

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

LISTENING JUICE CORPORATION
d/b/a SAMMY'S PIZZA/PETEY'S PUB

1308 NORTH "I" STREET
TACOMA, WA 98403

APPLICANT

LICENSE APPLICATION NO. 410101
UBI: 603 067 451 001 0002

LCB NO. 24,719
OAH NO. 2013-LCB-0056

FINAL ORDER OF THE BOARD

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

1. The Licensing Division of the Liquor Control Board issued a Statement of Intent to Deny Liquor License Application dated February 13, 2013.
2. The Applicant submitted a request for a hearing.
3. On July 18, 2014, Administrative Law Judge Terry A. Schuh issued his Findings of Fact, Conclusions of Law and Initial Order, affirming the decision to deny the Applicant's license application as expressed in the Statement of Intent to Deny Liquor License Application.
4. The Applicant filed a Petition for Review. The Licensing Division of the Board filed a Response to the Petition for Review.
5. 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 the Statement of Intent to Deny Liquor License for case 24,719 in this matter is ADOPTED.

IT IS HEREBY FURTHER ORDERED that liquor license application number 410101 for Listening Juice Corporation d/b/a Sammy's Pizza/Petey's Pub is DENIED.

DATED at Olympia, Washington this 14 day of October, 2014.

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

October 15, 2014

R. Randall Harrison,
Attorney for Applicant
Sadler Ladenburg, LLP
705 S 9th St Ste 305
Tacoma, WA 98405-4600

Russell Snell,
Listening Juice Corporation
d/b/a Sammy's Pizza/Petey's Pub
2025 Grandview Dr W
University Place, WA 98466-2920

Kim O'Neal, 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: Listening Juice Corporation
TRADE NAME: Sammy's Pizza/Petey's Pub
LOCATION: 1308 North "I" Street, Tacoma, WA 98403
LICENSE NO. 410101
LCB HEARING NO. 24,719
OAH NO. 2013-LCB-0056
UBI: 603 067 451 001 0002

Dear Parties:

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

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin McCarroll".

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Shannon McMinimee, General Counsel, Tacoma School District
Sharon Hendricks, Licensing Policy and Compliance Manager, WSLCB
Tacoma Enforcement and Education Division, WSLCB

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

LISTENING JUICE CORPORATION
d/b/a SAMMY'S PIZZA/PETEY'S PUB

1308 NORTH "I" STREET
TACOMA, WA 98403

APPLICANT

LICENSE APPLICATION NO. 410101
UBI: 603 067 451 001 0002

LCB NO. 24,719

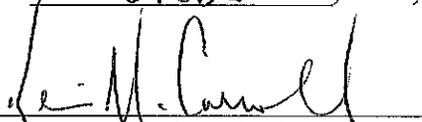
OAH NO. 2013-LCB-0056

DECLARATION OF SERVICE BY
MAIL

I certify that I caused a copy of the FINAL ORDER OF THE BOARD in the above-referenced matter to be served on all parties or their counsel of record by US Mail Postage Prepaid via Consolidated Mail Service for applicants and licensees, by campus mail for state offices, on the date below to:

R. RANDALL HARRISON, ATTORNEY FOR APPLICANT SADLER LADENBURG, LLP 705 S 9TH ST STE 305 TACOMA, WA 98405-4600	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION KIM O'NEAL, ASSISTANT ATTORNEY GENERAL
RUSSELL SNELL, LISTENING JUICE CORPORATION d/b/a SAMMY'S PIZZA/PETEY'S PUB 2025 GRANDVIEW DR W UNIVERSITY PLACE, WA 98466-2920	

DATED this 15th day of October, 2014, at Olympia, Washington.


Kevin McCarroll, Adjudicative Proceedings Coordinator

RECEIVED

SEP 26 2014

Liquor Control Board
Board Administration

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

In the Matter of the Denial of the liquor
license application for the privileges
of a Beer/Wine Restaurant with
Taproom for:

LISTENING JUICE CORPORATION dba
SAMMY'S PIZZA / PETEY'S PUB
2025 Grandview Dr. W.
University Place, WA 98466

Location address:
1308 N. "I" Street
Tacoma, WA 98403,

Appellant/Applicant.

License Application No. 410101
UBI 603 067 451 001 0002

OAH Docket No. 2013-LCB-0056
LCB No. 24,719

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND
INITIAL ORDER

I. ISSUE PRESENTED

Did the Liquor Control Board correctly deny the Appellant/Applicant's application for a liquor license as expressed in the Statement of Intent to Deny Liquor License dated February 13, 2013?

II. ORDER SUMMARY

The Liquor Control Board correctly denied the Appellant/Applicant's application for a liquor license as expressed in the Statement of Intent to Deny Liquor License dated February 13, 2013.

III. HEARING

3.1 **Hearing Date:** April 22, 2014

3.2 **Administrative Law Judge:** Terry A. Schuh

3.3 **Appellant/Applicant:** Listening Juice Corporation dba Sammy's Pizza / Petey's Pub

3.3.1 **Representative:** R. Randall Harrison, Attorney, Sadler Ladenburg LLP

3.3.2 **Witnesses:**

3.3.2.1 Dale G. Ladenburg

3.3.2.2 Russell E. Snell, President, Listening Juice Corporation

3.3.2.3 Harriet D. Montgomery, Production Manager, First American Title

3.4 **Agency:** Liquor Control Board

3.4.1 **Representative:** Kim O'Neal, Senior Counsel, Office of the Attorney General

3.4.2 **Witnesses:**

3.4.2.1 Lt. Alfred D. Anderson, Enforcement and Education Division, Liquor Control Board

3.4.2.2 Commander James L. Martinez, Enforcement and Education Division, Liquor Control Board

3.5 **Exhibits:** Exhibits 1 through 11 (offered by the Liquor Control Board) and Exhibits A, C, F, and G (offered by the Appellant/Applicant) were admitted.

3.6 **Post-hearing submissions:** By agreement, the record remained open for the submission of post-hearing briefs. The Liquor Control Board's brief was due on May 6, 2014. The Appellant/Applicant's response brief was due on May 13, 2014. The Liquor Control Board's reply brief was due on May 20, 2014. All three briefs were timely filed. The record closed on May 20, 2014, upon receipt of the reply brief.

IV. FINDINGS OF FACT

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

Jurisdiction

4.1 On August 17, 2012, Listening Juice Corporation dba Sammy's Pizza / Petey's Pub ("Sammy's") applied for a "beer/wine restaurant with taproom"

license ("liquor license"). Ex. 2, p. 1.

4.2 On February 13, 2013, the Liquor Control Board ("the Board") issued a Statement of Intent to Deny Liquor License, denying Sammy's' application. Ex. 1.

4.3 On or about March 25, 2013, Sammy's appealed the denial by filing a Request for Hearing: Response to Statement of Intent to Deny.

The Board measured the Sammy's/Lowell proximity

4.4 The Board visited the Sammy's premises as a function of processing Sammy's application for a liquor license. Testimony of Anderson.

4.5 Sammy's is located at 1308 N. "I" Street, situated on the southwest side of N. "I" Street, between N. 13th Street to the southeast and N. Steele Street to the west. Ex. 7, p. 5.

4.6 When visiting the premises, Lt. Anderson observed that the Lowell Elementary School ("Lowell") grounds were across the street from Sammy's. Testimony of Anderson.

4.7 Lowell is bordered on three sides by, consecutively, N. Yakima Ave., N. 12th Street, and No. "I" Street. Ex. 7, p. 5. N. Yakima Ave. runs northwest to southeast and forms the border of Lowell running from its northwest corner to its northeast corner. *Id.* N. 12th Street runs from northeast to southwest and forms the border of Lowell running from its northeast corner to its southeast corner. *Id.* N. "I" Street at this point runs northwest to southeast and forms the border of Lowell running from its southeast corner to its southwest corner. *Id.* The border of Lowell running from its southwest corner to its northwest corner is formed in part by N. 13th Street running northeast to southwest from Yakima approximately half way, where it terminates and resumes later on the southwest side of N. "I" Street. *Id.* The remaining border of Lowell at this point is private property and not precisely in line with N. 13th Street. *Id.*

4.8 N. Steele Street runs essentially north-south. Ex. 7, p. 5. Between N. 13th Street and N. Steele Street, N. "I" Street turns to a west-east orientation and then intersects N. Steele Street. *Id.* At the intersection with N. Steele Street, N. "I" Street becomes N. 21st Street. *Id.*

4.9 Before posting Sammy's liquor license application at the proposed premises on October 10, 2012, the Board measured Sammy's proximity to Lowell. See Ex. 7, p. 3. The Board used a rolling measuring device to measure the distance from the Sammy's public entrance closest to Lowell to the main

entrance to Lowell. Testimony of Anderson. The Board began at Sammy's front door which is on N. "I" Street. The Board crossed N. "I" Street to a paved walk that borders and parallels the Lowell playground. Ex. 11. The Board crossed N. "I" Street in the middle of the block rather than walking to an intersection or crosswalk to cross. Testimony of Anderson. The Board did so because it believed that doing so best satisfied the statutory direction to use the "most direct route". Testimony of Anderson. The Board always measures this way because that is the way the public would cross the street. Testimony of Anderson. Point in fact, the public was observed crossing the street in mid-block. Testimony of Ladenburg. The Board proceeded along the paved walk until the paved walk ended at a parking lot that serves Lowell. Ex. 11. The Board then continued on a sidewalk that bordered the parking lot until the Board reached the stairs leading to the main entrance to Lowell. The Board climbed the stairs and completed its measurement when it reached the main entrance doors. Testimony of Anderson; Ex. 11, pp. 7, 9. The distance measured on this route was less than 500 feet.

The Tacoma School District and Lowell objected

4.10 On October 10, 2012, Lt. Anderson posted notice on Sammy's premises advising the public that Sammy's had applied for a liquor license, announcing that Sammy's was within 500 feet of Lowell, and inviting public comment. Testimony of Anderson; Ex. 7, p. 3.

4.11 On October 15, 2012, the Tacoma School District filed notice with the Board that it objected to Sammy's being granted a liquor license due to its close proximity to Lowell. Ex. 3, p. 8.

4.12 On October 15, 2012, Lowell filed notice with the Board that it objected to Sammy's being granted a liquor license due to its close proximity to Lowell. Ex. 3, p. 9.

4.13 The Board also received an objection from St. Pat's Church. Testimony of Anderson. However, on October 18, 2012, Lt. Anderson measured and determined that the Church was more than 500 feet apart from Sammy's. Testimony of Anderson.

The Board re-measured the Sammy's/Lowell proximity

4.14 Commander Martinez returned to Sammy's to re-measure the original route. Testimony of Anderson. Commander Martinez re-measured *only* because Sammy's amended its application for a liquor license. Testimony of Martinez. In addition, Sammy's was considering alternative entrances that Sammy's hoped would place one of those entrances more than 500 feet from Lowell's main entrance. Testimony of Martinez. The Board measured those proposed

entrances as well. Testimony of Martinez. Apart from different starting points depending upon alternative entrances, the Board measured the same route it had measured previously. Testimony of Martinez.

4.15 The Board measured from a proposed side entrance to Sammy's. The result was 460 feet. Ex. 11, p. 10.

4.16 The Board measured from a proposed back entrance to Sammy's. The result was 496 feet. Ex. 11, p. 10.

Sammy's measured the Sammy's/Lowell proximity

4.17 Sammy's disputed the route measured by the Board in two basic regards. Testimony of Snell. First, the Board crossed N. "I" Street diagonally from the front entrance to Sammy's to the point at which the paved walk across Lowell ended at the sidewalk on N. "I" Street. *Id.* Sammy's believed that the Board should have crossed N. "I" Street either at the intersection of N. "I" Street and N. Steele Street (Note: N. "I" Street becomes N. 21st Street when it crosses N. Steele Street.) or at the T-intersection of N. "I" Street and N. 13th Street. *Id.* There are no crosswalks between Sammy's and those two intersections. *Id.* Moreover, neither of those intersections is controlled by a traffic control signal. Ex. G, pp. 5, 20, and 21. Second, the Board used the paved walk across Lowell as the route it measured. Testimony of Snell. Sammy's believed that the Board should have used sidewalks or alleyways as the route between Sammy's' public entrance and Lowell's main entrance. *Id.* With that in mind, Sammy's measured two alternative routes in late January 2013. Testimony of Ladenburg. Sammy's used a rolling measuring device similar to the one used by the Board. Testimony of Ladenburg; Testimony of Anderson; Ex. G, photo 1. Dale Ladenburg performed the measurements. Testimony of Ladenburg.

4.18 The first route Sammy's measured was similar to the route measured by the Board, using the paved walk across Lowell. Testimony of Ladenburg; Ex. G. However, there were two differences. First, Sammy's apparently did not measure from an entrance or proposed entrance. Rather, Sammy's measured from near the corner of the building at some point between the front entrance and the proposed side entrance. Testimony of Ladenburg; Ex. G, photo 3. Second, Sammy's did not cross N. "I" Street at a diagonal in the middle of the block. Instead, Sammy's crossed N. "I" Street where it intersects with N. 13th Street. Testimony of Ladenburg; Ex. G, photo 4. Sammy's measured this first route as 539 feet. Testimony of Ladenburg; Ex. G, photo 16.

4.19 The second route Sammy's measured began at Sammy's' front entrance. Testimony of Ladenburg; Ex. G. Mr. Ladenburg proceeded northwest-west on N. "I" Street until he reached the intersection with N. Steele Street. Testimony of

Ladenburg; Ex. G. He crossed N. "I" Street and followed N. Steele Street north until he intersected an alley on his right. Testimony of Ladenburg; Ex. G. He proceeded southeast on the alley until the alley ended at the Lowell parking lot, where he intersected with the routes which used the paved walk across Lowell. Testimony of Ladenburg; Ex. G. At that point he followed the same route to the main entrance to Lowell. Testimony of Ladenburg; Ex. G. Sammy's measured this second route as 969 feet. Testimony of Ladenburg; Ex. G, photo 34.

The Dave's/Lowell proximity

4.20 Dave's is also located on N. "I" Street, across a parking area from Sammy's, northwest of Sammy's. Ex. 5, p.19. Russell Snell estimates that Dave's is approximately 30 feet from Sammy's. Testimony of Snell. The record does not reflect the basis for that estimate.

4.21 The Board's records reflect that the Board determined that Dave's was more than 500 feet from Lowell. Ex. A. However, the Board has no record of what precisely was the proximity it measured between Dave's and Lowell or of what route was measured. Ex. A.

The Lowell passageway

4.22 The paved walk across Lowell which the Board used as part of the route in measured is entirely on Lowell grounds. Testimony of Montgomery. Where it intersects with N. "I" Street, it is bordered on its northwest side by private property and on its southeast side by Lowell playgrounds. Ex. 11, pp. 2, 5, 6. Where it intersects with the parking lot, it is bordered on its northwest side by Lowell grounds and buildings and on its northeast side by Lowell playgrounds. Ex. 11, pp. 5, 6, 7.

4.23 At one point, a warning sign is posted reminding pet owners to clean up pet waste. Testimony of Anderson; Ex. 11, p. 6. There was no sign that said use of the paved walk was restricted. Testimony of Anderson.

4.24 Lt. Anderson observed persons using the paved walk. Testimony of Anderson.

4.25 Some parents drop off their children where the paved walk intersects with N. "I" Street. Ex. 6, p. 2.

4.26 Some families use the playground on evenings and weekends. Ex. 6, p. 2.

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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 under WAC 314-07-070, chapter 34.05 RCW, and chapter 10-08 WAC.

Proximity

5.2 "The board may not issue a liquor license for either on-premises or off-premises consumption covering any premises not now licensed, if such premises are within five hundred feet of the premises of any tax-supported public elementary or secondary school measured along the most direct route over or across established public walks, streets, or other public passageway from the main entrance of the school to the nearest public entrance of the premises proposed for license, and if, after receipt by the school of the notice as provided in this subsection, the board receives written objection, within twenty after receiving such notice, from an official representative or representatives of the school within five hundred feet of said proposed licensed premises, indicating to the board that there is an objection to the issuance of such license because of proximity to a school." RCW 66.24.010(9)(a) (in pertinent part).

5.3 Here, all of the measurements produced by the Board placed the entrance to Sammy's – whether "front", "back", or "side" – within 500 feet of the main entrance to Lowell. Sammy's did not dispute the school entrance which the Board designated as the main entrance. Sammy's did not dispute the accuracy of the Board's measurements. Rather, Sammy's disputed the route selected by the Board for measurement. More particularly, Sammy's disputed the Board's interpretation of "most direct route" and "other public passageway".

Most direct route

5.4 Sammy's argued that the Board was required to cross the street only in a lawful manner and that crossing at other than an intersection or crosswalk was unlawful. In support of its assertion that the Board crossed unlawfully, Sammy's relied upon RCW 46.61.240, RCW 46.61.235, and WAC 308-330-415. Sammy's also observed that crossing other than at a crosswalk or intersection violated Tacoma Municipal Code. Sammy's did not cite to any provision in that code and I am not aware of any such provision. Moreover, the foregoing authority does not support Sammy's assertion either. Rather, pedestrians who cross in such manner "shall yield the right-of-way to all vehicles on the roadway". RCW

46.61.240(1). That means the crossing in such manner may be unwise and unsafe, but not lawful. The only occasion in which it is unlawful is “between adjacent intersections at which traffic-control signals are in operation”. RCW 46.61.240(4). That circumstance does not apply here. Accordingly, the Board’s route, which included crossing “I” Street in midblock and at an angle was not unlawful and not inconsistent with its responsibility to measure over the most direct route.

Other public passageway

5.5 Sammy’s argued that the concrete walk used by the Board as part of the route it measured for proximity was not a path contemplated by the statute because it was created by a public dedication or prescriptive easement, that it had to be public rather than private property, that it had to free from the control of Lowell, and that its use had to be more than merely permitted. The Board disagreed and argued that the fact that the public used the walk was sufficient to satisfy the statute. The statutory phrase at issue is “over or across established public walks, streets, or other public passageway”. See RCW 46.42.010(9)(a).

5.6 A tribunal may resort to statutory construction if statutory language is ambiguous. *Timberline Air Serv., Inc. v. Bell Helicopter-Textron, Inc.*, 125 Wn.2d 305, 312, 884 P.2d 920 (1994) (citing *Kadoranian v. Bellingham Police Dep’t*, 119 Wn.2d 178, 185, 829 P.2d 1061 (1992)).

5.7 “A statute is ambiguous if it can be reasonably interpreted in more than one way.” *Vashon Island Cmty. For Self-Gov’t v. State Boundary Review Bd.*, 127 Wn.2d 759, 771, 903 P.2d 953 (1995) (citing *Timberline Air Serv., Inc. v. Bell Helicopter-Textron, Inc.*, 125 Wn.2d 305, 312, 884 P.2d 920 (1994)).

5.8 Here, the parties interpreted an operative phrase in the statute differently. The differing interpretations are reasonable, at least on their face. Therefore, I characterize the statutory phrase as ambiguous and ripe for construction.

5.9 “All language within the statute must be given effect so that no portion is rendered meaningless or superfluous. A court does not glean the meaning of a particular word alone, but rather from the Legislature’s intent within the statute as a whole.” *Muckleshoot Indian Tribe v. Washington Department of Ecology*, 112 Wn. App. 712, 720, 50 P.3d 668 (2002).

5.10 “Ejusdem generis is a canon of statutory interpretation which provides that ‘where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated.’ For example, in a statute granting the Department of Conservation the authority to sell ‘gravel, sand, earth or other material’ from

state-owned land, the term 'other material' cannot include commercial timber harvested on state parkland because timber is not in the same general category as gravel, sand, and earth. Courts apply the doctrine only when a statute is ambiguous and contains the following characteristics: a) an enumeration of specific words that b) suggest a class, c) which is not exhausted by the enumeration, and d) is followed by a general reference." *Id.* at 725-726 (citations omitted).

5.11 "Under the rule of *ejusdem generis*, the general term 'other person' cannot be read to include all other persons, but it does include an 'other person' who is similar to the entities specified." *Sattler v. Northwest Tissue Center*, 110 Wn. App. 689, 693, 42 P.3d 440 (2002).

5.12 The statutory phrase at issue provides the following list: "established public walks", "streets", and "other public passageway". It is an enumeration of specific words ("established public walks" and "streets"), suggesting a class (paths used by the public) which is not exhausted by the enumeration (one can walk on paths other than "established public walks" and "streets", followed by a general reference ("other public passageway"). Thus, the rule of *ejusdem generis* applies.

5.13 Using this rule, I hold that "other public passageway" contemplated by the statute means a path similar to "established public walks" and "streets". "Established public walks" and "streets" have two things in common. One, they are indeed formally designated by dedication or prescriptive easement. Two, they are used by the public as paths. The statute at issue is not determining or even contemplating legal rights of public travel. Rather, the statute at issue is measuring the proximity of two locations as the public travels between them. Moreover, "passageway" means "a way that allows passage to or from a place or between two points". Webster's Third New International Dictionary, p. 1650 (1971). Accordingly, I hold that "other public passageway" means a path the public uses by permission but not necessarily as a matter of right. Here, the public uses the Lowell walk as demonstrated by witness observation and the assertion in at least one letter that the public uses the walk to access the playground at all hours any day of the week. Moreover, that use is recognized by the school district by virtue of the sign requiring owners to pick up waste deposited by their pets, a sign certainly not directed to the school population itself. Further, the use is permitted since the school district could install a gate, limiting use of the walk to school hours only. Finally, I am not persuaded by the argument that the school limited or forbade access by Sammy's and/or representatives of the Board. That action simply flowed from the fact that neither Sammy's nor the Board was using the walk in the permitted fashion. Moreover, they were accessing parts of the school ground (the steps to the entrance) that were off the permitted walk. Accordingly, the Lowell walk was an

“other public passageway” as contemplated by RCW 66.24.010(9)(a).

5.14 Therefore, I hold that the Board’s use of the walk through Lowell for measuring proximity was consistent with the statutory provision. Thus, the Board’s measurements establishing that Sammy’s is within 500 feet of Lowell were correct.

Objection

5.15 The Board may not issue a license to an applicant whose premises are within a 500-foot proximity to a public school if the school objects “because of proximity” to the school. RCW 66.24.010(9)(a).

5.16 Both the Tacoma School District and Lowell objected to Sammy’s licensure due to its close proximity to the school. Sammy’s argued that the school district and school’s objections to licensure were improperly motivated, implying that the true motivation was a personal conflict with Sammy’s owner. If this was so, and assuming for the sake of argument that it was relevant, it was Sammy’s Burden to prove. Sammy’s did not do so. Moreover, nothing in the statute directs the Board to question or investigate the motivation of an objection. If a school within 500 feet objects based on proximity, the Board may not issue a license. Here, the school and school district objected specifically based on proximity. Therefore, Sammy’s argument regarding motivation of the objections is not persuasive.

Constitutional arguments

5.17 Sammy’s raised several constitutional arguments. Some arguments addressed the constitutionality of the statute itself. Some arguments suggested that certain conduct by the Board violated Sammy’s constitutional rights. For example, Sammy’s argued that the Board was obliged to preserve records of its consideration of a neighboring business’s liquor license application, particularly how proximity was measured. However, an Administrative Law Judge lacks authority to consider the constitutionality of a statute or regulation. *Yakima County Clean Air Authority v. Glascom Builders, Inc.*, 85 Wn.2d 255, 257, 534 P.2d 33 (1975); *Bare v. Gorton*, 84 Wn.2d 380, 383, 526 P.2d 379 (1974 (citations omitted)). Further, Sammy’s argument regarding the Board’s action or inaction did not establish how the Board’s denial of Sammy’s liquor license application was inconsistent with the statutory provision at issue here, namely RCW 66.24.010(9)(a). Sammy’s relied heavily on *Prestige Station, Inc. v. Washington Liquor Control Board*, 33 Wn.App. 669, 657 P.2d 322 (1982). The issue before the *Prestige* court was the applicability of judicial review of the case. Sammy’s appeal will not be ripe for judicial review until if and when the Board issues a Final Order aggrieving Sammy’s. RCW 34.05.534. Moreover, the

license denial in *Prestige* was predicated upon a school's objection to generic commercial activity near the school, not to a liquor license specifically, and did not invoke the part of the statute at issue here. Thus, Sammy's reliance on *Prestige* is not apt and not persuasive. Accordingly, I decline to reach Sammy's constitutional arguments.

Conclusion

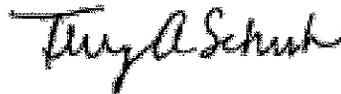
5.18 Therefore, I hold that the Board's decision to deny Sammy's application for a liquor license should be affirmed.

INITIAL ORDER

IT IS HEREBY ORDERED THAT:

The Liquor Control Board's decision to deny the Appellant/Applicant's application for a liquor license as expressed in the Statement of Intent to Deny Liquor License dated February 13, 2013 is **AFFIRMED**.

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



Terry A. Schuh
Senior 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 or the assistant attorney general may file a petition for the 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.

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 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 SE
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 requested. RCW 34.05.470 and 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).

CERTIFICATE OF SERVICE IS ATTACHED

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 2013-LCB-0056

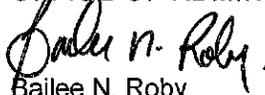
I certify that true copies of this document were served from Tacoma, Washington upon the following as indicated:

<p>Russell Snell President Listening Juice Corporation Sammy's Pizza / Petey's Pub 2025 Grandview Drive West University Place, WA 98466-2920 Respondent</p>	<p><input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> First Class, postage prepaid, Certified mail, return receipt</p>
<p>Russell Snell President Listening Juice Corporation Sammy's Pizza / Petey's Pub 1308 N I St Tacoma, WA 98403-2118 Respondent</p>	<p><input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> First Class, postage prepaid, Certified mail, return receipt</p>
<p>R. Randall Harrison Of Counsel Ladenburg Law, PLLC 705 S 9th St Ste 305 Tacoma, WA 98405-4600 Fax: (253) 295-2326 Respondent Representative</p>	<p><input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> First Class, postage prepaid, Certified mail, return receipt</p>
<p>S. Kim O'Neal Senior Counsel Office of the Attorney General 1125 Washington St SE PO Box 40100 Olympia, WA 98504-0100 Fax: (360) 664-0229 Agency Representative</p>	<p><input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> First Class, postage prepaid, Certified mail, return receipt</p>

<p>Kevin McCarroll Adjudicative Proceedings Coordinator Liquor Control Board 3000 Pacific Ave SE PO Box 43076 Olympia, WA 98504-3076 Fax: (360) 586-3190 Department Representative</p>	<p><input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> First Class, postage prepaid, Certified mail, return receipt</p>
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Date: Friday, July 18, 2014

OFFICE OF ADMINISTRATIVE HEARINGS



Bailee N. Roby
Legal Secretary

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

In the Matter of the Denial of the liquor license application for the privileges of a Beer/Wine Restaurant with Taproom for:

OAH Docket No. 2013-LCB-0056

Listening Juice Corporation
Sammy's Pizza/Petey's Pub
2025 Grandview Dr W
University Place, WA 98466-2920

LCB No. 24,719

Location Address: 1308 N I St
Tacoma, WA 98403

NOTICE OF APPEAL

LICENSEE.

License Application No. 410101
UBI: 603 067 451 001 0002

Comes now the Appellant/Applicant and submits the following Notice of Appeal. The issues in this case turn on several factual and legal issues. Therefore, I first list the relevant facts that were not properly concluded by the Hearing Examiner at the hearing of April 22, 2014. Next, I address the legal issues.

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WSLCB MS: 43075

AUG 08 2014

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Relevant Facts Not Properly Identified

Section 4.9 Contrary to the statement (referred to as Testimony of Anderson) that the “Board always measures this way because that is the way the public would cross the street”, Officer Martinez testified that he measured several times in different ways when cars were parked requiring him to adjust his route. He also testified that if too many cars were parked he would come back and measure at night. Finally, he testified that he did not know how other officers measured when specifically asked about the determination in the Board’s record that the neighbor 30 feet away was outside 500 feet.

The explanation that the Board’s measurement was along the paved walk... then” continued on a sidewalk that bordered the parking lot until the Board reach the stairs leading to the main entrance to Lowell, is wrong. See attached e-mail and photo in the record of the Hearing Examiner as Ex. 6 depicting the actual route used by Officer Martinez-the dotted line is shown on both N. I Street and N. 13th Street as diagonally cutting across a public street. This was also directly the testimony of Officer Martinez.

Section 4.13 Lt. Anderson testified that when he measured the church he used the cross walk rather than the more direct route cutting diagonally across the street because he knew it was going to be more than 500 feet.

Sections 4.22 to 4.26 fails to reflect the testimony of Officer Martinez that the School District asked them to not go on school property without permission. See attached e-mails in the record as Ex 6. This further bolsters that this is not a public walkway rather private school property and not the correct way to measure.

Legal Issues

Section 5.4 The Hearing Examiner is wrong. There is no standard if the individual officer measuring can cross at different spots in a road. It only makes sense that the Board adopt the legal crossing as the standard and order a re-measure in this case.

Section 5.13 The phrase “other public passageway” should not be interpreted as private property the Board was asked to stay off without permission.

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1 Section 5.17 The Board should properly consider all constitutional arguments raised by
2 Appellant.

3 This request is respectfully submitted this 6th day of August, 2014.
4

5 
6 R. Randall Harrison
7 Sadler Ladenburg, LLP
8 WSBA # 16514
9

10 CERTIFICATION OF SERVICE IS ATTACHED
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PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

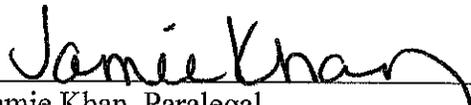
 X ABC Legal Messenger

Kim O'Neal
Attorney General of Washington
1125 Washington Street SE
Olympia, WA 98504-0100

Kevin McCarroll
Liquor Control Board
3000 Pacific Avenue SE
Olympia, WA 98504

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 6th day of August, 2014, at Tacoma, WA



Jamie Khan, Paralegal

Et 6

TAB 3

Jones, Mistie R

From: Martinez, James L
Sent: Tuesday, December 11, 2012 4:45 PM
To: Jones, Mistie R
Cc: Nordhorn, Justin T; Reinke, Lisa A; Anderson, Alfred D
Subject: Distance for Sammy's Pizza #410101
Attachments: Distance from Sammy's Pizza to Elementary School.pdf

The distance from Sammy's Pizza to the elementary school is still under five-hundred feet.

Please see attached photo.

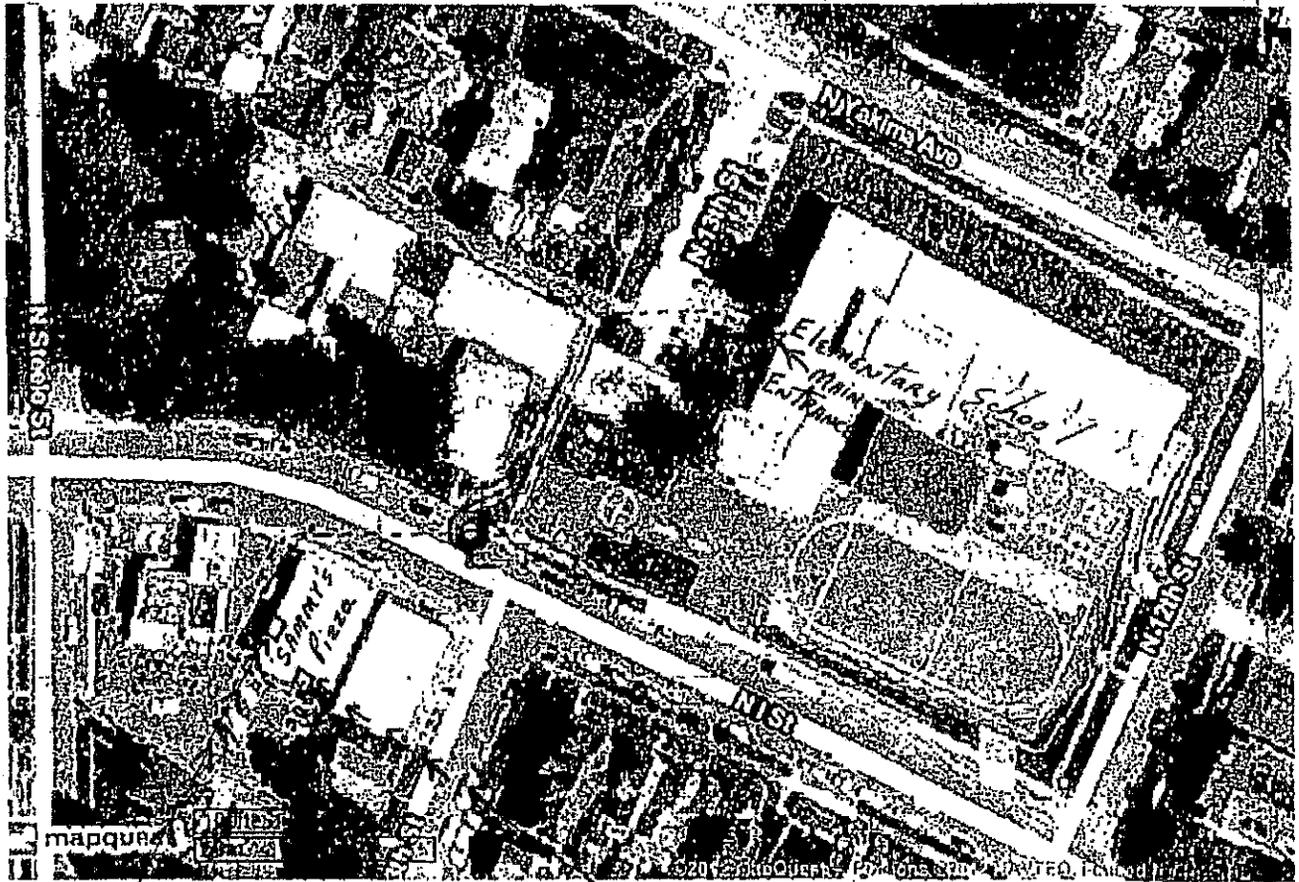
Mr. Snell walked along with me as I measured the distance utilizing the measuring devise. The measurement was conducted twice, once from the back door entrance, which was at 496 feet. The second measurement was from the proposed new public entrance, which was at 460 feet. Both measurements were measured along the most direct route over or across established public walks, streets, or other public passageways between the entrance of the premises and the main entrance of the school.

Jim Martinez, Liquor Enforcement Officer
WA State Liquor Control Board
Tacoma Enforcement Office
6240 Tacoma Mall Blvd, Ste 208
Tacoma, WA 98409-6819

(253) 471-4581
jlm@liq.wa.gov



Top of:
308 N I St
Tacoma, WA 98403-2118



Proposed new
public entrance for Premises
460 feet to
MAIN ENTRANCE of School

BACK door ENTRANCE for Premises
496 feet
to MAIN ENTRANCE of School

Anderson, Alfred D (LCB)

From: SHANNON MCMINIMEE [SMCMINI@Tacoma.K12.Wa.US]
Sent: Friday, January 11, 2013 7:39 AM
To: Anderson, Alfred D (LCB); Martinez, James L (LCB)
Cc: Jones, Mistie R (LCB); ROBERT DUKE
Subject: Re: Sammy's Pizza/Peety's Pub

Officer Martinez and Lt. Anderson,

Can you answer as to why you did not advise the school and district in advance of the time of taking measurements as had been previously requested and agreed to?

Can you advise as to if you made any effort to obtain permission to be on campus? Did you make any effort verify that the measurements at issue were being taken from the school's main entrance? Based on what was observed, the measurement taken was not from the main door of the school as is called for under statute. Can you identify why you did not measure from the main entrance?

Best regards,

Shannon McMinimee

On Jan 11, 2013, at 7:30 AM, "Jones, Mistie R" <MRJ@LIQ.WA.GOV> wrote:

For that I would have to refer you to the officers that were there. They are Officer Jim Martinez and Lieutenant Al Anderson. I have copied them in this e-mail.

Mistie Jones
License Investigator
(360)664-1620 phone
(360)753-2710 fax
www.liq.wa.gov

From: SHANNON MCMINIMEE [mailto:SMCMINI@Tacoma.K12.Wa.US]
Sent: Friday, January 11, 2013 7:24 AM
To: Jones, Mistie R
Cc: ROBERT DUKE
Subject: Re: Sammy's Pizza/Peety's Pub

Ms. Jones,

Any reason why the WSLCB did not advise the school and district in advance as had been previously requested? Any reason why the agents present made no effort to obtain permission to be on campus

and verify that the measurements at issue were being taken from the school's main entrance? I ask because based on what was observed, the measurement taken was not from the main door of the school as is called for under statute.

Best regards,

Shannon McMinimee

On Jan 11, 2013, at 7:20 AM, "Jones, Mistie R" <MRJ@LIQ.WA.GOV> wrote:

Mr. Snell was accompanied by two Liquor Enforcement Officers on Wednesday to conduct a remeasurement.

Mistie Jones
License Investigator
(360)664-1620 phone
(360)753-2710 fax
www.liq.wa.gov

From: SHANNON MCMINIMEE [<mailto:SMCMINI@Tacoma.K12.Wa.US>]
Sent: Thursday, January 10, 2013 3:43 PM
To: Jones, Mistie R
Cc: ROBERT DUKE
Subject: Sammy's Pizza/Peety's Pub

Ms. Jones,

I am writing as it has come to my attending that Guy Snell and two other individuals came onto Tacoma School District property (the Lowell Elementary School campus) yesterday without having obtaining prior permission or approval to be on campus from the Principal. Can you advise as to if any of the individuals with Mr. Snell were WSLCB employees, and if so, why no effort was made to obtain permission to be on school grounds? If no WSLCB employees were with Mr. Snell, can you please convey to Mr. Snell that he needs to obtain Mr. Duke's permission to be on the Lowell grounds when not present to attend an event, meeting, or function that is otherwise open to the public?

Thank you,

Shannon McMinimee
General Counsel
Tacoma Public Schools

RECEIVED

AUG 15 2014

Liquor Control Board
Board Administration

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

IN THE MATTER of the Denial of the
Liquor License Application for a
Beer/Wine Restaurant with Taproom
for:

LISTENING JUICE CORPORATION
d/b/a SAMMY'S PIZZA/PETEY'S PUB
2025 Grandview Drive West
University Place WA 98466

Location:
1308 North I Street
Tacoma, WA 98403,

Applicant.

License Application No. 410101

NO. OAH No. 2013-LCB-0056
LCB NO. 24, 719

RESPONSE TO PETITION FOR
REVIEW

I. INTRODUCTION

The Board Enforcement officers followed their normal procedures and complied with RCW 66.24.010(9) in doing the measurements to determine whether the Sammy's Pizza location proposed for a liquor license was within 500 feet of an elementary school that is directly across the street from the location. There is nothing in the record that justifies modifying the Administrative Law Judge's initial order affirming the denial of the Sammy's Pizza liquor license application, and that decision should be affirmed.

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II. STATEMENT OF FACTS

The facts in this case were not substantially disputed. The owner of Sammy's Pizza was present for and participated in most of the measurements that Lieutenant Al Anderson and Commander James Martinez of the Liquor Board Enforcement Division made. He does not dispute that their measurements were correct for the route that they measured. The route the Enforcement Officers measured was from the front, proposed side, and possible back entrances of the Sammy's Pizza location to the main door of the elementary school directly across the street. The officers both testified that they measured the distances in the same manner as they always do, and that they believed they were complying with the statute directing how this measurement is to be made.

By statute, the measurement to determine whether a proposed location for a liquor license is within 500 feet of a school is to be:

measured along the most direct route over or across established public walks, streets, or other public passageway from the main entrance of the school to the nearest public entrance of the premises proposed for license....

RCW 66.24.010(9)(a).

The officers measured the distance by crossing the street in the most direct way, which was in the middle of a block. They both testified that this is the way they always measure such distances, and that other Liquor Enforcement Officers do as well.

The Applicant argued both that the walkway that appears to be a public sidewalk is actually property owned by the school, not by the City; and, that the measurement must be made using a crosswalk, rather than directly across the street to the school. Measurements the Applicant and his agents made were both longer than the measurements the Liquor Officers made because they used a less direct, longer route to measure. The Applicant's route does not comply with the statutory language directing how the measurement should be made, and using his proposed methods would be impractical, resource-intensive and contrary to the way most people would travel between the two locations.

1 The Applicant argues that Finding of Fact 4.9 is incorrect because the officers did not
2 both testify that the way they measured was the way Board officers always measure the
3 distance. That argument is incorrect. Lt. Anderson did testify that he measured the distance
4 the way Board officers always measure the distance, and Commander Martinez also testified
5 that he used the same procedure all Board officers use. They testified they measured the
6 distance by the most direct route, the way people would normally travel between the two
7 locations, and that they crossed the street by the most direct route, not at a corner or crosswalk
8 if that would be less direct. Even the Applicant's witness, Mr. Ladenburg, who made
9 alternate measurements for the Applicant, testified that he observed people, with children,
10 crossing the street in the middle of the block, not at the crosswalk.

11 Commander Martinez testified that one of the measurements he made of the distance
12 was slightly different because of the presence of a parked car in the area of the measurements
13 during one of the measurements, but not another. He testified that none of the measurements
14 resulted in finding that the proposed licensed location was more than 500 feet from the front
15 entrance of the school. The testimony the Applicant references about what he describes as
16 "too many cars parked," came in answer to a hypothetical question posed by the Judge. The
17 Judge asked Commander Martinez what he would do if there were a solid, bumper-to-bumper
18 line of cars along the street he needed to cross to do the measurement. Commander Martinez
19 testified that he had never encountered such a situation before. When asked what he would do
20 if he did face such a situation, he testified that he would likely return at a different time to
21 make the measurement. When the Judge asked what he would do if the solid line of cars
22 remained present when he returned, Commander Martinez testified that he would likely return
23 in the evening to do the measurement. When the Judge asked whether he would make the
24 measurement in the evening even though things would be closed at that time, Commander
25 Martinez testified that liquor officers frequently do their work in the evening hours and that
26 liquor licensed establishments are often open and fully operating at such times.

1 The issue of how a neighboring grocery business had received an off-premises liquor
2 license six years before when it should have been considered to be within 500 feet of the
3 school as well was raised repeatedly by the Applicant. The Board staff's response was that it
4 had no bearing upon the decision whether to grant the Applicant's request for a hearing.
5 Board staff searched the records in response to Applicant's public records request and could
6 find only one document regarding the processing of the neighboring business's license
7 application—a posting notice that stated the business was not within 500 feet of the school.
8 There was no other document or record found. The Enforcement officer who had handled the
9 measurement no longer worked for the Board, and none of the current Enforcement officers
10 knew where he could be reached. Nothing in this record suggests that the Liquor officers
11 treated the Sammy's Pizza applicant differently than any other applicant. Commander
12 Martinez did not testify that he did not know how other officers measured the distance. He
13 testified that he did not know how the distance between the school and the neighboring
14 business was measured because no records remained.

15 There is no way now to know the circumstances of the neighboring business's
16 application process. The Applicant certainly could not show that the measurement was done
17 in a different way than the officers testified to in this case. Perhaps a mistake was made in the
18 measurement. Perhaps the officer mistakenly concluded the distance was more than 500 feet
19 and no measurement was necessary. Perhaps the school did not object to that application as it
20 did to this Applicant's request for a license. At the worst, perhaps Board staff mistakenly
21 granted the neighboring business a license. That would not entitle this Applicant to be
22 granted a license when his proposed location is demonstrably within 500 feet of a public
23 elementary school which did object to the issuance of the license.

24 Finding of Fact 4.9 accurately describes the way the Liquor Officers measured the
25 distance between the proposed licensed location and the main entrance of Lowell Elementary
26 School. The officers did cross the street in the middle of the block to a paved walk that

1 borders and parallels the school playground. While the Judge did not specify that the officers
2 crossed the street diagonally, that does not make his description of the route wrong. Changing
3 the description of the measurement to include the fact that when the officers crossed the street
4 they did so in a diagonal line would add nothing significant to the facts.

5 Finding of Fact 4.13 is correctly stated in the Judge's decision. Lt. Anderson testified
6 that when he measured the distance between the school and St. Patrick's Church he used the
7 crosswalk because that was the most direct route for that measurement. He also testified that
8 he knew before he measured that the distance between the school and the church was going to
9 be more than 500 feet no matter how it was measured, so he wasn't concerned about the route
10 used. Again, nothing about this claimed error would affect the basis for the decision or
11 provide any basis for reversing the Initial Order.

12 Findings of Fact 4.22 through 4.26 are correctly stated, and they accurately reflect the
13 testimony at the hearing. The Judge clearly concluded that whether or not school officials
14 could object to particular individuals coming onto school property at certain times, the
15 walkway used for the measurement appears to be a public sidewalk and is used that way by
16 the general public without objection by school officials. The e-mails attached to the
17 Applicant's brief on appeal reflect concern over unidentified males on "school grounds"
18 during school hours. The messages do not identify specifically where the men were or what
19 the objection to their presence was other than that the principal had not been warned they
20 would be present. The messages also reflect at least as much concern, if not more, with the
21 way the measurement was being done as with the men's presence to do the measurement. The
22 evidence shows that measurements had been done on a number of occasions. Perhaps school
23 officials were disturbed by the number of times people had been there to do measurements.
24 Perhaps it was the presence of three men together that caused people at the school to be
25 concerned. There is no way to know from these messages what caused the concern. The
26 testimony clearly showed that the public walkway the Liquor officers used as part of their

1 route for the measurement appeared to be a public sidewalk and was used that way by the
2 public. As the Judge noted, there was a sign (as there is on other public sidewalks) warning
3 people to clean up after their pets when using the sidewalk. There was no obstruction, fence
4 or other barrier to the public using the walkway, and there were photographs in evidence
5 showing the public using the walkway as a sidewalk as well as the observations of several
6 witnesses. The cited messages do not demonstrate that the walkway was private school
7 property or that considering it a public walk or public passage was incorrect.

8 Conclusion of Law 5.4 correctly construes the applicable statute regarding the route to
9 be used for the measurement. The Applicant argued that the measurement must be made
10 using a crosswalk that is available to cross I Street. The only statutory provision that governs
11 the Board's decision to deny a license because of a prohibited proximity to a public school is
12 RCW 66.24.010(9)(a). That statute directs that the measurement be made over "the most
13 direct route over or across established public walks, streets, or other public passageway."
14 RCW 66.24.010(9)(a). Nothing about that language indicates that a crosswalk must be used if
15 it is available. The direction to use "the most direct route" supports the Liquor Officers' route
16 crossing I Street in the middle of the block. Although there was some criticism of their choice
17 to cross the street diagonally, there is nothing in this record to establish that simply crossing
18 the street in a straight line but not at the crosswalk would result in a measurement greater than
19 500 feet, and the Applicant's representatives did not make that argument at hearing. The
20 statute says "the most direct route," not "the most direct route using a legal crossing." If the
21 intent had been to require a crossing at a corner or a controlled intersection or a "safe"
22 crossing, the statute could have used that language. The most direct route is the one the
23 officers used.
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1 The Applicant's own witness who made the additional measurements admitted that
2 each time he was at the location that members of the public, with children, were crossing
3 I Street between the school and the area of the Applicant's business in the middle of the block,
4 not at the corner crosswalk. The intent of the statute is to use the path that members of the
5 public, and especially children, use. The Liquor Officers' measurement using a direct route
6 across the street is the correct route in compliance with the statute.

7 Conclusion of Law 5.13 correctly construes the statutory language regarding "other
8 public passageway" in RCW 66.24.010(9)(a) as applied to the route the officers used for their
9 measurement to the main entrance of the school. As discussed above, the e-mail messages the
10 Applicant argues were a direction to stay off the apparently public walkway without school
11 permission are not the clear prohibitions against using the public walkway that Applicant
12 would like to portray. The Judge pointed out that in doing the measurements the men were
13 likely not using the walkway as school officials intended and were accessing parts of school
14 property off of the permitted walk. The Judge correctly dismissed the argument that the
15 walkway is across property that a title report shows was a vacated street which the School
16 District, as the adjacent property owner, holds title to. Conclusion of Law 5.13 correctly
17 construes the statutory language about public passageway to mean ways apparently open to
18 the public, used by the public and with no apparent barriers to use by the public.

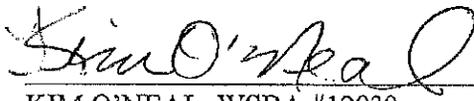
19 III. CONCLUSION

20 The Applicant has shown no factual or legal basis for reversing the Initial Order. He
21 has no legal right to a liquor license, and his location is within 500 feet of a publicly supported
22 elementary school, which has objected to the issuance of the license. The school is entitled to
23 the benefit of the statutory requirement that the Board not grant this license. Furthermore, it is
24 only because of the statute's requirement that the distance be measured between the school's
25 main door and the business public entrance that this Applicant even has an argument to make.
26

1 The play area of the school is right across the street and is much closer to the Applicant's
2 location than the school's main entrance. The Applicant received the benefit of the statute's
3 directed measurement, and he cannot complain now that he wants additional distance added
4 for his benefit. The Liquor Officers followed a route that complies with the statute as
5 construed by the Presiding Officer, and the decision to deny this license should be affirmed.

6 DATED this 15th day of August, 2014.

7
8 ROBERT W. FERGUSON
Attorney General

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10 

11 KIM O'NEAL, WSBA #12939
12 Senior Counsel
13 Attorneys for Washington State Liquor
14 Control Board Enforcement Division
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