also rural to receive a preference under subsection (2) of this statute. The Commission does not feel that the wording of this section indicates that the area must be both rural and unincorporated. However, the Commission would conclude that any preference under this section would be slight in this case because of the nearness of the premises to a large incorporated area.

ULTIMATE CONCLUSIONS OF LAW

A DA license should be granted because Applicant's premises will provide service to substantial numbers of patrons, because it provides food service and atmosphere which are somewhat different from most of the premises in the area, and because it is an unincorporated area. OAR 845-05-040(2)(a), (2)(b), and ORS 472.114.

FINAL ORDER

It is hereby ordered that the application for a Dispenser Class A (DA) license by Mr. Steak, Inc., in the trade name Mr. Steak #650, 10505 SW Beaverton-Hillsdale Highway, Beaverton, Oregon 97005, be GRANTED.

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

Dated this 20th day of June, 1983.



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.