BEFORE THE WASHINGTON STATE LIQUOR AND CANNABIS BOARD

IN THE MATTER OF: JUST HEMP LLC d/b/a JUST HEMP 11030 19TH AVE SW SEATTLE, WA 98146-2040 APPLICANT LICENSE APPLICATION NO. 414728 UBI: 603 358 398 001 0001	LCB NO. M-25,169 OAH NO. 2014-LCB-0097 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 and Cannabis Board issued a Statement of Intent to Deny Marijuana License dated June 30, 2014, asserting that the Applicant's proposed location was a residence.

2. The Applicant submitted a timely request for a hearing.

3. On May 1, 2015, a hearing was held before Administrative Law Judge Joshua D. Sundt with the Office of Administrative Hearings.

4. At the hearing, the Applicant was represented by Attorneys Stephanie Boehl and Kurt Boehl. Assistant Attorney General Kim O'Neal represented the Licensing Division of the Board.

5. On June 22, 2015, Administrative Law Judge Joshua D. Sundt issued an Initial Order, reversing the decision to deny the Applicant's license application as expressed in the Statement of Intent to Deny Marijuana 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 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;

IT IS HEREBY FURTHER ORDERED that marijuana license application number 414728 for Just Hemp LLC d/b/a Just Hemp is remanded to the Licensing Division for further processing.

DATED at Olympia, Washington this 18th day of AUGUST, 2015.

WASHINGTON STATE LIQUOR AND CANNABIS BOARD

Ruthann Kurose

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 and Cannabis 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 and Cannabis Board
3000 Pacific Ave, S.E.
P.O. Box 43076
Olympia, WA 98504-3076
Phone: 360-664-1602

Washington State
Liquor and Cannabis Board

August 19, 2015

Stephanie Boehl
Attorney for Applicant
KB Law Group PLLC
1001 4th Ave Ste 3200
Seattle, WA 98154-1003

Jeanelle Meintz
Just Hemp LLC
d/b/a Just Hemp
11030 19th Ave SW
Seattle, WA 98146-2040

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: Just Hemp LLC
TRADE NAME: Just Hemp
LOCATION: 11030 19th Ave SW, Seattle, WA 98146-2040
LICENSE APPLICATION NO. 414728
LCB HEARING NO. M-25,169
OAH NO. 2014-LCB-0097
UBI: 603-358-398-001-001

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: Becky Smith, Licensing Director, WSLCB
Frank O'Dell, Licensing Supervisor, WLSCB
Linda Thompson, Licensing Adjudications Coordinator, WSLCB

WASHINGTON STATE LIQUOR AND CANNABIS BOARD

IN THE MATTER OF: JUST HEMP LLC d/b/a JUST HEMP 11030 19TH AVE SW SEATTLE, WA 98146-2040 APPLICANT LICENSE APPLICATION NO. 414728 UBI: 603 358 398 001 0001	LCB NO. M-25,169 OAH NO. 2014-LCB-0097 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:

STEPHANIE BOEHL ATTORNEY FOR APPLICANT KB LAW GROUP PLLC 1001 4TH AVE STE 3200 SEATTLE, WA 98154-1003	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION KIM O'NEAL, ASSISTANT ATTORNEY GENERAL
JEANELLE MEINTZ JUST HEMP LLC d/b/a JUST HEMP 11030 19TH AVE SW SEATTLE, WA 98146-2040	

DATED this 19th day of August, 2015, at Olympia, Washington.

Kevin McCarroll, Adjudicative Proceedings Coordinator

RECEIVED
JUN 23 2015
Liquor Control Board
Board Administration

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

In the matter of: Jeanelle Meintz, dba Just Hemp, Applicant. Location address: 11030 19th Ave SW Seattle, WA 98146 License Application No. 414728 AVN No. 603-358-398-001-0001	Docket No. 2014-LCB-0097 **INITIAL ORDER** Agency: Liquor Control Board Program: Marijuana Licensing (MLI) Agency No. M-25,169

1. ISSUES PRESENTED

1.1 Whether the Applicant's proposed business location is a personal residence.

1.2 If so, then whether the Applicant's application for a marijuana retailer license is therefore subject to denial under WAC 314-55-050(1) and WAC 314-55-015.

2. ORDER SUMMARY

2.1 The Applicant's proposed business location is within a building which, at all times relevant to this matter, was being used as a personal residence.

2.2 The Applicant's application for a marijuana retailer license was not subject to denial under WAC 314-55-015 at the time the Statement of Intent to Deny was issued on June 30, 2014, because the Liquor Control Board did not provide the Applicant with notice and an opportunity to complete configuration of the proposed premises to comply with licensing standards.

2.3 The Liquor Control Board's denial of Applicant's marijuana retailer license is **Reversed**.

3. HEARING

3.1	Hearing Date:	May 1, 2015
3.2	Administrative Law Judge:	Joshua D Sundt
3.3	Licensee/Applicant:	Jeanelle Meintz, dba Just Hemp
	3.3.1 Representative:	Stephanie Boehl, KB Law Group PLLC. Kurt Boehl of KB Law Group PLLC also appeared as co-counsel for the Applicant.
	3.3.2 Witnesses:	Jeanelle Meintz appeared at the hearing but did not testify.

3.4 Agency: Liquor Control Board (LCB)

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

3.4.2 Witnesses: Frank O'Dell

3.5 Exhibits: The administrative law judge admitted exhibits 1 through 3, A1 through A39, and exhibit A42. Exhibits A40 and A41 were admitted for impeachment purposes only.

4. FINDINGS OF FACT

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

4.1 Sometime prior to January 11, 2014, Jeanelle Meintz, doing business as Just Hemp, made an initial application to LCB for a license to operate a retail marijuana business.

4.2 Because LCB planned to issue only a limited number of retail marijuana licenses, the agency established a lottery process to select the applicants whose applications would be processed.

4.3 LCB also instituted a "pre-screen" process to help ensure that the applications put into the lottery contained certain important information and documentation.

4.4 On January 11, 2014, LCB sent a welcome letter to Ms. Meintz notifying her about the upcoming pre-screen process. Exhibit 3, page 20. In this letter, or in a letter sent within the next few weeks, LCB notified Ms. Meintz of the information the LCB had to verify before entering her in the retail lottery, as follows:

> We must verify the following information before your application is entered into the retail lottery:
>
> - Applicant is at least 21 years of age
> - Applicant clears a personal criminal history check
> - Applicant meets residency requirements
> - Entity formed in WA
> - Location is not within 1000 feet of restricted entity
> - Applicant has the right to real property

Exhibit 15, page 2.

4.5 On February 21, 2014, LCB sent Ms. Meintz an email notifying her that the Retail Pre-screen Information packet (known as an "envelope") was available for her to view through an online service. Ms. Meintz first viewed the envelope on February 23, 2014. Exhibit 3, page 31.

4.6 The only information required to be submitted on or with the Retail Pre-screen Information form that related to the proposed business location was 1) the location

address, and 2) documentation of the applicant's legal right to the real estate. Exhibit 3, page 34. Notably, the pre-screen did not require information on the configuration of the proposed business premises or the proximity of the business premises to personal residences.

4.7 Ms. Meintz signed the Retail Pre-screen Information form using an online service known as DocuSign, and submitted the form to LCB on March 3, 2014. On the Retail Pre-screen Information form, Ms. Meintz identified 11030 19th Ave SW, Suite 2, Seattle WA 98146 as the location address to be entered into the lottery. Exhibit 3, page 34.

4.8 Among the documents Ms. Meintz submitted with her signed Retail Pre-screen Information form was a Retail Space Lease (Lease) for the proposed location, dated March 1, 2014. The Lease described the leased premises as "1000 SQUARE FOOT RETAIL SPACE (the 'Retail Space') located at 11030 19TH AVE SW STE 2, SEATTLE, WA 98146." Exhibit 3, page 46.

4.9 The Personal/Criminal History Statement that Ms. Meintz submitted along with her pre-screen information also identified the business location address as 11030 19th Ave SW Suite 2, Seattle WA 98146. Exhibit 3, page 36.

4.10 The landlord was identified as Thomas Meintz, having an address of 11030 19th Ave SW, Ste 1, Seattle WA 98146. Exhibit 3, pages 46 and 51.

4.11 Ms. Meintz also identified her own current home mailing address as 11030 19th Ave SW Unit 1, Seattle WA 98146. Exhibit 3, page 36.

4.12 As of the time of application, there is no evidence that any suite numbers were officially recognized—either by the county assessor's office or the postal service—as a component of the address at 11030 19th Avenue SW, Seattle WA 98146. Thus, the designation of separate suite numbers on the Retail Pre-screen Information form and the Lease apparently evinced only an intent to acquire a separate address for the business at some point in the future.

4.13 One provision of the Lease specified that "Tenant may use the Retail Space only for the purpose of operating a business open to the public for the sale of goods or services. The Retail Space may be used for any other purpose only with the prior written consent of Landlord, which shall not be unreasonably withheld."

4.14 By letter dated April 17, 2014, LCB notified Ms. Meintz that it had completed review of the documents received for the marijuana retail lottery prescreen process, and that her application did not meet the licensing requirement because "[t]he location is within 1000 feet of a restricted entity (WAC 314-55-050(10))."

4.15 On April 25, 2014, Frank O'Dell, Marijuana Supervisor with LCB, informed Ms. Meintz by voice mail that LCB had made a mistake and she should not have

received the application withdrawal letter dated April 17, 2014. Mr. O'Dell further advised Ms. Meintz to request reinstatement into the lottery process. Exhibit 3, page 11.

4.16 On April 26, 2014, Jeanelle and Thomas Meintz did send LCB an email requesting reinstatement into the retail marijuana license lottery. Exhibit 3, page 11.

4.17 More than two months later, on June 30, 2014, LCB issued a Statement of Intent to Deny Marijuana License to Ms. Meintz, under WAC 314-55-015. In the Statement of Intent to Deny, the summary of relevant facts stated simply that "It was found by Licensing Staff that applicant's proposed location is a residence." Exhibit 1.

4.18 Ms. Meintz filed a Request for Hearing, Response to Statement of Intent to Deny on July 21, 2014. Exhibit 2.

4.19 At no point prior to denying Ms. Meintz's application did LCB notify her that her business location would be required to have a legally recognized distinct address from her personal residence before being entered in the lottery. Similarly, at no point did LCB notify Ms. Meintz of a deadline or timeline for formalizing the distinct address which was indicated on her Retail Pre-screen Information form and Lease.

4.20 Testimony provided by LCB was inconsistent on the issue of whether retail marijuana businesses may be licensed in the same building as a personal residence. Mr. O'Dell's testimony at first suggested that the proximal personal residence must be in a separate building in order to be non-disqualifying. He later testified that a business could be licensed in the same building with a personal residence as long as the person residing in the residence was not affiliated with the business. Later still, he clarified that having a legally recognized separate address was the key demarcation allowing a marijuana retail business to be licensed in the same structure as a personal residence. Given LCB's own uncertainty about the practices employed in licensing businesses next to personal residences, I look to evidence of the Liquor Control Board's past practice. Although the evidence is slim, there is in the record at least one example of LCB licensing a marijuana retailer in the same building as personal residences. See Exhibit 24 and Exhibit 42, page 20 (Rain City Cannabis). I therefore find that LCB did license at least one retail marijuana business located in the same building as personal residences.

4.21 LCB has not followed a process that has consistently required the business location and the personal residence to be delineated as separate tax parcels.

4.22 Furthermore, LCB's process allowed for applicants to build or modify a structure ("build out") after the pre-screen. For example, one permitted practice was to

simply identify a parcel of vacant land as the proposed premises and then conduct the build out after the pre-screen but before licensure. Testimony of Frank O'Dell.

4.23 Therefore, it follows that LCB did allow completion of certain premises-related requirements after the pre-screen and retail lottery—such as requirements for signage, insurance, alarm systems, and surveillance system.

5. CONCLUSIONS OF LAW

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

5.1 The Office of Administrative Hearings has jurisdiction over the persons and subject matter of this case under Revised Code of Washington (RCW) 69.50.334, Washington Administrative Code (WAC) 314-55-070, chapter 34.12 RCW, chapter 34.05 RCW, and chapter 314-42 WAC.

5.2 The process of the retail pre-screen is not set forth in rule or statute.

5.3 The process of the retail lottery is not specified by rule or statute.

5.4 There is no rule specifying when law enforcement access will be deemed to be limited—other than the rather uncontroversial proposition that housing a business within an undifferentiated personal residence would limit law enforcement access. WAC 314-55-015(5).

5.5 In addition to testimony to the same effect, LCB attempted in its responses to discovery to argue that a marijuana business must be in a separate building from a personal residence. See, for example, LCB's admission in Exhibit A17, page 2, Admission No. 3 (lines 17-19):

> Admit that Board staff gave information to applicants about distinguishing a proposed business from a residence located at the same place, but this was only possible if the two were in separate buildings."

5.6 However, the "separate building" rationale is supported neither by the applicable rule nor LCB's own past practice. Furthermore, if we look to the rules for clues on how "location" is construed, the "separate building" rationale is again without support. In WAC 314-55-125(2) location is used to mean "any change to the physical location address." Nowhere do the rules prohibit marijuana businesses from inhabiting the same building as a personal residence.

5.7 Because licensed marijuana businesses and residences may exist within the same building, it follows that further investigation is needed to determine if the configuration of the location would restrict law enforcement access in violation of WAC 314-55-015(5). For example, information on whether there are interior doors between the premises, or whether the suites have separate entrances/exits, would

have to be investigated before the premises could meet the security requirements of WAC 314-55-083.

5.8 At hearing, LCB attempted to distinguish between situations in which the residents of such mixed-use configurations are affiliated with the business and those in which the residents are not so affiliated. This is not a valid distinction, given that the expressed restriction in WAC 314-55-015(5) concerns law enforcement access, which would by hampered as much by the first situation as by the latter. LCB offered no credible evidence of such a distinction being used consistently in its licensing practice. And there was certainly no credible evidence to show that this distinction was conveyed to applicants. Because the legitimate interest is to ensure unrestricted law enforcement access, LCB has shown no plausible rationale for making such a distinction, as the personal resident's affiliation with the business would seem to have no impact on whether law enforcement access is restricted. Rather, the relevant inquiry would be whether the business premises is configured and situated in such a way, relative to the personal residence, as to impair unrestricted access.

5.9 Because Ms. Meintz identified proposed premises to which she had a legal right and which were not within 1000 feet of a restricted entity, in light of its current practices—which are not published in rule—LCB should have permitted her to participate in the lottery and, if she was successful therein, should have permitted her to build out the proposed premises in such a way that met all the licensing requirements.

5.10 Nothing would prevent LCB from implementing a rule which requires a legally recognized distinct address at the time of the pre-screen application deadline; however, in this case LCB did not have such a rule and did not inform Ms. Meintz of such unpublished requirement. In effect, then, Ms. Meintz had no notice that she would have to complete the build-out of Suite 2 prior to the pre-screen information submittal deadline.

5.11 As set forth above, LCB's practice in the pre-screen was to require only two application criteria related to the proposed premises: 1) not within 1000 feet of restricted entity, and 2) legal right to real property. Other aspects of the proposed location were permitted to be completed post-lottery. For example, for those applicants who evidenced the legal right to real property only with a letter of intent, the security requirements were generally required to be completed until after the applicant negotiated and signed a lease and began to build out the premises. LCB certainly could have decided to require a fully completed business premises at the time of the pre-screen, but it chose not to, instead implementing a process that only looked at two specific elements of the real property licensure and deferring the remaining premises-related licensing requirements until a later juncture.

5.12 LCB would also be entitled to establish a timeline for completion of all premises requirements, but in this case no such deadline was communicated to Ms. Meintz. It would be patently unfair to allow some applicants to build out premises post-lottery, while others are denied that opportunity without notice.

5.13 Denying this this applicant a chance to participate in the retail lottery would be akin to denying an applicant for lack of security cameras or traceability software, at the time of the pre-screen, even though those requirements were not part of the pre-screen process communicated to applicants. LCB could enact rules or engage in a process which establishes a deadline for certain licensing requirements. However, LCB did not enact rules or communicate a deadline for finalizing the premises address.

5.14 This decision does not address the question of whether Ms. Meintz's proposed premises would—if built out—be considered to restrict law enforcement access to the business. The record is insufficient to make such a conclusion. Moreover, such a determination is not ripe until such time as Ms. Meintz has completed the build out of the premises or until such time as LCB properly establishes a deadline for compliance and makes a determination in accordance with that deadline.

5.15 This decision also does not address whether the proposed premises should be deemed compliant in other respects (such as meeting zoning codes), only that LCB's denial due to WAC 312-55-015(5) was premature without notice of a compliance timeline and opportunity to complete build out and acquire a legal second address.

5.16 Furthermore, this decision does not address whether Applicant's proposed premises meets any of the licensure requirements, only that LCB asserted no valid reason for withdrawing the Applicant from the lottery and failing to continue processing Applicant's application.

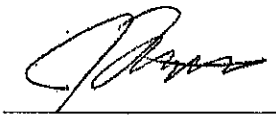
6. INITIAL ORDER

6.1 The Applicant's proposed business location is within a building which, at all times relevant to this matter, was being used as a personal residence.

6.2 The Applicant's application for a marijuana retailer license was not subject to denial under WAC 314-55-015 at the time the Statement of Intent to Deny was issued on June 30, 2014, because the Liquor Control Board did not provide the Applicant with notice and an opportunity to complete configuration of the proposed premises to comply with licensing standards.

6.3 The Liquor Control Board's denial of Applicant's marijuana retailer license is **Reversed**.

Dated: June 22, 2015



Joshua D. Sundt
Administrative Law Judge
Office of Administrative Hearings

NOTICE OF APPEAL RIGHTS – PLEASE READ CAREFULLY

Petition for Review of Initial Order: Either the applicant or the assistant attorney general may file a petition for review of the initial order with the liquor control board within twenty (20) days of the date of service of the initial order. RCW 34.05.464, WAC 10-08-211 and WAC 314-42-095.

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 (10) ten 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 response must be mailed to all other parties and their representatives at the time the response is filed.

Address for filing a petition for review with the board: Washington State Liquor Control Board, Attention: Kevin McCarroll, 3000 Pacific Avenue, PO Box 43076, Olympia, Washington 98504-3076.

Final Order and Additional Appeal Rights:

The administrative record, the initial order, any petitions for review, and any replies filed by the parties will be circulated to the board members for review. WAC 314-42-095(3).

Following this review, the board will enter a final order. WAC 314-42-095(4). Within ten days of the service of a final order, any party may file a petition for reconsideration with the board, stating the specific grounds upon which relief is 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).

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:

Kim O'Neal Senior Counsel Office of the Attorney General PO Box 40100 Olympia, WA 98504-0100	Agency Representative
Jeanelle Meintz dba Just Hemp 11030 19th Avenue SW Seattle, WA 98416	Applicant
Stephanie Boehl KB Law Group, PLLC 1001 - 4th Avenue, Suite 3200 Seattle, WA 98154	Applicant Representative
Kevin McCarroll Adjudicative Proceedings Coordinator P.O. Box 43076 Olympia, WA 98504-3076	Agency Contact
Becky Smith Licensing Director P.O. Box 43098 Olympia, WA 98504-3098	Agency Contact

Dated June 22, 2015 at Olympia, Washington.
(DATE OF MAILING)

Karen Williams

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