

069.

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Application for the)	
Extension of the)	
Dispenser Class A (DA))	
License held by:)	FINAL
)	FINDINGS OF FACT,
Milton & Carol Korgan)	CONCLUSIONS OF LAW,
THE CHASE RESTAURANT & LOUNGE)	AND ORDER
9242 SW Beaverton-Hillsdale Hwy.)	
Beaverton, Oregon)	
- - - - -)	
Washington County)	

A hearing in the above matter was held on the 23rd day of April, 1981 and the 1st day of May, 1981, in Portland, Oregon, before Hearings Examiner Douglas Crumme'. The Applicants appeared in person and were represented by Walter Crow, Jr., Attorney at Law, Beaverton, Oregon. The Commission was 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. Milton and Carol Korgan (Applicants) hold a Dispenser Class A (DA) license at the CHASE RESTAURANT AND LOUNGE (Chase), 9242 SW Beaverton-Hillsdale Highway, Beaverton, Oregon. The Applicants seek Commission approval to extend their DA license at the Chase to also cover a business known as the CHASE COWBOY, 9368 SW Beaverton-Hillsdale Highway, Beaverton, Oregon.

2. The Commission's License Staff Committee has recommended that the Applicants' DA-extension application be refused, citing the following:

- a. OAR 845-05-025(a) (objections of person in control of a preschool located within 500 feet of Chase Cowboy).
- b. ORS 472.010(6) and ORS 472.010(7) (whether existing DA license may be extended under statutory definition of "licensed premises").
- c. OAR 845-05-040(3)(b) (whether Applicants would primarily provide fast food or short order food).
- d. OAR 845-05-040(3)(e)(B) (whether Applicants' premises would be operated primarily as a tavern rather than as a restaurant).
- e. OAR 845-05-040(3)(d) (Applicants will provide food service at only one meal per day).

(Commission's Exhibit A.)

3. The Applicants assumed a lease at the Chase Cowboy on or about November 28, 1980. The Applicants also purchased the business of the previous lessees. The Applicants opened and operated the Chase Cowboy under a five-day Special Dispenser's license from about November 28, 1980 to December 3, 1980. The Commission has issued the Applicants no further license privileges at the Chase Cowboy. As a consequence, the Chase Cowboy has been closed since about December 4, 1980.

4. In addition to their application for the extension of their DA privileges at the Chase to the Chase Cowboy, the Applicants have applied for an RMB license at the Chase Cowboy. The RMB application was heard concurrently with the DA-license-extension application at the Applicants' April 23, 1981 - May 1, 1981 hearing.

5. The Chase Cowboy is located in the Valley Plaza Office Center on the Beaverton-Hillsdale Highway. The Beaverton-Hillsdale Highway is a strip-developed traffic arterial connecting Beaverton and Portland.

6. The Valley Plaza Office Center is owned by a general partnership. The buildings in the Valley Plaza Office Center go back from the Beaverton-Hillsdale Highway in a "U" shape, with parking located primarily in the center of the buildings. Businesses located in the Valley Plaza Office Center include the following: the Chase Restaurant (a DA licensed premises owned by Milton and Carol Korgan); an ice rink; a delicatessen; a bowling alley; a three-screen movie theatre; a bridge parlor; a transistor service store; the Pencil Pals Day School and Kindergarten; and a large bank building. (Applicants' Exhibit #1.)

7. Attachment "A" on the last page of this 'Proposed Order' depicts the approximate spatial relationship of the buildings and businesses in the Valley Plaza Office Center in the vicinity of the Chase Cowboy.

8. Applicants Milton and Carol Korgan purchased the business at the location of the Chase Cowboy from the former owners of the business there, Denton's Pizza Farm, Inc. The sale was completed on November 28, 1980. The purchase price for the business was \$70,000. The purchase price is to be paid with a \$5,000 down payment and monthly payments of \$1,250. (Applicants' Exhibit #25.)

9. Applicants Milton and Carol Korgan have assumed the lease on the Chase Cowboy location between lessor Valley Plaza

Office Center general partnership and the former lessee Denton's Pizza Farm, Inc. (Applicants' Exhibit #25, attachment D.) The term of the lease runs through at least January 24, 1984. (Applicants' Exhibit #25, attachment C, paragraph 3.) The rental due under the lease is the minimum of either \$2,375 per month or 5.25 percent of the monthly gross sales. (Applicants' Exhibit #25, attachment C, paragraph 4.)

10. The Commission takes official notice that the Chase Cowboy premises were initially licensed by the Commission beginning in 1974 when Denton's Pizza Farm, Inc. was issued a Restaurant (R) license there. The Denton's operation later closed. Two different businesses were operated simultaneously in the premises prior to the purchase of the business by the Korgans. These businesses were the Pizza Baron, a restaurant with pizza, and Pat Pattee's Oldies Lounge, a discotheque. The Pizza Baron and Pat Pattee's closed for business in approximately early 1980. The Commission takes official notice that the licensee or licensees at the Pizza Baron and Pat Pattee's held an RMB license.

11. The Chase Cowboy contains two main rooms.

The front room contains a dance floor, a disc jockey booth, a bar, a large fireplace, mens and womens restrooms, and booths and tables with seating capacity for about 260 persons. Present actual seating in the front room may more nearly be approximately 170, including numerous seats at cocktail tables located around the dance floor. (Commission's Exhibit K.) The kitchen at the Chase Cowboy is located adjacent to the front room.

The rear room of the Chase Cowboy contains a bar, a second large fireplace, a large open space in the center of the room where the Applicants at one time contemplated placing a mechanical bull, and a small side room which may be used as a game room . The seating capacity in the rear room is 136.

12. The Applicants had a mechanical bull in the rear room of the Chase Cowboy when the Applicants briefly opened under a special dispenser license between November 28 and December 3, 1980. The bull was being rented and has since been removed. The Applicants are not required under any lease to reinstall the bull if they reopen the Chase Cowboy. The Applicants are not certain if they would reinstall the mechanical bull if they reopen the premises. The Applicants would seek the advice of the Commission as to whether the mechanical bull and the contemplated game room should be installed in the event that the Applicants are issued license privileges by the Commission at the Chase Cowboy.

13. The Applicants intend to operate the Chase Cowboy at least five days per week from 4:30 p.m. until about 2:00 a.m.

14. The Applicants intend to offer full meal service at the Chase Cowboy from their 4:30 p.m. opening until approximately 10:00 p.m. The Applicants' proposed menu at the Chase Cowboy includes the following: T-bone Steak, Ribeye Steak, Salmon, Baked Chicken, Pan Fried Oysters, Lobster, Shrimp Salad, Western Burger Deluxe, Cowgirl Western Burger, Western Chiliburger, Chicken Fried Steak, Pendleton Hotdog, Chilidog, Fried Grits, Dorito Pie, French Fries, Basket of Doritos, Chili and Chips. (Commission's Exhibit H.)

15. The Applicants plan to feature a country-western theme at the Chase Cowboy. The Applicants plan to offer live country-western music and dancing during as many evenings as economically feasible. The Applicants plan to offer recorded music during those evenings when live music is not offered.

16. The Pencil Pals Day School and Kindergarten located next to the Chase Cowboy is owned by Mendenhall Day Schools, Inc. The sole stockholder in Mendenhall Day Schools, Inc. is David Mendenhall. Mendenhall Day Schools, Inc. has operated the Pencil Pals Day School and Kindergarten at the location adjacent to the Chase Cowboy since October, 1979.

17. David Mendenhall directs and manages the Pencil Pals next to the Chase Cowboy on a daily basis. Mr. Mendenhall greets parents, disseminates information to teachers, monitors activities, handles public relations and directs admissions, financial matters and corporate matters.

18. David Mendenhall has submitted to the Commission written objections to the Applicants' request for the extension to the Chase Cowboy of the Applicants' DA license at The Chase Restaurant and Lounge. (Commission's Exhibits E and F.) The particular objections stated in Mr. Mendenhall's letter are as follows:

"This letter is to voice my strong objections to granting a Retail Malt Beverage license to Mr. & Mrs. Milton Korgan for the Chase-Cowboy Lounge in Beaverton.

"My objections are based on past experience when said premises were occupied by Pat Patti's Oldies Lounge. We had the following:
1) During Happy hour on certain late afternoons we had cars going thru our circular

drive making short cuts to the back lounge. Children and their parents cross this driveway frequently and it posed a dangerous situation especially when some of their customers were leaving the lounge after drinking. 2) We frequently found broken beer and wine bottles in our swimming pool and on one occasion found people swimming in the pool that had frequented the lounge. 3) We have had customers sitting in our exit doors smoking grass. 4) We found vomit in our drive on occasions. 5) Our doors close for business at 6:30 p.m. and parking gets very bad for our mothers when their cars are carelessly parked. The lounge is only forty feet from our front door and thus it is almost impossible not to be effected by activities outside their door. 6) On occasion people have had arguments in their parking and at times it has been embarassing to find couples necking."

(Commission's Exhibit E.)

19. In addition to the specific objections which David Mendenhall indicated in his letter to the Commission (Commission's Exhibits E and F), Mr. Mendenhall also opposes the Applicants' application because an employee of the former business at that location, the Pizza Baron, once dumped ice on the Pencil Pals' landscaping, because use of Valley Plaza parking by Chase Cowboy patrons may interfere with some evening programs at Pencil Pals, and because the licensure of the Chase Cowboy may interfere with any future extension of hours at Pencil Pals.

20. Sixty-nine persons have signed a petition in opposition to the grant of the Applicants' applications. The petition was located in the Pencil Pals front Lobby. The petition states as follows:

"Notice to Parents:

"The Chase Cowboy is applying for a liquor or beer/wine license for the building next to our day care center. (Formerly Pat Pattee's Oldies Lounge). In the past we have had difficulty with traffic from the lounge and assorted other problems. If you oppose the granting of this license because of your child enrolled at Pencil Pals please sign below."

(Commission's Exhibit G.)

21. Pencil Pals is located on a 180-foot by 180-foot lot in the rear corner of the Valley Plaza Office Center. The Pencil Pals building occupies about one-fourth of this lot. The Pencil Pals building is about 40 feet from the side door of the Chase Cowboy. A Valley Plaza Office Center driveway leads through the area between the Chase Cowboy and Pencil Pals. A portion of the Pencil Pals lot is fenced. A swimming pool is located inside this fenced area. The Pencil Pals lot also includes a rather large loop driveway that leads from the Valley Plaza parking to the front door of the school. This loop driveway enables parents to park briefly in order to drop off and pick up their children at Pencil Pals. See Attachment A. (Applicants' Exhibit #1.)

22. At the date of the Applicants' hearing, 113 children were enrolled at the Pencil Pals next to the Chase Cowboy. An average of 85 children per day attend Pencil Pals. The children attending Pencil Pals range in age from 18 months to five years during the school year. Children up through the fourth grade attend Pencil Pals during the summer.

23. Children are at Pencil Pals from 6:30 a.m. to 6:30 p.m. However, parents generally pick up their children before 5:45 p.m.

24. The Pencil Pals' children are occasionally taken outside for walks. The walks are generally either around the Pencil Pals lot or over to a nearby park. The park to which the children walk is in the opposite direction from the Chase Cowboy. The children take such walks as late as 4:30 p.m.

25. At the date of the Applicants' hearing, there were only very limited activities that were taking place at Pencil Pals during the evenings. One evening teachers' meeting is held at Pencil Pals each month. Additionally, one graduation ceremony and one parents' discussion are held at Pencil Pals in the evening each year. Finally, there are two evening open houses at Pencil Pals each year. The children attend these two annual evening open houses.

26. A child care center initially went into business at the present Pencil Pals location next to the Chase Cowboy in 1969. Day care centers have been in business there since that time.

27. The Pizza Baron and Pat Pattee's Oldies Lounge were located in the present Chase Cowboy facilities in October, 1979 when Mendenhall Day Schools, Inc. opened the Pencil Pals immediately next door. The Pizza Baron and Pat Pattee's were open through approximately early 1980.

28. The Pizza Baron was a pizza restaurant that generally closed by 11:00 p.m. Pat Pattee's Oldies Lounge was a discotheque with a happy hour. Pat Pattee's generally closed at 1:30 a.m. or 2:00 a.m.

The doorway to the Pizza Baron was located on the front of the building, around the corner from Pencil Pals Day School. Access to Pat Pattee's was available either through the Pizza Baron or through the side door that directly faced Pencil Pals. After the Pizza Baron would close at about 11:00 p.m., the side door would be the only entrance available to Pat Pattee's.

29. During the time that Pizza Baron and Pat Pattee's were still open, broken beer and wine bottles were occasionally found on Pencil Pals property. It is not known specifically whether the source of these broken bottles was patrons of the Pizza Baron and Pat Pattee's.

30. On one occasion, patrons of the Pizza Baron were discovered in the Pencil Pals swimming pool.

31. On one occasion, an employee of the Pizza Baron dumped some ice onto the Pencil Pals landscaping.

32. On one occasion, two persons were smoking marijuana in a doorway of the Pencil Pals business during the period that the Pizza Baron and Pat Pattee's were operating.

33. When the Pizza Baron was still open for business, its patrons could, on occasion, be observed "necking" in the parking lot.

34. The loop drive located in front of Pencil Pals is intended to provide a convenient means to parents to drop off

and pick up their children. Parents generally park in the loop very briefly. Persons who do not have children at Pencil Pals occasionally park in or drive through the loop driveway.

35. David Mendenhall believes that the bulk of any problems he experienced from patrons of the Pizza Baron and Pat Pattee's were caused by Pat Pattee's patrons because the door for that business was located on the side of the building that directly faced Pencil Pals.

36. David Mendenhall did not experience any particular noise problems from the Pizza Baron and Pat Pattee's operations when they were in business.

37. David Mendenhall has not at any time observed drunk persons bothering the children attending the Pencil Pals Day School. Mr. Mendenhall has never had confrontations with drunks near the school.

38. A three-screen movie theatre is located about 50 to 80 feet from the Chase Cowboy in the opposite direction from the Pencil Pals Day School. The patrons of this movie theatre are responsible for a large amount of litter in the rear portion of the Valley Plaza Office Center near the Chase Cowboy and the Pencil Pals Day School.

39. William Roggenbihl has leased the swimming pool at Pencil Pals since 1979 to operate a swimming lesson business. Mr. Roggenbihl conducts swimming classes all day long, Monday through Saturday during the entire year. Mr. Roggenbihl generally leaves the pool at 6:00 or 7:00 p.m. Children attend Mr. Roggenbihl's classes in groups of three or four for half-hour

sessions. At the date of the Applicants' hearing, there were about 110 children enrolled in Mr. Roggenbihl's swimming classes.

40. William Roggenbihl, operator of the swimming classes at the Pencil Pals Day School, has no objections to the issuance of an RMB license or the extension of a DA license to the Chase Cowboy. Rather, Mr. Roggenbihl believes that such a license would be well received within the local community.

Mr. Roggenbihl has observed broken beer and wine bottles and beer cans on the Pencil Pals property, but is not able to attribute this debris to any particular business, including the former Pizza Baron and Pat Pattee's operations located next door. In Mr. Roggenbihl's observations most of the debris that collects at Pencil Pals comes from the nearby three-screen movie theatre. Broken beer and wine bottles are still occasionally found on the Pencil Pals property, despite the fact that the Pizza Baron and Pat Pattee's are now closed. Mr. Roggenbihl has not observed vomit on the Pencil Pals property. Mr. Roggenbihl has discovered unauthorized persons using the Pencil Pals swimming pool. In most instances however, these unauthorized swimmers have typically been neighborhood children who had no connection with the Pizza Baron or Pat Pattee's. Mr. Roggenbihl has not observed any parking problems in the Pencil Pals loop driveway.

41. On one occasion, some employees of Applicants Milton and Carol Korgan took some photos of Pencil Pals. On another occasion, Applicant Milton Korgan phoned David Mendenhall about

Mr. Mendenhall's objections to the Applicants' applications. Mr. Korgan became upset during the phone call. Mr. Mendenhall interpreted the employees taking the photos and Mr. Korgan's phone call as harassment.

42. All tenants at the Valley Plaza Office Center except the Pencil Pals Day School and the Oregon Bank have common rights to the Center's parking.

43. Harlan Halvorsen has the largest ownership interest in the Valley Plaza Office Center. Mr. Halvorsen has received no complaints regarding noise or other problems arising at the Chase Cowboy location under the former operators of businesses there, including the Pizza Baron and Pat Pattee's.

44. Thadeus Bruno is a partner in the Valley Plaza Office Center partnership. Mr. Bruno has received no complaints about the previous operators of businesses at the Chase Cowboy location. Mr. Bruno has not observed debris that could be attributed to the Chase Cowboy location. Mr. Bruno is in favor of license issuance.

45. Connie Parker has been directly responsible for managing the Valley Plaza Office Center since 1977. Mr. Parker has not observed problems with beer and wine bottles around the mall. Mr. Parker has not received any complaints from other tenants about the previous businesses that were located at the Chase Cowboy building.

46. The front door of the Chase Restaurant and Lounge is about 400 feet from the front door of the Chase Cowboy.

47. The Chase Restaurant and Lounge, the ice rink and the bowling alley form one continuous structure. (See Attachment Page 13 of 27

A.) The Chase Cowboy, the Bridge Room and the three-screen movie theatre form one continuous structure. The Chase/rink/bowling structure and the Cowboy/Bridge/theatre structure come within about 50 to 60 feet of one another. A sidewalk covering runs the length of the front of the Cowboy/Bridge/theatre structure. This sidewalk covering extends across the 50-to-60 foot space to the rear corner of the Chase/rink/bowling structure. The Chase/rink/bowling structure and the Cowboy/Bridge/theatre structure are not physically connected across the 50-to-60-foot space between them other than by the sidewalk covering. An uncovered sidewalk leads from the end of the covered sidewalk, past the bowling alley and skating rink, to the Chase Restaurant and Lounge. (See Attachment A., Applicants' Exhibit #1, Commission's Exhibit M.)

48. The address of the Chase is 9242 SW Beaverton-Hillsdale Highway. The address of the Chase Cowboy is 9368 SW Beaverton-Hillsdale Highway.

49. Ports of Call is an office and retail complex located on Swan Island in Northeast Portland. Sir Winstons, Jamoke Landing and the Chili Pepper are three restaurants located in the Ports of Call complex. (Applicants' Exhibit #23.)

50. Sir Winstons and Jamoke Landing have a common kitchen. The kitchen is separated from each restaurant only by walls with doors. The two restaurants then are continuous but for the dividing walls and doors. The Chili Pepper, however, is connected to Jamoke Landing and Sir Winstons only by covered exterior sidewalks. The Chili Pepper is more than 100 feet

from Jamoke Landing and Sir Winstons. (Applicant's Exhibit #23.)

51. At the date of the Applicants' hearing the Commission had issued just one DA license to cover Sir Winstons, Jamoke Landing and the Chili Pepper. However, at some time prior to the Applicants' April 23, 1981 hearing, the Commission had determined that the issuance of one DA liense to cover all three businesses was in error. The Commission has therefore directed that the owners of Jamoke Landing and Sir Winstons must apply for a separate DA license from the Chili Pepper. The Commission is permitting the three businesses to continue to operate under the single DA license pending a result on the application for a separate DA license at Jamoke Landing and Sir Winstons. An application for a separate DA license at the Jamoke Landing and Sir Winston's location has been received in the trade name of The Dallas Club.

52. Jamoke Landing, Sir Winstons and the Chili Pepper are all listed in the Commission's records as having an address of 4575 North Channel Avenue. However, the yellow pages of the Pacific Northwest Bell Telephone directory list Jamoke Land- ing's address as 4575 North Channel and the Chili Pepper's ad- dress as 4525 North Channel.

53. Ainsworth's is a DA outlet located on the ground floor of the Raleigh West Executive Building at 6443 SW Beav- erton-Hillsdale Highway, Portland, Oregon. There are two parts to Ainsworth's licensed premises. These two parts are separ- ated by an approximately 20-foot wide public lobby of the Ral- eigh West Executive Building. The lobby is an interior one

with doors leading either to the outdoors or to other portions of the Raleigh West Building. (Applicants' Exhibit #27.)

54. The different businesses in the Raleigh West Executive Building have different "suite numbers." The two separate portions of Ainsworth's had different suite numbers at some time in the past, as evidenced by the testimony of Milton Korgan. The record does not disclose whether the two portions of Ainsworth's currently have different street number addresses.

55. The Commission issued a DA license to H.R. Nored, Inc. at a new outlet named Big Reds, by Final Order dated September 23, 1980. (Applicant's Exhibit #24.) Big Red's proposed menu consisted of three sizes of steak, chicken fried steak, three types of chili, seven types of hamburgers, a hot dog, tacos, a tostada, french fries and a hot fudge sundae. The Commission's Final Order concluded that unfavorable consideration for license issuance was not indicated under OAR 845-10-735(3)(b) (now renumbered as OAR 845-05-040(3)(b)) concerning whether an applicant offers fast food or short order food. (Applicant's Exhibit #24, Final Order, Page 9, paragraph #4.)

56. The Commission has granted a DA license under a change of ownership at the Red Robin Burger and Spirits Emporium on West Burnside Avenue in Portland. The Red Robin's menu includes 30 hamburgers, three types of steak, fish and chips, four dinner salads, soups and ice cream desserts. (Applicant's Exhibit #18.)

57. There was a high degree of turnover of owners at the Chase Restaurant and Lounge building prior to the Korgans going

into business there on April 1, 1979. The Korgans are the seventh owners of restaurants at the Chase location.

58. The Chase Restaurant and Lounge opens at 6:00 p.m. every night.

59. The Chase Restaurant and Lounge has three rooms for the public. (Commission's Exhibit L.)

The largest room contains a circular dance floor and a bar. This room is used both as a dining area and a lounge. This room has seating for 119 persons.

A second dining room/lounge, which is also used on certain evenings for dancing later in the evening, is separated from the room with a circular dance floor by a see-through plexiglas wall. This second dining room/lounge has seating for 136 persons.

The third room at the Chase Restaurant and Lounge is named the "Chase Living Room." The "Chase Living Room" has a bar and has living room furniture rather than dining tables and chairs. Full service meals are generally not provided in the "Chase Living Room." The "Chase Living Room" has seating for 97 persons. The "Chase Living Room" has a hot tub. The hot tub is not available for use by the public except under very controlled situations where a banquet or meeting is being held.

60. The Chase Restaurant and Lounge offers Las Vegas style dinner shows with singing and dancing on Friday and Saturday evenings. Patrons are able to purchase dinner and a ticket to the show for a combined price of \$15.00. Patrons are also able to purchase tickets to the shows only, without the

dinner, for \$5.00. The plexiglas wall separating the two dining/lounge rooms enables patrons to observe the shows from both rooms. The dinner shows normally last until 10:00 p.m.

61. Tuesday and Thursday nights are "ladies night" at the Chase Restaurant and Lounge. On "ladies night" the Applicants feature performances by male exotic dancers in the 119-seat dining/lounge room.

62. The 136-seat dining/lounge room at the Chase Restaurant and Lounge is used as a teen disco during certain nights of the week. This room contains a portable bar only. The portable bar is removed at about 10:00 p.m. and liquor is no longer served in the room once the teen disco begins. The teen disco is offered on Friday and Saturday nights during the school year, and from Tuesday through Saturday during the summer.

63. The Applicants offer full meal service at the Chase Restaurant and Lounge from 6:00 p.m. until about 10:00 p.m. After 10:00 p.m. the Applicants offer a snack menu of cooked foods. The Applicants' dinner menu at the Chase Restaurant and Lounge is oral rather than printed. The menu changes from time to time. Entrees frequently offered include veal cordon bleu, chicken Kiev, salmon, 16-ounce T-bone steak and ground round. Items often included on the Applicants' snack menu available after 10:00 p.m. include steak "tid bits," hamburgers, nachos, and other items.

64. Between April, 1980 and March, 1981, the Applicants' experienced the following sales at the Chase Restaurant and Lounge:

<u>MONTH</u>	<u>LIQUOR SALES</u>	<u>FOOD SALES</u>	<u>TOTAL SALES</u>
Apr 1980	\$ 6,140.00	\$ 3,306.00	\$ 9,446.00
May	12,036.00	7,377.00	19,413.00
Jun	12,100.00	8,762.00	20,862.00
Jul	14,756.00	11,594.00	26,350.00
Aug	13,776.00	9,573.00	23,349.00
Sep	19,380.00	11,878.00	31,258.00
Oct	16,644.00	13,618.00	30,262.00
Nov	22,740.00	17,154.00	39,894.00
Dec	8,428.00	7,179.00	15,607.00
Jan 1981	11,760.00	11,298.00	23,058.00
Feb	10,092.00	8,597.00	18,689.00
Mar	<u>14,696.00</u>	<u>9,395.00</u>	<u>24,091.00</u>
Total	<u>\$162,548.00</u>	<u>\$119,731.00</u>	<u>\$282,279.00</u>
Average	\$13,546	\$9,997	\$23,523

(Commission's Exhibit O.)

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. A license will not be issued unless sufficient countervailing good cause is shown where the Commission receives written opposition to the granting of the license, stating reasons for the opposition, by a person having control of a pre-elementary, elementary or secondary school if such facility is located within 500 feet of the proposed outlet in an urban or suburban area or within 1,500 feet in a rural area. Good cause which outweighs such written opposition may include, but is not limited to, other licensed premises being located within the same distance of the opposing facility or the opposing facility beginning operation at a time when the subject premises were licensed. OAR 845-05-025(2)(d).

In the instant matter, the Pencil Pals Day School moved to its present location 40 feet from the Chase Cowboy in October, 1979 when the location was licensed by the Commission to the

Pizza Baron and Pat Pattee's Oldies Lounge. The Pizza Baron and Pat Pattee's were open for business at that time. This establishes good cause under OAR 845-05-025(2)(d) for the issuance of an RMB license to the Applicants at the Chase Cowboy despite Mr. Mendenhall's objections.

Good cause for license issuance under OAR 845-05-025(2)(d) is further established by the fact that there will likely be very little conflict between the Chase Cowboy and the Pencil Pals operations. The Chase Cowboy is not scheduled to open each day until 4:30 p.m. The parents of the children at the Pencil Pals Day School generally have picked their children up by 5:45 p.m. Therefore, the Chase Cowboy will have only been open one hour and 15 minutes until most of the children at Pencil Pals have been picked up. Furthermore, the period between 4:30 p.m. and 5:45 p.m. is not likely to be a time when music and dancing and other entertainment activities have begun to a significant degree at the Chase Cowboy. Rather, during these early evening hours patrons are more likely to simply be visiting the premises either to eat dinner or to obtain a drink. The potential for conflict between the Chase Cowboy and the Pencil Pals will also be diminished by the fact that the Applicants do not intend to use the side door of the facility facing the Pencil Pals except for emergency use. In Mr. Mendenhall's estimation, this side door was the source of many of the problems that Pencil Pals experienced from the patrons of the former Pizza Baron and Pat Pattee's operations.

2. ORS 472.110(1) and ORS 472.110(2) authorize the Commission to issue DA licenses. A DA license "shall permit the
Page 20 of 27

licensee to purchase, from the Commission only, distilled spirits at regular listed retail prices and to store the same on the licensed premises and to sell the same from the original container by the individual glass or drink for consumption on the licensed premises and shall allow the licensee to sell malt beverages and wine for consumption on the premises." ORS 472.110(2).

ORS 472.010(8) defines the terms "premises" or "licensed premises" as follows:

"Premises" or "licensed premises" used in connection with a location licensed under this chapter means the area where refreshments or food are served at the address for which the license is issued; however, a license granted to any hotel operator shall apply to all portions of the hotel controlled or operated by the person to whom the license is issued."

ORS 472.010(8)

The terms "a location licensed" and "at the address for which the license is issued" in ORS 472.010(8) indicate an intent under this statute that a licensed premises will include only one business location. The fact that ORS 472.010(8) provides for a specific exception to this interpretation in the case of hotels underscores that the statute intends that only one business location shall constitute a "licensed premises" in the case of operations other than hotels.

The Commission's issuance of a single DA license to cover the Jamoke Landing/Sir Winstons and Chili Pepper operations at Ports of Call on Swan Island appears to have been inconsistent with the intent of ORS 472.010(8). However, the Commission has

determined that the Ports of Call situation was in error. The Commission is requiring the Jamoke Landing/Sir Winstons Licensee to apply for a separate license from the Chili Pepper. The Commission's decision to allow all three operations to continue to serve distilled liquor under the single license pending a final decision on the Jamoke Landing/Sir Winstons application appears to be an appropriate action necessitated by the Commission's prior actions and justified temporarily due to unique circumstances. The temporarily continuing licensure of the three outlets at Ports of Call on Swan Island then would not be inconsistent with the conclusion that the Chase Cowboy would not qualify as a part of the licensed premises of the Chase Restaurant and Lounge under the definition of "licensed premises" in ORS 472.010(8).

The licensed premises which the Commission has allowed at Ainsworth's also would not be inconsistent with the Commission's conclusion that the Chase Cowboy would not fall within the definition of the "licensed premises" for the Chase Restaurant and Lounge under ORS 472.010(8). The record does not indicate what the official addresses are for the two portions of Ainsworth's. The record simply indicates that the two portions had different suite numbers in the past. The two portions of Ainsworth's are separated only by a public lobby of the Raleigh West Executive Building that is about 20-feet wide. The public lobby is an interior one with doors that lead either to the outside or to other portions of the Raleigh West Building. The two portions of Ainsworth's are under the same roof. The two

portions of Ainsworth's then essentially comprise one business location.

The application for the extension of the Chase DA license to cover the Chase Cowboy is a quite different situation from Ainsworth's. The Chase and the Chase Cowboy are approximately 400 feet from each other. The two businesses are not located in the same superstructure. Instead, the main building in which the Chase is located is connected to the main building in which the Chase Cowboy is located only by an approximately 60-foot long sidewalk covering that extends between the two main buildings as a cover for the pedestrian walkway. Furthermore, the street number addresses of the Chase and the Chase Cowboy are shown to be different.

The definition of "licensed premises" in ORS 472.010(8) does not allow the Chase Cowboy to be included in the licensed premises of the Chase Restaurant and Lounge because the Chase Restaurant and Lounge and the Chase Cowboy are at two different addresses and at two different business locations.

3. Unfavorable consideration may be given to an applicant for a dispenser license if the applicant will provide primarily fast foods or short order foods such as hamburgers, sandwiches, pancakes, eggs, and pizza, or other foods which which distilled liquor drinks are not normally ordered. This provision does not apply to Dispenser Class B licenses. OAR 845-05-040(3)(b).

In the instant matter, the Applicant has proposed a menu for the Chase Cowboy which is at least as extensive and places

as much emphasis on full service dinner items as the menu which was proposed by H.R. Nored, Inc. in its application for a DA license at Big Reds. The Applicants' proposed menu at the Chase Cowboy also places as much emphasis on full service dinner items as the menu which was proposed by the applicant at the Red Robin prior to the issuance of a DA license there under a change of ownership. Although the Applicants' menu at the Chase Cowboy will include hamburgers, a hot dog, fried grits and french fries, the emphasis at the business will not be on fast food or short order food when such dinner entrees as T-bone steak, salmon, chicken, oysters and lobster will be offered. Unfavorable consideration for the extension of the DA license at the Chase to the Chase Cowboy has therefore not been shown under OAR 845-05-040(3)(b).

4. Unfavorable consideration may be given to a dispenser 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).

In the instant matter, the Applicants experienced approximately 57 percent of their sales from alcoholic beverages at the Chase Restaurant and Lounge during the one-year period leading up through March, 1981. The Applicants' DA-licensed premises already place an emphasis on the sale of alcoholic beverages over food sales then.

Unfavorable consideration for the extension of the DA license to the Chase Cowboy would be indicated under OAR 845-05-040(3)(e)(B) if the extension of the license to the Chase
Page 24 of 27

Cowboy would increase the current emphasis at the business on the sale of alcoholic beverages over food sales.

The record does not afford an entirely precise and reliable way to determine whether the alcoholic beverage sales at the Chase Cowboy would exceed food sales. The nature of the proposed operation indicates that that is a substantial likelihood however. This would particularly be the case if the back room of the Chase Cowboy is used to house game machines and a mechanical bull. These activities in the back room, in conjunction with the large dance floor and bar in the front room would place an overall emphasis on entertainment that would be likely to favor the sale of alcoholic beverages over food sales. Even without the mechanical bull and the game room in the back room, the planned dancing in the front room and the bars in both areas appear likely to lead to an emphasis on alcoholic beverage sales. Therefore, some unfavorable consideration for the extension of the Chase's DA license to the Chase Cowboy is indicated under OAR 845-05-040(3)(e)(B) even if the game and bull ride devices are not installed.

5. Unfavorable consideration may be given to a dispenser applicant if the applicant will provide meal service at no more than one meal per day. This provision does not apply to Dispenser Class B licenses. OAR 845-05-040(3)(d).

The disfavor under OAR 845-05-040(3)(d) for applicants who will only be open for one meal seems logically to be aimed at reserving unissued dispenser's licenses for applicants who will make full use of the licenses. In the Korgans' case, they are

seeking the extension of their existing DA license to the Chase Cowboy rather than a separate new DA license. The granting of the requested extension would result in an expansion of the services and facilities that the Applicants could offer the public with their existing DA license. The granting of the extension would not use up any unissued DA licenses. The aim of OAR 845-05-040(3)(b) is not particularly applicable then to the Korgans' DA-extension application. OAR 845-05-040(3)(b) should not weigh against the application.

ULTIMATE CONCLUSIONS OF LAW

The application by Milton and Carol Korgan for the extension of the DA license that they hold at the Chase Restaurant and Lounge to the Chase Cowboy is not demanded by the public interest or convenience because the Chase Cowboy does not qualify under ORS 472.010(8) to be included in the "licensed premises" covered by the existing DA license, and because the extension of the license to the Chase Cowboy would be substantially likely to increase the current emphasis on the sale of alcoholic beverages at the licensed operation. ORS 472.160(1).

FINAL ORDER

It is hereby ordered that the application by Milton and Carol Korgan for the extension of the DA license privileges which they hold at the Chase Restaurant and Lounge to the Chase Cowboy at 9368 SW Beaverton-Hillsdale Highway, Beaverton, Oregon be DENIED.

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

Dated this 18th day of August, 1981.



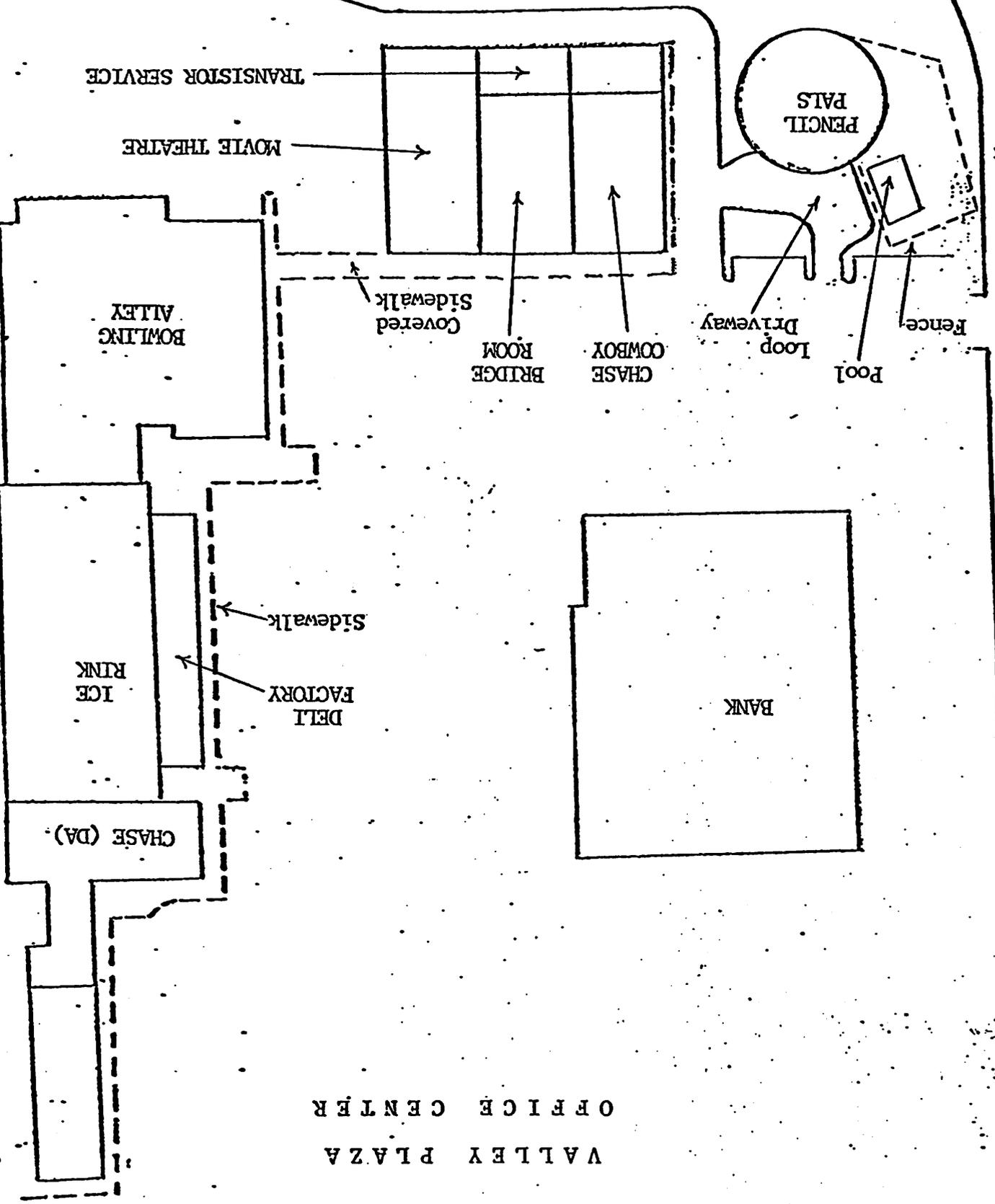
C. Dean Smith
Administrator
OREGON LIQUOR CONTROL COMMISSION

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.

BEAVERTON-HILLSDALE HIGHWAY

VALLEY PLAZA
OFFICE CENTER

JAMESON ROAD



TRANSISTOR SERVICE

MOVIE THEATRE

BOWLING ALLEY

Covered Sidewalk

CHASE COWBOY ROOM
BRIDGE ROOM

PENCIL PATS

Loop Driveway

Pool

Fence

BANK

Sidewalk

DELI FACTORY

ICE RINK

CHASE (DA)