

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Application for a)	
Retail Malt Beverage (RMB))	
License by:)	FINAL
)	FINDINGS OF FACT,
Patrick H. Burrington)	CONCLUSIONS OF LAW,
LEABURG TAVERN)	AND ORDER
42763 McKenzie Highway)	
Leaburg, OR 97401)	
- - - - -)	
Lane County)	

A hearing in the above matter was held on the 14th day of October, 1982, in Leaburg, Oregon, before Hearings Examiner Allen R. Scott. The Applicant appeared in person and was represented by Lawrence Gildea, Attorney at Law, Eugene, 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. Applicant seeks a Retail Malt Beverage (RMB) license in the trade name LEABURG TAVERN, 42763 McKenzie Highway, Leaburg, Oregon.
2. The Commission's Staff has recommended that the license be refused based upon OAR 845-05-025(1) (adverse recommendation by the governing body of the county) and OAR 845-05-035 (public opinion weighs against the issuance of the license).

3. Leaburg is an unincorporated community approximately 13 miles east of Springfield on Highway 126.

4. Applicant's premises is located in the west portion of Leaburg on the north side of Highway 126. The proposed premises would be in a former gas station, which will undergo significant remodeling if the license is granted.

5. Applicant intends the premises to be a tavern operation. There will be pool tables and video games. Applicant has no plans for any live entertainment.

6. Applicant plans to provide specialty sandwiches. He has no other specific plans for food in the premises, which will not contain a kitchen. Applicant intends that the premises will be a gathering place for adults in the community.

7. The hours of operation of the premises will be from noon to 1:00 a.m., seven days a week. The premises may close before 1:00 a.m. on occasion. Applicant has no plans to have the premises open after 1:00 a.m.

8. Highway 126 is straight for some distance to the east of Applicant's premises. There is a slight curve in the highway to the west of the premises.

9. The proposed premises is set back approximately 60 feet from the highway. Automobiles parked in front of the premises would therefore not need to back onto the highway when departing.

10. Applicant intends to discourage parking in front of the premises by the use of signs. A large area to the rear of the premises can be made suitable for parking for approximately

55 automobiles. Applicant intends, if the license is granted, to make this area into a parking lot and to direct patrons to this lot.

11. Eugene Walden, Eugene Station Commander of the Oregon State Police, wrote a letter concerning this application. It states, in part:

"I would characterize traffic conditions on the McKenzie River Highway in the vicinity of Leaburg as being normal for a rural highway in Oregon.

"We do not currently have problems with Ike's Pizza Parlor, or any other places that sell alcoholic beverages. We used to have some problems with the Cougar Room, a tavern at Blue River, but since new management has taken over, those problems have been largely resolved.

"I would not anticipate any problems at the proposed Leaburg Tavern site, as long as there was good management and adequate parking."

Officer Walden went on to state that the highway between Eugene and Leaburg is patrolled for 16 hours a day by at least one officer and the section from Leaburg east to the County border is patrolled by one full time officer.

12. Robert L. McManus, Operations Lieutenant for the Lane County Sheriff's Office, wrote in a letter concerning this application that the Sheriff's Department has a resident deputy who lives on the highway and operates out of an office at Blue River. Blue River is approximately 20 miles from Leaburg.

13. There is no police force in Leaburg.

14. Applicant Patrick Burrington has been a real estate broker for approximately 20 years. He was licensed at two RMB

premises and one Dispenser Class A (DA) premises in the Eugene area for a total of approximately five years without any serious problem with the OLCC.

15. Applicant intends to be personally involved in the premises, at least until the operation is well established.

16. The nearest licensed premises to Applicant's proposed outlet is Ike's Lakeside Pizza (RMB), approximately 4.9 miles to the east. The Riverside Inn (DA), is 6.3 miles to the east. The Lucky Logger Inn (RMB) is 7.2 miles to the west. These establishments are primarily restaurants.

17. The nearest "taverns" to Applicant's premises are those in Springfield, approximately 13 miles to the west. A tavern is also located in Blue River, approximately 20 miles to the east.

18. On July 14, 1982, the Lane County Board of Commissioners considered Applicant's application. Five opponents of the application testified before the County Commission. The Commission noted that approximately 10 letters in opposition to the application had been received by the Commission. The Commission voted to recommend to the OLCC that the application not be approved.

19. The County Commission included in its motion a statement that "no formal notice was sent to the applicant."

20. The County Commission later sent a letter to the OLCC stating as follows:

"The Board of Commissioners did hold a public hearing on this matter and the Applicant did attend that hearing. However, no formal notice was given him prior to the hearing."

21. Applicant Patrick Burrington learned that the County Commission was to consider his application the night before the meeting in a conversation with a newspaper reporter. The next morning, on the day of the County Commission meeting, Mr. Burrington called the County Commission and spoke to a person in the Planning Department. The individual informed him that the Planning staff had determined that there was no problem with the application and that it would be approved as a routine matter. This person also indicated that there was no need for Mr. Burrington to appear.

22. Applicant did appear at the County Commission meeting but did not come prepared to defend against objections. Applicant would have attempted to obtain the testimony of many supporters of the application had he been aware that opponents were to present statements to the Commission.

23. At the OLCC hearing held in this matter in Leaburg, 14 people testified in opposition to the granting of the license. In addition, nine individuals signed a list of "protesters" but did not actually testify.

24. The most common basis for opposition stated by the witnesses was that the tavern would cause traffic problems on the McKenzie Highway. Some of the witnesses stated that the McKenzie Highway in this area is one of the most dangerous in the State. Several of the protesters also mentioned what they felt to be a lack of law enforcement in the Leaburg area. Many of the protesters asserted that there were already enough licensed premises in the area. Some of the protesters stated

that the tavern would cause noise which would disrupt their quiet community.

25. The OLCC also received a petition stating that those signing are residents of Leaburg who oppose the license. Eleven of the people on this petition did not testify at the hearing.

26. The Commission also received a petition in opposition signed by 18 individuals who identified themselves as log truck drivers who pass through the Leaburg area several times a day and who base their opposition on congestion and the possibility of intoxicated drivers. Eighteen of the names on this petition were from those who did not testify at the hearing.

27. Letters from five individuals who did not testify or appear at the hearing and who did not sign either of the petitions were admitted into the record. The letter writers generally cited the same bases for opposition as did those who testified at the hearing.

28. Among those testifying in opposition was the president of the Lower McKenzie Community Council, a neighborhood association which includes Leaburg within its jurisdiction. The witness testified that the executive council of the Community Council, consisting of eight persons, had met and decided to oppose the application. The witness cited as the reasons the same general bases as did the other protesters.

29. Another witness who testified against the granting of the license was a representative of the local "Neighborhood

"Watch," an organization which has as its function the observation of suspicious activities in the neighborhood and notification to law enforcement agencies. The witness indicated that all 30 people at a meeting of the Neighborhood Watch were opposed to the license. He noted that no vote was taken, however.

30. Approximately 10 of the individuals who testified at the OLCC hearing against the application live within one mile of the proposed premises. Two are adjacent to the premises, approximately 60 or 70 feet away. Another is across the street.

31. Ten individuals testified at the OLCC hearing in Leaburg in favor of the application.

32. The supporters generally stated that they felt that the Leaburg area needed a gathering place for adults. They felt that the premises would be an asset to the area. Some testified to their favorable view of the Applicant. Many of the protesters disputed the claims of the opponents regarding traffic and other bases for opposition.

33. Many of the supporters who testified indicated that they would have testified at the Lane County Commission meeting had they been aware of it.

34. Among those who testified in support of the application at the OLCC hearing is one person who lives across the street from the proposed licensed premises and two who live within 300 yards. The others live from approximately one mile to approximately six miles from the proposed premises.

35. One of those who testified in favor is a veterinarian whose business is located adjacent to Applicant's premises, approximately 30-40 feet away. He is also the owner of the proposed premises and would therefore be Applicant's landlord.

36. Petitions containing the signatures of 64 individuals who did not testify at the hearing and who indicated that they were not opposed to the tavern were received into the record. The petitions describe those signing as residents of the Leaburg area.

37. Five letters supporting the application were received into the record. One of these was from an individual who did not testify and who did not sign a petition.

38. During the investigation of this application, the OLCC License Investigator conducted a survey of some of the residents of the area. Those contacted are located within 4/10 of a mile to the east of the proposed premises. Because of time limitations, no one living or working to the west of the tavern was contacted. Of the 29 people contacted, 17 expressed opposition to the license. Thirteen of these people were individuals who did not appear at the hearing and whose names do not appear on letters or petitions against the license. Four of those contacted indicated support for the license. None of these appeared at the hearing, nor do their names appear on letters or petitions supporting the license. Eight of those contacted were "neutral" to the license.

DISCUSSION

Applicant offered into evidence a video tape showing the proposed premises, the parking facilities, the highway in both

directions, and the parking and highway conditions at other licensed premises in the area. The Commission believes that this tape is of good quality and may be useful to the Commission.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The following criterion will be given sufficient consideration so that a license will not be issued unless good cause which outweighs the criterion is shown by the applicant:

An adverse recommendation of 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.

The evidence establishes that the Lane County Commission voted to recommend denial of this application.

The Commission nevertheless concludes that this criterion should not be a basis for denial of the application.

The criterion requires reasonable notice to the Applicant and to members of the public. In this instance, Applicant had actual notice of the County Commission meeting. However, he received such notice only the night before the meeting. More important, perhaps, is the fact that on the day of the meeting he spoke with staff of the County Commission and was led to believe that the application would be endorsed favorably by the Commission without any problem. Applicant therefore appeared at the County Commission meeting unprepared to deal with opposition to the application from citizens. The evidence also

indicates that had Applicant been aware of the fact that opposition was to be expressed at the meeting he would have produced members of the public to testify in his favor. The minutes of the Commission meeting indicate that the sole basis for the Commission's unfavorable recommendation was opposition from members of the community.

The Commission concludes that all of this evidence indicates that reasonable notice of the County Commission meeting was not provided to Applicant and to members of the public and that reasonable opportunity to be heard was not provided to either. This evidence of lack of adequate notice and opportunity to be heard also establishes that the County Commission did not give "due consideration" to the application. The Commission concludes that this criterion does not provide a basis for denying the application.

2. 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 premise. The number of persons expressing support or opposition will not, in and of itself, be controlling. OAR 845-05-035.

The Commission concludes that this criterion provides a basis for denying the application.

It is first noted that the number of people who expressed opposition and the number who expressed support are approximately equal. Under the criterion, the absolute number of supporters or opponents is not necessarily controlling and, apparently, neither is the comparative number of those against and those in favor. The reasons and the actual effect upon the people appear to be the key elements.

The most frequent reason cited for opposition and the most strongly voiced was the effect upon traffic that the tavern would have. The concern centered on both the possible problem of intoxicated individuals on the highway and on problems created by those entering and leaving the premises in automobiles. The assertions by opponents that this stretch of highway is extremely dangerous was effectively rebutted by the written evidence from the State Police Commander for the area. Furthermore, the evidence that adequate parking would be available in the rear of the premises blunts the assertions regarding parking problems.

Nevertheless, it is obvious that the traffic situation in the area would be affected by the granting of the license. Nearly all who would visit the tavern, whether local residents or people living elsewhere, would come by automobile. All would come on Highway 126, the major highway through the area. Certainly, the people who live in Leaburg would be affected by the increase in traffic. The Commission therefore concludes that this basis for objection should be given some weight.

Another major reason for opposition was the alleged lack of law enforcement protection in the area. The evidence indicates that both the State Police and the Sheriff's office provide patrols to the Leaburg area. There is, however, no local law enforcement. The Commission formed the opinion that the Applicant is a quite responsible person who would endeavor to operate a tavern in a manner which would not create significant law enforcement problems. Nevertheless, it would probably be almost inevitable that some kind of law enforcement matter would occur in connection with the premises at some time. Given the proximity of the residences of some of the objectors to the premises, it may be inferred that some effect on the objectors would occur if the license is granted.

Opponents also cited the possibility that noise and disruption would occur at the premises. Again, the Commission notes that Applicant is a person who would, in the Commission's view, successfully attempt to operate a premises that would not create serious disturbances in the community. However, given the fact that the premises is specifically a tavern, it would be almost inevitable that some increase in noise and disturbances in the quiet Leaburg community would occur. The Commission concludes that this reason for opposition also must be given some weight.

Some of the protesters also asserted that there were already enough premises in the area. The evidence indicates that although there are RMB licensees within approximately six or seven miles, the nearest taverns are at least 13 miles away.

The Commission concludes that this reason is not entitled to much weight.

Supporters of the application generally cited the need in the town for a gathering place for adults. They provided convincing evidence that the area does indeed lack such premises. The Commission concludes, however, that this consideration is not as important a matter as are the issues raised by the protestors. The Commission notes also that the supporters generally live further from the premises than do the protestors.

The Commission concludes that the substantial number of expressions of opposition, the fact that the protestors generally live closer to the proposed premises than do the supporters, and the fact that with the factual bases for the objections are entitled to greater weight indicate that public opinion against the license is entitled to more weight than public opinion in support of the application. The Commission therefore concludes that this criterion provides a basis for denying the license.

ULTIMATE CONCLUSIONS OF LAW

Although Applicant's application for a RMB license enjoys considerable public support in the community, the license should be refused because public opinion weighs against the granting of the license. OAR 845-05-035.

FINAL ORDER

It is hereby ordered that the application for a Retail Malt Beverage license by Patrick H. Burrington in the trade

name Leaburg Tavern, 42763 McKenzie Highway, Leaburg, Oregon
97401 be DENIED.

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

Dated this 24th day of January, 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.