

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

CHERRY CORNER MARKET AND
DELI LLC
d/b/a CHERRY CORNER MARKET
AND DELI
701 23RD AVE
SEATTLE, WA 98122-4813

APPLICANT

LICENSE APPLICATION NO. 407305

LCB NO. 23,888

OAH NO. 2011-LCB-0071

FINAL ORDER OF THE BOARD

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

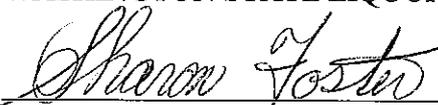
1. The Licensing Director of Liquor Control Board, Alan Rathbun, issued a Statement of Intent to Deny Liquor License dated October 13, 2011, denying the Cherry Corner Market and Deli LLC application for a Grocery Store Beer/Wine license.
2. The applicant made a timely request for a formal hearing.
3. The Respondent Cherry Corner Market and Deli, LLC was represented by Mel Foster with Merchant Services Washington, Inc. Stephanie Happold, Assistant Attorney General, represented the Education and Enforcement Division of the Board.
4. An administrative hearing was held on March 26, 2012 before Terry A. Schuh, Administrative Law Judge with the Office of Administrative Hearings in Tacoma, Washington.
5. On April 23, 2012, Administrative Law Judge Schuh entered his Findings of Fact, Conclusions of Law and Initial Order in this matter, which affirmed the application denial.
6. No petitions for review were filed by the parties.

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;

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 and that the application for Cherry Corner Market and Deli LLC d/b/a Cherry Corner Market And Deli located 701 23rd Avenue in Seattle, Washington, Application No. 407305, is hereby DENIED.

DATED at Olympia, Washington this 29 day of May, 2012.

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).



**Washington State
Liquor Control Board**

May 30, 2012

Mel Foster, Representative of Applicant
Merchant Services of Washington, Inc
300 Queen Anne Ave N #406
Seattle, WA 98109-4512

Daniel Abahyne, Applicant
Cherry Corner Market and Deli LLC
d/b/a Cherry Corner Market and Deli
701 23rd Avenue
Seattle, WA 98122-4813

Stephanie Happold, AAG
GCE Division, Office of Attorney General
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100

RE: FINAL ORDER OF THE BOARD
APPLICANT: Cherry Corner Market and Deli LLC
TRADE NAME: Cherry Corner Market and Deli
LOCATION: 701 23rd Avenue, Seattle, WA 98122-4813
LICENSE APPLICATION NO. 407305
LCB HEARING NO. 23,888
OAH NO. 2011-LCB-0071
UBI: 603 056 239 001 0001

Dear Parties:

Please find the enclosed Declaration of Service by Mail and a copy of the Final Order of the Board in the above-referenced matter. If you have any questions, please contact me at (360) 664-1602.

Sincerely,

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Beth Lehman, Licensing Supervisor, WSLCB
Tukwila and Seattle Enforcement and Education Divisions, WSLCB

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3 **WASHINGTON STATE LIQUOR CONTROL BOARD**

4 IN THE MATTER OF:

5 CHERRY CORNER MARKET AND
6 DELI LLC
7 d/b/a CHERRY CORNER MARKET
8 AND DELI
9 701 23RD AVENUE
10 SEATTLE, WA 98122-4813

11
12 **APPLICANT**

13 **LICENSE APPLICATION NO. 407305**

LCB NO. 23,888
OAH NO. 2011-LCB-0071

DECLARATION OF SERVICE BY MAIL

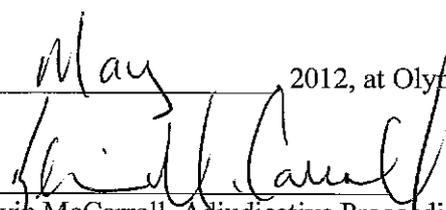
14 I certify that I caused a copy of the FINAL ORDER OF THE BOARD in the above-referenced
15 matter to be served on all parties or their counsel of record by US Mail Postage Prepaid via
16 Consolidated Mail Service for Licensees, by Campus Mail for the Office of Attorney General, on the
17 date below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

18 MEL FOSTER, REPRESENTATIVE OF
19 APPLICANT.
20 MERCHANT SERVICES OF WASHINGTON,
21 INC
22 300 QUEEN ANNE AVE N #406
SEATTLE, WA 98109-4512

OFFICE OF THE ATTORNEY GENERAL
MAIL STOP 40100, GCE DIVISION
STEPHANIE HAPPOLD, ASSISTANT
ATTORNEY GENERAL

DANIEL ABAHYNE, APPLICANT
CHERRY CORNER MARKET AND DELI LLC
d/b/a CHERRY CORNER MARKET AND DELI
701 23RD AVENUE
SEATTLE, WA 98122-4813

23 DATED this 30th day of May, 2012, at Olympia, Washington.

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25 
26 Kevin McCarroll, Adjudicative Proceedings Coordinator

**DECLARATION OF SERVICE BY
MAIL**

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Washington State Liquor Control Board
3000 Pacific Avenue SE
PO Box 43076
Olympia, WA 98504-3076
(360) 664-1602

RECEIVED

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

MAY 10 2012

Liquor Control Board
Board Administration

In the Matter of the Denial of the liquor
license application for the privileges
of a Grocery Store Beer/Wine license
for:

**CHERRY CORNER MARKET AND
DELI, LLC**

Cherry Corner Market & Deli

701 – 23rd Ave.

Seattle, WA 98122,

Location Address:

701 – 23rd Ave.

Seattle, WA 98122,

License Application No. 407305

UBI No. 603 056 239 001 0001,

Respondent.

OAH Docket No. 2011-LCB-0071

LCB No. 23,888

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND
INITIAL ORDER**

I. ISSUE PRESENTED

Whether, as expressed in the Statement of Intent to Deny Liquor License, dated October 13, 2011, the Liquor Control Board's denial of Respondent Cherry Corner Market and Deli, LLC's application for a Grocery Store Beer/Wine license was proper.

II. ORDER SUMMARY

As expressed in the Statement of Intent to Deny Liquor License, dated October 13, 2011, the Liquor Control Board's denial of Respondent Cherry Corner Market and Deli, LLC's application for a Grocery Store Beer/Wine license was proper.

III. HEARING

- 3.1 **Hearing Date:** March 26, 2012
- 3.2 **Administrative Law Judge:** Terry A. Schuh
- 3.3 **Respondent:** Cherry Corner Market and Deli, LLC
- 3.3.1 **Representative:** Mel Foster

3.3.2 Witnesses:

3.3.2.1 Mel Foster, Authorized Representative

3.3.2.2 Daniel Abaynhe, Co-member of the LLC

3.3.2.3 Samuel Tadesse, Co-member of the LLC

3.4 Agency: Liquor Control Board

3.4.1 Representative: Stephanie U. Happold, Asst. Attorney General

3.4.2 Witnesses:

3.4.2.1 Alan Rathbun, Director, Licensing and Regulation Division,
Liquor Control Board

3.4.2.2 Sharon Hendricks, Retail License Manager, Licensing and
Regulation Division, Liquor Control Board

3.5 Exhibits: Exhibits 1 through 9, A, and E, were admitted into the record.

IV. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

Jurisdiction

4.1 By means of the Statement of Intent to Deny Liquor License, dated October 13, 2011, the Liquor Control Board (hereafter, "the Board") denied the Cherry Corner Market and Deli, LLC's (hereafter, "the Market") application for a Grocery Store Beer/Wine License (hereafter, "License"). Ex. 1.

4.2 The Board served the Statement of Intent to Deny Liquor License upon the Market by certified mail dated October 13, 2011. Ex. 1. At the same time and in the same manner, the Board notified the Market that it could appeal the denial by completing the Request for Hearing that was enclosed if it did so no later than November 2, 2011. Ex. 1.

4.3 On November 1, 2011, the Market filed its appeal.

Application and Notice

4.4 The Board received the Market's application for a License on or about April 2, 2011. Ex. 2, p. 1.

4.5 The Board notified the local authority, the City of Seattle, (hereafter, the "City") of the Market's application for a License. See Testimony of Hendricks (Ms. Hendricks testified that, upon receipt of an application for a License, a Board investigator sends notice of that application to the local authority.).

4.6 The Board notified Cherry Hill Baptist Church of the Market's application for a License because Cherry Hill Baptist Church is located within 500 feet of the Market. Ex. 2, p. 2.

4.7 The Board required the Market to inform the local community of its application for a License by posting notice of its application on its premises. See Testimony of Hendricks (Ms. Hendricks testified that the Board requires an applicant to post notice on its premises of its application for a License.).

4.8 The City contacted local entities and individuals regarding the Market's application for a License. Testimony of Foster; Ex. 7, p. 1.

4.9 The Market is located within an Alcohol Impact Area (hereafter, "AIA"). Testimony of Rathbun; Ex. 2, p. 2; Ex. 4, p. 1; Ex. 4b; Ex. 7, p. 1.

Objections and Response

4.10 The City objected to the Market's application for a License in a letter dated June 10, 2011, as follows. Ex. 2, pp. 2, 3; Ex. 4. "The City believes that the location of the proposed liquor license will detrimentally impact the safety, health, and welfare of the surrounding community". Ex. 4, p. 1. The Market is located in a "high-crime area across the street from the Garfield Community Center . . . and within two blocks of Garfield High School". Ex. 4, p. 1. The Market is located in an AIA, "which was created in 2006 to address recognized problems with chronic public inebriation, illegal activity associated with alcohol sales, and the deterioration of the quality of life in the area." Ex. 4, p. 1. "The proposed Market would contribute to these problems by providing another venue for people to buy alcohol." Ex. 4, p. 1. The immediate area "has a history of alcohol-fueled problems." Ex. 4, p. 1. The immediate area already has an alcohol seller, the AM/PM, and the City has had problems in its vicinity. Ex. 4, p. 1. The City cited to and provided a declaration from a police officer, and letters from three schools and a church. Ex. 4, p. 1.

4.11 Officer Christopher Kelley wrote in his declaration signed June 1, 2011,

that the area surrounding the Market is an area that produces violent crime (including robberies, shootings, and assaults), property crimes, prostitution, narcotics trafficking, and chronic inebriation issues. Ex. 4a.

4.12 The Cherry Hill Baptist Church objected to the Market's application for a License. Testimony of Rathbun; Ex. 2, pp. 2, 3; Ex. 4, p. 2. Rev. Wilhelmina Daniel, Pastor, wrote in a letter dated June 6, 2011, that the Market is within 500 feet of her church and that persons loitering around the local AM/PM (which sells alcohol) already create a public nuisance, particularly as to families with young children, to teenagers, and to persons attending her church. Ex. 4d.

4.13 The Central Seattle Drug Free Communities Coalition objected to the Market's application for a License. Testimony of Rathbun; Ex. 2, p. 2; Ex. 4, p. 1. In a letter dated May 27, 2011, Isom Taylor, Steering Committee Chairperson, Central Seattle Drug Free Communities Coalition, wrote that the Market's proximity to Garfield High School and the Garfield Community Center would increase exposure of youths to alcohol and increase their opportunity to acquire it and thus would "increase youth involvement in underage drinking, increase truancy, inhibit academic achievement, and create a pattern of disturbances and public safety issues." Ex. 4c.

4.14 The Islamic School of Seattle objected to the Market's application for a License. Testimony of Rathbun; Ex. 2, pp. 2, 3; Ex. 4, p. 2. In a letter dated May 29, 2011, Ann El-Moslimany, Principal, Islamic School of Seattle, wrote that the school already has "problems with individuals consuming liquor in the stairwell across from [the] school" and that she feared that another liquor license would "reverse" the recent improvements in the neighborhood. Ex. 4e.

4.15 Causey's Learning Center objected to the Market's application for a License. Testimony of Rathbun; Ex. 2, pp. 2, 3; Ex. 4, p. 2. In a letter dated June 3, 2011, Ruth Brown, Director, Causey's Learning Center, wrote she was concerned that another alcohol seller in the neighborhood would increase the presence of idlers and transients, add to the problem her school already faced with people leaving alcohol containers and other litter on the Center's property, "would only add fuel to the fire, and intensify the many problems that already plague the community", and would prejudice the safety of the students and their parents. Ex. 4f.

4.16 Garfield High School objected to the Market's application for a License. Testimony of Rathbun; Ex. 2, pp. 2, 3; Ex. 4, p. 2; Ex. 5. In a letter dated June 14, 2011, Theodore Howard, Principal, Garfield High School, wrote that an additional licensee would "negatively impact" the school because it would increase student access to alcohol. Ex. 6, p. 2.

4.17 The Board notified the Market of the objections. Ex. 2, p. 2.

4.18 The Market responded to the objections by letter, dated June 23, 2011. Ex. 2, p. 2; Ex. 7. The Market wrote that “many other businesses” located in the AIA had recently been issued Licenses by the Board, that Seattle police abused their authority by contacting and encouraging the Market’s neighbors to oppose the application for a License, and that the Market was willing to agree to forgo selling any brands, types, or container-volumes, of alcohol restricted by the Board. Ex. 7.

4.19 The Market asserted that the objections were coerced by the City’s police officers. Ex. 7. Mr. Foster contacted three parties who objected to the Market’s application for a License. Testimony of Foster. Pastor Gibson, former pastor of the Cherry Hill Baptist Church, who had objected to a prior application by the Market, told Mr. Foster that he felt pressured by the police officer to write a letter. Testimony of Foster. However, Theodore Howard, the Principal of Garfield High School, told Mr. Foster that he would object to any application for a License because he believed that there was already too much alcohol in the area. Testimony of Foster. Nevertheless, when Mr. Foster talked to a representative from the Islamic School of Seattle, she told him that the school supported the Seattle Police Department in its objection because they did not want to oppose the police. Testimony of Foster.

4.20 The Director was not persuaded that those who wrote letters in support of the City’s objection were coerced -- for several reasons. Testimony of Rathbun. The Market did not provide to the Board any documentation of the alleged coercion. Testimony of Rathbun. None of the letters were retracted. Testimony of Rathbun. The Board trusted the Seattle Police Department to be truthful. Testimony of Rathbun. It is not unusual for the letters to be submitted through the local authority because that is the entity people are used to dealing with. Testimony of Rathbun. The letters were not form letters and each reflected details unique to and important specifically to the author of the letter. Testimony of Rathbun.

4.21 I find that Mr. Rathbun’s testimony regarding the alleged coercion of objection letters more compelling than the Market’s evidence – for three reasons. One, the Market’s evidence of coercion was testimony of what others told the witness. For example, Mr. Foster testified regarding what a representative from the Islamic School of Seattle told him. On that point, the evidence he offered was a statement from someone not present at the hearing and the statement was offered for the truth of what that statement contained. That constitutes “hearsay” evidence. Hearsay is “weaker” evidence because the person who made the statement was not present and subject to cross-examination. Nor could I observe the person who made the original statement. This made it more difficult

for me to evaluate the credibility of that person's statement. Two, none of the letters in evidence was retracted. Three, the letters were not form letters. Each letter contained observations unique to the circumstances of the author of the letter. Therefore, I find that the letters of objection were not coerced by the City's police officers.

4.22 The Market asserted that 49 other businesses located in the AIA were issued the same License sought by the Market. Testimony of Foster; Ex. E; Ex. 7.

4.23 The Board determined that, within a five-block radius, only four other local businesses were issued the same License as that sought by the Market. Testimony of Rathbun; Ex. 3; Ex. 2, p. 4. Moreover, only one of those four Licenses was issued after establishment of the AIA. Testimony of Rathbun. Further, none of the Licenses were objected to by the City or any entity or person. Testimony of Rathbun; Ex. 3; Ex. 2, p. 4.

4.24 Ex. E, the evidence that the Market offered in support of its assertion that 49 businesses with the same License as that sought by the Market are within the boundary of the AIA, is not credible. That exhibit's source is uncertain and the columns of information lack headings with which to interpret the information. Moreover, some businesses are listed more than twice. Further, at least one business appearing on the list was *not* granted a License. In addition, at least one business appears not to be a retail store and therefore would not have the same License as that sought by the Market. More to the point, given the size of the AIA, some of the businesses listed on Ex. E are located miles from the Market. Furthermore, the Board decided to deny the Market's application for a License primarily because of the objections that were filed, and not because the Market was located in an AIA. To be sure, the circumstances that likely predicated designation of the AIA were some of the same circumstances that predicated the objections. However, the objections recited specific circumstances and concerns rather than relying upon the AIA designation. Finally, the Board responded to the Market's assertion by determining specifically what other licensees are in the immediate area, which is the area from which the Market is likely to draw customers and the area which its License would most greatly impact. Accordingly, I am not persuaded that 49 other businesses possessed Licenses the same as was sought by the Market within the relevant area.

4.25 The Market asserted that the local area has problems fueled primarily by narcotics rather than alcohol. Testimony of Abaynhe. However, the Market's neighborhood is located in an AIA, which by definition is an area negatively impacted by alcohol. See Ex. 4b. Moreover, alcohol was a consistent concern raised by the objectors. See, e.g., Exs. 4, 4a, 4c, 4e, and 4f. Therefore, I find

that the area surrounding the Market is negatively impacted by alcohol.

4.26 The Market offered to restrict its sales of alcohol in order to avoid selling products prohibited from sale in the AIA. Ex., 7, p. 2. However, the restriction which the Market offered was a restriction which would have applied to the Market anyway because it is a restriction that applies to all licensees within that AIA. See Ex. 4b, pp. 4-5.

Denial

4.27 The Board decided to deny the Market's application for a License because the local authority objected for stated reasons, a church located within 500 feet of the Market objected, and other local entities objected. Testimony of Rathbun; Ex. 2, pp. 3-4. The Board concluded that the health, safety, and welfare of the local community were at risk if the Board issued the Market a License. Testimony of Rathbun; Ex. 2, p. 4.

V. CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I make the following Conclusions of Law:

Jurisdiction

5.1 I have jurisdiction to hear and decide this matter pursuant to RCW 66.24.010(8)(d); WAC 314-07-070(1); WAC 314-07-121(3); WAC 314-09-010(2)(b)(ii); and Chapter 34.05 RCW.

Denial per Objection from Local Authority

5.2 Before issuing a new license to an applicant located within an incorporated city or town, the Board must give notice to the local governing authority of the application for a new license. RCW 66.24.010(8)(a). If the applicant is located within an incorporated city or town, that city or town is the local governing authority; otherwise it is the county. RCW 66.24.010(8)(a).

5.3 Here, the Board notified the City of the Market's application for a license.

5.4 The local authority may file a written objection against the applicant or premises for which the License is sought. RCW 66.24.010(8)(c).

5.5 That written objection must include the basis for the objection. RCW 66.24.010(8)(d).

5.6 Here, the City filed a written objection supported by a declaration from a police officer and letters from local schools and a church.

5.7 The Board has "broad discretionary authority" to deny a license if the local authority has objected. WAC 314-07-065(7).

5.8 The Board may delegate that authority to the Licensing and Regulation Division Director. WAC 314-07-121(1)(a).

5.9 "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". WAC 314-09-010(2)(in pertinent part).

5.10 Here, the Board gave due consideration to the written objection filed by the City as well as the written response filed by the Market and decided to deny the Market's application for a license based in part on the objection and supporting documentation submitted by the City. The Board has "broad discretionary authority" to do so. The Board's exercise of its authority in this regard was consistent with the law and was proper.

Denial per Church within 500 feet

5.11 Before issuing a new license to an applicant, the Board shall give written notice to churches within five hundred feet of the premises to be licensed. RCW 66.24.010(9)(a); WAC 314-09-010(1).

5.12 Here, the Board notified Cherry Hill Baptist Church about the Market's application for a license.

5.13 Before issuing a new license to an applicant, the Board shall given due consideration to the proximity of churches. RCW 66.24.010(9)(a); WAC 314-07-121(2)(b); WAC 314-09-010(2).

5.14 "For the purposes of this section, 'church' means a building erected for and used exclusively for religious worship and schooling or other activity in connection therewith." RCW 66.24.010(9)(a) (in pertinent part).

5.15 The Board may deny a license application if it receives an objection from a church located within 500 feet of the applicant. WAC 314-07-065(8).

5.16 Here, Cherry Hill Baptist Church is located within 500 feet of the Market and Cherry Hill Baptist Church objected to the Market's application for a license. Accordingly, the Board was obliged to give due consideration to that objection.

Therefore, the Board properly exercised its authority when it denied the Market's application for a license in part because of the objection submitted by Cherry Hill Baptist Church.

Denial per Other Entities

5.17 Prior to issuing a license to an applicant, the Board shall give due consideration to the proximity of schools. RCW 66.24.010(9)(a); WAC 314-07-121(12)(b).

5.18 When deciding whether to issue or deny a license application, the Board will give "due consideration" to other persons or groups. WAC 314-09-010(2).

5.19 The Board may deny an application for a license if it "determines that the issuance of the liquor license will not be in the best interest of the welfare, health, or safety of the people of the state." WAC 314-07-065(9).

5.20 Here, the Board received objections from the Central Seattle Drug Free Communities Coalition, the Islamic School of Seattle, Causey's Learning Center, and Garfield High School, as well as the Cherry Hill Baptist Church and the City, all of which are located near the Market. Each of these entities expressed concern that issuing the Market a License would negatively impact the neighborhood, i.e. would not be in the best interest of the welfare, health and safety of the people who reside in the neighborhood and/or are associated with the objecting entities. Thus, the Board properly exercised its authority when it denied the Market's application for a license in part because of the objections filed by other persons and groups that believed that granting a License to the Market would not be in the best interest of the welfare, health, or safety of the local people.

Arguments Raised by the Market

5.21 The Market argued that the objections submitted by local entities were coerced by the City's police department. I determined in the Findings of Fact above that the alleged coercion did not occur. Accordingly, I am not persuaded by this argument.

5.22 The Market argued that the Board should not deny the Market's application for a license merely because the Market is located in the AIA, particularly given that some 49 other applicants located in the AIA have been granted licenses. However, I determined in the Findings of Fact above that some of the circumstances that predicated designation of the AIA were the same circumstances that caused the Board to decide to deny the Market's application for a License. Those circumstances remain evident in the Market's

neighborhood. It was those circumstances that drove the Board's decision to deny the Market's application for a license, and not merely that the Market is located in the AIA. Moreover, I also determined in the Findings of Fact above that there were only five licensees located sufficiently near to the Market to be relevant and that the Board did not receive any objections when those licensees applied. Therefore, I am not persuaded by this argument.

5.23 The Market argued that denying its application for a license was not fair because the basis for the denial violated Washington's "doctrine of fairness". I am not familiar with any state "doctrine of fairness" and the Market did not refer me to a statute or regulation that formed the basis of this assertion. However, as I addressed in the foregoing Conclusions of Law, the Board's decision was based upon statutes and regulations, and only upon those statutes and regulations. Thus, I am not persuaded that the Board's process and decisions were other than fair.

5.24 The Market argued that it was willing to accept a restricted license. However, as I determined in the Findings of Fact above, had the Board not denied the Market's application for a license, the Market would have been subject to those restrictions as created by the AIA, regardless of whether it did so voluntarily or involuntarily. Accordingly, the Market's apparent willingness to do so voluntarily was not relevant to the Board's decision regarding the Market's application. Therefore, I am not persuaded by this argument.

5.25 The Market argued that its principals were law-abiding and had experienced no problems with the City's police department or with individuals, groups, or entities within the neighborhood. However, the objections upon which the Board relied when it decided to deny the Market's application for a License were not based upon the applicants themselves but, rather, upon the anticipated effects of the applicants selling alcohol. Thus, the character of the applicants was never at issue. Accordingly, I am not persuaded by this argument.

5.26 The Market argued that there were no problems in the neighborhood with alcohol. However, I determined in the Findings of Fact above that there is indeed a problem with alcohol in the Market's neighborhood.

5.27 The Market argued that its business was not profitable without a license. However, the negative economic impact on the Market is not something I am allowed to consider. Therefore, I am not persuaded by this argument.

Summary

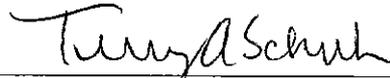
5.28 In summary, the Board properly exercised its discretion and authority by considering the objections recited above, and, based upon those objections,

denied the Market's application for a License. More specifically, the Board's decision was based upon an objection from the local authority, an objection from a church situated within 500 feet of the Market, and objections from other local persons, entities, and groups. The Board determined that, in view of those objections, granting the Market a License would not be in the best interest of the welfare, health, or safety of the local people.

INITIAL ORDER

IT IS HERBY ORDERED that the Liquor Control Board's determination to deny the application from Cherry Corner Market and Deli, LLC for a Grocery Store Beer/Wine License is **AFFIRMED**.

Signed and Issued at Tacoma, Washington, on the date of mailing.



Terry A. Schuh
Administrative Law Judge
Office of Administrative Hearings

NOTICE OF APPEAL RIGHTS – PLEASE READ CAREFULLY

Petition for Review of Initial Order

Either the licensee or permit holder of 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; WAC 314-42-095.

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 which is relied upon to support the petition; and
- (iii) Be filed with the liquor control board 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 of the other parties and their representatives at the time the petition is filed. **Within ten (10) days after**

service of the petition for review, any of the other parties may file a response to that petition with the Liquor Control Board. WAC 314-42-095(2)(a) and (b). Copies of the reply must be mailed to the all other parties and their representatives at the time the reply is filed.

Address for filing a petition for review with the board:

Washington State Liquor Control Board
Attention: Kevin McCarroll
3000 Pacific Avenue, PO Box 43076
Olympia, Washington 98504-3076.

Final Order and Additional Appeal Rights: 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 with the board, stating the specific grounds upon which relief is granted. RCW 34.05.470; WAC 10-08-215.

The final decision of the board is appealable to the Superior Court under the provisions of RCW 34.05.510 through 34.05.598 (Washington Administrative Procedure Act).

CERTIFICATION OF MAILING IS ATTACHED