STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE WASHINGTON STATE LIQUOR CONTROL BOARD

In the Matter of:

LA GUADALUPANA
3990 HARRAH ROAD
HARRAH WA 98933

APPLICANT

LICENSE NO. 083780-4D

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

I hereby certify that I have this day served a copy of this document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent.

DATED at Olympia, Washington, this 9th day of October, 2007.

S Koochagian
Representative, Office of Administrative Hearings

OAH NO. 2007-LCB-0017
NO. 22,745

NOTICE TO PARTIES

The attached administrative law judge's findings of fact, conclusions of law and initial order are not effective until a final order of the Washington State Liquor Control Board is issued.

All parties hereto shall have twenty (20) days from the date of service of these proposals to file exceptions as provided by RCW 34.05.464 and WAC 314-29. Exceptions shall be filed in triplicate with the Liquor Control Board, 3000 Pacific Avenue S.E., P.O. Box 43076, Olympia, WA 98504-3076. The exceptions must be received on or before **October 29, 2007.** Replies to exceptions shall be filed with the Board within ten (10) days of the date of service of exceptions as provided by WAC 314-29. One copy of the exceptions or replies must also be served upon all other parties of record, or their attorneys, with proof of service as required by WAC 314-29.

After reviewing the entire record including exceptions, replies, briefs and legal arguments, if any, the board will affirm, reverse or modify these proposals by a final order of the board.

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OLYMPIA OAH

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LICENSE NO. 083780-4D

OAH Docket No. 2007-LCB-0017
LCB Case No. 22,745

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INITIAL ORDER

STATEMENT OF THE CASE

By letter received by the License Division of the Washington State Liquor Control Board, Board herein, Martha Patricia F. Camacho and Silvestre M. Flores d/b/a/ La Guadalupana, Applicant herein, filed an amended application for a snack bar and grocery store liquor license. The application was assigned a prospective license number of 083780-4D. On March 22, 2007, the Board issued an Application Processing Report/License Review in which the Board recommended denial of the application based on an objection submitted by the town of Harrah, the local authority, an objection from the Harrah Community Christian School, objections submitted by local citizens, and an objection by the Yakama Indian Nation, as well as a statement of concern from the Yakima County Sheriff's Office. The Applicant made a timely request for hearing.

This matter came on for hearing on due and proper notice on June 21, 2007, in Yakima, Washington, before David G. Hansen, Senior Administrative Law Judge, Office

of Administrative Hearings. The record was held open for the submission of post-hearing briefs and the record closed on July 12, 2007.

At hearing, the Applicant appeared and was represented by Victor H. Lara, Attorney at Law. The Board appeared and was represented by Kate Reynolds, Assistant Attorney General, and Jennifer Elias, Assistant Attorney General. Sharon Hendricks, Retail Licenses Manager, and Joy Rosado, Liquor License Investigator, both with the Board, appeared as witnesses for the Board. Martha Patricia Camacho, Hector Franko, Tim Schilperoort, Gabriela Hernandez, Jim Scott, and Raul Lopez appeared as witnesses for the Applicant. Barbara Harrer, Mayor of Harrah, also appeared and testified.

Based upon the record presented, the undersigned Administrative Law Judge makes the following Findings of Fact:

FINDINGS OF FACT

1. Applicants, husband and wife, are owners and operators of La Guadalupana, located in Harrah, Washington. Harrah is a town of approximately 620 people, located in a rural, agricultural area south of Yakima. The town is located on the Yakama Indian Reservation. The town did have four liquor licenses in the past, but at the time of this application had only two.

2. Applicants have owned La Guadalupana since April 2001, and have operated it as a small grocery store and Mexican restaurant. The restaurant area has 16 to 20 tables, and can accommodate 50 to 60 people. The hours of operation are 7:00 a.m. to 9:00 p.m. during the summer, and 8:00 a.m. to 6:00 p.m. or 7:00 p.m. during the winter.

3. The Applicants most recent license applications are for two liquor licenses, a grocery store license to sell beer and wine to go and a snack bar license, in order to sell bottled or canned beer for consumption on-premises.

4. On November 20, 2006, the Board received its second letter from the town of Harrah objecting to the issuance of a license to the Applicants. Exhibit D2, pages 5 and 6. The town council met on November 13, 2006, and voted to object to the Applicants' license. The letter cited that "alcohol causes tremendous problems in our school district. This statement is verified by the fact that in 2006 Mt. Adams School District received a five year-$150,000/year 'Strategic Prevention Framework State Incentive Grant' to combat the alcohol problems in our District." Exhibit D2, page 6. The letter went on to assert that there is an average of 2.05 liquor licenses per 1,000 population in the state of Washington and that Harrah already has two businesses with liquor licenses. Lastly, the letter pointed out that the town of Harrah contracts with the Yakima County Sheriffs Department for law enforcement services. The contract calls for 90 minutes per day of the services for the town.

5. On September 21, 2006, the Board received a letter from the Yakima County Sheriff. Exhibit D2, page 10. In the letter the Sheriff indicates he had been contacted by the Mayor of Harrah, Barbara Harrer, with her concerns about the Applicants' request for a liquor license. He related the concern that the establishment was within 500 feet of a school. The Sheriff related the Mayor's other concerns regarding the locations of the establishment's front door and its proximity to a railroad spur. The letter did not state that the Sheriff objected to the issuance of a liquor license to the Applicants.

6. On August 15, 2006, the Board received a letter from an individual representing the Harrah Community Christian School. Exhibit D2, page 11. They too objected to the issuance of a license on the basis that the nearest public entrance to the establishment was less than 500 feet from the property line of the school. The school went on to express that they were "concerned because the town of Harrah does not have adequate law enforcement to handle another establishment selling alcohol. Another concern we have is that our students and staff pass this business on a regular basis and would not feel comfortable having another such establishment to pass." Exhibit D2, page 11.

7. On December 14, 2006, the Board received a letter from the owner of a business located across the street from the establishment. Exhibit D2, page 12. He objected on four grounds, the first being that he believed two liquor licenses in their community were sufficient. Secondly, he cited the lack of law enforcement in the remote, rural area. Thirdly, he cited the regulation relating to the establishment being within 500 feet of a school. Lastly, he complained that the Applicants were of no assistance in deterring their customers from parking in the complainant's parking area.

8. In late 2006 and early 2007, the Board received approximately 17 written objections from residents of the Harrah and White Swan area. Exhibits D2, pages 13 through 29. Two of the 17 letters had no address for the author, two had Toppenish mailing addresses, and four White Swan addresses. All but one of the letters were structured and formatted almost identically. Each letter raised the same four objections. First, their concern that granting another license would encourage underage drinking. Secondly, that three licensed establishments would be too many for

a town the size of Harrah. Thirdly, the lack of routine law enforcement protection in the area. Lastly, the letters cited the regulation prohibiting liquor establishments within 500 feet of schools.

9. On December 11, 2006, the Board received a written objection to the Applicants' application from the Confederated Tribes and Bands of the Yakama Nation. Exhibit D2, pages 30 and 31. In the letter the Yakama Nation contends that granting of an additional liquor license in the town of Harrah would saturate the area with liquor retailers. The letter went on to state:

> The saturation of the Yakama Reservation with alcohol retail licensees creates an endangerment to the public safety, drags down the quality of life for all citizens, creates additional costs for the court systems. Creates additional law enforcement costs, and ultimately increases the amount of funds that have to be devoted to health care costs by both Tribal and non-Tribal institutions.

Exhibit D2, pages 30 and 31. The letter further stated that the Yakama Nation objected "to the licensing of alcohol sellers anywhere within the exterior boundaries of the Yakama Reservation." Exhibit D2, page 30.

10. The Mt. Adams School District operates Harrah Elementary. By letter received August 30, 2006, by the Board, the Mt. Adams School District's Superintendent objected to the granting of a liquor license to the Applicant because the "school is located within 500 feet" of Harrah Elementary School." Exhibit D2, page 40. By letter dated October 16, 2006, the President of the Mt. Adams School Board of Directors advised the Board if the door to the Applicant's establishment is more than 500 feet from the school, the school district "would have no objection to the license... ." Exhibit D2, page 39.

11. The Applicant's establishment is not within 500 feet of the premises of any tax-supported public elementary or secondary school.

12. Hector Franco, a business and financial consultant and member of the Hispanic Chamber of Commerce of Yakima County testified in favor of the applicants. He has been actively assisting them in obtaining a liquor license. Jim Scott, a Harrah resident of 21 years, testified in favor of the Applicants. Tim Schilperoort works next door to Applicant's establishment, and testified favorably for the Applicants. Frequent customers of the establishment, Raul Lopez, and Gabriela Hernandez also testified favorably for Applicant. They each characterized the individual Applicants as hard working and of good character. They characterized the restaurant as being family oriented. Those supporting the Applicants believed it would be nice to be able to have a beer with their meal.

13. The Applicants' establishment is located next door to a licensed tavern. No objections have been raised by the local authority or the schools in the area when the tavern's license is renewed annually. The Board's investigation of the Applicants found them both suitable, with no reports of conduct requiring involvement of law enforcement authorities.

14. At having had an opportunity to hear and observe the Applicants during the hearing process, the undersigned finds them to be hard working and conscientious in regard to the successful operation of their business enterprise.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the following Conclusions of Law are entered:

1. As an Applicant for an initial retail liquor license in the state of Washington, Martha Patricia F. Camacho and Silvestre M. Flores d/b/a La Guadalupana, are subject to the jurisdiction of the Washington State Liquor Control Board. The Board has authority pursuant to RCW 66.24.010 to deny an application for an initial liquor license so long as the applicant is afforded an opportunity for a hearing. A proper hearing was provided in this case.

2. The provisions of RCW 66.24.010 (8)(a) are applicable, and provide in relevant part as follows:

> [B]efore the board issues a license to an applicant it shall give notice of such application to the chief executive officer of the incorporated city or town...." RCW 66.24.010 (8)(c) further provides that "The incorporated city or town through the official or employee selected by it...shall have the right to file with the board within twenty days after date of transmittal of such notice, written objections against the applicant or against the premises for which the license is asked. The board may extend the time period for submitting written objections.

3. WAC 66.24.010(8)(d) provides that the written objections are to include a "statement of all facts upon which such objections are based... ."

4. The Board's responsibility in regard to such objections is set forth as follows:

> Before the board issues any license to any applicant, it shall give (i) due consideration to the location of the business to be conducted under such license with respect to the proximity of churches, schools, and public institutions and (ii) written notice, with receipt verification, of the application to public institutions

> identified by the board as appropriate to receive such notice, churches, and schools within five hundred feet of the premises to be licensed.... For the purpose of this section, church shall mean a building erected for and used exclusively for religious worship and schooling or other activity in connection therewith. For the purpose of this section, public institution shall mean institutions of higher education, parks, community centers, libraries, and transit centers. WAC 66.24.010(9)(a).

5. Certain entities identified by WAC 314-09-010(1), as well as any person or group may comment to the board regarding the application for liquor licenses or permits. WAC 314-09-010(2) provides, in part as follows: "When deciding whether to issue or deny a liquor license application [or permit], the board will give due consideration to input from governmental jurisdictions in which the premises is located; private schools, churches, and public institutions within five hundred feet of the premises...and other persons or groups."

6. It is the conclusion of the undersigned that the Applicants have expressed a desire and shown an ability to comply with the rules and regulations of the Board. There has been no showing, nor even an allegation, that the Applicants are unable or unwilling to comply. First, addressing the objection of the city, namely, "alcohol causes tremendous problems in our school district." This might very well be true. However, there has been no showing that the granting of the requested licenses herein would contribute directly to the alcohol problems in the Mt. Adams School District. The city's concern regarding the average liquor license per 1,000 population is of little use because no reference is made to what type of liquor license. The city's concern for law enforcement coverage is unpersuasive. Law enforcement presence is far more necessary near establishments such as taverns and night clubs, as opposed to the type of establishments that have grocery store license or snack bar licenses in a family style restaurant. RCW 66.24.010(8)(d)

requires that written objections include a statement of "facts." Such is not the case with the city's written objection to the Applicants' license request, the basis for their objections being opinion rather than fact.

7. The objection from the Harrah Community Christian School was based upon their mistaken belief that the Applicants' nearest public entrance was less than 500 feet from the property line. They also expressed concern about inadequate law enforcement, and the fact that students and staff would pass the Applicants' establishment routinely. These are opinions, and not facts.

8. The objection from the business located across the street from the Applicants lacks facts as well. It is the owner's opinion that two licensed establishments is sufficient, and that law enforcement is insufficient. He too erroneously reported that the establishment was within 500 feet of a school. Lastly, the business owner's complaint was that the Applicants were of no assistance in controlling parking problems. Such complaints have no bearing on the granting of a liquor license.

9. In regard to the written objection to the granting of licenses to the Applicants from area residents, again, the undersigned finds little in the way of fact, but considerable opinion. Additionally, one doubts that these letters were individually composed by the signers. The letters express concern that the granting of these licenses would encourage underage drinking and that two licenses already existing in the community are sufficient. The letters repeat the law enforcement concerns, as well as the erroneous assumption that the establishment was within 500 feet of a school. Only 11 of the 17 letters were from individuals with Harrah mailing addresses. Lastly, 16 of the 17 letters were in the nature

of a form. Human nature is such that an individual is much more likely to sign a protest already prepared for them, rather than to sit down and thoughtfully create one of their own.

10. The Confederated Tribes and Bands of the Yakama Nation also object to the granting of a liquor license. However, their objection is not based upon the Applicants themselves but to the selling of alcohol anywhere on the Yakama reservation. The undersigned certainly appreciates the Yakama Nation's concern about alcohol consumption on the Yakama reservation. Yet, the undersigned cannot agree with the Yakama Nation's characterization that Harrah would be saturated with liquor retailers should the Applicants' licenses be granted.

11. In sum, no objection whatsoever was raised in regard to the Applicants' character or ability to comply with regulations and rules of the Board in the operation of an establishment with a liquor license to sell beer and wine to go in their grocery store and a snack bar license in their restaurant. There has been no evidence presented that incidents requiring law enforcement involvement decreased when the number of liquor licenses in Harrah decreased. Additionally, there has been no evidence that the incidents of underage drinking, public intoxication, or alcoholism, decreased in the area subsequent to the change from four to two liquor licenses in Harrah. There are simply no facts upon which to base a denial of the Applicants' liquor licenses in this case.

NOW THEREFORE,

INITIAL ORDER

IT IS HEREBY ORDERED, That the current Application submitted by the Applicants for issuance of a grocery store license to sell beer and wine to go and a snack bar license

in order to sell bottled or canned beer for on-premises consumption under License No. 083780-4D, is ALLOWED.

DATED at Olympia, Washington this 9th day of October, 2007.

WASHINGTON STATE OFFICE OF ADMINISTRATIVE HEARINGS

By _____
David G. Hansen
Administrative Law Judge

DGH: pm

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