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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,
G. Wheelers, Inc.)	CONCLUSIONS OF LAW,
dba WHEELERS)	AND ORDER
380 State Street SE)	
Salem, Oregon 97301)	
-----)	
Marion County)	

A hearing in the above matter was held on the 17th day of March, 1983, in Salem, Oregon, before Hearings Examiner Allen R. Scott. The Applicant appeared in person and was represented by D. Michael Mills, Attorney at Law, Salem, 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 Dispenser Class A (DA) license in the trade name WHEELERS, 380 State Street SE, Salem, Oregon 97301.

2. The Commission's Staff has recommended that the application be refused based upon OAR 845-05-030(1) (sufficient licensed premises in the area); 845-05-040(1), 845-05-040(3)(f) (lesser services, facilities, and economic benefit to the community).

3. Applicant's premises is located on State Street in the downtown area of Salem.

4. The premises was licensed with a dispenser license for approximately 12 years. It ceased operation in June, 1981. The license became inactive in August, 1982.

5. Applicant intends to operate the premises seven days a week, serving breakfast, lunch and dinner. The hours of operation will be 7:00 a.m. to 2:30 a.m. six days a week and 7:00 a.m. to 10:00 p.m. on Sunday.

6. The premises seats 62 in the restaurant portion, 56 in the lounge, and 12 in a conference/banquet room, for a total of 130.

7. The dinner menu has a Polynesian emphasis. Among the dinners offered are the following: pan fried oysters, chicken fried steak, grilled halibut, ribs, top sirloin, teriyaki steak, teriyaki chicken breasts, Mahi Mahi, Polynesian ham dinner, beef Hawaiian, prawns, seafood, scallops, New York strip steak, Australian Rock lobster tails, and steak and lobster. Full dinners range in price from \$5.95 to \$19.95.

8. The breakfast menu is traditional American-style breakfast food.

9. The lunch menu offers 12 sandwiches, including a Tahiti burger, six specialties, including teriyaki steak and sea-island mornay, and various soup and salad dishes.

10. The decor at the premises is Polynesian, with much use of bamboo, foliage, and decorative items suggestive of Polynesia.

11. Applicant estimates that average monthly sales at the premises if the Dispenser Class A license is granted would be as follows:

<u>FOOD</u>	<u>ALCOHOLIC BEVERAGE</u>	<u>TOTAL</u>
\$25,815	\$8,604	\$34,419

12. Average monthly sales at existing dispenser outlets in Salem and Marion County have been as follows:

	<u>FOOD</u>	<u>ALCOHOLIC BEVERAGE</u>	<u>TOTAL</u>
City of Salem	\$30,986	\$17,446	\$48,432
Marion County	26,415	14,437	40,852

13. Applicant's Polynesian decor and Polynesian emphasis in the cuisine are unusual in the Salem area. Only one other outlet with a dispenser license, The Terrarium, an establishment with a Dispenser Class C license approximately two blocks from Applicant's premises, features Polynesian food and decor. However, the decor at The Terrarium is much less elaborate and is less authentic than that at Applicant's premises. The menu at The Terrarium has somewhat less emphasis on Polynesian food than has the menu at Applicant's premises.

14. The nearest outlets with Dispenser Class A privileges to Applicant's premises are as follows: Videl's (DA), 0.05 miles east; Enciso's (DA), 0.1 mile northwest; The Mushroom (DA), 0.1 miles west; Union Oyster Bar (DA), 0.1 mile northwest; Gary's Bar & Grill (DA), 0.1 mile east; Stuart Anderson's Black Angus (DA), 0.2 miles south; Night Deposit (DA), 0.2 miles northeast.

15. Four of the above premises have average monthly sales below that projected for Applicant's premises. Several of the above premises do not have banquet rooms. Others are not open for breakfast. None opens at 7:00 a.m. for breakfast as will Applicant's premises.

16. Applicant's projections of sales are based upon the experience of corporate officer Gary Wheeler at Gary's, a DA outlet in Salem which Mr. Wheeler owned in part and managed until September, 1982, when he left the business. The projections assume that the Applicant's premises will be very popular, with the seating utilized to something approaching the maximum extent.

17. The downtown area of Salem has undergone something of a revival in recent years, with a number of new commercial enterprises and other facilities. Highway access to the downtown area has improved recently.

18. Applicant's premises is located near a 200-space parking garage. Applicant expects that his lunch business, in particular, will be aided by the proximity of this garage. The garage was not present during most of the operation of the premises under prior ownership.

19. Salem, with a population of 93,075, presently has 43 DA and DB licenses committed and in operation.

20. Marion County, with a population of 209,730, presently has 74 DA and DB licenses in operation.

21. There are currently approximately 75 DA and DB licenses available for issuance statewide.

22. Applicant presented a petition containing approximately 88 names of those who support the application.

23. Applicant presented five letters from those supporting the application. Four were from downtown Salem business people who express the view that Applicant's premises would meet a need in the downtown area for a place to which they might take business acquaintances and friends.

24. Applicant proposed minor remodeling of the premises at the time of application.

25. The present structure of the premises would require minors to pass by the bar to enter the dining area. The License Division proposed that a screen be installed to permit minors to enter the dining area.

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).

The evidence does not establish that the area is served by sufficient licensed premises. There are several licensed premises in downtown Salem, but no evidence suggests that this number is either adequate or inadequate to meet the needs. The evidence establishes that the City of Salem and Marion County both have fewer than one DA and DB license per 2,000 population. This evidence suggests that these areas are not served by sufficient licensed premises.

The Commission concludes that this criterion is not a basis for denying the license.

2. An application for a dispenser license may be granted or denied on the basis of a comparison with other existing dispenser licenses in the same city or county or with other pending applications for such licenses anywhere in the state. OAR 845-05-040(1).

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 projections supplied by Applicant do not appear to be unreasonable; however, it is noted that they are based upon an assumption of great popularity for the premises. In any event, the projected sales will be less than the average sales in Salem and Marion County. It may be inferred, therefore, that Applicant's premises will serve fewer patrons than does the average premises in the area.

It is also noted, however, that the projected sales at Applicant's premises are greater than sales at several of the existing premises in downtown Salem. This could possibly be taken as an indication that downtown area is adequately served. However, it may also be looked upon as an indication that Applicant's premises will provide greater services than do many of the existing premises in downtown Salem.

The evidence also indicates that Applicant's premises will be open during hours when few or none of the other premises in the area are open. Applicant also provides some banquet facilities, whereas many of those in the downtown area do not provide such facilities.

The Commission concludes that this criterion, on balance, does not provide a basis for denying the application.

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

The record establishes that Applicant's premises will provide Polynesian decor and a menu with some emphasis on Polynesian style food. The evidence indicates that only one other outlet with a dispenser license in the area, The Terrarium (DC), has a menu and decor at all similar to Applicant's. The Terrarium is a Dispenser Class C licensee whereas Applicant is applying for a DA license. Furthermore, the evidence indicates that the Polynesian emphasis is more elaborately carried out at Applicant's premises, both in terms of decor and cuisine. Thus, although Applicant's premises may not be literally unique in the area, it is very unusual.

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

ULTIMATE CONCLUSIONS OF LAW

The application for a Dispenser Class A license should be granted because Applicant's premises will provide a menu and

decor which are very unusual in the area and because Applicant's premises will provide some services not widely offered in the downtown Salem area. OAR 845-05-040(2)(b), (3)(f).

FINAL ORDER

It is hereby ordered that the application for a Dispenser Class A (DA) license by Wheelers, Inc. in the trade name Wheelers, 380 State Street SE, Salem, Oregon 97301, be GRANTED, with issuance of the license subject to the following conditions:

- a. That the remodeling proposed to the License Division be completed as proposed;
- b. That a screen be installed which will provide access to the dining area to minors;
- c. That the above conditions be complied with within 90 days of the Commission's Final Order granting the license or that the commitment of the license be withdrawn.

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

Dated this 23rd day of May, 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.