

3. Applicant's premises is located in the downtown area of Tigard.

4. Prior to Applicant's obtaining the license at the premises in 1981, the premises was operated as a tavern and had a bad reputation in the local community. Applicant has upgraded the premises in terms of decor, atmosphere, food service, and clientele.

5. The premises seats 60 in the dining area and 24 in the bar/lounge area. The bar area is visible to the dining area but is separated by a wood and glass wall.

6. The dining area is carpeted and nicely decorated. It contains tables and booths large enough for dining.

7. The premises will be open from 10:00 a.m. to 2:30 a.m., serving lunch and dinner.

8. Applicant's menu emphasizes Filipino foods. Filipino cuisine has been influenced by Chinese, Spanish, American and Japanese cooking traditions.

9. The entire menu is available for both lunch and dinner. The following 19 house specialties are offered: adobo (marinated chicken/pork); lumpia (meat egg-rolls); caldereta (beef stew); fritong manok (fried garlic chicken); filet of chicken breast; fried chicken; inihaw na baboy (char-broiled pork steak); sweet and sour pork; pork barbecue with peanut butter sauce; fried wonton; camaron rebosado (golden butterfly shrimp); longanisang insi (Chinese sausage); salambao (assorted seafoods); beef broccoli; shrimp broccoli; beef vegetables;

pork barbecue with peanut butter sauce; inihaw na isda (char-broiled fish steak); and char-broiled steaks seasoned Filipino-Spanish manner. These entrees range in price from \$3.95 to \$9.95, except for larger steaks which range up to \$13.95. The menu also offers over 20 Filipino soups and dishes which are available for groups of six or more with advance notice.

10. The menu also offers 10 sandwiches, five hamburgers, two salads, soup and 10 appetizers, some of which are Filipino style.

11. Sales at the premises have been as follows:

<u>MONTH</u>	<u>FOOD</u>	<u>BEER & WINE</u>	<u>TOTAL</u>
<u>1983</u>			
January	\$3,197	\$6,199	9,396
February	2,072	5,363	7,435
March	3,276	5,475	8,751
April	2,998	5,643	8,641
May	2,600	5,012	7,612
June	2,519	5,024	7,543
July	2,556	5,688	8,244
August	2,614	5,299	7,913
September	2,472	5,647	8,119
October	2,813	6,666	9,479
November	2,637	5,420	8,071
<u>December</u>	<u>2,651</u>	<u>5,420</u>	<u>8,071</u>
Average	2,700	5,580	8,280

12. Applicant reasonably estimates that if the DA license is granted, his sales will increase by 40 to 50 percent.

13. Average sales at existing premises in Washington County and Tigard have been as follows:

	<u>FOOD</u>	<u>ALCOHOLIC LIQUOR</u>	<u>TOTAL</u>
Washington County	\$42,949	\$21,020	\$63,514
City of Tigard	37,681	17,674	55,355

14. There are no dispenser outlets specializing in Filipino food in Portland or Oregon.

15. The premises has a game room, which contains one pool table, one video game, and one pinball machine. Applicant will remove the pinball machine and video game if the license is granted. He is also willing to remove the pool table if the Commission so requests, although he would prefer to retain it because some of his customers like to play pool in a quiet setting. The game room does not interfere with the dining atmosphere of the premises.

16. Applicant presently has and intends to retain a piano bar as the primary entertainment on the premises. It does not interfere with dining.

17. The nearest Dispenser Class A outlet to Applicant's premises is the Lone Oak, approximately one-half mile away. The next nearest is Gaffer's, approximately three-fourths of a mile away.

18. The City of Tigard has 18,200 people and has eight DA licenses. One of these premises, the Stadium Club, is presently closed but retains its license. Two other former DA premises in Tigard, the Plankhouse and Todd's, have relinquished their licenses within the past year or so.

19. Washington County, with a population of 257,400, presently has 95 DA and DB outlets in operation.

20. The Commission has approximately 70 DA/DB licenses available for issuance.

21. Six individuals testified in support of the application. All credibly testified that the food is excellent. All also credibly testified that the premises does not have a typical tavern atmosphere. The witnesses praised the friendliness of the premises and the pleasant atmosphere. Several indicated that they frequent the premises because they feel free there from the loud noise and sometimes threatening atmosphere of the typical tavern.

22. The Commission has received ten letters of support for the application. Among the letters were two from the Tigard area Chamber of Commerce which praised the premises and Applicant.

23. One of the other letters received was from the City Administrator of Tigard, who stated, in part: -

"The City of Tigard would like to encourage your approval of a Class "A" Liquor License Permit to Mr. Nick Capistrano for The Manila Express, located at 12370 SW Main Street in Tigard. The City of Tigard does not routinely pass on such requests automatically to OLCC, but rather does its own review prior to any council action.

The Manila Express, or more properly the former Town Tavern at the same location, had a bad reputation and caused the City and OLCC considerable difficulty. Since the acquisition and management of the tavern by Mr. Capistrano, that has all changed. The atmosphere is more community and food service oriented. The City's Police Department has had the full cooperation of Mr. Capistrano in dealing with what few difficulties have arisen."

24. The Mayor of Tigard and four City Councilmen also sent a letter, which states, in part:

"We understand that your office has preliminarily denied the issuance of Class A license to that establishment known as the Manila Express Restaurant.

Speaking on behalf of the City of Tigard, we wish to inform you that we are disturbed by this denial.

During the past three (3) years the owner, Nicolas Capistrano III has displayed exemplary management of his business and has afforded our City with a charming, clean, and delightful establishment in which to dine and socialize.

Many Civic Organizations have used the premises for business meetings and special events.

We do not feel that there is an abundance of Class A establishments in our neighborhood. In fact other than Gaffer's Pub there are no convenient hard liquor establishments in our community.

The food served in this establishment is of top quality and although the kitchen appears to be small, we have never experienced slow service or a lack of a wide variety of food in the menu.

We respectfully request the reconsideration of its adverse findings and issue a Class A license to the Manila Express Restaurant."

25. The Commission has also received two petitions supporting the application, one signed by 31 local businesspeople and the other by 330 individuals.

26. Applicant does not have any plans for immediate remodeling of the premises. However, if business is good, he may expand the premises.

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).

There is no convincing evidence that the area is served by sufficient licensed premises. No evidence was offered as to the number within 10 miles. If the existence of more than one DA license per 2,000 population may be taken as a rough estimate of sufficiency of licensed premises, such sufficiency is not established in this case. Washington County has fewer than one license per 2,000 population, as does the City of Tigard.

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

2. 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).

Applicant presently sells more beer and wine than food. His projections indicate his view that the proportion will not change. It may be that this is an unusual case where Applicant's projections are overly conservative. In any event, the fact that alcoholic liquor sales may be greater than food does not necessarily establish that the premises will be operated as a tavern. In this case, the Commission concludes that the evidence indicates that Applicant intends the premises to

be primarily a restaurant rather than a drinking establishment. Applicant credibly testified to that effect. Furthermore, the testimony of his supporters, along with letters of support, provided believable evidence that the premises does not have a typical tavern atmosphere and that patrons regard it as a place in which to eat as well as in which to drink. It is also noted that the premises contains a dining room which has a decor associated with food service rather than with mere alcohol consumption. The extensive and unusual menu offered is an indication of the sincerity of Applicant's interest in operating a restaurant rather than a tavern. Applicant is also willing to reduce or even eliminate the game room in the premises. The piano bar entertainment offered is, according to the evidence, relatively quiet and conducive to dining.

For all these reasons, the Commission concludes that this criterion does not provide a basis for denying the application.

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).

Applicant's sales will almost certainly remain far below the average at existing premises in Tigard and Washington County. It is fair to infer, therefore, that the premises will

serve significantly fewer patrons than do existing premises on the average. This is some indication of lesser services.

The Commission concludes that this criterion provides a basis for denying the license. However, it is further concluded that it is outweighed by the other criteria discussed below.

4. 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, decor and amenities, entertainment or other characteristics. OAR 845-05-040(2)(b).

The evidence establishes that Applicant's premises serves a type of food, Filipino cuisine, which is not served at any existing DA outlet within 20 miles or, in fact, at any DA premises in the state. The Commission concludes that Applicant is entitled to preference under this criterion and that this preference is significant enough in this case to outweigh the negative considerations relating to the number of patrons served.

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

Preference in licensing may be given to a dispenser license applicant whose premises is located in a rural unincorporated area or in an incorporated area with population of less than 25,000 and applicant's premises has seating capacity for 100 or fewer patrons. OAR 845-05-040(2)(e)

Applicant's premises is located in Tigard, an incorporated area with a population of less than 25,000, and has seating for

less than 100. Applicant is entitled to preference under these criteria.

6. The total number of licensed premises dispensing distilled liquor shall not exceed one for each 2,000 population in the state. ORS 472.110(a).

This statute limits the total number of DA licenses available for issuance throughout the state. As there are approximately 70 DA and DC licenses available for issuance, the statute does not provide a basis for denying the license. The bases for denying licenses are stated in ORS 472.160 and OAR 845-05-005 through 845-05-070.

ULTIMATE CONCLUSIONS OF LAW

Although Applicant's premises will serve fewer patrons than do existing premises on the average, it is concluded that that factor is outweighed in this case by the preference for uniqueness based upon applicant's service of food unique in the State of Oregon and by the preference for premises located in towns of less than 25,000 population and seating fewer than 100 patrons. OAR 845-05-040(2)(b), (2)(d), (2)(e).

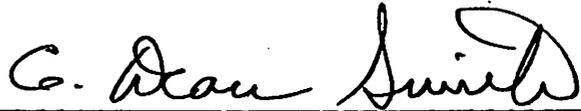
FINAL ORDER

It is hereby ordered that the application for a Dispenser Class A (DA) license by N. C. III Enterprises, Inc. in the trade name The Manila Express, 12370 SW Main, Tigard, Oregon 97223, be GRANTED upon the payment of appropriate license fees to the Commission and with the issuance of the license subject to the following condition:

1. That the premises be ready for operation as proposed within 90 days of the Commission's Final Order granting the license or that the grant 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 26th day of June, 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.