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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,
Arlo's Restaurant, Inc.	)	CONCLUSIONS OF LAW,
ARLO'S RESTAURANT	)	AND ORDER
215 East Third Street	)	
The Dalles, Oregon 97058	)	
- - - - -	)	
Wasco County	)	

A hearing in the above matter was held on the 5th day of March, 1984, in The Dalles, Oregon, before Hearings Examiner Allen R. Scott. The Applicants appeared in person and were represented by Ronald M. Somers, Attorney at Law, The Dalles. The Commission was not represented by legal counsel.

On July 23, 1984, the Commission considered the record of the hearing, the Proposed Order of the Hearings Examiner, and applicable statutes and regulations. Pursuant to this review, the Commission enters the following:

FINDINGS OF FACT

1. Applicants seek a Dispenser Class A (DA) license. They presently hold a Dispenser Class C (DC) license at ARLO'S RESTAURANT.

2. The Commission's Staff has recommended that the application be refused based upon OAR 845-05-040(2)(b) (no preference for uniqueness), 845-05-040(2)(c) (no preference for inadequate service in the area), 845-05-040(3)(f) (lesser services, facilities, and economic benefit), and ORS 472.110(4) (quota).

3. Applicants' premises is located on East Third Street in downtown The Dalles.

4. East Third Street is a one-way eastbound street in downtown The Dalles. It is the main eastbound street through The Dalles. People traveling eastbound on Interstate 84 who wish to stop in The Dalles can take one of two exits west of downtown. A dispenser outlet is located near each of these exits. After these two premises, the eastbound route through The Dalles has no other existing DA premises for approximately 3-1/2 miles. Thus, if granted a DA license, Applicants would have the only DA premises located on this 3-1/2 mile section of the eastbound route through The Dalles.

5. There are, however, other DA premises in downtown The Dalles. The nearest is the Recreation Cafe, which is one block away on East Second Street, the main westbound street in the downtown area. The next nearest is The Chuckwagon, 1-1/2 blocks away on East Second. The Tapadera Motor Inn is four blocks away on Second Street. The French House is four blocks away in the downtown area.

6. There are six other DA premises in the immediate The Dalles area, including the two referred to in Finding of Fact 4 above: The Highway House, two miles east; Portage Inn, four miles east; The Barbecue, 1-1/2 miles west; The Dalles Shamrock, two miles west; Ole's Supper Club, 3-1/2 miles west; and The Kopper Kitchen, three miles west.

7. Applicants' premises has a decor and atmosphere associated with "family dining." Four of the existing DA premises

in the area, including The Dalles Shamrock, The Barbeque, The Chuckwagon, and The Recreation Cafe, have a bar or nightclub atmosphere.

8. The premises will be open 6 days a week, and closed Sunday. Applicants may open the premises on Sunday if the DA license is granted, but has no firm plans to do so.

9. The premises is open for lunch and dinner; if the DA license is granted, the lounge will remain open until midnight.

10. The lunch menu contains 12 hot and cold sandwiches, soup, salad bar, fish and chips, chicken nuggets, and 12 side orders.

11. The dinner menu will contain the following seafood and seafood/steak dinners: prawns; scallops; oysters; seafood platter; halibut steak; salmon steak; steak and prawns; steak and scallops; steak and lobster. Prices will range from \$6.75 to \$15.50. Two steaks will be offered at \$8.95 and \$10.75, as will a steak sandwich at \$5.95. The menu also contains a buffet and salad bar priced at \$5.95. The buffet will have different meat entrees each night. Some of the meals will be served "family style" for two or more diners.

12. Food prices at Arlo's are generally less than those at existing DA premises in the area. The buffet service and family style food service are unusual in the area.

13. Monthly sales at Arlo's have been as follows during the past 12 months:

<u>MONTH</u>	<u>FOOD</u>	<u>ALCOHOLIC LIQUOR</u>	<u>TOTAL</u>
<u>1983</u>			
March	\$16,833	\$2,180	\$19,013
April	15,302	1,873	17,175
May	15,327	2,103	17,430
June	14,743	1,782	16,525
July	14,833	1,806	16,639
August	14,409	1,834	16,243
September	13,994	1,655	15,649
October	11,712	1,620	13,332
November	11,695	1,464	13,159
December	14,283	1,925	16,208
<u>1984</u>			
January	15,064	1,929	16,993
<u>February</u>	15,126	1,788	16,914
AVERAGES	\$14,443	\$1,830	\$16,273

14. Applicants reasonably project that the addition of the Dispenser Class A license will increase food sales by \$8,962 and liquor sales by \$2,575. Sales if the license is granted will thus average as follows: food - \$23,405; alcoholic liquor - \$4,405; total - \$27,810.

15. Existing DA premises in Wasco County and The Dalles have had the following average monthly sales:

	<u>FOOD</u>	<u>ALCOHOLIC LIQUOR</u>	<u>TOTAL</u>
Wasco County	\$22,541	\$12,690	\$35,231
The Dalles	25,211	14,229	39,440

16. The Dalles, with a population of 11,260, has a total of 14 DA and DB licenses in operation, with three of these being private clubs.

17. Wasco County, with a population of 22,700, has 20 DA and DB licenses in operation.

18. The Dalles is the largest town within a radius of approximately 80 miles. It is the major commercial and shopping center for a portion of north central Oregon and south central Washington which contains approximately 58,000 people.

19. The premises has seating for 75 in the restaurant and also contains a banquet room which can accommodate up to approximately 80. Applicants host several banquets a month, with the greatest number, about 20, occurring in December.

20. Applicants plan no major remodeling of the premise. They will use collapsible walls in the banquet area to separate that area from the bar area when a banquet is under way.

21. Applicants plan no entertainment on the premises.

22. The Commission has approximately 75 DA and DB licenses available for issuance.

#### ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. 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 or type from that offered by other licensees within a 20-mile radius as indicated by menu, décor and amenities, entertainment or other characteristics. OAR 845-05-040(2)(b).

Applicants' claim for preference under this criterion is based upon a comparison of their premises with the other premises in The Dalles area. The Commission's staff did not dispute the matter based upon any claim that any other premises outside the immediate The Dalles area was similar.

The evidence establishes that Applicants' buffet and family style service are unusual in the area among DA outlets.

The "family" oriented atmosphere of Applicants' premises differs from several of the existing DA premises in the area. The prices at Applicants' premises are lower than those at most of the existing DA premises in the area.

The evidence, then, does not indicate that any one facet of Applicants' dining service or atmosphere is unique; the evidence does establish, however, that, taken as a whole, Applicants' food service and atmosphere are distinct in the area and that Applicants are entitled to some preference under this criterion.

2. 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 applicant's community is being adequately served. OAR 845-05-040(2)(c).

The Dalles and Wasco County have significantly more DA outlets than one per 2,000 population.

Applicants make two arguments relating to the adequacy of service in the area. They point out that their premises is on a 3-1/2 mile stretch of a main thoroughfare which at present has no DA outlets. However, there are two existing DA premises within 1-1/2 blocks on another street and two others within four blocks. These other premises would be only slightly less accessible to eastbound travelers than would Applicants' premises. Furthermore, there has been no showing that travelers

make up a significant portion of the business of dispenser outlets in The Dalles. Thus, the Commission concludes that Applicants have not established inadequacy of service based on their specific location.

Applicant also notes that The Dalles is something of a marketing and entertainment center for a substantial portion of north central Oregon and south central Washington. This evidence may indeed indicate that The Dalles can support more than one DA premises per 2,000 population, but it does not establish inadequacy of the present service, given the fact that The Dalles already has considerable more than one such premises per 2,000 population.

The Commission concludes that Applicants have not established a basis for preference under this criterion.

3. 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 evidence indicates that Applicants' gross sales are less than the average for the city and county. This is an indication that Applicants' premises serves fewer patrons than do existing premises in the area.

Furthermore, The Commission concludes that Applicant's sales projections if a DA license is granted are not reasonable.

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

4. The total number of Dispenser licenses issued shall not exceed 1 per 2,000 population in the State. ORS 472.110(4).

The evidence establishes that there are approximately 75 DA/DB licenses available for issuance. The quota thus does not provide a basis for denying the application. The specific bases for denying applications are found in ORS 472.160 and OAR 845-05-070.

5. Preference in licensing may be given to an applicant showing that applicant's premises are located in a rural unincorporated area or in an incorporated area with population of less than 25,000. OAR 845-05-040(2)(d)

Applicants' premises is located in The Dalles, a town with a population of less than 25,000. Applicants are therefore entitled to preference under this criteria.

#### ULTIMATE CONCLUSIONS OF LAW

The license should be denied because Applicants' premises will serve fewer patrons than do existing premises in the area and this factor outweighs any preferences indicated. OAR 845-05-040(3)(f).

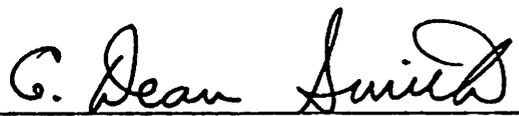
#### FINAL ORDER

It is hereby ordered that the application for Dispenser Class A license by Arlo's Restaurant, Inc. in the trade name

Arlo's Restaurant, 215 East Third Street, The Dalles, Oregon 97058, be DENIED.

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

Dated this 27th day of July, 1984.

  
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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.