

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

Library 67

In the Matter of the)	
Request for Change in)	
Hours of Operation at a)	
Dispenser Class A (DA))	
Licensed Premises by:)	FINAL
)	FINDINGS OF FACT,
Stansby Way Corporation)	CONCLUSIONS OF LAW,
WILLEY'S)	AND ORDER
165 W. 11th Avenue)	
Eugene, Oregon 97401)	
- - - - -)	
Lane County)	

A hearing in the above matter was held on the 9th day of March, 1983, in Eugene, Oregon, before Hearings Examiner Douglas Crumme'. The Applicant appeared in person and was represented by A. Kenneth Gough, Attorney at Law, Eugene. The Commission was not represented by legal counsel. The record of the hearing was held open through March 23, 1983, for the receipt of additional evidence from the Licensee. The Commission having considered the record of the hearing, the Proposed Order of the Hearings Examiner, Exceptions to 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. Stansby Way Corporation holds a Dispenser Class A (DA) license at WILLEY'S, 165 W. 11th Avenue, Eugene, Oregon.
2. Willey's dining room and lounge are separated by a large movable door. When the door is lowered the dining room is completely separated from the lounge. When the door is raised the dining room and lounge are in effect all one area.

3. The Licensee has requested Commission permission to change the hours when the door between the dining room and lounge may be raised to join the two areas. The Commission presently requires the door to be closed from 10:00 a.m. to 10:00 p.m. on weekdays, and from 8:00 a.m. to 10:00 p.m. on weekends. The Licensee requests approval to leave the door raised except from 11:00 a.m. to 2:00 p.m. and from 5:00 p.m. to 9:00 p.m.

4. The Commission's Regulatory Staff Committee has recommended that the Applicant's request be denied, citing the following:

- a. OAR 845-05-040(3)(e)(B) (premises will be operated primarily as a tavern rather than as a restaurant, as indicated by factors emphasizing the sale of alcoholic liquor to a greater degree than food service).
- b. OAR 845-05-025(3) (application is for renewal and the applicant has not built or operated the licensed premises substantially as proposed when originally licensed).
- c. OAR 845-05-025(4) (applicant has less than or is unable reasonably to project at least 25 percent ratio of food sales to gross sales of food and alcoholic liquor).

5. The Regulatory Staff Committee's refusal recommendation states in part:

. . . The Staff was aware of the letter submitted at the time of original licensure by John W. Hazen, in which he acknowledged the Commission's concern regarding 'appropriate food service' and in which he set out certain proposals regarding the planned operation of this dispenser outlet. The Staff believes that the proposal set out at that time are [sic] not being complied with.

(Commission's Exhibit E.)

The Commission's License Staff witness at the hearing was unable to identify the letter referred to in the paragraph above. Thus the record does not show what letter or proposals the Staff had in mind.

6. When the Applicant was originally licensed at Willey's in May, 1982, the Applicant proposed to operate the dining room as a separate facility with the large door lowered and service from the food menu from 7:00 a.m. until 10:00 p.m., seven days a week. The Licensee was subsequently granted permission by the Commission to cut back its restaurant hours to from 10:00 a.m. to 10:00 p.m., Monday through Friday, and from 8:00 a.m. to 10:00 p.m., Saturday and Sunday.

7. The seating in the lounge at Willey's accommodates 64 persons. The seating in the dining room accommodates 94 persons. The small banquet room adjacent to the dining room accommodates 30 persons.

8. When originally licensed, Willey's menu had 15 dinner entrees.

9. The Licensee's present menu includes the following items:

PRESENT MENU

DINNER

B.B.Q. Country Style Pork Ribs	\$4.95
B.B.Q. 1/2 Chicken	4.55
Beef Stroganoff in Rich Sour Cream Sauce	4.50
Cross Rib Roast, Au Jus Sauce	6.25
Top Sirloin, 10-oz. Steak	6.25
Chicken Fried Steak	5.95
Rib Steak	8.95
Teriyaki Chicken Kabob	4.95

Fish and Chips	4.95
Combination Seafood Platter	6.95
Baked Lasagna	4.95
Gobs of Spaghetti and Meat Sauce	3.95

LUNCHEON

Homemade Soup and 1/2 Sandwich	\$2.95
Barbeque Sandwich	2.95
Monte Cristo Sandwich	4.95
"Sweet Tooth Lunch" - Hambone Sandwich	2.95
Reuben Sandwich	3.95
Willeyburger	3.25
Gulf Style Fish Sandwich	3.25
Fish and Chips	3.95
Teriyaki Chicken Kabob	3.50
Baked Lasagna	2.95
Large Serving of "Spaghetti with Meat Sauce"	2.75

SIDE ORDERS

Toast with Jelly	\$.85
Fries or Hash Brown Potatoes	.95
Chili	Small .95
	Large 1.65
Cottage Cheese	.85
Vegetable	.85

BEVERAGES

Coffee	\$.40
Tea	.40
Ice Tea	.40
Soft Drinks	.50
Milk	.65
Milk Shake	1.25
Fruit Juice	.85

BAR MENU

Deep Fried Mushrooms	\$2.00
Clam Strips with Cocktail Sauce and Lemon Wedge	2.00
Chicken Nuggets with Honey	2.00
Little Smokeys with Mustard	2.00
7 oz. Sirloin Steak Sandwich with Fries and French Bread	5.25

DELI SANDWICHES

Ham and Swiss Cheese on Rye	\$2.25
Cold Beef on White with American Cheese	2.25
Cold Turkey on Wheat with American Cheese	2.25

DESSERTS

Homemade Cheesecake	\$1.25
Mud Pie	1.50
Vanilla Ice Cream	1.00
Fruit Pie	1.25
Sundaes	1.50

BREAKFAST

Two eggs, hash browns, country biscuits and gravy	\$2.25
Basic Omelet	3.25
Willey's Special Omelet	3.95
Biscuits and gravy	1.25

SALADS

Dinner Salad	\$1.25
Chef's Delight	3.95

SOUPS

House Special (Minestrone)	Sm. Bowl .95	Lg. Bowl 1.65
Soup de Jour	Sm. Bowl .95	Lg. Bowl 1.65

10. The Licensee has very few food sales between 2:00 p.m. and 5:00 p.m. and after 9:00 p.m.

11. The Licensee's sales at Willey's have been as follows:

ACTUAL SALES

<u>MONTH</u>	<u>FOOD</u>	<u>LIQUOR</u>	<u>TOTAL</u>	<u>PERCENTAGE OF FOOD TO TOTAL</u>
5-15-82 thru				
8-31-82	\$ 57,602	\$139,903	\$197,505	29.1
9-30-82	7,962	35,304	43,266	18.4
10-31-82	6,192	38,894	45,086	13.7
11-30-82	37,954	7,553	30,401	19.9
12-31-82	4,660	34,511	39,171	11.9
1-01-83 thru				
2-28-83	7,908	74,544	82,452	9.6
3-31-83	4,935	34,525	39,460	12.5
4-30-83	<u>3,585</u>	<u>35,522</u>	<u>39,107</u>	<u>9.1</u>
Total	<u>\$100,397</u>	<u>\$423,604</u>	<u>\$524,001</u>	<u>19.1</u>

12. The Licensee offers live country-western music and dancing at Willey's seven nights a week.

13. When originally seeking a license at Willey's, the Licensee projected that food sales would be 75 percent of total

food and alcoholic beverage sales. The Licensee made this projection based on the sales experience at the Golden Spike Pizza Restaurant, which the Licensee's President John Hazen II is associated with. The Licensee anticipated doing a similar food business at Willey's.

14. Willey's is located on the fringe of downtown Eugene. Willey's seems to be too far from the core area of downtown Eugene to attract a significant number of downtown office workers for lunch.

15. Willey's draws a large crowd to its lounge for dancing and music in the evening. When nationally prominent entertainers Willy Nelson and Jerry Lee Lewis played concerts in Eugene in the Spring of 1983, they and their bands went to Willey's and played there following the concerts.

16. The Licensee has employed Sarah Hazen six to eight hours a day to attempt to promote and generate food business at Willey's. Mrs. Hazen has been contacting groups for banquets. She has arranged various types of lunch fashion shows at Willey's. At the date of the Licensee's hearing, Mrs. Hazen had begun to attract some groups to Willey's that used the small banquet room.

17. The Licensee increased its advertising expenditures in the period immediately prior to the hearing on March 9, 1983 in an effort to stimulate food business at the premises. Advertising efforts included ads on local radio stations and in local newspapers. The week before the Licensee's hearing, the Licensee had distributed 3,000 two-for-one meal coupons in

downtown Eugene. Additionally, the Applicant is making efforts to put Willey's food menus in local hotel and motel rooms.

18. Of the \$14,000 that the Licensee had spent on advertising through November, 1982, all but \$1,500 was spent promoting the food business at Willey's.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Unfavorable consideration may be given to an applicant if the applicant's premises will be operated primarily as a tavern rather than as a restaurant, as indicated by factors emphasizing the sale of alcoholic liquor to a greater degree than food service. OAR 845-05-040(3)(e)(B).

Willey's has been operated primarily as a lounge and entertainment facility, as indicated by the Licensee's high percentage of alcohol sales versus food sales. The Licensee's request to leave the door up to join the restaurant and lounge an extra five hours a day will increase the lounge/tavern orientation and the emphasis on the sale of alcoholic beverages, and thus should be denied under OAR 845-05-040(3)(e)(B).

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

. . . if the application is for renewal, the applicant has not built or operated the licensed premises substantially as proposed by the applicant when the license was originally granted or previously renewed. OAR 845-05-025(3).

The Licensee's request to leave the garage door raised an additional five hours each day does not occur in the context of a license renewal application. OAR 845-05-025(3) only applies

to renewal applications. Therefore OAR 845-05-025(3) should not apply to the Licensee's present request.

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

. . . .

- (4) The applicant seeks a Dispenser Class "A" license under ORS 472.110(2) and has less than or is unable reasonably to project at least a 25 percent ratio of food sales to gross sales of food and alcoholic liquor. OAR 845-05-025(4).

The Licensee has recently experienced substantially under 25 percent food sales to total sales. The request to leave up the door between the dining room and lounge an extra five hours per day will increase the lounge orientation of the business and will likely decrease the food sales percentage at the business. The request should therefore be denied under OAR 845-05-025(4).

ULTIMATE CONCLUSIONS OF LAW

The request by Stansby Way Corporation to keep the door separating the dining room and lounge at Willey's raised except from 11:00 a.m. to 2:00 p.m., and from 5:00 p.m. to 9:00 p.m. is not demanded by the public interest and convenience and should be denied because the request would increase the premises' tavern emphasis and would increase the likelihood that the premises will fail to raise its food sales to 25 percent of total sales. ORS 472.160(1).

FINAL ORDER

It is hereby ordered that the request by DA Licensee Stansby Way, Inc., doing business as Willey's, 165 W. 11th Avenue, Eugene, Oregon, to raise the large door between the dining room and lounge except from 11:00 p.m. to 2:00 p.m., and from 5:00 p.m. to 9:00 p.m. 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.



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.