

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,
William and Janice Huston	)	CONCLUSIONS OF LAW,
and Michael and Helen Snyder	)	AND ORDER
CHANNEL CLUB	)	
521 Broadway	)	OLCC-84-L-036
Seaside, Oregon	)	
- - - - -	)	
Clatsop County	)	

A hearing in the above matter was held on the 6th day of November, 1984, in Seaside, Oregon, before Hearings Examiner Douglas Crumme'. The Applicants appeared in person and were represented by Steve Campbell, Attorney at Law, Seaside, Oregon. The Commission was not represented by legal counsel.

On January 21, 1985, the Commission considered the record of the hearing, the Proposed Order of the Hearings Examiner, Exceptions to the Proposed Order of the Hearings Examiner, and applicable statutes and regulations. Pursuant to this review, the Commission enters the following:

BACKGROUND

The Applicants have applied for a Dispenser Class C (DC) license at a new restaurant they are constructing in the downtown business district in Seaside. The restaurant will be known as the CHANNEL CLUB. The Channel Club is to be opened on March 1, 1985. The Channel Club will be modeled on a popular restaurant of the same name located in Sitka, Alaska.

## ISSUES

- I. The Commission's Regulatory Staff proposes refusal of the application under OAR 845-05-035, because adverse public opinion weighs against the application.
- II. The Regulatory Staff proposes refusal under OAR 845-05-040(3)(a), because the Applicants have shown neither that the Channel Club would offer greater services nor that the Channel Club would be unique in comparison to existing dispenser outlets within 20 miles.
- III. The Applicants argued that license issuance is merited because the Channel Club will offer greater services, the Channel Club will be unique, and the community is not adequately served.
- IV. The Commission notes that there is an issue of whether preference for licensure is shown under OAR 845-05-040(2)(e) because of the Channel Club's seating for fewer than 100 persons and location in a city with population under 25,000.

The Regulatory Staff cited the Court of Appeals decision in Battle Creek Golf Course, Inc. v. OLCC, 21 Or App 179, 534 P2d 204 (1975) as a refusal grounds. However, this decision does not provide an independent basis for license refusal beyond the license criteria set forth in the statutes that govern the Commission and in the Commission's Administrative Rules. OLCC Final Order, Oregon Care, Inc., Hershey's Place, September 1984.

### I. PUBLIC OPINION

The Commission may refuse to issue or renew a license if it determines that public opinion weighs against the issuance of a license. Interested persons may express their support for or opposition to the issuance of a particular license by petition or letter timely received at the Commission offices, or by personal appearance

and testimony at a Commission hearing, if any. Such public opinion will be evaluated in light of the reasons expressed and the extent to which the persons expressing it are likely to be affected by the issuance of the license. Greater weight will be given to opinions of persons residing, working or owning a business within a one-mile radius of the proposed premises. The number of persons expressing support or opposition will not, in and of itself, be controlling. Arguments concerning matters which are primarily within the control of the city or county government, and which were raised, or reasonably should have been raised, before the governing body of the city or county when it was considering its recommendation, may be given lesser weight by the Commission if the governing body's recommendation is inconsistent with the argument. OAR 845-05-035.

#### Findings of Fact

1. The Commission has received two letters in opposition to the issuance of a DC license at The Channel Club. Both letters are from individuals who live or are associated with businesses located within one mile of The Channel Club. Both writers cite the high concentration of liquor licensees in downtown Seaside near The Channel Club. The writer of the first letter asserts that Seaside has had serious liquor-related problems in the past, and suggests issuance of an additional license would be inappropriate because of these past problems. (Commission's Exhibit D). The writer of the second letter argues that the existing licensees have enough competition already. (Commission's Exhibit E). One of the two letter writers is a licensee of the Commission.

2. The Chief of Police and the Acting Chief of Police of Seaside have no objections to the issuance of a DC license at The Channel Club. Both the Chief and the Acting Chief believe that Seaside no longer has the liquor-related problems it may formerly have had. One factor cited in support of this reduction in problems is the recent remodeling of Broadway Street, the main retail business street in downtown Seaside. The Chief and Acting Chief also believe that a DC license would not lead to any additional alcohol problems because a DC outlet cannot have a lounge.<sup>1</sup>

3. The following Seaside residents and business persons support the application for a DC license at The Channel Club:

Curt Sagner, Golden Shores Realty; President, Seaside Chamber of Commerce  
Susan Folk, Executive Director, Seaside Chamber of Commerce  
Alan Wood, former member, Seaside City Council  
Jack Phillips, building contractor  
Steve Phillips, former member, Seaside City Council  
Daniel Hair, former President, Seaside Motel Association  
Michael McGuire, Director, Serenity by the Sea Alcoholic Treatment Center

4. The persons who support the issuance of a DC license at The Channel Club identified in the Finding of Fact above cited two main reasons. First, the supporters believe that there will not be any liquor-related problems likely to result from a DC license at this business. Second, the issuance of a DC license at The Channel Club would increase the variety of

---

<sup>1</sup> A DC license is more restricted than a Dispenser Class A (DA) license in that a DC outlet may only serve alcohol as an incident to food service, and may not have a lounge or public bar. ORS 472.110(6)(b) and (c); ORS 472.110(2).

cocktail-licensed restaurants available in the area for tourists and conventioners. Seaside has made a successful effort recently to cultivate more family visitors and more conventions. These types of visitors like to have a variety of restaurants to choose from.

#### Conclusions of Law

The weight of public opinion supports issuance of a DC license at The Channel Club. Many more persons have been identified who support the application than who oppose it. There were nine supporters versus two objectors. Furthermore, the reasons expressed by the supporters were persuasive. The issuance of a DC license at The Channel Club should not lead to any new alcohol-related problems because DC outlets have no lounge and are necessarily food-oriented establishments. The supporters' opinion that there is demand for an additional outlet in the area is at least as persuasive as the opinion of the objectors that Seaside has too many outlets. Public opinion, therefore, does not weigh against license issuance under OAR 845-05-035.

#### II. GREATER SERVICES

Preference in licensing may be given to applicants showing any one or more of the following. The applicant shall have the burden of proving that these provisions apply:

(a) Applicant's premises will provide greater 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(2)(a).

Findings of Fact

5. The Channel Club will have seating for 75 persons in its dining room. The Channel Club will not have a lounge.

6. The Channel Club will not have a separate banquet room. However, the Channel Club's tables may be moved together in the center of the dining room to accommodate larger parties.

7. There are ten dispenser outlets in the City of Seaside. These are all DA outlets. One of these outlets is the Seaside Convention Center, for which sales and seating information is not in the record.

8. The recent average monthly sales at the nine DA outlets in Seaside for which sales figures are available have been as follows:

	<u>Food</u>	<u>Total</u>	<u>Percent of Food to Total</u>
Bounty	\$21,129	\$30,268	70%
Frontier	7,336	23,658	31%
El Toucan	15,240	50,036	30%
Hara's	13,650	19,402	70%
Par-Tee Room	5,740	9,997	57%
Captain Morgan's	12,151	20,392	60%
Sandtrap	6,786	16,323	41%
Oceanside	7,570	11,730	64%
<u>Shilo Inn</u>	<u>72,500</u>	<u>107,083</u>	<u>68%</u>
Average	18,011	32,099	56%
Average Excluding Shilo Inn	11,200	22,726	49%

9. The seating and meals served at the nine DA outlets in Seaside for which information is available are as follows:

	<u>Dining Seating</u>	<u>Lounge Seating</u>	<u>Banquet Room Seating</u>	<u>Meals Served</u>
Bounty	72	60	None	Dinner
Frontier	50	45	None	Lunch/Dinner
El Toucan	80	100	None	Winter: Dinner Summer: Lunch/Dinner
Hara's	92	50	None	Dinner
Par-Tee Room	95	68	None	Lunch/Dinner
Captain Morgan's	46	95	50	Lunch/Dinner
Sandtrap	61	54	None	Lunch/Dinner
Oceanside	62	30	100	Dinner
<u>Shilo Inn</u>	<u>152</u>	<u>106</u>	<u>600</u>	<u>Breakfast</u> <u>Lunch/Dinner</u>
Average	79	68		
Average Excluding Shilo Inn	70	63		

10. The Channel Club's salad bar will be among the largest in Seaside in terms of variety. There will be approximately 22 prepared salads available at any given time.

11. The Applicants have projected average monthly sales at The Channel Club with a DC license of \$36,000 in food and \$50,000 in total food and alcoholic beverages. This projection was not reliably established by the evidence. Applicants did establish that the food sales percentage would be very high. See Discussion below.

## Discussion

The Applicants' accountant explained that the projections were based on the sales experience of about five cocktail-licensed outlets in Seaside with seating comparable to the Channel Club. However, a review of the recent average sales of the nine DA outlets in Seaside for which sales figures are available (see Finding of Fact No. 8 above) indicates that almost any combination of five outlets with seating similar to the Channel Club would have average sales far lower than \$50,000 per month. This is particularly so when considering that the Shilo Inn must not have been included because it has many more seats than the Channel Club. Thus, the explanation of the total sales projection was not persuasive. However, because there will be no lounge, Applicants' projection of a high food sales percentage is reasonable.

## Conclusions of Law

The Applicants have the burden under OAR 845-05-040(2)(a) of showing that they would offer greater services, facilities and economic benefit than the existing dispenser outlets in Seaside. The Applicants have not met this burden. The Channel Club will have fewer total dining and banquet seats than six of the nine Seaside DA outlets for which seating figures are available. Most of the nine outlets are open for as many meal periods as the Channel Club will be. The Applicants have not reliably established what the sales at the Channel Club would be or that the Channel Club's food sales would exceed the food sales average at existing dispenser outlets in Seaside. The only facet of the

business shown to constitute greater services is the number of salads at the salad bar. This one feature, however, is not enough to establish that the Channel Club will offer greater overall service than existing outlets. Thus, preference for license issuance is not shown under OAR 845-05-040(2)(a).

### III. UNIQUENESS

Preference in licensing may be given to applicants showing any one or more of the following. The applicant shall have the burden of proving that these provisions apply:

(b) Applicant's 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)(a), (b).

#### Findings of Fact

12. The Channel Club's menu will include a varied selection of beef and seafood entrees, plus sandwiches, appetizers, children's plates, desserts, and a large salad bar. See Finding of Fact No. 10 above. (Applicant's Exhibit No. 1.)

13. Seven of the nine nearest DA outlets to The Channel Club offer both steak and seafood on their menus.

14. Much of the food at The Channel Club will be cooked on a grill that extends partially into the dining room. The cook will stand behind the grill and prepare food facing the dining room, giving patrons an opportunity to observe the cooking activity.

15. None of the existing DA outlets in Seaside have a kitchen grill that extends out into the dining room to allow patrons a view of the cooking activity.

16. The Channel Club will use a special charbroiling method involving putting a spray of wine and herbs on the food while the broiling takes place. This method has been borrowed from The Channel Club in Sitka. This charbroiling method gives the food an unusual flavor.

#### Conclusions of Law

The Channel Club will have some unusual features, such as the grill extending out into the dining room and the special herb and wine spray for charbroiling. The question is whether these features have been shown to be so extraordinary in comparison to existing outlets as to constitute a unique or substantially different type or quality of dining service or atmosphere at the premises. OLCC Final Order, Oregon Care, Inc., Hershey's Place, September 1984. The Commission concludes that on balance, these features do not show preference for uniqueness under OAR 845-05-040(2)(b).

#### IV. FAILURE TO SHOW GREATER SERVICES OR UNIQUENESS

Unfavorable consideration may be given to an applicant if any of the following are shown:

(a) None of the criteria set forth in subsection (2)(a) or (b) of this rule is met. OAR 845-05-040(3)(a).

Conclusions of Law

The Applicant has not shown preference for license issuance under either OAR 845-05-040(2)(a) (greater services) or OAR 845-05-040(2)(b) (uniqueness). See Conclusions of Law Nos. II and III. Therefore, unfavorable consideration is indicated under OAR 845-05-040(3)(a).

V. ADEQUATE SERVICE

Preference in licensing may be given to applicants showing any one or more of the following. The applicant shall have the burden of proving that these provisions apply:

. . .

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

Findings of Fact

17. The following areas contain the populations and number of dispenser outlets indicated:

<u>Area</u>	<u>Population</u>	<u>Population Divided By 2,000</u>	<u>Licenses Issued or Committed</u>	
			<u>DA/DB</u>	<u>DC</u>
City of Seaside	5,235	2.62	10	0
Clatsop County	32,750	16.38	45	3

18. There is significant tourism in Seaside from persons visiting the coast. Tourism in Seaside has recently increased. Motel tax figures were up 40 percent in 1984 compared to the same period in 1983. In addition, 1984 showed increases in

visits, letters and phone calls to the Seaside Chamber of Commerce of 25 percent, 40 percent and 300 percent respectively. One factor leading to the increase has been the \$1,000,000 renovation of Broadway Street in downtown Seaside.

Conclusions of Law

The City of Seaside has approximately 382 percent more dispenser outlets than the one-per-2,000 quota considered prima facie evidence of adequate service under OAR 845-05-040(2)(c). Seaside has substantial tourism and this tourism is growing. However, this growth in tourism is not specific enough evidence of new demand to overcome the prima facie showing of adequate service in the area, given how much Seaside exceeds the one-per-2,000 average. Therefore, a preference is not shown under OAR 845-05-040(2)(c).

VI. POPULATION UNDER 25,000/SEATING UNDER 100

Preference in licensing may be given to applicants showing any one or more of the following. The applicant shall have the burden of proving that these provisions apply:

. . .

(e) Applicant's premises are 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).

Conclusions of Law

Preference is shown for this application under OAR 845-05-040(2)(e) because The Channel Club has seating for less than

100 persons and is located in an incorporated community with fewer than 25,000 persons. See Findings of Fact Nos. 5 and 17 above.

ULTIMATE CONCLUSIONS OF LAW

The Commission's license criteria are in conflict with respect to this application. On the one hand, unfavorable consideration is shown under OAR 845-05-040(3)(a) primarily because the premises will not compare favorably to existing DA premises. On the other hand, preference for license issuance is shown under OAR 845-05-040(2)(d) because the premises has seating for under 100 persons and is in a town with a population under 25,000.

In this case the criterion relating to how the Channel House will compare to the existing dispenser outlets in Seaside as to the level of services should be given less weight than the preference for location and seating. The unfavorable comparison results mostly from the Applicant's inability to project total sales which are greater than DA premises. Since DC premises have no lounge, an unfavorable sales comparison to premises that do have a lounge is not compelling in this analysis. The Channel Club will have a high food sales percentage, an extensive menu (which includes a superior salad bar), and seating near to that of existing DA premises. Therefore, preference for licensing outweighs the negative criteria of OAR 845-05-040(3)(a).

FINAL ORDER

It is hereby ordered that the application for a DC license by William and Janice Huston and Michael and Helen Snyder at The Channel Club, 521 Broadway, Seaside, Oregon, be GRANTED, subject to the following conditions:

1. That the premises be constructed as proposed and be ready for operation within ninety (90) days of issuance of the final order in this matter or that the commitment of the license be withdrawn.
2. That Applicant pay the appropriate fee for the license prior to issuance of the license.

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

Dated this 6th day of February, 1985.

*William A. Thomas for C. Dean Smith*  
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.