

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

DOUGLAS L. MAXFIELD d/b/a
MOUNTAIN VIEW ENTERPRISES LLC
252 MAXFIELD HOMESTEAD RD
FORKS, WA 98331

Mailing Address:
PO Box 663
Forks, WA 98331-0663

APPLICANT

LICENSE APPLICATION NO. 413168

LCB NO. M-24,979
OAH NO. 2014-LCB-0028

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 letter to the applicant dated January 27, 2014 which provided notification that the application was being administratively withdrawn due to the fact that the spouse listed on the application was not a Washington State resident.
2. The Applicant timely filed an appeal. The case was originally set as a Brief Adjudicative Proceeding, but was converted to a formal adjudicative hearing by order dated March 19, 2014.
3. On July 9, 2014, a hearing took place before Administrative Law Judge Steven C. Smith with the Office of Administrative Hearings. The Licensing Division appeared through

Assistant Attorney General Kim O'Neal. The Applicant, Mountain View Enterprises, LLC, appeared through Douglas L. Maxfield, who presented himself as the managing member of Mountain View Enterprises, LLC.

4. On August 22, 2014, Administrative Law Judge Steven C. Smith issued his Findings of Fact, Conclusions of Law & Final Order, dismissing the administrative appeal, because Mountain View Enterprises did not exist as an entity. Based on the Applicant's lack of lawful capacity to appeal the Board's action, the withdrawal of its marijuana licensing application by the Liquor Control Board's Licensing Division was upheld.

5. On September 11, 2014, the Applicant filed a Petition for Review of Initial Order. The Licensing Division filed a Response to Petition for Review on September 25, 2014, citing that the Petition was not received by the Office of Attorney General until September 18, 2014.

6. 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 Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order are AFFIRMED AND ADOPTED as the Findings of Fact, Conclusions of Law and Final Order of the Board for case M-24,979.

IT IS HEREBY FURTHER ORDERED that license application for Marijuana Producer (tier 3) for DOUGLAS L. MAXFIELD D/B/A MOUNTAIN VIEW ENTERPRISES, LLC is WITHDRAWN, and the appeal is DISMISSED.

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The Financial Division is directed to re-issue payment for replacement of check 427742F which was voided and returned by the Applicant. This is for a \$500.00 refund of application fees to Douglas L. Maxfield d/b/a Mountain View Enterprises, LLC.

DATED at Olympia, Washington this 18 day of November, 2014.

WASHINGTON STATE LIQUOR CONTROL BOARD

Sharon Foster

Patricia Kurek

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

November 19, 2014

Douglas L. Maxfield
Mountain View Enterprises, LLC
d/b/a Mountain View Enterprises
PO Box 663
Forks, WA 98331-0663

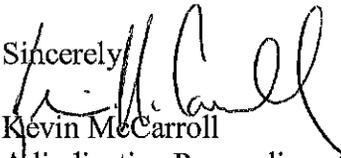
Kim O'Neal, AAG
GCE Division, Office of Attorney General
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100

RE: FINAL ORDER OF THE BOARD
APPLICANT: Douglas L. Maxfield, Mountain View Enterprises, LLC
TRADE NAME: Mountain View Enterprises
LOCATION: 252 Homestead Rd, Forks, WA 98331
LICENSE APPLICATION NO. 413168
LCB HEARING NO. M-24,979
OAH NO. 2014-LCB-0028

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,

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Alan Rathbun, Licensing Director, WSLCB
Becky Smith, Licensing Manager, WSLCB
Mary Henley, Administrative Assistant, WSLCB

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

DOUGLAS L. MAXFIELD d/b/a
MOUNTAIN VIEW ENTERPRISES
LLC
252 MAXFIELD HOMESTEAD RD
FORKS, WA 98331

Mailing Address:
PO Box 663
Forks, WA 98331-0663

APPLICANT

LICENSE APPLICATION NO. 413168

LCB NO. M-24,979
OAH NO. 2014-LCB-0028

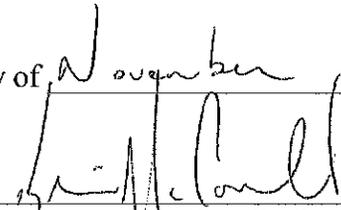
DECLARATION OF SERVICE BY
MAIL

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:

DOUGLAS L. MAXFIELD
MOUNTAIN VIEW ENTERPRISES, LLC
D/B/A MOUNTAIN VIEW ENTERPRISES
PO BOX 663
FORKS, WA 98331-0663

OFFICE OF THE ATTORNEY GENERAL
MAIL STOP 40100, GCE DIVISION
KIM O'NEAL,
ASSISTANT ATTORNEY GENERAL

DATED this 19th day of November, 2014, at Olympia, Washington.


Kevin McCarroll, Adjudicative Proceedings Coordinator

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

RECEIVED

NOV 05 2014

Liquor Control Board
Board Administration

IN THE MATTER OF:
MOUNTAIN VIEW ENTERPRISES, LLC
DBA MOUNTAIN VIEW ENTERPRISES,
Location Address:
252 MAXFIELD HOMESTEAD RD
FORKS, WA 98331
Respondent & Marijuana License
Applicant.
License Application No. 413168

OAH Docket No. 2014-LCB-0028
Agency No. 24,979

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

1. ISSUES FOR DETERMINATION:

1.1 **Issue One**¹: Did LCB act correctly under Washington law when, on or about January 27, 2014, LCB administratively withdrew the application of ostensible Respondent/Applicant Mountain View Enterprises, LLC for marijuana producer (tier 3) and marijuana processor licensure based on failure of Applicant to meet Washington state residency requirements for such licenses?

1.2 **Issue Two**: Based on the determination of Issue One, what is the appropriate outcome under Washington law?

¹ / This issue has been reworded for clarity, but remains substantively identical to the issue as stated in the *Order Following Prehearing Conference 2*, issued May 28, 2014. The terms "Applicant" and "Respondent" are used throughout this Initial Order for the sake of simplicity in understanding this Order. However, as the above-paragraph 2.1 *Summary of Determination of Issues* states, during all times herein relevant, Applicant, whether called such or called Respondent, was nonexistent. Therefore, the reader is advised that use herein of the terms Applicant and Respondent is not intended to contradict the determination that Mountain View Enterprises, LLC did not exist.

2. SUMMARY OF DETERMINATION OF ISSUES:

2.1 **Issue One:** Yes: LCB acted correctly under Washington law when, on or about January 27, 2014, LCB administratively withdrew the application of ostensible Respondent/Applicant Mountain View Enterprises, LLC for marijuana producer (tier 3) and marijuana processor licensure. At the time of licensure application, and thereafter through the date of request for this administrative appeal on behalf of Applicant, Applicant did not exist. Therefore, Applicant had no lawful capacity to make application for such licensure and issue of residency became moot.

2.2 **Issue Two:**

(A) Based on its nonexistence, neither Mountain View Enterprises LLC, nor Douglas L. Maxfield acting on its behalf, had lawful capacity to appeal Washington Liquor Control Board's administrative withdrawal of Mountain View Enterprises LLC's marijuana licensure application. Accordingly, the appeal request on behalf of Mountain View Enterprises LLC is stricken and this administrative appeal is DISMISSED.

(B) Alternatively, should any reviewing authority determine, contrary to the foregoing, this administrative appeal to have been appropriately requested, then because Mountain View Enterprises LLC did not exist at the time its application, LCB's administrative withdrawal of Applicant's application for marijuana producer (tier 3) and marijuana processor licensure was appropriate and shall be AFFIRMED.

3 **STATEMENT OF THE CASE:**

3.1 **Nature of The Case and Authority for Proceeding:** This is an administrative appeal before the Office of Administrative Hearings (OAH) under the authority of chapter 34.05 RCW and RCW 69.50.334 of the administrative withdrawal by Washington Liquor Control Board (LCB) of an application under RCW 69.50.325 for marijuana producer (tier 3) and marijuana processor licensure submitted to LCB by Douglas L. Maxfield (Maxfield) on behalf of putative limited liability company Mountain View Enterprises LLC.

3.2 **Evidentiary Hearing and Appearances:**

Evidentiary Hearing

3.2.1 On July 9, 2014, I, Administrative Law Judge (ALJ) Steven C. Smith, conducted an in-person evidentiary hearing in this matter at the conference room of the Washington Attorney General's Office in Port Angeles, Washington. By agreement at the conclusion of the evidentiary hearing, the record was left open for post-hearing submissions of documents by LCB and Applicant. The record was closed July 28, 2014. The proceeding was electronically recorded.

Appearances

3.2.2 Washington Liquor Control Board (LCB), appeared through Assistant Attorney General S. Kim O'Neal.

3.2.3 Ostensible Marijuana License Applicant, Mountain View Enterprises LLC, appeared through its ostensible and the putative managing member, Douglas L. Maxfield.

3.2.4 David (Dave) Spears attended as an observer with Mr. Maxfield.

Witnesses

3.2.5 The following witness appeared, was sworn and testified in this matter; the testimony was considered by me and given its due weight:
Douglas L. Maxfield, Putative CEO of Applicant

Exhibits

3.2.6 The following exhibits were admitted into evidence (the description of each exhibit was adopted by reference from the exhibit lists of the Applicant and LCB); each was considered by me and given its due weight.

LCB Exhibits: 1 through 5.

Applicant Exhibits: A through R and, by reason of the non-objection of LCB (see LCB's Closing Argument and Additional Briefing) Attachment 1 to Applicant's Post-Evidentiary Hearing Submission of Documents.

Non-Evidentiary Presentations Considered

3.2.7 The following non-evidentiary documents were filed with OAH and considered by

me (some of the following may also have been included by the parties as part of their evidentiary presentation), along with the oral arguments of LCB and Applicant: LCB's Closing Argument and Additional Briefing; and, Applicant's Post-Evidentiary Hearing Submission of Documents.

4. **FINDINGS OF FACT**²: Based on a preponderance of evidence, I make the following Findings of Fact:

4.1 Between November 21, 2013 through December 22, 2013, an application under RCW 69.50.325 for marijuana producer (tier 3) and marijuana processor licensure was submitted to LCB by Douglas L. Maxfield (Maxfield) on behalf of putative limited liability company Mountain View Enterprises LLC as Applicant's ostensible or putative managing member and chief executive officer (CEO). Maxfield did not intend to make personal application for licensure. There was no other applicant. (Exhibits 2, 3, B & D; testimony of Maxfield; LCB's Closing Argument, p. 5)

4.2 By letter of January 27, 2014 to Maxfield, regarding "Trade Name: Mountain View Express", LCB administratively withdrew the application for marijuana producer (tier 3) and marijuana processor licensure based on failure to meet the Washington state

² Citations to the record are used intermittently throughout these Findings of Fact as a convenience to the reader. The absence of any citation to any specific Finding of Fact is not intended to imply an absence of support in the record for that Finding; nor, is citation to only one or a few locations in the record intended to imply that support is limited to, or that the specific Finding was based solely on, the citation(s) given. All Findings of Fact are based on a totality of the evidence, including reasonable inferences to be drawn from the evidence.

residency requirements for such license, LCB wrote: "We are presently in receipt of your application for a marijuana License. According to the application as submitted, your spouse resides in Maryland and is not a Washington State resident. Under WAC 314-55-020(7), 'Per RCW 69.50.331(1)(b), all applicants applying for marijuana license must have resided in the state of Washington for at least three months prior to two application for a marijuana license.' Based on the above-mentioned statute, you do not meet the qualifications for marijuana license. Your application will be administratively withdrawn." (Exhibits 1, 3 & E; testimony of Maxfield. Emphasis added to quoted text.)

4.3 On or about February 6, 2014, Maxfield, on behalf of Applicant, requested an administrative appeal of LCB's withdrawal of the subject application. (Exhibits 3 & 4)

4.4 At the evidentiary hearing, there was no evidence presented as to the lawful formation (existence) of Applicant under the laws of Washington, or any other jurisdiction, prior to, or at the time of, submission by Maxfield of the application for marijuana licensure of Applicant, nor at the time of the request for administrative appeal of LCB's withdrawal of the subject application. Further, Maxfield acknowledged at the evidentiary hearing that he had yet to file any Certificate of Formation with the Washington Secretary of State, but intended to complete the formation of the LLC.

4.5 In Applicant's Post-Evidentiary Hearing Submission of Documents, Attachment 1, Maxfield provided a completed form Certificate of Formation for Mountain View

Enterprises LLC, bearing his signature and dated "07/09/2014" by which he attempted to establish the effective date of formation of the LLC as "11/30/2013" by filling in said date next to the form's admonition, "Specified effective date must be within 90 days AFTER the Certificate of Formation has been filed by the Office of the Secretary of State." The form carried no Secretary of State filing stamp or other indication that, even as of that date, the LLC formation document had actually been filed. (Applicant's Post-Evidentiary Hearing Submission of Documents, Attachment 1, p. 1-2; emphasis as to "AFTER" the original to form Certificate of Formation)

4.6 Maxfield contended that by reason of completion of the Certificate of Formation [on or after 07/09/2014] and submission of it to the Washington Secretary of State, that he had "... complete[d] the registration of Mountain View Enterprises LLC... formed on 11/30/2013..." (Applicant's Post-Evidentiary Hearing Submission of Documents, Sec. I)

4.7 As regards the January 27, 2014 notice of withdrawal of application for licensure sent by LCB to Maxfield, Maxfield presented evidence that his wife had lived in Washington as a resident for longer than three months (Exhibit 3) and contended that the statutory provisions regarding the Washington state residency requirement for marijuana licensure by their "plain language" did not require the three-month residency to be immediately preceding any application for marijuana licensure. In other words, any three-month or greater period of residency within the state of Washington would, according to Maxfield, meet the statutory residency requirement. LCB contended to the contrary; that is, the only reasonable statutory interpretation is that the three-month

residency must have occurred immediately prior to filing the marijuana application.

5. CONCLUSIONS OF LAW: Based on the above Findings of Fact, I make the following Conclusions of Law:

Jurisdiction

5.1 Based on the foregoing Findings of Fact, 4.1 through 4.3, OAH and I have jurisdiction over this administrative appeal pursuant to Title 69 RCW, RCW 69.50.334, Chapter 34.05 RCW, Title 314 WAC and WAC 314-55-070. Our review is *de novo*, based on the evidence presented at the evidentiary hearing.

Formation of a Limited Liability Company in Washington

5.2 In order to form a limited liability company, one or more persons must execute a certificate of formation. The certificate of formation must be filed in the office of the secretary of state. RCW 25.15.070(1).

5.3 Unless a delayed effective date is specified, a limited liability company is formed when its certificate of formation is filed by the secretary of state. A delayed effective date for a certificate of formation may be no later than the ninetieth day after the date it is filed. RCW 25.15.070(2)(a).

Non-Existence of Mountain View Enterprises LLC

5.4 Based on the foregoing Findings of Fact, at no time relevant to this administrative appeal did Mountain View Enterprises LLC exist, because no certificate of formation

had been filed with the Washington Secretary of State. Further, Maxfield's contention of retroactive formation by filing a certificate of formation on or after July 9, 2014 and choosing an effective date prior to the filing is contrary to the specific provisions of RCW 25.15.070(2)(a).

5.5 No [marijuana] license of any kind may be issued to a business entity, unless that entity is formed under the laws of Washington. RCW 69.50.331(1)(c).

5.6 Because Mountain View Enterprises LLC did not exist at any relevant time, it could not receive any type of marijuana license. RCW 69.50.331(1)(c). Therefore, LCB's administrative withdrawal of the licensure application submitted on behalf of the nonexistent Mountain View Enterprises LLC was not inappropriate.

Dismissal of Appeal

5.7 Because Mountain View Enterprises LLC was nonexistent, it had no lawful capacity to appeal LCB's administrative withdrawal of the licensure application. Additionally, as Maxfield was, by reason of the entity's nonexistence, neither a member, nor managing member, nor equity owner of it, he also had no lawful authority to act on its behalf by requesting an appeal. RCW 25.15.070 & RCW 25.15.150. Accordingly, said appeal request shall be stricken and this administrative appeal DISMISSED.

Affirmation of Administrative Withdrawal of Marijuana Licensure Application As An

Alternative to Dismissal of Appeal

5.8 Should any reviewing authority determine, contrary to the foregoing, this administrative appeal to have been appropriately requested, then because Mountain View Enterprises LLC did not exist at the time its application, LCB's administrative withdrawal of Applicant's application for marijuana producer (tier 3) and marijuana processor licensure was appropriate and shall be AFFIRMED.

Residency Issues Moot

5.9 In light of the foregoing conclusions of law, the contentions regarding duration of residency of either the non-existent business entity or Mrs. Maxfield are moot and not further addressed.

6. ORDER:

NOW THEREFORE, IT IS ORDERED:

6.1 The Office of Administrative Hearings has jurisdiction over this case.

6.2 Based on its nonexistence, neither Mountain View Enterprises LLC, nor Douglas L. Maxfield acting on its behalf, had lawful capacity to appeal Washington Liquor Control Board's administrative withdrawal of Mountain View Enterprises LLC's marijuana licensure application. Accordingly, the appeal request on behalf of Mountain View Enterprises LLC is stricken and this administrative appeal is DISMISSED.

6.3 Should any reviewing authority determine, contrary to the foregoing, this administrative appeal to have been appropriately requested, then because Mountain View Enterprises LLC did not exist at the time its application, LCB's administrative withdrawal of Applicant's application for marijuana producer (tier 3) and marijuana processor licensure was appropriate and is AFFIRMED.

Signed and Issued this August 22, 2014 at Tacoma, Washington.



Steven C. Smith
Administrative Law Judge
Office of Administrative Hearings

NOTICE TO PARTIES OF APPEAL RIGHTS

Petition for Review of Initial Order

Either the license applicant, licensee, 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).

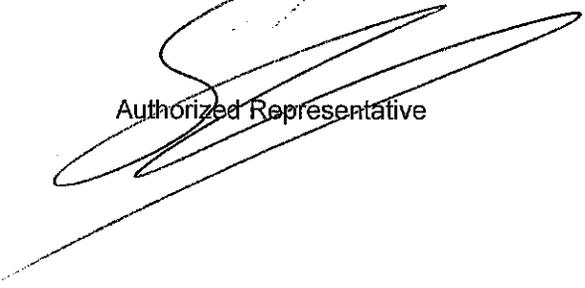
CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 2014-LCB-0028

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

<p>Douglas L. Maxfield, CEO Mountain View Enterprises, LLC 252 Maxfield Homestead Rd PO Box 663 Forks, WA 98331 <i>Applicant</i></p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</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 <i>Agency Representative</i></p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Kevin P. McCarroll Adjudicative Proceedings Coordinator Washington State Liquor Control Board 3000 Pacific Ave SE PO Box 43076 Olympia WA 98504-3076 Fax: (360) 586-3190 <i>Department Representative</i></p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>

Date: Friday, August 22, 2014

OFFICE OF ADMINISTRATIVE HEARINGS


 Authorized Representative

RECEIVED

SEP 11 2014

Liquor Control Board
Board Administration

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

IN THE MATTER OF:
MOUNTAIN VIEW ENTERPRISES, LLC

OAH Docket No. 2014-LCB-0028
Agency No. 24,979

Location Address:
252 MAXFIELD HOMESTEAD RD
FORKS, WA 98331
Respondent & Marijuana License
Applicant.
License Application No. 413168

**PETITION FOR REVIEW
OF INITIAL ORDER**

INTRODUCTION:

This Petition for Review of Initial Order is filed, because the ALJ decision, dated 22 August 2014, did not reflect an understanding of the Marijuana Licensing Addendum (MLA) Application process/requirements (**See Exhibit B, page 1 of 1 page.**) and failed to adequately address and decide the legal issues in the case generated by the LCB decision of 27 January 2014, (**See Exhibit E, page 1 of 1 page.**); and the legal issues raised and presented by Appellant, Mountain View Enterprises LLC, (MVE LLC) in this appeal. (**See Exhibit G, pages 1 through 5 of 5 pages.**)

The Appellant's firm position is that the legal issues presented by the moving party in this case be considered and decided on their merits. Realize this may only be done by an appeal to a court of record.

SUMMARY

1. The Initial Order in this case, dated 22 August 2014, should be SET ASIDE.
2. The LCB decision, dated 27 January 2014, be RESCINDED.
3. The legal issues presented in Exhibit G be decided.

4. Issue changes to the Marijuana Law, Chapter 314-55 WAC, in effect on 2 December 2013, if that law does not reflect the agency's operating requirement.
5. Issue a Final Order reflecting items 1 through 4 above based on the evidence and facts submitted in this case and the agency's needs.

EVIDENCE

The caption on the Findings of Fact, Conclusions of Law and Initial Order is a grievous error as pointed out during the hearing and by the evidence in the case. "DBA Mountain View Enterprises" is a false statement and usurps proprietary information of a completely separate and legally distinct licensed and established sole proprietorship business named Mountain View Enterprises, UBI 603311787. (See Exhibit A, page 1 through 7 of 7 pages.) The caption is erroneous and reflects the complete lack of attention to detail and disregard for the facts presented in the case. This disregard for the legal issues and facts in the case is predominant throughout the initial order.

Mountain View Enterprises has absolutely nothing to do with this case or the production and processing of marijuana. The continued perpetuation of "DBA Mountain View Enterprises" is unfortunate and reflects the complete lack of, or disinterest in, the actual parties and issues in this case. The initial order should be **set aside**, based upon the lack of the judicial process to understand the MLA application process/requirements, who the actual parties are in this case, and what the legal issues are in this case. The complete lack of judicial interest in the MLA requirements, who the actual parties are and the disregard for legal issues in this case is like playing pin the tail on a donkey and the participants don't even know whether it's a mule or a horse or a donkey they are sticking.

The ALJ unilaterally initiated and developed his own legal issue in the case and ignored the actual legal issues presented. Finding **“the Applicant did not exist,”** is an arbitrary and capricious personal opinion that simply ignores the factual evidence to the contrary (**See Exhibit F, page 1 of 9 pages.**), that finding culminated in an arbitrary and capricious decision based on that dominant assumption. The ALJ’s assumption was made, before receiving testimony on the legal action generated and appealed by the two parties involved, and permeated throughout the Initial Order. (See paragraphs 2.1, 2.2, 3.2.3, 3.2.5, 4.1, 5.4, 5.6, 5.7, 5.8, 5.9, 6.2, and 6.3 of the initial order.)

The ALJ’s determination that **“the Applicant did not exist,”** fails to realize that the Marijuana License Addendum Application does not require **“the Applicant to exist,”** it only requires that an **application for business license be submitted.**

The Marijuana License Addendum LIQ 1013 9/13 clearly states **“This form can only be submitted with a Business License Application from the Business Licensing Service.”** The MLA application does not require a business license, only that a **business license application** be submitted. (**See Exhibit B, page 1 of 1 page.**)

Applicants who applied for marijuana licenses were given a **30-day** time period (approximately 19 November to 20 December 2013) to apply for the marijuana licenses. To make application, the LCB on or about 18 November 2013 made available, for downloading off the web, the form LIQ1013 9/13. The form called for: “Owner/Business entity name: (Mountain View Enterprises LLC was entered); and UBI: (603352912 was entered) in this case. (**See Exhibit B, page 1 of 1.**)

On or about 18 November 2013, during a communication with the Washington State Business Licensing Office, it was confirmed that, **to establish a legal business entity**, a Business License, in the businesses name with a UBI number, was required.

An offer was made to provide a Business License for the consideration of a processing fee of \$19.00 and a fee of \$5.00 to register a trade name for a total consideration cost of \$24.00.

The Washington State Licensing Business Office's offer was accepted, the \$24.00 consideration was paid and the Business License application was made and submitted for a Business License in the name of "Mountain View Enterprises LLC" and registered the trade name "Mountain View Enterprises LLC." (See Exhibit F, pages 5 and 6 of 9 pages.)

On page 2 of 5 pages of the Business License Application, in response to the question "Have you filed your paperwork with the Washington State Secretary of State, "the response entered was "No." (See Exhibit F, page 7 of 9 pages.) As noted below, (See Exhibit F, page 1 of 9 pages.) the Business License was issued in the name of "Mountain View Enterprises LLC," with "UBI 603352912" confirming that **to establish a legal business entity**, the Certificate of Formation is an administrative action required before operating a business as a Limited Liability and **not** a dominant concern **to establish a legal business entity** and obtaining a business license. Of course, the MLA does not require the establishment of a legal business, only that an **application for a Business License** be submitted with the MLA application. (See Exhibit B, page 1 of 1 page.)

In reality, two more separate and distinct administrative actions were required before Mountain View Enterprises LLC could begin business operations as a Limited Liability Company involved in Agricultural/Farming (See Exhibit F, page 8 of 9 pages.) in the

production and processing of marijuana products (**See Exhibit F, page 7 of 9 pages.**) . These two administrative actions are: application for and receipt of a Certificate of Formation and the application for and receipt of a Marijuana Production and Processing License, from the Secretary of State and the LCB respectfully. Neither action can be accomplished within the 30 day filing period of the MLA established by the LCB to file the MLA application. The MLA **only** required that an **owner/business entity name** and **UBI number**, and the attachment of a **Business License application** be submitted.

On page 3 of 5 pages of the Business License Application, in response to the question "First date of business at this location for this ownership structure" the response entered was "5/25/2014." (**See Exhibit F, page 7 of 9 pages.**) The 25 May 2014 date was entered upon the realization/expectation/guesstimation that the LCB would not issue a Production and Processing Marijuana License and that the erection of a physical production and processing plant in time for a business operation to begin prior to that projected date. Additionally, the business tax reporting period would then start in 2014. No marijuana production or processing will begin at 252 Maxfield Homestead Road without a legal license to do so issued by the State of Washington.

On or about 25 November 2013, the Washington State Business Licensing Office, in response to our contractual agreement above, issued a "**Business License**" establishing a legal business entity in the name of "**Mountain View Enterprises LLC**" with a registered trade name of "**Mountain View Enterprises LLC**" and UBI 603352912. (**See Exhibit F, page 1 of 9 pages.**) This document was received prior to the Applicant, MVE LLC, filing the MLA application on 2 December 2013. The MLA application only required, "**This form can only be**

submitted with a Business License Application from the Business Licensing Service.” (See Exhibit B, page 1 of 1 page.)

On 30 November 2013, a document from the Washington State Department of Revenue (DOR) was issued showing UBI 603352912 was issued to “**Mountain View Enterprises LLC**” entity type “Limited Liability.” (See Exhibit F, page 3 of 9 pages.) This document was received prior to the Applicant, MVE LLC, filing the Marijuana License Addendum application on 2 December 2013.

On 2 December 2013, the **Applicant**, Mountain View Enterprises LLC, a **legally licensed business entity** in the State of Washington, completed and filed the Marijuana License Addendum application, applying for Marijuana Production and Processing licenses. The MLA application was filed within the **30-day** time period, by certified mail to the LCB. The application was mailed immediately after receiving the requested Business License and DOR information, from the State of Washington. (See Exhibit B, page 1 of 1 page.)

FINDINGS OF FACT

Chapter 314-55 WAC, Marijuana Licenses, Application Process, Requirements, and Reporting. This chapter outlines the application process, qualifications and requirements to obtain and maintain a marijuana license and the reporting requirements for a marijuana license.

The Washington State Liquor Control Board announced they would accept applications for marijuana licenses during a 30-day time period from, on or about, 19 November to 20 December 2013.

Marijuana License Addendum, LIQ1013 9/13, (MLA) , published by the Washington State Liquor Control Board, is the application form to be used and identified the necessary information required to make application for marijuana licenses.

The MLA application requires, among other information, but on point here, in this case: “owner/business name,” “UBI number,” and Business License Application.

The MLA application provides the following legal requirement/guidance/statement regarding the Business License Application: **“This form can only be submitted with a Business License Application from the Business Licensing Services.”**

On 2 December 2013, the Applicant, in this case, “Mountain View Enterprises LLC” (MVE LLC) as owner/business name with “UBI 603352912” submitted an MLA application for the marijuana production and processor licenses with a copy of the MVE LLC Business License Application attached.

On 25 November 2013, the State of Washington issued the Business License to MVE LLC with UBI 603352912 and MVE LLC actually received the Business License displaying the name MVE LLC with UBI 603352912 prior to submitting the MLA application on 2 December 2013.

On 30 November 2013, the State of Washington DOR issued their document showing the business name MVE LLC as an entity type Limited Liability with assigned UBI 903352912 and MVE LLC actually received the document prior to submitting the MLA application on 2 December 2013.

On 9 July 2014, MVE LLC filed a Certificate of Formation that was received by the Secretary of State's office on 6 August 2014. The Certificate of Formation was issued by the Washington State Secretary of State office on 11 August 2014 showing a formation date of 6 August 2014. MVE LLC received the Certificate of Formation on 18 August 2014 by U.S. mail.

MVE LLC has not yet received a Marijuana Production or Processing License applied for by MLA application on 2 December 2013. Until MVE LLC received the marijuana licenses, no MVE Limited Liability Company will be DBA MVE LLC or operating a marijuana production and processing business.

On 22 August 2014, the ALJ's Initial Order was issued declaring, **"The Applicant did not exist"** and subsequently DISMISSED the Applicant's appeal and AFFIRMED the LCB action withdrawing the Applicant's Marijuana License Addendum application.

CONCLUSIONS OF LAW

On 25 November 2013, the Application, MVE LLC was a legally established business entity licensed in the State of Washington.

On 2 December 2013, the Applicant, MVE LLC, properly and timely filed a Marijuana License Addendum Application for Marijuana Production and Processing licenses.

The Applicant, MVE LLC, at the time of filing the Marijuana License Addendum application had correctly filled in all information requested and required in full compliance with all LCB regulatory requirements published at the time; to include the submission of a copy of the MVE LLC Business License Application, with the MLA application.

The regulatory requirement to attach a copy of the MVE LLC business license application to the MLA application is clearly printed on the MLA application form as follows: **“This form can only be submitted with a Business License Application from the Business Licensing Service.”**

The evidence and testimony presented in the case clearly shows that MVE LLC timely filed and correctly submitted a MLA application; the MVE LLC application was received by LCB who acknowledged receipt of the MVE LLC properly submitted MLA application.

A properly submitted MLA application was submitted with a copy of MVE LLC Business License Application attached, and there is **no** evidence, either written or oral, submitted to record, in this case to the contrary,

DECISION

Therefore: based on the preponderance of the evidence, both written and oral, submitted and in the record in this case the following decisions are made and respectfully presented on appeal in this petition for review of Initial Order to the LCB advisory group:

The Applicant is MVE LLC;

The Applicant, MVE LLC, was a legal licensed business entity as of 25 November 2013 and was so when the MLA application was filed on 2 December 2013;

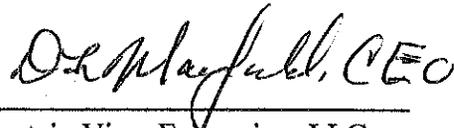
MVE LLC submitted a proper MLA application that met all legal requirements stated by the controlling LCB authority at the time of filing the MLA application on 2 December 2013; and

The ALJ Initial Order in this case is arbitrary and capricious as it does not adequately consider the appealed legal issues in this case or the plain language of the marijuana law, licensing and the application process regarding regulations or the published Marijuana License Addendum application stated requirements; and therefore is irrelevant and immaterial.

RECOMMENDATIONS

Therefore, it is requested that the LCB Advisory Group:

1. That the Initial Order be **SET ASIDE**;
2. The LCB decision dated 27 January 2014 be **RESCINDED**;
3. The legal issues presented in Exhibit G be **DECIDED**;
4. Issue changes to the Marijuana Law, Chapter 314-55 WAC, in effect on 2 December 2013, if that law does not reflect the agency's operating requirements; and
5. Issue a Final Order reflecting items 1 through 4 above based on the evidence and facts submitted in this case and the Agency's needs.



Mountain View Enterprises LLC
Douglas L. Maxfield, CEO
252 Maxfield Homestead Road
Post Office Box 663
Forks, Washington 98331
(301) 661-7773
maxfieldn@hotmail.com

Enclosures:
2 as stated



STATE OF WASHINGTON
SECRETARY OF STATE

FILED
SECRETARY OF STATE

AUGUST 6, 2014

STATE OF WASHINGTON

This Bill For Official Use Only

07/17/14 2702357-001
\$180.00 K
tid: 2801034

08/06/14 2715840-001
\$0.00 D
tid: 2801034

Limited Liability Company

See attached detailed instructions

- Filing Fee \$180.00
- Filing Fee with Expedited Service \$230.00

UBI Number: 603352912

CERTIFICATE OF FORMATION

Chapter 25.15 RCW

ARTICLE 1

NAME OF LIMITED LIABILITY COMPANY:

~~Mountain View Enterprises LLC~~ MOUNTAIN VIEW ENTERPRISES NW LLC

(Must contain one of the following designations: Limited Liability Company, Limited Liability Co or one of these abbreviations: L.L.C. or LLC. If the designation is omitted, it will default to LLC when processed)

ARTICLE 2

ADDRESS OF THE PRINCIPAL PLACE OF BUSINESS:

Street Address 252 Maxfield Homestead Road City Fork State WA Zip 98331
 PO Box PO Box 663 City Fork State WA Zip 98331

ARTICLE 3

EFFECTIVE DATE OF FORMATION: *(Please check one of the following)*

- Upon filing by the Secretary of State
- Specific Date: 11/30/2013 *(Specified effective date must be within 90 days AFTER the Certificate of Formation has been filed by the Office of the Secretary of State)*

ARTICLE 4

TENURE: *(Please check one of the following and indicate the date if applicable)*

- Perpetual existence
- Specific term of existence _____ *(Number of years or date of termination)*

ARTICLE 5

THE LIMITED LIABILITY COMPANY IS MANAGED BY: Members or Managers
(see instructions)

ARTICLE 6

NAME AND ADDRESS OF THE WASHINGTON STATE REGISTERED AGENT:

Name: Douglas L. Maxfield

Physical Location Address (required):

252 Maxfield Homestead Road

City Forks State WA Zip Code 98331

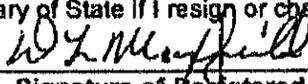
Mailing or Postal Address (optional):

P O Box 663

City Forks State WA Zip Code 98331

CONSENT TO SERVE AS REGISTERED AGENT:

I consent to serve as Registered Agent in the State of Washington for the above named Limited Liability Company. I understand it will be my responsibility to accept Service of Process on behalf of the Limited Liability Company; to forward mail to the Limited Liability Company; and to immediately notify the Office of the Secretary of State if I resign or change the Registered Office Address.

X		Douglas L. Maxfield	07/09/2014
	Signature of Registered Agent	Printed Name	Date

ARTICLE 7

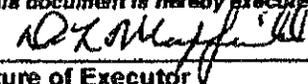
NAME, ADDRESS AND SIGNATURE OF EACH EXECUTOR:

(If necessary, attach additional names, addresses and signatures)

Name: Douglas L. Maxfield

Address: 252 Maxfield Homestead Road City Forks State WA Zip Code 98331

This document is hereby executed under penalties of perjury, and is, to the best of my knowledge, true and correct.

X		Douglas L. Maxfield	07/09/2014	301-661-7773
	Signature of Executor	Printed Name	Date	Phone

Name: _____

Address: _____ City _____ State _____ Zip Code _____

This document is hereby executed under penalties of perjury, and is, to the best of my knowledge, true and correct.

X	_____	_____	_____	_____
	Signature of Executor	Printed Name	Date	Phone

UNITED STATES OF AMERICA

The State of Washington



Secretary of State

I, KIM WYMAN, Secretary of State of the State of Washington and custodian of its seal, hereby issue this

CERTIFICATE OF FORMATION

to

MOUNTAIN VIEW ENTERPRISES NW LLC

a/an WA Limited Liability Company. Charter documents are effective on the date indicated below.

Date: 8/6/2014

UBI Number: 603-352-912



Given under my hand and the Seal of the State of Washington at Olympia, the State Capital

Kim Wyman

Kim Wyman, Secretary of State

Date Issued: 8/11/2014

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 2014-LCB-0028

I certify that true copies of this document were served from Forks, Washington 98331 upon the following as indicated:

<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 type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Kevin P. McCarroll Adjudicative Proceedings Coordinator Washington State 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 Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Office of Administrative Hearings ATTN: ALJ Steven C. Smith 949 Market St, Suite 500 Tacoma, WA 98402 Fax: (253) 593-2200</p>	<p><input type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>

Date: 7 Sept 14

APPLICANT

MVE LLC

DL Mayfield, CEO

RECEIVED

SEP 25 2014

Liquor Control Board
Board Administration

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

In the Matter of:
MOUNTAIN VIEW ENTERPRISES, LLC,
Applicant,
Application Number 413168

NO. OAH Docket No. 2014-LCB-0028
LCB No. 24,979
RESPONSE TO PETITION FOR
REVIEW

INTRODUCTION

The Initial Order affirmed the denial of the Applicant's application for a marijuana producer license because the Applicant Limited Liability Company was not formed at the time the application was filed or at the time the request for hearing was filed. The Applicant LLC was not formed at the time the Board stopped accepting applications in December, 2013, and there is no evidence in the record that it had been formed even as of the hearing date. The Initial Order affirming the denial of the application should be adopted as the Board's Final Order.

STATEMENT OF FACTS

Although the Petition for Review filed by Mr. Maxfield appears to suggest on the last page that he mailed it to the Office of the Attorney General on September 7, 2014, the Petition was not received in our office until September 18, 2014.

1 The original basis for denying the application was that Mr. Maxfield's spouse did not
2 meet the required three-month residency in Washington required by RCW 69.50.331(1)(c)
3 and WAC 314-55-035. At hearing, Mr. Maxfield confirmed that he had not formed the
4 Limited Liability Company which was the Applicant for the producer license sought.

5 The facts in this matter are essentially not disputed. The Applicant for the marijuana
6 producer license is a Limited Liability Company of which Douglas L. Maxfield is the only
7 member. As he testified at the hearing, Mr. Maxfield intends to form the Limited Liability
8 Company, but as of the date of the hearing, he had not done so. When asked at the hearing
9 what he had done to form the LLC, Mr. Maxfield testified that he had filed for a business
10 license, obtained a UBI number, and that he had registered with the Department of Revenue to
11 pay business taxes. He referenced the documents in his Exhibit F. He testified he intends to
12 file with the Secretary of State and that he is "working on formalizing the LLC", but that he
13 had not yet completed that process because of other work he needed to do for the application,
14 such as the business plan. There is no document in Exhibit F or anywhere else in the record
15 as of the hearing showing that Mr. Maxfield filed a Certificate of Formation of the LLC with
16 the Secretary of State. Mr. Maxfield testified that he also has formed a sole proprietorship
17 named Mountain View Enterprises, but that he never intended that entity to be the applicant
18 for or to hold the marijuana producer license. He also testified he didn't intend to be the
19 Applicant or to hold the license himself. He always intended Mountain View Enterprises,
20 LLC to be the Applicant and to hold the license.

21 In the documents Mr. Maxfield filed with his post-hearing brief, are documents
22 marked "Attachment 1." The first two pages of Attachment 1 is a form Mr. Maxfield appears
23 to have filled out following the hearing on July 9, 2014, and which he intends to file with the
24 Secretary of State. The two-page form is to form an LLC under the name Mountain View
25 Enterprises LLC. While Mr. Maxfield attempts to make 11/30/2013 the effective date of the
26 formation, the form itself (as well as statutes discussed below) state that the effective date

1 cannot be prior to the date the Certificate of Formation is accepted and filed by the Office of
2 the Secretary of State. The specified effective date for formation is either the filing date when
3 the Secretary of State accepts and files it or a specified effective date within 90 days AFTER
4 the Certificate is accepted and filed by the Secretary of State. (Capitals emphasizing that the
5 date of formation must be after filing are in the original form.) While Mr. Maxfield may have
6 attempted to file the Certificate of Formation immediately following the hearing, there is still
7 nothing in the record to show that the Certificate of Formation has been accepted or filed by
8 the Office of Secretary of State.

9 Mr. Maxfield also testified that he is the sole, complete owner of Mountain View
10 Enterprises, LLC. There are no other members.

11 Mr. Maxfield agreed at hearing that as the spouse of a member of an LLC, under
12 Liquor Board regulations, his wife would need to meet the Washington residence requirement
13 just as all members of the LLC would be required to do. Both by the exhibits he filed and by
14 testimony at the hearing, Mr. Maxfield confirmed that his wife resided in Washington for 23
15 months, most recently in February 2012. By his testimony at the hearing, Mr. Maxfield stated
16 that the date on Exhibits 3 and G stating when his wife last resided in Washington should be
17 2012, and not 2013, making her Washington residence even further in the past than the
18 exhibits state.

19 While there was testimony and argument about whether the application was withdrawn
20 or denied, the only evidence of any distinction between them are the Board documents in the
21 parties' exhibits. Exhibit 1 (also Exhibit E) states the application is withdrawn because the
22 Applicant does not meet the Washington residency requirement in WAC 314-55-020(7) and
23 RCW 69.50.331(1)(b), because Mrs. Maxfield did not reside in Washington for at least three
24 months prior to filing the application. In "Attachment 2", pages 9 and 10, Liquor Board
25 documents reflect that the application has been withdrawn and that the application fee is being
26 refunded because the application has been withdrawn. While Mr. Maxfield is correct that an

1 application fee is normally not refunded when a license application is denied, Board staff
2 attempted to allow him to withdraw the application and receive a refund when they
3 determined his application did not meet the requirements for the license. Other than the
4 availability of a refund of the application fee, there is no difference between deciding an
5 application should be withdrawn and deciding to deny the application.
6

7 ARGUMENT

8 **A. Mountain View Enterprises LLC Was Not Formed When The Application Was 9 Filed And The Application Was Not Complete Or Valid**

10 Judge Smith concluded because the Limited Liability Company Applicant was never
11 lawfully formed that it lacked the legal capacity both to make application for a marijuana
12 producer license in the first place and also lacked the legal capacity to appeal the decision to
13 deny its application. Initial Order page 2. Those decisions were both factually and legally
14 correct, and Judge Smith's decision should be adopted as the Board's Final Order.

15 A Limited Liability Company is permitted to be formed by statute, and both its
16 formation and its ability to operate are controlled by statute. *Operational Overview of the
17 Washington Limited Liability Company Act*, 30 Gonz.L.Rev. 183, 187-88 (1994-95). An LLC
18 comes into existence when its certificate of formation is filed with the Office of the
19 Washington Secretary of State. RCW 25.15.070, 30 Gonz.L.Rev. at 188. The executed
20 original of the certificate with a duplicate must be delivered to the Secretary of State for filing,
21 and once the certificate has been filed, the LLC is considered a separate legal entity as long as
22 it exists. *Id.* Only limited liability companies formed in compliance with state law may carry
23 on business as a limited liability company. RCW 25.15.030. The Certificate of Formation
24 must be filed with the Office of the Secretary of State. RCW 25.15.095(1). "If the Secretary
25 of State determines the documents conform to the filing provisions, he or she shall . . .
26 Endorse on each signed original and duplicate copy the word 'filed' and the date of its

1 acceptance for filing. . . .” RCW 25.15.095(1)(a). The effective date for the Certificate of
2 Formation is effective when filed by the Secretary of State unless a later date (which cannot
3 be later than the ninetieth day after the date it is filed) is provided for in the Certificate of
4 Formation. RCW 25.15.070(2)(a).

5 Mr. Maxfield obviously attempted to complete the formation of the LLC following the
6 hearing on July 9, 2014. However, that formation cannot and does not relate back to when the
7 license application was filed in November, 2013. By state statute, the LLC comes into
8 existence when the Certificate of Formation is accepted for filing by the Secretary of State, or
9 up to 90 days after its acceptance for filing. RCW 25.15.070(2)(a). It cannot be formed prior
10 to the date the Certificate of Formation is accepted for filing by the Secretary of State. Mr.
11 Maxfield filed a Certificate of Formation with his Petition for Review, and that document
12 confirms that his LLC was formed as of August 6, 2014. Although Mr. Maxfield has
13 attempted to create an earlier formation date by putting November, 2013, into the form as the
14 specified formation date, both the form itself and the statute state clearly that the formation
15 date is either the date of filing by the Secretary of State or a date selected that is within 90
16 days AFTER that filing. The formation date cannot be earlier than when the Certificate was
17 accepted for filing by the Secretary of State, and that had not occurred when the Board
18 received this license application. It had not occurred when the deadline for filing applications
19 passed in December, 2013. Similarly, the LLC did not exist when it filed the request for
20 hearing to contest the decision to deny the license application.

21 The license applicant is the “business entity” applying for the license.
22 WAC 314-55-010(1). Mr. Maxfield testified that Mountain View Enterprises LLC was the
23 Applicant, and it did not exist as a matter of law when the application was filed or when the
24 deadline for filing applications passed. All limited liability companies applying for a license
25 must be formed under the laws of Washington. WAC 314-55-020(7), RCW 69.50.331(1)(c).
26

1 Applications for a marijuana producer license were accepted from November 21, 2013, until
2 December 22, 2013. WAC 314-55-075(4).

3 Mr. Maxfield argues in various ways that the forms he filed with the Department of
4 Revenue constitute forming his Limited Liability Company, but he is incorrect. As argued
5 above, there is only one way to legally form a Limited Liability Company under Washington
6 law, and he did not follow it until after the date of the hearing in this case.

7 Because Mountain View Enterprises LLC did not legally exist when the application
8 was filed, when the time for filing applications ended, as of the date of the hearing, or until
9 August 6, 2014, it cannot be the Applicant, and neither the application nor the request for
10 hearing could be filed in its name. Judge Smith's Initial Order is correct, and it should be
11 adopted as the Board's Final Order.

12
13 **B. Mrs. Maxfield Is The Spouse Of A Member Of the Applicant Business Entity
And She Does Not Meet The Washington Residence Requirement**

14 The original issue that caused the denial to be issued was that Mr. Maxfield's spouse
15 did not reside in Washington during the three months prior to the application being filed.
16 Because Judge Smith decided the case on the alternative ground that the Limited Liability
17 Company did not legally exist, he did not reach this issue. If the Board decides to reach the
18 issue, the application should be denied on this basis as well. Both parties agree that as the
19 spouse of a member of the limited liability company that apparently applied for a marijuana
20 producer license, Mrs. Maxfield must meet the requirement that all members and spouses
21 have resided in Washington for at least three months prior to filing the application. WAC
22 314-55-035, 314-55-020(7). While the Board's briefing referred to the period as "90 days,"
23 which is often synonymous with a three-month period, we agree that the regulation and statute
24 states the period is "three months." WAC 314-55-020(7), RCW 69.50.331(1)(b),(c). Both
25 parties also agreed at hearing that this Washington residency requirement exists regardless of
26 whether the applicant is Mr. Maxfield himself, Mr. Maxfield as a sole proprietor, or Mr.

1 Maxfield as a member of a limited liability company. In any of these situations, both Mr.
2 Maxfield and his spouse must meet the Washington residency requirement. WAC 314-55-
3 035.

4 The parties disagree on whether Mrs. Maxfield having resided in Washington for 21
5 months ending in February, 2012, satisfies the requirement. The Board's argument is that it
6 does not. While the bare language of the statute might support an argument that any three-
7 month period of Washington residency could meet the requirement, that construction makes
8 no sense. If residing in Washington for three months 50 years ago could satisfy the
9 requirement, then it is meaningless. Statutory construction should not reach an absurd result.
10 *Blueshield v. State Office of Ins. Com'r*, 131 Wn.App. 639, 648, 128 P.3d 640 (2006). The
11 Court should interpret the statutory provision to harmonize it with other parts of the statute
12 and should adopt the interpretation that is consistent with the spirit or purpose of the statute
13 rather than a literal reading that renders the statute ineffective. *Id.* citing *Glaubach v. Regence*
14 *Blueshield*, 149 Wash.2d 827, 833, 74 P.3d 115 (2003). The most sensible construction of
15 the residency requirement is that it requires Washington residency for the three months
16 immediately preceding filing the application. If the requirement is to make sure that
17 applicants have ties to this state, or to prevent encouraging residents of other states where
18 marijuana has not been legalized from engaging in this business, then the requirement must
19 apply to the period immediately preceding filing the application. That is the only three-month
20 period that can be relevant here. The residence requirement should be construed to refer to
21 the three months prior to the filing of the application, and Mrs. Maxfield does not meet that
22 requirement.

23 At the hearing, Mr. Maxfield confirmed that the date on the declaration Mrs. Maxfield
24 filed is in error, and that she last resided in Washington in 2012, even more distant from the
25 filing of the application than the exhibit stated. That just provides additional support to the
26 argument that it does matter when the three-month residence occurs. It provides no benefit

1 and serves no policy purpose to require an applicant to reside in Washington for at least three
2 months but to say it can be any three months any time in their life.

3 Mr. Maxfield filed a brief at the hearing in response to the Board's hearing brief in
4 which he argues primarily that the Presiding Officer should look only at the bare language of
5 the statute. That is clearly not the appropriate standard, and in construing a statute, the Court
6 should consider the policy purpose being served. It is not ignoring the language of the statute
7 to construe it to serve the purpose for which it was enacted.

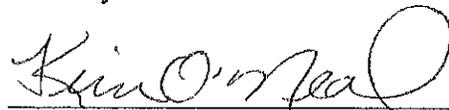
8 Requiring those involved in this new, heavily-regulated business, which has obvious
9 risks and impacts on Washington citizens and neighborhoods to be residents of Washington
10 for the three months before they apply serves an appropriate policy purpose, and that purpose
11 should be supported in the way the statutory language is construed. It would serve no purpose
12 whatever to require an applicant to have lived in Washington for three months sometime in
13 their lives long in the past, and that construction should be rejected.

14 CONCLUSION

15 Both because the Applicant entity was not lawfully formed under Washington law
16 when the application was filed, at the time the deadline for filing passed, or when the request
17 for a hearing was filed, and because the spouse of a member or the spouse of the Applicant
18 does not meet the Washington residency requirement, Judge Smith correctly affirmed the
19 denial of this license application. His decision should be adopted as the Board's Final Order.

20 DATED this 5th day of September, 2014.

21
22 ROBERT W. FERGUSON
23 Attorney General

24 

25 KIM O'NEAL, WSBA #12939
26 Senior Counsel
Attorneys for Washington State Liquor
Control Board Enforcement Division