

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

HOLY SMOKE BAR & GRILL, LLC
STEVEN HOVANDER AND
STARLARE HOVANDER
d/b/a HOLY SMOKE
10453 MT BAKER HWY
GLACIER, WA 98244

APPLICANT

LICENSE APPLICATION NO. 352254
UBI: 602 587 301 001 0002

LCB NO. 23,685
OAH NO. 2010-LCB-0045

FINAL ORDER OF THE BOARD

The above-entitled matter coming on regularly before the Board, and it appearing that:

1. The Liquor Control Board issued a Statement of Intent to Deny Liquor License dated June 1, 2010 regarding the application by Holy Smoke Bar & Grill, LLC d/b/a Holy Smoke.
2. The Applicant timely requested a hearing on this matter.
3. Administrative Law Judge Steven C. Smith conducted an administrative hearing on this matter on November 10, 2010 at the Office of Administrative Hearings in Tacoma, Washington.
4. Assistant Attorney General Brian Considine represented the Licensing Division of the Liquor Control Board. The Applicant, Holy Smoke Bar & Grill LLC and real parties in interest Steven Hovander and Starlare Hovander appeared through, and were represented by, LLC equity members Steven Hovander and Starlare Hovander.

5. On February 7, 2011, Administrative Law Judge Steven C. Smith entered his Findings of Fact, Conclusions of Law and Initial Order in this matter, which sustained the license application denial.
6. No petition for review was received.
7. The entire record in this proceeding was presented to the Board for final decision, and the Board having fully considered said record and being fully advised in the premises, adopts the ALJ's Findings of Fact, Conclusions of Law and Initial Order, with the following modifications to correct typographical errors:

Findings of Fact 2.6 - The last sentence of the paragraph is corrected as follows:

Those facts included, among others: Three administrative violations then pending against the Sumas location license (AVN #3X7341A – Allow/Engage in Criminal Conduct-Misdemeanor/Licensee Ineligible to retain liquor license issued April 10, 2008; AVN #3N8201A – Allowing an Apparently Intoxicated Person to Consume, issued July 19, 2008; AVN #3A9189A – Disorderly Conduct, Employee (Guy Hovander) Apparently Intoxicated on Licensed Premises).

Conclusion of Law 3.4 is corrected as follows:

Each liquor license application is unique and investigated individually. The Liquor Control Board may inquire and request documents regarding all matters in connection with the liquor license application. The investigation shall include contacting local authorities where the applicant intends to conduct business as a licensee; verification that the proposed business meets the minimum requirements for the type of license or privilege; request the applicant's criminal history and administrative violation history per WAC 314-07-040 and 314-07-045; a financial investigation in order to verify the source of funds used for the acquisition and start up of the business; the applicants' right to the real and personal property and to verify the true parties of interest. The LCB may provide a briefing on liquor laws and rules. It may conduct a final inspection of the proposed licensed business in order to determine if the applicant has complied with all requirements of the license or privilege requested. WAC 314-07-020.

Conclusion of Law 3.16 - The first sentence of is corrected as follows:

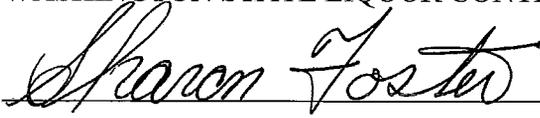
Based on the foregoing Findings of Fact, LCB notified Whatcom County of the Applicant's application for liquor license for the Maple Falls location, as required by law.

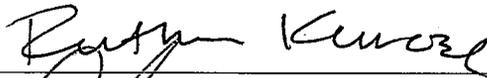
NOW THEREFORE; IT IS HEREBY ORDERED that that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order heretofore made and entered in this matter be, and the same hereby are, AFFIRMED and adopted as the Findings of Fact, Conclusions of Law

and Final Order of the Board except for Finding of Fact 2.6 is corrected as set out above, Conclusions of Law 3.4 and 3.16 are corrected as set out above and that the liquor license application 352254 for Holy Smoke Bar & Grill, LLC d/b/a Holy Smoke located at 10453 Mount Baker Hwy in Glacier, Washington is hereby DENIED.

DATED at Olympia, Washington this 16th day of March, 2011.

WASHINGTON STATE LIQUOR CONTROL BOARD







Reconsideration. Pursuant to RCW 34.05.470, you have ten (10) days from the mailing of this Order to file a petition for reconsideration stating the specific grounds on which relief is requested. A petition for reconsideration, together with any argument in support thereof, should be filed by mailing or delivering it directly to the Washington State Liquor Control Board, Attn: Kevin McCarroll, 3000 Pacific Avenue Southeast, PO Box 43076, Olympia, WA 98504-3076, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board's office. RCW 34.05.010(6). A copy shall also be sent to Mary M. Tennyson, Senior Assistant Attorney General, 1125 Washington St. SE, P.O. Box 40110, Olympia, WA 98504-0110. A timely petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on the petition. An order denying reconsideration is not subject to judicial review. RCW 34.05.470(5). The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

Stay of Effectiveness. The filing of a petition for reconsideration does not stay the effectiveness of this Order. The Board has determined not to consider a petition to stay the effectiveness of this Order. Any such request should be made in connection with a petition for judicial review under chapter 34.05 RCW and RCW 34.05.550.

Judicial Review. Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

1
2 **WASHINGTON STATE LIQUOR CONTROL BOARD**

3 IN THE MATTER OF:

LCB HEARING NO. 23,685
OAH DOCKET NO. 2010-LCB-0045

4 STEVE HOVANDER AND
5 STARLARE HOVANDER
6 HOLY SMOKE BAR & GRILL, INC.
7 d/b/a HOLY SMOKE
8 10453 MT BAKER HWY
9 GLACIER, WA 98244

DECLARATION OF SERVICE BY
MAIL

APPLICANT

LICENSE APPLICATION NO. 352254
UBI: 602 587 301 001 0002

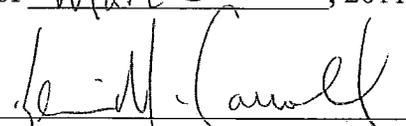
11 I certify that I caused a copy of the *FINAL ORDER OF THE BOARD* in the above-
12 referenced matter to be served on all parties or their counsel of record by US Mail Postage
13 Prepaid via Consolidated Mail Service for Licensees; by Campus Mail for the Office of
14 Attorney General, on the date below to:

16 STEVE HOVANDER AND STARLARE
17 HOVANDER
18 HOLY SMOKE BAR & GRILL, INC.
19 d/b/a HOLY SMOKE
20 10453 MT BAKER HWY
21 GLACIER, WA 98244

BRIAN J. CONSIDINE, ASSISTANT
ATTORNEY GENERAL, GCE DIVISION
OFFICE OF THE ATTORNEY GENERAL
MAIL STOP 40100

20 STEVE HOVANDER AND STARLARE
21 HOVANDER
22 HOLY SMOKE BAR & GRILL, INC.
23 d/b/a HOLY SMOKE
24 5268 OLSON ROAD
25 FERNDALE, WA 98248-9551

23 DATED this 16th day of March, 2011, at Olympia, Washington.

24
25 
26 Kevin McCarroll, Adjudicative Proceedings Coordinator

DECLARATION OF SERVICE BY
MAIL

**STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE WASHINGTON STATE LIQUOR CONTROL BOARD
(Licensing and Regulation Division)**

In The Matter Of:

Holy Smoke Bar & Grill, LLC
Steven Hovander
Starlare Hovander

5268 Olson Road
Ferndale WA 98248-9551

APPLICANT

License Application No. 352254
UBI No. 602-587-301-001-0002

OAH Docket No. 2010-LCB-0045

LCB No. 23,685

INITIAL ORDER

1. STATEMENT OF THE CASE

1.1 Hearing:

In response to the June 7, 2010 written Request for Hearing by the Appellant, and pursuant to Washington Administrative Code (WAC) 314-07-070, WAC 314-09-010, WAC 314-07-121 and RCW 34.05, Administrative Law Judge (ALJ) Steven C. Smith conducted an administrative hearing in this matter on November 10, 2010 at the Office of Administrative Hearings (OAH), 949 Market St., Suite 500, Tacoma, WA 98402. The hearing was digitally recorded.

The hearing record remained open to allow for post-hearing submissions of documents and related replies. The record was closed December 7, 2010.

1.2 Issue for Hearing:

Did the Director of the Licensing Regulation Division of the Washington State Liquor Control Board act within his authority and discretion when he denied a liquor license to the Applicant as set forth in his Statement of Intent to Deny Liquor License on June 1, 2010, or did the Director abuse his discretion?

1.3 Appearances and Representation:

The Liquor Control Board (LCB or Agency) appeared through its Director of Licensing and Regulation Division, Alan E. Rathbun. LCB was represented by Assistant Attorney General Brian Considine.

The Applicant, Holy Spoke Bar & Grill, LLC, and real parties in interest Steven Hovander and Starlare Hovander, appeared through, and were represented by, LLC equity members, Steven Hovander and Starlare Hovander.

1.4 Witnesses:

The following witnesses appeared, were sworn and testified in this matter; the testimony of each was considered by the ALJ:

Alan E. Rathbun, Director of Licensing and Regulation Division, LCB; Sharon A. Hendricks, Manager of Licensing and Regulation Division, LCB; Captain Thomas A. Dixon, Enforcement Education Division, LCB; Steven Hovander, Holy Smoke Bar & Grill; and, Starlare Hovander, Holy Smoke Bar & Grill.

1.5 Exhibits:

The following exhibits were admitted into evidence on behalf of LCB, without objection from Applicant; each was considered by the ALJ:

1. Copy of Letter from Alan Rathbun dated June 1, 2010, with Statement of Intent to Deny Liquor License and Request for Hearing (6 pages);
2. Copy of Sharon Hendrix Liquor Control Board Application Processing Report/License Review for Holy Smoke Bar & Grill, LLC (4 pages);
3. Copy of Licensing's Correspondence to Holy Smoke Bar & Grill, LLC, regarding the objection materials received from Whatcom County (3 pages);
4. Copy of Licensing's Correspondence to Holy Smoke Bar & Grill, LLC, requesting further documentation from the Applicant (2 pages);
5. Copy of Denial Recommendation Report and Attachments from Rex Prout, Assistant Chief, Enforcement Division (52 pages);
6. Copy of Whatcom County Executive's Office Objection Letter against issuing the Applicant a liquor license and supporting documents (63 pages); and,
7. Copy of Holy Smoke Bar & Grill, LLC dba Holy Smoke Bar & Grill, Certified Licensing History (211 pages).

No exhibits were offered or admitted into evidence on behalf of the Applicant:

1.6 Non-Evidentiary Documents Received And Considered By The ALJ:

The following non-evidentiary documents were received and considered:

1. Licensing's Hearing Brief (document filed with OAH October 8, 2010.) Applicant did not submit a hearing brief.
2. Applicant's post-hearing submission informing the ALJ of the inability of Applicant to locate copies of application documentation allegedly submitted by Applicant to LCB during the application process. Document filed with OAH November 22, 2010.
3. Licensing's Response to Applicant's Submission of Additional Evidence. Document filed with OAH December 3, 2010. Applicant did not reply to Licensing's Response.

2. FINDINGS OF FACT

Based on a preponderance of evidence, I make the following Findings of Fact:

Jurisdictional Facts

2.1 At all relevant times, Holy Smoke Bar & Grill, LLC (Holy Smoke) was a limited liability company, the status of which (for example, active/good standing) was not established at hearing. Nonetheless, this LLC was an applicant for the license application herein discussed.

2.2 At all relevant times, Steven Hovander and Starlare Hovander were husband and wife and the sole equitable owners of Holy Smoke. As such, the Hovander's were the real parties in interest as to the license application herein discussed. (Holy Smoke and the Hovander's are jointly referred to as Applicant.)

2.3 On August 5, 2009, the Applicant applied for a Spirits/Beer/Wine Restaurant Lounge license for 10453 Mount Baker Hwy., Maple Falls, Whatcom County, Washington ("Maple Falls location"). On behalf of the LCB, on June 1, 2010, the Director of Licensing and Regulation Division denied the application for the reasons set forth in his Statement of Intent to Deny Liquor License, specifically: (a) "a demonstrated pattern of disregard for laws and rules in accordance with WAC 314-07-045"; (b) "substantial weight [given] to objections from an incorporated city, town or county legislative authority based upon chronic illegal activity that threatens the public health, safety and welfare of the city, town or county"; and, (c) failure of the Applicant to submit information and documentation requested by LCB in furtherance of the application process, contrary to the requirements of WAC 314-12-035 and WAC 314-07-065 (2).

2.4 On June 15, 2010, both Hovander's, on behalf of the Applicant, filed a

written request for an administrative hearing in this matter pursuant to WAC 314-09-010 and WAC 314-07-121.

Application Process and Denial of Liquor License

2.5 Prior to the application which is the subject of this matter, the Hovander's held a separate liquor license issued by LCB (License # 360777, "Sumas location"). By final order of LCB, this license was both canceled and non-renewed on June 15, 2010. (See, LCB Nos. 22,865 and 23,502; OAH Docket No. 2009-LCB-0009.)

2.6 As part of the application process for the application denied by the Director on June 1, 2010, LCB investigated and considered the Hovander's prior history with regard to the Sumas location license. Although at the time of its investigation, and at the time that the Director issued his denial of the application here at issue, LCB was not aware of the cancellation and nonrenewal of the Sumas location license, as that had yet to happen, LCB was aware of the underlying facts that led to the cancellation and nonrenewal. Those facts included, among others: Three administrative violations then pending against the Sumas location license (AVN #3X7341A - Allow/Engage in Criminal Conduct-Misdemeanor/Licensee Ineligible to retain liquor license issued April 10, 2008; AVN #3N8201A - Allowing Intoxicated Person to Consume, issued July 19, 2008; AVN #3A9189A - Disorderly Conduct, Employee (Guy Hovander) Apparently Intoxicated Premises):

2.7 Also, at the time of denial of the Maple Falls location license, the Applicant had received two other recent administrative violations at the Sumas location that have been concluded: (a) AVN #3A 8024A - Allowing Apparently Intoxicated Persons to Possess/Consume Liquor on Premises issued January 12, 2008 (\$350 fine paid); (b) AVN #3A9107A - Allowing Apparently Intoxicated Persons to Possess/Consume Liquor on Premises issued April 17, 2009 (15 day suspension served). These were group one "threat to public safety" violations under RCW 66.24.010 (2) and WAC 314-07-045.

2.8 Also, at the time of denial of the Maple Falls location license, LCB was aware of the then most recent criminal conviction against Starlare Hovander by which she had accumulated nine criminal history points. This was a conviction for misdemeanor disorderly conduct (Whatcom County Superior Court Case Number 07-1-01717-1.)

2.9 In making his decision to deny the application, the Director gave strong and independent consideration to the foregoing violations of law.

2.10 In addition to the foregoing, LCB was concerned about and on October 6, 2009, requested further information and documents from the Applicant regarding: (a) an additional \$2,135 for the spirits, beer, and wine application fee; (b) written

verification from the Whatcom County Fire Marshal and Whatcom County Health Department codes had been met; (c) written verification from Whatcom County Planning and Development that a Certificate of Occupancy for the intended Maple Falls location had been obtained; (d) verification from the Washington Secretary of State, Corporation Division, showing Holy Smoke Bar & Grill LLC had been renewed and reinstated; (e) an assignment, assumption, with landlord's written consent of the lease to the applicant entity Holy Smoke Bar & Grill, LLC; (f) statement of source of funds and verifying documents to include estimated \$30,000 startup cost (Applicant had only disclosed source of \$450 to date), six months bank statements showing \$20-\$30,000 for Maple Falls location investment, or alternate source of funds if not from bank account, and the Hovander's lease documents for the Maple Falls location and an explanation of their relatives' status as landlords, if any.

2.11 At the time the Director denied the application (June 1, 2010), the Applicant had failed to produce the foregoing requested documentation, explanations and application fees. The Applicant's failure to produce the requested documents was given strong and independent consideration by the Director in reaching his decision to deny the application.

2.12 At hearing, the Applicant, through the Hovander's contended that the Applicant had produced all of the information requested by the LCB. The Hovander's represented, and Mr. Hovander testified, that given time, they could locate copies of all of the documents that had been submitted to LCB in connection with the application process. On that basis, the record of hearing was held open to allow the Hovander's the opportunity to produce the documents in question.

2.13 Following the hearing, on November 22, 2010, the Hovander's filed the following, unsworn statement, "We have looked in our files for the paperwork that you requested and were unable to find them. It is our belief that we didn't make copies of the paperwork before sending to the liquor control Board for review."

2.14 In response, LCB produced the sworn declaration of Linda Brock to which the Applicant filed neither an objection nor motion to strike. The declaration stated in relevant part, "I am a Liquor License Investigator with the [LCB] Licensing and Regulation Division... My duties include: processing investigation of liquor license applications. ... I was asked by the Licensing Director,... To conduct a search to determine if [the Hovander's] had submitted any/all of the documents I requested in my letter dated October 6, 2009. ... On November 15, 2010 [after the hearing] I searched the following to determine if the requested documents existed [all places within LCB where the documents might reasonably be located or referenced (for example, computer database)] ... As of today, November 30, 2010, neither the Applicant Holy Smoke [nor the Hovander's] have sent [LCB] the requested documents in my letter dated October 6, 2009."

2.15 The Hovander's contention that they had produced the requested documents to LCB, but had merely failed to keep a photocopy when they submitted the documents, was not credible for at least the following reasons: (a) without reasonable and convincing explanation, it is not believable that the Hovander's, given the year between request and hearing could not have located a single one of the requested documents to support their contention of compliance with the document request in such a serious matter; and, (b) in light of the exhaustive search for the documents as detailed under oath by Ms. Brock in her declaration, the preponderance of the evidence is that the applicant never responded to the October 6, 2009 request for documentation by LCB.

2.16 As part of the application process, LCB notified relevant Whatcom County officials of the application and invited comment pursuant to RCW 66.24.010(8). Whatcom County objected in writing to issuance of a liquor license to the Applicant. Whatcom County's objections included concerns regarding the violations of law at the Sumas location stated above, eviction of the applicant from the Sumas location, the license suspension pursuant to AVN #3A9107A at the Sumas location, problems with Whatcom County Health Department as to the Maple Falls location, and the Maple Falls structure not meeting the Whatcom County Fire Marshall's code requirements as a commercial building. Applicant provided no credible evidence to refute the objections of Whatcom County.

2.17 In making his decision to deny the application, the Director gave independent and due consideration to the objections of Whatcom County officials.

3. CONCLUSIONS OF LAW

Based on the above Findings of Fact, I make the following Conclusions of Law:

Law Applicable to Liquor License Applications and Applicants

3.1 "Applicant" or "liquor license applicant" means any person or business entity who is considered by the board as a true party of interest in a liquor license... as outlined in WAC 314-07-035. WAC 314-07-010(1).

3.2 True parties of interest for purposes of a liquor license application by a limited liability company (LLC) are all members with more than 10% interest in the LLC and spouses. WAC 314-07-035.

3.3 A person or entity must meet certain qualifications to receive a liquor license, which are continuing qualifications in order to maintain the license. RCW 66.24.010 and WAC 314-07-015(1).

3.4 Each liquor license application is unique and investigated individually. The Liquor Control Board may inquire and request documents regarding all matters

in connection with the liquor license application. The investigation shall include contacting local authorities where the applicant intends to conduct business as a at her licensee; verification that the proposed business meets the minimum requirements for the type of license or privilege request the applicants' criminal history and administrative violation history per WAC 314-07-040 and 314-07-045; a financial investigation in order to verify the source of funds used for the acquisition and start up of the business; the applicants' right to the real and personal property and to verify the true parties of interest. The LCB may provide a briefing on liquor laws and rules. It may conduct a final inspection of the proposed licensed business in order to determine if the applicant has complied with all requirements of the license or privilege requested. WAC 314-07-020.

3.5 The Liquor Control Board will conduct an investigation of all applicants' liquor law or rule administrative violation history. The board will not normally issue a liquor license to a person, or to an entity with a true party in interest who has demonstrated a pattern of disregard for laws or rules. WAC 314-07-045.

3.6 The LCB has broad discretionary authority to approve or deny a liquor license or permit application pursuant to RCW 66.24.010. Among other reasons, the LCB may deny a liquor license application for: failure to meet qualifications or requirements for the specific liquor license; failure to submit information or documentation requested by the LCB; failure to meet criminal history standards; failure to meet liquor law or rule violation history standards; questionable or unverified source of funds used for the acquisition, startup and operation of the business; and, objection from local authority. RCW 66.24.010 (2) and WAC 314-07-065 (1)-(7).

3.7 A decision by the LCB to deny a liquor license application can only be successfully challenged if the applicant can establish an abuse of discretion by LCB. An abuse of discretion occurs only when a decision is manifestly unreasonable or based on untenable reasons. *Graves v. Department of Employment Security*; 144 Wn. App. 302, 182 P. 3d 1004 (2008).

3.8 LCB may delegate to the licensing and regulation division director the authority to make initial threshold determinations on liquor license applications where objections have been submitted. If the director determines that the board will seek denial of a license application, an aggrieved applicant may request an adjudicative hearing before an administrative law judge. WAC 314-07-121.

Jurisdiction

3.9 Based upon the Director's decision to deny the Applicant a liquor license, the Applicant's written request for an adjudicative hearing before an administrative law judge, and the foregoing authorities, the Office of Administrative Hearings and I have jurisdiction to hear this matter. WAC 314-07-121.

Denial Based On Demonstrated Pattern Of Disregard For Laws And Rules

3.10 Based on the foregoing Findings of Fact, the Hovander's are the real parties in interest of Holy Smoke Bar & Grill, LLC. Therefore, their previous liquor license history and personal criminal history, if any, are relevant to a determination of approval or denial of a new liquor license application. In this case, Holy Smoke's violation history which is attributable to its real parties in interest, the Hovander's, was significant and demonstrated a pattern of disregard for laws and rules. Ms. Hovander, had a recent criminal history inconsistent with the granting of a liquor license.

3.11 Accordingly, the Director, acting for the Liquor Control Board, was within his authority and discretion to deny the application for a liquor license to the Applicant based on a demonstrated pattern of disregard for law. RCW 66.24.010(2), WAC 314-07-045 and 314-07-065(1)-(7).

3.12 The Applicant did not establish an abuse of that discretion. Therefore, the Director's denial on this basis will not be disturbed. *Graves v. Department of Employment Security*, 144 Wn. App. 302, 182 P. 3d 1004 (2008).

Denial Based On Failure To Provide Requested Documentation

3.13 Based on the foregoing Findings of Fact, the Applicant failed to provide the documentation requested by the LCB. The documentation requested was not insignificant. It included: (a) an additional \$2,135 for the spirits, beer, and wine application fee; (b) written verification from the Whatcom County Fire Marshal and Whatcom County Health Department codes had been met; (c) written verification from Whatcom County Planning and Development that a Certificate of Occupancy for the intended Maple Falls location had been obtained; (d) verification from the Washington Secretary of State, Corporation Division, showing Holy Smoke Bar & Grill LLC had been renewed and reinstated; (e) an assignment, assumption, with landlord's written consent of the lease to the applicant entity Holy Smoke Bar & Grill, LLC; (f) statement of source of funds and verifying documents to include estimated \$30,000 startup cost (Applicant had only disclosed source of \$450 to date), six months bank statements showing \$20-\$30,000 for Maple Falls location investment, or alternate source of funds if not from bank account, and the Hovander's lease documents for the Maple Falls location and an explanation of their relatives' status as landlords, if any.

3.14 Accordingly, the Director, acting for the Liquor Control Board, was within his authority and discretion to deny the application for a liquor license to the Applicant based on failure of the Applicant to provide the requested documentation to complete the application investigation process. RCW 66.24.010(2), WAC 314-07-045 and 314-07-065(1)-(7).

3.15 The Applicant did not establish an abuse of that discretion. Therefore, the Director's denial on this basis will not be disturbed. *Graves v. Department of Employment Security*, 144 Wn. App. 302, 182 P. 3d 1004 (2008).

Denial Based On Objections of Whatcom County

3.16 Based on the foregoing Findings of Fact, LCP notified Whatcom County of the Applicant's application for liquor license for the Maple Falls location, as required by law. Whatcom County provided written objection to the application. The Director, on behalf of LCB, gave the objections due consideration. Those objections were not insignificant. They included: concerns regarding the violations of law at the Sumas location stated above, eviction of the applicant from the Sumas location, the license suspension pursuant to AVN #3A9107A at the Sumas location, problems with Whatcom County Health Department as to the Maple Falls location, and the Maple Falls structure not meeting the Whatcom County Fire Marshall's code requirements as a commercial building.

3.17 Accordingly, the Director, acting for the Liquor Control Board, was within his authority and discretion to deny the application for a liquor license to the Applicant based on objection of Whatcom County to the application of Applicant. RCW 66.24.010(2), WAC 314-07-045 and 314-07-065(1)-(7).

3.18 The Applicant did not establish an abuse of that discretion. Therefore, the Director's denial on this basis will not be disturbed. *Graves v. Department of Employment Security*, 144 Wn. App. 302, 182 P. 3d 1004 (2008).

4. INITIAL ORDER

Based on the foregoing Conclusions of Law, IT IS ORDERED:

4.1 The Liquor Control Board's June 1, 2010 denial of a liquor license to Applicant Holy Smoke Bar & Grill, LLC, Steven Hovander and Starlare Hovander, real parties in interest, on the basis of a demonstrated pattern of disregard for laws and rules is hereby SUSTAINED.

4.2 The Liquor Control Board's June 1, 2010 denial of a liquor license to Applicant Holy Smoke Bar & Grill, LLC, Steven Hovander and Starlare Hovander, real parties in interest, on the basis of a failure of the Applicant to provide the Liquor Control Board with requested documentation is hereby SUSTAINED.

4.3 The Liquor Control Board's June 1, 2010 denial of a liquor license to Applicant Holy Smoke Bar & Grill, LLC, Steven Hovander and Starlare Hovander,

real parties in interest, on the basis of objection by Whatcom County to issuance of a liquor license to the Applicant is hereby SUSTAINED.

Signed and Issued at Tacoma, Washington on February 7, 2011.


Steven C. Smith
Administrative Law Judge
Office of Administrative Hearings

NOTICE TO PARTIES OF FURTHER APPEAL RIGHTS

Either the applicant, licensee or permit holder, or the Assistant Attorney General may file a Petition for Review of the Initial Order with the Liquor Control Board within twenty (20) days of the date of service of the Initial Order. RCW 34.05.464, WAC 10-08-211 and WAC 314-42-095. Documents are deemed filed with the Board upon actual receipt by the Board, during office hours, at the Board's headquarters office in Olympia, Washington (P.O. Box 43075, 3000 Pacific Avenue, S.E., Olympia, WA 98504-3075). If the Board does not receive a petition for review within twenty (20) days, the Board will review and make this order its final order.

The Petition for Review must:

- (i) Specify the portions of the Initial Order to which exception is taken;
- (ii) Refer to the evidence of record relied upon to support the petition; and,
- (iii) Be filed with the Liquor Control Board and within twenty (20) days of the date of service of the Initial Order.

A copy of the Petition for Review must be mailed to all parties and their representatives at the time the petition is filed. Within (10) ten days after service of the Petition for Review, any of the other parties may file a Reply to that Petition with the Liquor Control Board. WAC 314-42-095(2) (a) and (b). Copies of the Reply must be mailed to all other parties and their representatives at the time the Reply is filed.

The administrative record, the Initial Order, any Petitions for Review, and any Replies filed by the parties will be circulated to the Board members for review. WAC 314-42-095(3).

Following this review, the Board will enter a final order. WAC 314-42-095(4). Within ten days of the service of a Final Order, any party may file a Petition for

Reconsideration, stating the specific ground upon which relief is requested.
RCW 34.05.470 and WAC 10-08-215.

The File Decision of the Board is appealable to the Superior Court under the provisions of RCW 34.05.510 through 34.05.058 (Washington Administrative Procedure Act).

Certification of Mailing

I certify that I mailed true copies of the foregoing document to the following parties, postage prepaid this February 7, 2011 from Tacoma, Washington.



Authorized Representative
Office of Administrative Hearings

Steven Hovander
Holy Smokes Bar & Grill
5268 Olson Rd
Ferndale, WA 98248

Starlare Hovander
Holy Smokes Bar & Grill
5268 Olson Rd
Ferndale, WA 98248

Brian Considine
Assistant Attorney General
Office of the Attorney General
PO Box 40100
Olympia, WA 98504

Not Sent By US Mail:
Kevin McCarroll
Adjudicative Proceedings Coordinator
Liquor Control Board
MS: 43076