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BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Application for a)	
Seasonal Dispenser)	
License by:)	FINAL
)	FINDINGS OF FACT,
Marilyn D. Knight)	CONCLUSIONS OF LAW,
WELLS CREEK INN)	AND ORDER
Route 1, Box 394)	
Elkton, OR 97436)	
- - - - -)	
Douglas County)	

A hearing in the above matter was held on the 11th day of August, 1983, in Reedsport, Oregon, before Hearings Examiner Jill Thompson. The Applicant appeared in person and was not represented by legal counsel. 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. Applicant has operated WELLS CREEK INN since January 1983; it currently has a Retail Malt Beverage (RMB) license.
2. Applicant has applied for a Seasonal Dispenser license to operate between April 1 and October 31.
3. The Commission refused the application on the following grounds:
 - a. OAR 845-05-040(3)(f) (lesser services).
 - b. OAR 845-05-040(3)(e)(A) (tavern-style operation).
 - c. ORS 472.160(1) (sufficient outlets)

4. The premises is located in Wells Creek, an unincorporated rural community on Highway 38, 17 miles west of Elkton and 20 miles east of Reedsport. Highway 38 is a major route from Eugene and Roseburg to the Oregon coast. It parallels the Umpqua River between Elkton and Reedsport.

5. The seasonal demand at Wells Creek Inn is attributable to spring Chinook and deep-sea fishing seasons lasting from March or April through summer, and fall hunting season. The premises is 16 miles from Loon Lake, a popular fishing and boating recreation area.

6. Relevant sales figures are as follows:

AREA DISPENSER LICENSEES

	<u>Average Food</u>	<u>Average Gross</u>
City of Reedsport	\$ 9,706	\$16,583
Douglas County	16,785	25,966

APPLICANT'S ACTUAL AND PROJECTED SALES

Actual 1983

	<u>Food</u>	<u>Gross</u>	<u>Percentage</u>
March	\$2,424	\$3,406	71%
April	3,259	4,475	73%
May	4,379	5,928	74%
June	4,714	6,906	68%
July	6,354	8,618	74%
August	5,152	6,026	85%
September	4,088	5,671	72%
October	4,121	5,393	76%
November	<u>3,317</u>	<u>4,435</u>	<u>75%</u>
Average	\$4,201	\$ 5,651	74%

Projected

	<u>Food</u>	<u>Gross</u>	<u>Percentage</u>
January	\$4,783	\$ 5,627	85%
February	5,143	6,050	85%
March	5,398	6,350	85%
April	6,375	8,500	75%
May	8,000	12,000	66%
June	8,000	12,000	66%
July	8,500	13,000	65%
August	8,500	13,000	65%
September	8,250	11,000	75%
October	6,000	8,000	75%
November	4,675	5,500	85%
December	<u>4,675</u>	<u>5,500</u>	<u>85%</u>
Average	\$6,525	\$ 8,877	76%

7. The nearest city to Applicant is Elkton, which is 17 miles east. The next closest city is Reedsport, 20 miles west. Area license distribution figures are as follows:

	<u>Population</u>	<u>Quota</u>	<u>DA/DB Committed</u>	<u>DC Committed</u>
Douglas County	92,050	46.03	47	2 -
City of Elkton	155	.08	0	0 -
City of Reedsport	4,880	2.44	5	0

8. Applicant has a banquet room which will accommodate at least 50. She has held banquets in this room for up to 60, and advertises the facility in the Reedsport newspaper.

9. The premises has two dining areas. One, seating 35, is for adult dining; the other, seating 25, is for family dining. A pool table which had been located in the adult dining area has been disposed of and will not be replaced. There are no games or devices in the dining areas, which are separated from the bar by a floor-to-ceiling partition.

10. The bar area seats 14 and has pinball and game machines. There is no live entertainment anywhere in the premises.

11. The premises draws its non-seasonal patronage primarily from the Wells Creek area, which has a population of about 300.

12. Applicant is open from 9:00 a.m. to 9:00 p.m. Wednesday through Sunday. The following menu is available:

Breakfast

Eggs and ham, bacon or sausage	\$2.65 - 2.95
Omelets, four types	2.40 - 3.45
Eggs	1.50 - 1.85
Ham, bacon or sausage	1.45
Steak and eggs	4.95
Pancakes with ham, bacon or sausage	2.70
Pancakes with eggs	1.95
Pancakes	.85 - 1.45
French toast	1.75
Biscuits and gravy	1.75

Lunch

Hamburgers, four types	\$1.95 - 2.95
Chickenburger	1.95
Fishburger	1.95
Hot dog	1.50
Reuben	2.50
Ham and swiss	2.50
Corned beef and swiss	2.75
Club	4.50
Tuna	1.75
Cheese	1.35
Ham	1.85
Egg	1.45
Bacon, lettuce, tomato	2.40
Roast beef	2.25
French dip	3.95
Hot beef	3.25
Hot turkey	3.00
Chili	.75 - 1.50
Soups, two types	.75 - 1.75
Two cold plates	1.85 - 3.95
Salad bar	1.50 - 3.00

Dinner

Full Entrees

Shishkebob	\$5.95
Chicken-fried steak	4.95
Ham steak	4.95
Top sirloin steak, 8 oz.	5.95
Rib steak, 14 oz.	8.95
Ground chuck	4.95
Half chicken	4.95
Halibut steak	5.95
Shrimp	5.95
Oysters	5.95
Seafood platter	6.95
Scallops	5.95
Scampi	6.75

A La Carte and Side Dishes

Shrimp basket	\$4.75
Fish and fries	3.50
Clam strip basket	4.25
Chicken basket	3.50
Baked potato	1.25

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission may refuse to license any applicant if it has reasonable grounds to believe:

(1) That there are sufficient licensed premises in the locality set out in the application, or that the granting of a license in the locality set out in the application is not demanded by public interest or convenience. ORS 472.160(1).

There are no dispenser premises within Applicant's locality. The nearest city is Elkton, 17 miles east, which has no outlets. Reedsport, 20 miles west, has five DA outlets; there are none between Reedsport and Applicant, nor any between Applicant and Elkton. Additionally, Elkton is undersubscribed. The Commission concludes that there are insufficient dispenser outlets in Applicant's locality.

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).

Applicant's actual and projected sales are below those of Douglas County and the City of Reedsport, but that cannot be said to establish that Applicant's community and market area would not be better served than it presently is. Applicant's premises would be the only dispenser outlet in the area, so it is difficult to conclude that her services would be less than those already existing. She has a banquet facility seating 50, with regular dining for 60. Her menu is extensive, and she is open for three meals a day, five days a week. The Commission concludes that this criterion is not a basis for unfavorable consideration.

3. Unfavorable consideration may be given to an applicant if any of the following are shown:

. . .

(e) The applicant's premises will be operated primarily as a tavern rather than as a restaurant, as indicated by factors emphasizing:

(A) The sale of entertainment by means of pool tables, coin-operated game machines, legal card games or other games of chance. This provision will not apply if the premises offers food service conforming with OAR 845-08-015 in a dining room seating at least 40 persons which is separated

from the area in which entertainment devices or games are located. OAR 845-05-040(3)(e)(A).

The Commission's refusal letter stated that Applicant's adult dining area contains a pool table, a pinball machine and two electronic games. In fact, the pool table has been permanently removed from the premises and the other games were never in the dining areas. There are game machines in the 14-seat bar, but that area is screened from the dining areas by a full-length partition.

Applicant's food sales ratio also indicates an emphasis on dining. She currently maintains a 74 percent average ratio, and her projected sales contain a 76 percent average. Her menu is ample and varied, and she serves three meals daily. She has dining facilities for a total of 60 people. No live entertainment is planned for the premises.

The Commission concludes that this criterion is not a basis for unfavorable consideration.

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

. . . .

(e) Applicant's premises are located in a rural unincorporated area or in an incorporated area with a population of less than 25,000 and applicant's premises has seating capacity for 100 or fewer patrons. OAR 845-05-040(2).

Applicant meets both factors of this criterion. She is located in the rural unincorporated community of Wells Creek,

population approximately 300, and the nearest town to her outlet is Elkton, population 155. Her premises seats a total of 74. The Commission concludes that a preference for licensing exists under this criterion.

5. A seasonal dispenser's license may be issued based upon evidence furnished by the applicant indicating a seasonal demand resulting from tourism or from activities such as fishing, hunting or skiing which are determined by weather conditions or state regulation. The term of a seasonal dispenser's license shall be fixed by the Commission, be valid for not more than seven months and may be divided into no more than two periods. The term may vary from season to season if demand or conditions warrant. OAR 845-04-040.

Based on Applicant's actual 1983 sales a seasonal demand does exist, and is attributable to sport and recreation attractions in the area. However, the figures do not reflect the extent of seasonality (April through October) for which Applicant is requesting a dispenser license. Her 1983 actual gross sales average is \$5,651; this average was exceeded only in the months of May through September. Although sales in April were higher than those in March, and October sales were higher than November's, the Commission concludes those increases are insufficient to establish the degree of seasonality which would justify dispenser privileges. The Commission concludes that a seasonal license is warranted, but only for the five months from May through September. Applicant's gross sales average for those months in 1983 was \$6,630, and her food sales average was \$4,937. Her projected averages (May through September) are, respectively, \$12,200 and \$8,250.

ULTIMATE CONCLUSIONS OF LAW

A Seasonal Dispenser license should be granted to Applicant for the period May 1 through October 31. No statutory or regulatory bases for unfavorable consideration are present, and the application contains preference factors.

FINAL ORDER

It is hereby ordered that a Seasonal Dispenser license for the period of May 1 through October 31 be GRANTED to Marilyn D. Knight at Wells Creek Inn, Route 1, Box 394, Elkton, Oregon.

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

Dated this 27th day of February, 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.