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No. 91867-8

SUPREME COURT
OF THE STATE OF WASHINGTON

THE CITY OF BURLINGTON,
a Washington Municipal Corporation,

Respondent,

v.

HAKAM SINGH AND JANE DOE SINGH,
and the marital community composed thereof; and
HK INTERNATIONAL, LLC,
a Washington Limited Liability Company,

Petitioners,

and

THE WASHINGTON STATE LIQUOR CONTROL BOARD,
a Washington Agency,

Defendant.

ANSWER TO PETITION FOR REVIEW

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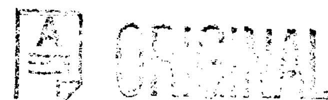

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A. INTRODUCTION

This case involves the standing of a city, with its broad police powers within its boundaries as to liquor-related activities, to address proposed relocation of a liquor license after the deregulation of liquor by Initiative 1183 ("I-1183"). The Washington State Liquor Control Board ("WSLCB") had no authority under I-1183 or otherwise to authorize relocation of a liquor license obtained by the petitioners Singhs and HK International, LLC ("license applicants") to a mini-mart near a local high school and a public park. By statute, the City of Burlington ("City") was entitled to notice of the application for a liquor license and had a right to request a public hearing on the application (a hearing the WSLCB arbitrarily denied the City). The City participated in the administrative proceedings on the liquor license application by submitting a letter outlining the reasons why the relocation of the license to the mini-mart site was illegal and inappropriate. Nevertheless, the trial court erroneously concluded the City lacked standing to participate in judicial review of the WSLCB's adverse administrative decision on relocation of the license.

The Court of Appeals correctly applied well-recognized standing principles in its opinion reversing the trial court's erroneous decision that while the City had standing in the WSLCB's administrative process to challenge the relocation, it somehow lacked standing to seek judicial

review of the WSLCB's erroneous license relocation decision. The license applicants, but not WSLCB, now seek review by this Court. The license applicants, however, fail to articulate grounds under RAP 13.4(b) for review by this Court of the Court of Appeals' sound decision. This Court should deny review. RAP 13.4(b).

B. ISSUES PRESENTED BY PETITIONERS

The City believes the issues here are more properly formulated as follows:[1]

1. Was the Court of Appeals correct in concluding that a city has standing to seek judicial review under the Administrative Procedures Act, RCW 34.05 ("APA") of an adverse decision of the WSLCB on a liquor license within its boundaries when the city had a statutory right to notice of such a license application and to object, the city generally had an interest in such a license associated with the exercise of its broad police powers on behalf of its citizens, and it was undisputed that the city had standing in the administrative process before the WSLCB?

2. Was the Court of Appeals correct in concluding that the trial court abused its discretion in refusing to consider certain declarations on standing when the WSLCB raised standing for the first time in the trial court in its response to City's opening brief on the merits, the trial court specifically requested supplemental

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[1] Although briefed by the parties, the Court of Appeals opinion did not address the merits of the relocation issue after the enactment of I-1183, i.e. whether the WSLCB had the authority to authorize successful private bidders on former WSLCB sites to relocate their license to another situs. If, and only if, this Court were to grant review on standing, the City conditionally reserves the right to raise the issue of whether the WSLCB had such authority. RAP 13.7(b); *Queen City Farms, Inc. v. Central Nat. Ins. Co.*, 126 Wn.2d 50, 61, 882 P.2d 703 (1994); *Lewis River Golf, Inc. v. O. M. Scott & Sons*, 120 Wn.2d 712, 715, 845 P.2d 987 (1993) (recognizing conditional raising of issues).

materials on standing, and such materials were pertinent and necessary for the standing decision?

C. STATEMENT OF THE CASE

The overwhelming bulk of the license applicants' petition is devoted to their reargument of the facts. Pet. at 6-18.[2] The City believes the Court of Appeals opinion correctly articulates the facts, op. at 2-5, and it does not repeat them here except to note several factual points that bear emphasis in connection with this Court's review decision.

When private spirit liquor sales were legalized by the enactment of I-1183, the WSLCB could only license those retailers whose premises were comprised of "at least ten thousand square feet of fully enclosed retail space within a single structure." RCW 66.24.630(3)(a). The WSLCB could license smaller retailers if they operated at former state liquor or contract liquor store. RCW 66.24.630(3)(c). I-1183 directed that the WSLCB auction off the right to operate state stores *at the same location* at which the stores had previously been operated. RCW 66.24.620(4)(c).[3]

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[2] They devote a mere two and a half pages to the grounds in RAP 13.4(b) and offer little real analysis of the Court of Appeals' actual opinion.

[3] This "same location" imperative was designed to address an issue vigorously argued by proponents and opponents of I-1183: the fear that the initiative would result in expanded liquor sales at mini-marts, gas stations, and other convenience stores. *See* Appendix. Ironically, the license applicants have proposed to re-locate their license to a mini-mart.

The WSLCB did not follow those requirements. Instead, on its own, without *any* authority,[4] it simply decided that the license applicants who prevailed at an auction for a state liquor store could move the license to a location one mile away, a mini-mart near Burlington High School.

The WSLCB gave the City notice of the proposed transfer. *See* Appendix. However, the WSLCB's notice to the City stated it was being provided "as an informational courtesy" and "The Board may not deny a Spirits Retailer license to an otherwise qualified bidder…" *Id.*[5]

The City timely objected to the proposed license relocation by a letter that not only asserted the WSLCB's action was contrary to law, it also stated that the new location was "the site of numerous activities requiring law enforcement," and that a liquor store is "incompatible with the land use in the area, and particularly incompatible with the Burlington High School, which is situated just beyond 500 feet[6] from the entrance to

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[4] Not only was there no authority in I-1183 for such relocation, no WSLCB regulations applicable at the time allowed this relocation. The WSLCB asserted below that license relocation here was accomplished pursuant to an "interim policy." Yet, Policy BIP-04-2012, which purports to provide guidelines as to the relocation of liquor stores, never became effective until two months *after* the WSLCB approved the transfer of the license at issue here. AR 23; CP 133-37.

[5] From these statements, it can be reasonably concluded that the WSLCB was going to approve the license no matter what the City said or did.

[6] If the license was for a site 500 feet or less from a high school, the WSLCB admitted below it would have had to deny the license. RCW 66.24.010.

the proposed location." AR 37-39, 41.[7]

The City requested a hearing which would have allowed it to expand upon these facts but the WSLCB denied such a hearing for unspecified reasons. AR 28.[8]

After the WSLCB approved relocation of the license and upon judicial review in the Thurston County Superior Court at the City's request, the trial court concluded that the City lacked standing, but it observed in its oral ruling that it likely would have ruled for the City on the merits: "Nothing in the initiative allows relocation." RP 30-32. It

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[7] The WSLCB's own enforcement officer testified as to her concerns about the license applicants' mini-mart site:

> I watched the store one afternoon, and saw a stream of kids from the high school go into the store. I didn't see any come out with beer, but they all had back packs, and the bought or stolen beer could very easily be hidden in the back pack.
>
> As a liquor officer and a parent I am concerned with a spirits license for this premises is an invitation to add to the serious problem of youth access to alcohol.

AR 41. Officer Johnson's investigative aide reported that he knew "kids who buy alcohol from [the HK Mini-Mart] all the time." AR 41.

[8] Any letter to the WSLCB by the City opposing the license applicants' relocation of their license was never meant to be an exhaustive recitation of the City's factual basis for opposing license relocation. That type of evidence would have been developed at a hearing with all parties having the opportunity to present and cross-examine witnesses, a hearing the WSLCB denied the City.

From the City's letter, the WSLCB knew of numerous police calls, the incompatibility of the new site for the liquor license with land use, particularly given its proximity to the high school (being located just beyond the prohibited zone), that its own enforcement officer had concerns, and that minors bought beer there "all the time." Yet, with all that information, it refused to grant a hearing so that these legitimate concerns of its local government partner and staff in enforcing the Liquor Act could be developed.

went on to reject the WSLCB's argument that the initiative/statutory language was ambiguous: "The term 'freely alienable' does not create ambiguity. It simply means that the winning bidder can sell the right to another person." RP 30. "The plain meaning of this initiative is clear, and the phrase does not create ambiguity." RP 31-32. The court concluded: "Based upon that, if I were to get to a final ruling, I would find that Board acted outside its statutory authority. I would find they erroneously interpreted and applied the law." RP 32.

D. ARGUMENT WHY REVIEW SHOULD BE DENIED

(1) The City Had Standing to Seek Judicial Review Here

The license applicants do not offer any analysis as to why the Court of Appeals' decision on the City's standing, op. at 5-9, 12-20, merits review. They do not assert that the Court of Appeals' analysis conflicted with decisions of this Court or the Court of Appeals, that the decision in any way implicates constitutional issues, or that the decision involves an important issue of substantial public interest. RAP 13.4(b).

Simply put, the Court of Appeals determined that the City met the long-established APA test for standing expressed in RCW 34.05.530 and in this Court's decision in *Seattle Bldg. & Constr. Trades Council v. Apprenticeship & Training Council*, 129 Wn.2d 787, 793, 920 P.2d 581 (1996). Op. at 5-6. The court determined that the City met all the

requirements of the standing test, particularly given a city's involvement with the licensure of liquor premises within its boundaries. *Id.* at 9 ("...where, as here, the Board issued an alleged illegal license, no person or entity processes a more compelling interest for standing purposes than the City.").[9]

In specific, the court recognized that the parties all agreed that the City met the zone of interest requirement of this Court's test. *Id.* at 6. The court also determined that the City met the injury-in-fact prong of this Court's APA standing test.

The Court of Appeals analysis is sensible and does not merit this Court's review. The City was a party in the administrative process.[10] It is undisputed that RCW 66.24.010(8) confers upon the City a statutory *right* to request a hearing that the WSLCB refused to hold. Even without a hearing, by filing an objection, the City became a *party* in the underlying administrative proceeding. There was no challenge, or any basis to

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[9] The quantum of interest required for standing to pursue judicial review of administrative action is quite small, particularly when there are important interests to be vindicated. As Professor Davis has put it: "The basic idea that comes out in numerous cases is that an identifiable trifle is enough for standing to fight out a question of principle; the trifle is the basis for standing and the principle supplies the motivation." Kenneth Culp Davis, *Standing: Taxpayers and Others*, 35 U. Chi. L. Rev. 601, 613 (1968).

[10] The WSLCB accepted the City's standing in that process because it ruled on the merits without contesting the City's standing and did not argue to the trial court that the City lacked standing in the administrative process. RP 5.

challenge, the City's standing in the administrative proceeding because the APA gave the City standing in that process as a matter of law.[11]

Ultimately, it is anomalous that a party could have standing in the administrative process on an issue, but not on judicial review. *Snohomish County Public Transportation Benefit Area v. State*, 173 Wn. App. 504, 509-14, 294 P.3d 803 (2013) (agency involved in PERC administrative process had standing to seek judicial review of PERC's issuance of a ruling that grievance arbitration provisions would survive the expiration of a collective bargaining agreement because such ruling affected the agency in future labor negotiations). That is similarly true here where, as the Court of Appeals acknowledged, op. at 1, the City as a general government possesses broad police power to protect the health, welfare, peace, and safety of its residents. RCW 35A.11.020. *See also*, Wash. Const. art. XI § 11. Such police power extends to liquor-related activities and it is undisputed that liquor and the sale of liquor can create conditions detrimental to the health, welfare, peace and safety of the public.[12]

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[11] RCW 34.05.010(1) defines an "adjudicative proceeding" as a proceeding before an agency in which "an opportunity for a hearing" is provided by statute and "is contested by a person having *standing* to contest under the law." (emphasis added).

[12] The police power of local government was not preempted by the Liquor Act. RCW 66.08.120. Local governments were given the responsibility of investigating and prosecuting violations of the Liquor Act, including those relating to minors. RCW 66.44.270. Local government input on WSLCB licensure decisions was deemed significant where local government objections, including those relating to premises

The Court of Appeals determined specifically that the City met the injury-in-fact aspect of the standing test, an element that "is not meant to be a demanding requirement." Op. at 13. *See generally*, op. at 12-20. Again, the license applicants nowhere dispute the principles of law as to injury-in-fact set forth in the Court of Appeals opinion or document how review on that aspect of standing is met under RAP 13.4(b), particularly in light of this Court's decision in *Allan v. University of Washington*, 140 Wn.2d 323, 997 P.2d 360 (2000), a case where the wife of faulty member did not establish injury-in-fact to challenge amendments to faulty code adjudicative procedures because she was not personally affected by such procedures.

By contrast here, the Court of Appeals analysis on injury-in-fact is well-supported whether based on the City's original letter to the WSLCB opposing relocation or as supported by the supplemental declarations to be discussed *infra*.

RCW 66.24.010(12) provides that if there is "chronic illegal activity" the WSLCB must give the objection of local government "substantial weight." Even in the absence of chronic illegal activity associated with a site, subsections (8) and (9) of RCW 66.24.010

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locations must be considered. RCW 66.24.010(8). The Act also provided locational restrictions on licenses near parks owned and operated by local governments. RCW 66.24.010(9).

specifically require the WSLCB to provide notice to a municipality so that public concerns may be considered and that the Board must give "due consideration" to the location of the licensee and its proximity to churches, schools, and other public institutions. RCW 66.24.010(9)(a). The WSLCB's decision here reflected no consideration of anything other than "chronic illegal activity;" it failed to provide "due consideration" to the City's other legitimate objections to the license applicants' proposed license relocation.

In its letter to the Board, the City not only took the position that the WSLCB had no legal basis to move the site of the liquor store pursuant to I-1183, it also informed the WSLCB that the proposed location "is the site of numerous activities requiring law enforcement involvement, and that the Burlington Police Department had "logged many calls" to the proposed license location. AR 39. It also noted that a liquor store "is incompatible with land use in the area" particularly incompatible with Burlington High School which is situated just beyond 500 feet from the entrance to the proposed location, and that high-school aged children frequent this area going to and from school, and that adding liquor "will necessarily bring children into frequent close contact with those individuals who commit the crimes that plague the Skagit Big Mini-Mart." AR 39.

The City's concerns were also echoed by its own enforcement officer who investigated the proposed location; Officer Johnson stated that she had seen "a stream of kids from the high school go into the store," and that "[a]s a liquor officer and a parent I am concerned a spirits license for this premises is an invitation to add to the serious problem of youth access to alcohol." RP 41. The City would be compelled by the WSLCB's relocation decision permitting liquor sales at a mini-mart near the high school to dedicate additional law enforcement resources to ensure that youth would not obtain liquor through theft or deception. The dedication of additional resources constitutes "injury-in-fact."

The special role local government plays in regard to protecting the "welfare, health, morals, and safety of the people," coupled with its specific rights and duties under the Act, has been recognized by the courts; a city speaks for all of its citizens and not just an interested few. In *Sukin v. Wash. State Liquor Control Board,* 42 Wn. App. 649, 710 P.2d 814, 816 (1985), *review denied*, 105 Wn.2d 1017 (1986), Division III affirmed a decision of the WSLCB to allow the City of Spokane to submit its objections to the renewal of the Sukins' liquor license which was submitted after the twenty-day period provided for such submissions in RCW 66.24.010(8), holding that to preclude the WSLCB from considering Spokane's untimely objection to license renewal "would frustrate the

purpose of the liquor control act as expressed in RCW 66.08.010." *Id.* The same is true here in regard to the City's timely objection which raised the illegality of the WSLCB's relocation decision, the mini-mart location's proximity to the high school, the "high level of crime that occurs at the licensee's business," and its incompatibility with the land use in the area including an adjacent park.[13]

In sum, the petitioner license applicants have failed to demonstrate that the Court of Appeals decision on standing merits review under RAP 13.4(b). In fact, they failed to actually argue or analyze any grounds under that rule as to standing.[14] By failing to do so, they *concede* that the Court

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[13] The Court of Appeals did not reach the City's associational standing argument, but that doctrine also supports the Court of Appeals and would be raised by the City, if and only if review is granted, as another basis to sustain the Court of Appeals. Washington courts have long recognized the associational standing of a variety of groups to obtain judicial review of administrative decision, including unions and other associations. *Trades Council,* 129 Wn.2d at 795 (union petitioners met injury-in-fact requirement where future economic impact was present); *Mukilteo Citizens for Simple Government*, 174 Wn.2d 41, 46, 272 P.3d 227 (2012) (citizens association had standing to file action to prevent ballot proposition repealing ordinance authorizing use of automated traffic cameras); *National Elec. Contractors Ass'n v. Employment Sec. Dep't*, 109 Wn. App. 213, 221-22, 34 P.3d 860 (2001) (employer association); *Hunt v. Wash. State Apple Advertising Comm'n*, 432 U.S. 333, 342-43, 97 S. Ct. 2434, 53 L. Ed. 2d 383 (1997) (Apple Commission could state claims of its apple grower/dealer members); *Pugh v. Evergreen Hosp. Medical Center*, 177 Wn. App. 363, 365-66, 312 P.3d 665 (2013), *review denied*, 180 Wn.2d 1007 (2014) (nurses union had associational standing to bring action for its members regarding missed rest breaks). As a general purpose government, the City's objections reflect not only its objections as a city, but the concerns, injury, and potential injury to its citizens. Plainly, the license applicants' neighbors, City residents, have standing to protest the licensure of a mini-mart selling liquor near Burlington High School and a public park. So did the City in its representative capacity.

[14] A further basis for standing here is the WSLCB's failure to comply with procedural requirements that applied to it. The Court of Appeals declined to reach that issue as well. Op. at 20. Again, if and only if this Court was to grant review, the City

of Appeals correctly resolved the standing issue, the principal decision before the Court of Appeals. RAP 13.7(b).

(2) The Court of Appeals Correctly Ruled That the Trial Court Abused Its Discretion in Excluding Additional Evidence on Standing

The only issue in the Court of Appeals decision upon which the license applicants offer any analysis is the Court of Appeals' determination that the trial court abused its discretion in excluding three declarations on standing submitted to the trial court. The license applicants contend this decision is contrary to two federal court decisions. Pet. at 18-20. But the Court of Appeals fully addressed the admissibility of those declarations and the referenced federal cases in its opinion. Op. at 10-12. Critically, the court concluded that the City established injury-

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reserves the right to raise this basis for standing to further sustain the Court of Appeals petition.

This Court has held that a failure of an agency to comply with procedural requirements alone establishes sufficient injury to confer standing. *Allan, supra* at 330; *Trades Council, supra* at 794. In *Trades Council*, like here, the agency failed to provide for a hearing. This Court held that a hearing was required under the APA, specifically RCW 34.05.010(9)(a) and RCW 34.05.422(1)(b), even though approval of apprenticeship programs was not required by law since compliance with RCW 49.04 (which provided for program certification) was voluntary. Those same sections would require a hearing here. *See also, Ellensburg Cement Products, Inc. v. Kittitas County*, 179 Wn.2d 737, 747 n.2, 317 P.3d 1047 (2014) (due process principle requires that a party must be given an opportunity to make a record either before the administrative body or in court). Here, the City would have presented evidence at a hearing before the WSLCB to create a sufficient record to further demonstrate actual or potential "injury-in-fact" for standing purposes. The WSLCB chose not to convene a hearing. Instead, the WSLCB merely approved the tentative decision of its director for licensing. RP 28. ("The final order was granted in somewhat of a summary fashion, with not a lot of explanation as to the Board's rationality.") The trial court should have allowed the City a legitimate opportunity to create a record on standing, but did not do so.

in-fact, *with or without* those declarations. Op. at 12. Review of such a narrow ruling is certainly not worthy of this Court's attention in light of this fact.

The declarations at issue *reinforce* the City's position on injury-in-fact and their admission is consistent with this Court's decisions. Burlington's Mayor Sexton testified that any increase in the workload for law enforcement impacts the City's ability to maintain public safety and has an impact on the City's budget. CP 154. Lieutenant Tom Moser testified that since January 2009 the City's police responded on 202 occasions to the license applicant's mini-mart site as compared to 22 occasions to the site of the former state liquor store (one of which only involved traffic enforcement). CP 157. City Planning Director Fleek testified about the adjoining park; that youth often pass by and purchase items at the store; that they would come into contact with liquor advertising; and that a liquor license at the mini-mart would change the character of the nearby residential neighborhood. CP 159-61.[15] The trial

[15] The evidence that the license applicants' mini-mart is adjacent to a park is a matter of which the trial court could have taken judicial notice. ER 201. ER 201(b) states that a court may take judicial notice of facts "not subject to reasonable dispute." Geography or location is frequently noticed judicially. Long ago, this Court upheld judicial notice of the fact that the Snohomish River empties into Puget Sound. *Vail v. McGuire*, 50 Wash. 187, 96 Pac. 1042 (1908). *See also*, *State v. Hardamon*, 29 Wn.2d 182, 186 P.2d 634 (1947) (Seattle is in King County); *Lofberg v. Viles*, 39 Wn.2d 493, 236 P.2d 768 (1951) (Chehalis is in Lewis County); *State v. Portnoy*, 43 Wn. App. 455, 718 P.2d 805, *review denied*, 106 Wn.2d 1013 (1986) (Bonny Lake is in Pierce County).

court's reversal of its own decision to ask the parties to supplement the record on standing was an abuse of discretion.

Washington law recognizes the ability of courts to admit additional evidence on review, particularly when an unlawful procedure or decision-making process has been employed. RCW 34.05.562(1). This is particularly true where additional evidence is needed to decide disputed issues of material fact not determined on the agency record. *Wash. Independent Tel. Ass'n v. Wash. Util. & Transp. Comm'n,* 110 Wn. App. 498, 518, 41 P.3d 1212 (2002), *affirmed,* 149 Wn.2d 17, 65 P.3d 319 (2003). Additional evidence may also be allowed when, like here, no administrative hearing occurred. *Trades Council, supra* at 798-99.[16] Thus, the Court of Appeals decision that it was appropriate for additional evidence to be considered by the trial court and was an abuse of discretion to exclude it, particularly when the effect was to deny judicial review to a general government of illegal agency action, is fully supported and does not merit review by this Court.

In *Northwest Envt'l Defense Ctr. v. Bonneville Power Admin.,* 117 F.3d 1520, 1527-28 (9th Cir. 1997), in circumstances paralleling this case,

[16] The WSLCB also never availed itself in the trial court of any motions practice, which would have allowed the City to present evidence on the standing issue. Neither the WSLCB nor the license applicants brought a motion to dismiss pursuant to CR 12(b). Similarly, the WSLCB did not move for summary judgment.

the petitioners submitted affidavits to establish standing before the court to challenge BPA's duty to consider the petitioners' economic and environmental interests, which the petitioners claimed BPA was required to consider and BPA ignored. BPA, like here, moved to strike the affidavits as being outside the agency record. In rejecting BPA's motion, the district court ruled it could consider the affidavits for the purpose of addressing standing and the Ninth Circuit agreed. "[B]ecause standing was not an issue in earlier proceedings, we hold that petioners in this case were entitled to establish standing anytime during the briefing phase." *Id.* at 1528. *See also*, *Beck v. U.S. Dep't of Interior,* 982 F.2d 1332, 1340 (9th Cir. 1992) (court accepts appellant-intervenors' supplemental declarations alleging particularized injury because intervenors were not required to establish standing until they appealed).

In sum, the Court of Appeals correctly concluded that the trial court abused its discretion in excluding the three declarations under the confusing circumstances created by the trial court itself. With or without those declarations, the City established injury-in-fact for standing. Review on this issue, the only basis for review discussed by the license applicants in their petition, is not merited. RAP 13.4(b).

E. CONCLUSION

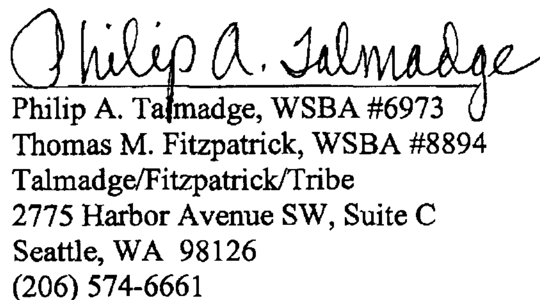
The Court of Appeals was correct in ruling that the trial court's decision that the City lacked standing to challenge the WSLCB's illegal relocation of a liquor license to a new mini-mart site close to a high school and a public park from its former WSLCB site, contrary to I-1183 or the Liquor Act, was erroneous.

The petitioner license applicants have failed to articulate any grounds under RAP 13.4(b) as to why this Court should review the Court of Appeals' well-reasoned opinion reversing the trial court's standing decision. The fact that the WSLCB, principally charged with addressing the Liquor Act, has not sought this Court's review forcefully documents that this case lacks significant public interest.

This Court should deny review under RAP 13.4(b).

DATED this 13th day of July, 2015.

Respectfully submitted,



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APPENDIX

RCW 34.05.530:

A person has standing to obtain judicial review of agency action if that person is aggrieved or adversely affected by the agency action. A person is aggrieved or adversely affected within the meaning of this section only when all three of the following conditions are present:

(1) The agency action has prejudiced or is likely to prejudice that person;

(2) That person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and

(3) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the agency action

RCW 34.05.562:

(1) The court may receive evidence in addition to that contained in the agency record for judicial review, only if it relates to the validity of the agency action at the time it was taken and is needed to decide disputed issues regarding:

(a) Improper constitution as a decision-making body or grounds for disqualification of those taking the agency action;

(b) Unlawfulness of procedure or of decision-making process; or

(c) Material facts in rule making, brief adjudications, or other proceedings not required to be determined on the agency record.

(2) The court may remand a matter to the agency, before final disposition of a petition for review, with directions that the agency conduct fact-finding and other proceedings the court considers necessary and that the agency take such further action on the basis thereof as the court directs, if:

(a) The agency was required by this chapter or any other provision of law to base its action exclusively on a record of a type reasonably suitable for judicial review, but the agency failed to prepare or preserve an adequate record;

(b) The court finds that (i) new evidence has become available that relates to the validity of the agency action at the time it was taken, that one or more of the parties did not know and was under no duty to discover or could not have reasonably been discovered until after the agency action, and (ii) the interests of justice would be served by remand to the agency;

(c) The agency improperly excluded or omitted evidence from the record; or

(d) A relevant provision of law changed after the agency action and the court determines that the new provision may control the outcome.

RCW 34.05.570:

(1) Generally. Except to the extent that this chapter or another statute provides otherwise:

(a) The burden of demonstrating the invalidity of agency action is on the party asserting invalidity;

(b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken;

(c) The court shall make a separate and distinct ruling on each material issue on which the court's decision is based; and

(d) The court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.

....

(3) Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;

(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;
(f) The agency has not decided all issues requiring resolution by the agency;

(g) A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion;

(h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

(i) The order is arbitrary or capricious.

(4) Review of other agency action.

(a) All agency action not reviewable under subsection (2) or (3) of this section shall be reviewed under this subsection.

(b) A person whose rights are violated by an agency's failure to perform a duty that is required by law to be performed may file a petition for review pursuant to RCW 34.05.514, seeking an order pursuant to this subsection requiring performance. Within twenty days after service of the petition for review, the agency shall file and serve an answer to the petition, made in the same manner as an answer to a complaint in a civil action. The court may hear evidence, pursuant to RCW 34.05.562, on material issues of fact raised by the petition and answer.

(c) Relief for persons aggrieved by the performance of an agency action, including the exercise of discretion, or an action under (b) of this subsection can be granted only if the court determines that the action is:

(i) Unconstitutional;

(ii) Outside the statutory authority of the agency or the authority conferred by a provision of law;
(iii) Arbitrary or capricious; or

(iv) Taken by persons who were not properly constituted as agency officials lawfully entitled to take such action.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CITY OF BURLINGTON, a Washington municipal corporation, Appellant, v. WASHINGTON STATE LIQUOR CONTROL BOARD, a Washington Agency; HAKAM SINGH and JANE DOE SINGH, and the marital community composed thereof; and HK INTERNATIONAL, LLC, a Washington limited liability company, Respondents.	)	NO. 72438-0-I DIVISION ONE ORDER AMENDING OPINION

A majority of the panel has determined that the opinion should be amended. It is therefore

ORDERED that the opinion be amended as follows:

DELETE the following sentence in footnote 12, on page 10:

> The parties' briefing at the trial court and on appeal discuss the application of RCW 34.05.562 governing new evidence taken by the trial court on the agency.

REPLACE the above sentence with the following:

> The parties' briefing at the trial court and on appeal discuss the application of RCW 34.05.562 governing new evidence taken by the trial court or the agency.

The remainder of the footnote will remain the same.

Done this 17th day of June, 2015.

Dwyer, J.

Becker, J.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2015 JUN 17 AM 8:26

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CITY OF BURLINGTON, a Washington municipal corporation,

Appellant,

v.

WASHINGTON STATE LIQUOR CONTROL BOARD, a Washington Agency; HAKAM SINGH and JANE DOE SINGH, and the marital community composed thereof; and HK INTERNATIONAL, LLC, a Washington limited liability company,

Respondents.

NO. 72438-0-I

DIVISION ONE

PUBLISHED OPINION

FILED: May 26, 2015

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2015 MAY 26 AM 8:51

LAU, J. — The City of Burlington, Washington, appeals the Washington State Liquor Control Board's decision to grant a spirits license to Hakam Singh and to allow Singh to relocate the license from the previously state-run location to a small convenience store he already owned.[1] The City argued the Board exceeded its statutory authority by allowing Singh to relocate the spirits license. The trial court

[1] We refer in this opinion to all respondents as "the Board."

rejected the City's appeal, concluding the City lacked standing to seek judicial review of the Board's action under the Administrative Procedure Act (APA), chapter 34.05 RCW. Because the Board's action directly impacts the City's interest to protect the safety of the public by ensuring alcohol sales are properly regulated, and because the City presented sufficient facts to demonstrate an injury in fact, we conclude the City has standing to challenge the Board's relocation of Singh's license. Accordingly, we reverse and remand for further proceedings consistent with this opinion.

FACTS

In November 2011, Washington voters approved Initiative Measure No. 1183 (I-1183), a measure privatizing liquor sales. I-1183 directed the Washington State Liquor Control Board to "sell by auction open to the public the right at each state-owned store location . . . to operate a liquor store upon the premises." I-1183 § 102(4)(c); RCW 66.24.620(4)(c). On April 20, 2012, respondents Hakam Singh and HK International (HK) submitted the highest bid for a liquor retail license at former Board Store No. 152, then located at 912 South Burlington Boulevard, in Burlington, Washington. On May 7, Singh submitted a store relocation request to the Board. Singh indicated that the landlord refused to lease at the original store location. Singh proposed a new location: the Skagit Big Mini Mart, a gas station and convenience store he already owned, located at 157 South Burlington Boulevard, approximately one half-mile north of the original store location. On May 14, the Board notified the City of Burlington about Singh's relocation request in compliance with RCW 66.24.010(8). Should the City object, the Board's notice form directed the City to "attach a letter to the Board detailing

the reason(s) for the objection and a statement of all facts on which [the City's] objection(s) are based." Administrative Record (AR) at 36.

On May 30, the City responded objecting to the new location and requesting an adjudicative hearing before the Board took any final action. The City included a brief letter detailing its reasons for the objection. First, the City argued that the Board lacked the legal authority to relocate the license attached to Store No. 152 because "[t]he clear language of [RCW 66.24.620(4)(c)] provides that the rights to be sold by the Board are linked to the then-current location of the liquor store." AR at 37. Second, the City noted that language in the voter pamphlet indicated that I-1183 "prevent[ed] liquor sales at gas stations and convenience stores . . . ." AR at 38.[2] Finally, the City expressed concern regarding how the liquor sales might affect the surrounding area, stating, "The Burlington Police Department has logged many calls to the proposed license location, reflecting the high level of crime that occurs at the licensee's business." AR at 39. The City also emphasized that the proposed location is just over 500 feet from Burlington High School.[3] The Board solicited comments from its own enforcement officer, who repeated the City's concerns: "One of the Investigative Aids I work with goes to that high school and he says he knows kids who buy alcohol there all the time. . . . As a liquor

---

[2] Generally, the Board could only issue a license to retailers whose premises were comprised of "at least ten thousand square feet of fully enclosed retail space within a single structure . . . ." RCW 66.24.630(3)(a). However, there is an exception to this requirement for those who, like Singh, purchase at auction a license to operate a former state liquor store. RCW 66.24.630(3)(c).

[3] If the minimart were within 500 feet of the school, the Board would have had to notify the school and could not have issued the license if the school objected. RCW 66.24.010(9).

officer and a parent I am concerned a spirits license for this premises is an invitation to add to the serious problem of youth access to alcohol." AR at 41.

On August 31, the Board issued a Statement of Intent to Approve Liquor License Over the Objection from the City of Burlington. The Board found no liquor violations at that location in the past four years, the City's challenge of the Board's interpretation of I-1183 was not grounds for denial, and "[t]he City did not demonstrate any conduct that constitutes chronic illegal activity as defined by RCW 66.24.010(12) at this premise." AR at 30. On September 11, the Board issued a final order denying the City an adjudicative hearing and issuing the license for the minimart.[4]

The City promptly appealed the Board's decision to Thurston County Superior Court. The City's opening brief asserted it had standing. The Board's response brief challenged the City's standing. After oral argument, the trial court allowed the parties to "supplement the record" with up to five pages each on the standing issue. Report of Proceedings (RP) (Jul. 19, 2013) at 40. The City submitted declarations from three individuals: Burlington Mayor Steve Sexton; City Planning Director Margaret Fleek, and City Police Lieutenant Tom Moser. The Board moved to strike this evidence, arguing that the court requested additional briefing, not evidence. The court struck the declarations, clarifying that it invited the parties to submit supplemental briefing only. In its oral ruling, the court apologized for any confusion and emphasized that "it was never the intent of the Court that there be supplemental declarations submitted . . . ." RP (Aug. 23, 2013) at 21.

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[4] Singh and HK also requested a hearing.

The court dismissed the City's petition for judicial review for lack of standing. The court found that the City failed to meet the "injury in fact" test "because there was no immediate, concrete or specific injury really that was argued or put into the record by the City, and the few statements that were made were really conjectural and hypothetical." RP (Aug. 23, 2013) at 34. The trial court also denied the City's "request to overturn the Board's grant of a liquor license to HK International LLC." Clerk's Papers (CP) at 225. The City appeals.

ANALYSIS

Standard of Review

Standing is reviewed de novo. In re Estate of Becker, 177 Wn.2d 242, 246, 298 P.3d 720 (2013). When reviewing a party's standing, this court stands in the same position as the superior court. Patterson v. Segale, 171 Wn. App. 251, 257, 289 P.3d 657 (2012). The party seeking judicial review of agency action—the City—bears the burden of establishing standing. KS Tacoma Holdings, LLC v. Shorelines Hr'gs Bd., 166 Wn. App. 117, 127, 272 P.3d 876 (2012).

Standing

The APA delineates standing requirements that differ from the general standing test applicable in other contexts:

> A person has standing to obtain judicial review of agency action if that person is aggrieved or adversely affected by the agency action. A person is aggrieved or adversely affected within the meaning of this section only when all three of the following conditions are present:
>
> (1) The agency action has prejudiced or is likely to prejudice that person;
>
> (2) That person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and

(3) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the agency action.

RCW 34.05.530. "These three conditions are derived from federal case law."[5] Seattle Bldg. & Const. Trades Council v. Apprenticeship & Training Council, 129 Wn.2d 787, 793, 920 P.2d 581 (1996) (citing St. Joseph Hosp. & Health Care Ctr. v. Dep't of Health, 125 Wn.2d 733, 739, 887 P.2d 891 (1995). The second prong is the "zone of interest" test, while the first and third prongs constitute the "injury-in-fact" test. Allan v. Univ. of Wash., 140 Wn.2d 323, 327, 997 P.2d 360 (2000).

1. Zone of Interest[6]

The parties agree that the City satisfies the zone of interest test. Nevertheless, the City's unique and compelling interest adversely affected by the Board's action here merits further discussion.

The zone of interest test limits judicial review of an agency action to litigants with a viable interest at stake, rather than individuals with only an attenuated interest in the agency action:

> [N]ot every person who can show an injury in fact should be permitted to have judicial review. There are many people potentially affected by agency action in a complex interdependent society. To permit them all to seek review would overburden both the courts and the agencies. Hence, the courts have felt that a further filter was needed . . . . [T]he [zone of interest] test seeks another rational means for limiting review to those for whom it is most appropriate. Here, the focus is on legislative intent. . . .

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[5] The APA expressly states the Legislature's intent that "the courts should interpret provisions of this chapter consistently with decisions of other courts interpreting similar provisions of other states, the federal government, and model acts." RCW 34.05.001.

[6] Although the zone of interest test focuses on legislative intent, much of our zone of interest test discussion applies equally to the injury in fact test.

> [T]he underlying question is whether the legislature intended the agency to consider the applicant's interests when taking the action it took.

William R. Andersen, The 1988 Washington Administrative Procedure Act—An Introduction, 64 Wash. L. Rev. 781, 824–25 (1989);[7] see also Trades Council, 129 Wn.2d at 797 ("The test focuses on whether the Legislature intended the agency to protect the party's interests when taking the action at issue." (quoting St. Joseph Hosp., 125 Wn.2d at 739–40)).

Here, the Board's action treads directly upon the City's broad zone of interest regarding the licensing of liquor stores within its borders. The licensing statute explicitly protects the City's interest by providing a statutory right to object to a proposed license and request a hearing:[8]

> [B]efore the board issues a new or renewal license to an applicant it must give notice of such application to the chief executive officer of the incorporated city. . . .
>
> . . . .
>
> (c) The incorporated city . . . has the right to file with the board within twenty days after the date of transmittal of such notice . . . written objections against the applicant or against the premises for which the new or renewal license is asked. . . .
>
> (d) . . . [T]he city or town . . . may request and the liquor control board may in its discretion hold a hearing . . . .

[7] Andersen is a professor of law at the University of Washington. Professor Andersen was a member of the Washington Bar Association Task Force which proposed the 1988 Administrative Procedure Act to the state legislature. His authoritative article has been cited in numerous appellate cases.

[8] The City correctly asserts that it had statutory standing in the administrative process. That fact distinguishes the City from Mrs. Allan. Allan v. Univ. of Wash., 140 Wn.2d 323, 997 P.2d 360 (2000). (Wife of university professor lacked standing to challenge revisions to faculty code. Court rejected her argument that she should have standing as a part of her husband's marital community, asserting an interest in his income. It concluded that she failed to show a concrete interest of her own and also that her asserted interest is one that the agency is required to consider.)

RCW 66.24.010(8). Further, the statute requires the Board to give "substantial weight" to the City's objections regarding chronic illegal activity:

> In determining whether to grant or deny a license or renewal of any license, the board must give substantial weight to objections from an incorporated city or town or county legislative authority based upon chronic illegal activity associated with the applicant's operations of the premises proposed to be licensed . . . . "Chronic illegal activity" means (a) a pervasive pattern of activity that threatens the public health, safety, and welfare of the city, town, or county including, but not limited to, open container violations, assaults, disturbances, disorderly conduct, or other criminal law violations, or as documented in crime statistics, police reports, emergency medical response data, calls for service, field data, or similar records of a law enforcement agency . . . .

RCW 66.24.010(12). Indeed, the legislature has declared that the statutory scheme for liquor licenses be read as a means for local government to protect the health and safety of its constituents:

> This entire title shall be deemed an exercise of the police power of the state, for the protection of the welfare, health, peace, morals and safety of the people of the state, and all its provisions shall be liberally construed for the accomplishment of that purpose.

RCW 66.08.010. In Sukin v. Wash. State Liquor Control Bd., 42 Wn. App. 649, 710 P.2d 814 (1985), Division Three of this court held that the Board properly considered objections raised by the city of Spokane even though those objections were submitted past the 20-day statutory time limit. Sukin, 42 Wn. App. at 652–53. The court stated that reading the statute in a more restrictive way "would frustrate the purpose of the liquor control act as expressed in RCW 66.08.010." Sukin, 42 Wn. App. at 652–53. That purpose, quoted above, recognizes the City's compelling interest to protect the health and safety of its citizens. RCW 66.08.010.

Cities like Burlington are uniquely situated in the liquor license statutory scheme because of their interest in regulating alcohol sales within their borders.[9] The statute's purpose expressly reflects this interest. RCW 66.08.010. There is no doubt that alcohol sales are heavily regulated due to its profound impact on public safety. See Liquor Act, Title 66 RCW.[10]

Further, the statute provides procedural protections for this interest by requiring the Board to consider and give due weight to the City's objections to licenses. RCW 66.24.010(8)–(12). Section 103(3)(b) of I-1183 provides that the issuance of a liquor license is subject to RCW 66.24.010.[11] Indeed, it is difficult to imagine a litigant more appropriately suited to challenge the Board's action than the City under these circumstances. When an applicant's license is denied, that applicant unquestionably suffers an injury to his zone of interest sufficient to confer standing to appeal. But where, as here, the Board issues an alleged illegal license, no person or entity possesses a more compelling interest for standing purposes than the City. We conclude that the Board's action directly implicates the City's broad interest spelled out in the plain language of the statute.

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[9] The City correctly asserts that it "is a general purpose government responsible for ensuring public safety. *See*, RCW 35A.11.020. As such, Burlington has a statutory interest in the enforcement of regulations governing alcohol sales." CP at 31.

[10] "Initiative Measure 1183 (I-1183), which privatizes our state liquor industry, allows hard liquor to be sold at grocery stores and other retail establishments, and dramatically changes state regulation of liquor distribution and sales." WASAVP, 174 Wn.2d at 666.

[11] Section 103(3)(b) provides in part:

> License issuance and renewals are subject to RCW 66.24.010 and the regulations promulgated thereunder, including without limitation rights of cities...to object to or prevent issuance of local liquor licenses.

2. Motion To Strike City's Supplemental Standing Evidence

Before addressing the injury in fact test, we consider whether the trial court improperly excluded supplemental declarations submitted by the City to show standing. The City contends the trial court abused its discretion when it struck the supplemental declarations. The Board responds that the court never authorized supplemental facts. The parties agree that the trial court's ruling granting the Board's motion to strike is reviewed under an abuse of discretion standard.[12] "A trial court abuses its discretion when its exercise of discretion is manifestly unreasonable or based upon untenable grounds or reasons." Davis v. Globe Mach. Mfg. Co., 102 Wn.2d 68, 77, 684 P.2d 692 (1984).

A party seeking review of an agency action may submit additional evidence to demonstrate standing particularly where, as here, no hearing occurred at the administrative level. See Trades Council, 129 Wn.2d 798–99. Typically, judicial review of an agency action is limited to the administrative record. Because the City was not required to demonstrate standing for judicial review at the administrative level, and because the Board denied the City an adjudicative hearing, the administrative record is limited on evidence of standing. We conclude that the trial court should have considered the City's supplemental declarations, because the evidence went only to the question of standing for judicial review and not the merits. Nw. Envt'l Def. Ctr. v. Bonneville Power Admin., 117 F.3d 1520, 1528 (9th Cir.1997) ("Because Article III's standing requirement does not apply to agency proceedings, petitioners had no reason

[12] The parties' briefing at the trial court and on appeal discuss the application of RCW 34.05.562 governing new evidence taken by the trial court on the agency. We need not address whether that provision applies here.

to include facts sufficient to establish standing as a part of the administrative record. We therefore consider the affidavits not in order to supplement the administrative record on the merits, but rather to determine whether petitioners can satisfy a prerequisite to this court's jurisdiction.").

The record also shows that the trial court invited additional evidence on the standing issue. At the close of oral argument, the court specifically stated that the parties could "supplement the record on the issue of standing." RP (Jul. 19, 2013) at 40. The City then submitted declarations from three individuals supporting the inference that it would be injured if the minimart received a spirits license. The court struck the declarations and clarified it intended to request supplemental briefing only—not supplemental facts.

The City reasonably understood that the procedures followed in Lujan v. Defenders of Wildlife, 504 U.S. 555, 112 S. Ct. 2130,119 L. Ed. 2d 351 (1992) and the court's comments allowed it to file the supplemental declarations. The City explained to the Court, "That's what we thought we were invited to do by the Court. And maybe I was mistaken, but that was my understanding. . . ."[W]e proceeded along with the outline that was laid out by Lujan." RP (Aug. 23, 2013) at 17-18. When the court asked the Board if it had a response to the City's argument on Lujan, the Board said, "I'm sorry, I don't at this time." RP (Aug. 23, 2013) at 20. The trial court acknowledged the confusion surrounding its request to "supplement the record":

> "And insomuch as the court may have caused any confusion, I apologize for that but it was never the intent....to allow supplemental declarations."

RP (Aug. 23, 2013) at 21. From our review of the record, we conclude that the trial court's invitation to "supplement the record" is ambiguous. We also note the absence of any prejudice to the parties arising from the City's submission of these declarations. Indeed, the record shows that the Board addressed the perceived deficiencies in the declarants' testimony at oral argument. In its briefing to the court, the Board had a full and fair opportunity to be heard with regard to these declarations. Yet, the court granted the motion to strike because the declarations were "too late."[13] RP (Aug. 23, 2013) at 23. Under the unique circumstances presented here, we conclude the trial court erred when it struck the City's declarations and declined to consider them.

Even if we ignore the supplemental declarations, the City's unique interest in protecting the safety and health of its citizens together with the Mayor's letter and the Board's enforcement officer statement are sufficient to satisfy the injury in fact test. We consider the supplemental declarations and the administrative record to determine whether the City demonstrated a sufficient injury in fact.

3. Injury in Fact

The parties' dispute here centers mainly on whether the City has shown injury in fact for standing. The Board contends the City's injury in fact evidence falls short because it "has to be concrete, in particular, actual or imminent, not conjectural or hypothetical..." to satisfy the injury in fact test. RP (Aug. 23, 2013) at 7- 8.

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[13] The Board did not argue to the trial court that the declarations were irrelevant on the standing question or that the timing of these submissions caused it prejudice. Exclusion of evidence is undisputedly a harsh remedy, generally imposed as a sanction for the failure to comply with a court ordered deadline, willful violation of discovery order, or other similar conduct. None of the usual grounds for exclusion are present here.

To show an injury in fact, the City must demonstrate that it will be "specifically and perceptibly harmed" by the Board's action. Trepanier v. City of Everett, 64 Wn. App. 380, 382, 824 P.2d 524 (1992) (quoting Save a Valuable Env't v. City of Bothell, 89 Wn.2d 862, 866, 576 P.2d 401 (1978)). Where, as here, a party alleges a threatened injury, "as opposed to an existing injury," the party must prove that the threatened injury is "immediate, concrete, and specific." Trepanier, 64 Wn. App. at 383 (citing Roshan v. Smith, 615 F. Supp. 901, 905 (D.D.C. 1985)). Conjectural or hypothetical injuries are not sufficient for standing. Trepanier, 64 Wn. App. at 383 (citing United States v. Students Challenging Regulatory Agency Procedures (SCRAP), 412 U.S. 669, 688–89, 93 S. Ct. 2405, 37 L. Ed. 2d 254 (1973)).

The injury in fact test is not meant to be a demanding requirement.[14] Typically, if a litigant can show that a potential injury is real, that injury is sufficient for standing:

> It might be thought that the first condition is merely a *de minimis* rule: if substantial harm is not threatened, no important social purpose is served by review. But a judicial appraisal of the *extent* of harm is not contemplated. The requirement of harm is best thought of as one rational way to delimit the class of persons who can seek review. It is rational because it provides review for those close enough to the agency action to feel its impact in a tangible way and excludes those who are further removed. Thus, a person should be able to meet this condition if he or she can show that the potential injury is real, not that it is substantial. As the United States Supreme Court stated, an "identifiable trifle" should be sufficient.

Andersen, 64 WASH. L. REV. at 824 (quoting United States v. Students Challenging Regulatory Agency Procedures, 412 U.S. 669, 689 n.14, 93 S. Ct. 2405, 37 L. Ed. 2d 254 (1973)).[15]

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[14] The trial court's oral ruling acknowledged that, "I do recognize, I don't think standing is a really high burden to meet."

The City has satisfied the injury in fact test for standing. The City demonstrated that minors regularly come into contact with the minimart and that criminal activity is common in the area. In its objection letter to the Board, the City claimed that licensing the minimart would be "incompatible with the land use in the area," AR at 39, noting crime near the location and the proximity to Burlington High School:

> [T]he proposed location is the site of numerous activities requiring law enforcement involvement. The Burlington Police Department has logged many calls to the proposed license location, reflecting the high level of crime that occurs at the licensee's business.
>
> . . . . High-school aged children frequent this area . . . . Adding liquor to the products sold at this location will necessarily bring children into frequent close contact with those individuals who commit the crimes that plague the Skagit Big Mini Mart.

AR at 39.

The City's declarations also support the allegations in the Mayor's initial objection letter to the Board. Police Lieutenant Tom Moser notes that "[s]ince January 2009, Burlington police officers have responded to the address of the Skagit Big Mini Mart on 202 occasions," while the police responded to the former state liquor store only 22 times in between January 2009 and August 2011. CP at 157. Lieutenant Moser's declaration confirms the Mayor's assertion in his objection letter that the minimart "is the site of numerous activities requiring law enforcement involvement." AR 39.

City Planning Director Margaret Fleek provided a declaration emphasizing that, unlike the previous store location, minors frequent the minimart and the surrounding areas:

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[15] But the United States Supreme Court has indicated that the injury in fact must not be too slight. Lujan v. Defenders of Wildlife, 504 U.S. 555, 112 S. Ct. 2130,119 L. Ed. 2d 351 (1992).

> The site of the former store was not near any schools, playgrounds, or similar areas where children would congregate, and because of the proximity of the store to homes and dwellings, it would be unusual for children to pass by the former store on their way to school, parks, or other areas where children would be expected to frequent.
> . . .The Mini-Mart site is located just over 500 feet from the property line of the Burlington-Edison High School, and a similar distance from numerous multi-family housing developments. Immediately adjacent to the convenience store is the Harry Ethington Memorial Park . . . .
> The Mini-Mart is located between the multi-family developments and the High School. Youth who live in those dwelling units pass by the Mini-Mart often on their way to and from the High School. Youth also pause at the Harry Ethington Memorial Park on their way to and from school . . . .

CP at 160. Fleek also noted the correlation between alcohol advertising and underage drinking:

> The City of Burlington does not regulate the content of advertising that businesses place in their storefront windows.
> I am aware of numerous studies that have been conducted, which demonstrate the adverse effects alcohol advertising has on youth. For example, the Johns Hopkins University Bloomberg School of Public Health has identified 26 academic studies and papers as to the impacts of alcohol advertising on youth, leading the School to conclude that "research clearly indicates that alcohol advertising and marketing also have a significant effect by influencing youth and adult expectations and attitudes, and helping to create an environment that promotes underage drinking."

CP at 160–61.

Further, an email from the Board's own enforcement officer confirms that minors frequent the minimart, and the officer had knowledge that minors occasionally purchase alcohol there:

> One of the Investigative Aids I work with . . . says he knows kids who buy alcohol there all the time.
> I watched the store one afternoon and saw a stream of kids from the high school go into the store. I didn't see any come out with beer, but they all had back packs, and the bought or stolen beer could very easily been hidden in the back pack.

> As a liquor officer and a parent I am concerned a spirits license for this premises is an invitation to add to the serious problem of youth access to alcohol.

AR at 41. Because of these concerns, Mayor Steve Sexton emphasized that the City will need to dedicate more law enforcement resources to monitor the minimart, impacting the City's budget:

> Burlington currently employs 25 commissioned law enforcement officers, well short of the number of police officers that has been recommended for a city of our size. Any increase in workload for the City's police department impacts the City's ability to maintain public safety, and also has an impact on the City's budget. The relocation of the former state liquor store to the Skagit Big Mini Mart impacts the City's law enforcement resources, and the City's budget.

CP at 154.

The Mayor's objection letter, the enforcement officer's email to the Board, and the declarations submitted to the trial court demonstrate a probability that transferring the location of the spirits license from the original store to the minimart will harm the City. The record shows that, by moving the license from the old location to the minimart, the Board has placed a licensed liquor store at a location with more crime and a higher presence of minors. Reasonable minds might differ on whether the level of criminal activity constitutes "chronic illegal activity" for purposes of RCW 66.24.010. But we only need to address whether the City has demonstrated the minimal injury required to confer standing. The City has demonstrated a real injury that "is likely to [cause] prejudice." RCW 34.05.530. We do not examine the extent of the alleged harm. A party seeking standing need only demonstrate that the threatened injury is likely to occur, not that it is substantial. See Andersen, 64 WASH. L. REV. at 824. The record supports an inference that alcohol sales at the minimart are likely to impact school

children, coming and going from the nearby high school, the citizens who reside near the minimart, and the City's law enforcement resources and budget. Because the City will feel the impact of the Board's alleged illegal action in a tangible way, as this record demonstrates, it satisfies the test for standing to challenge the Board's decision.

Finally, our Supreme Court held that the threat to public safety posed by expanded liquor sales under I-1183 is a sufficient injury for standing. In Wash. Ass'n for Substance Abuse and Violence Prevention v. State, 174 Wn.2d 642, 278 P.3d 632 (2012), Washington Association for Substance Abuse and Violence Prevention (WASAVP)—a group dedicated to preventing substance abuse and violence—challenged the constitutionality of I-1183. WASAVP, 174 Wn.2d at 646. Though the appellants lost on the merits, the court concluded that the threat of expanded alcohol sales was a sufficient injury for standing.[16] The court applied the common law "zone of interest" and "injury in fact" standing test to find standing:

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[16] WASAVP is a non APA case that involved standing under the uniform declaratory judgment act (UDJA) chapter 7.24 RCW. Nevertheless, WASAVP is controlling authority because the two-part standing test under the UDJA is nearly identical to the APA two-part standing test. See Suquamish, 92 Wn. App at 829 (LUPA standing and APA standing nearly identical because the prejudice prongs of the two standing tests are substantially identical. Both prongs require injury in fact.) In order to establish a justiciable controversy based on harm, the APA and UDJA standing test both require a litigant to satisfy the same two-part test–"zone of interest" and "injury in fact". In addition, "The principles stated in the APA were not novel, but represented the state and federal common law of standing as of the date of the [APA's] passage....that common law has continued to evolve, but the Washington APA provisions on standing are still consistent with general standing law." William R. Andersen, *Judicial Review of Administrative Procedure Act Decisions, in* Wash. State Bar Ass'n, Washington Administrative Law Practice Manual § 10.02[C] (Richard Heath et al. eds., 2008).

The legislature has directed that "courts should interpret provisions of this chapter consistently with decisions of other courts interpreting similar provisions of ...the federal government...." Seattle Bldg of Const. Trades Council v. Apprenticeship of Training Counsel, 129 Wn.2d 787, 794, 920 P2d 581(1996) citing RCW 34.05.001.

> Appellants appear to have interests that are regulated by I-1183. WASAVP's goal of preventing substance abuse and violence places it within the zone of interests of I-1183, which broadly impacts the State's regulation of alcohol. . . .I-1183 removes the State from the business of running liquor stores.
> [WASAVP has] established injury in fact. Although WASAVP has not suffered economic loss as a result of I-1183, <u>its goals of preventing substance abuse could reasonably be impacted by I-1183's restructuring of Washington's regulation of liquor.</u> Indeed, [WASAVP] stress[es] <u>the established relationship between public safety and liquor</u>, . . . such that the increase in liquor availability would injure WASAVP's goals.

<u>WASAVP</u>, 174 Wn.2d at 653–54 (emphasis added). The City's injury here stems from the same relationship between public safety and liquor discussed in <u>WASAVP</u>. Like in <u>WASAVP</u>, the issuance of a liquor license to the minimart presents a public safety concern for Burlington residents—a concern recognized by the City and the Board's own enforcement agent. To prove standing, the City does not have to prove a history of violations or increased criminal or other specific unlawful conduct that go to show why the minimart location is ill-suited for that area. It is enough for the City to show a potential threat to public safety and its interest in public safety. <u>WASAVP</u>, 174 Wn.2d at 653–54.

Further, if the City succeeds on the merits, a court order reversing the Board's issuance of the minimart's liquor license would remedy this injury. RCW 34.05.530(3).

"[T]he APA standing test was intended to codify some basic principles derived from standing case law." <u>Suquamish Indian Tribe v. Kitsap County</u>, 92 Wn. App 816, 829, 965 P.2d 636 (1998).

We also note that § 302 of I-1183 mandates that a portion of the liquor revolving fund associated with the state's collection of liquor licensing fees be provided to "...cities... for the purpose of enhancing public safety programs." It was this compelling interest that prompted city and county government officials to file amici briefs expressing their interest in the implementation of I-1183 in their communities, and in particular, the allocation of liquor-related revenue for public safety purposes. <u>WASAVP</u>, 174 Wn.2d at 652.

The City presents a discrete, narrow legal question regarding whether the Board exceeded its authority under the plain language of the statute when it issued the license to the minimart. Such a straightforward issue of statutory interpretation is well within the province of the courts, and a determination on the merits would either confirm the City's allegation that the minimart was granted a license illegally—in which case the threat to public safety would be removed—or affirm the Board's authority to grant and transfer licenses obtained via public auction. Courts regularly grant standing to parties, like the City, that present well-defined legal questions with clearly available remedies:

> [C]ourts are most likely to examine narrowly drawn challenges to the legality of agency action at the instance of parties who have suffered injury in a setting which bespeaks injustice. Similarly, courts are less likely to reach unfocused, peripheral or fact-dependent questions at the instance of those whose injuries are slight or whose claim to justice is marginal.

Andersen, 64 WASH. L. REV. at 824-25. Here, the City's claim is not "unfocused, peripheral or fact-dependent," but instead presents a narrowly drawn legal issue with an available remedy. To deny the City an opportunity to address this discrete statutory question based on a rigid application of the standing requirements would be to ignore a real threat to public safety and frustrate the purpose of the statute. RCW 66.08.010.

The question of the Board's alleged illegal action would also evade judicial review to the detriment of the City's interest in the safety of its residents.

We note that Professor Andersen emphasized the vital function performed by judicial review of agency action:

> [T]o keep administrative agencies within the bounds set for them by legislative and constitutional command. During judicial review courts support the legislative process by insisting that legislatively prescribed boundaries of agency action are respected. Courts also may be enforcing

> any constitutional limits the people thought wise to impose on agencies or legislatures.
>
> Agencies benefit from judicial review. Courts can support vigorous agency action with statutory clarification. Courts sometimes can insulate agencies from wrongful pressure from other public or private actors. In a broader sense, judicial review confers legitimacy on the administrative process, in essence, certifying that the agency action is legislatively authorized, and hence is democratically accountable.[17]

Andersen, 64 WASH. L. REV. at 820.

Under the circumstances here, we conclude the City has demonstrated standing to challenge the Board's issuance of a liquor license.[18]

The City's Remaining Claims

The City raises several other arguments related to standing.[19] The City also claims the Board violated its procedural and constitutional rights.[20] Given our disposition of the standing question, we need not address the City's remaining claims.

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[17] There is no doubt that the City's legal challenge to the Board's action raises a significant question of public importance about the Board's authority to grant relocation of a liquor license under I-1183.

[18] The Board relies on Patterson for the proposition that "[a] party's standing to participate in an administrative proceeding, however, is not necessarily coextensive with standing to challenge an administrative decision in a court." Patterson, 171 Wn. App. at 257. We agree. Any party appealing an administrative action must satisfy the standing requirements under RCW 34.05.530. And in that case, the litigant who might have had standing gave it up by settling and withdrawing review of the aggrieving issue.

[19] The City contends it has standing because (1) as a general purpose local government with police powers, it does not need to meet the normal redressability and immediacy requirements of the injury in fact test, (2) it was party to the administrative proceedings, (3) it has associational standing to challenge the Board's action, and (4) the agency's failure to provide a hearing is sufficient to satisfy the injury in fact test.

[20] The City contends (1) that the Board violated its constitutional right to procedural due process by denying a hearing, (2) that denying a hearing was arbitrary and capricious, (3) that the Board failed to raise standing during the administrative proceedings and therefore may not raise the issue on appeal, (4) that the Board failed to provide notice regarding the adjacent park, (5) that the Board failed to give "due consideration" to the location of the minimart as required by RCW 66.24.010 (9)(a)(i), and (6) that the Board failed to give the City's objections proper weight.

CONCLUSION

We conclude the City has standing to seek judicial review of the Board's decision to allow transfer of a liquor license from the location of a former state-run liquor store. Accordingly, we reverse and remand to the superior court for further proceedings consistent with this opinion.[21]

Cox, J.

WE CONCUR:

Trickey, J. Becker, J.

[21] We also note that before ruling on the standing question, the trial court explained that without a finding of standing, it could not reach the merits of the City's assertions about the Board's actions. Nevertheless, the trial court determined in its oral ruling that the Board's license relocation decision was erroneous:

> And I want to talk about the main issue...whether or not the Washington State Liquor Control Board had the authority to allow a former state-run liquor store to relocate. <u>And I find that it did not have the authority. . . .If I were to get to a final ruling,</u> I would find that the Board acted outside its statutory authority. I would find that they erroneously interpreted and applied the law...And I can't make any rulings on the merits unless I find that there is standing. RP (Aug. 23, 2013) at 29 and 32 (emphasis added).

The court concluded by denying the City standing for judicial review. This record is clear. The trial court did not make a final decision on the Board's liquor license relocation decision, nor could it when it found no standing.

State Measures

Initiative Measure 1125 Concerning state expenditures on transportation.

Initiative Measure 1163 Concerning long-term care workers and services for elderly and disabled people.

Initiative Measure 1183 Concerning liquor: beer, wine, and spirits (hard liquor).

Senate Joint Resolution 8205 Concerning the length of time a voter must reside in Washington to vote for president and vice president.

Senate Joint Resolution 8206 Concerning the budget stabilization account maintained in the state treasury.

Initiative Measure 1183

Ballot Title | Full Text

Initiative Measure No. 1183 concerns liquor: beer, wine, and spirits (hard liquor).

This measure would close state liquor stores and sell their assets; license private parties to sell and distribute spirits; set license fees based on sales; regulate licensees; and change regulation of wine distribution.

Should this measure be enacted into law?
[ ] Yes
[ ] No

The Official Ballot Title was written by the Attorney General as required by law and revised by the court. The Explanatory Statement was written by the Attorney General as required by law. The Fiscal Impact Statement was written by the Office of Financial Management as required by law. The Secretary of State is not responsible for the content of arguments or statements (WAC 434-381-160).

Explanatory Statement

The Law as it Presently Exists

In Washington, the state sells and controls the distribution and sale of "spirits." The term "spirits" refers to alcoholic beverages also called "hard liquor" (whiskies, vodka, gin, etc.). Spirits include beverages containing distilled alcohol and wines exceeding twenty-four percent alcohol by volume. Spirits do not include lower alcohol content beverages such as flavored malt beverages, beer, or wines containing less than twenty-four percent alcohol by volume.

In Washington, spirits are sold at retail at state-run liquor stores and at "contract liquor stores." Contract liquor stores are private businesses that sell spirits and other liquor under a contract with the state. Washington has approximately 165 state liquor stores and 160 contract liquor stores.

The Washington State Liquor Control Board ("the Board") operates the state liquor stores and oversees the contract liquor stores. Among its responsibilities, the Board regulates liquor advertising in the state. The Board, however, cannot advertise liquor sales.

The Board sets the price for spirits sold at state-run and contract liquor stores based on the wholesale cost of the spirits, taxes, and a markup authorized by statute. The Board also collects the taxes imposed on the retail sale of spirits, and collects license fees and penalties. The proceeds received from the sale of spirits, the tax revenues on spirits, and license fees are distributed to cities, counties, and the state. Certain revenues are dedicated to funding programs addressing alcohol and drug abuse treatment and prevention.

In Washington, manufacturers and suppliers of spirits may only sell spirits to the Board. The Board acts as the sole distributor of spirits sold in the state liquor stores and contract liquor stores, and sold by restaurants and certain other licensed sellers. Under a law effective June 15, 2011, the state must examine whether to lease the state's liquor distribution facilities to a private party, and whether such a lease would produce better financial returns for the state.

Existing law allows private parties to sell or distribute alcoholic beverages that are not spirits, such as wine or beer. Wine and beer sellers are licensed by the state. There are different licenses for each of "three tiers" of the wine and beer business: (1) manufacturing; (2) distribution; and (3) retail sales. Existing law regulates the financial relationships and business transactions allowed between manufacturers, distributors, and retailers. While there are some exceptions, retailers are allowed to purchase wine or beer only from distributors. Similarly, distributors are allowed to purchase only from manufacturers, with certain exceptions.

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EXHIBIT B

Existing law requires wine and beer manufacturers and distributors to maintain published price lists and offer the same price to every buyer. This requirement of uniform pricing prevents manufacturers or distributors from selling wine or beer at discounted prices to select customers, such as a quantity discount or other business reason for a discount. Existing law also requires wine and beer retailers to receive all wine and beer at their retail store and to not take delivery or store wine or beer at a separate warehouse location.

The Effect of the Proposed Measure, If Approved

Initiative 1183 allows private parties to sell and distribute spirits, and alters the Liquor Control Board's powers and duties. It eliminates the Board's power to operate state liquor stores, to supervise the contract liquor stores, to distribute liquor, and to set the prices of spirits. Initiative 1183 directs the Board to close state liquor stores by June 1, 2012. It directs the Board to sell assets connected with liquor sales and distribution, and to sell at auction the right to operate a private liquor store at the location of any existing state liquor store. Initiative 1183 repeals a 2011 law that directed the state to examine the financial benefit of leasing the state liquor distribution facilities to a private party.

Under Initiative 1183, qualifying private parties may obtain licenses to distribute spirits or to sell spirits at retail. A retail spirits license allows the retailer to sell spirits directly to consumers, and allows the sale of up to 24 liters of spirits for resale at a licensed premises, such as to a restaurant. Initiative 1183 allows private distributors to start selling spirits on March 1, 2012, and private retail spirits sales to start on June 1, 2012.

To obtain a retail spirits license, a store must have at least 10,000 square feet of enclosed retail space in a single structure. However, Initiative 1183 also allows a retail spirits license for a store at the location of a former state liquor store or contract liquor store, even if the store is smaller than 10,000 square feet. It also allows smaller stores where there are no 10,000 square foot licensed spirits stores in the area. Initiative 1183 requires retail stores to participate in training their employees to prevent sales of alcohol to minors and inebriated persons.

Initiative 1183 allows local governments and the public to provide input before issuance of a license to sell spirits. Initiative 1183 preserves local government power to zone and regulate the location of liquor stores.

Initiative 1183 would not change the existing taxes on spirits. Initiative 1183 would require spirits retailers and distributors to pay license fees to the state. Retail stores would pay a fee of seventeen percent of gross revenues from spirits sales under the license, plus an annual $166 fee. Spirits distributors would pay an annual $1,320 fee, plus a percentage of gross revenues from spirits sales under the license. During the first two years of a spirits distributor license, the distributor license fee would be ten percent of the distributor's gross spirits sales. After two years, the spirits distributor fee would drop to five percent of the distributor's gross spirits sales.

Initiative 1183 also requires that all persons holding spirits distributor licenses must have together paid a total of one hundred fifty million dollars in spirits distributor license fees by March 31, 2013. If the total license fees received from all distributor license holders is less than one hundred fifty million dollars, the Board must collect additional spirits distributor license fees to make up the difference. This additional fee would be allocated among the persons who held a spirits distributor license at any time before March 31, 2013.

In addition to existing laws controlling the distribution of moneys received by the Board, a portion of fees from retail spirits licenses and spirits distributor licenses would be distributed to border areas, counties, and cities to enhance public safety programs.

Initiative 1183 also changes laws that regulate the retailers, distributors, and manufacturers of wine. Initiative 1183 eliminates the requirement that distributors and manufacturers of wine sell at a uniform price, which would allow the sale of wine at different prices based on business reasons. Spirits could also be sold to different distributors and retailers at different prices. Beer manufacturers and distributors, however, would continue to be regulated by existing laws requiring uniform pricing. Under Initiative 1183, retailers could accept delivery of wine at a retail store or at a warehouse location. Under Initiative 1183, a store licensed to sell wine at retail may also obtain an endorsement allowing the store to sell to license holders who sell wine for consumption on the premises. For example, this would allow the store to sell wine to a restaurant that resells the wine by the glass or bottle to its customers.

Fiscal Impact Statement

The fiscal impact cannot be precisely estimated because the private market will determine bottle cost and markup for spirits. Using a range of assumptions, total State General Fund revenues increase an estimated $216 million to $253 million and total local revenues increase an estimated $186 million to $227 million, after Liquor Control Board one-time and ongoing expenses, over six

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fiscal years. A one-time net state revenue gain of $28.4 million is estimated from sale of the state liquor distribution center. One-time debt service costs are $5.3 million. Ongoing new state costs are estimated at $158,600 over six fiscal years.

General Assumptions

- The initiative uses the term "spirits" to describe alcoholic beverages that are distilled instead of fermented. For purposes of the fiscal impact statement, the term "liquor" is used for "spirits" to maintain consistent terminology. Beer and wine are not spirits or liquor.
- Estimates are described using the state's fiscal year (FY) of July 1 through June 30.
- New liquor distributor licenses and new liquor retailer licenses are available beginning Feb. 8, 2012. There is no limit on the number of licenses that can be issued.
- Liquor distributor licensees can begin making sales of liquor March 1, 2012. Liquor retailer licensees can begin making sales of liquor June 1, 2012.
- By June 15, 2012, the state will no longer operate the state liquor distribution center or state liquor stores.
- Estimates assume 1,428 licensed liquor retailers based on research from implementation of Substitute Senate Bill 6329 that authorized beer and wine tasting at grocery stores with a fully enclosed retail area of 9,000 square feet and the current number of state-operated and contract -operated liquor stores (328). The number of licenses is assumed to be constant for each fiscal year.
- Estimates assume 184 licensed liquor distributors, based on the number of current Washington State Liquor Control Board (LCB) licensed beer and wine distributors, wine distributors, distilleries and liquor importers. The number of licenses is assumed to be constant for each fiscal year.
- Estimates of impacts are measured against the June 2011 LCB revenue forecast (forecast).
- Retail liquor liter sales are estimated to grow 5 percent from increased access to liquor. This assumption is based on an academic study and growth experienced in Alberta, Canada, after converting from state-operated liquor stores to private liquor stores. A decrease in liquor liter sales is estimated using the forecast price elasticity assumption of 0.49 percent. Price elasticity is a method used to calculate the change in consumption of a good when price increases or decreases. For every 1 percent increase/decrease in price, liquor liter sales increase/decrease 0.49 percent. Growth from increased access and price elasticity is in addition to normal 3 percent growth in liquor liter sales assumed in the forecast.

State and Local Revenues

Actual fiscal impacts depend on liquor bottle cost in the private market and the markup applied by both private liquor distributors and retailers. Therefore, there is a wide range of potential fiscal impacts.

To estimate gains or losses to the state and local governments, the fiscal impact statement used a model developed for prior initiatives, adjusted to reflect the content of this initiative. The model measures the difference between LCB forecasted liquor revenues and the sum of the revenue gains and losses generated under the initiative using the set of assumptions set forth below.

Total Estimated State General Fund Revenues

Fiscal Year	2012	2013	2014	2015	2016	2017	TOTAL
Low Markup	$6,404,000	$51,373,000	$52,007,000	$35,083,000	$35,689,000	$35,244,000	$215,789,000
High Markup	$8,777,000	$59,054,000	$58,372,000	$42,194,000	$42,204,000	$42,260,000	$252,831,000

Total Estimated Local Government Revenues

Fiscal Year	2012	2013	2014	2015	2016	2017	TOTAL
Low Markup	$5,012,000	$36,913,000	$42,500,000	$27,873,000	$26,757,000	$25,492,000	$165,847,000

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High Markup	$5,361,000	$63,034,000	$60,741,000	$35,770,000	$34,949,000	$34,098,000	$228,953,000

State and Local Government Revenue Assumptions

- LCB's forecasted average bottle price for a liter of liquor (before taxes and markup) is used to estimate both state and private market bottle price.
- State's markup on liquor is 51.9 percent during FY 2012 and FY 2013, and 39.2 percent thereafter.
- Total private distributor/retailer markup for liquor sold in stores is set at a low of 52 percent and a high of 72 percent from March 1, 2012, to March 1, 2014. Thereafter, the private market markup is assumed to be a low of 47 percent and a high of 67 percent. The selected range was based on the following sources:
  - Low markup — 25 percent — is based on U.S. Internal Revenue Service data (sales revenue minus cost of goods) of retail food, beverage and liquor stores throughout the United States.
  - High markup — 45 percent — is the total liquor markup contained in the Washington State Auditor review and is based on information from the Distilled Spirits Council of the United States.
  - To these percentages, 27 percent is added through Feb. 28, 2014, and 22 percent is added thereafter. These percentages represent the total amount of new liquor distributor and retailer license fees under the initiative. While individual distributor and retailer actions will vary, academic research supports an assumption that, in the aggregate statewide, the value of the new liquor distributor and retailer license fees will be passed on to the consumer in the private market markup.

Markup Assumptions

Fiscal Year	2012	2013	July 1, 2013 to Feb. 28, 2014	March 1, 2014 to June 30, 2014	2015	2016	2017
State Markup	51.90%	51.90%	39.20%	39.20%	39.20%	39.20%	39.20%
Low Markup	52%	52%	52%	47%	47%	47%	47%
High Markup	72%	72%	72%	67%	67%	67%	67%

- The initiative imposes a new liquor distributor license fee of 10 percent of total liquor revenues from March 1, 2012, to March 1, 2014; the fee decreases to 5 percent thereafter. The initiative imposes a new liquor retailer license fee of 17 percent of total liquor revenues beginning June 1, 2012.
- Based on inventory information from the Retail Owners Institute®, private liquor stores are estimated to maintain two months of liquor inventory. In contrast, state-operated liquor stores maintain 1.2 months of liquor inventory. Therefore, an additional 0.8 month of liquor liter sales to liquor retailers is assumed during FY 2012.
- If the new liquor distributor license fee totals less than $150 million by March 31, 2013, these licensees must pay the difference between $150 million and actual receipts by May 31, 2013. The model estimates that $84 million to $91 million will be paid by licensees during FY 2013 due to this requirement.
- The initiative sets a $1,320 license fee for each liquor distribution location and a $166 license fee for each liquor retailer license. Both fees are due at the time of license renewal.
- Liquor distributor licensees are assumed to be subject to the wholesaling business and occupation (B&O) tax. Liquor retailer licensees are assumed be subject to the retailing B&O tax.
- Liquor liter taxes and liquor sales taxes are amended by the initiative, but these changes are assumed not to increase, create or eliminate any tax.
- Except for the loss of sales in state-operated liquor stores, estimates do not assume any change in pricing or volume of sales of beer and wine.

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- State-operated liquor stores sell Washington State Lottery products to the public. The estimate assumes 25 percent of these sales will be lost and remaining sales will occur in other outlets selling Washington State Lottery products. This revenue loss is estimated to be $1.3 million over six years.
- Estimates of sales by current restaurant licensees who sell liquor at retail are limited to changes from price elasticity and the loss of the state's 15 percent quantity price discount to these licensees.
- Estimates do not assume any change in sales by liquor stores operated on military bases. Such sales are assumed not to be subject to liquor liter taxes, liquor sales taxes or B&O tax.
- Estimates do not assume any change in sales by liquor stores operated by tribes. Such sales are assumed to be subject to liquor liter taxes and liquor sales taxes based on current agreements between tribes and LCB, but are not subject to B&O tax.
- No additional change is assumed for tax avoidance/non-compliance by consumers or migration of sales in and out of state by consumers. These items are assumed in the forecast price elasticity assumption.
- Revenue from the state markup used to pay for the state liquor distribution center and state liquor store costs are netted to zero. The initiative eliminates both the revenue (markup) and the costs (state liquor distribution center and state liquor stores), which results in no additional revenue to the state.
- The initiative requires new liquor distributor and retailer fees to be deposited into the Liquor Revolving Fund. The Liquor Revolving Fund is distributed by statute in the following order:
  1. Payment of LCB administrative costs;
  2. Distributions to state accounts for specific purposes (such as drug and alcohol research at the University of Washington and Washington State University);
  3. Border areas (cities, towns and counties adjacent to the Canadian border); and
  4. The remainder after these distributions: a) 50 percent to the State General Fund; b) 10 percent to counties; and 3) 40 percent to cities and towns.

Therefore, the model first reduces the Liquor Revolving Fund by LCB costs, one-time and ongoing, to determine total revenues distributed to the State General Fund and local governments. Other revenues (beer taxes, wine taxes, penalties, etc.) deposited into the Liquor Revolving Fund are assumed to be unaffected by the initiative and continue to be shared between the state and local governments.

Specific Local Government Revenue Assumptions

- New liquor distributor and retailers license fees must be used to maintain, in the aggregate, Liquor Revolving Fund distributions to counties, cities, towns, border areas and the Municipal Research Service Center in an amount no less than the amount received in comparable periods. For purposes of the model, comparable period is measured by funds forecasted for calendar year 2011. The model estimates that local distributions will exceed the maintenance level required by the initiative each fiscal year.
- An additional $10 million is also provided to counties, cities, towns and border areas.
- Approximately 38 cities and towns impose a local B&O tax. Using data from the Washington State Department of Revenue's 2008 Tax Reference Manual, total local B&O tax is approximately 10 percent of total state B&O tax. Assuming this ratio, $8 million is estimated as new local B&O taxes from liquor sales over six fiscal years.
- Total local government revenues are the sum of the increased Liquor Revolving Fund distributions, the additional $10 million and local B&O tax.

Specific State Asset Assumptions

The sale of the state liquor distribution center is estimated to generate a potential net $28.4 million in revenue. Because the sale date cannot be precisely determined, this revenue is stated seperately and excluded from the total State General Fund revenue estimates in the first table above. The value of the state liquor distribution center is estimated to be $20.4 million, based on the King County Assessor's Office 2011 assessed value of the property. The sale of the equipment in the state liquor distribution center is estimated to be $8 million, based on the 2010 Washington State Auditor review, which assumed the sale of $16 million in assets would return about $8 million. Costs to sell the state liquor distribution center are estimated to total $1 million at the time of sale.

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The initiative requires LCB to sell by public auction the right — at each state-owned store location — to operate a liquor store upon the premises without regard to the size of the premises if the applicant otherwise qualifies for a liquor retailer license. All state-operated liquor stores are leased and cannot be transferred or assigned. In addition, of the 166 state-operated liquor stores, 127 are located within one block of a grocery store. Because these factors (location, competition and lessor) will vary by state-operated liquor store and will affect the value of each operating right, revenue generated from the auction is indeterminate and not assumed in the model.

The initiative would repeal Engrossed Substitute Senate Bill 5942 (ESSB 5942), which directed the Office of Financial Management to conduct a competitive process for the selection of a private sector entity to lease and modernize the state's liquor warehousing and distribution facilities. Under ESSB 5942, if a proposal is determined to be in the best interests of the state by the Office of Financial Management after consultation with LCB and an advisory board created through the legislation, LCB may contract with that private entity for the lease of the state's liquor warehousing and distribution facilities. Because it is not known if LCB will enter into a contract, no revenue is assumed in the model.

State and Local Expenditure Estimate Assumptions
Revenue gains will accrue to existing accounts, the largest being the State General Fund, which may be used for any governmental purpose as appropriated by the Legislature.

Washington State Lottery proceeds in excess of expenses are deposited into the State Opportunity Pathways Account to support programs in higher education and early learning. Due to the loss of some lottery product sales in state liquor stores, it is estimated that funds to this account will decrease $1.6 million over six fiscal years.

Each county and city is required to spend 2 percent of its share of liquor revenues on alcohol and chemical dependency services, and these expenditures will increase. The additional $10 million distributed to cities, towns, counties and border areas are for enhancing public safety programs. The remaining revenue can be used for any allowable local government purpose.

State and Local Cost Estimate Assumptions
The fiscal impact statement does not estimate state costs or state savings due to social impacts from approval of the initiative. No costs are assumed for local governments.

Liquor Control Board Costs
Estimated one-time and ongoing LCB costs are assumed to be paid by the Liquor Revolving Fund. Therefore, payment of the following costs is reflected in the State General Fund revenue estimate.

LCB ongoing costs for licensing, enforcement and administration are estimated to increase by $350,000 for new fee-collection costs and implementing the "responsible vendor program." No state costs from increased enforcement activities are assumed in the estimate.

Assuming a closure date of June 16, 2012, LCB will incur one-time state costs associated with managing the closure of the state liquor distribution center and state liquor stores. There will be additional one-time costs for issuing new licenses. These state costs are estimated to total $28.7 million during FYs 2012 and 2013:

- Unemployment, sick leave and vacation buyout costs for state employees estimated at $11.8 million.
- Information technology changes and staff to issue new licenses estimated at $2.7 million.
- Staffing costs to coordinate the sale of existing inventory, termination of contract store leases, surplus of store fixtures and auction of state-operated store operating rights estimated at $11 million.
- Final audits of each state and contract liquor store estimated at $1.9 million.
- Project management and additional human resource staff estimated at $1.3 million.

Department of Revenue Costs
The Washington State Department of Revenue will administer the collection of liquor excise tax from licensed liquor distributors and retailers. Costs include additional staff, information technology changes, rule-making and policy activities, taxpayer mailings and workshops, supplies and

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materials. Total one-time state costs are estimated to total $120,100 during FY 2012. Ongoing costs are estimated to be $38,600 each fiscal year beginning FY 2013.

State Indebtedness
There is $5.3 million in debt service costs for a Certificate of Participation bond for the state liquor distribution center that is scheduled to be paid by Dec. 1, 2013. This one-time state cost is assumed in FY 2014.

Arguments For and Against

Argument For	Argument Against
Initiative 1183 gets our state government out of the business of distributing and selling liquor I-1183 ends Washington's outdated state liquor store monopoly and allows consumers to buy spirits at licensed retail stores, like consumers do in most other states. It allows a limited number of grocery and retail stores to get licenses to sell liquor, if approved by the Liquor Control Board, and prevents liquor sales at gas stations and convenience stores. **1183 provides vitally needed new revenues for state and local services** Distributors and stores approved for liquor licenses will pay a percentage of their sales as license fees, generating hundreds of millions of dollars in new revenues for state and local services like education, health care and public safety. **1183 strengthens laws governing the sale of liquor** 1183 doubles penalties for retailers who sell spirits to minors, ensures local input into which grocery and retail stores get liquor licenses, mandates new training programs and increases compliance requirements for retailers, and dedicates new revenues to increase funding for local police, fire, and emergency services statewide. **1183 eliminates outdated wine regulations** 1183 eliminates outdated regulations that currently restrict price competition and wholesale distribution of wine in Washington. This will help small Washington wineries and lead to better selections and more competitive wine prices for consumers. Yes on 1183 will create true competition in liquor and wine distribution and sales, strengthen liquor law enforcement, benefit Washington taxpayers and consumers, and generate vitally needed new revenues for state and local services.	Last year more than one million Washingtonians voted "no" twice to big box stores and grocery chains selling liquor. Yet despite the clear message we sent, they're back again spending millions to push I-1183. What part of "no" don't they understand? **More Consumption, More Problems** Alcohol already kills more kids than all other drugs combined. Yet 1183 allows more than four times as many liquor outlets. The Centers for Disease Control recently came out against privatization because it leads to a 48 percent or more increase in problem drinking. That means more underage drinking and crime, overburdening police and first responders. **Mini-Mart Loophole** 1183 is another flawed measure designed to benefit the big chains, not the public. It gives chains an unfair competitive advantage over smaller grocers, while a major loophole written into the measure will allow mini-marts to sell liquor across much of the state. State stores have one of the best enforcement rates in the country; groceries, gas stations and mini-marts sell to teenagers one time out of four. **Higher Taxes on Consumers** The sponsors of this measure say it increases government revenue. But they do it by creating a new 27 percent tax passed on to consumers. Ask yourself: when was the last time a big corporation spent millions, twice, to try and save us money? Firefighters, first responders, and law enforcement leaders oppose 1183. It's too risky, and too high a price to pay for a little convenience. Vote *no* on 1183.
Rebuttal of Argument Against	Rebuttal of Argument For

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The campaign against 1183 is funded *by* big national liquor distributors that profit from Washington's outdated *liquor monopoly. Their* claims are false and self-serving. 1183 specifically prevents liquor sales at gas stations and convenience stores, doubles penalties for selling spirits to minors and generates hundreds of millions in new revenues to schools, health care, police and emergency services *without raising taxes*. That's why community leaders, law enforcement officials and taxpayer advocates support *yes* on 1183.

The Liquor Control Board determined 1183 contains loopholes that enable mini-marts and gas stations to sell liquor. Local independent grocers oppose 1183 because it tilts the rules against them. And 1183 creates a new 27 percent hidden tax passed onto consumers, raising taxes to fund corporate profits. Four *times the number of outlets is too much*. 1183 is another flawed, risky initiative putting corporate *profits over our safety*. The responsible choice: Vote *no* 1183.

Argument Prepared By	Argument Prepared By
Anthony Antón, President, Washington Restaurant Association; Eric Robertson, Former Captain, Washington State Patrol; Daniel J. Evans, Former Governor of Washington; Charlie Myers, Washington State Chair, Northwest Grocery Association; Bob Edwards, Former President, Association of Washington Cities; John Morgan, Winemaker/Board Member, Family Wineries of Washington State.	Jim Cooper, Washington Association for Substance Abuse and Violence Prevention; Alice Woldt, Co-Director, Faith Action Network; Kelly Fox, President, Washington State Council of Firefighters; Sharon Ress, RN, Acute Care Nurse; Craig Soucy, Emergency Medical Technician, Renton Fire and Emergency Services; Linda Thompson, Executive Director, Greater Spokane Substance Abuse Council.
Contact: (800) 958-3460; info@YESon1183.com; www.YESon1183.com	Contact: (206) 456-5556; info@protectourcommunities.com; www.protectourcommunities.com

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Licensing and Regulation
PO Box 43098, 3000 Pacific Ave SE
Olympia WA 98504-3098
Phone – (360) 664-1600
Fax – (360) 753-2710

May 14, 2012

MAYOR OF BURLINGTON

Re: Application for a Spirits Retailer License

Applicant: HK INTERNATIONAL LLC
Principals: HAKAM SINGH; KULWANT KAUR; HARVINDER SINGH; BALJINDER SINGH
License No: 080190-3C
Tradename: STATE LIQUOR STORE # 152/SKAGIT BIG MINI MART
UBI: 602-365-483-001-0001
Address: 157 S BURLINGTON BLVD
BURLINGTON, WA 98233-1708

Contact Name: Hakam Singh Phone No: 360-941-4000

This letter is to notify you that HK INTERNATIONAL LLC, has applied for a liquor license at the above location to sell **spirits** in original containers to:

- Consumers for off-premises consumption
- Permit holders
- Retailers licensed to sell spirits for on-premises consumption; and to
- Export spirits

Per state law adopted under Initiative 1183 (RCW 66.24.620 (1)), if this application is approved, sales cannot begin until **June 1, 2012.**

The applicant's location is a former WSLCB state liquor store. In accordance with Initiative 1183 (RCW 66.24.630 (c)), The Board may not deny a Spirits Retailer license to an otherwise qualified holder of a former state liquor store operating rights sold at auction. Therefore, this notice is being provided to you as an informational courtesy only.

Alan E. Rathbun, Director
Licensing & Regulation

DECLARATION OF SERVICE

On said day below, I emailed a courtesy copy and deposited in the U.S. Mail for service a true and accurate copy of the Answer to Petition for Review in Supreme Court Cause No. 91867-8 to the following parties:

Mary M. Tennyson
R. July Simpson
Sr. Assistant Attorney General
Licensing & Admin. Law Division
1125 Washington St. SE
Olympia, WA 98504-0110
(AG has authorized service by email)

Leif Johnson
City of Burlington
833 S Spruce St
Burlington, WA 98233-2810

Daniel G. Lloyd
Assistant City Attorney
P.O. Box 1995
Vancouver, WA 98668-1995

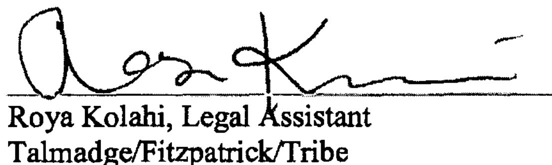
Corbin Volluz
Law Offices of Corbin Volluz
508 South Second Street
Mount Vernon, WA 98273-3819

Josh Weisss
General Counsel
206 Tenth Avenue SE
Olympia, WA 98501

Original efiled with:
Washington Supreme Court
Clerk's Office
415 12th Street W
Olympia, WA 98504-0929

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: July 13th, 2015, at Seattle, Washington.



Roya Kolahi, Legal Assistant
Talmadge/Fitzpatrick/Tribe

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, July 13, 2015 3:33 PM
To: 'Roya Kolahi'
Cc: Leif Johnson; shelleya@burlingtonwa.gov; maryt@atg.wa.gov; rjulys@atg.wa.gov; RainD@ATG.WA.GOV; corbin@volluzlaw.com; dan.lloyd@cityofvancouver.us; jweiss@wacounties.org
Subject: RE: The City of Burlington v. Hakam Singh, et ux., et al. Cause No. 91867-8

Received 7/13/15

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Roya Kolahi [mailto:Roya@tal-fitzlaw.com]
Sent: Monday, July 13, 2015 3:28 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Leif Johnson; shelleya@burlingtonwa.gov; maryt@atg.wa.gov; rjulys@atg.wa.gov; RainD@ATG.WA.GOV; corbin@volluzlaw.com; dan.lloyd@cityofvancouver.us; jweiss@wacounties.org
Subject: The City of Burlington v. Hakam Singh, et ux., et al. Cause No. 91867-8

Good Afternoon:

Attached please find the Answer to Petition for Review in Supreme Court Cause No. 91867-8 for today's filing. Thank you.

Sincerely,

Roya Kolahi
Legal Assistant
Talmadge/Fitzpatrick/Tribe
206-574-6661 (w)
206-575-1397 (f)
roya@tal-fitzlaw.com