

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Application for a)	
Dispenser Class C (DC))	
License by:)	FINAL
)	FINDINGS OF FACT,
Lemon Tree Inn, Inc.)	CONCLUSIONS OF LAW,
LEMON TREE INN)	AND ORDER
NE Corner of Sunset and Hemlock)	
Cannon Beach, OR 97110)	
-----)	
Clatsop County)	

A hearing in the above matter was held on the 6th day of December, 1983, in Portland, Oregon, before Hearings Examiner Allen R. Scott. The Applicant appeared in person and was represented by William Schaub, Attorney at Law, Portland. 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 C (DC) license at the LEMON TREE INN.
2. The Commission's Staff has recommended that the license be refused based upon OAR 845-05-030(1) (sufficient licensed premises in the locality) and OAR 845-05-040(2)(b), (2)(c) (not unique; applicant has not established that the public is inadequately served).

3. Applicant's proposed premises is part of the new Surfview Resort Motel complex, which is located in the "midtown" area of Cannon Beach. The "midtown" area is approximately one mile south of downtown Cannon Beach.

4. The Surfview Resort Inn consists of two main buildings. One, on a bluff overlooking the beach, has 81 completed motel units. Twenty-eight units are still under construction. The motel has a fine view of Haystack Rock.

5. The smaller of the two main buildings in the complex is located across Hemlock Street from the main building. It will contain the Lemon Tree Inn, two rental units, four motel units, and retail space. It is to be completed in approximately April 1984.

6. The total investment in the motel complex will be approximately \$10 million. Applicant will lease the restaurant premises from the developer. The restaurant itself involves an investment of about \$500,000 and will employ approximately 27 people.

7. The Lemon Tree Inn will seat approximately 140, with seating in two dining rooms containing 50 to 60 seats and a mezzanine area containing 30 seats. The construction will be of high quality with emphasis on natural woods, skylighting, and plants. The intent is to create a light, airy, informal feeling.

8. The premises will be open seven days a week all year from 7:00 a.m. to 9:00 p.m.

9. The breakfast menu contains, in addition to the traditional egg and meat dishes, eggs benedict, steak and eggs, razor clams and eggs, pancakes, waffles and roll-ups. About 12 styles of omelette are available all day.

10. Available at lunch, in addition to the omelettes, are seafood dishes such as fish and chips, oysters and chips, prawns and chips, seafood combo, shrimp melt and Dungeness crab melt. Several sandwiches and burgers are also available.

11. The dinner menu offers the following seafood dinners: salmon filet, halibut steak, red snapper filet, razor clams, and Dungeness crab casserole. Four steaks, including filet mignon, teriyaki rib eye, filet mignon with shrimp, and filet mignon with oysters, are offered. The prices of the dinner entrees range from \$7.95 to \$14.95. The dinner menu also offers sandwiches and salads, chowders, soup and breads.

12. The lunch and dinner menus also feature "gourmet hamburgers." Among those offered are the supreme hamburger, the supreme mushroom burger, the supreme benedict burger, and the supreme teriyaki burger. The "gourmet hamburgers" consist of a half pound of meat and unusual sauces or accompaniments. Also offered are other burgers such as chicken burger, onion burger and French burger dip.

13. Service of "gourmet hamburgers" has become something of a trend in the restaurant business, with chains such as the Red Robin restaurants offering special hamburgers of this type.

14. Applicant provides fresh fish on nearly all occasions and stresses fresh ingredients in all of the items offered on the menus. The eggs benedict and fish and chips are of higher quality than the versions offered at many restaurants in the area.

15. There are presently four Dispenser Class A (DA) licenses and one Seasonal Dispenser outlet in Cannon Beach. Three are located in downtown Cannon Beach, approximately one mile from Applicant's premises: Ron Martin's Bistro (Seasonal Dispenser), the Whaler (DA), and the Driftwood Inn (DA). All of these premises are somewhat smaller than Applicant's premises and none is generally open seven days a week.

16. The "midtown" area of Cannon Beach, where Applicant's premises is to be located, contains one existing DA outlet, the Wayfarer Restaurant. It is somewhat smaller than Applicant's premises, but is open seven days a week.

17. The Tolovana Park area of Cannon Beach is approximately 1.2 miles south of Applicant's premises. It contains one DA outlet, Daggett's at Tolovana. This premises has approximately the same total seating as Applicant's proposed premises and is open seven days a week.

18. Of the five dispenser outlets noted in the preceding Findings of Fact, only the Whaler offers breakfast.

19. If the license is granted, Applicant estimates that average monthly sales will total \$54,678, including \$51,944 in

food sales. Alcoholic beverage sales will average approximately five percent of total sales. These projections are based upon Applicant's sales at the existing Lemon Tree Inn in downtown Cannon Beach, which has a Restaurant (R) license and a total of approximately 62 seats. It averages approximately \$22,000 a month in total sales.

20. Existing DA outlets in Cannon Beach and Clatsop County have the following average monthly sales:

	<u>FOOD</u>	<u>ALCOHOLIC LIQUOR</u>	<u>TOTAL</u>
Cannon Beach	\$28,293	\$11,533	\$39,826
Clatsop County	20,756	10,500	31,256

21. Cannon Beach, with a population of approximately 1,200, has one Dispenser Class B (DB) outlet in addition to the four DA outlets. It has no DC outlets.

22. Cannon Beach is a tourist area and a summer resort area. As many as 10,000 people, including day visitors, may be in town on a peak season day.

23. Clatsop County, with a population of 32,700, has 35 DA and DB outlets. It also has one DC outlet.

24. The Surfview Resort Motel, of which Applicant's premises will be a part, features high quality accommodations with an unusually good view of the coastline, including Haystack Rock. Rooms in the motel range in price from \$50.00 to \$119.00, the highest prices in the area. The motel operators

cater to a professional, "up-scale" clientele. Those who patronize the motel expect to have dining facilities, including cocktails, nearby. The proprietors of the motel are also seeking convention and meeting business. The motel contains a meeting room which will seat 125 people.

25. The Lemon Tree Inn will use one of the dining areas of the premises as a separate banquet facility during the off season. There are no licensed premises with separate banquet facilities in Cannon Beach. The Tolovana Inn has meeting rooms, however.

26. Applicant has operated the present Lemon Tree Inn in downtown Cannon Beach for approximately three years. It has a good reputation for food and service.

27. Prior to beginning operation of the existing Lemon Tree Inn, Applicant Allen Litwiller worked in the restaurant business for some years, including four years as a public relations person for Farrells Ice Cream Parlors.

28. Applicant's premises will be the first new building built for restaurant use in Cannon Beach in some years. Most of the present establishments are located in buildings originally built for some other purpose.

29. The trend in Cannon Beach has been for much of the new housing to be located south of the downtown 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 establishes that Cannon Beach and Clatsop County have far more than one dispenser outlet per 2,000 population. The importance of this is dulled somewhat by the fact that the population of the area during tourist season is far more than the official population. The fact that Applicant's premises will be located in a large motel complex, from which much of its business may come, also tends to reduce somewhat the importance of this evidence. Nevertheless, this criterion provides some basis for denying the application.

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

The evidence indicates that Applicant will provide food and service of unusually high quality for the area. Applicant also provides emphasis on certain foods, such as omelettes, eggs benedict, and gourmet hamburgers, that are not emphasized

in the area. Applicant provided some convincing evidence that gourmet hamburgers are a trend even in establishments serving hard liquor. However, the Commission concludes that applicant's service of such hamburgers is not a basis for granting a license. It should be noted that the evidence does not indicate that Applicant's premises features "fast foods."

The evidence also indicates that Applicant's decor will be unusual and of high quality.

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

3. Preference in licensing may be given to applicants providing greater services, facilities or economic benefit to the area or 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, entertainment or such characteristics. Gross sales figures may be used as a basis for determining the number of patrons served. OAR 845-05-040(2)(a).

Applicant's projected sales are considerably larger than average sales at the existing outlets in Cannon Beach. The projected sales are also well above the county average. The projections appear to be reasonable in that they are based upon Applicant's experience at his existing Cannon Beach restaurant, which is much smaller than the proposed outlet, has only a beer and wine license, and is open for dinner only in the summer. The fact that the premises is located in a large motel complex

also lends credibility to the projections. The evidence thus indicates that Applicant's premises will serve more patrons than do the existing premises in the area.

Applicant's premises is somewhat larger than most of the existing premises in the area. Applicant will also host banquets, at least during the off season, thus providing a service that is not commonly found in Cannon Beach. The evidence also indicates that Applicant's premises involves a substantial investment and that it will employ a significant number of new employees.

For all these reasons, the Commission concludes that Applicant is entitled to preference under this criterion.

4. Preference in licensing may be given to applicants whose premises are located in an incorporated area with a population of less than 25,000. OAR 845-05-040(2)(d).

Applicant is entitled to preference under this criterion.

ULTIMATE CONCLUSIONS OF LAW

Although Applicant's proposed premises is located in a city and county which have substantially more dispenser outlets than one per 2,000 population, the license should be granted because Applicant's premises will provide greater services and facilities than existing premises, because Applicant will provide dining service and atmosphere which are substantially different from other outlets in the area, and because the premises is located in a city having a population of less than 25,000.

However, the Commission concludes that Finding of Fact #13, relating to the "gourmet hamburgers," is not a basis for granting the license. OAR 845-05-040(2)(a), (2)(b), (2)(d).

FINAL ORDER

It is hereby ordered that the application for a Dispenser Class C (DC) license by Lemon Tree Inn, Inc. in the trade name Lemon Tree Inn, corner of Sunset and Hemlock, Cannon Beach, Oregon 97110 be GRANTED with the following condition:

1. That Applicant's premises be completed and ready for operation within ninety (90) days following the issuance of the Commission's Final Order or that 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 27th day of February, 1984.



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.