91867-8

No. 72438-0-I

SUPREME COURT
OF THE STATE OF WASHINGTON

THE CITY OF BURLINGTON

v.

THE WASHINGTON STATE LIQUOR CONTROL BOARD, HAKAM SINGH AND JANE DOE SINGH, and HK INTERNATIONAL, LLC.

PETITION FOR REVIEW

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I. Identity of Petitioner

Petitioner is Hakam Singh, dba H.K. International, LLC, by and through attorney of record Corbin T. Volluz

II. Citation to Court of Appeals Decision

Petitioner requests review of the decision of Division One of the Court of Appeals in Washington Municipal Corporation, 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, No. 72438-0-I. The Court of Appeals opinion was filed on May 26, 2015, a copy of which is attached hereto as **Appendix A**.

III. Short Statement of the Case

The City of Burlington (hereafter "The City") appealed a decision by the Liquor Control Board (hereafter "The Board") allowing Hakam Singh, dba HK International (hereafter "Singh") to relocate a liquor license he bought at public auction for six-figures. The appeal was taken to Thurston County Superior Court.

In its opening brief in Superior Court, the City argued it had standing to bring the appeal, relying on documents submitted to the Board in its objection to the grant of the spirits license. In his response brief,

Singh argued that the documents submitted by the City did not establish standing. In its reply brief, the City counter-argued that the documents submitted below did in fact confer standing on the City. At no time during the normal briefing phase did the City seek to introduce additional declarations or evidence to support standing.

After oral argument, the trial judge advised standing was going to be an issue, and invited the parties to submit up to five pages of supplemental briefing on the issue prior to making her decision. The City seized on this opportunity to thereafter file nine pages of declarations in support of standing. Singh and the Board objected to this material being considered and moved to strike the late-filed declarations. A hearing on the Motion to Strike was noted.

At the hearing, the trial court advised the City it was never her intention to allow the City to file additional declarations; that she would have allowed such a filing as late as the City's reply brief; but that filing additional declarations two-weeks after oral argument was too late.

The trial judge accordingly struck the City's late-filed declarations; found that the remaining pleadings did not establish standing, and dismissed the City's appeal.

The City appealed this decision to Division II of the Court of Appeals, which thereafter transferred the case to Division I of the Court of Appeals. The Court of Appeals reversed the trial court's decision to strike the City's late-filed declarations and found that the late-filed declarations, in combination with the timely-filed materials, established standing.

IV. Issues Presented for Review

Issue No. 1—Whether an appellate court is required to permit a party to file additional declarations and evidence after the normal briefing schedule is concluded, and after oral argument is conducted, so that the party may establish its standing for appellate review.

Issue No. 2—Whether an appellate court abuses its discretion by not permitting a party to file additional declarations and evidence after the briefing schedule is concluded, and after oral argument is conducted.

Issue No. 3—Whether one party to an appeal may take advantage of an allegedly ambiguous oral statement from the trial judge in order to late-file declarations and evidence, even when the trial judge herself clarifies that was never her intent.

Issue No. 4—Whether a trial judge has the authority to control the schedule of filing declarations and evidence in her own courtroom.

V. Considerations Governing Acceptance of Review

Consideration No. 1—The decision of the Court of Appeals is in conflict with decisions of the Supreme Court standing for the fundamental proposition that a trial judge has the discretion to control the schedule for filing declarations and evidence in matters before her.

Consideration No. 2—The decision of the Court of Appeals is in conflict with other decisions of the Court of Appeals standing for the fundamental proposition that a trial judge has the discretion to control the schedule for filing declarations and evidence in matters before her.

Consideration No. 3—The fundamental proposition that a trial judge has the discretion to control the schedule for filing declarations and evidence in matters before her involves an issue of substantial public interest that should be determined by the Supreme Court.

VI. Washington Supreme Court Decisions in Conflict

> The abuse of discretion standard applies to review of a trial court's decision on a motion to strike a declaration or affidavit allegedly containing inadmissible evidence. *W.R. Grace & Co. v. Dep't of Revenue,* 137 Wash.2d 580, 591, 973 P.2d 1011 (1999).

Oltman v. Holland Am. Line USA, Inc., 163 Wash. 2d 236, 247, 178 P.3d 981, 988 (2008).

A ruling on a motion to strike is discretionary with the trial court.

King Cnty. Fire Prot. Districts No. 16, No. 36 & No. 40 v. Hous. Auth. of King Cnty., 123 Wash. 2d 819, 826, 872 P.2d 516, 519 (1994).

> In addition to asserting that the trial court erred in granting the State's motion for an order shortening time to hear its motion for summary judgment, CAT claims that the trial court failed to strike several newspaper articles and press releases attached to declarations in support of the State's motion for summary judgment. This ruling is also discretionary. Thus, CAT must show manifest abuse of discretion. *In re Dependency of E.S.,* 92 Wash.App. at 769, 964 P.2d 404; *Coggle,* 56 Wash.App. at 504, 784 P.2d 554. However, CAT does not advance any argument showing such manifest abuse of discretion. Accordingly, we conclude that the trial court did not err in not striking these newspaper articles and press releases.

State ex rel. Citizens Against Tolls (CAT) v. Murphy, 151 Wash. 2d 226, 240, 88 P.3d 375, 382 (2004).

VII. Washington Court of Appeals Decisions in Conflict

> Whether to accept or reject untimely filed affidavits is within the trial court's discretion. *See Brown v. Peoples Mortgage Co.,* 48 Wash.App. 554, 559–60, 739 P.2d 1188 (1987) (citing KCLR 56(c)(1)(B), the court found no abuse of discretion when a trial court struck a supplemental affidavit filed on the same day as a scheduled summary judgment proceeding) (citing *Jobe v. Weyerhaeuser Co.,* 37 Wash.App. 718, 684 P.2d 719 (1984)).

O'Neill v. Farmers Ins. Co. of Washington, 124 Wash. App. 516, 521-22, 125 P.3d 134, 136 (2004).

VIII. Statement of the Case

HK International, LLC, operates a convenience store in the City of Burlington under the name, "Skagit Big Mini Mart." Hakam Singh is the owner of HK International.

HK International was the successful bidder in the auction which closed on April 20, 2012, for State Store #152 within the City of

Burlington. AR 14. The private landlord of the premises of State Store #152 refused to lease the premises to Hakam Singh, the owner of HK International, LLC. AR 23. Accordingly, Hakam Singh notified the Board on May 7, 2012 that he wished to move the location of the "operating right" about one-half mile from the location of the former state store to the location of his "Skagit Big Mini Mart." AR 23.

1. Singh's History of Being Licensed Without Violations

Singh applied for a spirits retail license at the new location of the store where it had held licenses to sell beer and wine since 2003. AR 23. The Board examined the history of the applicant, and the history of the location, with regard to liquor and tobacco sales. The most recent violation for a sale of alcohol to a person under age 21 occurred more than four years prior to the decision to grant the application for the spirits retail license. AR 43-48. Despite close attention from the Board's enforcement staff, there had been no more recent violations. The record further showed that the Liquor Control Board had conducted recent "compliance checks" at the location and the licensee refused to sell liquor to the underage operative used by the Board. AR 48.

2. The City Provided No Facts to Support its Vague Assertions of Public Safety Concerns

The Board notified the City of Singh's request for a spirits retail license at the new location by "Notice of Liquor License Application" dated May 14, 2012. AR 36. The City objected to the location and submitted a three-page letter dated May 31, 2012. AR 37-39.

The City focused its letter-objection on the authority of the Board to grant such a request, not on any public safety concerns regarding the location. Only on the final page of the letter did the City briefly address such concerns, choosing to include only vague and unsubstantiated allegations with no supporting documentation. AR 39

The Board also solicited input from Board employee Roxanne Johnson, who referenced an anonymous Investigative Aid who "says he knows kids who buy alcohol there all the time." AR 41. Ms. Johnson also stated on one afternoon she saw "a stream of kids from the high school go into the store," though Ms. Johnson admits she "didn't see any come out with beer." *Id.*

In short, Ms. Johnson's email comments contained only triple-hearsay in the first paragraph, and no personal observations in her second paragraph.

3. The Decision of the Board Shows the Licensing Director Carefully Considered the City's Objections

The Board's Licensing Director reviewed the report of the Licensing Division staff (AR 34-35) who investigated the application and the materials submitted with the application. The Licensing Director provided the City with a "Statement of Intent to Approve Liquor License Over the Objection of the City of Burlington" dated August 31, 2012. AR 29-31.

The Statement of Intent took into account the issues raised by the City relating to public safety, but found, "In examining the record, there have been no liquor violations at the existing grocery store licensed premise for the past four years and several compliance checks conducted by the Liquor Control Board resulted in no sale. The City did not demonstrate any conduct that constitutes chronic illegal activity as defined by RCW 66.24.010(12) at this premise. The City of Burlington's objection does not conclusively link the licensee and areas under the licensee's control to the information cited in the city's objection." AR 30, paragraphs 3.2, 3.3 and 3.5.

The Board subsequently issued its "Final Order of the Board" approving Singh's license application, and offering the City the ability to request reconsideration: "Pursuant to RCW 34.05.470, you have ten (10)

days from the mailing of this Order to file a petition for reconsideration stating the specific grounds on which relief is requested." AR 49-51, at 50.

4. The City Did Not Seek Reconsideration or Seek to Supplement the Record Before the Board or the Superior Court

Rather than asking the Board to reconsider, or to provide the Board with information to support any public safety concerns, The City appealed the Board's decision to the Thurston County Superior Court.

Here it should be noted that the City is granted standing at the administrative level by statute. RCW 66.24.010(8). The same is not true, however, on appeal of the administrative decision.

5. The City was Aware of Its Obligation to Establish Standing in its Opening Brief but Relied Solely on the Administrative Record.

The City was aware of its legal obligation to establish standing for the appeal, and addressed the issue extensively in its Opening Brief to the Superior Court. CP 22, pp. 13-15. The City, however, did not submit any additional evidence in support of its standing argument, but chose to rely on the administrative record filed by the Board.

The *Board's Response Brief*, dated March 22, 2013, included a lengthy section challenging the City's standing to appeal the Board's grant of the license. CP 24, pp. 15-19.

6. The City Did Not Seek to Supplement the Record to Show Standing with its Reply Brief.

In its Reply Brief, dated April 4, 2013, the City argued that it did have standing to bring the action, but once again chose to not introduce any additional evidence but to rely solely on the administrative record on file with the court. CP 26, pp. 12-13.

7. The City Did Not Seek to Supplement the Record Until Two Weeks After Oral Argument Before the Superior Court.

A hearing on the City's appeal was held July 19, 2013 before the Honorable Christine Schaller. After hearing argument from the parties, Judge Schaller directed counsel for the City to restrict his arguments to standing, advising that if she did not find the City had standing, she was not going to reach the other issues. 7/19/13 Hearing, RP 37. Judge Schaller then gave all parties the opportunity to provide additional "briefing" of no more than five pages on the issue of standing, provided a deadline for the submission of such briefing, and reserved her final ruling until after such submissions were made. It is important Judge Schaller be quoted in her entirety rather than cherry picking only certain phrases which may give an incorrect impression, as the Court of Appeals did in their decision. See *City of Burlington v. LCB*, **Exhibit A**, p. 11.

> All right. Thank you. Even if I wanted to, I could not rule because it is noon. I think that by my questions and perhaps from my comments in general the way I see this case is probably clear and the issue that the Court is having difficulty with is standing. I would not be ruling today because I want to further look at this issue based upon some of the arguments made in court today that has made me look at this differently than I was approaching it prior to the hearing today, which is why we have argument.
>
> **I am going to allow, if any party wants to, to supplement the record on the issue of standing five pages per entity that is before the Court. You are not required to, but I want to give the parties an opportunity to do that. If you are going to supplement the record on the issue of standing on the briefing,** that would need to be done by a week from today, which would be July 26th. I will issue a ruling by the close of business on July 31st.

7/19/13 Hearing, RP 40-41. (Emphasis added.)[1]

The City misconstrued Judge Schaller's invitation to supply additional "briefing" on the issue of standing as an open door to file evidentiary declarations in support of the City's standing. This was clearly not Judge Schaller's intent, as manifested by the fact she specifically referred to "the issue of standing **on the briefing**." Making Judge Schaller's intent even more clear: (1) the supplemental briefing was limited to five pages; (2) she made the same invitation to the Board and to

[1] The deadline for submitting additional briefing was subsequently changed to August 2nd at the request of counsel for the City of Burlington. *Id.*

HK International; and, (3) no mention was made of supplementation by means of additional evidence or affidavits. [2]

The City at no point requested clarification from Judge Schaller, but instead seized upon its alleged misunderstanding to file 9-pages of declarations from three persons on August 2, 2013, *two weeks after* the July 19, 2013 hearing on the appeal. CP 32-37.

8. The Superior Court Struck the City's Late-Filed Declarations as Untimely.

On August 5, 2013, Respondents filed objections to the City's filing of extra-record declarations and moved to strike them as too late, as improper, and as an attempt to supplement the record without leave of court (citing RCW 34.05.562 and RCW 34.05.558 for when a court may receive evidence in a case to be decided on the administrative record). CP 39-40.

A hearing on the Motion to Strike the City's late-filed declarations was held on August 23, 2013, at which time Judge Schaller made it clear that she had **not** extended an invitation to the City to submit late

[2] It is clear from the 7/19/13 transcript that the superior court did not anticipate any additional opportunity for hearing, argument, or response to the supplemental briefing on standing. Judge Schaller offered the opportunity for additional briefing to be submitted by the parties, then indicated she would make her ruling. The parties only had the opportunity for argument on the City's additional evidence because Respondent moved to strike the declarations—otherwise, Judge Schaller would have made her ruling on the briefing alone.

declarations in support of standing, but only to supply additional briefing and argument:

> At the conclusion of the hearing on July 19th, I told the parties that, initially, I had been prepared to rule from the bench but that, based upon arguments to the court, I wanted to further consider the issue of standing, and I invited each of the three parties to provide **supplemental briefing**, up to five pages each, on that issue.
>
> And insomuch as the Court may have caused any confusion, I apologize for that, but it was never the intent of the Court that there be supplemental declarations submitted at that point. 8-23-13 Hearing, RP 3 (emphasis added).

Judge Schaller granted the motion to strike the late declarations in the following carefully considered and balanced language:

> [A]s I've looked at this case and the issue of standing being challenged from the very beginning, it was a question in my mind, well, how can the City of Burlington prove standing if they can't supplement the record, because they're not trying to prove standing for a Court's review when they are submitting their information to the Liquor Control Board.
>
> And I think I better now understand really how that process is supposed to happen, and I'm going to grant the motion to strike. And that is because, even before I read the case that certainly isn't binding on the court, it's consistent with what I'd already decided I was going to rule, and that's the *Sierra Club vs. EPA* case [I.e., *Sierra Club v. Environmental Protection Agency*, 292 F.3d 895, 900 (D.C. Cir. 2002)] that was cited by Mr. Volluz in his supplemental briefing. That's consistent with what I ultimately concluded. And that is, initially, the City knew that standing is a requirement of the Administrative Law Review process when the Court is going to review an agency's decision. Maybe that's because it's addressed in their opening brief.

Clearly, the City believed that they had sufficient evidence at that time to support the issue of standing and that, if they didn't, they would have filed additional declarations to supplement the record on the issue of standing as it relates to the matter before the Court. And if the respondents had objected, had the City done that, I would have denied any objections, and I would have considered that information.

But in this case, it went even further than that, because the response filed in this matter clearly argued first and foremost, I think, that the Court shouldn't get to the merits of the case because there is no standing, and there was quite a bit of information. And I believe Mr. Volluz said he drafted that portion of the brief. There was a big section on standing in the State's brief. And so the City was well on notice at that point that the respondents believed that the Court did not have jurisdiction to hear this matter because the petitioners had no standing.

And contrary to the ruling in the *Sierra Club* case cited by Mr. Volluz, had the City at that point in their reply filed additional declarations with their reply brief, I would have considered those on the issue of standing above any objection, which I'm sure there would have been from the respondents, because, at that point, at least, it would be completely clear to the City that the issue of standing was a large issue that the Court was going to face.

And based upon all of that, I find it is too late for the City of Burlington to now supplement the record. And when I asked for supplementation, I was not inviting them to supplement factually the record; although, I believe they could have done that prior to our argument on July 19th. 8-23-13 Hearing RP 3-6.

9. Superior Court Ruled the City Did Not Establish Standing

Judge Schaller then announced that she would take the opportunity of the parties being present at the hearing on the Motion to Strike to rule on the appeal itself. Judge Schaller carefully considered the evidence properly submitted and ruled that the City had not established standing to

bring the action in Thurston County Superior Court and dismissed the City's appeal:

> Standing, though, is the threshold question. And I can't make any rulings on the merits unless I find that there is standing. And I think it was well argued and well put that it is important to note that, just because someone is entitled to receive notice and object to something that an agency might do, that in and of itself does not then confer standing to bring an action for judicial review.
>
> Under RCW 34.05.530, a person who is aggrieved or adversely affected by an agency action to have standing, there has to be three elements met: One, the agency action has prejudiced or is likely to prejudice that person; two, that the person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and three, a judgment in favor of that person would substantially eliminate or redress the prejudice to the person caused or likely to be caused by the agency action.
>
> Burlington has argued that the agency action has prejudiced it or is likely to prejudice it. The City is entrusted with ensuring public safety, and part of that includes preventing minors from obtaining alcohol. They're also entrusted with fighting crime. The record contains very little information on standing in this issue. The record contains information that the convenience store location is in an area where there have been numerous activities requiring law enforcement to respond, that there have been calls to the police department in this area, and an argument that this reflects a high area of crime. Additionally, there's evidence in the record that this minimart is just outside 500 feet of a high school.
>
> Of the three criteria, clearly, number two is met, and that is that the City is among those whose opinion was required to be considered by the Board, and that did happen in this matter.
>
> The other two factors, which are factors one and three, are referred to sometimes as an "injury in fact" test. And it must be proven that the City has a real interest in or injury, and that the relief

requested will redress the harm suffered as a result of the agency action. If it's a threatened injury and not a real injury—which is this case, it's a threatened injury—the City must demonstrate immediate, concrete and specific injury. And I do not recognize, I don't think standing is a really high burden to meet. But in this case, it simply has not been met, 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.

And based upon that, I find the petitioner does not have standing, and, therefore, the petition must be dismissed. 8-23-13 Hearing, RP 15-17.

The City then appealed Judge Schaller's decision to the Court of Appeals.

10. The Court of Appeals Reversed, Tacitly Holding the Superior Court Abused Its Discretion in Striking the City's Late-Filed Declarations and Evidence

In *City of Burlington V. Washington State Liquor Control Board; Hakam Singh and Jane Doe Singh; and HK International*, No. 72438-0-1, filed May 25, 2015, the Court of Appeals first noted that the proper standard in reviewing the "trial court's ruling granting the Board's motion to strike . . . is the "abuse of discretion standard." See *Burlington v. LCB*, p 10.

And yet the Court of Appeals decision nowhere holds that the trial court did, in fact, abuse its discretion. Instead, it substitutes its judgment for that of the trial court by concluding only that the trial court "should

have" considered the City's late-filed declarations. See *Burlington v. LCB*, p. 10. And later, "Under the unique circumstances presented here, we conclude the trial court erred when it struck the City's declarations and declined to consider them. *Ibid*, at 12. But nowhere does the Court of Appeals find that the trial court **abused its discretion** in striking the City's late-filed declarations.

In spite of acknowledging it was "never the intent" of the trial court to "allow supplemental declarations," the Court of Appeals alters that intent to an "invitation" for supplemental declarations: "The record also shows that the trial court invited additional evidence on the standing issue," and that, "the court's comments allowed it (the City) to file the supplemental declarations." See *Burlington v. LCB*, p. 11.

This unwarranted and contra factual conclusion permits a party to take advantage of a purported misunderstanding of an oral statement by a trial judge and then enforce it against the trial judge—in spite of the fact the trial judge herself declares it was never what she intended.

The Court of Appeals held that, "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." See *Burlington v. LCB*, p. 12. **But the Court of Appeals never engages in this analysis.** Instead, the Court of Appeals conducts its analysis based on the timely filed pleadings *in addition to* the late-filed declarations. Indeed, the very next sentence of the opinion states, "We consider the supplemental declarations and administrative record to determine whether the City demonstrated a sufficient injury in fact." *Ibid.*

IX. Argument

Issue No. 1—*The Superior Court did not abuse its discretion in striking the City's late-filed declarations.*

In addition to the conflict decisions cited in sections VI and VII above, the Court of Appeals does not address the critical case, cited to by both parties below, of *Beck v. United States Dep't of Interior*, 982 F.2d 1332, 1340 (9th Cir. 1992). *Beck* stands for the proposition that an appellant-intervenor seeking to establish standing should do so by filing supplemental declarations alleging particularized injury at the time they appeal. [*Brief of Appellant, 39*, citing *Northwest Envt'l Defense Ctr. V. Bonneville Power Admin.*, 117 F.3d 1520, 1527-28 (9th Cir. 1997).]

As set forth in *Sierra Club v. Environmental Protection Agency*:

> Henceforth, therefore, a petitioner whose standing is not self evident should establish its standing by the submission of its arguments and any affidavits or other evidence appurtenant thereto *at the first appropriate point in the review proceeding.* In some cases that will be in response to a motion to dismiss for want of standing; in

> cases in which no such motion has been made, *it will be with the petitioner's opening brief—and not, as in this case, in reply to the brief of the respondent agency.* . . . Requiring the petitioner to establish its standing *at the outset of its case* is the most fair and orderly process by which to determine whether the petitioner has standing to invoke the jurisdiction of the court.

Sierra Club v. Environmental Protection Agency, 292 F.3d 895, 900 (D.C. Cir. 2002) (Emphasis added.)

Under the holding in *Sierra Club*, *supra*, the City should have established its standing by submission of "any affidavits or other evidence" filed no later than "with the petitioner's opening brief." It should not be done so late as "in reply to the brief of the respondent agency." This is because "[r]equiring the petitioner to establish its standing at the outset of its case is the most fair and orderly process by which to determine whether the petitioner has standing to invoke the jurisdiction of the court." *Sierra Club*, *supra*, at 900.

And yet, in spite of the *Sierra Club* case being brought to the attention of the reviewing court, Judge Schaller stated she would not have held the City to the strict *Sierra Club* requirement of filing "affidavits or other evidence" to establish standing with its opening brief, but would have extended her discretion to allow the City to have filed "affidavits and other evidence" as late as the City's reply brief. 8/23/13 Hearing, RP 5. But because the City waited to file "affidavits or other evidence" until

after the briefing schedule was completed, and even after oral argument on appeal had been heard, it was clearly "too late" for such filings to be considered timely. *Id.*

Here, the trial court properly used its "wide discretion" in striking late-filed declarations by the City after the normal briefing phase and after oral argument. This was not an abuse of discretion.

X. Conclusion

A trial court has broad discretion to strike untimely filed declarations and evidence. The trial court here was well within its discretion to strike the City's late-filed declarations.

The Court of Appeals decision holding otherwise conflicts with Washington State Supreme Court decisions, Washington Court of Appeals decisions, and involves an issue of substantial public interest that should be determined by the Supreme Court.

DATED this 22nd day of June, 2015.

Respectfully submitted,

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APPENDIX A

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

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

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[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 . . . .

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[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, its goals of preventing substance abuse could reasonably be impacted by I-1183's restructuring of Washington's regulation of liquor. Indeed, [WASAVP] stress[es] the established relationship between public safety and liquor, . . . such that the increase in liquor availability would injure WASAVP's goals.

WASAVP, 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 WASAVP. Like in WASAVP, 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. WASAVP, 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." Suquamish Indian Tribe v. Kitsap County, 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. WASAVP, 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. And I find that it did not have the authority. . . .If I were to get to a final ruling, 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.