

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,
Kennedy and Lucia Hawkins)	CONCLUSIONS OF LAW,
ELKHORN INN)	AND ORDER
4780 Highway 35)	
Odell, Oregon 97044)	
- - - - -)	
Hood River County)	

A hearing in the above matter was held on the 13th day of February, 1984, in Portland, Oregon, before Hearings Examiner Allen R. Scott. The Applicants appeared in person and were represented by Thomas G.P. Guilbert, Attorney at Law, Portland. The Commission was not represented by legal counsel.

On May 21, 1984 the Commission considered the record of the hearing, the Proposed Order of the Hearings Examiner, and applicable statutes and regulations. Pursuant to this review, the Commission enters the following:

FINDINGS OF FACT

1. Applicants seek a Dispenser Class A (DA) license at the ELKHORN INN. The premises presently has a Retail Malt Beverage license.

2. The Commission's Staff has recommended that the application be denied based upon OAR 845-05-030(1) (sufficient licensed premises in locality), 845-05-040(3)(f) (lesser services, facilities), 845-05-040(2)(b) (applicants have not established uniqueness), 845-05-040(2)(c) (applicants have not established that the public is not adequately served by existing

outlets), and 845-05-040(3)(e)(B) (premises will be operated primarily as a tavern).

3. Applicants' premises is located in an unincorporated area on Highway 35 approximately 11 miles south of the town of Hood River and 28 miles north of the Mt. Hood Meadows ski area. Highway 35 is a main highway between the east side of Mt. Hood and the Columbia River.

4. Applicants have operated the premises for approximately two-and-one-half years. It had been a tavern for many years before they took over ownership.

5. After taking over the premises, Applicants have painted the exterior and added a new entrance and a false front and porch. Applicants have also created a family dining room seating 30 and have carpeted this area and the lounge/bar.

6. If the DA license is granted, Applicants will take out all games and pool tables and make the game room into a new dining area which will also be available for banquets. They will put a partition between this area and the present bar and lounge.

7. Seating in the remodeled premises will be as follows: 55 in the existing restaurant area; 30 in the new dining/banquet area; and 30 in the lounge.

8. If the DA license is granted, the premises will be open seven days a week all year for lunch and dinner.

9. If the license is granted, Applicants' lunch menu will include a prime rib sandwich, French dip sandwich, chicken basket, shrimp basket, and soup and salad. The dinner menu

will contain the following nine entrees: roast prime rib, rib steak, ham steak, prime barbecue ribs, fantail shrimp, ocean scallops, Pacific oysters, seafood platter, and fried chicken. The entrees will range in price from \$6.25 to \$12.95. Appetizers and desserts will also be offered.

10. Some of the items on Applicants' menu, such as barbecued ribs, ham steak, and rib steak, are not generally found in other restaurants in the area. Prices of some of the items on the menu are lower than prices of comparable items on menus of other DA premises in the area.

11. The decor of the premises is that of a rustic mountain cabin with finished knotted pine interior walls.

12. Monthly sales at the premises have been as follows:

<u>MONTH</u>	<u>FOOD SALES</u>	<u>BEER/WINE</u>	<u>TOTAL SALES</u>	<u>FOOD PERCENTAGE</u>
<u>1982</u>				
January	\$1,709	\$4,663	\$ 6,372	26%
February	1,619	4,806	6,425	25%
March	1,789	5,444	7,233	25%
April	2,419	5,639	8,058	30%
May	2,486	5,500	7,986	31%
June	2,291	5,123	7,414	31%
July	3,590	5,731	9,321	38%
August	4,161	5,387	9,548	44%
September	4,176	5,080	9,256	45%
October	3,489	5,410	8,899	39%
November	2,793	4,046	6,839	41%
December	3,147	3,425	6,572	48%
<u>1983</u>				
January	3,109	4,625	7,734	40%
February	2,743	4,184	6,927	30%
March	4,388	4,749	9,137	48%
April	4,541	4,929	9,470	48%
May	4,937	4,427	9,364	52%
June	4,866	5,012	9,878	49%
July	5,867	6,037	11,904	49%
August	5,012	5,308	10,320	48%
September	4,412	4,792	9,204	48%
October	4,451	4,510	8,961	49%

November	3,479	3,726	7,205	48%
December	4,103	3,741	7,844	52%
<u>1984</u>				
January	4,699	3,259	7,958	59%
Average - (Last 12 Months)	\$4,458	\$4,556	\$ 9,014	49%

13. Applicants provided the following credible projections of sales if the license is granted: food - \$11,825; alcoholic liquor - \$10,479; total - \$22,304.

14. Average monthly sales at existing DA premises in Hood River County have been as follows: food - \$29,720; alcoholic liquor - \$13,798; total - \$43,518.

15. Applicants have occasionally hosted meetings at the premises. With the DA license and the banquet facility, they will have more banquet and meeting business. There are four companies within five miles of Applicants' premises, including Diamond Fruit Company, U.S. Forest Service regional office, and two mills, which will be good sources of such business.

16. The nearest DA outlets to Applicants' premises are six premises in the City of Hood River, approximately 9.5 to 12 miles from Applicants' premises. Only one is within 10 miles. The next nearest premises with a DA license is the Alpenstube at Mt. Hood Meadows, approximately 28 miles south of Applicants' premises. A DC premises, the Cooper Spur Inn, is approximately 13 miles south of Applicants' premises.

17. Hood River County, with a population of 15,870, presently has 15 DA and DB licenses in operation. The unincorporated area of the County contains 10,705 people and has six DA and DB licenses in operation.

18. The Commission has approximately 67 DA and DB licenses available for issuance.

19. Applicants offered three letters from residents of the general area in support of the application. The letters generally cite the improvements that Applicants have made in the premises since taking over, the good quality of the food, and the desire of the writers to have a convenient place at which they can enjoy cocktails.

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 Commission's Staff claims that there are sufficient licensed premises in the locality. Under this rule, the community is the area within ten miles of Applicants' premises. According to the evidence offered by the Commission, there is only one DA premises within ten miles, a premises in Hood River 9.5 miles away. The evidence thus does not give any indication that the service within ten miles can be considered sufficient.

The Commission concludes this criterion does not provide a basis for denying the application.

2. 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).

Applicants' present gross sales are far below the average for the County. Applicants' projections, which are credible, would still leave the sales well below the average. It may be concluded that Applicants' premises will serve fewer patrons than do existing DA outlets on the average. This fact is of less significance in this case than it might otherwise be, given the fact that Applicants' premises is located in a relatively isolated area well removed from most of the existing premises in the County and is thus providing services to a different area and clientele.

Applicants will provide a banquet facility if the license is granted and reasonably expect to have some meetings or banquets at the premises. There is no indication, however, that there is any great need for a banquet facility in the area.

The Commission concludes that, although Applicants' gross sales will be less than the average, this criterion is of relatively less importance in this case because of Applicants' location.

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).

Although some of the dishes on applicants' menu are uncommon in the area and although the menu prices are lower than at many of the other premises in the area, the Commission concludes that this is not sufficient evidence to establish a preference under this criterion.

This criterion does not provide a basis for preference in consideration of this application.

4. Preference in licensing may be given to an applicant showing that the public is not being adequately served by dispenser outlets, if any, in the applicant's community as defined in OAR 845-05-030(1). Evidence that there is more than one dispenser license per 2,000 people in the applicant's city or county will be prima facie evidence that the applicant's community is being adequately served. OAR 845-05-040(2)(c).

The reference in this criterion to OAR 845-05-030(1) establishes that the relevant area is the area within ten miles of Applicants' premises. There is only one DA outlet within that ten-mile radius, a premises 9.5 miles away. Furthermore, Applicants' premises is located on a 30 mile portion of a main highway not presently served by any DA outlet. The evidence also establishes that there is support for the application among some of the people living in the area.

The Commission concludes that the area is not now served by adequate dispenser outlets and that Applicants will provide service to this area, both to local residents and visitors. Applicants have thus overcome the fact that Hood River County, as a whole, has more than one dispenser license per 2,000 population and are entitled to a preference under this criterion.

5. Unfavorable consideration may be given to an applicant if the applicant's premises will be operated primarily as a tavern rather than as a restaurant, as indicated by factors emphasizing the sale of alcoholic liquor to a greater degree than food service. OAR 845-05-040(3)(e)(B).

The only evidence which might tend to support the claim that Applicants' premises will be operated as a tavern is the fact that the projections of sales indicate that anticipated food sales will be only slightly more than half of the total food and liquor sales. However, this evidence is outweighed by substantial other evidence that Applicants intend to, and will, operate the premises as a restaurant. It is noted, for example, that Applicants have changed the operation of the premises since taking it over in a manner consistent with an emphasis on food sales. For example, they created a family dining area in 1982. They also remodeled both the interior and exterior of the premises after taking it over to make it more attractive for dining. It is noted that during 1982 and 1983, Applicants' food sales showed an upward trend, both in dollar amount and as a percentage of total sales. Applicants also propose other changes if the DA license is granted which will emphasize the food service aspect of the business. They will, for example, take out all games and convert the game room into a dining/banquet room. They will also provide a partition between the new dining/banquet room and the bar. Their proposed menu is also more typical of a restaurant than of a tavern.

The Commission concludes that the evidence does not indicate that the premises will be operated primarily as a tavern

and that this criterion is accordingly not a basis for denying the license.

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 population of less than 25,000. OAR 845-05-040(2)(d).

The evidence establishes that Applicants' premises is located in an unincorporated area and that Applicants are thus entitled to preference under this criterion. This criterion is of particular importance in this case because of Applicants' location in an area some distance from other premises.

7. The total number of dispenser licenses issued shall not exceed one per 2,000 population in the state. ORS 472.110(4)

The evidence indicates that the Commission has approximately 67 such licenses available for issuance. This statute thus does not provide a specific basis for denying the application. The bases for denial are found in ORS 472.160 and in OAR 845-05-005 through 845-05-070.

ULTIMATE CONCLUSIONS OF LAW

Applicants' premises will serve fewer patrons than do existing premises in the area on the average. It is concluded, nevertheless, that that criterion is of minor significance in this case because Applicants' premises will provide needed food and beverage service to an area which is not adequately served and which is located along a main highway. It is further concluded that the criterion providing preference for applicants located in a rural area is of particular importance in this case in that Applicants' premises is located a significant

distance from the nearest premises offering food and beverage service of the kind Applicants propose. OAR 845-05-040(2)(c), (2)(d).

FINAL ORDER

It is hereby ordered that the application for a Dispenser Class A (DA) license by Kennedy H. and Lucia Hawkins in the trade name ELKHORN INN, 4780 Highway 35, Odell, Oregon 97044, be GRANTED upon the payment of appropriate license fees to the Commission and with the issuance of the license subject to the following condition:

1. That the premises be remodeled as proposed and be ready for operation as a DA premises within 90 days following the Commission's Final Order in this matter or that the grant of the license 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 May, 1984.

William A. Thomas for

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.