

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

JOSH LOCKE
d/b/a JOSH LOCKE

18407 PACIFIC AVE S #1
SPANAWAY, WA 98387

APPLICANT

LICENSE APPLICATION NO. 415577
UBI: 603 359 581 001 0001

LCB NO. M-25,223
OAH NO. 2014-LCB-0070

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 Marijuana License dated June 16, 2014, asserting that the Applicant's proposed location was within 841 feet of Challenger Secondary School located at 18020 B Street East in Spanaway, Washington.
2. The Applicant timely submitted a request for a hearing.
3. On January 15, 2015, a hearing was held before Administrative Law Judge Leslie Birnbaum with the Office of Administrative Hearings.
4. At the hearing, the Applicant was represented by Attorney Jay Berneburg. Assistant Attorney General Kim O'Neal represented the Licensing Division of the Board.
5. On April 8, 2015, Administrative Law Judge Leslie Birnbaum issued an Initial Order, affirming 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.

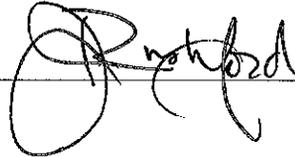
7. The entire record in this proceeding was presented to the Board for final decision, and the Board having fully considered said record and being fully advised in the premises;

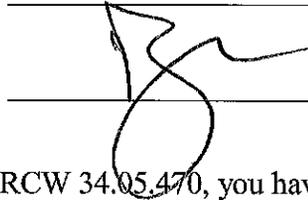
NOW, THEREFORE, IT IS HEREBY ORDERED that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order are, AFFIRMED and adopted as the Findings of Fact, Conclusions of Law and Final Order of the Board;

IT IS HEREBY FURTHER ORDERED that marijuana license application number 415577 for Josh Locke d/b/a Josh Locke is DENIED.

DATED at Olympia, Washington this 23rd day of JUNE, 2015.

WASHINGTON STATE LIQUOR CONTROL BOARD





Reconsideration. Pursuant to RCW 34.05.470, you have ten (10) days from the mailing of this Order to file a petition for reconsideration stating the specific grounds on which relief is requested. A petition for reconsideration, together with any argument in support thereof, should be filed by mailing or delivering it directly to the Washington State Liquor Control Board, Attn: Kevin McCarroll, 3000 Pacific Avenue Southeast, PO Box 43076, Olympia, WA 98504-3076, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board's office. RCW 34.05.010(6). A copy shall also be sent to Mary M. Tennyson, Senior Assistant Attorney General, 1125 Washington St. SE, P.O. Box 40110, Olympia, WA 98504-0110. A timely petition for reconsideration is deemed to be denied if,

within twenty (20) days from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on the petition. An order denying reconsideration is not subject to judicial review. RCW 34.05.470(5). The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

Stay of Effectiveness. The filing of a petition for reconsideration does not stay the effectiveness of this Order. The Board has determined not to consider a petition to stay the effectiveness of this Order. Any such request should be made in connection with a petition for judicial review under chapter 34.05 RCW and RCW 34.05.550.

Judicial Review. Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).



Washington State
Liquor Control Board

June 24, 2015

Jay Bernburg
Attorney for Applicant
The Law Office of Jay Berneburg
705 S 9th St Ste 206
Tacoma, WA 98405-4622

Josh Locke
d/b/a Josh Locke
12320 Vail Rd SE
Yelm, WA 98597-8305

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: Josh Locke
TRADE NAME: Josh Locke
LOCATION: 18407 Pacific Ave S #1, Spanaway, WA 98387
LICENSE APPLICATION NO. 415577
LCB HEARING NO. M-25,223
OAH NO. 2014-LCB-0070
UBI: 603 359 581 001 0001

Dear Parties:

Please find the enclosed Final Order of the Board and Declaration of Service by Mail in the above-referenced matter.

If you have any questions, please contact me at (360) 664-1602.

Sincerely,

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

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Becky Smith, Licensing Director, WSLCB
Frank O'Dell, Licensing Supervisor, WLSCB
Mary Henley, Administrative Assistant, WSLCB

PO Box 43076, 3000 Pacific Ave. SE, Olympia WA 98504-3076, (360) 664-1602 www.liq.wa.gov

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

JOSH LOCKE
d/b/a JOSH LOCKE

18407 PACIFIC AVE S #1
SPANAWAY, WA 98387-8374

APPLICANT

LICENSE APPLICATION NO. 415577
UBI: 603 359 581 001 0001

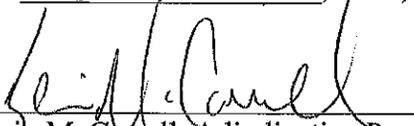
LCB NO. M-25,223
OAH NO. 2014-LCB-0070

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:

JAY BERNEBURG ATTORNEY FOR APPLICANT THE LAW OFFICE OF JAY BERNEBURG 705 S 9TH ST STE 206 TACOMA, WA 98405-4622	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION KIM O'NEAL, ASSISTANT ATTORNEY GENERAL
JOSH LOCKE d/b/a JOSH LOCKE 12320 VAIL RD SE YELM, WA 98597-8305	

DATED this 24th day of JUNE, 2015, at Olympia, Washington.


Kevin McCarroll, Adjudicative Proceedings Coordinator

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

IN THE MATTER OF:

JOSH LOCKE, DBA JOSH LOCKE,

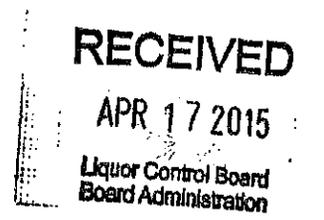
**Location Address:
18407 PACIFIC AVE. S. #1
SPANAWAY, WA 98387**

Applicant.
License Application No. 415577

OAH Docket No. 2014-LCB-0070

Agency No. M-25,223

INITIAL ORDER



1. ISSUES PRESENTED

- 1.1 Is the proposed location for Josh Locke's marijuana retail store within 1,000 feet of Challenger Secondary School?
- 1.2 Did the Liquor Control Board ("Board") correctly deny a marijuana retailer license to Mr. Locke because of the proposed location's proximity to Challenger Secondary School under RCW 69.50.331(8) and WAC 314-55-050(10)?

2. ORDER SUMMARY

- 2.1 The proposed location for Mr. Locke's marijuana retail store is within 1,000 feet of Challenger Secondary School.
- 2.2 The Board correctly denied a marijuana retailer license to Mr. Locke because of the proposed location's proximity to Challenger Secondary School under RCW 69.50.331(8) and WAC 314-55-050(10).

3. HEARING

- 3.1 **Hearing:** January 15, 2015, Office of Administrative Hearings, Olympia.
- 3.2 **Administrative Law Judge:** Leslie Birnbaum.
- 3.3 **Applicant:** Josh Locke.
 - 3.3.1 **Representative:** Jay Berneburg, Attorney, Law Offices of Jay

Berneburg.

3.3.2 **Witness:** Bruce Studeman, Licensed Land Surveyor, Bracy and Thomas.

3.3.3: **Observer:** Larry Mahan.

3.4 **Agency:** Liquor Control Board.

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

3.4.2 **Witnesses:**

3.4.2.1 Frank O'Dell, Marijuana Supervisor, Board.

3.4.2.2 Rebecca Smith, Marijuana Unit Manager, Board.

3.5 **Exhibits:** Exhibits 1 through 6 and A were admitted.

3.6 **Close of Record:** On February 6, 2015, both parties submitted post-hearing briefs. The record closed on February 9, 2015.

4. FINDINGS OF FACT

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

Jurisdiction

4.1 On June 24, 2014, the Board issued and served Mr. Locke with a Statement of Intent to Deny Marijuana License regarding License Application No. 415577. Exhibit 1, pp. 1 - 3.

4.2 On June 30, 2014, Mr. Locke filed an appeal (Request for Hearing). Exhibit 2, pp.1-2.

Background

4.3 The Board is charged with the responsibility of protecting public safety. Testimony of Mr. O'Dell.

4.4 The Board instituted "property line to property line" measurement rules to provide consistent measurements of the closest distance between the proposed location of marijuana retail stores and restricted entities to prevent [marijuana]

exposure to children. Testimony of Mr. O'Dell. The Board wanted to promote consistent measurements for all marijuana license applicants. Testimony of Ms. Smith.

4.5 The Board included schools on the list of restricted entities due to the potential exposure to children. Testimony of Mr. O'Dell.

4.6 The Board performs mapping and measurement by using a program that relies on parcel maps that are obtained from county government websites. The maps are designed for tax purposes. Testimony of Ms. Smith.

Locke Application

4.7 On March 20, 2014, as part of the marijuana retail license application process, Mr. Locke submitted a Personal/Criminal History Statement and other materials to the Board. Exhibit 3, pp. 1 - 27.

4.8 Mr. Locke identified his proposed marijuana retail location as 18407 Pacific Ave., #1, Spanaway, Washington 98387. Testimony of Mr. O'Dell; Exhibit 3, pp. 18, 23.

4.9 Mr. Locke's proposed retail location is a leased suite in a former condominium unit ("Unit 1"), which is part of a former-condominium complex ("complex"). Testimony of Ms. Smith; Testimony of Mr. Studeman; Exhibit 3, pp. 1, 27; Exhibit 5. The complex consists of 12 adjoining units that are arranged in a "U" formation in a strip-mall plaza. Exhibit 5; Exhibit 6; Testimony of Mr. O'Dell. Each unit contains two suites. Exhibit 5.

4.10 The complex is currently owned by one owner. Testimony of Ms. Smith. The complex has one tax group account number (26188). Exhibit 4.

4.11 The complex has a common area, which has two parking areas for all occupants and their visitors. Exhibit 5; Exhibit 6; Testimony of Mr. Studeman; Testimony of Ms. Smith. Mr. Locke received approval from Timothy Cronk to lease the proposed marijuana retail location, if Mr. Locke is approved for a marijuana retail license.

4.12 The tax parcel number for the complex is 4660000431. Exhibit 4; Exhibit 5.

4.13 The tax parcel number of Mr. Locke's suite is 7816400010. Exhibit 3, p. 27; Exhibit 5.

Measurement

4.14 The Board investigates each license application for a marijuana retail store to determine if the proposed store location is within 1,000 feet of the restricted entities listed in RCW 69.50.331(8) and WAC 314-55-050(10). Testimony of Mr. O'Dell. The Board is charged with protecting public safety and performs these types of investigations and determinations for all applications. *Id.*; Testimony of Ms. Smith.

4.15 The investigator measures the distance between a proposed retail location and restricted entities by using a Global Information System ("GIS"). Testimony of Mr. O'Dell; Exhibit 3, pp. 28 - 34.

4.16 The GIS program incorporates property lines taken from tax parcel numbers to make measurements of distances. *Id.* For Mr. Locke's application, the Board used the property lines as found on the Pierce County Assessor-Treasurer's tax parcel map for the measurement of the shortest distance to a restricted entity. Exhibit 5; Testimony of Mr. O'Dell.

4.17 An investigator uses GIS to enter the address of the proposed location. The program provides maps and photos of the surrounding area and identifies restricted entities. For Pierce County properties, including Mr. Locke's proposed location, the GIS "pulls" information and data from the Pierce County Assessor's website, the Department of Early Learning, the Office of the Superintendent of Public Instruction and other data sources. Testimony of Mr. O'Dell. The program superimposes property/plat lines onto a map of the tax parcels in the area, which includes the proposed location and the location of restricted entities. *Id.*

4.18 The investigator entered the address of Mr. Locke's proposed location into the GIS program. The investigator clicks the mouse on the closest corner of the property line of the proposed location on the map and drags the cursor to the closest corner of the property line of the restricted entity on the map.¹ Testimony of Mr. O'Dell. The GIS software provides the measurement. *Id.* By this method, the investigator measures the shortest straight line distance between the two properties. The property line refers to the parcel property line and does not use the property line for individual suites. Testimony of Ms. Smith. The measurement is to the parcel property line and "not to the front door." *Id.*

4.19 The measurement is not precise because the accuracy depends on the investigator's placement of the cursor on the appropriate property-line corner,

¹ The "closest corner" of the proposed location's property line refers to the closest corner of the property line to the restricted entity. Exhibit A; Exhibit 3, p. 28; Testimony of Mr. O'Dell. The "closest corner" of the restricted entity's property line refers to the closest corner of the tax parcel's property line to the proposed location. *Id.*

which may vary by 10 to 30 feet or more. Testimony of Mr. O'Dell; Testimony of Ms. Smith. The variance in the measurement depends on the placement of the mouse or cursor by each individual investigator. Testimony of Mr. O'Dell.

4.20 The investigator determined that Mr. Locke's proposed location is within 841.4 feet from a restricted entity, Challenger Secondary School. Exhibit 3, p. 28; Testimony of Mr. O'Dell. The investigator performed the measurement by clicking the mouse on the corner of the tax parcel property line of the complex, which contains Mr. Locke's proposed location, and dragging the cursor to the corner of the property line of Challenger Secondary School. *Id.*

4.21 Mr. O'Dell used the GIS program in this investigation to determine the shortest distance between the proposed location and the restricted entity. Testimony of Mr. O'Dell. A second measurement showed the proposed location to be within 816.3 feet of Challenger Secondary School.² Exhibit 3, p. 34; Testimony of Mr. O'Dell.

4.22 Mr. Locke hired Bruce Studeman, a licensed land surveyor, who performed a site visit and did a measurement from the closest corner of the complex's property line to the closest corner of the property line of Challenger Secondary School and determined that the distance was 841 feet. Exhibit A; Testimony of Mr. Studeman. Mr. Studeman used the property lines as found on the Pierce County Assessor-Treasurer's tax parcel map for the measurement of the shortest distance to Challenger Secondary School. The Board did not dispute the accuracy of this measurement.

4.23 During the site visit, Mr. Studeman also measured the distance from the closest corner of the property line of Mr. Locke's proposed location (Unit 1) to the closest corner of the property line of Challenger Secondary School and determined that the distance was 1,001 feet. Exhibit A; Testimony of Mr. Studeman. The Board did not dispute the accuracy of this measurement.

4.24 Mr. Studeman's measurements of 841 feet and 1,001 feet were accurate to .2 feet. Testimony of Mr. Studeman.

4.25 As a result of Mr. O'Dell's GPS measurements and computations, the Board determined that Mr. Locke's proposed location was within 816 to 841 feet of Challenger Secondary School. Testimony of Mr. O'Dell. The Board did not perform a site visit and did not obtain a land survey.

4.26 On June 24, 2014, the Board issued a Statement of Intent to Deny

² The Board did not contest the land surveyor's measurement of 841 feet as the shortest straight line distance between the corner of the property line of the complex and the corner of the tax parcel's property line of Challenger Secondary School. See Exhibit A.

License to Mr. Locke because his proposed location was within 1,000 feet of the perimeter of the grounds of a secondary school. Exhibit 1, p. 2; Testimony of Mr. O'Dell.

4.27 On June 30, 2014, the Board received Mr. Locke's Request for Hearing. Exhibit 2, pp. 1 – 2.

5. CONCLUSIONS OF LAW

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

Jurisdiction

5.1. I have jurisdiction over the persons and subject matter of this case under RCW 66.08.150; RCW 69.50.331(2)(c); Chapter 34.12 RCW, and WAC 314-42-051.

Applications to Sell Marijuana

5.2. On November 6, 2012, the voters approved Initiative Measure 502 ("Initiative"). RCW 69.50.010; See Notes - Intent. As a result, the Legislature enacted chapter 69.50 RCW, which "authorizes the Board to regulate and tax marijuana for persons 21 years of age and older, and added a new threshold for driving under the influence of marijuana." *Id.*

5.3. When considering applications for marijuana retail licenses, the Board has discretion regarding the construction and operation of premises that are used to sell marijuana. RCW 69.50.331. RCW 69.50.331(1) states:

For the purpose of considering any application for a license to produce, process, or sell marijuana, or for the renewal of a license to produce, process, or sell marijuana, the state liquor control board may cause an inspection of the premises to be made, and may inquire into all matters in connection with the construction and operation of the premises.

...

Subject to the provisions of this section, the state liquor control board may, in its discretion, grant or deny the renewal or license applied for.

...

RCW 69.50.331(1).

5.4. The Initiative intended to authorize the Board to regulate marijuana, including its retail sale, by "tak[ing] marijuana out of the hands of the illegal drug

organizations and bring[ing] it under a *tightly regulated, state licensed system similar to that for controlling hard alcohol.*" RCW 69.50.101, See Note 3 [emphasis added].

5.5. The Legislature directed the Board to establish licensing procedures and criteria that consider security and safety issues relating to retail outlets. RCW 69.50.345.

Restrictions on Distance Between Proposed Location and Secondary School

5.6. "The state liquor control board *shall not* issue a license for any *premises within one thousand feet of the perimeter of the grounds of any elementary or secondary school*, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older." RCW 69.50.331(8) [emphasis added].

5.7. "Perimeter" means a property line that encloses an area. WAC 314-55-010(14). The Board uses the corners of the property lines as found on the Pierce County Assessor-Treasurer's tax parcel map for the points of measurement of the shortest distance to a restricted entity. See Findings of Fact 4.15 - 4.17.

5.8. Chapter 69.50 RCW does not provide a definition of "premises." The Washington State Supreme Court has defined premises as:

The property conveyed in a deed; hence, in general, a piece of land or real estate; sometimes, esp. [especially] in fire insurance papers, a building or buildings on land; as to lease *premises*; the *premises* insured. Sometimes loosely applied to personal property, as a vessel.

Seattle v. Green, 51 Wn.2d 871, 874, 322 P.2d 842 (1958) (citing the Webster New International Dictionary definition of premises for a criminal case involving the unlawful possession of liquor).

5.9. The online Webster Dictionary definition of "premises" states:

Noun 1. premises - land and buildings together considered as a place of business, "bread is baked on the premises"

See www.webster-dictionary.org.

5.10. The Initiative intended for the Board to have a tightly regulated system similar to the Board's system regulating hard alcohol. Consequently, the definition of "premises" that applies to the regulation and enforcement of alcohol use is instructive because alcohol is also tightly regulated by the Board.

RCW 66.44.010. The statute pertaining to “Furnishing Liquor to Minors-Possession, use-Penalties-Exhibition of Effects-Exceptions” states:

It is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control. For the purposes of this subsection, *“premises” includes real property, houses, buildings, and other structures, and motor vehicles and watercraft.* A violation of this subsection is a gross misdemeanor punishable as provided for in chapter 9A.20 RCW.

RCW 66.44.270(1) [emphasis added].

RCW 66.44.270 uses a broad definition of premises because it includes “real property, houses, buildings and other structures...” This supports the Board’s position, which includes the complex as the point of measurement for the shortest straight-line distance to the restricted entity. The complex, containing adjoining units and common areas, is real property, which falls under the definition of premises. *Id.*

5.11. The Board provides the following information on the measurement of the distance between the proposed location and a restricted entity:

The board shall not issue a new marijuana license if the proposed licensed business is within one thousand feet of the perimeter of the grounds of any of the following entities. The distance *shall be measured as the shortest straight line distance from the property line of the proposed building/business location* to the property line of the entities listed below:

- (a) Elementary or secondary school;

WAC 314-55-050(10)³ [emphasis added].

5.12. The shortest straight-line distance from the corner of the property line of the complex to Challenger Secondary School is 841.4 feet. The shortest straight line distance from the corner of the property line of Unit 1, which houses the actual location of the proposed retail store, and the corner of the property line of Challenger Secondary School is 1,001 feet. The parties did not contest the accuracy of the measurements or distances. The parties’ dispute focused on the points of measurement: whether the corner of the property line of the complex or the corner of the property line of the unit itself should be used as the measurement point when computing the shortest straight line distance from

³ WAC 314-55-050 provides the same list of the restricted entities as mentioned in RCW 69.50.331(8).

Challenger Secondary School.

5.13. The parties agree on the facts and the legal issue before this tribunal. The parties disagree on the points of measurement for the shortest straight-line distance between the proposed business to the restricted entity. Mr. Locke argued that the Board chose the wrong tax parcel property line for the shortest distance measurement and should have used the corner of the property line from Unit 1 instead of the larger tax parcel - the complex. By this method, the proposed business location was located 1,001 feet away from Challenger Secondary School and therefore was outside of the 1,000-foot distance between a retail business and a restricted entity. The method proposed by the Board measured the shortest straight-line distance between the larger tax parcel's property lines (the complex) and Challenger Secondary School, which was 841 feet and did not meet the 1,000-foot requirement. RCW 69.50.331(8); WAC 314-55-050(10).

Mr. Locke provided a well-formed and organized argument, which relied on the case of *Mall Inc. v. City of Seattle*, 108 Wn.2d 369, 739 P.2d 668 (1987). Mr. Locke also pointed out that the statute and regulations did not define the terms "premises" and "property line," and the Board used boundary lines of tax parcels as they are determined and mapped by the County Assessor.

5.14. I am not persuaded by Mr. Locke's argument for the following reasons:

1. In *Mall*, the landowner had a [fee interest] in the underlying street; however, he could not calculate additional square footage into the computation of the lot area, which would have increased allowable floor space for the construction of a larger structure. The court found that the city's zoning code was clear: "streets are not to be considered part of a landowner's lot area." *Mall*, 108 Wn. 2d at 386. *Mall* can be distinguished from the facts of this case. *Mall* involved a landowner, whether or not a street easement should be included in a lot area for construction purposes, and the interpretation of a zoning ordinance. Mr. Locke is a potential leaseholder and is not a landowner or the owner of the complex. The central issue involves the point(s) of measurement for the calculation of the shortest straight-line distance to a restricted entity. The interpretation involves statutes and regulations pertaining to the licensing of marijuana retail businesses and does not pertain to zoning ordinances or construction.

The court in *Mall* gave considerable deference to the construction of the zoning ordinance by the "officials charged with its enforcement." *Id.* at 378. Mr. Locke may disagree with the Board's measuring points from the larger tax parcel [complex]; however, considerable deference

should be provided to the Board because it is charged with the regulation and enforcement of marijuana retail businesses as well as protecting public welfare, health and safety. See Conclusions of Law 5.4. - 5.5.

2. The Board's use of the County Assessor's tax parcel property lines for the property line measurement is consistent with its methodology for mapping and measuring all marijuana licensing applicants.
3. The Legislature's inclusion of "premises" in RCW 69.50.331 provides the Board with a clear directive. It "*shall not* issue a license for any premises within one thousand feet of the perimeter of the grounds of any elementary or secondary school... *Id.* The definition of premises and its meaning as used in the regulation of alcohol supports a broad interpretation. As a result, the measurement of the shortest distance would include the complex as the proposed business location. See Conclusions of Law 5.8 - 5.10. The broad definition of premises does not support the measurement from an individual unit or suite because it is too narrow. A narrow definition of "premises" is restrictive in light of the Initiative's intent to provide safeguards and protection to public institutions and the physical layout of the complex as one structure containing 12 adjoining units and common areas.
4. At the present time, the complex operates under a sole ownership, has one tax group account number and has a common tax parcel number (466000431). Each unit has two separate tax parcel numbers. The Assessor-Treasurer's parcel map for the complex does not provide separate and distinct property lines for each of the suites. Exhibit 5.
5. Mr. Locke's suite, like the 23 remaining suites in the complex, cannot be separated from the complex as a whole.
6. Mr. Locke's proposed location is on the corner of the complex. The complex contains 12 adjoining units, which are located in a U-shaped formation. Each unit contains two suites. Mr. Locke's proposed business would be located in one of the two suites in Unit 1. Unit 1 is located on one end of the complex's U-shaped formation. The U-shaped formation partially encloses the central parking area. Exhibit 6.
7. The complex contains common areas, which include two main entrances to the complex, two parking areas and walkways. *Id.* Potential customers would have access to other areas in the complex, including the common areas.

8. Although Mr. Locke's proposed location is one suite occupying the corner of complex, it is not practical to consider the location in isolation of the complex itself. The daily activity of people coming and going from Mr. Locke's proposed location as well as from other suites extends beyond the 'four corners' of an actual suite. Considering the common areas and the U-formation of the complex, it is more likely than not that there will be a comingling of daily activity from all units.⁴ As a result, the areas of impact and activity of the proposed business extends well-beyond the individual suite.
9. It is more likely than not that the proposed business would constitute the complex as a whole. See Conclusions of Law 5.15 - 5.16.
10. The Legislature passed chapter 69.50 RCW for the "immediate preservation of public peace, health, or safety, or support of the state government and its existing public institutions ..." RCW 69.50.010; See Note. This indicates the Legislature's health and safety concerns for public institutions, which would include schools.
11. The Initiative intended to bring marijuana under a "tightly regulated, state-licensing system similar to controlling the regulation of alcohol." *Id.*; RCW 69.50.010; See Note. This would support a marijuana licensing system that "tightly regulate[s]" the locations of retail marijuana stores with respect to the required distances from restricted entities. In other words, this would favor the shortest distance measurement occurring from the closest corner of the property line of the complex to the closest corner of Challenger Secondary School's property line.

5.15. The Board argues that it should measure the shortest distance from the property line of the complex, and not from Mr. Locke's proposed suite. By this method, the proposed business location is located 841 feet from the Challenger Secondary School. The Board argues that the statutory and regulatory language referring to "premises" and "building/business location" support a broad interpretation, which would provide a measurement from the entire U-shaped building structure to the school as opposed to the narrow interpretation, which would limit the measurement to one unit. The Board cites the protection of children as the motivation behind the Licensing staff's measurement. The express language of RCW 69.50.331 and WAC 314-55-050 prohibits the Board from issuing a license to any premises within 1,000 feet of the grounds of any elementary or secondary school playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade (not

⁴ It would not be uncommon to see provisions in a lease agreement that detail access to common areas for tenants with regard to parking, garbage, recycling, storage and other amenities.

restricted to those 21 years or older). RCW 69.50.331(8); WAC 314-55-050(10). The Legislature and the Board's express inclusion of child-friendly public and private institutions supports the interpretation of the shortest measurement from the complex to Challenger Secondary School in order to protect children. In addition, the Board has broad authority to deny a marijuana license application if it determines the issuance of the license would not be in the best interest of the welfare, health, or safety of the people of the state, which would include children. WAC 314-55-050(16). Similarly, the Board's interpretation is also supported because it has broad discretion to "deny, suspend, or cancel a marijuana license application or license." Per RCW 69.50.331, "the [B]oard has broad discretionary authority to approve or deny a marijuana license application" for a list of reasons including the 1,000 foot proximity to a restricted entity; however, the Board's authority is not limited to the list of exclusions in the regulation. WAC 314-55-050.

5.16. I disagree with Mr. Locke's argument because of the express language of the regulation, which states: "The distance *shall be measured as the shortest straight line distance from the property line of the proposed building/business location* to the property line of the entit[y]." WAC 314-55-050 [emphasis added]. The express language of the regulation contemplates using either the shortest straight-line distance from the corner of the property line of the proposed building, which in this case would be the complex, or the shortest straight-line distance from the corner of the property line of the proposed business location, which, according to Mr. Locke, would be Unit 1. The presence of the backslash character or "/" between "business" and "business location" can be read as "or." By substituting the word, or, in place of the backslash symbol, the sentence can be read in the following way:

The distance shall be measured as the shortest straight line distance from the property line of the proposed building [or the] business location to the property line of the entit[y].

Id.

By using the word "or," the regulation provides a choice:

(1) The shortest distance shall be measured as the shortest straight-line distance from the property line of the proposed building (complex) to Challenger Secondary School.

or

(2) The shortest distance shall be measured as the shortest straight line distance from the property line of the business location (Unit 1) to Challenger Secondary School.

The complex constitutes the "proposed building" because Unit 1 is not separate, but attached to the U-shaped complex, as are all of the units. Each adjoining unit cannot be considered separately because they are not independent of the main structure and incorporate shared common spaces. The shared spaces include the parking areas, the two parking lot entrances and walkways. Visitors and patrons, including Mr. Locke's potential customers, would have access to the common areas. Each suite may be individually occupied but the suites and the units are physically part of the complex and share common areas. Thus, the measurement should occur from the property line of the complex to Challenger Secondary School, as directed in WAC 314-55-050, which is within 1,000 feet (841 feet) of a restricted entity. The intent of the Initiative to provide a "tightly regulated state-licensing system similar to controlling the regulation of alcohol" also supports the choice of the complex as the location for measuring the shortest straight distance to the restricted entity. Furthermore, the broad definition of premises in chapter 66.44 RCW supports the inclusion of the complex as the premises (and point of measurement) and would disfavor limiting the premises as well as the business location to one unit or one suite.

5.17. The Legislature used mandatory language and provided a clear directive prohibiting the issuance of marijuana retail licenses within specified distances of restricted entities. RCW 69.50.331 states that the Board "*shall not* issue a marijuana retail license for *any premises within* one thousand feet of the perimeter of the grounds of any elementary or secondary school..." RCW 69.50.331(8) [emphasis added]. Because Mr. Locke's proposed location for a marijuana retail store is within 1,000 feet of Challenger School, the Board correctly denied Mr. Locke's license application.

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

6.1 The proposed location for Mr. Locke's marijuana retail store is within 1,000 feet of Challenger Secondary School.

6.2 The Board correctly denied a marijuana retailer license to Mr. Locke because of the proposed location's proximity to Challenger Secondary School under RCW 69.50.331(8) and WAC 314-55-050(10).

The Board's decision to deny Mr. Locke's application for a marijuana retailer license is **AFFIRMED**.

Issued on the date of mailing.


Leslie Birnbaum
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 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).

CERTIFICATE OF SERVICE ATTACHED

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 2014-LCB-0070

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

<p>Josh Locke Dba Josh Locke 12320 Vail Road SE Yelm, WA 98597</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>Jay Berneburg Attorney at Law 705 South 9th Street, Ste. 206 Tacoma, WA 98405</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>Kim O'Neal Senior Counsel Office of the Attorney General 1125 Washington St SE PO Box 40100 Olympia, WA 98504</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</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: Wednesday, April 08, 2015

OFFICE OF ADMINISTRATIVE HEARINGS

Julie Wescott

Julie L. Wescott
 Legal Secretary