

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Application for a)	
Retail Malt Beverage (RMB))	
License by:)	FINAL
)	FINDINGS OF FACT,
Waylon & Willie's, Inc.)	CONCLUSIONS OF LAW,
WAYLON & WILLIE'S)	AND ORDER
107 Main Street)	
Jefferson, Oregon 97352)	
- - - - -)	
Marion County)	

A hearing in the above matter was held on the 5th day of April, 1983, in Salem, Oregon, before Hearings Examiner Douglas Crumme'. The Applicant appeared in person and was represented by D. Michael Mills, Attorney at Law. The Commission was not represented by legal counsel. The Commission having considered the record of the hearing, the Proposed Order of the Hearings Examiner, and the entirety of the Criteria for the Issuance and Maintenance of Licenses and applicable statutes and regulations, enters the following:

FINDINGS OF FACT

1. Waylon & Willie's, Inc. has applied for a Retail Malt Beverage (RMB) license at WAYLON & WILLIE'S, 107 Main Street, Jefferson, Oregon.

2. The premises at which the Applicant seeks a license is presently closed. The Waylon & Willie's' premises was first licensed by the Commission in about 1979. In June, 1980, the Commission approved a change of ownership for the premises. The new owner and licensee was a corporation, the stockholders

of which were Raymond Ulven and Robert Shearer. Mr. Ulven and Mr. Shearer operated the premises from June, 1980 until approximately September, 1981. In September, 1981, the Commission approved the sale of stock in the licensed corporation to a third party. The third party operated the business until January, 1982. In January, 1982, the third party defaulted on its obligations for the purchase of stock from Mr. Ulven and Mr. Shearer. The premises was closed in January, 1982. Mr. Ulven and Mr. Shearer repossessed the business in June, 1982.

3. The Commission's Licensing Staff has recommended that the Applicant's application be denied, citing the following:

- a. ORS 471.295(1) (granting of license not demanded by public interest or convenience).
- b. OAR 845-05-025(2) (written opposition to granting of the license stating reasons for the opposition received by a person having control of a church, 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).

(Commission's Exhibit H.)

4. The Jefferson Christian Church is located 360 feet from Waylon & Willie's.

5. The governing body of the Jefferson Christian Church is the Board of Elders. The Board of Elders of the Church has written the Commission a letter in opposition to the Applicant's application. The Church's letter states as follows:

"Our church wants your board to deny the application for a RETAIL MALT BEVERAGE LICENSE for Waylon and Willies, Inc. of Jefferson, Oregon. This particular business has not conducted itself well in the past

and its operation has caused a great deal of disturbance resulting in complaints from citizens within the immediate area. The City of Jefferson has turned down this application at its September meeting.

Our church is located only one block from this establishment and we represent 150 members who live within or immediately outside of the city limits of Jefferson. We do not condemn the people but we do not approve of the distribution of alcoholic beverages. Three businesses already sell these products in our small town of 1750 along with three grocery stores.

Please accept our plea to deny this request in order that we can maintain peace and tranquility within this downtown area of Jefferson, Oregon."

(Commission's Exhibit D.)

6. The Jefferson Christian Church has been at its present location since 1911.

7. The Jefferson Christian Church is located on the same street as Waylon & Willie's. The Church and Waylon & Willie's are located on the same side of the block and are one block from each other.

8. The Jefferson Christian Church has 150 members.

9. The Jefferson Christian Church's regular services are on Sunday morning and on Sunday evening at 6:30 p.m. In addition, the Church has a regular business meeting on Wednesday evening at 7:30 p.m. The business meeting includes committee meetings and other activities, not including religious services.

10. The Jefferson Christian Church holds special events during the year including weddings, missionary conferences and teaching seminars. Approximately five to six weddings are held

each year in the evening. Four to five missionary conferences are held each year in the evening. Four to five teaching seminars are held each year in the evening.

11. Reverend Allan D. Ross, Pastor at the Jefferson Christian Church, fears occasional noise interference by Waylon & Willie's with Church activities. Further, Reverend Ross fears that Waylon & Willie's will attract intoxicated persons to the neighborhood who will engage in inappropriate or objectionable behavior when leaving Waylon & Willie's after having consumed alcoholic beverages.

12. Waylon & Willie's and the Jefferson Christian Church are located in the main business district of downtown Jefferson.

13. The Waylon & Willie's' location is appropriately zoned for use as a tavern.

14. The Jefferson City Council has favorably endorsed the Applicant's application for an RMB license at Waylon & Willie's. (Commission's Exhibit A.)

15. The Commission did not find the licensed corporation in violation of any of the Commission's rules or regulations during Mr. Ulven and Mr. Shearer's management at the business from June, 1980 until September, 1981.

16. A review of City of Jefferson police records regarding disturbances at Waylon & Willie's indicates that the only disturbances at the premises reported to Jefferson City Police were of a minor nature and the premises' employees were completely cooperative with the local police.

17. Reverend William Graybill, Pastor of the Abundant Life Center, 835 N. Second Street, Jefferson, Oregon, testified at the Applicant's hearing in opposition to the issuance of an RMB license. The Abundant Life Center is a Church on the other side of Jefferson from Waylon & Willie's. The Abundant Life Center is more than 500 feet from Waylon & Willie's. Reverend Graybill opposes license issuance because of the adverse impact of alcohol on individuals who Mr. Graybill counsels and because of the increased traffic danger that the service of alcohol at Waylon & Willie's would present to the community.

18. The Abundant Life Center has approximately 90 to 100 members.

19. Gerald Lenhart appeared at the Applicant's hearing and testified in opposition. Mr. Lenhart is a Pastor of the Agape Community, a lay apostolic facility located about one-and-one-half blocks from Waylon & Willie's. The Agape Community is more than 500 feet from Waylon & Willie's. The Agape Community has about 25 members. The Agape Community is monastic in nature with daily morning and evening prayers. Mr. Lenhart opposes issuance of an RMB license at Waylon & Willie's because excessive noise that he has experienced from the business in the past and because of his perception that license issuance might result in increased vandalism and inappropriate behavior by intoxicated persons in the neighborhood.

20. The Agape Community on occasion holds prayer or other religious services quite late in the evening. The noise from

live music at the Waylon & Willie's' premises in the past has been audible at the Agape Community and has been disturbing to services being held.

21. The Commission has received a letter in opposition to the Applicant's application from Mr. and Mrs. Don Lida, Sr., residents of Jefferson. Mr. and Mrs. Lida oppose license issuance because of the adverse impact that alcohol consumption has on the community.

22. The Commission has received letters in support of license issuance from the following:

Chuck Foster, Marion County Sheriff

P.C. Vrontakis, Vice President and Manager,
Western Security Bank

Garry Kanz, Marion County Commissioner

Gary Heer, Marion County Commissioner

Randall Franke, Chairman, Marion County
Board of Commissioners

Jeff Gilmour, Oregon State Representative

Roger A. Frank, Jefferson Building Investors

Approximately 26 persons who support issuance of an RMB license at Waylon & Willie's appeared at the Applicant's hearing before the OLCC. These supporters believe that Mr. Ulven and Mr. Shearer operated the premises properly when they previously managed the business in 1980 and 1981. These witnesses believe that jobs provided by the opening of Waylon & Willie's would help the local economy. The names of these supporters

and the distances they live from Waylon & Willie's are as follows:

B. Shirby	2 miles
H. Leonard	4 blocks
Rhonda Shedley	1 block
Renee' D. Morgan	3 blocks
Lynette Rieder	3 blocks
Stephen Oberg	3 blocks
Tim Turner	2 miles
Richard Sarvis	6 blocks
Kim Harrold	3 blocks
Doug Maclean	1/2 miles
Marilyn F. Gross	2 blocks
Rose Salinas	6 blocks
Clayton Atchison	3 miles
Gloria Atchison	3 miles
Lila Seleen	8 blocks
Rodney L. Rhodes	9 miles
John R. Bostwick	2 miles
Merlin D. Wamsley	3 Doors North
Vern DuVall	10 miles
Albert L. Johnson	1/2 block
William Barnes	2 blocks
Vernon J. Thorne	2 miles
Sue Wilson	200 feet
Edith Neal	3 blocks
Steven J. Davis	Not Given
Mary Ann Kurt	Not Given
W. E. Wenig	Not Given

(Commission's Exhibit No. 15.)

23. Approximately 493 persons have signed a petition in support of the issuance of an RMB license at Waylon & Willie's. (Applicant's Exhibit No. 1.) The petition was collected over approximately four weeks at various locations including Salem and Lebanon. Particular locations where the petition was collected included taverns. Individuals were asked if they were familiar with Waylon & Willie's. Individuals were not pressured into signing the petition.

24. The Applicant conducted a survey of property owners and residents within 500 feet of Waylon & Willie's. Individuals at five residences and at the Jefferson Christian Church indicated opposition to the issuance of an RMB license. Persons at approximately 35 businesses or residences within 500 feet of Waylon & Willie's indicated support for license issuance. (Applicant's Exhibit No. 7.)

25. The incidence of intoxicated persons on the streets in the neighborhood around Waylon & Willie's has increased during the periods that Waylon & Willie's was open and operating.

26. Pat's Tavern, with an RMB license, is located 0.1 mile south of Waylon & Willie's. A pizza business with an RMB license is located 0.2 miles northeast of Waylon & Willie's. The Plantation, a Dispenser Class A outlet, is located approximately 0.2 miles from Waylon & Willie's. The pizza outlet and the Plantation are located within 500 feet of the Jefferson Christian Church.

27. Waylon & Willie's has seating for 118 persons.

28. Waylon & Willie's has a capacity set by the fire marshal of 300 persons. The largest crowd that has been in Waylon & Willie's has been about 250 to 300 persons. The average crowd on a Friday or Saturday night has been about 175 persons. An average crowd on a week night has been about 30 persons.

29. Waylon & Willie's has two pool tables. The premises has no other games.

30. Waylon & Willie's offers live country-western music on Friday and Saturday evenings only. Music is normally offered from 9:00 p.m. until 1:30 a.m.

31. Waylon & Willie's would be the only on-premises liquor-licensed outlet in the City of Jefferson where live music and dancing would be offered.

32. In the past, Waylon & Willie's has drawn patrons from outside the City of Jefferson because of the availability of country-western music at the premises.

33. The Applicant plans to offer a limited food menu at the premises including the following: chicken tubs (\$6.25 to \$9.40), chicken basket (\$2.60), fish and chips (\$1.90), shrimp basket (\$2.95), fish sandwich (\$1.10), clam strips (\$1.25), onion rings (\$.85), deep-fried mushrooms (\$1.50), side of fries (\$.70), chili (\$.50 and \$.75), chili burger (\$2.65), hamburger deluxe (\$1.35), hamburger deluxe with fries (\$1.95), cheeseburger deluxe (\$1.50), and cheeseburger deluxe with fries (\$2.10). (Applicant's Exhibit No. 13.)

34. Mr. Ulven and Mr. Shearer did not receive any particular complaints from the First Christian Church during their previous management of the business from June, 1980 through September, 1981.

DISCUSSION

The Applicant argued that the refusal grounds cited in the Licensing Staff's refusal letter, Commission's Exhibit H, would violate the Establishment Clause of the First Amendment of the

United States Constitution under the holding of the United States Supreme Court in Larkin v. Grendel's Den, Inc., 103 S. Ct. 505 (1982).

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. 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:

. . .

(2) Written opposition to the granting of a license, stating reasons for the opposition, by a person having control of a church, 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 it 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)(b).

Good cause has been shown to overcome the written objection received from the controlling body of the Jefferson Christian Church, which is located within 500 feet of Waylon & Willie's in an urban area.

The first factor showing good cause is that the main hours of use at Waylon & Willie's and the Church are not in conflict. Waylon & Willie's' peak operating times are Friday and Saturday evenings when live country-western music is offered. The peak hours of use at the Jefferson Christian Church are Sunday morning and Sunday evening. The Church is also used regularly on Wednesday evenings. However, Waylon & Willie's

does not offer live music on Wednesday evenings and generally has a small crowd that evening. The representative of the Jefferson Christian Church, Allan Ross, has not cited specific instances where the operation of Waylon & Willie's has interfered with Church activities. The record does not show that license issuance at Waylon & Willie's would have significant enough impact on the Jefferson Christian Church that the license should be refused because of the Church's objection.

A second factor establishing good cause for issuance is the fact that Waylon & Willie's is located in the downtown business core of Jefferson, in a commercial area that seems appropriate for a tavern. Waylon & Willie's will likely attract additional tavern patrons to the neighborhood, leading to some increase in the inappropriate activities characteristic of persons who have been consuming alcohol. However, the site of Waylon & Willie's is zoned for tavern use. The City of Jefferson has favorably endorsed the application.

Good cause for license issuance is finally indicated by the strong community support shown for the premises. In the face of the Church's objections, support for licensure has been shown by 493 petition signers, the three Marion County Commissioners, the Marion County Sheriff, the City of Jefferson, the Mayor of the City of Jefferson, Oregon State Representative Jeff Gilmour, 35 business owners or residents within 500 feet of Waylon & Willie's (versus five objectors within 500 feet) and 26 supporters (mostly Jefferson residents) who appeared at

the Applicant's hearing. The evidence shows that a large segment of the community believes the downtown Jefferson site of Waylon & Willie's is an appropriate location for the proposed tavern operation.

Objections to license issuance have been expressed by the Abundant Life Center and the Agape lay apostolic community in Jefferson. These facilities are located beyond the 500-foot distance specified under OAR 845-05-025(2)(b) for premises located in an urban or suburban area. Thus the objections from the Abundant Life Center and Agape community are not entitled to the extra weight specified under OAR 845-05-025(2)(b) and should be considered on the same footing with the other expressions in the record of public opinion pro and con. The objections of the Abundant Life Center and Agape community are overcome by the fact that the urban downtown location of Waylon & Willie's seems reasonable and appropriate for a tavern and by the large amount of public support that has been shown for the application.

The Commission consequently concludes that the Applicant's application should be granted under OAR 845-05-025(2).

ULTIMATE CONCLUSIONS OF LAW

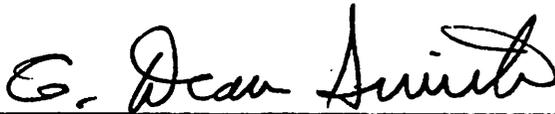
1. The Applicant's application is demanded by the public interest and convenience because good cause has been shown to overcome the written objection from the body in control of the Jefferson Christian Church, located within 500 feet of Waylon & Willie's, as noted in the Conclusions of Law above. ORS 471.295(1).

FINAL ORDER

It is hereby ordered that the application by Waylon & Willie's, Inc. for a Retail Malt Beverage (RMB) license at Waylon & Willie's, 107 Main Street, Jefferson, Oregon, be GRANTED.

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

Dated this 20th day of June, 1983.



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.