

sale of alcoholic beverages to a greater degree than food service).

3. Applicant's premises is on Old Cornelius Pass Road, approximately three miles north of US Highway 26 (Sunset Highway). It is located in an unincorporated area approximately seven miles north of downtown Hillsboro.

4. Applicant has operated the premises with an RMB license for approximately 10 years. The building has been operated as a restaurant or tavern for over 50 years.

5. The premises is open seven days a week for lunch and dinner and will retain the same approximate schedule if a DA license is granted.

6. The lunch menu contains a fresh fish entree, two cold sandwiches, five hot sandwiches, several burgers, pizza, and several pasta dishes.

7. The dinner menu will contain all of the lunch items and will also offer the following entrees: Cornish game hen, roast pork loin, fresh fish, barbecued steak, a barbecue special, desserts and side dishes. Applicant will also offer specials on occasion. The dinner entrees will range in price from approximately \$5.00 to \$9.00, with some higher-priced specials.

8. Applicant employed Karl J. Schaefer, owner of Le Cuisinier Restaurant in Portland, to help design the new menu noted above. Mr. Schaefer has had extensive training and experience in the culinary arts, including study at the Culinary

Institute of America and employment as sous chef at Le Perroquet, a noted Chicago restaurant. Mr. Schaefer's Portland restaurant, Le Cuisinier, has been recognized by reviewers as one of the best restaurants in Portland.

9. Applicant anticipates employing Mr. Schaefer again, if the license is granted, to train employees on food preparation and food purchasing.

10. Monthly sales at the premises during 1983 and 1984 have been as follows:

<u>MONTH</u>	<u>FOOD</u>	<u>BEER AND WINE</u>	<u>TOTAL</u>	<u>FOOD PERCENTAGE</u>
Jan 1983	\$6,618	\$10,874	\$17,492	38%
Feb	6,193	10,010	16,203	38%
Mar	7,156	12,123	19,279	37%
Apr	8,067	11,268	19,325	42%
May	7,276	10,931	18,207	40%
Jun	8,203	12,639	20,842	39%
Jul	8,368	13,295	21,663	39%
Aug	8,135	10,523	18,658	44%
Sep	8,082	13,081	21,163	38%
Oct	8,695	11,426	20,121	43%
Nov	7,008	9,586	16,594	42%
Dec	6,210	7,310	13,520	46%
Jan 1984	6,338	9,750	16,088	39%
Feb	8,072	9,457	17,529	46%
Mar	7,866	10,588	18,454	43%
Average	\$7,486	\$10,858	\$18,243	41%

11. During the past three or four years, Applicant's food sales have gradually been increasing while sales of beer and wine have gradually been decreasing. For example, the first quarter of 1984 shows an increase of approximately 11.2 percent in food sales over the first quarter of 1983; however, sales of beer and wine are down 10 percent in that period.

12. At the time of application, Applicant reasonably estimated that average monthly sales if the dispenser license is granted will be as follows: food - \$21,947; alcoholic liquor - \$16,121; total - \$38,068. The estimate is based upon projected increases in food sales owing to the expanded menu and higher prices, revenues from cocktails, an increase in banquet and meeting business, a slight increase in dining seating resulting from the removal of the pool tables, and upon the general commercial and population growth of the area.

13. If the DA license is granted, Applicant will make the following changes in the premises: the upper dining area will be enclosed by a wall topped with glass which will reach to within a foot-and-a-half of the ceiling; a bandstand and dance area now near the front of the premises will be moved to the rear of the premises; pool tables and games located in the rear of the premises will be removed; a new small dining room near the front door will be created; a barbecue porch will be added off the kitchen. Changes and additions in the kitchen will also be made. The cost of the remodeling will be approximately \$50,000.

14. After the remodeling, the premises will offer seating for approximately 95 in two dining areas and eight at a small bar. There will be no lounge.

15. Applicant will offer live music at the premises four nights a week. On Thursday and Sunday nights, music will generally be provided by a solo artist or small groups offering jazz, blues, and folk music. On Friday and Saturday nights,

Applicant plans to have full bands offering blue-grass, blues, rock-n-roll, and other styles of music. Dancing will be offered on Friday and Saturday nights, with dancing restricted to the dance area. The music will begin sometime between 8:00 p.m. and 9:00 p.m. Applicant will offer food after the music starts.

16. The decor of the premises is rustic, featuring rough-hewn wood, some stained-glass windows and a large fireplace. Applicant does not plan any major changes in the decor if the license is granted.

17. Meetings and banquets have been held at the premises for many years. For example, during the 10-day period preceding the February hearing on this matter, Applicant hosted five meetings ranging in size from approximately 30 to 90 for employee groups from Intel, Floating Point Industries, and Tektronix. Applicant reasonably anticipates that the DA license along with the other changes in the premises will increase his banquet and meeting business.

18. The area within approximately one to two miles of Applicant's premises is primarily grazing and farm land. Farther to the north, northwest and west is rather hilly terrain marking the west edge of the Portland West Hills.

19. Approximately three to three-and-one-half miles south of Applicant's premises is the Sunset Highway (US Highway 26). A five-mile portion of the Sunset Highway directly south of Applicant's premises is called the "Sunset Corridor." This Corridor has experienced significant industrial, commercial, and

residential growth recently and is expected to undergo substantial growth in the next 15 to 20 years. Applicant's primary market area is this Sunset Corridor area, most of which is within about five to six miles of Applicant's premises.

20. The Sunset Corridor now contains 11 industrial and commercial sites operating or under construction. Approximately 6,000 employees work in the area. During 1983, approximately 20 major developers and businesses began construction or site improvements. More than 20 million dollars was spent on construction projects in this area during 1983, creating 1,500 new jobs. Among major projects built recently or under construction are a Kaiser Hospital and buildings for the Oregon Graduate Center Science Park. The Standard Insurance Company will begin construction of the Tanasbourne Commerce Center in early 1984. Estimates of total new jobs to be created in this area within the next 15 to 20 years range as high as 36,000.

21. In 1980, the census tract which contains Applicant's premises and his market area, including the Sunset Corridor, contained 23,322 people. Five current or planned residential developments are located along the Sunset Highway in the Sunset Corridor. Approximately 1,250 residential building lots are at or near construction stage. The Tanasbourne Community, to be developed by the Standard Insurance Company in the Sunset Corridor area, is expected to add 6,000 residents in the next 15 years. Approximately 25,000 new housing units are projected for the Sunset Corridor area by the turn of the century.

22. The nearest DA outlet to Applicant's premises is the Farmstead Restaurant, approximately 3.5 miles away along the Sunset Highway. The next nearest is Charlie's on the Green, located approximately 3.7 miles from Applicant's premises at a golf course near the Sunset Highway. The next nearest is the Upper Level Pub, located approximately 3.9 miles away in the Tanasbourne development. The next nearest premises is the Red Baron at the Hillsboro Airport, approximately five to six miles away. Other DA premises are located in the downtown area of Hillsboro and in Cedar Mill, both of which are approximately six to seven miles from Applicant's premises on a straight-line distance basis.

23. Washington County, with a population of 257,400, has 94 DA and DB outlets in operation. The Commission has approximately 75 DA and DB licenses available for issuance. At the time of this hearing, 39 applications for such licenses were pending.

24. Applicant proposes to change the name of the premises to the Rock Creek Tavern Restaurant and Bar if the license is granted. He desired to maintain the word "tavern" in the name because of the long association of that term with the premises.

25. Applicant presented a petition with approximately 400 signatures of those supporting the application along with several letters from individuals and businesses expressing a favorable view of the premises.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

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 initially estimated that monthly average sales at the premises if the license was granted will be approximately \$38,000. This estimate is reasonable and credible. At the hearing, Applicant revised the projection upward to an average of \$60,000 per month total sales. The Commission concludes that this new projection is not credible as it would involve approximately a tripling of present total sales and a quadrupling of food sales. As the Applicant's premises will not be significantly expanded, that magnitude of increase would not appear likely in the near future, although with the expected growth of the area it may be realized eventually.

Applicant's reliable projection is that average sales will be about \$38,000 per month. This figure is considerably less than the average for Washington County of \$63,000. The Hearings Examiner concludes that Applicant's premises will probably serve fewer patrons than do existing premises on the average.

The staff also claims that Applicant's premises has limited dining facilities, a limited menu, and no banquet facilities. The only evidence offered by the staff providing any basis for comparison with other premises is evidence relating to eight of the nearest DA outlets. This evidence indicates that four of the eight have more restaurant seating than Applicant's premises and four have less. Applicant's premises thus cannot be said to have limited dining facilities in comparison with the other premises in the area. No evidence was offered that Applicant's menu is "limited" in comparison with these, or other, premises. The evidence also indicates that only two of the eight premises have banquet facilities. The lack of a separate banquet facility at Applicant's premises is thus not a basis for concluding that Applicant will provide lesser services.

The Commission concludes, therefore, that the only basis for concluding that Applicant's premises will provide lesser services, facilities, and economic benefit is that Applicant's premises will serve fewer patrons than do existing premises in the area on the average. This criterion thus provides a basis for denying the application but it is not considered by the Commission to be of as much weight as the other criteria involved in this case.

2. 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).

There is no basis in the evidence for concluding that Applicant's premises will emphasize the sale of alcoholic liquor over the sale of food. Applicant's projections of sales if the license is granted indicate that food sales will be about 57.6 percent of total food and alcoholic liquor sales. This forecast of the relative proportion of food and alcoholic liquor sales seems reasonable, given the fact that food sales, even under the present operation, make up over 40 percent of total sales, given the fact that food sales have tended to increase while beer and wine sales have tended to go down in recent years, and given Applicant's intention of introducing a new and more ambitious menu. Thus, the estimated proportion of food to alcohol sales indicates no emphasis on alcohol sales. Although the relative proportions of food and alcohol sales at a premises is not conclusive evidence of emphasis, it is in this case strong evidence against any inference that the premises will be operated as a tavern.

More important than the mere figures, however, is Applicant's own testimony. He testified credibly that he wants to operate a restaurant. The fact that he has hired a food expert to design his menu and to train his personnel is a significant indication of his sincerity. Applicant's proposal to remove all pool tables and other games is also an indication of his desire to emphasize food service.

All of this evidence is enough to overcome any slight inference that might be drawn from that fact that Applicant intends to have live entertainment four nights a week with dancing two nights a week. The existence of entertainment may be suggestive of emphasis on the sale of alcoholic beverages, although it is not necessarily so, but in this case the other factors outweigh any such inference.

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

3. Preference in license may be given to applicants 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 applicant's community is being adequately served. OAR 845-05-040(1).

OAR 845-05-030(1) defines the applicant's "community" for purposes of the above criterion as "a ten-mile radius for dispenser licenses and a two-mile radius for other licenses, unless the applicant establishes that a substantial portion of the patronage is or would be from a larger or smaller area."

The initial question in this case, then, is whether Applicant's community is the area within a ten-mile radius or a smaller area. It is the Applicant's position that his community is the area within approximately five or six miles of the tavern. The main population concentration in this area is the Sunset Corridor along Highway 26. He presented credible testimony that most of his patrons come from the area within five or

six miles and that no substantial portion of his patronage comes on a regular basis from distances greater than five or six miles.

The Commission presented evidence of the number of DA premises within a ten-mile radius of Applicant's premises. The Commission did not, however, present any evidence which controverts Applicant's claim that his actual community is the area within five or six miles, not the area within a ten-mile radius. It should be noted that the area within a ten-mile straight-line radius of Applicant's premises encompasses much of Northwest and North Portland and a portion of Vancouver, Washington. Most of the DA premises within this ten-mile radius are located in North and Northwest Portland. Most people who live in North and Northwest Portland are approximately 30 to 40 minutes in driving time from Applicant's premises, a fact which lends credibility to Applicant's claim that these areas do not provide a substantial proportion of his patronage.

The Commission thus concludes that Applicant has established that Applicant's community is that area within about five or six miles of the premises, including primarily the area to the south known as the Sunset Corridor. The evidence indicates that this area has at least 23,000 people and is served by only four DA premises. The evidence also indicates that the population of this area is growing and will grow in the immediate future as well as over the next 15 or 20 years. The evidence also indicates that commercial and industrial concerns in

the area already use the services provided by Applicant's premises and will increase their patronage if the DA license is granted.

The Commission concludes that Applicant has established that there is a need for additional dispenser services in the area and that his premises will help meet this need. Applicant is thus entitled to preference under this criterion.

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

Applicant's premises is located in a rural unincorporated area and is thus entitled to preference under this criterion.

ULTIMATE CONCLUSIONS OF LAW

Although Applicant's premises will serve fewer patrons than do existing premises in the area on the average, it is concluded that the license should be granted because this negative factor is outweighed by the fact that the premises will meet a significant present need for additional premises in the area, will meet an increased need arising in the near future, and because Applicant is entitled to preference in that his premises is located in a rural unincorporated area. OAR 845-05-040(2)(c), (2)(d).

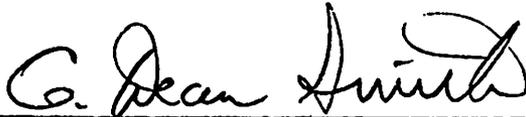
FINAL ORDER

It is hereby ordered that the application for a Dispenser Class A license by Matthew Britton in the trade name Rock Creek Tavern Restaurant and Bar, Route 1, Box 991, Hillsboro, Oregon 97124, be GRANTED upon payment of appropriate license fees to the Commission with the issuance of the license subject to the following condition:

1. That the premises be remodeled as proposed and that it be ready for operation within (ninety) 90 days of the Commission's Final Order in this matter or that the commitment 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 28th day of September, 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.