

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
FROM THE ALCOHOLIC MARIJUANA CONTROL BOARD**

In the Matter of	)	
	)	
ALASKA GREEN GLACIERS GARDEN, LLC)	)	OAH No. 17-0444-MCB
d/b/a ALASKA GREEN CROSS	)	Agency No. 10154
_____	)	

**DECISION AFTER REMAND**

**I. Introduction**

Alaska Green Glaciers Garden, LLC dba Alaska Green Cross (Green Glacier) applied for a marijuana retail establishment license. After corresponding with Green Glacier about deficiencies in its application, the Marijuana Control Board staff (Board staff) recommended that the application be denied as incomplete. The Marijuana Control Board denied the application on that basis, and Green Glacier filed this appeal.

*A. Proposed Decision*

After an evidentiary hearing, a proposed decision was issued on September 29, 2017, which recommended that Green Glacier’s application be denied because the application was materially incomplete.

*B. Proposal for Action*

The parties were notified of their rights to object to the proposed decision by filing proposals for action under AS 44.64.060(e). Those proposals for action were due by October 23, 2017. Board staff timely filed a proposal for action. Green Glacier did not timely file a proposal for action. Board staff’s proposal requested that a paragraph contained in the proposed decision at pages 14 – 15 be stricken in its entirety. That paragraph reads:

Board staff raised a collateral issue for the first time at hearing. It argued that because Mr. Troutman had been removed as an LLC member, that Green Glacier would have to readvertise (post and publish) the application. This argument is not persuasive. Mr. Troutman had a very small ownership interest (three percent) in the LLC, and his membership was transferred to Ms. Davis who was already the majority member. The regulations do not directly address this issue. However, the regulation governing an already licensed establishment provide that a change in ownership only needs to be timely reported to the Board, unless it is a change in the controlling interest, in which case an application for transfer of the license

must be made.<sup>1</sup> Using this related regulation for guidance, the conclusion is that removal of a member, which does not result in a change in the LLC controlling interest, does not require a new application.

*C. Board Meeting*

The proposed decision and Board staff's proposal for action were presented at the Board Meeting held on November 14, 2017. At that time, the Board deliberated. The Board then adopted a motion remanding the case, pursuant to AS 44.64.060(e)(2), to the Administrative Law Judge to issue a revised decision which struck the paragraph in question, and which otherwise left the decision unchanged.

*D. Summary of Decision*

The evidence in this matter shows that Green Glacier had a very difficult time navigating the marijuana license application process. There were notable deficiencies in Green Glacier's application, the majority of which it rectified. However, Green Glacier failed to satisfy the regulatory requirement that it provide an adequate description of its retail premises. Its application contained a written description of the premises and the dispensing process, and several different diagrams of the premises, which were inconsistent with each other.

The pertinent regulations require the applicant to provide a diagram with a clear description of the premises indicating restricted access and storage areas. Because of the contradictory descriptions contained in its application and the inconsistent diagrams, Green Glacier did not adequately comply with this regulatory requirement. Although Green Glacier explained the changes in the diagrams at hearing, its oral explanations confused rather than clarified the underlying discrepancies, and, in any event, could not and did not comply with the requirement that the premises diagram be adequately documented on the application. Accordingly, Green Glacier's application was materially incomplete. The application is DENIED.

**II. The Marijuana License Application Process**

On November 4, 2014, the citizens of the State of Alaska voted in favor of Ballot Measure No. 2, which legalized the possession, use, and sale of marijuana by persons who were at least 21 years old. Among its other provisions, the Ballot Measure authorized the creation of

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<sup>1</sup> 3 AAC 306.040.

the Marijuana Control Board to license and regulate commercial marijuana establishments.<sup>2</sup> As subsequently enacted by the Legislature, the pertinent statutes provide the Board with authority to license and regulate the sale of marijuana.<sup>3</sup>

The license involved in this case is for a retail store. In order to operate a retail store, a business must first obtain a license from the Board.<sup>4</sup> It applies for the license by completing an application on a form supplied by the Board, which must contain, in addition to other requirements, the following:

1. When, as is the case here, the applicant is a limited liability company, the LLC operating agreement, a list of all members, their percentage ownership interests, contact information, and social security numbers;
2. the address of the premises;
3. “the title, lease, or other documentation showing the applicant’s right to possession of the proposed licensed premises;” and
4. “a detailed diagram of the proposed licensed premises; the diagram must show all entrances and boundaries of the premises, restricted access areas, and storage areas.”<sup>5</sup>

After completing the application, the applicant is to publicly post a copy of the application, at the proposed business location, and another “conspicuous” site near the proposed business location, and publish notice of the application.<sup>6</sup> After complying with those requirements, the applicant must then submit the completed application to the Board, along with proof of publication and posting, and required fees.<sup>7</sup> The Board’s Director is then required to review the application and notify the applicant if it is incomplete. If the application is incomplete, then the Director has the option to return the incomplete application to the applicant, or to request the information required to complete the application.<sup>8</sup>

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<sup>2</sup> The text of the ballot measure, the ballot summary, and the voting totals are located at the Alaska Division of Elections website: <http://www.elections.alaska.gov/Core/initiativepetitionlist.php> (date accessed September 20, 2017).

<sup>3</sup> AS 17.38.121.

<sup>4</sup> 3 AAC 306.005(1); 3 AAC 306.300; 3 AAC 306.315.

<sup>5</sup> 3 AAC 3016.020(b).

<sup>6</sup> 3 AAC 306.025(a) and (b).

<sup>7</sup> 3 AAC 306.020(a) and (b); 3 AAC 306.025(c).

<sup>8</sup> 3 AAC 306.025(d).

Once the application is complete, it goes to the Board for action.<sup>9</sup> The Board “will deny an application” if it finds that it is incomplete.<sup>10</sup> If an application is denied, the applicant has the option of requesting a formal hearing, or an informal conference with the Director. If an informal conference is requested, the applicant, if dissatisfied with the result of the conference, may request a formal hearing.<sup>11</sup> An applicant, who is challenging the denial of an application has the burden of proof by the preponderance of the evidence.<sup>12</sup> Following the hearing, unless there is a delegation (which has not occurred here), a proposed decision is issued by the Administrative Law Judge and presented to the Board for a final decision.<sup>13</sup>

The decision at the end of the second round will be a more rigorously tested version of the first decision. If it differs from the first, the difference may not stem from any ‘errors’ in the initial round. Instead, it is simply a new decision made with a different and more complete body of evidence. The task is to make the best decision possible at the executive branch level.<sup>14</sup>

The final decisionmaker in such cases – here, the Board – may defer to judgments made by agency staff, but is not required to do so.<sup>15</sup>

### **III. Facts and Procedural History**

#### *A. Background*

Green Glacier is an Alaska limited liability company, which was formed in October 2014.<sup>16</sup> Its operating agreement, which states it is “adopted effective as of the \_\_\_ day of August, 2016” provides that Adele Davis is the LLC’s manager.<sup>17</sup> Ms. Davis holds the controlling interest in Green Glaciers.<sup>18</sup>

Ms. Davis, who also goes by the name Adele Tara, operates a retail store from a leased location in the King’s Row Shoppes Condominiums (King’s Row). The store is leased from Sue Chang. The lease identifies the tenant as “Adele Tara DBA Alaska Green Glacier Garden, LLC.

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<sup>9</sup> 3 AAC 306.075.

<sup>10</sup> 3 AAC 306.080(a)(1).

<sup>11</sup> 3 AAC 306.085; 3 AAC 306.090.

<sup>12</sup> AS 44.62.460(e)(2).

<sup>13</sup> AS 44.62.500.

<sup>14</sup> See *In re Palmer*, OAH No. 09-0133-INS (Director of Insurance 2009), at pp. 6-7 (describing this decision-making paradigm in the context of professional licensing cases).

<sup>15</sup> *Id.* at 7, citing *In re Alaska Medical Development – Fairbanks, LLC*, OAH No. 06-0744-DHS, Decision & Order at 5-6 (issued April 18, 2007; adopted by Commissioner of Health & Social Services in relevant part, Decision After Remand, Oct. 9, 2007).

<sup>16</sup> Ex. H.

<sup>17</sup> Administrative Record (AR) 67, 74.

<sup>18</sup> AR 89.

& Alaska Glass Gardens.”<sup>19</sup> The street address for the store is 211 E Dimond, Blvd, Suite A, Anchorage, Alaska. The leased property identified in the lease is:

Approximately 1460 square feet of floor area located at the Northeast corner of the Kings Row Mall in the current location of the Kings Row Mall, located at 211 East Dimond Boulevard unit G, Anchorage, Alaska.<sup>20</sup>

*B. Green Glacier’s application*

Green Glacier began the application process for a retail marijuana license, which would be located at 211 E Dimond Blvd., Suite A, on March 8, 2016.<sup>21</sup>

On March 24, 2016, one of the tenants in King’s Row emailed Board staff objecting to the application, on the basis that it was an undesirable type of business and further that marijuana businesses were not allowed under the condominium association rules.<sup>22</sup> On March 31, 2016, three weeks after Green Glacier started the application process, the King’s Row Shoppes Condominium Association amended its rules to prohibit marijuana businesses.<sup>23</sup> On April 4, 2016, another tenant emailed Board staff objecting to the application on the basis that it violated the condominium association’s rules.<sup>24</sup> On April 8, 2016, the condominium association objected to the application on the basis that marijuana businesses were not allowed under the association’s rules.<sup>25</sup>

On June 8, 2016, Green Glacier submitted several documents as part of its application. Those included:

- “Form MJ-00: “Application Certifications” which identified the licensee as “Alaska Green Glacier Garden” doing business as (DBA) “Alaska Green Cross” and stating that Adele Davis was the owner.<sup>26</sup>
- “Form MJ-01: Marijuana Establishment Operating Plan.” This form identifies the licensee as “Alaska Green Glacier Gardens LLC” DBA “Alaska Green Cross.”<sup>27</sup> It states that “[o]ur Cannabis will be stored in a bullet proof area, that is only accessible through finger print technology.” It further states that all money would be “kept in a

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<sup>19</sup> AR 482 – 495.

<sup>20</sup> AR 482.

<sup>21</sup> Ex. 2, p. 1.

<sup>22</sup> AR 32.

<sup>23</sup> AR 38 – 42.

<sup>24</sup> AR 31.

<sup>25</sup> AR 36 – 37.

<sup>26</sup> AR 105 – 107.

<sup>27</sup> AR 141.

secure restricted access kiosk.”<sup>28</sup> It then refers to a “bud closet” and a “cannabis closet,” stating that only the “owner and the bud tender on duty” will have access to the closet. It again refers to cash being kept in a “secure kiosk.”<sup>29</sup> Information on the cash kiosk, scales, and a secured “bud bar” which would contain product samples for viewing was also provided.<sup>30</sup>

- “Form MJ-02: Premises Diagram.” This has the licensee as “Alaska Green Glacier Gardens” DBA “Alaska Green Cross.” It contains two sketches. They show one small counter, an ATM, the kiosk, a glass display case, and a triangular area directly behind the glass display case. That triangular area contains two sections, each of which have separate doors. The sections are captioned “customer pickup” and “dispenser.” The notes indicate that the glass display case contains the product samples and that the customer pickup section is accessed by only one customer at a time, and that the dispenser area can only be accessed by fingerprint entry. The sketches and notes show an area marked as a “closet” which is accessible by employees only. However, neither the sketches nor the notes provide that the closet is the cannabis closet.<sup>31</sup>
- “Operating Plan Supplemental Form MJ-03: Retail Marijuana Store.” This has the licensee as “Alaska Green Glacier Gardens” DBA “Alaska Green Cross.” It describes a process where the customer pays for the product using the kiosk and receives a purchase slip. The customer then takes the purchase slip to the customer pickup room where they pass the purchasing slip and their identification through a dispensing carousel to a budtender who then dispenses the purchase to the customer by the same carousel.<sup>32</sup>
- “Form MJ-09: Statement of Financial Interest.” This has the licensee as “Alaska Green Glacier Gardens” DBA “Alaska Green Cross.” It lists Ms. Davis as the owner.<sup>33</sup>

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<sup>28</sup> AR 142.

<sup>29</sup> AR 147.

<sup>30</sup> AR 164 – 170.

<sup>31</sup> AR 177 – 178.

<sup>32</sup> AR 181, 183.

<sup>33</sup> AR 191 – 192.

On September 16, 2016, Board staff emailed Green Glacier and told it that its application was “rolled back to ‘New,’” a process that allows an applicant to make changes to its application and resubmit it.<sup>34</sup> Green Glacier submitted additional documents and revisions to the application.<sup>35</sup>

*C. Board Staff correspondence and Green Glacier’s responses*

On November 8, 2016, then-Director Cynthia Franklin sent Green Glacier a letter detailing deficiencies in its application. The listed deficiencies included missing/defective fingerprint cards, missing forms for LLC members, the lack of a signed LLC operating agreement, discrepancies between the LLC information provided by the applicant and the public records maintained by the Division of Corporations, incomplete/defective answers on the facility operating plan, deficiencies in the premises diagram and supplemental operating plan, an inconsistency between the address on the lease and the address on the application, Alaska Green Glacier, LLC not being a party to the lease, and residency verification issues for the LLC members. That letter gave Green Glacier 90 days to correct the problems.<sup>36</sup>

Green Glacier responded to the November 8, 2016 letter by supplying additional documentation. Board staff determined that Green Glacier’s responses did not completely correct the identified deficiencies. Board staff did not prepare a new deficiency letter. Instead, on November 17, 2016, Board staff resent the November 8, 2016 letter to Green Glacier, with the corrected matters interlineated, indicating that most of the previously identified deficiencies had not been resolved.<sup>37</sup>

On November 23, 2016, Green Glacier submitted a slightly different premises plan, that showed an ATM, and the same triangular area behind the glass display case which contained the customer pickup and dispensary areas. There is cross-hatching on the diagram without any explanation. Although the notes on the diagram refer to a kiosk being used for financial transactions, there is no kiosk visible on the diagram.<sup>38</sup>

On December 7, 2016, after reviewing additional information provided by Green Glacier, Board staff resent the November 17, 2016 letter to Green Glacier, with additional interlineations.

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<sup>34</sup> AR 234. Only a truncated portion of the email was provided. *Also see* Ms. Franklin’s testimony.

<sup>35</sup> *See, e.g.*, AR 64 – 65, 108 – 113, 187 – 196 (Posting and notice affidavits, LLC Member information, etc.).

<sup>36</sup> AR 223, 397 – 400.

<sup>37</sup> AR 222, 251 – 254.

<sup>38</sup> AR 177.

That email and interlineated letter stated that Board staff were reviewing the residency status of three of the LLC members, that a signed copy of the LLC's operating agreement still needed to be supplied, that there were still discrepancies between the LLC information provided by the applicant and the public records maintained by the Division of Corporations, that there were deficiencies in the premises diagram, and that there were lease issues, being the inconsistency between the address on the lease and the address on the application and Alaska Green Glacier, LLC. not being a party to the lease.<sup>39</sup>

Director Franklin, emailed Green Glacier on December 14, 2016, stating, in part, that two of the LLC members, Dantae Lloyd and John Troutman, were not Alaska residents, and that Green Glacier was being given until March 14, 2017 to complete its application.<sup>40</sup>

Green Glacier filed several documents on December 22, 2016. These included the following:

- An as-built plat for the King's Row Shoppes Condominiums, recorded in 1986, showing Unit "G," and a site plan for Alaska Glass Garden, showing the project location as being a portion of what was shown as Unit "G" on the 1986 as-built plat.<sup>41</sup>
- A color-coded premises diagram, identical to that submitted on November 23, 2016, with additional information hand-written on it. That additional information added the language "Cannabis Storage (Restricted Access)" to the "Dispensary" language contained on the diagram. There were also notes that explained the cross hatching on the diagram, stating that there were multiple glass display cases where two areas of cross-hatching intersected.<sup>42</sup>
- "Form MJ-17: Ownership Change." That form was dated December 21, 2016. It showed Ms. Davis as being a member and the manager for the LLC with a 75% ownership interest, along with 10 other individual members. Mr. Troutman was no longer listed as a member.<sup>43</sup>

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<sup>39</sup> AR 225, 255 – 258.

<sup>40</sup> AR 395. Ms. Franklin sent a follow-up email to Board staff that repeated the March 14, 2017 deadline. AR 394.

<sup>41</sup> AR 174, 176.

<sup>42</sup> AR 175.

<sup>43</sup> AR 301 -305.



On December 22, 2016, the Board’s investigator determined Dantae Lloyd, who had been previously found not to be an Alaskan resident, was indeed a resident.<sup>44</sup> Director Franklin sent Green Glacier a follow-up letter on December 30, 2016, which asked for the following:

- A new LLC operating agreement showing that Mr. Troutman was no longer a member of the LLC.
- Updated state licensing documents showing that the individuals identified by Green Glacier as its members were also listed with the Division of Corporations as being its members.
- A premises diagram clearly showing that Green Glacier was physically located at Unit “A” in the shopping center because the submitted diagram showed it at Unit “G.”
- A lease showing that “Alaska Green Glacier Gardens, LLC” is the tenant at Unit “A.”

That letter stated that Green Glacier had 90 days to complete the application, or it would have to reapply.<sup>45</sup>

Green Glacier sent Board staff an email on January 3, 2017, which read:

Everything your office has requested has been turned in. OUR CORP papers now list all our affiliates and Mr. Troutman is no longer a owner. I am glad the confusion about my son, Dantae Lloyd has been resolved. We look forward to seeing the board on Feb 7<sup>th</sup> 2017.<sup>46</sup>

Director Franklin responded on January 4, 2017 with a letter that stated Green Glacier’s application was being placed on the agenda for the Board’s February 2017 hearing with a recommendation that it be denied. The letter identified the following deficiencies:

- The public information on the LLC with the Division of Corporations continued to not match the members in the LLC identified by the application.
- There was inadequate information showing that Mr. Troutman, the non-resident, was no longer a member of the LLC.
- The lease did not show that the LLC is a tenant to the property, and it was also for a different address from the one on Green Glacier’s application.
- A request for a revised copy of the LLC Operating Agreement.

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<sup>44</sup> AR 1.

<sup>45</sup> AR 248 – 250.

<sup>46</sup> AR 243.

- Receipt of incomplete non-responsive documents that did not address the issues in the previous correspondence.

That same letter provided Green Glacier with the option of rescinding its application and reapplying.<sup>47</sup>

On January 26, 2017, Acting Director wrote a memo to the Board. It recommended denial of Green Glacier’s application. The specific recommendation was that the Board deny either due to incompleteness, or if the Board deemed the application complete, to deny it based on the information contained in the application.<sup>48</sup>

*D. February 2, 2017 Board Meeting*

Green Glacier did not rescind its application. Its license application was heard at the February 2, 2017 Marijuana Control Board hearing.

Sarah Oates, who was part of the Board’s staff, attended the Board hearing. She presented the staff recommendation that the Board deny the application as incomplete.<sup>49</sup>

Ms. Davis spoke to the Board and provided it with additional documents. In her comments, Ms. Davis explained that Unit “G” of the King’s Row shopping center had been resubdivided into Units “A” and “B” approximately 20 years ago. She presented a written statement from her business neighbor at 211 E, Dimond, Unit B, explaining that 211 E Dimond had been split into Units “A” and “B” a number of years ago, and that Ms. Davis occupied Unit “A.”<sup>50</sup> She also addressed objections presented by other tenants in the shopping center where her store is located.<sup>51</sup>

The Board voted on Green Glacier’s application and denied it.<sup>52</sup> The motion itself was to deny the application for incompleteness:

Board Member Jones: I would move that the Board accepts that recommendation, that we will not approve this application. Basically, I guess, deny this application based on staff’s recommendation of it being incomplete and it not being corrected by the applicant.<sup>53</sup>

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<sup>47</sup> AR 239 – 240.

<sup>48</sup> Ex. M.

<sup>49</sup> Transcript, p. 3.

<sup>50</sup> Transcript, pp. 4 – 8; Ex. D.

<sup>51</sup> Transcript, pp. 9 – 12.

<sup>52</sup> Transcript, p. 17.

<sup>53</sup> Transcript, p. 2.

The Board discussion also referred to the objections filed by the condominium association and its tenants: “Chair Mlynarik: . . . I wouldn’t approve it just because it’s not allowed in your condominium association;”<sup>54</sup> “Chair Mlynarik: Well, objections – people can make objections and we listen to that and that’s in the regulations. So this is one of the objections that I think is important.”<sup>55</sup> However, the transcript shows that the motion to deny was not amended to include the objections as a reason for the denial.

Green Glacier requested an informal conference with the Director on February 17, 2017 regarding the Board’s denial of its application.<sup>56</sup> After the informal conference request was made, the then Acting Director, Sara Chambers, sent Green Glacier, on February 27, 2017, the formal notice that its application was denied “because it was determined to be incomplete.”<sup>57</sup>

Green Glacier met with Director Chambers on March 16, 2017 for the informal conference. At that time, Green Glacier presented state corporate records proving that as of March 15, 2017, Mr. Troutman was no longer a member of Green Glacier.<sup>58</sup> Green Glacier also provided a March 16, 2017 supplement to its lease that specifically referred to the leased premises as Unit “A,” and transferred the lessee’s interest to “Adele Davis & Alaska Green Glacier Gardens LLC DBA Alaska Green Cross.”<sup>59</sup> Director Chambers sent Green Glacier formal notice on March 17, 2017, that reconsideration of the Board’s denial of the application was denied.<sup>60</sup>

#### *E. Administrative Hearing*

Green Glacier requested a hearing to challenge the denial of its application. That hearing was held on July 25 - 26, and August 24 - 25, 2017. The witnesses for Green Glacier were Adele Davis, Dantae Lloyd, Cody Davis, Richard Andrews, Edward McVeagh, John Troutman, and Regina Manteufel. The witnesses for the Board staff were former Director Cynthia Franklin, former Acting Director Sara Chambers, the current Director, Erika McConnell, and program coordinator Sarah Oates.

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<sup>54</sup> Transcript, p. 13.

<sup>55</sup> Transcript, p. 14.

<sup>56</sup> AR 58 – 59.

<sup>57</sup> Ex. 1.

<sup>58</sup> AR 47 – 57.

<sup>59</sup> AR 45 – 46.

<sup>60</sup> AR 43 – 44.

Ms. Davis testified at length regarding the application process. She spoke about the overall security for the premises. She stated that the kiosk, shown in several of the premises diagrams, had its own extensive security features, was used for receiving payments, and to store and dispense the marijuana: all marijuana products were stored in the kiosk, and a customer would deposit funds into the kiosk, which would then dispense the marijuana. She explained that the premises diagrams which showed the customer payment and dispensing area were erroneous and superseded by the kiosk. She said that the multiple glass cases referred to in the December 22, 2016 diagram were used to display marijuana accessories, not for actual marijuana products. She further explained that the property Green Glacier was leasing was originally designated as Unit “G,” but that it had been divided into two units, known as Unit “A,” her unit, and Unit “B,” which was occupied by a separate business.<sup>61</sup>

Ms. Franklin was the Director for the Board until the first part of January 2017. She participated in the review of Green Glacier’s application. She explained that she had authored the various letters which gave Green Glacier 90 days to complete the application process, but when she received Ms. Davis’s January 3, 2017 email which stated that Green Glacier had provided all of its documents, she interpreted that as Green Glacier wanting its application to be presented to the Board at its February meeting.<sup>62</sup>

Ms. Chambers was the Acting Director for the Board at the time of the February 2, 2017 Board meeting and at the time of the March 16, 2017 informal conference meeting. She stated that the purpose of the informal conference was to allow an applicant/licensee to present additional information to the Director. If the Director was persuaded, the Director could then resubmit the application to the Board for action.<sup>63</sup> She opined that the information presented by Ms. Davis at the reconsideration meeting did not entirely clear up the issue of whether Mr. Troutman was still a member of Green Glacier, and that if he was no longer a member, then Green Glacier would have to reapply, and repost and republish their public notices. She testified

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<sup>61</sup> Ms. Davis’s August 25, 2017 testimony.

<sup>62</sup> Ms. Franklin’s July 25, 2017 testimony.

<sup>63</sup> Ms. Chambers testified on July 26, 2017 that the purpose of the informal conference was purely dialogue and that she could not change the Board’s decision, nor could she have sent the case back to the Board after the informal conference meeting. She was recalled as a witness on August 25, 2017, where her testimony was markedly different, stating that she could have taken the application back to the Board based upon new information provided at the informal conference. It is not necessary to resolve whether Ms. Chambers misunderstood the scope of her available discretion at the time of the informal conference, however, because Green Glaciers was provided and availed itself of the opportunity to have a hearing challenging the denial.

that the lease changes still did not resolve the question of whether Alaska Glacier was leasing Unit “A” or Unit “G,” and that layout of the premises was still questionable.<sup>64</sup>

#### **IV. Discussion**

##### *A. Preliminary Procedural Issues*

1. Were the objections filed by neighboring tenants and the condominium association part of the basis for the denial?

Green Glacier argued that the objections filed by the tenants and condominium association were a factor in the denial of its application. The record shows that the Board Chair discussed the objections. However, the Board staff recommendation was that the application be denied for incompleteness. The motion made, seconded, and voted on by the Board, without any amendments or revisions, was that the application be denied for incompleteness. Neither the formal notice of denial sent on February 27, 2017, nor the reconsideration denial letter of March 17, 2017, refer to the objections as being part of the reason the application was denied.<sup>65</sup> Accordingly, those objections, their validity or non-validity, are not properly part of the issues to be addressed in this case, and will not be addressed further.

2. Did the Director prematurely submit the application to the Board for its consideration?

Green Glacier argued that there was a procedural error in this case, being that the Director did not provide it time to complete its application. The record is clear that the Director notified Green Glacier on several occasions that it would have 90 days to complete its application, or it would have to start the application process from the beginning. The latest of those communications was the Director’s letter dated December 30, 2016. This would then have provided Green Glacier until the end of March 2017 to finalize its application for presentation to the Board. Green Glacier therefore argues that submitting the application to the Board for its February 2, 2017 meeting was reversible error.

Green Glacier’s argument is not persuasive. Green Glacier’s email of January 3, 2017 is clear that it considered its application to be complete and wanted it heard by the Board:

Everything your office has requested has been turned in. OUR CORP papers now list all our affiliates and Mr. Troutman is no longer a owner. I am glad the

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<sup>64</sup> Ms. Chambers’ testimony.

<sup>65</sup> See 3 AAC 306.080(d): “If the board denies an application for a new license .... The board will ... furnish a written statement of issues to the applicant, explaining the reason for the denial in clear and concise language, and identifying any statute or regulation on which the denial is based.”

confusion about my son, Dantae Lloyd has been resolved. We look forward to seeing the board on Feb 7<sup>th</sup> 2017.<sup>66</sup>

*B. Was Green Glacier's application complete?*

The issues in this case all pertain to the completeness of Green Glacier's application. At hearing, Board staff identified four deficiencies: whether all of Green Glacier's members had been properly identified, whether the non-resident, Mr. Troutman, continued to be one of Green Glacier's members, whether Green Glacier had the legal possession of the proposed retail location, and whether the premises diagrams satisfied regulatory requirements.

Green Glacier requested an informal conference with the Director to address the Board's denial of its application. The applicable regulation allows an applicant, who is aggrieved by the Board's denial of its application, to request an informal conference with either the Board or the Director.<sup>67</sup> "If the informal conference does not resolve the matter to the applicant's satisfaction," the applicant may request a formal hearing.<sup>68</sup> As explained by former Acting Director Chambers, part of the purpose of the informal conference is to allow applicants to present additional information which could result in the application being resubmitted to the Board.

Director Chambers did not reconsider the application based upon the new information presented to the Board and did not resubmit the application, including the new information to the Board. Because additional information was provided on the application, the completeness of the application will be examined based upon all the information in the record, including that submitted at the March 16, 2017 informal conference.

1. Green Glacier's membership issues

The marijuana licensing regulations require that when the applicant is an LLC, it must provide a list of all members and their percentage ownership in the LLC.<sup>69</sup> In addition, the regulations require that each member of the liability company must be an Alaska resident.<sup>70</sup>

Mr. Troutman, who was a member of the LLC, was determined to not be an Alaska resident. Accordingly, Green Glacier was notified that he would have to be removed as a

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<sup>66</sup> AR 243.

<sup>67</sup> 3 AAC 306.085(a).

<sup>68</sup> 3 AAC 306.085(b).

<sup>69</sup> 3 AAC 306.020(b)(3)(B).

<sup>70</sup> 3 AAC 306.015(b)(3).

member of the LLC. Green Glacier did not dispute the fact that Mr. Troutman needed to be removed as an LLC member.

On December 22, 2016, Green Glacier filed “Form MJ-17: Ownership Change” with Board staff. The list named Ms. Davis and 10 other people are Green Glacier’s members, and listed their percentage membership.<sup>71</sup> That form did not list Mr. Troutman as a member.

On March 16, 2017, Green Glacier, during its informal conference with the Director, provided the Director with proof, consisting of documents filed with the State of Alaska Department of Commerce and Economic Development Corporations Section transferring Mr. Troutman’s three percent interest in the LLC to Ms. Davis, showing that he had been removed as a member of the LLC on March 15, 2017, and a Corporations Section printout listing all of the LLC members.<sup>72</sup> That printout did not list Mr. Troutman as a member. This list contained the same members as listed on the “Form MJ-17: Ownership Change” document filed on December 22, 2016.<sup>73</sup>

Green Glacier therefore, as of the date of the informal conference, had complied with the requirement that it provide a list of its members and their respective ownership interests, and had also shown Mr. Troutman had been removed as a member of the LLC. As a result, neither of these reasons justify denying the application.

2 Did Green Glacier have a right to possession of the business property?

Green Glacier applied for licensure as a retail marijuana business located at 211 E Dimond Blvd., Suite “A,” Anchorage, Alaska. As part of its application, it submitted a lease stating that “Adele Tara DBA Alaska Green Glacier Garden, LLC. & Alaska Glass Gardens” was the tenant.<sup>74</sup> The “DBA” is an abbreviation for “doing business as.” This is therefore construed as Adele Tara who does business using the business name Alaska Green Glacier Garden, LLC. This would be a sole proprietorship, not a limited liability company. The confusion is compounded by the fact that Ms. Davis is also known as “Adele Tara.”

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<sup>71</sup> AR 301 – 305.

<sup>72</sup> See AR 47 – 52.

<sup>73</sup> There is one minor discrepancy, between the corporation documents and the list provided by Green Glacier. The Green Glacier members list filed on December 22, 2016 lists Mr. Yocum as having a 3% interest and Ms. Yocum as having a 4% interest. The corporate documents filed on March 16, 2017, show Mr. and Ms. Yocum as each having a 3.5% ownership interest. This exceedingly minor discrepancy is insufficient to affect the outcome of this case.

<sup>74</sup> AR 482 – 495.

The lease presented an additional issue. It identified the property as being Unit “G.” The application was made for premises located at Unit “A.” The initial lease document presented therefore did not satisfy the regulatory requirement that Green Glacier, the LLC, supply documentation showing that it has the “right to possession of the proposed licensed premises.”<sup>75</sup> Instead it showed that Adele Tara’s individual business Alaska Green Glacier Gardens LLC & Alaska Glass Gardens was leasing Unit “G.”

Ms. Davis was able to clarify the confusion to some degree before the Board meeting. She presented an explanation that Unit “G” had been subdivided in the past into “A” and “B” and that she was in “A.” The business in “B” corroborated this explanation in writing. Then at the March 2017 informal conference meeting, she provided the Director with a copy of a supplement to the lease stating that “Alaska Glacier Garden, LLC” was a tenant, and identifying the leasehold as “A.” As a result, Green Glacier satisfied the requirement that it provide documentation showing it had a right to possession of the licensed premises.

3. Did the premises diagrams adequately describe the business property and restricted areas?

The applicable regulation requires that an applicant must provide a “detailed diagram of the premises” which “must show all entrances and boundaries of the premises, restricted access areas, and storage areas.”<sup>76</sup>

There are four diagrams of the premises in the record. The first two, submitted on June 8, 2016, show an ATM located to the right of someone entering the store, with one small counter and a kiosk along the left wall, and a separate triangular area, located directly behind a glass display case. That triangular area contains two sections, each of which have separate doors. The sections are captioned “customer pickup” and “dispenser.” The notes indicate that the glass display case contains the product samples and that the customer pickup section is accessed by only one customer at a time, and that the dispenser area can only be accessed by fingerprint entry. The sketches and notes show an area marked as a “closet” which is accessible by employees only. However, neither the sketches nor the notes provide that the closet is the cannabis closet.<sup>77</sup>

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<sup>75</sup> 3 AAC 306.020(b)(9).

<sup>76</sup> 3 AAC 306.020(b)(8).

<sup>77</sup> AR 177 – 178.



The written description of the purchasing process, contained in the application, provides that the marijuana products are stored in the cannabis closet, and that the customer pays for the product using the kiosk and receives a purchase slip. The customer then takes the purchase slip to the customer pickup room where they pass the purchasing slip and their identification into a dispensing carousel to a budtender located in the dispenser room. The budtender then dispenses the purchase to the customer by the same carousel.<sup>78</sup>

The third diagram of the premises, submitted on November 23, 2016, shows an ATM, and the same triangular area behind the glass display case which contained customer pickup and dispensary areas. There is cross-hatching on the diagram without any explanation. Although the notes on the diagram refer to a kiosk being used for financial transactions, there is no kiosk visible on the diagram. There is no cannabis closet contained on the diagram, nor any other indication of where the marijuana products would be stored.<sup>79</sup>

The fourth diagram, submitted on December 22, 2016, is a color-coded version of the diagram submitted on November 23, 2016, with additional information hand-written on it. That additional information added the language “Cannabis Storage (Restricted Access)” to the “Dispensary” language contained on the diagram. There were also notes that explained the cross-hatching on the diagram, stating that the red cross hatching represented restricted access areas, the green cross-hatching represented general access areas, and that there were multiple glass display cases where the two areas of cross-hatching intersected. There is no indication on the diagram showing that there are any barriers to the public entering the restricted area behind the multiple glass display cases. The entrance to the customer pick up area has an indication that it has some type of entrance, and the notes show that it is only available to one person at a time. There is a separate entrance to the dispensary/cannabis storage area, which is marked as restricted access.<sup>80</sup>

The diagrams submitted on November 23 and December 22, 2016 do not show a kiosk, which the application describes as an integral part of the purchasing process. They do not show a cannabis closet, as described in the application. Further, the diagram does not show whether any marijuana products would be contained in the multiple glass display cases denoted on the

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<sup>78</sup> AR 181, 183.

<sup>79</sup> AR 177.

<sup>80</sup> AR 175.

diagrams. The fact that the description contained in the application only refers to one glass display case which contains samples, does not lend itself to an inference that the multiple glass display cases referenced on the December 22, 2016 diagram would not contain marijuana products, which would then require some type of barrier to keep the public from accessing them. This ambiguity and lack of detail renders these premises diagrams defective.

Ms. Davis's hearing testimony helped to both clarify and confuse the matter. She stated that the multiple glass display cases were to hold accessories, not marijuana products. This should have been indicated on the premises diagram. Further, she described a process wholly inconsistent with that described in the application and the diagrams. The application and the diagrams describe the process as: (1) the customer making the payment into the kiosk, (2) the kiosk providing the customer with a purchase ticket, (3) the customer entering the customer pick up area and handing the budtender the purchase ticket through a carousel of some type, and (4) the budtender giving the customer the product through that same carousel.

Ms. Davis's explanation at hearing was that the kiosk was essentially a vending machine: (1) the customer inserts the payment into the kiosk, which has the products stored within it, and (2) the kiosk then dispenses the product to the customer. It is notable that the kiosk is completely missing from both the November 23 and December 22 diagrams. If it was an integral part of the marijuana storage and dispensing process, it should have been located on the diagrams, and it should have been described in the application documents.

The final premises diagrams were therefore defective in that they did not clearly indicate the nature of the multiple glass display cases, stating that they did not contain marijuana product, and they did not display the kiosk or explain its use. The final diagrams also do not display the "cannabis closet" described in the application.

In light of these ongoing and unremedied deficiencies, Glacier Gardens failed to show that it was more likely true than not true that it complied with the regulatory requirement that it provide a "detailed diagram of the premises . . . [showing] all entrances and boundaries of the premises, restricted access areas, and storage areas." The specific areas it did not satisfy were showing the restricted access areas and storage areas. Additionally, given Ms. Davis's testimony regarding the role the kiosk played in both storing and dispensing the marijuana products, it should have been shown on the later filed (November and December) premises diagrams, and its use fully described in the accompanying application documents.

The requirement for the detailed premises diagram is mandatory. Failure to comply with that requirement renders Green Glacier's application defective.

**V. Conclusion**

Alaska Green Glacier Gardens, LLC, had a very protracted application process. Throughout that process, Board staff had numerous legitimate concerns about its membership, its leasehold interest, and the required diagram of the premises. While Green Glacier and Board staff had numerous contacts over these matters, and Green Glacier made ongoing attempts to resolve the issues, Green Glacier's premises diagram failed to satisfy regulatory requirements. As a result, its application was materially incomplete. Accordingly, Alaska Green Glacier Garden, LLC's application for a retail marijuana establishment license is DENIED.

Dated: November 14, 2017

*Signed* \_\_\_\_\_  
Lawrence A. Pederson  
Administrative Law Judge

**Adoption**

The Marijuana Control Board adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of distribution of this decision.

DATED this 14<sup>th</sup> day of November, 2017.

By: *Signed* \_\_\_\_\_  
Peter Mlynarik  
Board Chair  
Alaska Marijuana Control Board

[This document has been modified to conform to the technical standards for publication.]