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BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Application for a)	
Dispenser Class C (DC))	
License by:)	FINAL
)	FINDINGS OF FACT,
Dennis and Michelle Muir)	CONCLUSIONS OF LAW,
Michael and Bonnie Graziano)	AND ORDER
dba FEEDLOT RESTAURANT)	
412 Main Street)	
Canyonville, Oregon)	
- - - - -)	
Douglas County)	

A hearing in the above matter was held on the 9th day of December, 1983, in Roseburg, Oregon, before Hearings Examiner Douglas Crumme'. The Applicants appeared in person and were represented by Stephen Kaser, Attorney at Law, Roseburg, Oregon. The Commission was not represented by legal counsel. The record of the hearing was held open to receive additional documentary evidence from the Applicants. A Proposed Order dated April 10, 1984 was issued by the Hearings Examiner. Both the Regulatory Staff and the Applicants submitted exceptions to the Proposed Order.

On May 21, 1984 the Commission considered the record of the hearing, the Proposed Order of the Hearings Examiner, Exceptions to 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. Dennis and Michelle Muir and Michael and Bonnie Graziano have applied for a Dispenser Class C (DC) license at

the FEEDLOT RESTAURANT, 412 Main Street, Canyonville, Oregon. The Applicants have held a Restaurant license from the Commission at the Feedlot Restaurant since April, 1979.

2. The Commission's Regulatory Staff Committee has recommended that the Applicants' application be denied, citing the following:

- a) ORS 472.160(1) (sufficient licensed premises and not demanded by public interest or convenience).
- b) OAR 845-05-030(1) and OAR 845-05-040(2)(c) (sufficient licensed premises in the locality set out in the application).
- c) OAR 845-05-040(2)(b) (dining service or atmosphere not unique or substantially different).
- d) Battle Creek Golf Course, Inc. v. OLCC, 21 Or. App. 179, 183-84, 534 P2d 204 (1975).

(Commission's Exhibit D.)

3. The Feedlot Restaurant is located in downtown Canyonville in southern Douglas County. The Feedlot Restaurant is located about two blocks from an exit off Interstate 5.

4. The Feedlot Restaurant has a cafe and an additional dining room. The cafe has an eating counter. The cafe has total seating for 73 persons. The dining room is known as "The Round-Up Room." The Round-Up Room is used for both evening dining and for banquets. The Round-Up Room can accommodate up to 105 persons for banquets.

5. The Feedlot Restaurant does not have a lounge or public bar. Distilled spirits would be served from a service bar.

6. The Feedlot Restaurant does not have any pool tables or game machines.

7. The decor of The Feedlot Restaurant is rustic and depicts logging and old west themes.

8. The Feedlot Restaurant is open from 6:00 a.m. to 10:00 p.m., seven days a week.

9. The full menu at the Feedlot Restaurant is available all day.

10. The Feedlot Restaurant's menu includes breakfast, lunch and dinner selections.

The lunch selections include fifteen smaller sandwiches, seven larger sandwiches, six hamburgers, soups, side orders, four salads and desserts.

The dinner selections include entrees, children's plates, and specials. The entrees are: top sirloin steak (\$9.50), porterhouse steak (\$11.50), rib steak (\$9.50), T-bone steak (\$9.50), deep-fried shrimp (\$5.95), deep-fried scallops (\$5.75), deep-fried oysters (\$5.75), Captain's plate (\$7.50), breaded veal cutlets (\$5.25), pork chops (\$5.25), roast beef (\$5.25), ham dinner (\$5.25), chicken-fried steak (\$5.25), liver and onions (\$4.75), ground beef steak (\$4.75), four-piece chicken dinner (\$4.95), and two-piece chicken dinner (\$4.15).

Dinner specials have included the following: 16-ounce rib steak (\$8.95), stuffed pork chops (\$7.95), Alaskan king crab (\$10.95), seafood plate (\$9.50) and prime rib (\$8.95). (Commission's Exhibit F.)

11. The Applicants have experienced the following sales at the Feedlot Restaurant:

<u>ACTUAL SALES</u>			
<u>MONTH/YEAR</u>	<u>FOOD SALES</u>	<u>BEER AND WINE</u>	<u>TOTAL SALES</u>
June 1982	\$21,056.78	\$154.00	\$21,210.78
July 1982	20,983.97	252.00	21,235.87
August 1982	24,441.28	466.00	24,907.28
September 1982	19,839.80	319.00	20,158.80
October 1982	18,421.81	261.00	18,682.81
November 1982	15,640.55	177.00	15,817.55
December 1982	18,013.51	302.00	18,315.51
January 1983	15,509.95	221.00	15,730.95
February 1983	16,048.81	216.00	16,264.91
March 1983	19,465.22	266.00	19,731.22
April 1983	18,167.40	273.00	18,440.40
May 1983	19,703.30	347.00	20,050.30
June 1983	21,985.00	435.00	22,420.00
July 1983	24,979.00	428.00	25,407.00
August 1983	27,295.00	527.00	27,822.00
September 1983	25,395.00	377.00	25,772.00
<u>October 1983</u>	<u>25,633.00</u>	<u>322.00</u>	<u>25,955.00</u>
Average (approx.)	\$21,979.00	\$400.00	\$22,379.00

(Applicants' Exhibits 9 and 23.)

12. The Applicants project average monthly food sales of about \$26,979, average monthly alcohol sales of about \$2,900, and average monthly total sales of about \$29,879 with a DC license. This yields a ratio of food to total sales of 90 percent.

13. The Applicants' projected increase in sales with a DC license is based on several factors.

First, the Applicants project the DC license would lead to the sale of an additional 25 dinners per night. At an average ticket of \$5.00 to \$6.00, this would yield an additional \$3,750 to \$4,500 per month extra in food sales.

Second, the Applicants project a DC license would lead to two extra banquets per month. These banquets are projected to be an average size of 75 persons and have an average ticket of \$6.00. This would yield an additional \$900.00 per month.

Finally, the projected increase in alcoholic beverage sales is based on the estimate that one-third of dinner patrons would order an average of \$2.00 worth of alcoholic beverages with their meal. This would be an average of 42 dinner patrons per evening at \$2.00 per dinner times 30 nights per month = \$2,520 additional alcoholic beverage sales per month. (Applicants' Exhibit 16.)

14. During a recent 12-day period, the Applicants compared sales at the Feedlot in the evening from 6:00 a.m. to 3:00 p.m. with the sales from 6:00 p.m. to 10:00 p.m. About 61 percent of the sales during these two periods occurred from 6:00 p.m. to 10:00 p.m. (Applicants' Exhibit 10.)

15. Dispenser outlets in the following areas experienced the average monthly sales indicated below during one-year periods ending in the year indicated:*

<u>AREA/YEAR</u>	<u>FOOD SALES</u>	<u>TOTAL SALES</u>
Canyonville (Forester's) (1983)	\$ 2,090	\$ 7,768
(1982)	1,860	5,990
Douglas County (1983)	15,198	23,770
(1982)	16,785	25,966

* The Hearings Examiner takes official notice of the above figures from the Commission's official computer printouts of the "Percentage of Food Sales to Gross Sales for the Year 1982" and the "Percentage of Food Sales to Gross Sales for the Year 1983".

16. The following areas contain the populations and numbers of dispenser outlets indicated:

<u>AREA</u>	<u>POPULATION</u>	<u>POPULATION DIVIDED BY 2,000</u>	<u>DA & DB LICENSES</u>	<u>DC LICENSES</u>
Canyonville	1,260	0.63	1	1
Douglas County	92,025	36.03	47	3

17. The following are the nearest dispenser outlets to the Feedlot Restaurant and have the recent average sales, seating and banquet capacities indicated:

<u>OUTLET</u>	<u>APPROXIMATE DISTANCE TO FEEDLOT</u>	<u>AVERAGE MO. TOTAL SALES</u>	<u>% OF FOOD SALES TO TOTAL</u>	<u>SEATING: TOTAL/BANQ</u>
Forester's Cafe (DA)	1 Block South	\$ 7,768	27	58/0
Amigo's* (DC)	9 Blocks Northwest	11,452 (projected)	81	100/50
Fat Harvey's (DA)	1.3 miles Northwest	68,449	81	356/200
Sportsman Club (DA)	5.6 miles Northwest	13,511	49	145/0
The Spot (DA)	5.6 miles Northwest	11,800	28	67/0
The Powder Horn (DA)	7.3 miles North	20,296	51	340/(n/a)
Casa de Oro (DA)	10.5 miles North	9,230	38	165/0
South Umpqua Inn (DA)	10.7 miles North	13,837	45	169/0
Glendale Village Inn (DA)	15 miles South	17,145	61	151/0

* The Hearings Examiner takes official notice that the Commission issued a DC License to Richard Ficker and Margaret Hawkins at Amigo's on February 27, 1984.

18. One of the nearest DA outlets to the Feedlot Restaurant, Fat Harvey's, plans to expand its dining seating by 70 places.

19. The Vinara Inn, a Seasonal Dispenser outlet, is about one block south of the Feedlot Restaurant. The Vinara Inn features Mexican food. The Vinara Inn has a tavern atmosphere. The dining areas, bar and pool tables are close together.

20. Of the nearest Dispenser outlets to the Feedlot Restaurant listed in Finding of Fact No. 17 above, the South Umpqua Inn, The Spot, Forester's and The Sportsman Club place a much heavier emphasis on the sale of alcoholic beverages than the Feedlot.

21. Fat Harvey's, one of the nearest DA outlets to the Feedlot, is located immediately off the freeway and is a truck stop. Fat Harvey's has appropriate facilities for families but has less of a family orientation than the Feedlot Restaurant. Fat Harvey's has an exterior sign that says, "Booze Boogie Land." (Applicants' Exhibit 12.)

22. Amigo's, a Canyonville restaurant that received a DC license from the Commission in February, 1984, features Mexican food.

23. The population of Canyonville in 1982 was 1,265. The population of Canyonville in 1983 was 1,260.

24. The population of Douglas County in 1982 was 92,300. The population of Douglas County in 1983 was 92,025.

25. Industrial development in Canyonville received a boost when the municipal Win Walker reservoir was completed in

April, 1983. This reservoir will guarantee the availability of water for industrial use in Canyonville through the year 2020 based on present population projections. Prior to completion of the reservoir, industrial water users in the area had generally been shut off from July through the fall due to shortages. This occurred from 1977 through 1983.

26. A contract is scheduled to be awarded in April 1984 to construct the Galesville reservoir on Cow Creek, approximately five to six miles from Canyonville. This reservoir is planned to meet the water needs of south Douglas County. There is presently no unappropriated water left to be drawn from the South Umpqua River in south Douglas County. The Galesville Reservoir is scheduled to be completed in about two years. The project will employ about 100 local people. The reservoir will improve the fishery on Cow Creek and will serve recreational users. It is anticipated that the reservoir will result in approximately 50,000 to 200,000 recreational user days a year.

27. The Hanna nickel mine is located about six miles north of Canyonville. The mine was recently closed for 18 months. Before the closure, the mining operation employed about 500 people. The mine is being reopened and 284 employees have been called back to work. The Feedlot Restaurant gets many nickel mine employees as patrons.

28. The timber industry in Douglas County has improved in 1983. Local mills have been running near full capacity.

29. Canyonville serves as one of the main business districts for south Douglas County. Canyonville serves as a business and service area for rural residents living outside the

city limits as well as residents of small nearby cities and communities. The following areas are within ten miles of Canyonville and had the populations in 1980 indicated:

1980 POPULATIONS

	<u>INCORPORATED AREA</u>	<u>UNINCORPORATED AREA</u>	<u>TOTAL</u>
Riddle-Canyonville	2,780	2,570	5,350
South Umpqua	70	680	750
Tri-City	3,680	360	3,620 [sic]
Myrtle Creek	3,630	1,210	4,840
Azalea (Upper Cow Creek)			<u>2,300</u>
TOTAL			16,860

(Applicants' Exhibit No. 1.)

30. Canyonville is located just one block off of Interstate 5. Canyonville is a service area for travelers along Interstate 5.

31. Several stores along Main Street near the Feedlot are planning to remodel their exterior storefronts in a turn-of-the-century motif. This is likely to make Canyonville a more interesting and attractive place for Interstate 5 travelers to stop.

32. The population of the Canyonville-Riddle area is likely to increase during the next forty years and be approximately double the 1980 figure by the year 2020. (Applicants' Exhibit 1.)

33. The Feedlot Restaurant cuts its own beef. The restaurant is thus able to offer custom-cut steaks. This feature would be unique among Dispenser outlets within a 20-mile radius.

34. The Feedlot's western decor features include wood-paneled booths and walls in the Round-Up Room, local cattle brands burned into a wall of the front dining room, and items hung on the walls such as horse shoes, a two-handled saw, antlers, western paintings, a cast iron skillet and a horse collar. Commission's Exhibit E. The evidence did not show another dispenser outlet within 20 miles with the western decor features found at the Feedlot.

35. Many of the foods at the Feedlot Restaurant, including gravies, breads and pie shells, are made from scratch.

36. The Feedlot Restaurant presently averages two banquets a month. Banquet groups average from 75 to 100 persons. Groups for which banquets have been held recently include the Forestry Department, the Lion's Club, Business Women of America, VFW, the Canyonville Merchants, the Board of Directors of the Little League and wedding and retirement groups.

37. Persons who have asked about banquets at the Feedlot have held their banquets elsewhere, citing a lack of cocktails at the Feedlot.

38. About a third of the Feedlot's dinner patrons inquire concerning the availability of cocktails. Regular customers at the Feedlot go elsewhere when they want a cocktail with their meal.

39. The following persons have written letters in support of the issuance of a DC license at the Feedlot Restaurant:

James H. Chambliss, Safeco Insurance Companies
Gynn Deaton, City Recorder, City of Canyonville
Ronald and Evelyn Badger, Canyonville
Harlan White, D.M.D., Canyonville
Charlie T. Mauldin, Chief of Police, City of Canyonville

40. Approximately 252 persons have signed a petition in support of the issuance of a DC licence at the Feedlot Restaurant. The petition was collected at the Feedlot Restaurant. (Commission's Exhibit G.)

41. The Applicants have received certificates of appreciation from the Canyonville Police Department for continued and exceptional service to the community. (Applicants' Exhibits 5 and 6.)

42. At the date of the Applicants' December 9, 1983 hearing there were more Dispenser licenses available to the Commission for issuance than the number of applications 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).

Preference in licensing may be given to applicants showing any one or more of the following. That applicant shall have the burden of proving that these provisions apply:

. . . .

(c) 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 City of Canyonville contains more Dispenser outlets per population than the one per 2,000 population standard set forth in OAR 845-05-040(2)(c). Canyonville has one DA outlet to serve its population of 1,260. In addition, there is a DC outlet (Amigo's) that has just been issued in Canyonville, there is a Seasonal Dispenser outlet (the Vinara Inn) in Canyonville and there is a DA outlet (Fat Harvey's) just outside the city. Thus, the Applicants' community is adequately served by existing dispenser outlets and no preference for license issuance is shown under OAR 845-05-040(2)(c).

The picture is more two-sided under OAR 845-05-030(1) concerning the sufficiency of existing dispenser outlets within a ten-mile radius. Some factors suggest that the existing outlets are not sufficient. These factors include the new dams and water supply facilities built or planned, the recent reopening of the Hanna nickel mine, the improving wood products industry, the rising sales at the one DA outlet (Forester's) located in Canyonville, and the fact that Canyonville is a stop for freeway travellers, serving many other people besides simply the local residents. On the other hand, some factors show the area within ten miles of the Feedlot to contain sufficient outlets. These factors include the recent falling sales at DA outlets in Douglas County and the static or falling populations in Canyonville and Douglas County. There are presently eight full-year dispenser outlets issued to serve a population of 16,860 persons living within 10 miles of Canyonville. Therefore, the issuance of a DC license would create more than one

dispenser outlet per 2,000 population in this area. On balance, the ten-mile radius area appears to contain sufficient outlets because of the falling county sales and the static or falling populations. The factors suggesting a stronger local economy do not show that demand for dispenser services has increased yet to the point where the existing outlets are not sufficient. The sufficiency of existing outlets weighs against licensure under OAR 845-05-030(1).

2. 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 Feedlot Restaurant custom cuts its beef to provide unusual and better selections for its patrons. No other premises within 20 miles of the Feedlot custom cuts its own beef. However, although this particular practice is unique, it does not make the general dining service or atmosphere at the Feedlot so unique or substantially different as to merit preference under OAR 845-05-040(2)(b).

Similarly, the Feedlot's family orientation and western decor have not been shown to constitute a dining atmosphere that is so different from existing dispenser outlets within 20 miles as to merit preference for licensure under OAR 845-05-040(2)(b).

3. 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).

The Feedlot Restaurant has projected average monthly gross sales with a DC license of \$26,979 in food, and \$2,900 in alcoholic beverages, for a total of \$29,879 per month. The bases for the projections set forth in Finding of Fact No. 13 seem realistic and constitute a reliable basis for the projections.

The Feedlot's projected sales figures substantially exceed the sales at the Forester's Cafe, which is the only DA outlet in Canyonville. The Feedlot's projected sales figures also substantially exceed the projected sales figures for Amigo's, at which the Commission issued a DC license in February, 1984.

The Feedlot has a banquet facility with capacity for over 100 persons. This substantially exceeds the banquet capacity of Amigo's. Forester's does not have a banquet facility.

The Feedlot's comparatively high sales and large banquet capacity indicate the premises would offer greater services and facilities to the public in conjunction with a Dispenser license. This indicates a preference for licensure under OAR 845-05-040(2)(a).

4. The number of dispenser licenses available to the Commission for issuance to DA and DB outlets is limited under ORS 472.110. The Commission is not required to issue all of

its statutory quota of licenses to all qualified applicants on a first-come, first-served basis, and could properly consider the limited number of licenses it may issue in terms of the "public interest or convenience" in the future, as well as the present. ORS 472.160(1). Battle Creek Golf Course, Inc. v. DLCC, 21 Or. App. 179, 183-84, 534 P2d 204 (1975); ORS 472.160(1).

This statute limits the total number of DA licenses available for issuance throughout the state. As the number of available dispenser licenses is not exhausted, the statute does not provide a basis for denying the license. The bases for denying licenses are stated in ORS 472.160 and OAR 845-05-005 through 845-05-070.

5. Preference in licensing may be given to dispenser's license applicants where an applicant's premises are located in a rural or unincorporated area or in an incorporated area with a population of less than 25,000, or applicant's premises has seating for 100 or fewer patrons. OAR 845-05-040-(2)(d).

The Feedlot is located in Canyonville, population 1,260. Preference for license issuance is therefore shown under OAR 845-05-040(2)(d).

ULTIMATE CONCLUSIONS OF LAW

The Applicants' application for a DC license at the Feedlot Restaurant is demanded by the public interest and convenience despite the number of Dispenser outlets in the Applicants' community because the Applicants would offer greater services and economic benefit to the community as indicated by the Feedlot's comparatively high projected gross sales and

large banquet capacity, and because preference for license issuance is shown due to the Feedlot's location in a city with less than 25,000 population. ORS 472.160(1).

FINAL ORDER

It is hereby ordered that the application for a DC license by Dennis and Michelle Muir and Michael and Bonnie Graziano at The Feedlot Restaurant, 412 Main Street, Canyonville, Oregon be GRANTED upon the payment of appropriate license fees to the Commission.

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.