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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  
Tosis Belesiotis ) ) FINDINGS OF FACT,  
George Belesiotis ) ) CONCLUSIONS OF LAW,  
Tom Katsaros ) ) AND ORDER  
TOSIS RESTAURANT )  
6120 NE Sandy Boulevard )  
Portland, OR 97213 )  
- - - - - )  
Multnomah County )

A hearing in the above matter was held on the 19th day of May, 1983 and the 16th day of June, 1983, in Portland, Oregon, before Hearings Examiner Allen R. Scott. The Applicants appeared in person and were represented by James Longergan, Attorney at Law, Beaverton, 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. The Applicants seek a Dispenser Class A (DA) license at TOSIS RESTAURANT, 6120 NE Sandy Boulevard, Portland, Oregon.
2. The Commission's Staff has recommended that the application be denied based upon OAR 845-05-025(2) (opposition from a church within 500 feet), OAR 845-05-040(2)(b) (not

unique), 845-05-040(2)(c) (public being served by adequate outlets), and OAR 845-05-040(3)(f) (lesser services, facilities, and economic benefit to the area).

3. Applicants' premises presently operates as a restaurant without any liquor license.

4. The premises is now open from 6:00 a.m. to 9:00 p.m., serving breakfast, lunch and dinner. Applicants propose, however, to be open from 11:00 a.m. to 2:30 a.m. if the license were granted.

5. The lunch and dinner menu contains 17 sandwiches, three salads, two steaks, seven meat dinners, and six seafood dinners. Five special dinners are offered on occasion, such as spare ribs, salmon steak, roast chicken, beef stroganoff, and pork chops. Prices of full dinners range up to \$6.75. There is no ethnic emphasis in the menu nor any other special emphasis.

6. The seating of the premises, if the license is granted, will be as follows: restaurant portion - 78; lounge - 23; at bar - 5.

7. Sales at the restaurant have been as follows:

<u>MONTH</u>	<u>FOOD/TOTAL</u>
<u>1981</u>	
January	\$18,153
February	18,736
March	21,771
April	26,823
May	21,412
June	23,840
July	19,487
August	20,038
September	18,867

<u>MONTH</u>	<u>FOOD/TOTAL</u>
<u>1981</u>	
October	25,542
November	20,347
December	<u>23,772</u>
AVERAGE	\$21,566

8. Applicants project that sales would double if the license is granted. They provided no explanation as to how they arrived at this projection, however.

9. Average monthly sales at establishments in Multnomah County and the City of Portland are as follows:

	<u>FOOD</u>	<u>ALCOHOLIC BEVERAGE</u>	<u>TOTAL</u>
Multnomah County	\$36,806	\$19,595	\$56,401
City of Portland	33,541	18,734	52,275

10. The nearest DA outlets to Applicants' premises are as follows: Neighborhood Inn - 3.8 mile east; Sylvia's - 1/2 mile west; the Rheinlander - 1/2 mile west; Prime Rib Restaurant - 1/2 mile west.

11. There are approximately 22 DA outlets within two miles of Applicants' premises.

12. Multnomah County, with a population of 564,500, has 378 DA and Dispenser Class B (DB) licensees. The City of Portland, with a population of 368,100, has 313 such licenses in operation.

13. The Faith Lutheran Church is located directly across the street from Applicants' premises. It is within 500 feet of the premises. The president of the Church expressed opposition

to the granting of this license in a letter to the Commission.

The letter states, in part:

"The granting of a license will be disruptive to our membership. Parents of young children are particularly concerned about their safety. Their children often wait at the curb for their parents to pick them up. We do not want to see an increase in drivers under the influence of alcohol on the street in front of the church. We do not want the possibilities of indecent actions by people who have had to (sic) much to drink perform in view of the children."

14. The pastor of the Faith Lutheran Church appeared at the hearing to reiterate the view of the Church.

15. The Chairman of the Rose City Park Neighborhood Association also appeared at the hearing to express the opposition of the Association to the granting of the license.

#### DISCUSSION

Applicant Tosis Belesiotis was present at the hearing, represented by legal counsel. Counsel presented no evidence, however, stating in argument merely that the area needs another license.

#### 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:

Written opposition to the granting of the license, stating reasons for the opposition, by a person having control of a church located within 500 feet of the proposed outlet in an urban area. OAR 845-05-025(2)(b).

The evidence establishes that the Faith Lutheran Church is located within 500 feet of Applicants' premises and that written opposition to the granting of the license, stating reasons, was sent by those having control of the Church. The Commission concludes that this criterion is therefore a basis for denying the license.

2. Preference in licensing may be given to an applicant showing that applicant's premises will provide dining service or atmosphere which is unique or substantially different in quality or type from that offered by other licenses within a 20-mile radius as indicated by menu, decor and amenities, entertainment or other such characteristics. OAR 845-05-040(2)(b).

There is no evidence indicating that Applicants' dining service or atmosphere is unusual. Applicants did not claim any "uniqueness." The Staff's refusal letter appears to assert that this lack of uniqueness is a basis for denying the license. However, lack of uniqueness, by itself, is not a basis for denying a license under the Commission's criteria; that is, uniqueness is a basis for preference in granting a license, but a lack of uniqueness is not a basis for denying the license, unless combined with a lack of preference based upon services, facilities and economic benefit to the area (OAR 845-05-040(2)(a)).

3. Preference in licensing may be given to an applicant showing that 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).

Applicant made no showing that the public is not adequately served by existing dispenser outlets. Again, the Staff's refusal letter appears to assert that this is a basis for denying a license. However, under the criteria, a showing of inadequate service is a basis for preference; there is no criterion making the failure to show inadequate service a basis for denying the license.

4. Unfavorable consideration may be given to an applicant if 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 evidence indicates that the gross sales at Applicants' premises are substantially below the average for Multnomah County and the City of Portland. That is an indication that the premises serves fewer patrons than do existing premises. Applicants' estimate that sales would double if the license is granted was not supported by any explanation as to methodology. The Commission does not consider it to be particularly persuasive.

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

#### ULTIMATE CONCLUSIONS OF LAW

The license application should be denied because of opposition from a church within 500 feet and because Applicants'

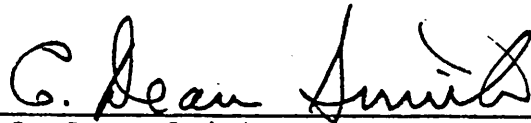
premises will provide lesser services, facilities, and economic benefit to the area than do existing premises. Applicant has failed to establish a basis for preference for the granting of the license. OAR 845-05-025(2); 845-05-040(3)(f).

FINAL ORDER

It is hereby ordered that the application for a Dispenser Class A (DA) license by Tosis Belesiotis, George Belesiotis and Tom Katsaros in the trade name Tosis Restaurant, 6120 NE Sandy Boulevard, Portland, Oregon 97213 be DENIED.

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

Dated this 26th day of September, 1983.



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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.