

**BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD**

IN THE MATTER OF:

ES INVESTMENTS, INC.  
d/b/a CLEAR LAKE MARKET  
23416 HIGHWAY 99 STE B  
EDMONDS, WA 98026

APPLICANT

LICENSE APPLICATION NO. 357246  
UBI: 602 764 839 001 0004

OAH NO. 2014-LCB-0114  
LCB NO. L-25,103

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 dated June 12, 2014 asserting that the Applicant did not meet the requirements of the definition of trade area because there was at least one location actively licensed at the time of application within twenty-miles of the Applicant's location.
2. A timely request for a hearing was received from the Applicant.
3. On December 16, 2014, a hearing was held before Administrative Law Judge Terry A. Schuh with the Office of Administrative Hearings.
4. At the hearing, the Applicant was represented by President Seoung Young Lee of ES Investments, Inc. d/b/a Clear Lake Market and Assistant Attorney General Aryna Anderson represented the Licensing Division of the Board.

5. On March 4, 2015, Administrative Law Judge Terry A. Schuh issued an Initial Order, affirming the decision to deny the Applicant's license application as expressed in the Statement of Intent to Deny Liquor License.

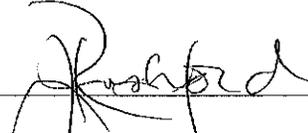
6. No Petition for Review was received.

7. The entire record in this proceeding was presented to the Board for final decision, and the Board having fully considered said record and being fully advised in the premises; NOW, THEREFORE, IT IS HEREBY ORDERED that the Statement of Intent to Deny Liquor License for case L-25,103 in this matter is ADOPTED.

IT IS HEREBY FURTHER ORDERED that the liquor license application for the added privileges of Spirits Retailer for ES Investments Inc. d/b/a Clear Lake Market is DENIED. This decision does not affect the Licensee's current license for Beer/Wine Sales for Off-Premises.

DATED at Olympia, Washington this 12<sup>th</sup> day of MAY, 2015.

WASHINGTON STATE LIQUOR CONTROL BOARD

  
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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**

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May 12, 2015

Seoung Y. Lee, President  
ES Investments, Inc  
d/b/a Clear Lake Market  
23416 Highway 99 Ste B  
Edmonds, WA 98026-9328

Aryna Anderson, 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: ES Investments, Inc  
TRADE NAME: Clear Lake Market  
LOCATION: 12689 SR9 Clearlake, WA 98235  
LICENSE APPLICATION NO. 357246  
LCB HEARING NO. L-25,103  
OAH NO. 2014-LCB-0114  
UBI: 602-764-839-001-0004

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', written over a white background.

Kevin McCarroll  
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Becky Smith, Licensing Director, WSLCB  
Sharon Hendricks, Policy and Compliance Manger, WLSCB  
Linda Thompson, Customer Service Supervisor, WSLCB

**WASHINGTON STATE LIQUOR CONTROL BOARD**

IN THE MATTER OF:

ES INVESTMENTS, INC  
d/b/a CLEAR LAKE MARKET  
12689 SR9  
CLEARLAKE, WA 98235

APPLICANT

LICENSE APPLICATION NO. 357246  
UBI: 602-764-839-001-0004

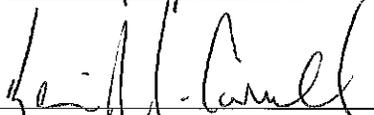
LCB NO. L-25,103  
OAH NO. 2014-LCB-0114

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 electronic mail for WSLCB offices, and Campus Mail via Consolidated Mail Services for state offices on the date below to:

SEOUNG Y. LEE, PRESIDENT ES INVESTMENTS, INC d/b/a CLEAR LAKE MARKET 23416 HIGHWAY 99 STE B EDMONDS, WA 98026-9328	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION ARYNA ANDERSON, ASSISTANT ATTORNEY GENERAL
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DATED this 12<sup>th</sup> day of MAY, 2015, at Olympia, Washington.

  
Kevin McCarroll, Adjudicative Proceedings Coordinator

**STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS  
LIQUOR CONTROL BOARD**

In the matter of:

ES Investments, Inc. dba Clear Lake  
Market,

Location Address:  
12689 SR 9  
Clear Lake, WA 99235,

Applicant.

License Application No. 357246  
UBI No. 602 764 839 001 0004

Docket No. 2014-LCB-0114  
LCB No. L-25,103

**INITIAL ORDER**

**RECEIVED**

**MAR 06 2015**

Liquor Control Board  
Board Administration

**TRANSLATION:** The Applicant may obtain a Korean translation of this order at no expense by calling Evergreen Interpreting Services at 360-844-5329, Monday through Friday, 8:00 a.m. to 5:00 p.m.

**1. ISSUES PRESENTED**

1. Is the Applicant's proposed location within 20 miles travel distance of a spirits retail licensed location?
2. If so, was the Liquor Control Board correct to deny on that basis the Applicant's application for a spirits retail license?

**2. ORDER SUMMARY**

1. The Applicant's proposed location is within 20 miles travel distance of a spirits retail licensed location.
2. Accordingly, the Liquor Control Board was correct to deny on that basis the Applicant's application for a spirits retail license.

**3. HEARING**

1. Hearing Date: Tuesday, December 16, 2014
2. Administrative Law Judge: Terry A Schuh

INITIAL ORDER  
Docket No. 2014-LCB-0114  
8500-LCB

OAH: (800) 583-8271  
Page 1 of 10

3. Licensee/Applicant: ES Investments, Inc. dba Clear Lake Market
  1. Representative: Seoung Young Lee, President
  2. Witness: Molly Johnson, Manager
  
4. Agency: Liquor Control Board
  1. Representative: Aryna Anderson, Assistant Attorney General
  2. Witness: Sharon Hendricks, Liquor Control Board
  
5. Exhibits: The administrative law judge admitted exhibits 1 through 8 and A through E.
  
6. Kun Park served as Korean/English interpreter.
  
7. Linda Thompson appeared as an observer on behalf of the Liquor Control Board.
  
8. By agreement with the parties, the record remained open until January 7, 2015, for the parties to submit post-hearing briefs.

#### 4. FINDINGS OF FACT

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

##### Jurisdiction

1. On June 13, 2014, the Liquor Control Board ("the Board") served by U.S. Mail on ES Investments, Inc., dba Clear Lake Market ("Clear Lake Market") the Statement of Intent to Deny Liquor License dated June 12, 2014. Ex. 2.
  
2. On June 21, 2014, the Board received Clear Lake Market's request for a hearing to appeal the denial of its application for a spirits retail license. Ex. 1, p. 3.

##### Clear Lake Market

3. Clear Lake Market is one of the oldest grocery stores still operating in Skagit County. Testimony of Johnson; Testimony of Lee; Ex. 5. It serves the residents of Clear Lake and Day Creek. Testimony of Lee; Ex. 5.
  
4. Clear Lake Market has had a beer/wine grocery store liquor license since 2009. Ex. 2, p. 2; Ex. 7; Ex. 8.

5. Clear Lake Market operates less than 10,000 square feet of retail space. Testimony of Hendricks.
6. Clear Lake Market is accessible by automobile. Testimony of Hendricks. However, driving from Clear Lake to Mt. Vernon or Sedro Woolley is not an easy task because of local road conditions. Testimony of Johnson; Ex. 5. Many residents of Clear Lake walk or ride bicycles. Testimony of Johnson.
7. Clear Lake Market's customers want the store to sell spirits. Ex. 5; Ex. D.
8. Clear Lake Market applied for a spirits retail license on March 31, 2012. Testimony of Hendricks.

The Board processed Clear Lake Market's application

9. In 2012, 160 of the applicants for spirits retail licenses operated less than 10,000 square feet of retail space. Testimony of Hendricks.
10. The legislature provided that applicants for spirits retail licenses that operated less than 10,000 square feet of retail space could be licensed if there were no other licensees within the trade area of the applicant. Testimony of Hendricks. However, the legislature did not define "trade area", leaving that task to the Board. Testimony of Hendricks. So, the Board held those 160 applications until it defined "trade area". Testimony of Hendricks. Those applicants were allowed to withdraw their applications if they wished to do so rather than wait. Testimony of Hendricks. Once the Board defined "trade area", it applied the definition to each of the applicants, including Clear Lake Market. Testimony of Hendricks.
11. When Ms. Hendricks processed Clear Lake Market's application, she observed that Clear Market operated less than 10,000 square feet of retail space. Testimony of Hendricks. Therefore, she used the Board's computerized mapping tool to determine if other spirits retail licensees operated within a 20 mile radius of Clear Lake Market. Testimony of Hendricks. Ms. Hendricks discovered 20 such licensees. Testimony of Hendricks; Ex. 4.
12. Next, Mr. Hendricks reviewed the license for each of those licensees. Testimony of Hendricks. She determined that one licensee no longer operated. Testimony of Hendricks; Ex. 4. She determined that the Board had licensed 18 of the 20 proximate licensees *after* Clear Lake Market applied. Testimony of Hendricks; Ex. 4. She discovered that the Board had licensed Costco, the remaining

proximate licensee, on March 21, 2012, 10 days before Clear Lake Market applied. Testimony of Hendricks; Ex. 4 p. 3. Costco is 8.09 miles from Clear Lake Market. Ex. 4, p. 3.

13. Based upon the timing of Costco's license and its proximity, Ms. Hendricks determined that Clear Lake Market did not meet the definition of "trade area". Testimony of Hendricks. So she considered whether Clear Lake Market met the exception to the 20 mile travel distance element of the "trade area" definition, that exception being that the mode of travel was other than by automobile. Testimony of Hendricks. She determined that Clear Lake Market was accessible by automobile and so did not meet the exception element. Testimony of Hendricks.
14. The Board issued a letter informing the unsuccessful applicants that they had failed to satisfy the definition of "trade area". Testimony of Hendricks. Clear Lake Market received such a letter, dated March 20, 2014. Testimony of Hendricks; Ex. 6.
15. Clear Lake Market responded that it wished to appeal. Testimony of Hendricks; Ex. 5.
16. Thus, the Board issued the Statement of Intent to Deny Liquor License to Clear Lake Market. Testimony of Hendricks; Ex. 2.
17. Clear Lake Market responded with its request for a hearing. Testimony of Hendricks; Ex. 1, pp. 2-3.

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## 5. CONCLUSIONS OF LAW

Based on the facts above, I make the following conclusions:

### Jurisdiction

1. I have jurisdiction over the persons and subject matter of this case under Revised Code of Washington ("RCW") 66.08.150, Chapter 66.24 RCW, Chapter 34.05 RCW, Chapter 414-42 Washington Administrative Code ("WAC"), and Chapter 10-08 WAC.

Record limited to testimony and exhibits admitted at the evidentiary hearing

2. Clear Lake Market referenced facts in its written closing argument submitted on December 31, 2014, which were not part of the record established at the evidentiary hearing. I specifically and formally closed the evidentiary record at the hearing after the parties had each presented all of the evidence they intended to offer. I said that the record would only be re-opened by my order to that effect. Clear Lake Market's reference to facts not in evidence leave me two choices, ignore those "late" factual assertions or re-open the record. Ms. Anderson, on behalf of the Board, specifically asked that they be struck. Re-opening the record would mean reconvening the hearing, taking additional testimony under oath and subject to cross-examination and/or admitting additional exhibits into the record. I would consider doing so if I believed that doing so would add material evidence to the record and complete an otherwise incomplete record. I am not so persuaded. However, the factual assertions are blended with argument, argument that depends in part upon the new factual assertions and in part on the record already established. So ignoring or striking the assertions is an over-reaction. What I have chosen to do is to refrain from accepting as evidence any part of Clear Lake Market's written closing argument but to accept and consider all parts of its arguments, yet only based upon the evidentiary record established at the hearing.

The legal basis for denying Clear Lake Market's application for a spirits retailer license

3. "A grocery store licensee . . . may add a spirits retail liquor license to their current license if they meet the requirements for the spirits retail license." WAC 314-02-107(2).
4. Clear Lake Market has held a beer/wine grocery store liquor license since 2009. Accordingly, Clear Lake Market can add a spirits retail liquor license to their current license if they meet the requirements.
5. Those requirements are at least 10,000 square feet of retail space and a security plan. RCW 66.24.630(3)(a); WAC 314-02-107(1).
6. Exceptions to the foregoing are otherwise qualified contract liquor stores, the holder of former state liquor store operating rights, and stores located where "there is no retail spirits license holder in the trade area that the applicant proposes to serve". RCW 66.24.630(3)(c); WAC 314-02-107(3).

7. Clear Lake Market is not a contract liquor store nor does it hold the operating rights of a former state liquor store. So it may qualify for a spirits retail liquor license only if no other retail spirits license holder operates in Clear Lake Market's trade area.
8. "Trade area' as used in RCW 66.24.630 means an area where there is not spirits retail license within a twenty mile travel distance at the time of license application." WAC 314-02-1017.
9. There is a Costco store that holds a spirits retail liquor license within 20 miles travel distance of Clear Lake Market. Therefore, Clear Lake Market does not qualify for a spirits retail liquor license. However, there is an exception to the twenty mile travel distance rule.
10. "The board may make an exception to the twenty mile travel distance for the following: A spirits retail license application is for a location where the significant mode of travel is other than by automobile." WAC 314-02-1071(4).
11. Here, Clear Lake Market is situated on a state highway, is accessible by automobile, and is connected by highway to other towns and stores within a 20-mile radius. Clear Lake Market argued that the roads are difficult and that many local people walk and ride bicycles. However, there is no evidence in the record that people who walk or bike are restricted to those choices because travel by automobiles is dysfunctional; there is no evidence that access or egress is limited to boat or plane, instead of automobile. Thus, I am not persuaded by Clear Lake Market's argument. Clear Lake Market is not located where the significant mode of travel is other than by automobile. Clear Market does not qualify for the exception to the twenty mile travel distance requirement.

#### Clear Lake Market's arguments

12. Clear Lake Market argued that other retailers, with less than 10,000 square feet of retail space and within 20 miles travel distance of other spirits retail licensees, were nevertheless granted spirits retail liquor licenses. However, the evidentiary record reflects nothing about those circumstances, including timing. The 20 mile travel distance rule only applies to licenses granted before a relevant applicant applied. Moreover, even if the Board erred in granting any particular license – and there is no evidence in the record that the Board erred – such an error does not waive application of the law to Clear Lake Market. In addition, Clear Lake Market suggests that some present licensees may have been allowed to

relocate. In the first place, Clear Lake Market is not asking to do that. Further, the evidentiary record does not reflect if Clear Lake Market's assertions are correct, much less why any alleged relocation was allowed. I observe that former state liquor stores and auctioned state liquor stores were not subject to the 10,000 square-foot rule and so did not need to satisfy the 20 mile travel distance rule. Accordingly, I am not persuaded by the argument that other retailers were granted a license.

13. Clear Lake Market argued that Costco had an unfair advantage and so that Costco applied 10 days before Clear Lake Market did should not be relevant. First of all, Costco did not apply 10 days before Clear Lake Market. Rather, Costco was granted a license 10 days before Clear Lake Market applied. Regardless, that Costco is a large company may have enhanced its ability to better understand, anticipate, and comply with the law is not of itself an unfair advantage. There is no evidence in the record that Costco had inside information not available to competitors such as Clear Lake Market. Moreover, if it did, that would have no bearing on Clear Lake Market's qualifications for a license. Therefore, I am not persuaded by this argument.
14. Clear Lake Market observed that the definition of trade area did not become effective until November 2, 2013, well after Clear Lake Market applied, and so argued that the definition should not apply to Clear Lake Market's application and qualifications. Here, Initiative Measure No. 1183 was approved by the voters on November 8, 2011. In Section 103(3)(c) the Initiative included the same language that appears in 2012 in RCW 66.24.630 regarding the trade area element of the exception to the requirement of 10,000 square feet of retail space. To be sure, the Board's definition of "trade area" post-dated Clear Lake Market's application. However, the restriction as to "trade area" existed before Clear Lake Market applied. Thus, Clear Lake Market knew or could have known at the time it applied that it would need to satisfy the "trade area" rule, although it could not know at that time what conditions or circumstances would satisfy. The Board did not process any applications for applicants with less than 10,000 square feet of retail space until it defined "trade area". Nothing in the record suggests that the Board designed its definition other than neutrally. Clear Lake Market could have done nothing differently if the definition had been produced before it submitted an application. The definition applied only to licenses granted before Clear Lake Market applied. Therefore, the timing of the definition is irrelevant and this argument is unpersuasive.

15. Finally, Clear Lake Market argued that it should be granted a spirits retail liquor license because it has served its community for a long time, the community needs and deserves a local spirits retail outlet, and because Clear Lake Market's customers want Clear Lake Market to sell spirits. However philosophically compelling that argument might be, there is no provision under the law for those considerations. Thus, the argument is not persuasive.

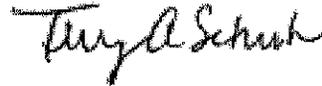
The Board's decision to deny Clear Lake Market's application for a spirits retail liquor license should be affirmed

16. As discussed above, Clear Lake Market failed to satisfy the requirements for qualifying for a spirits retail liquor license, notwithstanding its arguments to the contrary. Accordingly, the Board's decision to deny Clear Lake Market's application for a spirits retail liquor license should be affirmed.

6. INITIAL ORDER

The Statement of Intent to Deny Liquor License dated June 12, 2014, issued by the Liquor Control Board to ES Investments, Inc. dba Clear Lake Market is AFFIRMED.

Dated: March 04, 2015.



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Terry A Schuh  
Senior Administrative Law Judge  
Office of Administrative Hearings

APPEAL RIGHTS

**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)(b). Copies of the reply must be mailed to all other parties and their representatives at the time the reply is filed.

Mail the petition for review of initial order to:

Washington State Liquor Control Board  
Attention: Kevin McCarroll  
P.O. 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).

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DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that today I served a copy of this document, by placing it in the mail with postage prepaid, addressed to the following parties of record:

Aryna Anderson  
Assistant Attorney General  
PO Box 40100  
Olympia, WA 98504-0100

Agency Representative

Clear Lake Market  
c/o Seoung Y. Lee, President  
23416 Highway 99, Ste B  
Edmonds, WA 98026-9328

Appellant

Kevin McCarroll  
Adjudicative Proceedings Coordinator  
P.O. Box 43076  
Olympia, WA 98504-3076

Agency Contact

Evergreen Interpreting Services  
2220 NW Utah Court  
Camas, WA 98607

Interpreter

Dated March 04, 2015, at Olympia, Washington.  
(DATE OF MAILING)



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Representative  
Office of Administrative Hearings  
2420 Bristol Court SW  
Olympia, WA 98502