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BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Application for a)	
Dispenser Class A (DA))	
License by:)	FINAL
)	FINDINGS OF FACT,
Heloma and Raechel Goforth)	CONCLUSIONS OF LAW,
FIDDLER'S GREEN)	AND ORDER
218 W. Marine Drive)	
Astoria, Oregon 97103)	
- - - - -)	
Clatsop County)	

A hearing in the above matter was held on the 6th day of July, 1983, in Astoria, Oregon, before Hearings Examiner Douglas Crumme'. The record of the hearing was held open through the 25th day of July, 1983, for the receipt of additional sales figures and projections from the Applicants. The Applicants appeared in person and were represented by James K. Neill, Jr., Attorney at Law, Portland, Oregon. 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. Heloma and Raechel Goforth have applied for a Dispenser Class A (DA) license at the FIDDLER'S GREEN, 218 W. Marine Drive, Astoria, Oregon. The Applicants have held a Restaurant (R) license at the Fiddler's Green since July, 1982.

2. The Regulatory Staff Committee has recommended that the Applicants' application be refused, citing the following:

- a. OAR 845-05-030(1) and 845-05-040(2)(c) (sufficient licensed outlets in applicant's community).
- b. OAR 845-05-040(3)(f) (lesser services, facilities and economic benefit).
- c. ORS 472.110(4) (the quota on licenses available for issuance).
- d. Battle Creek Golf Course, Inc. v. OLCC, 21 Or. App. 179, 183-84, 534 P2d 204 (1975).
- e. ORS 472.114 (importance of issuing dispenser licenses to applicants with seating for less than 100 and located in incorporated areas with population under 25,000).

(Commission's Exhibit C.)

3. The Applicants originally purchased the Fiddler's Green in 1970. The premises had formerly been named the Snug Harbor and was primarily a tavern for men. In changing the business to the Fiddler's Green, the Applicants created a gourmet restaurant with a friendly atmosphere. The Applicants sold the business in 1979. Almost immediately thereafter one of the purchasers was hit by a drunk driver and the remaining purchasers were unable to operate the premises successfully. These purchasers sold to an engineer who tried a Mexican format. This was unsuccessful and the business was closed for 11 months. Mr. and Mrs. Goforth repossessed the business on June 14, 1982 and reopened the business in August, 1982.

4. Fiddler's Green is located on Highway 30 in the older Union Town section of Astoria near the Columbia River bridge.

5. Fiddler's Green has a somewhat unusual floorplan. The main entrance opens into a waiting and dining area that

also contains the premises' bar. This waiting/dining area contains tables with seating for 22 persons. In addition there is seating for 15 at the bar. To the right of the waiting/dining room is a separate banquet/dining room with seating for 24 persons. The main dining room is reached through a door at the rear of the waiting/dining room. The main dining room contains seating for 35 persons.

6. The Applicants can use either their front banquet/dining room or their main dining room for banquets.

7. Fiddler's Green holds a No. III minor posting under OAR 845-06-040(3)(c). A No. III minor posting permits minors in dining rooms where food service is the principal business and the sale of alcoholic liquor is incidental. A No. III minor posting does not permit minors to loiter.

8. The Fiddler's Green does not have any pool tables or electronic game machines.

9. The only live entertainment offered at the Fiddler's Green is a piano bar on weekends. There is no bandstand or dance floor.

10. The decor of the Fiddler's Green emphasizes natural woods. Tablecloths and cloth napkins are used on dining tables. The waiting/dining room contains a free-standing fireplace, creating a warm atmosphere.

11. The premises is open six days a week during the winter and seven days a week during the summer. The regular menu is featured between approximately 10:00 a.m. and 10:00 p.m.

The premises closes to the public between 1:00 a.m. and 2:30 a.m.

12. The Applicants' menu includes the following:

Dinner Entrees

Oysters Rockefeller	\$ 9.95
Combination Seafood Plate	9.95
Scallops Flambe'	10.50
Steak and Seafood Combination	12.50
New York Steak	11.95 & 14.95
London Broil	10.95
Cioppino (seafood stew)	12.50
Chicken au Galliano	10.95
Poached Chicken	9.95
Fillet de Lapin * (rabbit)	10.95
Steak Dianne *	12.95

* Prepared at patron's table

Light Suppers

(Served from 3:00 p.m. to 10:00 p.m.
in Waiting/Dining Room Only)

Fish and Chips	\$ 5.25
Hamburger	4.50
Pot of Soup	4.25
Tureen of Soup	6.00 for two 12.00 for four
Assortment of Raw Vegetables & Cheese	3.50
Seafood Cocktail (Shrimp, Crab or Oyster)	3.75
Stuffed Potato	1.75
Steak Sandwich	7.95

Luncheon

11:00 a.m. to 3:00 p.m.

Turkey Sandwich	\$ 3.95
Ham and Cheese Sandwich	3.95
Pastrami Sandwich	4.25
Reuben Sandwich	4.50
Corn Beef Sandwich	4.25
Liverwurst Sandwich	3.95
Hamburger	4.25
Fish and Chips	4.75
Steak Sandwich	5.95
Pot of Soup with French Roll and Salad	3.75

Pot of Soup and French Roll	2.75
Seafood Sandwich	5.95
Chef's Salad	3.50 & 5.50
Tossed Green Salad with Roll and Garne'	

In A Basket

(Served Throughout The Day)

Home Cut French Fries	\$ 1.75
Nachos	1.95
Onion Rings	1.75
Fish and Chips	3.75

Sunday Brunch

Eggs Benedict
 Seafood Benedict
 Hangtown Fry
 Eggs any style with Ham, Bacon or Sausage
 Blintzes
 Crepes ala Lorraine

(Applicants' Exhibit No. 6.)

In addition to the above, the Applicants propose offering special after-dinner coffees and Sunday Brunch drinks if issued a DA license.

13. The Applicants' sales at the Fiddler's Green since opening in August, 1982 have been as follows:

<u>MONTH</u>	<u>FOOD</u>	<u>BANQUET</u>	<u>BEER & WINE</u>	<u>TOTAL SALES</u>
1982-				
August	\$4,363.00	\$ -0-	\$1,870.20	\$ 6,234.00
September	4,047.00	832.00	2,230.00	7,109.00
October	5,181.00	1,010.00	2,510.00	8,701.00
November	5,584.00	936.00	2,793.00	9,310.00
December	7,240.50	1,300.00	3,231.50	10,772.00
1983				
January	5,833.36	894.00	1,651.36	8,378.72
February	5,286.04	1,634.27	1,366.20	8,286.51
March	7,195.74	1,231.64	2,271.46	10,698.84
April	6,548.91	1,489.50	1,856.61	9,895.02

<u>MONTH</u>	<u>FOOD</u>	<u>BANQUET</u>	<u>BEER & WINE</u>	<u>TOTAL SALES</u>
<u>1983</u>				
May	7,360.14	1,363.00	2,481.05	11,204.19
June	<u>7,686.91</u>	<u>1,562.00</u>	<u>2,422.21</u>	<u>11,671.12</u>
Monthly Average				\$ 9,296.00

14. The Applicants' sales projections submitted at the hearing were based on the following:

PROJECTED SALES

<u>AVERAGE NO. OF PATRONS TIMES AVERAGE TICKET</u>	<u>SUBTOTAL</u>
45 dinner x \$14.95	\$ 672.75
38 lunch x \$ 4.75	180.50
Total Average Daily Bar	<u>300.00</u>
DAILY TOTAL	<u>\$ 1,153.25</u>
30 days x \$1,153.25	\$34,597.50
Plus Total Monthly Banquet Sales	<u>3,000.00</u>
TOTAL MONTHLY PROJECTION	<u>\$37,597.50</u>

(Applicants' Exhibit No. 8.)

15. The Applicants have done limited advertising for the Fiddler's Green since repossessing and reopening the premises themselves in August, 1982. They plan to increase advertising for the restaurant, including an item in the yellow pages of the Portland telephone directory under the coastal restaurants section.

16. The Applicants are presently selling an average of about 28 lunches a day. They sold an average of 60 lunches a day at the Fiddler's Green before selling the premises in 1979.

17. The Applicants served an average of 40 dinners a day during their last year of operation before selling the business in 1979.

18. Dispenser's outlets in the following areas have recently averaged the monthly sales indicated below:

<u>AREA</u>	<u>FOOD SALES</u>	<u>TOTAL SALES</u>
City of Astoria	\$25,846	\$39,435
Clatsop County	21,486	31,455

19. The following numbers of dispenser's licenses have been issued in the areas indicated:

<u>AREA</u>	<u>POPULATION</u>	<u>POPULATION DIVIDED BY 2,000</u>	<u>DA & DB LICENSES</u>	<u>DC LICENSES</u>
Clatsop County	32,700	16.35	43	1
City of Astoria	9,950	4.98	16	0

20. The following are the nearest dispenser's outlets to the Fiddler's Green:

<u>OUTLET</u>	<u>TYPE OF LICENSE</u>	<u>DISTANCE AND DIRECTION FROM FIDDLER'S GREEN</u>
Davey Jones Locker	DA	100 feet east
The House of Chan	DA	2 blocks east
Sea Fare	DA	5 blocks west
The Ship Inn	DA	6 blocks east
Happy Inn Restaurant	DA	8 blocks east
Labor Temple Cafe	DA	13 blocks east
Eagles Lodge Aerie #2189	DB	13 blocks east
Pier 11 Feed Store Rest & Lounge	DA	15 blocks east
Andrew & Steve's	DA	17 blocks east
Fiesta Club	DA	17 blocks east
The Brass Rail	DA	18 blocks east
BPOE #180 Elks Club	DB	18 blocks east
American Legion Post #12 Club	DB	18 blocks east
Shilo West	DA	20 blocks east
Moose Lodge #408	DB	24 blocks east
Sunset Empire Room	DA	33 blocks east

21. Fiddler's Green is a somewhat smaller and more limited operation than the majority of the 12 DA outlets in the City of Astoria. Six of the DA outlets in Astoria are open for breakfast. Fiddler's Green is not. Nine of the Astoria DA outlets are open seven days a week, all year long. Fiddler's Green is open only six days a week during the winter. Nine of the 11 DA outlets for which seating information is available provide greater seating than Fiddler's Green.

22. The Fiddler's Green is primarily a high quality dinner house. Three of the 12 DA outlets in the City of Astoria fit comfortably in the same category. These three outlets are the Pier 11, the Thunderbird, and the Ship Inn. Five other dispenser outlets within a 20-mile radius fall in this category: the Buccaneer (three miles west in Warrenton), the Surfside (12 miles southwest in Gearhart), Hara's (15 miles south in Seaside), the Bounty (15 miles south in Seaside), and the Par'Te Room (15 miles south in Seaside).

23. The populations for Clatsop County and the City of Astoria have been as follows for the years indicated:

	<u>POPULATION</u>				
<u>AREA</u>	<u>1950</u>	<u>1960</u>	<u>1970</u>	<u>1980</u>	<u>1982</u>
Clatsop County	30,776	27,380	28,473	32,489	32,700
City of Astoria	12,331	11,239	10,244	9,998	9,950

* The Commission takes official notice from Page 305 of the 1983-1984 Oregon Blue Book published by the Oregon Secretary of State.

24. Astoria has recently lost some industry. A Bumble Bee Seafood Canning Plant recently closed, eliminating several

hundred jobs. An American Can Plant also recently closed, eliminating about 40 jobs.

25. The commercial salmon and lumber industries have not been strong in Clatsop County recently.

26. The Commission and the Applicants introduced a selected scattering of unemployment information for Clatsop County and nearby areas. In addition, various witnesses testified about their observations of the direction of the local Clatsop County economy during the last few years. The evidence shows that the Clatsop County economy hit the bottom of a down cycle in 1981 and 1982 and had improved slightly by the end of 1982. A continuing improving trend occurred in the Spring of 1983. The economy in Clatsop County is seasonal. The Clatsop County unemployment figure is lower than the Oregon average during the summer and higher than the annual average during the winter.

27. The Crown Zellerbach Corporation plans to construct an approximately \$30,000,000 mill in Tongue Point. The completion date is projected to be in June, 1985. The mill is projected to employ 125 persons. The multiplier effect from the Crown Zellerbach mill is anticipated to create three jobs in Clatsop County for each of the jobs at the mill.

28. The focus of the Astoria economy in the future is expected to be on tourism.

29. Tourist visits to Astoria were down 12 percent in 1981 from 1980. However, they regained their 1980 level in 1982.

30. Forty-thousand persons visited the Astoria Chamber of Commerce Office in 1982.

31. A greatly expanded maritime museum was opened in Astoria in May, 1982. About 100,000 persons visited the museum in 1982.

32. Tourist attractions in the Astoria area include the maritime museum, sport fishing, ocean beaches, state parks and Fort Clatsop, where there is a replica of Lewis and Clark's headquarters. Tourist attractions also include special events that the local citizens sponsor each year such as the Scandinavian Festival, a four-day boat regatta, the Great Columbia Crossing Run across the Highway 101 Bridge, and the Victorian Christmas weekend.

33. The following objectors appeared at the Applicants' hearing and testified in opposition to license issuance: Werter Meeker, John Van Horn, Lenore Camberg, and Mary Owen. These objectors either own, have security interests in, or work at dispenser-licensed premises in the Astoria area. The sales at two of these premises were down in 1983. The sales at another of the premises were down in 1982 but have recovered in 1983. The fourth objector cited two Clatsop County dispenser outlets that recently failed and closed. One of these outlets has reopened, the other remains closed. The objectors oppose the Goforths' application because they believe that sufficient dispenser licenses have been issued in Clatsop County to serve the demand for cocktail privileges.

34. The following persons have written letters to the Commission in support of issuance of a DA license at Fiddler's Green:

SUPPORTERS

Darrell Moss, Developer, Columbia House Condominiums,
Astoria

Blanche Mae Enlund, Warrenton

Ray Dreeszen, Astoria, past President of Local Chapters of Rotary Club, Red Cross, City Council, Chamber of Commerce, Yacht Club, Boy Scouts of America, Urban Renewal Committee

Roger Berg, Astoria

Cherie Savage, Executive Vice President, Bank of Astoria

Bill Ohlmann, Bill's Department Store, Astoria

George Phillips, Marketing Instructor, Clatsop Community College

35. The Astoria area Chamber of Commerce has recommended to the Commission that the Commission issue a DA license to the Applicants at the Fiddler's Green. (Applicants' Exhibit No. 17.)

36. About 246 persons signed a petition in support of the issuance of a DA license to the Applicants at the Fiddler's Green. About half of these persons came from the Astoria area. Thirty persons came from the North Oregon Coast. About 20 percent came from outside of the North Coast area.

37. When the Applicants operated the Fiddler's Green between 1970 and 1979, they were the only outlet in the area listed in the Mobil Travel Guide. The Applicants expect to be relisted in the Mobil Travel Guide soon.

38. When the Applicants were licensed at the Fiddler's Green from 1970 to 1979, restaurant review articles appeared in newspapers around the Northwest commenting favorably on the food and atmosphere at the Fiddler's Green.

39. The Fiddler's Green recently participated in a clam chowder cook-off in Astoria. The Fiddler's Green took third place in both the clam chowder and seafood soups divisions. (Applicants' Exhibit No. 10.)

40. At the date of the Applicants' hearing there were 55 DA and DB licenses available to the Commission for issuance to the state as a whole. As of this date there were 25 DA and one Dispenser Class B license applications pending before the Commission. The Commission further takes official notice that an additional 25 DA licenses were authorized for issuance by the 1983 Oregon Legislature effective October 15, 1983. Senate Bill No. 4.

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).

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:

. . .

(c) 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).

The City of Astoria contains 320 percent of the number of dispenser licenses that would be allowed under the one per 2,000 standard of OAR 845-05-040(2)(c). Clatsop County contains 263 percent of this standard. These figures constitute a prima facie showing under OAR 845-05-040(2)(c) that Astoria and Clatsop County are adequately served by existing dispenser outlets.

The record does not overcome this prima facie showing. There have been some recent setbacks to the local economy. Plants have closed. Jobs have been lost. This can be presumed to hurt demand for dispenser services. Astoria's population fell from 12,331 in 1950 to 9,950 in 1982. This population decline also suggests that demand for dispenser services has been declining.

The record suggests promise for the future from increased tourism and a new lumber mill. These developments have not yet occurred however. Any increase in demand for dispenser services from these developments is prospective and uncertain.

As a result, the large number of dispenser outlets in the Applicants' community weighs against license issuance. OAR 845-05-040(2)(c).

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).

The record shows comparison between Fiddler's Green and existing DA outlets in Astoria and Clatsop County on the following points: sales, seating, days and hours of operation, and the degree to which the outlets offer a high-quality dinner house operation.

The Applicants' recent average total sales were \$9,296. The Applicants have projected an increase in average monthly total gross sales with a DA license to \$37,597.50 per month.

The Applicants' projected sales have not been reliably established. The projection would constitute more than a 300 percent increase from recent sales. The primary reason put forth by the Applicants to account for the sales increase with a DA license is the demand by customers for distilled spirits with food. Certain items in the record do establish that there would be increased demand with a dispenser license at the Fiddler's Green. These items include the petition in favor of license issuance, the letters received in support of license issuance and the fact that the Fiddler's Green offers a high-quality dinner menu with which patrons are likely to expect and

prefer a full service bar. The record does not reliably establish, however, that the increased demand would be sufficient to cause more than a tripling in sales.

The recent average monthly total sales at Astoria DA outlets have been \$39,435, and in Clatsop County DA outlets have been \$31,455. The record does not reliably show that an increase in sales at Fiddler's Green with a DA license would be sufficient to compare favorably with the Astoria and Clatsop County sales averages. This shows a lack of preference for license issuance under OAR 845-05-040(3)(f).

The Applicants' days and hours of operation and number of seats compare somewhat unfavorably with the majority of the dispenser outlets in Astoria. (See Findings of Fact No. 21.) This also shows unfavorable consideration for license issuance under OAR 845-05-040(3)(f).

The record establishes that Fiddler's Green offers a relatively large number of high-quality dinner entrees in comparison to existing dispenser outlets in Astoria and Clatsop County. This shows favor for licensure under OAR 845-05-040(3)(f).

3. 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).

4. OAR 845-05-040(2)(d) provides as follows:

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

The Fiddler's Green is located in Astoria, with a population of 9,950. The Fiddler's Green has total seating for 97 persons. Preference for license issuance is therefore shown under OAR 845-05-040(2)(d).

5. 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 Fiddler's Green offers dinner entrees that are reasonably comparable to only about eight of the 44 dispenser outlets in Clatsop County in the degree to which the entrees constitute high quality dinner house fare. The Fiddler's Green then offers dining service that is substantially different from existing dispenser outlets within a 20-mile radius, showing preference for license issuance under OAR 845-05-040(2)(b).

ULTIMATE CONCLUSIONS OF LAW

The application by Heloma and Raechel Goforth for a DA license at the Fiddler's Green is demanded by the public interest or convenience despite the fact that the Applicants' community is adequately served by existing dispenser's outlets and despite the somewhat unfavorable comparisons between the Fiddler's Green and dispenser outlets in the City of Astoria with respect to sales, seating, and days and hours of operation. These negative factors are outweighed by the preferences for license issuance shown by the Applicants' substantially different high-quality dinner menu and by the Applicants' seating for fewer than 100 persons and location in a city with fewer than 25,000 persons. ORS 472.160(1).

FINAL ORDER

It is hereby ordered that the application for a Dispenser Class A (DA) license by Heloma and Raechel Goforth at the Fiddler's Green, 218 W. Marine Drive, Astoria, 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 21st day of November, 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.