

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,
Daryl and Vera Petersen)	CONCLUSIONS OF LAW,
CANDLELIGHT RESTAURANT)	AND ORDER
2101 Main Street)	
Baker, OR 97814)	
- - - - -)	
Baker County)	

A hearing in the above matter was held on the 18th day of November, 1982, in Baker, Oregon, before Hearings Examiner Douglas Crumme'. The Applicants appeared in person and were 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. Daryl and Vera Petersen have applied for a Dispenser Class C (DC) license at the CANDLELIGHT RESTAURANT, 2101 Main Street, Baker, Oregon. The Applicants presently hold a Retail Malt Beverage (RMB) license at the Candlelight Restaurant. The Applicants went into business at the Candlelight Restaurant in October, 1981.

2. The Commission's Licensing Staff has proposed that the Applicants' application be refused, 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).
- c. OAR 845-05-040(2)(b) (unique or substantially different dining service or atmosphere).
- d. Battle Creek Golf Course, Inc. v. OLCC, 21 Or. App. 179, 534 P2d 204 (1975) (Commission may consider future license applicants in determining if issuance of a dispenser license is in the public interest or convenience).
- e. ORS 472.114 (importance in issuing dispenser licenses to outlets located in incorporated areas with populations of less than 25,000 and to outlets in such areas with fewer than 100 seats).

(Commission's Exhibit H.)

3. The Candlelight Restaurant is located on the main business street in downtown Baker.

4. The Candlelight Restaurant has seating for 89 persons at tables, plus seating for an additional eight or nine persons at an eating counter.

5. The Candlelight Restaurant does not have a separate banquet room. However, the Restaurant has a corner area with seating for 16 that may be separated from the remainder of the premises by partitions for group dining. When not partitioned off, this corner area is used for regular dining.

6. The Candlelight Restaurant does not have a lounge or public bar.

7. The Candlelight Restaurant does not have any pool tables, game machines or other entertainment activities. Live music and dancing is not indicated at the premises other than an occasional performer playing background music.

8. The Candlelight Restaurant is open for breakfast, lunch and dinner. Hours are from 6:00 a.m. until 10:00 p.m., Sunday through Thursday. Hours on Friday and Saturday are from 6:00 a.m. until 11:00 p.m.

9. The Candlelight Restaurant's lunch menu includes the following items: Monte Cristo sandwich, \$3.95; Denver sandwich, \$3.25; club house sandwich, \$3.75; French Dip sandwich, \$3.75; patty melt sandwich, \$2.95; bacon, lettuce and tomato sandwich, \$2.95; barbequed beef sandwich, \$3.50; steak sandwich, \$4.95; diet plate, \$3.95; cold ham, turkey or beef sandwich, \$2.45; regular or double burger, with or without cheese, \$2.75 to \$3.95.

The Applicants' lunch sandwiches are served with a choice of french fries, tossed salad, potato salad, fruit cup or cottage cheese. The lunch menu also includes five children's plates. Additionally, the Candlelight Restaurant customarily offers three lunch specials a day. (Applicants' Exhibit No. 8.)

10. The Candlelight Restaurant's dinner selections include the following: beef and vegetable saute', \$7.95; top sirloin steak, \$7.95 to \$10.95; filet mignon, \$9.25 to \$11.25; steak and prawns, \$12.95; finger steaks, \$6.95; chicken-fried steak, \$5.95; ground sirloin steak, \$6.50; chicken saute', \$7.50; chicken breast, \$7.50; chicken strips, \$6.95; filet of sole, \$7.50; poached northern cod, \$5.95; scampi saute', \$9.75; deep fried prawns, \$9.50; shrimp omelet, \$5.95; crab omelet, \$6.95; crab louis, \$4.50 or \$6.95; shrimp louis, \$3.95 or

\$5.95; chef's salad, \$2.50 or \$3.95; taco salad, \$3.95. In addition, the Candlelight Restaurant normally serves two dinner specials a day. (Applicants' Exhibit No. 8.)

In addition to the above, the Applicants offer a Mexican menu after 5:00 p.m. each day. Items on this Mexican menu include: two tacos and refried beans, \$4.10; burrito, taco and Spanish rice, \$4.55; enchilada, taco and burrito, \$4.60; tamale pie, enchilada and taco, \$4.75; tacolata, tamale pie and chili relleno, \$5.75; charizo with eggs and tamale pie, \$5.75; and Mexican steak and refried beans, \$6.95. In addition, ten Mexican side orders priced from \$1.90 to \$4.00 are offered. (Applicants' Exhibit No. 8.)

11. Applicant Vera Petersen was born in Germany. The specials that the Applicants serve at the Candlelight Restaurant occasionally include German dishes.

12. The Candlelight Restaurant's sales have been as follows:

<u>ACTUAL SALES</u>			
<u>MONTH</u>	<u>GROSS SALES</u>	<u>FOOD SALES</u>	<u>BEER/WINE SALES</u>
<u>1981</u>			
November	\$20,361.96	\$19,720.56	\$641.40
December	11,877.81	11,491.78	386.03
<u>1982</u>			
January	12,141.38	11,684.58	456.80
February	11,212.08	10,868.92	444.15
March	14,552.52	14,070.38	482.15
April	13,402.36	13,003.06	399.30
May	15,480.24	15,066.14	414.10
June	14,887.62	14,254.62	633.00
July	16,369.75	15,835.05	534.70
August	16,405.92	15,894.61	511.31

ACTUAL SALES

<u>MONTH</u>	<u>GROSS SALES</u>	<u>FOOD SALES</u>	<u>BEER/WINE SALES</u>
September	15,586.10	15,099.70	486.40
<u>October</u>	<u>16,829.32</u>	<u>16,125.52</u>	<u>703.80</u>
Average	\$14,925.59	\$14,426.24	\$499.35

13. The Applicants have not made any specific projections about the impact that a DC license would have on their sales. However, Applicant Vera Petersen believes that a DC license would lead to some increase in sales, particularly during the evening hours. Mrs. Petersen bases this belief in part upon the numerous requests that the Applicants have had from their customers for cocktails.

14. Dispenser Class A (DA) outlets in the following areas have recently experienced the average monthly sales indicated:

<u>AREA</u>	<u>FOOD SALES</u>	<u>TOTAL SALES</u>
City of Baker	\$14,389	\$23,641
Baker County	11,503	18,340

15. 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 COMMITTED AND IN OPERATION</u>	<u>DC COMMITTED AND IN OPERATION</u>
City of Baker	9,580	4.79	11	1
Baker County	16,300	8.15	19	1

16. The following dispenser outlets are located within 20-miles of the Candlelight Restaurant:

<u>OUTLET</u>	<u>LICENSE</u>	<u>LOCATION</u>
Stockman's Exchange	DA	Baker
Stirrup Room	DA	Baker
Cattle Kate's	DA	Baker
Royal Cafe & Shangrila	DA	Baker
Kopper Kitchen	DA	Baker
Fireside Inn	DA	Baker
American Legion 41 Club	DBA	Baker
Eagles Club	DBA	Baker
City Golf Club	DBA	Baker
Veterans Memorial Club	DBA	Baker
Elks Club	DBC	Baker
Trail's End Restaurant	DC	Baker
Haines Steakhouse	DA	9 miles NW at Haines
Circle H Restaurant	DA	9 miles NW at Haines
Powder Club	DA	18 miles NW at North Powder

17. Four of the dispenser outlets within 20-miles of the Candlelight Restaurant are workingman's or non-family establishments that place diminished emphasis on the service of food. These outlets are the Stockman's Exchange, the Stirrup Room, Cattle Kate's and the Powder Club.

18. The Royal Cafe, a dispenser outlet in the City of Baker, serves Chinese food. The Circle H Restaurant, a dispenser outlet nine miles from the Candlelight Restaurant is going to begin serving Oriental food in the near future.

19. The Haines Steakhouse, a dispenser outlet nine miles from the Candlelight Restaurant, is a dinner house that serves almost entirely steaks and beef.

20. The Fireside Inn, a DA outlet located in the City of Baker, is a dinner house restaurant that also offers live music and dancing. The live music and dancing at The Fireside can lead to a less quiet and leisurely dining atmosphere than found at the Candlelight Restaurant.

21. The DA-licensed Kopper Kitchen in Baker is located on a freeway interchange near several motels. The Kopper Kitchen is part of the Kopper Kitchen chain. The Kopper Kitchen emphasizes food service. The atmosphere at the restaurant is somewhat less personal than that found at the Candlelight Restaurant.

22. There are no dispenser outlets within 20-miles of the Candlelight Restaurant that serve Mexican food.

23. There are no dispenser outlets within 20-miles of the Candlelight Restaurant that currently serve German food.

24. The majority of dispenser outlets within 20-miles of the Candlelight Restaurant do not offer the variety of seafood served at the Candlelight Restaurant.

25. Approximately 89 persons have signed a petition in support of the issuance of a DC license at the Candlelight Restaurant. (Applicants' Exhibits Nos. 6 and 7.)

26. The Commission takes official notice that as of January 1, 1983, there were 24 DC licenses available to the Commission for issuance. On this same date there were 17 DC license applications pending before the Commission.

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).

Both the City of Baker and Baker County contain substantially more than one dispenser outlet per 2,000 population. This is prima facie evidence under OAR 845-05-040(2)(c) that the Applicants' community contains sufficient dispenser outlets, weighing against license issuance under OAR 845-05-030(1).

2. 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 Applicants' average monthly food sales during their initial year of operation were \$14,426.

The Applicants have projected a sales increase with the issuance of a DC license. An increase seems likely given the dinner house nature of the Applicants' menu and given the many requests the Applicants' patrons make for cocktails. The Applicants have not projected a specific sales increase figure. The Commission concludes that an increase in average food sales of at least about 10 percent, to the \$16,000 area, is reasonably likely.

A \$16,000 food sales average would exceed the food sales average of DA outlets in the City of Baker and in Baker County.

• The comparison of food sales between the Candlelight and the area DA outlets is probably more fair than comparing total sales for purposes of OAR 845-05-040(2)(a) because of the more restricted liquor sales allowed under a DC license than under a DA license.

The favorable food sales comparison between the Candlelight Restaurant and existing DA outlets in Baker and in Baker County indicates preference for licensure under OAR 845-05-040(2)(a).

3. 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 Candlelight Restaurant's combination of a dinner house menu, Mexican menu items, relatively numerous seafood items and occasional German specials, is substantially different from existing dispenser outlets in the 20-mile radius area. Preference for license issuance is therefore shown under OAR 845-05-040(2)(b).

4. The number of dispenser licenses available to the Commission for issuance to DA and DB outlets is limited under ORS 472.110. Caution must be exercised in the review of this application then, in order to insure that only those dispenser license applicants most qualified to serve the public interest and convenience are issued the limited dispenser licenses

available. There are, however, more dispenser licenses available for issuance to DA and DB outlets than the number of applications presently pending for such licenses. The existence of some factors showing a lack of preference for license issuance under some of the Commission's license criteria then should not preclude license issuance if the applicant shows sufficient preference factors under other of the license criteria. Battle Creek Golf Course, Inc. v. OLCC, 21 Or. App. 179, 183-84, 534 P2d 204 (1975); ORS 472.160(1). "

5. A preference for issuance of a dispenser license may be given to applicants located in a rural unincorporated area or in an incorporated area with a population of less than 25,000, or where applicant's premises are located in such an area and have seating capacity for 100 or fewer persons. OAR 845-05-040(2)(d) and (e).

The Candlelight Restaurant is located in the City of Baker, population 9,580. The Candlelight Restaurant has total seating for 98 persons. Preferences for license issuance are therefore indicated under OAR 845-05-040(2)(d) and (e).

ULTIMATE CONCLUSIONS OF LAW

The Applicants' application for a DC license at the Candlelight Restaurant is demanded by public interest and convenience despite the fact that sufficient dispenser licenses have been issued in the Applicants' community, because preferences for license issuance are shown by the Applicants' comparatively high likely food sales with a DC license, by the Applicants' substantially different dining service or atmosphere, by the Candlelight Restaurant's location in an incorporated area with

fewer than 25,000 persons, and by the Candlelight Restaurant's seating for 100 or fewer persons. ORS 472.160(1).

FINAL ORDER

It is hereby ordered that the application by Daryl and Vera Petersen for a Dispenser Class C (DC) license at the Candlelight Restaurant, 2101 Main Street, Baker, Oregon be GRANTED.

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 February, 1983.



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.