

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

MGL CONSULTING LLC
d/b/a MGL CONSULTING

19910 OLD OWEN RD STE B
MONROE, WA 98272-9778

APPLICANT

LICENSE APPLICATION NO. 413356
UBI: 602 924 630 001 0001

LCB NO. M-25,242
OAH NO. 10-2014-LCB-00051

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 July 22, 2014, asserting that the Applicant failed to submit a required, valid and signed letter of intent to lease or purchase from property owner or designee. The Licensing Division also asserted that the Applicant's proposed location was within 602 feet of Al Borlin Park at 615 Simmons Road in Monroe, Washington.
2. The Applicant timely submitted a request for a hearing.
3. On February 2, 2015, a hearing was held before Administrative Law Judge T.J. Martin with the Office of Administrative Hearings.
4. At the hearing, the Applicant was represented by Mitch Leisten of MGL Consulting LLC. Assistant Attorney General Kim O'Neal represented the Licensing Division of the Board.

5. On April 10, 2015, Administrative Law Judge T.J. Martin 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.

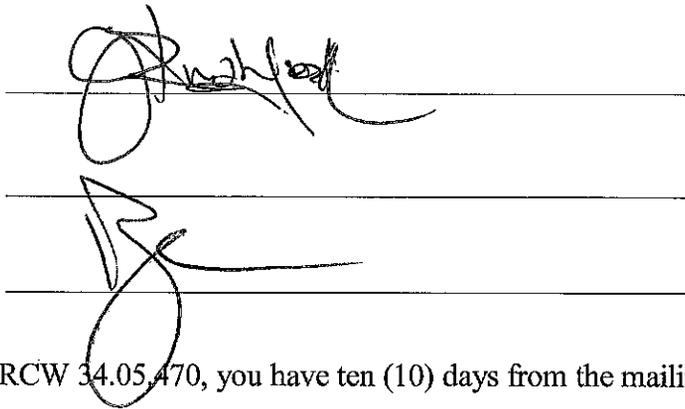
7. The entire record in this proceeding was presented to the Board for final decision, and the Board having fully considered said record and being fully advised in the premises;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order for case M-25,242 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 413356 for MGL Consulting LLC d/b/a MGL Consulting 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

Mitchell Leisten
MGL Consulting LLC
d/b/a MGL Consulting
15486 168th Ave SE
Monroe, WA 98272-2881

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: MGL Consulting LLC
TRADE NAME: MGL Consulting
LOCATION: 19910 Old Owen Rd Ste B, Monroe, WA 98272-9778
LICENSE APPLICATION NO. 413356
LCB HEARING NO. M-25,242
OAH NO. 10-2014-LCB-00051
UBI: 602-924-630-001-0001

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,

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

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

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

MGL CONSULTING LLC
d/b/a MGL CONSULTING
19910 OLD OWEN RD STE B
MONROE, WA 98272-9778

APPLICANT

LICENSE APPLICATION NO. 413356
UBI NO. 602 924 630 001 0001

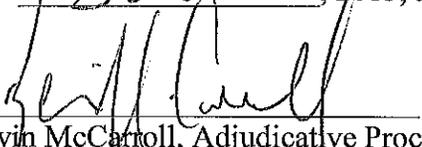
LCB NO. M-25,242
OAH NO. 10-2014-LCB-00051

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:

MITCHELL LEISTEN MGL CONSULTING LLC d/b/a MGL CONSULTING 15486 168 TH AVE SE MONROE, WA 98272-2881	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION KIM O'NEAL, ASSISTANT ATTORNEY GENERAL
MITCHELL LEISTEN MGL CONSULTING LLC d/b/a MGL CONSULTING 19910 OLD OWEN RD STE B MONROE, WA 98272-9778	

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


Kevin McCarron, Adjudicative Proceedings Coordinator

RECEIVED

APR 21 2015

Liquor Control Board
Board Administration

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
LIQUOR CONTROL BOARD

In the matter of:

MGL Consulting LLC

Applicant

Location Address:

19910 Old Owen Road, STE B
Monroe, WA 98272-9778

License No. 413356

UBI 602-924-630-001-0001

Docket No. 10-2014-LCB-00051

Agency No. M-25,242

INITIAL ORDER

Agency: Liquor Control Board

Program: Marijuana Retail Licensing

Agency No. M-25,242

1. ISSUES PRESENTED

1. Whether the Applicant failed or refused to submit information or documentation requested by the board during the evaluation process. If so, whether the Liquor Control Board was correct in denying the Applicant's application based on the failure to submit required documents under RCW 69.50.331(1) and WAC 314-55-050(2); AND
2. Whether the Applicant's proposed location is within 1,000 feet of a child care center, elementary or secondary school, public park or other entity listed in RCW 69.50.331(8) and WAC 314-55-050(10). If so, whether the Liquor Control Board was correct in denying the Applicant's application based upon the proximity of the Applicant's application for a marijuana retailer license.

2. ORDER SUMMARY

1. The Liquor Control Board was correct to deny a marijuana retailer license to MGL Consulting LLC for its failure to provide documentation demonstrating intent by the property owner to lease to the Applicant the real property located 19910 Old Owen Road, STE B, Monroe, Washington 98272-9778.
2. The Liquor Control Board LLC was correct to deny a marijuana retailer license to MGL Consulting because of its proposed location, 19910 Old Owen Road, STE B, Monroe, Washington 98272-9778, is within 1,000 feet of Al Borlin Park in Monroe, Washington.

INITIAL ORDER

Docket No. 10-2014-LCB-00051
8500-LCB

OAH: (800) 583-8271

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3. HEARING

1. Hearing Date: Monday, February 2, 2015
2. Administrative Law Judge: T.J. Martin
3. Applicant: MGL Consulting LLC
 1. Representative: Mitch Leisten
 2. Witnesses: Mitch Leisten and Yvette Leisten
4. Agency: Liquor Control Board
 1. Representative: Kim O'Neal, Senior Counsel,
Washington State Office of the Attorney General
 2. Witness: Frank O'Dell, Marijuana Supervisor,
Washington State Liquor Control Board
5. Exhibits: The administrative law judge admitted the Liquor Control Board's Exhibits 1 through 6 and the Applicant's Exhibits A-C, were admitted.
6. Observers: Terry Schuh, Senior Administrative Law Judge with the Office of Administrative Hearings.

4. FINDINGS OF FACT

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

Jurisdictional Facts

1. On July 22, 2014, the Liquor Control Board ('LCB') issued and served on MGL Consulting LLC, a 'Statement of Intent To Deny Marijuana License', regarding License Application Number 413356. *Exhibit 1.*
2. On August 7, 2014, the Applicant, MGL Consulting LLC, filed a 'Request for Hearing, Response To Statement Of Intent To Deny.' *Exhibit 2.*

[Continued]

Letter of Intent

4. The Applicant's proposed location for its marijuana retail store is 19910 Old Owen Road, STE B, Monroe, Washington 98727-9778.
5. The Liquor Control Board required as a part of an applicant's application for a marijuana Retail License, a party must submit a Retail Pre-Screen Information Form and attach one of the following documents:
 - Real Estate Purchase and Sale Agreement signed by buyer and seller; or
 - Real estate closing statement; or
 - Signed lease agreement; or
 - Letter of intent to lease signed by property owner
6. The Applicant, MGL Consulting LLC, submitted an application and Pre-Screen Information Form for a marijuana retail license. However, the LCB determined the Applicant had failed to submit legal documentation demonstrating the Applicant maintained ownership, had a legal right to occupy, or a Letter of Intent from the property owner demonstrating an intent to lease to the Applicant the proposed location of its proposed marijuana retail site, located at 19910 Old Owen Road, STE B, Monroe, Washington 98727-9778.
7. MGL Consulting LLC submitted documentation, via a 'Letter of Intent', that it was in 'negotiations' with the party, Ruth Realty, who owned and managed the property where the Applicant planned to use for its marijuana retail store. *Exhibit 3; Page 51.*
8. At the time of submission of its application and Pre-Screen Information Form, MGL Consulting LLC did not have the legal right to own or occupy the location, listed as 19910 Old Owen Road, STE B, Monroe, Washington 98272-9778.
9. The Applicant believed if it was granted a marijuana retail license, an agreed-upon lease agreement with the owner, Ruth Realty, would be negotiated and forthcoming.

'Proximity' to Al Borlin Park

10. Part of the Board's investigation of any marijuana retail application is to determine whether the proposed location is within 1,000 feet of any 'restricted entities', listed in RCW 69.50.331(8) and/or WAC 314-55-050(10). *Testimony of Frank O'Dell.*

[Continued]

11. The first step in the process in determining the distance between the application site and any restricted entities is to consult with the County Assessor's Office maps to identify the tax parcels of the applicant's proposed location and any restricted entities in the nearby area.
12. The next step is to consult with Global Information Mapping, by means of electronic software licensed by a private company called ESRI, that measures the distance from 'boundary line to boundary line' between the proposed location and any restricted entities. This measurement is commonly referred to as "how the crow flies." *Testimony of O'Dell; See Exhibit 3; Page 32.*
12. An investigator employs the software, enters the address of the proposed location, and the software provides maps and photos of the surrounding area and identifies restricted entities. *Testimony of O'Dell; See Ex. 3.*
13. The investigator clicks the mouse on the proposed location address on the map and drags the cursor to the restricted entity on the map. The software provides the measurement in feet. *Testimony of O'Dell.*
14. Here, employing the software, Mr. O'Dell determined MGL Consulting LLC's proposed marijuana retail location is within 602 feet from Al Borlin Park, located at 615 Simons Road, Monroe, Washington 98272. *Testimony of O'Dell.*
15. The City of Monroe describes Al Borlin as the 'largest and among the oldest of Monroe's parks. Al Borlin Park provides the unusual opportunity to enjoy a secluded natural experience in an urban environment.' *Exhibit 6.*
16. As a result of this measurement, the Board issued to MGL Consulting LLC a 'Statement of Intent To Deny Marijuana License.' *See Ex. 1.*
17. Mitch Leisten on behalf of MGL Consulting LLC, did not refute that 'boundary line to boundary line' measurement between the proposed location and Al Borlin Park was within 1,000 feet.
18. However, the Applicant did contend the park entrance is located on the other side of the park and likely more than 1,000 feet away from the proposed location. In addition, there is a four-lane road and stream in between the proposed location and the boundary line of the park.

[Continued]

5. CONCLUSIONS OF LAW

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

Jurisdiction

1. The Office of Administrative Hearing has jurisdiction over the persons and subject matter of this case under Revised Code of Washington (RCW) 69.50.331(2)(c), RCW 69.50.335, Chapter 34.12 RCW, and the Washington Administrative Code (WAC) 314-55-070.

Letter of Intent

2. When granting a marijuana retailer license, the LCB must license not only the applicant business entity, but also the physical premises used by the business. Thus, if one licensed entity operates multiple locations, a separate license must be obtained for each location. RCW 69.50.325(3). There are multiple provisions of the law which impose a duty on LCB, or grant it discretion, to assess the proposed licensed premises, including the following:
 - a. RCW 69.50.331(1) confers on the LCB the authority to inspect the premises and inquire into all matters in connection with the construction and operation of the premises. See *also*, WAC 314-55-020(6).
 - b. RCW 69.50.331(7) requires LCB to notify the applicable city or county government of a pending license application for a location within the city's or county's jurisdiction, so that such government may file a written objection against the applicant *or the premises*.
 - c. RCW 69.50.331(8) provides the LCB must not issue a marijuana license for any premises within one thousand feet of certain businesses and facilities.
 - d. WAC 314-55-020(9) requires the applicant to submit a detailed floor plan or site plan for the proposed licensed premises.
3. To carry out its regulatory duties, the LCB "may inquire and request documents regarding all matters in connection with the marijuana license application." WAC 314-55-020. It is evident, then, the LCB has the legal authority to request specific information or documentation regarding the proposed licensed premises.

4. The LCB has broad discretionary authority to deny a marijuana license application, including for “[f]ailure or refusal to submit information or documentation requested by the board during the evaluation process.” WAC 314-55-020(2).
5. WAC 314-55-020(12) gives the LCB specific authority to administratively close or seek denial of an application upon the applicant’s “failure to respond to the board licensing and regulation division’s requests for information within the timeline provided.”
6. In the present case, the LCB requested the Applicant, MGL Consulting LLC, to submit either a real estate purchase and sale agreement signed by buyer and seller; a real estate closing statement; a signed lease agreement; or a letter of intent to lease signed by property owner. MGL Consulting LLC submitted a letter by the property owner and occupant, Ruth Realty, announcing the Applicant and property owner/occupant were ‘in negotiations’ and such ‘negotiations’ would only lead to a lease agreement, if the Applicant were granted a marijuana retail license. Based on the documentation submitted by the Applicant, the letter submitted by the property owner/occupant fails to be a valid letter of intent since it fails to establish any agreement has been reached by the parties that the legal owner would rent or lease to the Applicant regarding the location at issue.
7. MGL Consulting LLC failed to submit the requested real estate documentation. As a result, MGL Consulting LLC’s application is subject to denial under RCW 69.50.331, WAC 314-55-020(12) and WAC 314-55-050(2). The LCB’s action in denying the application was supported by law and denial of the application is appropriate. The LCB’s ‘Statement of Intent to Deny’ should be **affirmed**.

‘Proximity’ to Al Borlin Park

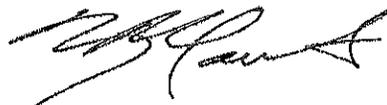
8. “The state liquor control board **shall not** issue a license for any premises within one thousand feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older.” RCW 69.50.331(8). **(Emphasis added)**.
9. ‘The distance shall be measured as the shortest straight line distance from property line of the proposed building/business location to the property line of the entity listed in WAC 314-55-050(10)(a-h). WAC 314-55-050(10).

10. MGL Consulting LLC's proposed location is within 1000 feet of Al Borlin Park.
11. Al Borlin Park is owned by the public. Therefore, Al Borlin Park is a 'public park', as contemplated by RCW 69.50.331(8) and WAC 314-55-050(10).
12. The distance from the proposed location property line to the entrance of Al Borlin Park is likely more than 1,000 feet. However, as per WAC 314-55-050(10), the regulation establishes the distance of one thousand feet is the shortest straight line distance from property line to property line, not property line to entrance of the public entity.
13. The state legislature provided that the Board *shall not* issue a marijuana retail license to an applicant with a proposed location within 1000 feet of a public park. Thus, the Board was correct to deny MGL Consulting LLC's license application. The Liquor Control Board's 'Statement of Intent to Deny' should be **affirmed**.

6. INITIAL ORDER

Under RCW 69.50.331, WAC 314-55-020(12), and WAC 314-55-050(2), the marijuana retail license application of MGL Consulting LLC, application number 413356, is **DENIED**. The Liquor Control Board's 'Statement of Intent to Deny' is **AFFIRMED**.

Dated: April 10, 2015.



TJ Martin
Administrative Law Judge
Office of Administrative Hearings

APPEAL RIGHTS

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

The petition for review must:

- (i) Specify the portions of the initial order to which exception is taken;
- (ii) Refer to the evidence of record which is relied upon to support the petition;
and
- (iii) Be filed with the liquor control board within twenty (20) days of the date of service of the initial order.

A copy of the petition for review must be mailed to all of the other parties and their representatives at the time the petition is filed. Within ten (10) days after service of the petition for review, any of the other parties may file a response to that petition with the Liquor Control Board. WAC 314-42-095(2)(b). Copies of the reply must be mailed to all other parties and their representatives at the time the reply is filed.

Mail the petition for review of initial order to:

Washington State Liquor Control Board
Attention: Kevin McCarroll
P.O. Box 43076
Olympia, Washington 98504-3076

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

Following this review, the board will enter a final order. WAC 314-42-095(4). Within ten days of the service of a final order, any party may file a petition for reconsideration with the board, stating the specific grounds upon which relief is requested. RCW 34.05.470 and WAC 10-08-215.

The final decision of the board is appealable to the Superior Court under the provisions of RCW 34.05.510 through 34.05.598 (Washington Administrative Procedure Act).

[Continued]

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'Neil
Senior Counsel
Office of the Attorney General
PO Box 40100
Olympia, WA 98504-0100

Agency Representative

MGL Consulting
c/o Mitch Leisten
15486 - 168th Avenue SE
Monroe, WA 98272-2881

Applicant

Alan Rathbun
Licensing Director
P.O. Box 43098
Olympia, WA 98504-3098

Agency Contact

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

Agency Contact

Becky Smith
Licensing Manager
P.O. Box 43098
Olympia, WA 98504-3098

Agency Contact

Dated April 10, 2015, at Olympia, Washington.
(DATE OF MAILING)



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