



BACKGROUND

Applicant's premises is located in downtown Reedsport. Applicant seeks renewal of the Retail Malt Beverage license which he has held since May 1982.

ISSUES

I. The staff asserts that the renewal should be denied because of a negative recommendation by the local governing body. OAR 845-05-025(1).

II. The staff asserts that the renewal should be denied because of illegal activities or a recent history of altercations, noisy conduct, or other disturbances in and around the premises under the Applicants' or other's ownership or control. OAR 845-05-025(10).

III. The staff asserts that the renewal should be denied because public opinion weighs against the license. OAR 845-05-035.

I. LOCAL ENDORSEMENT

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:

(1) An adverse recommendation by the governing body of the appropriate city or county, after due consideration. The recommendation may be disregarded by the Commission if the body has failed to give to the applicant and to interested members of the public both reasonable notice of the proceedings at which the application was considered and reasonable opportunity to be heard. OAR 845-05-025(1).

### Findings of Fact

1. At the time the Staff considered this matter, the Reedsport City Council had voted to recommend that this application be denied.

2. On March 4, 1985, the Reedsport City Council reconsidered the matter and voted to recommend to the OLCC that the license be renewed.

3. The primary reason for the changed recommendation by the Reedsport City Council was the fact that two council members who originally opposed renewal have been replaced by two new members who support renewal. However, it appears that some of the council members were influenced by the fact that Rhonda Mix is no longer on the license, and by the fact that no violations have been reported to the City Council since Rhonda Mix left in October 1984.

4. Prior to the City Council's vote on reconsideration, Mr. Chandler represented that The Gangplank intended to continue having semi-clad dancers, as permitted by local ordinance. He asked the council to vote with that in mind.

### Conclusions of Law

As the City Council has now voted to recommend that the license be renewed, this criterion does not provide a basis for denial.

### II. ILLEGAL ACTIVITIES AND RECENT HISTORY OF DISTURBANCES AND ALTERCATIONS

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:

. . . . .  
(10) The licensing of the premises would not be in the best interests of the community because of illegal activities or a recent history of altercations, noisy conduct or other disturbances in or around the premises under the applicant's or other's ownership or control. OAR 845-05-025(10).

Findings of Fact

5. On February 5, 1983, Carrie L. Palmer, who was employed as a dancer at The Gangplank, was arrested and charged with violation of an Oregon statute relating to sexual conduct in a live show.

6. Eventually, Ms. Palmer was convicted of the crime of Failure To Appear because she failed to appear for a trial on the sexual conduct charge. The record does not reflect whether Ms. Palmer was ever convicted of the sexual conduct charge.

7. The OLCC filed administrative charges against The Gangplank tavern as a result of the above incident. Ultimately, the charges were dismissed as a result of a Court of Appeals decision which invalidated part of the statute involved. State v House, 66 Or App 953, 676 P2d 892, aff'd as modified 68 Or App 360, 681 P2d 176 (1984).

8. On December 28, 1983, Carrie Jean Barker was arrested while dancing at The Gangplank tavern. She was charged with violation of Reedsport ordinances forbidding totally nude dancing and circulating among the patrons. On February 21, 1984, Ms. Barker was convicted of the charges and fined. The conviction is classified as an infraction.

9. Since Applicants were licensed at The Gangplank tavern in May of 1982, five people have been convicted of crimes resulting from actions either in or around the tavern. The description of the five incidents follows. The information is taken from police reports. The date indicated is the date of arrest rather than the date of conviction, which is not in the record.

1. December 19, 1982: Man convicted of criminal mischief for pulling the telephone cord out of the wall in The Gangplank. Fine of \$100.
2. March 16, 1983: Female patron convicted of disorderly conduct and resisting arrest because she attempted to fight with the dancer at the premises, threw glasses and ashtrays around, and fought with the police officer who came to arrest her. She was fined and given a suspended jail sentence.
3. April 9, 1983: Male patron convicted of minor in possession by consumption after police officer observed him leaving the premises. He was fined and placed on probation.
4. May 15, 1983: Male patron convicted of theft. His charge account at the premises was overextended but he nevertheless took a 12 pack of beer from the premises and was therefore convicted of theft. He was fined and placed on probation.
5. January 7, 1984: Female patron convicted of assault. While in the tavern, she observed her boyfriend kissing another woman outside. She ran out and beat up the other woman. She was fined and placed on probation.

10. In October 1982, State Police did an undercover investigation in and around the premises. They reported to local officials that they had observed one instance of solicitation for

prostitution and one instance of attempted sale of marijuana. The alleged attempted sale of marijuana occurred not in The Gangplank but on a stairway next to the premises. No prosecutions resulted from these observations and no information regarding the specifics of the alleged illegal activities was offered at the hearing.

11. During the time the Applicants have operated the premises, beginning in May of 1982, there have been approximately 14 instances of disturbances or altercations at The Gangplank. Information on these matters was obtained from police reports. These 14 incidents include the two conviction matters noted above which involved disorderly conduct or assault. Details on some of the incidents are not clear from the police reports. Approximately five of the incidents appear to have occurred outside the premises. A few of the incidents involved verified fights, while the actual circumstances of others are not clear. Approximately eight of these instances occurred in 1982, two in 1983, and four in 1984.

#### Conclusions of Law

The record establishes that some "illegal activities," a term used in the regulation, have occurred at the premises. One dancer was convicted of the violation of Reedsport ordinances. Five other convictions have resulted from activities in or around the premises. It should be noted that in two of those matters, Licensees were victims of the criminal activity. The Commission does not give much weight to the allegation involving solicitation of prostitution and sale of marijuana noted in Finding of

Fact 13 above. These two alleged incidents of illegal activity are not supported by any reports or testimony and it is therefore impossible to make any reasoned judgment as to whether they actually occurred or under what circumstances. The only other evidence of illegal activities offered by the Commission's staff was four photographs taken of a dancer performing at The Gangplank in approximately March 1983. The photographs show a totally nude woman in suggestive poses. They were taken prior to the passage of a city ordinance banning totally nude dancing. Counsel for the Commission alleges that the activity depicted in the pictures was nevertheless illegal under some unspecified state statutes. However, as no evidence was produced that authorities have ever taken any action against the dancer for the activities involved, the Commission considers the evidence that this was illegal activity to be unpersuasive.

The evidence also establishes that there have been approximately 14 disturbances or altercations in or around the premises during the past two years. Although the circumstances of these incidents are not clear in every instance, it is concluded that enough disturbances and altercations have been established to prove that there has been a "recent history," as the regulation requires.

The evidence establishes, therefore, that illegal activities and a recent history of disturbances and altercations have occurred in or around the premises. However, those facts do not necessarily establish that the criterion involved should be a basis for denying the license. The criterion indicates that illegal

activities or a recent history of disturbances and altercations should be a basis for the denial if the licensing of the premises "would not be in the best interests of the community." This phrasing appears to indicate that the circumstances of the activities, their frequency, their remoteness in time from the present, and any other factors which may affect their impact on the public interest may be taken into account in determining whether the illegal activities or disturbances and altercations should be a basis for denial.

In this case, it is concluded that the evidence does not indicate that the illegal activities and history of disturbances and altercations are such as would make renewal of the license not in the best interests of the community. It is noted, first, that only two of the illegal activities, the violation of city ordinances by a dancer and the conviction of a woman for beating up a rival for her boyfriend in front of the tavern, occurred during the 12 month period before the expiration of this license. Furthermore, the other illegal activities that are substantiated by good evidence (which are described in Finding of Fact 12 above) do not suggest any particular pattern nor do they suggest any threat to the community. None of them appears to be of great seriousness and taken as a whole or individually they do not suggest that the premises is or was either lawless or dangerous.

The same analysis may be made of the evidence relating to the recent history of disturbances or altercations. Over half of the approximate number established by the evidence occurred during 1982. Some of the incidents involved actual fights, while

others involved less serious sorts of disturbances. Again, there does not seem to be any pattern in these matters which would suggest that the premises has been an unusually dangerous or violent place. The evidence does not establish that the community is endangered by the continued existence of the license.

The Commission concludes that this criterion should not be the basis for denial of the renewal.

### III. 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

12. Three people testified at the OLCC hearing in opposition to the renewal of the license. One lives in Springfield, Oregon, but is the pastor of the United Methodist Church in

Reedsport, which is located at the opposite end of town from The Gangplank tavern. Another is the minister of a Presbyterian church in Reedsport which is located about two miles from the premises. The minister lives approximately one mile from the premises. The third protester lives approximately 1.5 or 2 miles away and works further than that from the premises. The objectors referred to the number of police calls to the premises and to their view that the type of dancing formerly at the premises may have a negative influence on children or other people in the town. None of the protesters had ever been in the premises. One based his objection partly on money spent in connection with the tavern on the police calls, the City Council meeting at which this matter was considered, and this OLCC hearing.

13. Five letters in opposition to the renewal were received into the record. Some of the writers merely thanked the City Council for voting against renewal; others alleged that indecent acts and illegal activities had occurred at the premises.

14. Petitions containing approximately 93 names of those opposed to the renewal of the license were received into the record. Two of the petitions merely state, "We agree with the decision of the City Councils (sic) recommendation, to deny the liquor license of The Gangplank tavern." Two other petitions state, "We feel that there are enough other places in Reedsport, for social drinking, which have not caused continual trouble for the police or had activities which are not approved by a great number of citizens of Reedsport. Such activities provide a fertile ground for prostitution."

15. Ten Reedsport area private citizens testified in support of the renewal application. One is now employed at the premises and another was formerly employed there.

16. At least five of the supporters live or work within one mile of the premises, including a manager for Bohemia, Inc., located 1.5 blocks away, and the secretary of the local woodworkers union, whose hall is located next door to the premises. Most of the supporters are patrons of the premises, although at least two had never been in the premises.

17. The supporters generally stated positive opinions of Rhonda Mix, at that time co-licensee, and testified that the premises is well run and does not, in their opinion, present unusual problems for the community.

18. Five letters in support of the application were also received. The letter writers generally cited their positive view of Applicants and of the operation of the premises.

19. Also received into the record were three petitions supporting the application. Two of the petitions are signed primarily by people giving local addresses. These petitions contain approximately 232 signatures. The other petition contains 19 signatures of people stationed on a boat temporarily in the area.

20. Just prior to the OLCC hearing on this matter, OLCC investigators conducted a survey of public opinion within three blocks of The Gangplank tavern. The results are as follows:

BUSINESSES

Favor Renewal	16
Oppose Renewal	5
No Opinion	15

RESIDENTS

Favor Renewal	10
Oppose Renewal	5
No Opinion	8

TOTAL

Favor Renewal	26
Oppose Renewal	10
No Opinion	23

Conclusions of Law

The evidence establishes that expressions of support for the renewal substantially outnumber expressions of opposition. Furthermore, those expressing support tend to live or work in closer proximity to the premises than those expressing opposition. There is nothing to suggest that the opponents' reasons should be given more weight than those expressed by supporters.

The Commission concludes that public opinion does not weigh against the license and that this criterion therefore is not a basis for denying the application.

ULTIMATE CONCLUSIONS OF LAW

The license should be renewed because the endorsement by the local governing body is no longer adverse, because the evidence does not establish that the public interest would be negatively affected because of the history of some disturbances and illegal activities at the premises, and because public opinion does not weigh against the renewal of the license. OAR 845-05-025(1), (10); OAR 845-05-035.

FINAL ORDER

The Commission orders that the application for renewal of a Retail Malt Beverage license by Robert F. Mix, in the trade name The Gangplank, 346 North Fourth Street, Reedsport, Oregon, be GRANTED.

It is further ordered that notice of this action, including the reasons for it, be given as provided by law.

Dated this 21st day of June, 1985.

Allen R. Scott  
Allen R. Scott  
Hearings Examiner  
Hearings Division

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.