

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
)	FINDINGS OF FACT,
David M. Jones)	CONCLUSIONS OF LAW,
SAND CASTLE INN)	AND ORDER
8275 Highway 101)	
Waldport, Oregon 97394)	
- - - - -)	
Lincoln County)	

A hearing in the above matter was held on the 20th day of October, 1982, in Newport, Oregon, before Hearings Examiner Douglas Crumme'. The Applicant appeared in person and was represented by James K. Neill, Jr., Attorney at Law, Portland, Oregon. The Commission was not 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. David M. Jones has applied for a Dispenser Class A (DA) license at the SAND CASTLE INN, 8275 Highway 101, Waldport, Oregon. Mr. Jones has held a Restaurant license at this location since July 23, 1981.

2. The Commission's Licensing Staff has recommended that the Applicant's application be refused, citing the following:

- a. ORS 472.160(1) (sufficient licensed premises and not demanded by public interest or convenience); OAR 845-05-030(1) (sufficient licensed premises);

- b. OAR 845-05-040(1) (comparison with existing outlets in applicant's city or county);
- c. OAR 845-05-040(3)(f) (applicant will provide lesser services or facilities than existing outlets in city or county); ORS 472.110(4) (quota);
- d. Battle Creek Golf Course, Inc. v. OLCC, 21 Or. App. 179, 183-84, 534 P2d 204 (1975); and
- e. ORS 472.114 (preference may be given to dispenser applicants with seating for less than 100 or located in communities with populations of 25,000 or less).

(Commission's Exhibit D.)

3. The Sand Castle Inn is located on Highway 101, two miles south of Waldport, in southern Lincoln County.

4. The Commission takes official notice that the Sand Castle Inn is located in a rural area.

5. The Sand Castle Inn is located on a sandstone rise overlooking the beach and Pacific Ocean. The dining room and lounge have an expansive view of the beach and ocean. The Sand Castle Inn has flood lights that shine on the ocean at night so that evening patrons may also see the surf.

6. The Sand Castle Inn has a first floor dining room and is completing a second floor lounge. The dining room has seating for 87 persons. The lounge will have seating for 48 persons.

7. The Applicant plans to hold banquets in the upstairs lounge.

8. The Applicant has spent approximately \$68,000 on new equipment and for reconstruction of the building since going

into business at the Sand Castle Inn. Approximately \$10,000 to \$12,000 in additional work remains to be done to the upstairs lounge.

9. The dining room of the Sand Castle Inn is attractively decorated. The dining room has wall-to-wall carpeting. Tablecloths and cloth napkins are used. Carved wooden beams and wooden window moldings offer contrast to the off-white plaster walls. Both the downstairs dining room and the upstairs lounge have fireplaces. (Applicant's Exhibit Nos. 1 through 5.)

10. The Sand Castle Inn does not have any pool tables or game machines.

11. The Applicant's dining room hours are as follows:

<u>DAYS</u>	<u>HOURS</u>
Weekdays	11:00 a.m. to 10:00 p.m.
Friday and Saturday	11:00 a.m. to 11:00 p.m.
Sunday	10:00 a.m. to 10:00 p.m.

The lounge will be open at the same hours but close at midnight on weekdays and 1:00 a.m. on Friday and Saturday.

12. The Applicant does not serve breakfast with the exception of Sunday brunch. The champagne Sunday brunch includes such dishes as eggs Benedict, eggs Florentine and chicken liver madiera.

13. The Applicant's lunch menu includes the following: prime rib sandwich; shrimp salad; crab salad; sirloin burger platter; French dip sandwich; Reuben sandwich; crab and cheese sandwich; bacon, lettuce and tomato sandwich; turkey sandwich; ham and cheese sandwich; shrimp salad sandwich with avocado; shrimp omelet with mushrooms; crab omelet with mushrooms;

cheese and mushroom omelet; teriyaki steak; fish and chips; jumbo prawns; filet of sole; soup of the day; Sand Castle chowder; shrimp cocktail; crab cocktail; five children's plates; beverages and desserts. (Applicant's Exhibit No. 11.)

14. The Applicant's dinner menu includes the following: jumbo prawns (\$9.95), oysters (\$7.95), scampi (\$10.95), lobster tails (\$21.50), Alaskan halibut (\$8.50), salmon (\$8.95), razor clams (\$8.95), seafood platter (\$9.50), petrale sole (\$6.95), Sand Castle veal (\$6.50), prime rib (\$8.95 and \$11.95), top sirloin steak (\$9.95), pork chops (\$6.95), chicken (\$6.50), liver and onions (\$5.95), sauteed scallops, plus appetizers, soups, salads, beverages, desserts and children's plates. (Applicant's Exhibit No. 10.)

15. The Applicant attempts to serve fresh beef and fish as much as possible. The Applicant avoids deep frying and pre-frozen food. The emphasis is on sauteeing and poaching.

16. The sales at the Sand Castle Inn have been as follows:

ACTUAL SALES

<u>MONTH</u>	<u>FOOD SALES</u>	<u>BEER AND WINE</u>	<u>TOTAL</u>
<u>1981</u>			
August	\$20,879.40	\$2,371.60	\$23,251.00
September	13,716.05	1,923.70	15,639.75
October	11,912.60	1,639.85	13,552.45
November	8,288.90	1,108.95	9,397.85
December	5,914.45	821.80	6,736.25
<u>1982</u>			
January	6,311.90	748.40	7,060.30
February	7,154.10	884.20	8,038.30
March	9,290.70	1,219.15	10,509.85
April	9,693.30	1,321.80	11,015.10
May	13,647.60	1,550.20	15,197.80
June	13,221.20	1,387.85	14,609.05
July	20,917.15	2,453.95	23,371.10

ACTUAL SALES

<u>MONTH</u>	<u>FOOD SALES</u>	<u>BEER AND WINE</u>	<u>TOTAL</u>
August	22,667.65	2,490.60	25,153.25
<u>September</u>	<u>20,254.60</u>	<u>2,477.85</u>	<u>22,732.45</u>
Average, 10-81 to 9-82	\$12,439.51	\$1,508.71	\$13,948.22

17. The Applicant projects that his sales at the Sand Castle Inn would increase 40 percent with the receipt of a DA license. The Applicant bases this projection in part on the discussions that he has had with other restaurant owners and with area motel owners about the number of people who do not patronize a restaurant if cocktails are not available. A 40 percent increase from the Sand Castle Inn's average monthly total sales between October, 1981 and September, 1982 would yield a monthly total of \$19,527.50.

18. The Dispenser Class B (DB) licensed Moose Lodge in Waldport appears to Applicant David Jones to cater to members and non-members alike. Mr. Jones believes that if the Moose Lodge's operations were limited to only those persons allowed under the Commission's regulations, there would be more business for the DA outlets in the Waldport area.

19. Dispenser outlets in the following areas have recently experienced the average monthly sales indicated:

<u>AREA</u>	<u>FOOD SALES</u>	<u>TOTAL SALES</u>
Lincoln County	\$35,384	\$49,862
City of Waldport	19,874	29,303
City of Yachats	20,018 *	25,146 *

* The Commission takes official notice of the October 18, 1982 Commission computer printout listing recent average monthly sales for the four Yachats DA outlets.

20. The following areas contain the populations and number of dispenser's outlets indicated:

<u>AREA</u>	<u>POPULATION</u>	<u>POPULATION DIVIDED BY 2,000</u>	<u>DISPENSER'S LICENSES ISSUED OR COMMITTED</u>	
			<u>DA/DB</u>	<u>DC</u>
Lincoln County	35,530	17.77	43	4
City of Waldport	1,315	.66	2	0
City of Yachats	485	.24	4	0

21. The nearest dispenser outlets to the Sand Castle Inn and their seating are as follows:

<u>OUTLET</u>		<u>DISTANCE AND DIRECTION FROM SAND CASTLE INN</u>	<u>SEATING</u>		
			<u>DINING</u>	<u>LOUNGE</u>	<u>BANQUET</u>
Iron Kettle	(DA)	2.1 miles N.	58	136	0
4 J's Rest.	(DA)	2.3 miles N.	46	38	0
The Moose Lodge	(DB)	3 miles NE	N/A	N/A	N/A
Bayshore Inn	(DA)	4 miles N.	70	32	250
The Experience	(DC)	6 miles NE	35	0	0
The Adobe	(DA)	5.8 miles S.	56	22	0
Beulah's Seaview	(DA)	6.5 miles S.	100	80	0
Riverview Inn	(DA)	6.5 miles S.	60	12	50
La Serre	(DA)	6.5 miles S.	70	0	0

22. The Sand Castle Inn is operated as a very high-quality dinner house. Of the nearest dispenser outlets to the Sand Castle Inn, The Adobe and The Experience would most nearly fall into the same category. The other dispenser outlets listed in Finding of Fact No. 21 above serve dinners but have less of a gourmet orientation than the Sand Castle Inn. The 4 J's Restaurant and the Iron Kettle, in particular, do not fall into this category.

23. The Adobe has a direct view of the ocean. One or two of the other dispenser outlets in Yachats have a view of the Yachats River but have less of a view of the ocean. None of

the dispenser outlets in Waldport have a view of the ocean, although the Bayshore Inn has a view of Alsea Bay.

24. No more than three or four of the 47 dispenser outlets in Lincoln County have the combination of an ocean view and very high-quality food found at the Sand Castle Inn.

25. The beaches in Lincoln County are a popular tourist destination. There are a large number of motels in Lincoln County that cater to tourists.

26. There are ten to 12 motels between Waldport and Ya-chats in the vicinity of the Sand Castle Inn. These motels regularly refer guests to the Sand Castle Inn.

27. There are a number of retired persons that live in Lincoln County. Many of these retired persons particularly enjoy going out to dinner at a high-quality dining establishment.

28. In addition to the beach, many persons visit the Waldport area in connection with boating and fishing on the Alsea River and in Alsea Bay.

29. The Sand Castle Inn employs from 15 to 20 persons.

30. The following Lincoln County residents testified at the Applicant's hearing in support of the issuance of a DA license at the Sand Castle Inn:

Honorable Max Rijken, Oregon State Representative,
District 4

Ronald Leavens, Editor, Coastal Currents

Russell Jacobson, Waldport business owner and member of local community service club

31. The following persons wrote letters to the Commission in support of license issuance:

Ronald Earl Leavens, Editor, Coastal Currents
Ron and Cheryl Mundelle, Waldport Seafoods
Jim and Anne Baker, owners, The Deli Wharf
Carole Johnson, director of sales and marketing,
The Inn At Otter Crest
Bonnie Deemer, Miller's Motel, Newport
Charles Johnson, manager, Newport Chamber of
Commerce
Charles Rook, KCRF Radio Station, Lincoln City
Deirdre Peterson, office manager, South Bay
Marina, Inc., Newport
William Gardner, William Gardner Agency, Otter
Rock
Warren Kenton, owner, Hilltop General Store and
Gallery, Waldport
Mr. and Mrs. Don Williams, business owners, Lincoln
County
Richard and June Martin, Sears & Roebuck Catalog Sales
Merchants, Waldport
Don Vandehey, Don Vandehey Construction, Waldport
Viola L. Thompson, Thompson Insurance, Waldport
Ronald Corbell, principal, Waldport Jr. High
Philip A. Spulnik, Waldport Realty Company, Inc.
Ted and Cathleen Wilcox, The Stained Glass Studio,
Waldport
Edna Comstock, broker, Bayshore Realty, Inc., Waldport
Todd and Erika Lindberg, owners, Alsea Manor Hotel,
Waldport
Robert and Mary Oxley, Shamrock Lodgettes, Yachats
Rodney R. Helms, OLCC Agency No. 45, Waldport
Mack and Judy Remington and family, Mack's Chevron
Service, Waldport

Russ Jacobson, Casper Janitorial Company, Waldport

Ron and Tina Dyer, The Brass Bell, Newport

Howard Adams, Certified Public Accountant, Newport

Joseph and Ann Christine Swafford, owners of a lunch restaurant and specialty gift shop in Newport

(Applicant's Exhibit Nos. 25 through 50.)

32. Approximately 350 persons have signed a petition in support of the issuance of a DA license to the Applicant at the Sand Castle Inn. (Applicant's Exhibit No. 23.)

33. At the date of the Applicant's hearing there were 79 dispenser licenses available to the Commission for issuance to DA and DB applicants. On this same date there were 26 DA applications and no DB applications pending before the Commission.

34. The Commission receives an average of 12 to 15 new dispenser license applications each month.

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 fact that Lincoln County contains 47 dispenser's outlets for its permanent population of 35,530 indicates prima facie evidence under OAR 845-05-040(2)(c) that the Applicant's community is adequately served by existing outlets. Lincoln

County is a very popular tourist area and receives a large influx of weekend and other tourist visitors. In such a situation, it is very difficult to gauge whether a community contains sufficient outlets in terms of the one per 2,000 quota under ORS 472.110. In this case, however, the figures in Finding of Fact No. 20 show that Waldport and Yachats, the nearest cities to the Sand Castle Inn, contain even more dispenser's outlets per permanent population than Lincoln County as a whole. In addition, there are two additional dispenser outlets (The Bayshore and The Experience) that are located a short distance outside the city limits of Waldport. These figures indicate then that the Applicant's community is adequately served by existing dispenser outlets despite the tourism in Lincoln County. This weighs against license issuance under OAR 845-05-030(1).

2. An application for a DA license may be granted or denied on the basis of a comparison with existing DA licenses in the same city or county or a comparison with other pending dispenser's applications. OAR 845-05-040(1). Preference in licensing may be given to applicants providing greater economic benefit to the area or 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, entertainment or such characteristics. Gross sales figures may be used as a basis for determining the number of patrons served. OAR 845-05-040(2)(a).

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).

a. The Applicant's projected sales are substantially lower than the average monthly gross sales of existing DA outlets in Lincoln County. The Applicant's projection of a 40 percent sales increase with a DA license yields a monthly total of \$19,527.50. Lincoln County DA outlets recently averaged \$49,862 per month in total sales. Waldport DA outlets recently averaged \$29,303 and Yachats DA outlets averaged \$25,146 in monthly total sales. Unfavorable consideration for license issuance is therefore shown under OAR 845-05-040(3)(f) based on sales.

b. The Applicant has more seating than six of the eight nearest dispenser outlets to the Sand Castle Inn. Although the record does not show how the Applicant's seating compares to dispenser outlets in Lincoln County as a whole, the favorable comparison to six of the eight nearest dispenser outlets indicates a preference under OAR 845-05-040(2)(a).

3. Preference for issuance of a dispenser license will be given to applicants who provide dining service or atmosphere which is unique or substantially different in quality, quantity or type from that offered by other licensees within a 20-mile radius as indicated by menu, decor and amenities, entertainment or other characteristics. OAR 845-05-040(2)(b).

The Applicant's combination of an expansive ocean view and a very high-quality dinner house presentation is found at only

three or four of the 47 dispenser outlets in Lincoln County. This is a reasonable indication that the Applicant offers dining service or atmosphere which is substantially different from existing dispenser outlets in a 20-mile radius. A preference for licensure is therefore shown under OAR 845-05-040(2)(b).

4. The number of dispenser licenses available to the Commission for issuance to DA and DB outlets is limited under ORS 472.110. Caution must be exercised in the review of this application then, in order to insure that only those dispenser license applicants most qualified to serve the public interest and convenience are issued the limited dispenser licenses available. There are, however, more dispenser licenses available for issuance to DA and DB outlets than the number of applications presently pending for such licenses. The existence of some factors showing a lack of preference for license issuance under some of the Commission's license criteria then should not preclude license issuance if the applicant shows sufficient preference factors under other of the license criteria. Battle Creek Golf Course, Inc. v. OLCC, 21 Or. App. 179, 183-84, 534 P2d 204 (1975); ORS 472.160(1).

5. The Commission may refuse to issue or renew a license if it determines that public opinion weighs against the issuance of a license. Interested persons may express their support for or opposition to the issuance of a particular license by petition or letter timely received at the Commission offices, or by personal appearance and testimony at a Commission hearing, if any. Such public opinion will be evaluated in light of the reasons expressed and the extent to which the persons expressing it are likely to be affected by the issuance of

the license. Greater weight will be given to opinion of persons residing, working or owning a business within a one-mile radius of the proposed premise. The number of persons expressing support or opposition will not, in and of itself, be controlling. OAR 845-05-035.

Substantial public opinion in support of issuance of a DA license has been shown. Three members of the community testified at the Applicant's hearing. Letters in support were received from 26 Lincoln County residents or business persons. Approximately 350 persons signed the Applicant's petition. OAR 845-05-035.

6. Preference in licensing may be given to dispenser's license applicants where an applicant's premises are located in a rural unincorporated area or in an incorporated area with a population of less than 25,000. OAR 845-05-040(2)(d).

The Sand Castle Inn is located in a rural unincorporated area. Preference for license issuance is therefore indicated under OAR 845-05-040(2)(d).

ULTIMATE CONCLUSIONS OF LAW

The Applicant's application is demanded by the public interest and convenience despite the fact that the Applicant's community is relatively adequately served by existing dispenser outlets and despite the Applicant's comparatively low likely sales in relation to DA outlets in Lincoln County as a whole, because the Applicant's combination of a fine ocean view and high-quality dinner house cuisine is substantially different from existing dispenser's outlets in Lincoln County, because the Applicant's number of seats compares favorably to existing

dispenser outlets nearby in Yachats and Waldport, and because preference for license issuance is indicated by the Applicant's location in a rural unincorporated area. ORS 472.160(1).

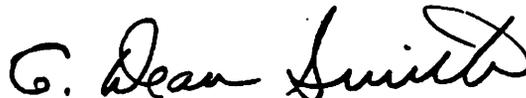
FINAL ORDER

It is hereby ordered that the application by David M. Jones for a Dispenser Class A (DA) license at the Sand Castle Inn, 8275 Highway 101, Waldport, Oregon, be GRANTED subject to the following conditions:

- a. The Applicant must complete construction of the upstairs lounge as represented in Applicant's Exhibit No. 8 prior to the exercise of dispenser license privileges.
- b. The Applicant must comply with condition "a" above and be prepared to open with a Dispenser Class A license within six months of the date of the Commission's Final Order in this matter or the DA license granted to the Applicant will be withdrawn.

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

Dated this 24th day of January, 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.