

4. The premises now seats 60 in the restaurant portion and 20 in a room used as a lounge. Most of the existing DA outlets in the area have a larger seating capacity. If the DC license is granted, the smaller room will be used for dining and perhaps for meetings or small banquets. Applicants plan no remodeling of the premises.

5. The restaurant has a nautical motif. Seating is at tables and booths, which are not set with tablecloths. A free standing metal fireplace is in the dining room. The walls are paneled with wood.

6. The premises has a comfortable family dining atmosphere. It is the Applicants' intention to provide moderately priced food to families, particularly those visiting the area.

7. The premises is open seven days a week all year, except during a period of approximately five weeks when Applicants close for renovation and vacation. During the week, the premises is open for lunch and dinner until about 9:00 p.m. On weekends, the premises opens about 7:30 a.m. for breakfast and also serves lunch and dinner. The closing hour is usually around 10:00 p.m. on weekends.

8. Applicants' lunch menu features eight sandwiches, fish and chips, clam strips, chowder, salads and desserts. The sandwiches are priced from \$2.35 to \$5.50, with most in the \$2.00 to \$4.00 price range.

9. The dinner menu will have the following seafood dinners: Halibut steak, deep fried oysters, grilled salmon, deep

fried prawns, lobster tail, deep fried scallops, razor clams, grilled filet of cod, and steamed butter clams. A seafood combination plate and fish and chips are also offered, as are seven steaks and steak/seafood combinations. The dinners range in price from \$5.25 to \$18.95, with most in the \$5.00 to \$8.00 price range. In addition to the above dinners, Applicants offer family style fish and prawn and fish dinners. The fish dinner is \$12.95 for four persons and \$18.95 for six persons; the fish/prawn dinners are \$14.50 for four persons and \$20.95 for six persons. Shrimp and crab cocktails are also offered.

10. Applicants' dinner prices are lower than those at most of the existing dispenser outlets in the area.

11. Monthly sales at Applicants' premises have been as follows:

<u>MONTH</u>	<u>FOOD SALES</u>	<u>BEER & WINE</u>	<u>TOTAL</u>
<u>1983</u>			
January	\$ 6,636	\$560	\$ 7,196
February	7,325	598	7,923
March	8,878	739	9,617
April	8,626	652	9,278
May	8,460	761	9,221
June	8,720	628	9,348
July	15,110	980	16,090
August	15,657	981	16,637
September	11,641	705	12,346
October	8,746	377	9,123
November	3,869	223	4,092
December*	631	34	665
<u>1984</u>			
January	6,551	428	6,979
February	8,691	565	9,255
AVERAGE	\$8,539	\$588	\$9,127

*Open only three days

12. Applicants reasonably estimate that average gross sales will increase by approximately 20 percent if the DC license is granted.

13. Existing DA outlets in Clatsop County have had the following average monthly sales: food \$21,677; alcoholic beverage \$7,305; total \$28,982.

14. The nearest Dispenser Class C premises is The Buccaneer, approximately eight miles away. It has a more expensive food than Applicants' premises.

15. The nearest DA outlet is Captain Morgan's, 0.1 mile away. It has a bar and dance floor. The food is more expensive than the food at Applicants' premises. The next nearest DA outlets are the Oceanside Restaurant and Lounge and the Sandtrap, both approximately one-half mile away. After these premises, the next nearest places are several DA outlets in Seaside, which is approximately two miles from Gearhart.

16. Applicants' premises has two or three video games. Applicants plan to offer no other form of entertainment.

17. Applicants have operated three restaurants with dispenser privileges in the Seaside-Gearhart area over the last 14 years.

18. Clatsop County, which has a population of 32,700, presently has 44 DA and DB licenses in operation. The County has two DC premises.

19. Tourism is very important to the economy of the Seaside-Gearhart area, and is becoming increasingly important in

Clatsop County as a whole as employment in the wood products industry, fishing, and other traditional industries has declined.

20. The Seaside-Gearhart area has few moderately priced family restaurants where cocktails are available. If the DC license is granted, Applicants' premises will help fill this need.

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).

No evidence was offered as to the number of premises within ten miles of Applicants' premises. Clatsop County has considerably more dispenser outlets than one per 2,000 population, a fact which may be some indication of the sufficiency of licensed premises in the area. It is the Commission's conclusion, however, that the fact that the County and the relevant area within ten miles are not identical and the fact that mere numbers are not a convincing way to indicate "sufficiency" make this evidence inconclusive as to sufficiency.

It is also noted that Applicants presented credible testimony that their premises will fill a need in the area for a moderately priced family restaurant with cocktails.

For these reasons, the Commission concludes that this criterion does not provide a basis for denying the application.

2. 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).

Clatsop County has more than one dispenser outlet per 2,000 population. The Commission concludes, nevertheless, that Applicants are entitled to preference under this criterion. The evidence establishes that the Seaside-Gearhart area is the area from which Applicants will draw most of their business, both from residents and tourists staying in that area. The evidence further establishes that this area has a need for a moderately priced family style restaurant with dispenser privileges. Applicants' premises meets this need.

The Commission concludes that the public is not being adequately served by dispenser outlets in the Seaside-Gearhart area and that Applicants are therefore entitled to preference under this criterion.

3. 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 reasonably estimate that their sales will increase by about 20 percent if the license is granted. This will bring the average monthly gross sales up to approximately \$11,000. This figure will be well below the average for existing DA outlets in the county. The Commission considers this to be of little significance, however, as Applicants are applying for a DC license rather than a DA license. The evidence also establishes that Applicants will have no separate banquet facility. However, Applicants will conduct some banquet or meeting business, as opportunity allows. The evidence also establishes that Applicants' seating capacity is less than at most of the existing DA premises. The Commission concludes, however, that a comparison with DA premises is not directly pertinent.

The Commission concludes that this criterion provides some basis for denying the license but that it is not of great significance in this particular situation.

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

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

Applicants' premises is located in an unincorporated area and has fewer than 100 seats. Applicants are therefore entitled to preference under these criteria.

ULTIMATE CONCLUSIONS OF LAW

Applicants' premises will meet a need in the Seaside-Gearhart area for a moderately priced family restaurant with cocktails. It is concluded that this additional service provided by Applicants is of more significance in this case than is the fact that Applicants' gross sales will be less than the average for DA premises, as the lesser sales are primarily a function of the size of the premises and of the fact that Applicants will have the limited cocktail service available to DC premises. Furthermore, Applicants are entitled to preference because of their location in an unincorporated area and because the premises has fewer than 100 seats.

For these reasons, it is concluded that the license should be granted. OAR 845-05-040(2)(c)(d)(e).

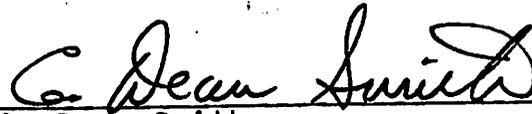
FINAL ORDER

It is hereby ordered that the application for a Dispenser Class C license by Robert and Grace Nelson in the trade name The Fish House, 4340 Highway 101 N., Gearhart, Oregon 97138 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 ready for operation as a DC premises within 90 days of 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 26th day of June, 1984.



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.