BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the Application for Renewal of a Package Store (PS) License by: Ioannis and Stavros Karakasis dba DIMITRI'S GROCERY 121 NW Sixth Portland, Oregon - - - - - - - - - - - - - - Multnomah County	)	FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

A hearing in this matter was held on April 12, 1984, in Portland, Oregon, before Hearings Examiner Douglas Crumme'. The Applicants appeared and were represented by Alex Christy, Attorney at Law, Portland, Oregon. The Commission was not represented by legal counsel.

On April 29, 1985, the Commission considered the record of the hearing, the applicable law, the Proposed Order of the Hearings Examiner, Exceptions to the Proposed Order of the Hearings Examiner, and Response to Exceptions. Based on this review, the Commission makes the following:

BACKGROUND

Ioannis and Stavros Karakasis have applied for renewal of a Package Store (PS) license at Dimitri's Grocery, 121 NW Sixth, Portland, Oregon, for the 1984 calendar year. The Portland City Council first entered a recommendation to the Commission on this application at the Council's December 22, 1983, meeting. The Council recommended at that meeting that the application be refused. At the request of the Commission, the

Council reconsidered its recommendation on the application at the Council's October 25, 1984, meeting. At that meeting, the Council again recommended that the application be refused.

ISSUES

I. The Commission's Regulatory Staff proposes refusal of the application under OAR 845-05-035 on the grounds that public opinion weighs against the application.

II. The Regulatory Staff proposes refusal under OAR 845-05-025(1) because of the unfavorable recommendation on the application from the City of Portland.

The Applicant argued at the hearing that the application should be granted because public opinion does not weigh against the application and because good cause has been shown to overcome the City of Portland's refusal recommendation.

I. PUBLIC OPINION

> The Commission may refuse to issue or renew a license if it determines that public opinion weighs against the issuance of a license. Interested persons may express their support for or opposition to the issuance of a particular license by petition or letter timely received at the Commission offices, or by personal appearance and testimony at a Commission hearing, if any. Such public opinion will be evaluated in light of the reasons expressed and the extent to which the persons expressing it are likely to be affected by the issuance of the license. Greater weight will be given to opinions of persons residing, working or owning a business within a one-mile radius of the proposed premises. The number of persons expressing support or opposition will not, in and of itself, be controlling. Arguments concerning matters which are primarily within the control of

> the city or county government, and which were raised, or reasonably should have been raised, before the governing body of the city or county when it was considering its recommendation, may be given lesser weight by the Commission if the governing body's recommendation is inconsistent with the argument. OAR 845-05-035.

Findings of Fact

Background on Conditions at Dimitri's

1. Dimitri's is a small grocery store. The business is open seven days a week from 7 a.m. to 1 a.m. During a recent period, approximately 50 to 55 percent of sales at Dimitri's' were from food versus alcoholic beverages. The next nearest PS license to Dimitri's is about four blocks away.

2. During 1983 and before, persons would congregate on the sidewalk in front of Dimitri's, particularly during the summer. Many of these persons were alcoholics and did things in front of the store such as drink alcohol, panhandle, urinate in public, break bottles, commit crimes and yell and shout.

3. There are two garbage drop boxes located near the front of Dimitri's on the sidewalk. The location of the drop boxes and the people who gathered in front of Dimitri's led in the past to garbage and litter accumulating around the front of the store.

4. When the Applicants first went into business at Dimitri's, they phoned the police frequently to get help in dealing with persons loitering in front of the store. However, because of restrictions on the police where the loiterers were

not committing any particular crime, the Applicants turned more to self-help to deal with their problems.

5. The Applicants frequently found themselves in the position of having to choose between allowing offensive persons to congregate in front of the store or resorting to force to get those persons to move.

6. The Burnside neighborhood around Dimitri's has a great deal of low-cost housing and a number of social service agencies. The community has a greater-than-average population of derelicts and persons with alcohol problems. Many of these people patronize Dimitri's.

7. Alcoholics attempting to purchase wine in Dimitri's sometimes become belligerent and abusive when the Applicants will not sell them wine when the customer is intoxicated. The Applicants occasionally respond in a physically forceful manner to deal with such customers.

8. On some date prior to the Portland City Council's December 22, 1983, meeting, council member Margaret Strachan was walking past Dimitri's. A clerk came outside and engaged in a confrontation with an older man. The clerk was rough with the man. Ms. Strachan walked up to the clerk and asked, "What did the guy do?" The clerk turned to Ms. Strachan, grabbed her and shook her. (Commission's Exhibit B, page 38.)

9. On March 16, 1984, two women went into Dimitri's to return two bottles of bad soft drinks. The clerk refused to exchange the bottles on the grounds they had not been purchased

from Dimitri's. The women refused to leave and wanted to pursue the matter. The clerk took hold of the arm of one of them to force her out of the store. She resisted. The clerk grabbed an empty pop bottle and held it in a threatening manner. The clerk then grabbed the woman and forced her out of the store. (Commission's Exhibit K.)

10. In early 1984, the Applicants began putting on two employees in the evening to enable better control when a problem arises.

11. The Applicants have made different improvements to Dimitri's since taking it over, including painting inside and outside and adding new product lines such as Greek food.

12. Beginning the first of December 1983, the Applicants took new efforts to reduce litter and loitering in front of Dimitri's. By the time of their April 12, 1984, hearing, the Applicants had reduced problems in front of the store by about 80 percent, as evidenced by the testimony of Police Sergeant Robert LaGae. The Applicants' methods of controlling these problems include frequently hosing down the sidewalk, sweeping in front of the store, and trying to get to know the people in the area to make it easier to persuade them to behave or move on.

13. The Applicants kept up the improvements in conditions in front of the store through their January 9, 1985, reconvened hearing, as evidenced by the testimony of Sergeant LaGae and Police Sergeant Michael Martin. Sergeant LaGae and Sergeant

Martin were shift supervisors for the area including Dimitri's in 1984. In 1984, the Applicants attempted to move transients along and keep the sidewalk clear as best anyone can in the Burnside neighborhood, as evidenced by the testimony of Sergeant LaGae.

14. Some members of the public have complained in 1984 that Dimitri's does not mark prices or give receipts in an effort to short-change customers. However, there was no specific evidence in the hearing of any customer who had been short-changed.

15. The Applicants attempt to mark prices on the items for sale at Dimitri's, with the exception of some items that are too small to normally be marked, such as candy bars. Dimitri's marked more items in 1984 than in 1983. Dimitri's gives cash register receipts if a customer requests one.

16. Dimitri's extends credit to a number of customers who receive monthly pension and benefit checks.

17. Applicant Stavros Karakasis has never been cited by the Commission for a liquor violation either at Dimitri's or during Mr. Karakasis' prior occupation as a bartender.

18. Neighborhood groups first complained to the Applicants about problems at Dimitri's in 1981. (Commission's Exhibit B, page 32.) No significant improvement in the problems occurred until December 1983. See Finding of Fact No. 12.

19. On November 30, 1982, a group of 31 persons associated with businesses located in the Old Town area near Dimitri's requested that the OLCC deny license renewal for Dimitri's. In explanation, the group cited personal and physical intimidation, street violence and open defiance of the law in the area near Dimitri's. (Commission's Exhibit C.)

20. The Commission renewed the PS license at Dimitri's for the calendar year 1983, despite some indications of public opinion against license renewal. After the renewal was granted, the Commission sent the Applicants a letter on December 23, 1982, stating in pertinent part as follows:

> . . .
>
> Nevertheless, the Regulatory Staff Committee wishes you to understand the concern they have for adverse public opinion generated by a licensed establishment. If further community complaints come in, you may be faced with a non-renewal action again next year. (Commission's Exhibit H.)

Public Opinion Against

Renewal Application

21. Burnside Consortium. The Burnside Consortium operates low-cost housing in the Burnside area near Dimitri's. The Consortium opposed Dimitri's license renewal at the Portland City Council's December 22, 1983, meeting. In recommending refusal then, the Consortium cited a lack of cooperation from the Applicants in improving the situation at Dimitri's following the Consortium's complaints about the premises in 1982 and a belief that Dimitri's had served as a

tremendous detriment to the Consortium being able to run decent housing in the area. (Commission's Exhibit B, pages 35-36.)

22. The Burnside Consortium has changed its name to Central City Concern (CCC). CCC held a meeting on October 8, 1984, to review liquor license renewal applications in the Burnside area. The meeting was open to the public. Eighteen persons attended and expressed various concerns about the different premises being considered. Concerns were expressed that Dimitri's does not price goods in the store, short-changes customers, and sells alcohol to minors. Following this comment, the CCC recommended against license renewal at Dimitri's for the reason that there has been no improvement in the operation of the business since 1983. (Commission's Exhibit I, Applicant's Exhibit 15.)

23. Burnside Projects, Inc. Burnside Projects provides night shelters, alcoholism treatment, correction services and aid to the chronically ill in the Burnside neighborhood. Burnside Projects opposed Dimitri's' license renewal at the Portland City Council's December 22, 1983, meeting, citing problems with crime and safety near Dimitri's. (Commission's Exhibit B, page 37.)

24. Burnside Projects continued to oppose renewal of the license for Dimitri's at the Portland City Council's October 25, 1984, meeting. Its reasons center on the cash register system at Dimitri's and on the contribution that alcohol sold

at Dimitri's makes to problems of public drunkenness, loitering, vandalism and litter. (Applicants' Exhibit 13, pages 58-60.)

Concerning the cash register system, Burnside Projects believes that cash payment and credit records at Dimitri's are kept in an unclear manner, making it difficult for customers to understand the amount of change they should receive. Burnside Projects believes this problem is compounded because prices at Dimitri's are unmarked and because many of the customers are alcoholic or mentally ill and might be easily cheated.

25. In making its refusal recommendation to the Portland City Council on October 25, 1984, Burnside Projects conceded that many more items were marked with prices in Dimitri's than in previous years. Burnside Projects also acknowledged that Dimitri's was keeping its store much cleaner both inside and outside. (Applicants' Exhibit 13, page 58.) Burnside Projects told the Council that if further improvements occurred at Dimitri's, Burnside Projects would drop its opposition to the renewal application. (Applicants' Exhibit 13, page 60.)

26. Burnside Merchants, Inc. Burnside Merchants is a group composed of about 15 businesses from the Burnside area near Dimitri's. The purpose of Burnside Merchants is to deal with street problems in the area.

Burnside Merchants opposed renewal of the PS license of Dimitri's at the Portland City Council's December 22, 1983, meeting because of problems with dangerous and offensive persons congregating in front of Dimitri's. The Merchants felt

Dimitri's had failed to do anything about these problems for an extended period. The Merchants also felt Dimitri's lacked a concrete plan to eliminate the problems. (Commission's Exhibit B, page 40.)

27. Burnside Merchants continued to oppose renewal of the PS license at the Portland City Council's October 25, 1984, meeting. The Merchants' continued opposition was based on the belief that, although Dimitri's has made improvements both inside and outside the store, the availability of alcohol at Dimitri's still contributes to the problems caused in the general neighborhood by persons who abuse alcoholic beverages. (Applicants' Exhibit 13, pages 60-62.)

28. Burnside Merchants appeared at the January 9, 1985, reconvened hearing before the Commission and stated its continuing opposition to renewal of the PS license at Dimitri's. The Merchants believe the Applicants are probably insincere in saying they will keep up the improvements at the store. The Merchants believe the Applicants' insincerity is shown by questionable customer receipt practices and because problems at Dimitri's persisted from 1981 through December of 1983, despite complaints.

29. The Urban Street Life Task Force. The Task Force is a coalition of business and social service agencies that have gathered together to improve street problems in the Burnside area. Burnside Merchants, Inc., is one of the organizations represented on the Task Force. The Task Force opposed license

renewal at the Applicants' April 12, 1984, hearing for the same reasons as the Burnside Merchants set out in Finding of Fact No. 26.

30. An Urban Street Life Task Force representative appeared at the City Council's October 25, 1984, meeting. The representative declined to recommend whether the license should be renewed. However, the representative expressed concerns about Applicants' sincerity for the reasons set out in Finding of Fact No. 28. (Applicants' Exhibit 13, pages 62-64.)

31. McDonald's Food Store. McDonald's is located on the ground floor of the hotel next to Dimitri's. McDonald's sells low-cost food and operates a senior center and outreach ministry. The managers of McDonald's complained at the December 22, 1983, Portland City Council meeting that clerks at Dimitri's are treating persons who congregate in the area in a violent and abusive manner. (Commission's Exhibit B, pages 36-37.)

32. Anchor Tools. Anchor Tools was formerly located on the city block in which Dimitri's is located. Anchor Tools moved to a new location. A major influence on the move was the operation of Dimitri's. Anchor Tools' owner testified at the City Council's December 22, 1983, meeting that Dimitri's helped cause a decline in the neighborhood. (Commission's Exhibit B, pages 39-40.)

33. Sgt. LaGae's personal opinion is that the PS license at Dimitri's not be renewed based on fears that the Applicants would revert to previous practices. However, Sgt. LaGae would

drop his objections to license renewal if he could be assured that the Applicants would continue operating Dimitri's in the same manner which they have since December 1983.

Public Opinion

In Favor of Renewal

34. Approximately 779 persons have signed a petition in support of the renewal of the PS license at Dimitri's. The petition was collected during February 1984. Many who signed the petition have addresses in the Burnside area. The petition states as follows:

> "We the undersigned, on behalf of Dimitri's Grocery request that the City of Portland grant a favorable recommendation for its liquor license renewal and that the Oregon Liquor Control Commission grant the renewal on the ground and for the reason that we find the store convenient for our purchases and find the owners very helpful in many ways. The owners work very hard to keep their premises free from undesirables and do not allow loitering on or near the premises. They also are very careful to avoid sales of alcoholic beverages to anyone who is under the influence. The neighborhood is difficult to operate a business in, but under the circumstances we feel the owners of Dimitri's are doing their best. We too would like to see a safe clean neighborhood but do not feel the problem is one that is the fault of the store, nor will the problem disappear if this license is not renewed. The owners support their families through this store and it would be an extreme hardship if their license was not renewed."

(Applicants' Exhibit No. 1.)

35. Seven of Dimitri's customers appeared at the October 25, 1984, Portland City Council meeting and testified they

believe that Dimitri's is generally well-run, that Dimitri's provides valuable services to them, including giving them credit, and that they are treated well at the store. (Applicants' Exhibit 13, pages 43-55.)

Conclusions of Law

In analyzing public opinion under OAR 845-05-035, the Commission may consider the numbers of supporters versus objectors, the proximity of the supporters and objectors to the proposed outlet, and the merits of the arguments for and against licensure.

The numbers of supporters versus objectors does not give clear direction in showing how public opinion weighs in this case because although considerable opinion against the application has been shown[1], there is also opinion in support, shown by the Applicants' 779-signature petition and the seven persons who testified in support of the Applicants at the October 25, 1984, City Council meeting.

The petition merits some weight because it was collected in the store and represents people who have actually patronized

[1] The Commission formerly held that it would limit consideration of public opinion under OAR 845-05-035 to statements made to the OLCC, whether in written or oral form, as opposed to statements made to the local government body only. OLCC Final Order, Rotten Robert's, Inc., Rotten Robert's, October 1982. However, the Commission takes notice that at its consideration of the application on September 24, 1984, the Commission determined it would also consider public opinion expressed to local government bodies in assessing public opinion under OAR 845-05-035. Therefore, the analysis of OAR 845-05-035 in the present case includes both public opinion that was expressed to the City of Portland and that was expressed directly to the Commission.

the store. Although it is unlikely that every person who signed the petition has personal knowledge of all the contentions in the petition, their signatures certainly show support by patrons for continuation of the license at Dimitri's.

It is also significant that some of the organizations that originally objected to this application in December 1983 have softened their positions. For instance, Burnside Projects, Inc. recognizes the various improvements at Dimitri's and would drop its opposition if further improvements occurred. See Finding of Fact No. 25. The Urban Street Life Task Force declined to recommend at the City Council's October 25, 1984, meeting whether the license should or should not be renewed. See Finding of Fact No. 30. Police Sgt. LaGae would not personally oppose license renewal if he could be assured that improvements at Dimitri's would continue. See Finding of Fact No. 33. Thus, the objectors are somewhat fewer and less vociferous than in December 1983. A comparison of the numbers of objectors versus supporters, then, does not give clear direction either for or against license renewal.

Likewise, an analysis of the proximity of supporters and objectors to Dimitri's is not particularly helpful in determining the weight of public opinion. Both the supporters and the objectors are generally made up of persons residing, working, or owning a business within one mile of the premises. Both the supporters and objectors are strongly affected by the existence of a license at Dimitri's.

The remaining issue to look at in determining the weight of public opinion on license renewal, then, becomes the merits of the arguments expressed for and against licensure.

Some public opinion expressed against the application has little to do with the effects of the liquor license and should not be given much weight. Such opinion includes the concerns expressed about not marking prices, not giving receipts and possibly short-changing customers. Short-changing may be a crime, but it is not a violation of the liquor laws. ORS Chapters 471 and 472, OAR Chapter 845. Short-changing is not a practice the Commission has the power to eliminate by non-renewal of the PS license. The Applicants could shortchange customers whether they had a PS license or not. Therefore, the renewal application does not seem the appropriate forum to resolve such complaints.

We should note, in any case, that no particular incidents of short-changing are cited in the record. Thus, in addition to having a tenuous connection to the PS license renewal, complaints about short-changing appear unsubstantiated and speculative.

After separating out the public opinion that does not particularly concern the liquor license, the merits of the objectors' arguments outweigh the arguments of the supporters. The objectors essentially argue that conditions relating to the sale of alcohol at Dimitri's have been, are, and are likely to be bad enough that the PS license should not be renewed. The

supporters argue that the Applicants have done a reasonable job and that conditions relating to the sale of liquor at Dimitri's are such that the PS license should be renewed.

The evidence supports the objectors' position, based upon the merits of the arguments. The objectors were concerned about a variety of alcohol-related problems which continued, despite numerous complaints, from 1981 through December 1983. Those problems included public drinking and public drunkenness in front of Dimitri's (and resulting problems of public urination, broken bottles, and disturbances) and rough treatment of visibly intoxicated people attempting to purchase wine. Although conditions have improved significantly since the City Council recommended against renewal, there is serious doubt as to whether the Applicants would maintain the improved conditions in the future. These arguments outweigh the supporters' arguments, which appear to be largely based upon the Applicants' post-1983 efforts and upon the convenience of shopping at Dimitri's. We note that there is another package store selling beer and wine within four blocks of Dimitri's.

The Portland City Council's refusal recommendation on this application (see Findings of Fact Nos. 36 and 42) is itself an indication of public opinion.

In summary, then, the Commission concludes that public opinion weighs against this application under OAR 845-05-035 because the objectors' reasons are better supported and more persuasive than the reasons of those who favor license renewal.

II. LOCAL ENDORSEMENT

> The following criteria will be given sufficient consideration so that a license will not be issued unless good cause which outweighs the criteria involved is shown by the applicant:
>
> (1) An adverse recommendation by the governing body of the appropriate city or county, after due consideration. The recommendation may be disregarded by the Commission if the body has failed to give to the applicant and to interested members of the public both reasonable notice of the proceedings at which the application was considered and reasonable opportunity to be heard. OAR 845-05-025(1).

Findings of Fact

36. The City of Portland voted to recommend at the City Council's December 22, 1983, meeting that the Commission deny renewal of the PS license at Dimitri's. (Commission's Exhibits A and B.)

37. At the City Council's December 22, 1983, meeting, the Council received testimony from its Bureau of Licenses and its Police Bureau. Representatives of the Burnside Consortium, Burnside Projects, Burnside Merchants, Inc., McDonald Food Store and Anchor Tools testified against license renewal. See Findings of Fact Nos. 21, 23, 26, 31, and 32. (Commission's Exhibit B.)

The Applicants were represented at the December 22, 1983, City Council meeting by their attorney, Alex Christy. Mr. Christy spoke to the Council in support of license renewal. (Commission's Exhibit B.)

38. The City's Bureau of Licenses went into the December 22, 1983, Council meeting with a recommendation that the license be renewed with a Letter of Warning. However, following testimony at the meeting by a Portland Police Bureau representative, the Bureau of Licenses changed its recommendation to one of refusal. (Commission's Exhibit B, pages 32-35.)

39. At the December 22, 1983, Council meeting, Portland Police Sergeant LaGae testified that there was a problem with loitering drinkers near Dimitri's, that there had been incidents and rumors of violence occurring in or near Dimitri's, and that Dimitri's had not been cooperative in avoiding sales of alcohol to sober persons who buy for intoxicated persons waiting outside. Sergeant LaGae pointed out, however, that Dimitri's had started making some effort at keeping its sidewalk clean beginning about early December 1983. (Commission's Exhibit B, pages 32-33.)

40. The City of Portland's Bureau of Licenses cited the 1982 opposition to Dimitri's when addressing the Council at its December 22, 1983, meeting. The Bureau also advised the Council that there had been opposition to the Dimitri's license renewal in 1981 from the Old Town Merchants Association. The Bureau advised the Council that, "[i]f Dimitri's stands out [from other operators in Old Town] it is because the objections to this outlet have been consistent year after year." (Commissions Exhibit B, Page 32.)

41. Portland City Code Section 7.18.070(d) provides as follows:

> "Before the [Portland City] Council hears any liquor license application, the applicant shall be notified by the Bureau of Licenses of . . . the nature of the recommendation made to the Council by the Bureau of Licenses or Bureau of Police . . . . Where a recommendation from the Bureau of Licenses or Bureau of Police is not Favorable, it shall be the responsibility of the Bureau of Licenses to inform the applicant as to the reasons for the recommendation and to advise the applicant as to the procedures for gaining access to any reports which may be a part of such recommendation."
>
> (Applicant's Exhibit 18.)

42. The Portland City Council reconsidered and again recommended against the renewal application at the Council's October 25, 1984, meeting.

At the meeting, the Council heard from its Bureau of Licenses, from the Police Bureau, and from objectors representing Burnside Projects, Burnside Merchants, and the Urban Street Life Task Force. See Findings of Fact Nos. 24, 27, and 30.

In addition, the Council heard from the Applicants' attorney, Alex Christy, Applicant Stavros Karakasis, and seven customers of the store who testified favorably concerning Dimitri's. See Finding of Fact No. 35. (Applicants' Exhibit 13.)

43. At the October 25, 1984, meeting, the Bureau of Licenses recommended that the City Council again take a position against renewal of the PS license at Dimitri's. The Bureau of

Licenses representative argued that any improvement at Dimitri's since December 1983 was at best marginal and was accomplished only under threat of the loss of the liquor license. The Bureau argued that improvements accomplished since December 1983 showed that the Applicants could have improved matters at the store between 1981 and 1983, when neighborhood groups were complaining about problems at Dimitri's. (Applicants' Exhibit 13, Page 37.)

44. At the Portland City Council's October 25, 1984, meeting, a Portland Police Bureau representative advised the Council of two police office reports showing instances where employees at Dimitri's had treated customers roughly. Applicants' Exhibit 13, pages 66 and 67. One of these incidents was that described in Finding of Fact No. 9 above. The other incident was one where the customer involved has since written the Commission a letter stating the incident "was nothing" and that the Applicants are very good to her. Applicants' Exhibit 20.

45. At the Portland City Council's October 25, 1984, meeting, two of the three Council members present stated they were particularly concerned over the reports of rough treatment of customers at Dimitri's. Applicants' Exhibit No. 13, page 70.

46. At the Portland City Council's October 25, 1984, meeting, the Council received and considered a memorandum from Captain Wayne Inman of the Portland Police Bureau. Captain Inman's memo stated as follows:

> "After reviewing the activity at Dimitri's Grocery during the license year 1984, I recommend that the license not be renewed for 1985. The area officers who are well acquainted with Dimitri's during their hours of operation all conclude that there has been no improvement in the operation of the grocery."

(Applicants' Exhibit 19.)

47. Captain Inman did not contact Sergeants Martin and LaGae before issuing his memorandum to the Portland City Council that there had been no improvements at Dimitri's during the license year 1984. Sergeants Martin and LaGae were supervisors of the area including Dimitri's in 1984 and were not aware of any particular problems in front of Dimitri's in 1984. (See Finding of Fact Nos. 12 and 13.) Sergeants Martin and LaGae did not appear before the City Council at its October 25, 1984, meeting.

48. Applicants' attorney, Alex Christy, advised the City Council at its October 25, 1984, meeting that Sergeant LaGae had testified before the Commission on April 12, 1984, that conditions at Dimitri's had improved 80 percent. (Applicants' Exhibit 13, page 41.)

Conclusions of Law

The adverse recommendation of the City of Portland establishes a basis for license refusal under OAR 845-05-025(1).

The City has met the requirement under the rule that its recommendation be based on due consideration. Due consideration is shown by the nature of the City Council meetings where

the City's recommendations were made. The meetings allowed the City staff, interested members of the public, and the Applicants a thorough opportunity to present their views. The information presented to the Council established a reasonable basis for its recommendation.

The Applicants argue that the Commission should disregard the City recommendation under OAR 845-05-025(1) because the City did not provide the Applicants notice under City of Portland Ordinance 7.18.070(d) that the City's Bureau of Licenses would recommend against renewal at the City's December 22, 1983, meeting. Ordinance 7.18.070(d) requires the City Bureau of Licenses to notify the applicant of the Bureau's recommendation to the Council and the reasons for the recommendation, if unfavorable. See Finding of Fact No. 41. The Applicants argue that the City failed to comply with ordinance 7.18.070(d) when, without prior notice to the Applicants, the Bureau of Licenses changed its recommendation on Dimitri's to "unfavorable" during the course of the Council's December 22, 1983, meeting.

The Applicants' argument is not well taken. Nothing in Ordinance 7.18.070(d) prevents the Bureau of Licenses from changing its recommendation at the Council meeting based on new information. Further, even if the change in recommendation at the December 22, 1983, meeting could be considered a violation of the City's notice rules, this matter was cured by the Council's reconsideration of the application on October 25,

1984. At the reconsideration, the Applicants were on notice that the Bureau of Licenses recommendation had been changed to unfavorable.

The Applicants argue that good cause has been shown to disregard the adverse City recommendation under OAR 845-05-025(1) because of the improvements that the Applicants have made at Dimitri's since December 1983. The Applicants have made improvements in the situation in front of the store since December 1983. See Findings of Fact Nos. 10, 12, and 13.

The Applicants' argument for good cause would perhaps be well taken if there were no other bases indicated for the City's adverse recommendation than the problems at Dimitri's that the Applicants have solved. However, the record indicates that there are other bases for the City's adverse recommendation beyond the problems that the Applicants have solved.

These bases include the strong continuing opposition shown by the objectors' testimony before the City, the legitimate doubt that Dimitri's record raises about whether the Applicants would operate Dimitri's properly in the future, the instances of rough treatment of customers at Dimitri's, and the contribution that the PS license makes to the problems that alcohol causes in the general Burnside neighborhood. This last point, in particular, bears important consideration. The City is in a good position to determine whether the problems associated with alcohol in the neighborhood around Dimitri's are serious enough to require drastic action such as cutting off the supply of

alcohol from establishments such as Dimitri's with a history of abuses.

Thus, sound bases remain for the Council's adverse recommendation on reconsideration. The City's adverse recommendation represents, on the whole, a reasonable approach to deal with the continuing problems and concerns associated with a PS license at Dimitri's. Consequently, Applicants' improvements do not establish good cause to disregard the Council recommendation.

The Applicants argue that the adverse City recommendation is not sufficient by itself to support license denial, citing 35 Opinions of the Oregon Attorney General 25 (1970) and Morishige v. OLCC, 29 Or App 651, 564 P2d 1359 (1977).

The authority cited by the Applicants, however, does not establish their argument.

The 1970 Attorney General opinion cited by the Applicants concluded that the Commission could not deny an application based solely on an adverse local government recommendation because an adverse local recommendation was not one of the bases for non-renewal set forth under ORS 471.295. See ORS 471.301(1)(c).

However, since the Attorney General's opinion was issued in 1970, the Commission has adopted various administrative rules to flesh out the statutory grounds for non-renewal under ORS 471.295. Among the rules adopted since 1970 is OAR 845-05-025(1), which now provides a basis to deny an application solely upon an adverse local recommendation.

In Morishige, supra, cited by the Applicants, the specially concurring opinion concluded that the Commission would be making an unauthorized delegation of its licensing power to the local government if the Commission took a licensing action based solely on an unreasoned local government recommendation. Morishige, supra at 659.

In the present case, however, the City of Portland's recommendation is not unreasoned, despite the fact that the City did not write the Commission a letter explaining its vote. The bases for the vote are clearly inferrable from the transcripts of the City Council meetings that were received as Commission's Exhibit B and Applicants' Exhibit 13.

The present case shows very similar facts on the "local endorsement" issue to those found in Rotten Roberts Inc. v. Oregon Liquor Control Commission, 65 Or App 351, 671 P2d 753 (1983). In Rotten Roberts, the Commission had denied license renewal because of a negative City recommendation and because of public opinion. The Commission's Findings of Fact in the Rotten Roberts Final Order[2] indicate that the reasoning for the City's recommendation was shown through evidence of the testimony at the City Council meeting where the recommendation was entered. On appeal, the court affirmed the Commission, noting that there were sufficient facts in the record to establish the City recommendation as a basis for license refusal. Rotten Roberts, supra at 355.

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[2]See footnote No. 1 above.

In conclusion then, the City of Portland's refusal recommendation has been established as a basis for nonrenewal under OAR 845-05-025(1). The Applicants have not overcome this criterion as a refusal ground.

ULTIMATE CONCLUSIONS OF LAW

The renewal application for Dimitri's should be denied because public opinion weighs against the application and because of the City of Portland's adverse recommendation.

FINAL ORDER

The Commission orders that the application for renewal of the PS license held by Ioannis and Stavros Karakasis at Dimitri's Grocery, 121 NW Sixth, Portland, Oregon be DENIED.

Dated this 14th day of May, 1985.

C. Dean Smith

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.