

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

LARS AND VERONICA
CHRISTENSEN d/b/a
ISLAND STYLE BARBECUE

9401 NE COVINGTON RD STE 101
VANCOUVER, WA 98662

APPLICANT

LICENSE APPLICATION NO. 414394
UBI: 603 349 395 001 0001

LCB NO. M-25,259
OAH NO. 10-2014-LCB-00054

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. It was also found that the Applicant's proposed location was within 383 feet of Little Lights Child Care Center located at 7808 NE 94th Avenue in Vancouver, Washington.

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

3. On January 27, 2015, a hearing was held before Administrative Law Judge Gina L. Hale with the Office of Administrative Hearings.

4. At the hearing, the Applicant was represented by Lars Christensen. Assistant Attorney General Susie Giles-Klein represented the Licensing Division of the Board.

5. On March 5, 2015, Administrative Law Judge Gina L. Have 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.

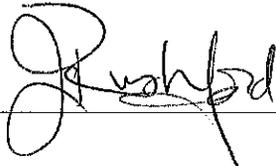
7. The entire record in this proceeding was presented to the Board for final decision, and the Board having fully considered said record and being fully advised in the premises;

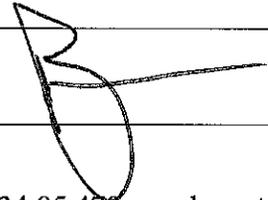
NOW, THEREFORE, IT IS HEREBY ORDERED that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order are, AFFIRMED and adopted as the Findings of Fact, Conclusions of Law and Final Order of the Board;

IT IS HEREBY FURTHER ORDERED that marijuana license application number 414394 for Lars and Veronica Christensen d/b/a Island Style Barbecue is DENIED.

DATED at Olympia, Washington this 9th 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 10, 2015

Lars and Veronica Christensen
d/b/a Island Style Barbecue
3002 NW 7TH St
Battle Ground, WA 98604-4284

Susie Giles-Klein, AAG
GCE Division, Office of Attorney General
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100

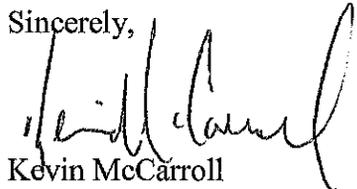
RE: FINAL ORDER OF THE BOARD
APPLICANT: Lars and Veronica Christensen
TRADE NAME: Island Style Barbecue
LOCATION: 9401 NE Covington Rd, Ste 101, Vancouver, WA 98662-3897
LICENSE APPLICATION NO. 414394
LCB HEARING NO. M-25,259
OAH NO. 10-2014-LCB-00054
UBI: 603 349 395 001 0001

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

KM:mg

Enclosures (2)

cc: Becky Smith, Licensing Director, WSLCB
Kim Gabbard, Licensing Supervisor, WLSCB
Mary Henley, Administrative Assistant, WSLCB

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

LARS AND VERONICA
CHRISTENSEN
d/b/a ISLAND STYLE BARBECUE
9401 NE COVINGTON RD, STE
101
VANCOUVER, WA 98662-3897

APPLICANT

LICENSE APPLICATION NO. 414394

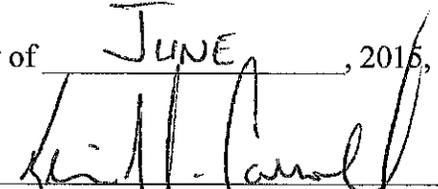
LCB NO. M-25,259
OAH NO. 10-2014-LCB-00054

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:

LARS AND VERONICA CHRISTENSEN d/b/a ISLAND STYLE BARBECUE 3002 NW 7 TH ST BATTLE GROUND, WA 98604-4284	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION SUSIE GILES-KLEIN, ASSISTANT ATTORNEY GENERAL
LARS AND VERONICA CHRISTENSEN d/b/a ISLAND STYLE BARBECUE 9401 NE COVINGTON RD, STE 101 VANCOUVER, WA 98662-3897	

DATED this 10th day of JUNE, 2015, at Olympia, Washington.


Kevin McCarroll, Adjudicative Proceedings Coordinator

RECEIVED

APR 03 2015

Liquor Control Board
Board Administration

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

In the matter of:

Lars and Veronica Christensen,

Appellant.

Application No. 414394
UBI No. 603-349-395-001-0001

Docket No. 10-2014-LCB-00054

INITIAL ORDER

Agency: Liquor Control Board
Program: Marijuana Licensing
Agency No. M-25,259

1. ISSUES PRESENTED

- 1.1. **Issue No. 1.** Whether the Applicant, Island Style Barbecue, failed to submit a signed letter of intent to lease or purchase the premises proposed to be licensed.
- 1.2. **Issue No. 2.** Whether the proposed location for Island Style Barbecue is within 1000 feet of Little Lights Child Care Center.
- 1.3. **Issue No. 3.** If so, then whether Island Style Barbecue's application for a marijuana retailer license is subject to administrative closure and denial under RCW 69.50.331, WAC 314-55-020(12) and WAC 314-55-050(2).

2. ORDER SUMMARY

- 2.1. **Issue No. 1.** Island Style Barbecue did not submit a signed letter of intent to lease or purchase the proposed premises as required.
- 2.2. **Issue No. 2.** The proposed location for Island Style Barbecue is within 1000 feet of Little Lights Child Care Center.
- 2.3. **Issue No. 3.** The license application for Island Style Barbecue is therefore denied under RCW 69.50.331, WAC 314-55-020(12) and WAC 314-55-050(2).

3. HEARING

- 3.1. **Hearing Date:** January 27, 2015
- 3.2. **Administrative Law Judge:** Gina L Hale
- 3.3. **Applicant:** Island Style Barbecue

- 3.3.1. **Representative:** Lars Christensen
- 3.3.2. **Witnesses:** Lars Christensen
- 3.4. **Agency:** Liquor Control Board
- 3.4.1. **Representative:** Susie Giles-Klein, Assistant Attorney General
- 3.4.2. **Witnesses:** Frank O'Dell – LCB Marijuana Manager
Nicola Reid – LCB Licensing Specialist
- 3.5. **Exhibits:** The administrative law judge admitted LCB exhibits 1-8. No exhibits were submitted by the Applicant.
- 3.5.1. **LCB Exhibits:**
1. Statement of Intent to Deny License; (3 pages)
 2. Applicant's Request for Hearing; (2 pages)
 3. Cannabis Map and GIS data; (3 pages)
 4. Document History for Application 414394; (36 pages).
 5. Letter fro landlord Luther O. Hatch revoking Letter of Intent to Lease; (1 page);
 6. Master business license information for Island Style Barbecue; (4 pages);
 7. Business License information for Island Style Barbecue; (1 page)
 8. .Licensing information for Little Lights Child Care Center; (1 page).
- 3.6. **Non-Evidentiary Presentations Considered.** The following non-evidentiary documents were filed with OAH and considered by the Administrative Law Judge (some of the following may also have been included by the parties as part of their evidentiary presentation):
- 3.6.1. The Applicant's Request for Administrative Hearing and the Notice of Hearing.
- 3.6.2. The parties' opening statements.

4. FINDINGS OF FACT

Based on a preponderance of evidence, the undersigned makes the following Findings of Fact:

Jurisdiction

- 4.1 On July 22, 2014, the Liquor Control Board (Board) issued a Statement of Intent to Deny Marijuana License to the Applicants, Lars and Veronica Christensen, d.b.a. Island Style Barbecue (Applicant). Exhibit 1.

- 4.2 Mr. Christensen submitted a Request for Hearing on August 4, 2014. Exhibit 2, page 2.
- 4.3 The Board received the Applicant's Request for Hearing on August 7, 2014. Exhibit 2, page 1.

Marijuana License Pre-Screen Process and Lottery

- 4.4 In 2013, the Board was charged with creating an application process for issuing retail marijuana licenses. State-wide there was a limit of 334 licenses that would be issued. The Board received 2,100 retail applications.
- 4.5 To better manage the large number of applications, the Board designed a pre-screening process, the goal of which was to allow only successfully vetted applicants into the lottery for a chance to win a retail license.
- 4.6 The pre-screen process was also designed to address the Board's concern that unprepared applicants would cause a delay in the licensing process and create an opportunity for product to go into the black market.
- 4.7 The Board provided a 30-day window for all applicants to submit their documents for the "Retail Pre-Screen Information" process. No Pre-Screen application would be reviewed until the close of the 30-day application window. However, applicants had the entire 30-day period to submit their documents, and to change or update any documents previously submitted.
- 4.8 Following the close of the 30-day window, the submitted Pre-Screen information was reviewed and investigated by the Board staff. If all the required information was provided, was correct, and was not disqualifying, applicants were not automatically given a license. Rather, they had won the right to be included in the lottery.
- 4.9 No applicant would know whether they successfully met the Pre-Screen requirements until after the 30-day window had closed. Once it had closed, the applicant was not allowed to submit any additional documents to correct or supplement their information. If an applicant failed to meet the requirements, they would be excluded from the lottery.

Pre-Screen Requirements

- 4.10 The Retail Pre-Screen Information form required, among other things, the physical location of the proposed premises.
- 4.11 The location of the proposed premises was crucial because the Board was prohibited from approving a location which was within 1000 feet of entities listed in RCW 69.50.331(8) and/or WAC 314-55-050(10) ("restricted entities").

- 4.12 Along with the location of the premises, the applicant was required to attach the following information regarding the physical location proposed to be licensed:
- 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

Applicant's Pre-Screen Documentation: Letter of Intent and Proximity of Location

- 4.13 Letter of Intent to Lease. On March 21, 2015, Mr. Christensen and property owner, Luther O. Hatch, signed a non-binding Letter of Intent to Lease. The form letter included a hand-written addition which read as follows:

This agreement shall be null-void and terminate on or before 4-20-2014.
Exhibit 4, page 30.

- 4.14 Mr. Christensen included the Letter of Intent from Mr. Hatch as part of his Retail Pre-Screen Information materials. It was Mr. Christensen's intent to lease property located at 9401 N.E. Covington Road, Suite 101, Vancouver, Washington 98662. Exhibit 4, page 19.
- 4.15 On April 1, 2014, the Board received a letter from Mr. Hatch indicating that he had chosen not to lease to Mr. Christensen, and was asking that he be removed from Mr. Christensen's lottery application. Exhibit 5.
- 4.16 Location Proximity. Following the close of the 30-day application window, Board staff began to review all of the submitted applications. While reviewing Mr. Christensen's application documents, the investigation and GPS analysis of his proposed premises indicated that it was located 383.3 feet from the Little Lights Child Care Center. Exhibit 3.

Board's Response to the Withdrawal of the Letter of Intent to Lease and the Location Proximity

- 4.17 Once Board staff reviewed Mr. Christensen's application and became aware that Mr. Hatch had withdrawn his Letter of Intent to Lease and also discovered that the proposed premises was within 1000 feet of a child care center, the application was denied and the case administratively closed under the provisions of WAC 314-55-020.

Applicant's Arguments

- 4.18 Mr. Christensen is a veteran of the United States military with high level security clearances. Once he had completed his active duty, he chose to pursue a career as a Washington State marijuana retailer where the activity was legal. Although a veteran, he was unable to secure a VA loan because of the federal, legal position that marijuana is illegal and will not be supported by federal institutions.
- 4.19 Mr. Christensen also had difficulty securing a location for lease. He needed a potential landlord to agree to hold the property for the duration of the 30-day application window. Mr. Christensen thought Mr. Hatch would be that landlord. However, the agreement they both signed had a nullity clause. So, while he knew Mr. Hatch was agreeing to lease to him, he also knew that reality could change before the end of the 30-day application period.
- 4.20 Within a week of signing the agreement letter, Mr. Hatch did change his mind.
- 4.21 After the close of the 30-day application window, Mr. Christensen learned that the Letter of Intent to Lease had been withdrawn and that the premises had actually been rented to someone else. On learning that, Mr. Christensen attempted to submit to the Board an alternate location he had identified through a family friend. He was informed that he would not be able to change location.
- 4.22 During the hearing, Mr. Christensen stipulated that the proposed premise was not suitable because of its proximity to the child care center.

Changing Proposed Locations

- 4.23 Mr. Christensen was looking to run his retail marijuana business in Vancouver, Washington.
- 4.24 The Board could have approved the change in a proposed location if the City of Vancouver had instituted a moratorium. We find that the City of Vancouver had not instituted any type of moratorium.
- 4.25 The Board had allotted six retail licenses for Vancouver. The Board received 48 applications for those six licenses. As of the date of the hearing, four licenses had been issued and the remaining two were being processed.
- 4.26 Because the 30-day application window had closed, Mr. Christensen was not allowed to submit any new location options.

5. CONCLUSIONS OF LAW

Based on the above Findings of Fact, the undersigned makes the following Conclusions of Law:

Jurisdiction

- 5.1. The undersigned administrative law judge has jurisdiction over the persons and subject matter of this case under Revised Code of Washington (RCW) 69.50.331(2)(c), RCW 69.50.334, chapter 34.12 RCW, and under Washington Administrative Code (WAC) 314-55-070.

Board Responsibilities

- 5.2. The Board is authorized to "inquire and request documents regarding all matters in connection with the marijuana license application. WAC 314-55-020. Therefore, the Board has the legal authority to request specific information or documentation regarding the proposed licensed premises.
- 5.3. Board 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).
- 5.4. Under the provisions of WAC 314-55-020(12), the Board has 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."
- 5.5. Additionally, "[t]he 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).
- 5.6. "The distance shall be measured as the shortest straight line distance" from property line to property line. WAC 314-55-050(10)(in pertinent part). This regulation provides the same list of entities as recited in the statute above.

Island Style Barbecue's Application

- 5.7. In the present case, the Board requested that Island Style Barbecue submit either a real estate purchase and sale agreement signed by buyer and seller; or a real estate closing statement; or a signed lease agreement; or a letter of intent to lease signed by property owner. Island Style Barbecue was given 30 days to provide the requested documentation, as were all applicants state-wide.
- 5.8. Island Style Barbecue submitted a Letter of Intent to Lease which had a nullity clause, which Mr. Hatch executed.

- 5.9. It had been a difficult process for Mr. Christensen to find a landlord who would agree to work with him. He did find one. However, there was a clear option for Mr. Hatch to back out of the agreement, which he did.
- 5.10. The Board made it clear to all applicants that there was one and only one opportunity to submit all required documents. It was therefore, incumbent on the applicants to provide as much accurate and complete information as possible. A decision to provide less information or something other than what was explicitly requested left applicants vulnerable to being excluded from the lottery process.
- 5.11. Mr. Christensen acted in good faith believing that his agreement with Mr. Hatch would hold for the 30-day period. Although the agreement was a valid one, signed by the property owner, it was withdrawn before it could be acted upon. Therefore, it left Mr. Christensen without an actual signed Letter of Intent to Lease.
- 5.12. Had the agreement held for the 30-day window, the investigation of the actual premise location would have disqualified Mr. Christensen because it was within 1000 feet of a restricted entity, i.e., a child care center. Mr. Christensen himself agreed that the location was not suitable.

Board Action

- 5.13. The Board administratively closed the application because Mr. Christensen did not have a signed Letter of Intent to Lease.
- 5.14. The Board denied the application on the basis that the location was too close to a restricted entity. So, even if the Letter of Intent to Lease had not been withdrawn, the Board would not have been allowed to issue a license to a location inappropriately close to a child care center.
- 5.15. Because Island Style Barbecue failed to submit the requested real estate documentation within the timeline required, and the proposed premises was within 1000 feet of a restricted premises, its application is subject to administrative closure and denial under RCW 69.50.331, WAC 314-55-020(12) and WAC 314-55-050(2). The Liquor Control Board's action in administratively closing the application was supported by law and denial of the application is appropriate. The Board action should be affirmed.

6. INITIAL ORDER

- 6.1. The Liquor Control Board's action is affirmed. The marijuana retail license application of Island Style Barbecue, application number 414156, is DENIED.

Dated: April 01, 2015.



Gina L Hale
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).

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:

Lars and Veronica Christensen
d/b/a Island Style Barbecue
3002 NW 7th Street
Battle Ground, WA 98604-4284

Appellant

Susie Giles-Klein
Assistant Attorney General
PO Box 40100
Olympia, WA 98504-0100

Assistant Attorney General

Kevin McCarroll
Adjudicative Proceedings Coordinator
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Agency Contact

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Olympia, WA 98504-3098

Agency Contact

Dated April 01, 2015, at Olympia, Washington.
(DATE OF MAILING)



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