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

In the Matter of	)	
	)	
THE ALASKA CLUB, INC.	)	OAH No. 16-0200-ABC
d/b/a THE SUMMIT	)	Agency No. 16-01
	)	

DECISION

I. Introduction

In 2010, the Alaska Club was granted a recreational site license to serve beer and wine at the Summit, its "platinum-level" athletic club. The Summit's "Rec Site" license was granted at a time that the Alcoholic Beverage Control Board was very broadly construing the recreational site license statute to allow such licenses across a variety of settings. Thereafter, during a series of public meetings over the course of several years, the Board revisited its application of the recreational site license statute, eventually determining that it had been overly broad in construing the statute.

When the Alaska Club applied to renew the Summit's recreational site license in 2016, the Board received a public objection arguing that the Summit did not fit the statutory definition for a "recreational site." After a hearing on the objection, the Board denied the application to renew the Summit's license on the basis that the Summit's operations were outside the statutory definition of a recreational site.

The Summit now appeals, correctly noting that the Board has continued to renew other seemingly non-conforming Rec Site licenses despite its stated intention to narrowly construe the statute as to all licensees.

This decision concludes that the Board has appropriately decided to interpret the Rec Site statute consistent with a narrow reading of the statute's terms. However, the Board's actions in continuing to renew all other non-conforming Rec Site licenses, while denying non-renewal to the Alaska Club alone, are so arbitrary as to not withstand constitutional scrutiny. Accordingly, the Board's decision to deny the Club's 2016-2017 renewal application is reversed.

This decision does not preclude the Board from denying future renewal applications – either from the Alaska Club or from other existing Rec Site licensees – provided that the Board adjusts its renewal application process to apply equally to similarly situated applicants.

II. Factual and Procedural History

A. Context of alcoholic beverage licensing options and processes

The Alcoholic Beverage Control Board is responsible for controlling the manufacture, barter, possession, and sale of alcoholic beverages in Alaska.[1] In its exercise of that duty, the Board administers twenty-two different types of licenses and permits related to alcoholic beverages.[2] These include beverage dispensary licenses, restaurant or eating place licenses, pub licenses, golf course licenses, club licenses, special event permits, and caterer's permits, each of which is separately defined by statute.

The specific license type at issue in this appeal is the "recreational site license," defined in AS 04.11.210 as follows:

> (a) The holder of a recreational site license may sell beer and wine at a recreational site during and one hour before and after a recreational event that is not a school event, for consumption on designated areas at the site.
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> (b) The biennial fee for a recreational site license is $800.
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> (c) In this section, "recreational site" includes a location where baseball games, car races, hockey games, dog sled racing events, or curling matches are regularly held during a season.

The Board's administrative, licensing, and enforcement functions are carried out by its Director and her 16-person staff, who also bear those responsibilities for the fledgling Marijuana Control Board.[3]

Because this appeal specifically concerns a renewal application, the renewal application process is briefly summarized. Within the Board's four-person licensing staff, two license examiners review and process nearly 1,000 renewal applications annually.[4] Each year, licensees whose applications are coming up for renewal are mailed application forms prior to November 1, with the completed renewal application due back by December 31.[5] Under the Director's delegated authority, renewal licenses are issued bearing the proviso that the license renewal is "subject to Board approval within 90 days."[6] Unless a protest or objection is received during that time, the license is deemed to be "issued" without further action by the Board.[7]

B. Historical application of the recreational site license statute

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1 AS 04.06.090(a).
2 AS 04.06.080; AS 04.11.080.
3 3 AAC 304.015; Franklin testimony.
4 Oates testimony.
5 Oates testimony; AS 04.11.270(b)(1).
6 Oates testimony.
7 Oates testimony. This process is discussed in greater detail at page 14, below.

As noted above, the Rec Site license statute allows a licensee to sell beer or wine "at a recreational site during and one hour before and after a recreational event." The statute then describes a "recreational site" as one that "includes a location where baseball games, car races, hockey games, dog sled racing events, or curling matches are regularly held during a season."[8]

Currently, there are 28 active Rec Site licenses, including licenses held by various baseball teams, hockey teams, and sports arenas.[9] Almost since the statute's inception, the Board's issuance of recreational site licenses has extended to events outside the five sporting events identified in subsection (c) and outside the context of similar sporting events. In 1973, the Board issued a recreational site license to the Gold Creek Salmon Bake in Juneau to "provide food and beverages in conjunction with tour activities."[10] The Board issued a recreational site license to a Homer bowling alley, Kachemak Bowl, in 1984, and another to Kenai's AlaskaLanes in 1992, both to "provide food and beverage to bowlers."[11] In 2006, the Board issued a Rec Site license to a Skagway establishment, "Liarsville," to provide food and beverage service to patrons during "gold-panning and theatre."[12] The Board issued another Rec Site license for a bowling alley in 2007, and in 2008, issued a Rec Site license to Alaska Wild Berry Products to provide food and beverages "to theatre attendees and tour lunch groups."[13] In 2009, the Board issued recreational site licenses to another bowling alley, a tour company, a zipline establishment, and another theatre.[14]

C. The Summit Club and its 2010 application for a recreational site license

1. The Summit

The Alaska Club is an Anchorage-based corporation that has operated fitness centers in Alaska since 1986.[15] The Club operates 14 fitness centers, nine of which are in Anchorage.[16] This appeal concerns "the Summit," a "platinum-level" club intended to serve as "a fitness-oriented country club." As described by the Summit's General Manager in support of the Summit's initial recreational site license application:

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8 When the statute was enacted in 1969, the language describing "recreational site" began, "in this section, 'recreational site' means. . . ." The statute was later amended to replace the term "means" with the broader term "includes." The statute has otherwise remained unchanged since its enactment.

9 Ex. 4.

10 Ex. 3, p. 2.

11 Ex. 3, pp. 1-2.

12 Ex. 3, p. 2.

13 Ex. 3, pp. 1, 3.

14 Ex. 3, pp. 1-2.

15 R. 50.

16 Brewster testimony.

> This luxury 19,000 square foot facility . . . has provided a new level of variety in individual and group recreational and fitness activities. This 21 and over multipurpose club offers many regularly scheduled events, classes and sporting activities. It has been specifically constructed to maximize social interaction and has multiple lounges specifically designed for relaxation. These areas include a fireplace, large screen televisions, wireless internet and furniture arranged in a manner that allows convenient opportunities to relax after exercise, classes or sports activities.[17]

Alaska Club President and CEO Robert Brewster originally conceived of the Summit as "an athletic, recreational, and social center for those 21 and over."[18] According to Mr. Brewster, an "integral part" of the Club's objective "was to have a social environment where people could enjoy themselves."[19] The Club thus designed and built the Summit facility with a greater emphasis on spaces for "social interaction and relaxation" than its other clubs. Its design reflected the plan to eventually be able to serve beer and wine – with a larger front desk to accommodate dispensing devices, as well as a larger lounge area.[20]

2. 2010 submission of Rec Site applications by the Summit and Beluga Billiards

The Summit initially applied for a recreational site license in late 2010 and the application was put on the agenda for the Board's December 13, 2010 meeting.[21] The Board considered the Summit's application in tandem with another Rec Site applicant, Beluga Billiards. Prior to the December 13 meeting, Director Shirley Gifford prepared a memo to the Board that addressed both applications, describing "the question for the Board" as whether either of these operations "fit the definition of a recreational site." The memo noted that neither "seem[ed] to fit within the examples given for a recreational site license" in AS 04.11.210, but also that other seemingly non-conforming recreational site licenses had been granted.[22]

The Board first took up both applications on December 13, 2010.[23] The consideration of recreational site licenses at that meeting began with a discussion of the Beluga Billiards application, and both licenses were discussed in the context of the Board's overall approach to the recreational site license. There was a general concern amongst Board members that the types of

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17 R. 50.
18 Brewster testimony.
19 Brewster testimony.
20 Brewster testimony; Ex. 10.
21 For unknown reasons, the application itself is not in the agency record. Also unclear is the reason for the delay in seeking a license after opening its doors in May 2006, although as a precursor to obtaining a Rec Site license, the Club applied for and was granted a conditional use permit from the Anchorage Assembly. R. 27, 47-49, 50.
22 R. 38.
23 Ex. B.

licenses being issued under the Rec Site mantle might be outside the scope of the statute, but also a recognition that – at least as to Beluga Billiards – the current request was functionally indistinguishable from other recently granted requests.[24] The general approach being considered by the Board was to allow the two pending applications based on their similarities to prior approvals, but then "hold the line" as to any new applications.[25]

The Board's counsel at the time offered his opinion that the Board "has been approving [Rec Site applications] inappropriately," noting that the statutory language suggests an intent to limit the availability of alcoholic beverages to one hour before or after a defined event, which was different, he noted, than "any time anybody is shooting pool."[26] At the same time, counsel suggested the Board had discretion to approve the licenses before it, while cautioning that future applicants could be denied.[27] After further discussion about whether these applications met the statutory framework, and what implications would accompany either acceptance or denial of the applications, the Board tabled both applications until the following day.[28]

When the Board reconvened on December 14, 2010, its counsel indicated that he had found no instructive legislative history to shed light on the task of interpreting the Rec Site statute.[29] The Board discussed its history of having "in our collective wisdom" approved Rec Site license applications for settings including not just sporting events but also bowling alleys, a salmon bake, theatres, and a zipline tour.[30] The Board then unanimously approved a Rec Site license for Beluga Billiards.[31]

The Board next took up the Summit's application. The discussion did not center on the statutory definition of Rec Site licenses, but included whether any other license type was potentially available (none was) and whether the Summit met the requirements of public access (it did).[32] Having satisfied itself on these issues, but without further addressing the interpretation of the Rec Site license statute, the Board unanimously approved the Summit's Rec Site license application, granting license No. 5004.[33]

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24 Ex. B at 3:28, 3:37.
25 *See* Ex. B at 3:43.
26 Ex. B at 3:38.
27 Ex. B at 3:50.
28 Ex. B at 4:10-4:28.
29 Ex. C at 9:10.
30 Ex. C at 9:13-9:26.
31 Ex. C at 9:30.
32 Ex. C at 9:31-9:44, 10:55.
33 Ex. C at 10:57.

D. Origin of the April 2011 "policy memo"

Later the same day, the Board returned to a broader discussion of the Rec Site license problem.[34] The Board's consensus was that there was a problem that needed fixing, and that the "fix" should come from the legislature. The Board tasked then-Director Shirley Gifford with developing draft language for discussion at the next meeting.[35]

When the Board reconvened on March 24, 2011, it returned to the Rec Site license issue, considering draft statutory language prepared by its counsel.[36] As had been suggested at the December 14 meeting, the draft proposal identified two separate categories of recreational site licenses – one being "event-based," and the other "activity-based."[37]

In the discussion that followed, the Board's then-counsel advised that the Board need not necessarily go through the process of proposing and then awaiting changes to the language of the statute. Instead, counsel suggested, the Board could adopt a "policy" interpreting the statute as reflecting those changes.[38] The Board then unanimously approved its counsel's "policy recommendations."[39]

An April 11, 2011 memorandum from Director Gifford summarized these events, then set forth "the policy by which [the Board] will consider recreational site license applications:"

> A recreational site license authorizes the licensee to sell beer and wine on licensed premises located on the recreational site. A license may be issued only if an application is approved by the local governing body and the board, and the applicant does not hold a beverage dispensary license or a restaurant or eating place license.
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> An event-based recreational site license will allow the licensee to sell beer and wine one hour before and one hour after an event. An event[-]based recreational site license includes the following spectator events, or other spectator sporting events having substantially similar characteristics – baseball games, softball games, football games, soccer matches, running events, skiing events, dog sled

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34 Ex. C at 1:31-1:45.

35 Ex. C at 1:40-1:45. The Board also expressed the sentiment that "in the meantime, no more" recreational site licenses should be granted. See Ex. C at 1:45.

36 Ex. D at 12:04. *See* R. 104. The meeting recording reflects that a memorandum from the Board's then-counsel was in the Board's packet. Ex. D at 12:05. Unfortunately, however, that memorandum is not in the evidentiary record, although the later memo by Director Gifford apparently contains the language counsel had proposed. R. 104-105.

37 Ex. D at 12:10; R. 104; Ex. C at 1:44.

38 Ex. D at 12:13.

39 Ex. D at 12:16.

> races, hockey games, basketball games, curling matches, gymnastics meets, volleyball meets, car racing events, and snow machine races.
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> An activity-based recreational site license will allow the licensee to sell beer and wine during times the recreational activity is taking place. An activity-based recreational site license includes the following recreational activities, or other recreational activities having substantially similar characteristics – baseball, softball, football, soccer, running, skiing, dog sledding, curling, gymnastics, zip lines, volleyball, climbing, hiking, fitness activities, golf, bowling, billiards, hiking, rafting, and boating.
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> A recreational site license may not be issued if the licensed premise is within 200 feet of the property line for real property that is owned by, leased to, or rented to any public or private school, church, college, or university.[40]

E. Fallout from the Board's adoption of the April 2011 "policy memo"

By early 2013, significant concerns had arisen about the Board's adoption of the policy articulated in the April 2011 memo. Several organizations and public officials wrote to the Board expressing displeasure with the Board's adoption of the policy. Senator Hollis French suggested that the Board was "on tenuous ground operating on a 2-year-old 'policy' rather than properly adopted regulations," but added that his "main concern is that these licenses not be issued in a way that increases the total number of full-time beer and wine licenses beyond the board's population restrictions."[41]

The Board of Directors of Anchorage CHARR, an industry advocacy group, submitted a letter arguing that the Board's "policy" had the effect of "opening the qualification so broadly that just about any recreational or sports facility can qualify for a license."[42] The result, according to CHARR, was "more businesses applying for Recreational Licenses due to the changes made by [board counsel] accommodating almost every recreational facility to fit" the definition of recreational site.[43]

By this time, there were 33 current recreational site licenses.[44] Some were tied to beverage service around the specific types of events listed in AS 04.11.210(c), including baseball games (Anchorage Bucs; Anchorage Glacier Pilots; Home Run Concessions; Mat-Su Miners; Peninsula Oilers), car races (AK Raceway Park; Mitchell Raceway; Northstar Speedway), and hockey games (Sullivan Arena; Kenai River Brown Bears).[45] Others were not as clear a fit with

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40 R. 104-105.
41 R. 173.
42 R. 174.
43 R. 174.
44 Ex. 3.
45 Ex. 3.

the statute's parameters, and included not just the Summit but also bowling alleys, billiards halls, a ski lodge, and various adventure and tour group activities.[46]

F. Summer 2013 special meeting and development of draft regulation

The Board heard about and discussed Rec Site licenses – both broadly and specifically – during its May 2013 meeting. During the portion of the meeting reserved for public testimony on topics not otherwise on the agenda, Alaska Mental Health Trust Authority CEO Jeff Jessee expressed his concern that the Board was issuing Rec Site licenses "to licensees conducting activities not inferred in the statutory reference of recreational site licenses."[47] Mr. Jessee also argued that the Board lacked authority to adopt the April 2011 policy championed by its former counsel.[48]

During the May 2013 meeting, the Board took up another application for a recreational site license – this one from Minnesota Billiards, whose application was noted to be largely indistinguishable from the Beluga Billiards Rec Site license the Board had granted at the same time it granted the Summit's license.[49] While the Board heard and discussed concerns raised by community members, the Chair queried: "did we, as a board, go too far on recreational site licenses?"[50]

Amidst concerns that the April 2011 policy had indeed "gone too far," the Board tabled the Minnesota Billiards application, as well as two other Rec Site licenses on its agenda, in order to further "sort out" the recreational site license interpretation issue.[51] The Board then scheduled a special meeting specifically to discuss recreational site licenses.

At the June 11, 2013 meeting, the Board's new counsel opined that the April 2011 policy championed by her predecessor, while "certainly well intended," impermissibly "expands the definition of recreational site beyond what appears to have been the scope that the legislature intended when it drafted and adopted section 04.11.210."[52] Noting that policies which "go way beyond what's in the statute" are effectively regulations that must be promulgated and adopted in

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46 Ex. 3.
47 Ex. E at 9:22.
48 Ex. E at 9:22.
49 Ex. E at 11:13, 11:54.
50 Ex. E at 11:53. This sentiment was echoed in testimony from a CHARR spokesperson, Bob Wynn, who indicated that CHARR was "not sure how this interpretation was made by Mr. Novak," and opined that the policy was an improper administrative modification of the statute. Ex. E at 12:04.
51 Ex. E at 12:11-12:13, 4:10.
52 Ex. F at 3:16.

accordance with the Administrative Procedure Act, counsel advised the Board that it should not continue following the April 2011 policy without putting those changes into a regulation.[53]

The Board also heard testimony from various license holders, including the Alaska Club, and those opposed to the Board's expansive policy, including Jeff Jessee.[54] In response to concerns raised by the Alaska Club, the Chair indicated that the Board intended to first figure out what its Rec Site license policy should be, and would then figure out how to deal with existing licenses.[55] After further discussion, the Board decided to pursue a change to its regulations to address the proper scope of Rec Site licenses.[56]

G. Development of draft regulation

In July 2013, one month after the special meeting, the Director provided the Board with a draft regulation that would substantially narrow the scope of the recreational site license from the broad approach set out in the April 2011 policy memo.[57] The draft regulation limited recreational site licenses to those "based upon a competitive spectator sporting event with a designated sport season, and with a starting time and an ending time."[58] The draft regulation provided a list of activities included in this definition; the list was more extensive than the narrower list from the 1969 statute, but was limited to competitive spectator sports.[59]

The Board took up the draft regulation at its meeting on July 23, 2013, and heard testimony from multiple licensees, applicants and objectors.[60] The Board discussed that, under the regulation as drafted, a number of existing licensees would not qualify.[61] The Board discussed the possibility of grandfathering, and the problems that creates, but also discussed the need to first identify the license's proper parameters before making any determinations about whether to grandfather existing "activity-based" licensees.

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53 Ex. F at 3:16-3:20.
54 Ex. F at 3:26-3:55.
55 Ex. F at 3:37.
56 Ex. F at 4:05-4:09.
57 R. 159-160.
58 R. 160.
59 R. 160. ("A competitive spectator sporting event includes baseball games, softball games, football games, soccer matches, dog sled races, hockey games, basketball games, curling matches, gymnastics meets, volleyball meets, car races, boating races, snow machine races, skiing races, and leagues or tournaments that includes golf, bowling, and billiards").
60 Ex. G.
61 Ex. G at 1:11, 1:24.

Board members opined that "the 2011 policy went way too far."[62] Jeff Jessee, the objector in this case, urged the Board that its "public purpose . . . isn't to find a way for everyone with an entrepreneurial spirit who wants a license to fit into one of the categories and get one."[63]

After discussing both the 2011 policy and the proposed regulation, the Board rejected two new Rec Site license applications as outside the scope of the narrower interpretation the Board had been discussing.[64]

H. Continued discussions of Rec Site licenses in 2013 and into 2014

The Board continued to work on the Rec Site license regulation throughout 2013.[65] The proposed regulation was put out for public comment consistent with the Administrative Procedure Act. The Board considered public comments and testimony at its December 2013 meeting.

At that meeting, Alaska Club CEO Mark Brewster testified against the narrower construction of the statute, defending the April 2011 policy and arguing that losing the Summit's Rec Site license would be very costly for the Alaska Club.[66] The Chair again identified the need, "once we decide about the regulation," to figure out, "what do we do with all the existing licenses?"[67]

Continuing to have threshold concerns about how to appropriately construe the statute, the Board decided that a better way to proceed might be to have the existing Title 4 task force evaluate the need for possible legislative changes.[68] That task force was an effort by Title 4 stakeholders to consider and recommend changes to the overall statutory scheme. The project, a massive undertaking that had begun in 2012 and ultimately continued for more than four years, grew out of generalized concerns amongst stakeholders about the need to update Title 4 to address, *inter alia*, the significant changes to the business landscape in the decades since it was enacted. At the December 2013 meeting, Board members expressed an interest in having "the task force" work on the Rec Site license issue, and so voted unanimously to table the Board's discussion.[69]

At its next meeting, in April 2014, the Board took up a license application for a beverage dispensary tourism license that would have allowed an airport nail salon to serve alcohol to its

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62 Ex. G at 1:30.
63 Ex. G at 2:10.
64 Ex. G at 2:14, 2:36.
65 Ex. H at 3:04; Ex. I at 10:09-11:42.
66 Ex. I at 10:42-51.
67 Ex. I at 11:21.
68 Ex. I at 11:37, 11:42.
69 Ex. I at 11:42-11:44.

customers.[70] Beverage dispensary tourism licenses are created under AS 04.11.090; they are not Rec Site licenses and entirely different standards apply. Nonetheless, the Board's discussion of the airport nail spa application continued to reflect a concern about overreaching statutory interpretation. Board members referenced their ongoing concerns about Rec Site license statutes and the problems occasioned by the April 2011 policy, to justify a narrow reading of the beverage dispensary tourism license statute.[71]

I. May 2014 legislative audit

In the meantime, in May 2014, the Division of Legislative Audit completed its required sunset audit of the Board's operations.[72] The audit "conditionally" endorsed the Board's continued operation, but identified several serious concerns, one of which related to recreational site licenses.[73] The audit concluded that, of 32 active recreational site licenses, 47 percent (15 businesses) "did not meet the criteria for a recreational license."[74]

> Ineligible businesses include bowling alleys, a sports center and pub, an exercise gym, a gift shop, theatres, and pool halls. These business types did not meet the definition of a recreational site nor were operations limited to a season. The issuance of these licenses expanded the number of establishments licensed to sell alcohol over the number allowed by statute.

The auditors reported that "[i]nquiries with [B]oard members revealed that the improper issuance of recreational site licenses was caused by an historic misunderstanding of what qualifies as a recreational event."[75] The audit recommended that "the Board should issue recreational site licenses in accordance with statutory requirements."[76]

In November 2014, both the Commissioner's office and the Board submitted responses to the audit.[77] Director Franklin researched and assisted in drafting the response from the Commissioner's office. That letter, signed by Commissioner of Commerce Susan Bell, responded to the Rec Site license concern as follows:

> The Department concurs with this recommendation. The ABC Board took public testimony at its July 23, 2013 board meeting regarding recreational site licenses and considered drafting regulations to clarify which types of businesses would qualify for recreational site licenses. The Board then determined that no

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70 Ex. N at 11:02-11:25.

71 Franklin testimony; Ex. N at 11:02-11:25. The airport nail spa application was denied at the April 2014 meeting, and a motion to reconsider the denial failed in July 2014. Ex. N at 11:25; Ex. O at 11:07-11:12.

72 Ex. L.

73 Ex. L, pp. 1, 2, 11-12; Franklin testimony.

74 Ex. L, p. 11.

75 Ex. L, p. 12.

76 Ex. L, pp. 2, 11.

77 Franklin testimony. Ex. L, pp.44 - 47, 49 - 51.

> regulations would be passed and the board directed the agency to return to a strict statutory interpretation of AS 4.11.210 for issuing recreational site licenses. Since July of 2013, all recreational site license applications have received strict scrutiny from the Director and the board, and the Board Chair has stated his intent that the recreational site license statute be applied as written.[78]

The Board's response, signed by Board Chair Bob Klein after "conferring with members of the Board and with staff," responded to the recommendation as follows:

> The Board agrees with this recommendation. The Board had been relying on advice from Attorneys General as to the latitude that could be used in granting recreational site licenses. On July 23, 2013, the Board devoted a portion of the meeting to the use and issuance of these licenses. After taking public testimony and a healthy debate, the Board decided to return to strict adherence to the Title IV definition of the Rec Site license. The Board now carefully reviews each application and issues only those licenses which adhere to the statute.[79]

Both agency responses were appended to the final legislative audit report.[80]

J. December 2014 presentation of the Title 4 Review

At the same time these events were unfolding, a large and diverse group of stakeholders had been working for several years on an attempt to comprehensively rewrite Title 4. In December 2014, the Title 4 review committee produced a 35-page report outlining the group's proposed legislative changes. The report set out 45 separate recommendations across four broad subjects, including 29 separate recommendations about licensing.

One of the 29 licensing recommendations concerned the recreational site license statute. The subcommittee recommended that the Board return to a strict constriction of the Rec Site license statute. Concluding that "the statute itself is sufficient and must be interpreted more narrowly when reviewing recreational site License applications," the subcommittee further recommended that the April 2011 "policy memo that broadens the intent of the statute should be nullified because it does not appear to have statutory basis."[81] However, in order to minimize negative effects on existing licensees, the subcommittee also advocated that the Board "should provide a sunset provision" for existing licenses.[82]

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78 Ex. L, p. 46.
79 Ex. L, p. 50.
80 See Ex. L.
81 Ex. 7, pp. 13-14.
82 Ex. 7 pp. 13-14 ("The primary implication for returning to a strict statutory interpretation is whether existing licenses granted under a stretched definition of recreational activities should be revoked, as they were issued without proper legal basis. The subcommittee weighed the existing licensees' investment against the benefits of closing a growing loophole, and recommends that the ABC Board should not renew licenses that do not fit this definition. Instead, it should provide a sunset period to allow non-conforming licensees to depreciate their investment in the license or alter their operations to comply with AS 04.11.210. In the next renewal period for each recreational site

The Title 4 Steering Committee, the governing body of the larger stakeholders' group, presented its recommendations to the Board at the Board's December 2014 meeting. The licensing-specific recommendations were presented by licensing committee chair Jeff Jessee, who summarized the Rec Site license recommendation as follows:

> We looked at this pretty carefully and basically the conclusion of the committee is the board should just apply the statute as it was written. Going back to a stricter interpretation would not only fulfill the intent of the legislature in passing the recreational site license, but also bring more predictability to folks and close what had potential at one point in time to almost exponentially increase the number of licenses available.[83]

The related "grandfathering" recommendation was not raised during this brief overview. Earlier in his presentation, however, Mr. Jessee had noted the committee's generalized desire to avoid unduly disadvantaging existing licensees, stating, "[i]n cases where we are rolling back on some licenses, we looked for ways to ameliorate or minimize impacts on existing licensees."[84]

The committee's recommendation about Rec Site licenses was one of scores of recommendations in the 35-page document presented to the Board in the Title 4 review, and was introduced as part of a lengthy presentation of the committee's entire body of recommendations on how the *legislature* might improve Title 4.[85] At the close of that lengthy presentation, Chair Klein asked for a motion "that we endorse this and move it forward."[86] In discussing the motion and concerns about it, the Chair clarified that "moving it forward" meant beginning the process of drafting proposed legislation that would incorporate the committee's recommendations, with such draft legislation still subject to review by stakeholders and by the Board.[87] The Board unanimously agreed to "move [the Title 4 review recommendations] forward."[88]

K. July 2015: Board reaffirms policy to strictly construe Rec Site license

At its July 2015 meeting, the Board reaffirmed its policy of strictly construing the Rec Site license statute.[89] The issue arose in the context of an administrative matter – closing a

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license, the ABC Board would issue a memo explaining that all licenses of this type will be reviewed by staff and a recommendation made whether it meets the statutory definition of a recreational site. Licensees would be given four renewal periods (eight years) to submit an appeal to the ABC Board explaining how they comply with statute or which operational changes they would make (e.g. instituting a seasonal league) to come into compliance. At the end of this period, licenses that are no longer in compliance would not be renewed.").

83 Ex. P at 9:47.
84 Ex. P at 9:17.
85 Ex. P.
86 Ex. P at 10:37.
87 Ex. P at 10:39.
88 Ex. P at 10:52.
89 Ex. J at 4:31-4:33.

Department of Law file opened in 2013 when the Board was considering adopting regulations governing its interpretation of the statute.[90] Although the Board later decided to abandon the regulation project in favor of simply deciding to strictly construe the statute as written, the Department of Law "regulation file" had remained open. After a very brief discussion of the Board having "by policy decided" to "strictly follow the way Title 4 defines" the recreational site license, the Board voted to close out the regulation file.[91]

L. Denial of the Summit's 2016 application to renew its recreational site license

While all of the foregoing debate had been taking place, Board staff had quietly renewed the Summit's recreational site license for 2012-2013 and 2014-2015.[92] During this time, renewal applications were being processed by staff in a fairly "automated" manner.[93] After assuming the directorship in fall 2014, Director Cynthia Franklin had aspirations about making changes to the process. Instead, however, "marijuana happened."[94] Specifically, in the fall of 2014, Alaska voters approved Ballot Measure No. 2, which legalized the possession and use of marijuana by adults.[95] The new law took effect on February 24, 2015. The legalization of marijuana had real and significant impacts on the day to day operations of the AMCO. The attention of the Director and her staff was significantly diverted to address – initially without any additional staff members – the varied and complex legal, administrative, and procedural implications of legalization.

As a result, the automated nature of license renewals remained the status quo. The Director likened the renewal process to a very swift river through which 1,800 applications flow every two years. Because of the volume of renewals, the small number of staff members, and the significant additional burdens associated with adding marijuana to the office's responsibilities, renewal applications are only "dipped out of the river" when a protest or objection has been made. "The only renewals that are brought before the board are the ones that received a protest or objection," Director Franklin testified. "Otherwise, it's a complete back office process."[96]

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90 Ex. J at 4:31.
91 Ex. J at 4:32-4:33.
92 R. 25, 30, 32.
93 Franklin testimony; Oates testimony.
94 Franklin testimony.
95 *See* AS 17.38.
96 Director Franklin expressed dissatisfaction with this state of affairs, and noted her intent to "look hard" at the license renewal process, including determining whether the process should be less automated and whether her office should be specifically identifying license renewal issues for the Board. But she indicated that the current realities of workload, staff size, and prioritizing have thus far precluded such a "hard look" from taking place.

Against this backdrop, on December 24, 2015, the Alaska Club submitted its application to renew the license for 2016-2017.[97] On December 31, 2015, Board staff issued a temporary Rec Site license for 2016-2017, subject to approval by the Board.[98]

On January 19, 2016, the Board received a public objection to the Club's renewal application from Jeff Jessee. Although Mr. Jessee frequently appears before the Board in his capacity as the CEO of the Mental Health Trust, he made his objection as a private citizen (and a member of the Summit who personally disapproves of the sale of alcohol at his gym). Mr. Jessee's objection argued that the Summit's recreational site license "clearly does not comply with the language of the statute and was erroneously granted by the Board in the first place."[99]

The Board scheduled a hearing to consider the objection and make a decision about the renewal application. The Board held a 40-minute hearing on February 10, 2016, taking testimony from Director Franklin, Mr. Jessee, Alaska Club counsel Fred Odsen, Alaska Club CFO Mark Boright, and Alaska CHARR President CEO Dale Fox.

In his testimony, Mr. Jessee argued to the Board that it should "correct a prior decision which, in [his] opinion, needs to be reversed."[100]

Mr. Odsen pointed out that there were a number of "activity-based" Rec Site licenses, including six that had submitted renewal applications at the same time as the Alaska Club, and whose licenses had been renewed without protest. He urged the Board not to single the Club out for differential treatment.[101]

The Director explained that this particular renewal application had been brought before the Board because an objection had been received.[102] The Director also noted the mandatory language in AS 04.11.330(a) which provides that a renewal application "shall be denied" if its renewal would violate the statutory restrictions pertaining to the particular license.[103]

At the close of testimony, Board member Bobby Evans moved to deny the license renewal pursuant to AS 04.11.330(a)(6). The motion carried 3-2, with members Tom Manning and Bob

97 R. 12-13, 15.
98 R. 10; Oates testimony; Franklin testimony.
99 Ex. 2.
100 Ex. K at 12:57.
101 Ex. K at 1:04.
102 Ex. K at 12:53, 1:16.
103 Ex. K at 12:54.

Klein opposing the motion.[104] The Club was directed to stop selling alcoholic beverages immediately.[105]

The Alaska Club was shocked by the nonrenewal of its license. Mr. Brewster had apparently believed that the license, once granted, would continue to be renewed as long as the Club remained a "clean operator" with no violations, as it undisputedly had been.

Since the non-renewal of its Rec Site license, the Summit has lost 22% of its membership.[106] Mr. Brewster believes that this loss, or at least the lion's share of it, is attributable to the loss of the Club's recreational site license. Given what he perceives as impacts on membership, Mr. Brewster believes that the loss of the license will cost the club $200,000-$300,000 in revenue over the next twelve months.[107]

M. Procedural history of appeal

On March 4, 2016, the Alaska Club, through counsel, submitted a Notice of Defense and request for hearing. An evidentiary hearing was held on August 22, 2016.[108] Both parties were ably represented by counsel. Testimony was taken from Director Cindy Franklin, DCCED Records and Licensing Supervisor Sarah Oates, Alaska Club President/CEO Robert Brewster, Alaska Club Vice President Mark Boright, and CHARR President/CEO Dale Fox.

All exhibits submitted by both parties were admitted by stipulation. These included ten CDs of prior ABC Board meetings at which either the Summit's license specifically, or the construction of the Rec Site license statute generally, were discussed. Following the hearing, the Director supplemented the record with recordings of three additional ABC Board meetings, which were also admitted.[109] The record closed on September 9, 2016, after the parties' submission of post-hearing briefing.

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104 Ex. K, at 1:36.

105 Ex. 9. Staff originally issued, and Director Franklin originally signed, a notice to this effect but describing the underlying events as a "suspension." Ex. 9. The notice was posted at the entrance to the Summit, which Club CEO Boright found "very embarrassing." The Alaska Club counsel and Director Franklin quickly resolved the notice posting issue and replaced the notice with a letter on Club letterhead. Boright testimony.

106 Brewster testimony.

107 Brewster testimony.

108 The evidentiary hearing was initially scheduled for early May 2016, but was postponed at the joint request of both parties.

109 The CD recordings of Board meetings dated April 29, 2014; July 8, 2014; and December 22, 2014, are admitted as Exhibits N, O, and P, respectively.

III. Discussion

A. Legal framework and standard of review

Licenses issued under Title 4 are issued for two-year periods, after which the licensee must reapply.[110] The Director issues or renews all licenses and permits at the direction of the Board.[111] The Board may delegate to the Director "any duty" under Title 4 other than its power to propose and adopt regulations.[112]

Just as with an initial application, the Board must provide notice of a renewal application to the relevant community council and to any nonprofit that has requested notification.[113] And just as with an initial application, any person "may object to an application for . . . renewal . . . by serving upon the applicant and the board the reasons for the objection.[114]

The Board may hold a hearing on an application to consider any objections, or on its own initiative, in order "to ascertain the reaction of the public" to an application.[115] Just as AS 04.11.320(a) identifies ten broad circumstances under which the Board "shall" deny a new license application, AS 04.11.330(a) sets out nine broad categories under which the Board "shall" deny a license renewal application. These include that the Board "shall" deny a renewal application where renewing the license would "violate the restrictions pertaining to the particular license under [Title 4]."[116]

The Board is permitted to review a renewal application without notice or hearing.[117] However, if the Board votes to deny a renewal of a license, as it did here, the licensee is then entitled to an administrative hearing conducted under Alaska's Administrative Procedure Act.[118] Because such a hearing concerns the denial of a renewal of a license, it is treated as the equivalent of taking away a license and the Director bears the burden of proof.[119] Following the hearing, unless there is a delegation (which has not occurred here), the matter then returns to the Board for a final decision.[120]

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110 AS 04.11.210(b); AS 04.11.270, AS 04.11.680.
111 AS 04.06.080.
112 AS 04.06.080.
113 AS 04.11.310.
114 AS 04.11.470. Likewise, a local governing body may protest a renewal. AS 04.11.480.
115 AS 04.11.470; AS 04.11.510(b)(2); 3 AAC 304.150.
116 AS 04.11.330(a)(6).
117 AS 04.05.510(b).
118 AS 04.11.510(b)(1).
119 *Alaska Alcoholic Beverage Control Board v. Malcolm, Inc*., 391 P.2d 441, 444 (Alaska 1964).
120 Of note, the February 12, 2016 Notice of a Right to Hearing issued by the Director informed the licensee that the Board's decision to deny renewal would become final within 15 days of that notice unless the licensee timely

> 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.[121]

The final decisionmaker in such cases – here, the Board – may defer to judgments made by agency staff, but is not required to do so.[122]

B. Alaska Statute 04.11.210, as currently drafted, does not encompass the type of "recreational activity" occurring at the Summit.

As a threshold matter, the Alaska Club takes issue with the Board's interpretation of AS 04.11.210, the Rec Site statute, and urges the Board to return to the broad reading espoused in the April 2011 policy memo.[123] But the Board's decision to narrowly construe the statute is reasonable, appropriate, and far more consistent with the statutory language than the April 2011 policy. To review, the statute reads:

> (a) The holder of a recreational site license may sell beer and wine at a recreational site during and one hour before and after a recreational event that is not a school event, for consumption on designated areas at the site.
>
> (b) The biennial fee for a recreational site license is $800.
>
> (c) In this section, "recreational site" includes a location where baseball games, car races, hockey games, dog sled racing events, or curling matches are regularly held during a season.

As noted in testimony before the Board and by members of the Board itself, at least three features of this definition signal limitations on the scope of recreational activities the statute is intended to include.

The first is timing – the licensee may sell beer and wine beginning an hour before "a recreational event" and continue until an hour after the "event" ends.[124] This proviso strongly suggests that the intended purpose of the statute is to allow the sale of beer and wine during identifiable "recreational events." It further suggests that a "recreational event" is something

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requested a hearing. Because a hearing was timely requested, the Board's decision on renewal will not become final until the conclusion of proceedings under the APA. *See* AS 44.62.520(a)(2).

121 *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).

122 *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).

123 Alaska Club post-hearing brief, pp. 11-13.

124 AS 04.11.210(a).

more specific than, say, the operating hours of a gym.[125] A recreational event is a time-limited event that people might arrive at an hour before it begins, and stay for up to an hour after it ends – an event, subsection (c) tells us, such as "baseball games, car races, hockey games, dog sled racing events, or curling matches."

Indeed, the commonalities between the examples listed in subsection (c) – "baseball games, car races, hockey games, dog sled racing events, or curling matches" – are the second distinguishing feature of "recreational events" under the statute. While the use of the word "includes" signals an intent to not restrict Rec Site licenses to only those five events, the similarities amongst the five examples listed necessarily informs the inquiry into the overall scope of events that are included. All five have certain characteristics in common – all are competitive sporting events, all are considered "spectator sports," all are time-limited (e.g. to the length of the game, race, or match), and all share the statute's final distinguishing feature – they are all events that "are regularly held during a season." Just like the timing limitation in subsection (a), and the specific, narrow list of exemplars, subsection (c)'s reference to events "regularly held during a season" is another indicator that the "recreational events" contemplated in AS 04.11.210 is something more concrete and identifiable than the "event" of relaxing after a gym workout. None of which is to criticize the Alaska Club's vision for the Summit. But that vision is not one that fits within a commonsense reading of the Rec Site license statute as it is currently drafted.

This commonsense reading is reinforced by the legal doctrine of *ejusdem generis*, a latin phrase meaning "of the same kind." It is a guideline of construction holding that "where general words follow an enumeration of persons or things, . . . such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned."[126] An example of an application of *ejusdem generis* would be the interpretation of the phrase "horses, cattle, sheep, goats, or any other farm animal;" the doctrine would suggest, in the absence of contrary factors, that "any other farm animal" would encompass only similarly large mammals, and would exclude chickens.[127]

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[125] The Alaska Club's prehearing brief suggests that the Legislature's use of the word "may" suggests "that beer and wine is permitted to be served during such a period, but not required to be served during those time frames." Alaska Club Prehearing Brief, p. 15. This is simply not a reasonable reading of the word "may" in the context of this statute.

[126] Black's Law Dict. (5th ed. 1979) at 464.

[127] The example comes from *West v. Municipality of Anchorage*, 174 P.3d 224, 228 (Alaska 2007), quoting Black's Law Dictionary.

As has since been discussed in some detail by the Board, the 2011 "policy memo" made several leaps beyond this commonsense interpretation, essentially creating a new type of license outside what the statute actually allows. First, the memo identified and described the category of "event-based recreational site license" for "spectator sporting events" strongly similar to the existing content of the statute, and provided that *this* type of license "will allow the licensee to sell beer and wine one hour before and one hour after an event" – precisely the window of time provided for in the statute.[128] But the memo then went on to describe a second type of Rec Site license – the "activity-based" Rec Site license, meant to cover what it identified as non-spectator "recreational events," including "baseball, softball, football, soccer, running, skiing, dog sledding, curling, gymnastics, zip lines, volleyball, climbing, hiking, fitness activities, golf, bowling, billiards, hiking, rafting, and boating."[129] The policy then abandoned the statute's one-hour-before-through-one-hour-after time restriction, providing that "an activity-based recreational site license will allow the licensee to sell beer and wine during times the recreational activity is taking place."[130] The Board was correct in subsequently identifying that this "policy" was significantly out of step with the plain language of the actual statute.

While the Alaska Club, among other licensees whose Rec Site licenses appear at odds with the statute's actual language, may be right that the business community and the public would benefit from a broader statutory scheme allowing the sale of beer and wine in broader contexts, that ultimately is a legislative determination. The Board has correctly determined that the statute does not currently contemplate the "activity-based" license the Board and its prior counsel previously attempted to create through "policy." The Board's task is to interpret and implement Title 4 as it currently exists, not as entrepreneurs may wish it existed. Towards that end, the Board has engaged in considerable, thoughtful deliberation about the meaning and scope of the Rec Site license statute over longer than five years, and its decision to strictly construe AS 04.11.210 is reasonable and appropriate.

C. Whether the Board has discretion to change its interpretation of AS 04.11.210 in a way that negatively impacts existing licensees' future eligibility for a Rec Site license.

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128 R. 104 ("An event[-]based recreational site license includes the following spectator events, or other spectator sporting events having substantially similar characteristics – baseball games, softball games, football games, soccer matches, running events, skiing events, dog sled races, hockey games, basketball games, curling matches, gymnastics meets, volleyball meets, car racing events, and snow machine races.").

129 R. 104.

130 R. 105.

In addition to taking issue with the specific decision to deny the Club's renewal application, the Alaska Club more broadly takes issue with the Board's decision to reject its earlier expansive reading of the Rec Site statute in favor of the current stricter interpretation, and its failure to provide notice of this change to existing licensees.

The Director argues that the Board has discretion to change its interpretation at any time, pointing to the "no binding precedent" statute, AS 04.11.537. But that statute, AS 04.11.537, specifically relates to licensing decisions that are based on a finding about whether a license "is in the best interest of the public."[131] Here, the Board's decision was not based on a finding under AS 04.11.330(a)(1) that renewal was contrary to the public interest, but rather was based on its conclusion under AS 04.11.330(a)(6) that the Summit did not meet the statutory requirements for a Rec Site license.[132] Because the Board's decision is based on AS 04.11.330(a)(6), the "no binding precedent" statute does not apply.

More fundamentally, the Alaska Club's argument raises the question whether the Board's earlier adoption of the April 2011 policy memo obligated the Board to provide clear notice when it later abandoned that policy. There can be no serious doubt that the Board has discretion, as a policy matter, to change its approach to issues before it. The Board is vested by statute with the "powers, duties and responsibilities necessary for the control of alcoholic beverages" in Alaska.[133] Those powers, duties, and responsibilities necessarily include interpreting and implementing Title 4. And the Alaska Supreme Court has acknowledged the need to afford the Board broader authority in carrying out its charge.

> Where the police power of the state is so vitally involved, as it is here, it becomes imperative that those who are charged with the duty of regulating the industry have a freedom of action not restricted by limitations that may be required where other types of businesses are involved.[134]

The record reflects that the Board engaged in a thoughtful, deliberative process for several years as it puzzled through the best way to deal with Rec Site licenses. Its decision to abandon an overbroad approach in favor of a strict reading of the statute was within its discretion.

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131 *See* AS 04.11.537 ("In determining whether issuance, renewal, transfer, relocation, suspension, or revocation of a license is in the best interests of the public, the board need not conform to or distinguish its decision from any action it has taken in the past on applications presenting similar facts, but may instead base its decision only on the particular facts before it.").

132 *See* Ex. K at 1:21-1:23 (motion expressly based on operation being inconsistent with the statutory definition).

133 AS 04.06.090.

134 *Boehl v. Sabre Jet Room*, 349 P.2d 585, 589 (Alaska 1960).

But was public notice required? As the Board has since recognized, the April 2011 policy memo's addition of the entirely new category of activity-based Rec Site licenses went far beyond and was inconsistent with the plain language of the statute. The Board, acting in good faith, adopted this policy at the advice of its then-counsel – advice that has since been recognized as having been well-intentioned but fundamentally unsound. It is well established that the Board cannot escape its rulemaking-associated obligations under the APA by calling a regulation a "policy."[135] The Board was thus appropriately advised by its new counsel in June 2013 that it could not continue to follow the "policy" without adopting it as a regulation, including following the various public participation requirements associated with such adoption.[136]

The Board is required to promptly notify affected licensees of "major changes" to Title 4 and to regulations adopted by the Board.[137] The Board never adopted a Rec Site license regulation – neither before it granted the Alaska Club's 2010 application, nor at the time it adopted the April 2011 "policy," nor at any time since. At the same time, the policy itself was invalid precisely because it purported to regulate Rec Site licenses without having been properly promulgated as a regulation under the APA. For the policy to ever have been valid, the Board needed to have adopted it as a regulation. It never did so, and so stopped following the invalid policy on the advice of counsel. The Alaska Club has provided no legal authority to support its suggestion that the Board was required to provide explicit notice to licensees when it decided to stop following the policy it had imprudently adopted. Nor is the undersigned aware of such authority. Case law tells us that invalidly adopted regulations are per se invalid.[138] It would be paradoxical to conclude that an agency cannot stop following an invalid policy until it gives notice of intent to do so.

Further, under the facts of this case, the Alaska Club had ample notice that the Board had retreated from the April 2011 policy. The Board articulated its rejection of the policy in public documents (such as the response to the legislative audit) available to licensees, and at meetings attended by Club representatives. In particular, Club representatives were present at the June 2013 meeting when counsel told the Board it could not keep following the April 2011 policy

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135 *See*. *Squires v. Alaska Bd. of Architects*, 205 P.3d 326, 333 (Alaska 2009).

136 Ex. F at 3:16-3:20.

137 AS 04.06.090(d).

138 *Squires v. Alaska Bd. of Architects*, 205 P.3d 326, 334 (Alaska 2009); see also *Jerrel v. State*, 999 P.2d 138, 143-44 (Alaska 2000); *Wickersham v. State Commercial Fisheries Entry Comm'n*, 680 P.2d 1135, 1140 (Alaska 1984) ("When a policy is invalidly promulgated under the APA, generally the appropriate remedy is to invalidate the offending policy until the procedures required by the APA are observed.").

without putting those changes into a regulation.[139] The Club was aware that the Board then began pursuing regulatory changes, and that the draft regulation that was produced was limited to competitive spectator sports.[140] By the time the Board abandoned the draft regulation project in lieu of having the Rec Site issue addressed as part of the Title 4 review process, the Board had already declared its intention to abandon its ill-advised April 2011 policy on the advice of counsel. The Club was present at the meetings in which these key events took place, and has not demonstrated that it was entitled to further notice of either the Board's abandonment of the wrongly-adopted April 2011 policy, or of its evolving views as to Rec Site licenses generally.

D. The Board's initial grant of the Summit's Rec Site license does not estop it from now denying the Club's renewal application.

To the extent that the Alaska Club contends that the Board is estopped from denying its renewal application, or must grandfather its license for some period of time because the Club has relied on past action by the Board, this argument fails.

Mr. Brewster testified that he had been under the impression that the Club could not lose its license for reasons beyond its control, and that, absent the Club "performing some misdeed," the Club would continue to possess the license. Mr. Brewster opined that the Club had been treated unfairly, given its good behavior and "the representations made by" the Board and its staff. When pressed, Mr. Brewster indicated his belief that the conduct by the Board and its staff in granting the license initially amounted to a "misrepresentation," if the Board did not intend to allow the Club to keep the license in perpetuity. Mr. Brewster and Mr. Fox both also suggested that the Board's endorsement of the Title 4 report amount to a "promise" to grandfather existing licensees.

A claim that one is bound by prior promises, as Mr. Brewster and Mr. Fox have suggested, sounds in promissory estoppel, requiring a showing that:

> (1) the action induced amounts to a substantial change of position;
>
> (2) it was either actually foreseen or reasonably foreseeable by the promisor;
>
> (3) an actual promise was made and itself induced the action or forbearance in reliance thereon; and
>
> (4) enforcement is necessary in the interest of justice.[141]

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139 Ex. F at 3:16-3:20.

140 Ex. G, I.

141 *Simpson v. Murkowski*, 129 P.3d 435, 440, n. 18 (Alaska 2006); *Ross v. State, Dep't of Revenue*, 292 P.3d 906, 914-915 (Alaska 2012).

Here, neither the Board nor its staff made the Club any promises vis-à-vis some continued right to possess a Rec Site license in perpetuity.

The Alaska Supreme Court rejected a similar claim in *Ross v. Dept. of Revenue*, holding that the eligibility requirements in place at one time do not "amount to an enforceable promise" that those requirements will never change.[142] The Alaska Club "cannot rely on an extant law as a promise that that law continue to have the same effect in perpetuity."[143]

Mr. Brewster also expressed his expectation that the February 2016 hearing on Mr. Jessee's protest of the renewal application would be "pro forma" because the Club had not had any prior problems with its license. Mr. Brewster's professed expectations are inconsistent with the most basic provisions of Title 4, including the requirement that licenses be renewed every two years. "To make out a claim for promissory estoppel, one must show that 'an actual promise was made.'"[144] There is no evidence in the record of any promise that the Club would be exempted from the process of renewal application review.[145]

To the extent the Alaska Club contends that the Board is bound by the recommendations of the Title 4 report, this argument also fails. Mr. Brewster also testified that he believed the Board would implement an 8-year sunset if it decided the license should not be renewed. Mr. Fox likewise testified that he viewed the Board as having "promised" a lengthy sunset to nonconforming Rec Site licensees. However, the evidentiary record does not bear out this view. The Title 4 report contains scores of recommendations for what a revised statutory scheme might look like. The Board's endorsement was an agreement that these proposals should be put to the legislature for consideration and action. The Board did not, by the Chair's single-sentence motion, adopt into policy each separate proposal set out in the 35-page report.[146] The Board's aspirational endorsement of the Title 4 report and vote to move it towards legislative action cannot reasonably be interpreted to bind the Board to the contents of that report. While the Board's roll call vote on the Title 4 report may be a learning opportunity about the benefits of clearly worded motions, the vote "approving" the report – as a set of recommendations to propose

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142 *Id*., at 915.

143 *Id*., at 915.

144 *Simpson v. Murkowski*, 129 P.3d at 442 (quoting *Brady v. State*, 965 P.2d 1, 10 & n. 20 (Alaska 1998)).

145 Nor is there evidence of any reliance on any alleged "promises." The testimony established that the Club's investments related to the ability to serve beer and wine came at the front of end of the design and construction process – years before the Club even submitted its initial application for the Rec Site license. Even if there were otherwise evidence of some "promise" – which, to be clear, there is not – the estoppel claim would still fail.

146 Indeed, as the Club's post-hearing brief notes, the presentations about the report did not even cover each recommended change. It is unreasonable to construe the Board as having done anything more than agree that the recommendations should be promoted in the legislature.

for future legislative action – did not change its policies in place vis-à-vis Rec Site licenses, nor constitute an enforceable promise to grandfather in existing licensees.

Mr. Brewster's testimony suggested a significant degree of misunderstanding of both the licensing process specifically and the scope and extent of the Board's authority generally. The Club's misunderstanding about the renewal application process does not entitle it to legal relief, however.

E. The Summit received adequate due process before and after the denial of its Rec Site license renewal application.

The Alaska Club also contends that the denial of its renewal application violated its right to both procedural and substantive due process.[147] Procedural due process requires that before property rights can be taken directly or infringed upon by governmental action, there must be notice and an opportunity to be heard in a meaningful, impartial hearing.[148] The Alaska Supreme Court has recognized that liquor licenses are property rights to which constitutional protections attach.[149] Accordingly, "[b]efore this property interest can be taken, due process requires that [a licensee] be provided with notice and an opportunity to be heard in a meaningful, impartial manner."[150] Additionally, case law recognizes that licensees have no vested interest in renewal of a liquor license, which remains subject to Board approval.[151]

The Alaska Supreme Court has rejected procedural due process challenges where the challenger "received all the process she was due."[152] Thus, in *Gates v. City of Tenakee Springs*, a permit holder's due process challenge failed where the permit holder "received advance notice of the city's intent to order removal of her encroachment, and . . . had a chance to appeal the city's decision."[153] Here, the "process that is due" is determined by Title 4. The Alaska Club received all of the process that Title 4 requires, and more.[154] The Club had notice of the objection raised. The Board held a hearing to consider the objection. The Club received advance notice of that

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147 Alaska Club Pre-hearing brief, p. 20.

148 *Rollins v. State, Dep't of Revenue*, 991 P.2d 202 (Alaska 1999); *Frontier Saloon, Inc. v. Alcoholic Beverage Control Bd*., 524 P.2d 657, 659 (Alaska 1974).

149 *Rollins*, 991 P.2d at 211; *Godfrey v. State, Dept. of Community and Economic Development*, 175 P.3d 1198, 1203 (Alaska 2007); *Frontier Saloon v. Alcoholic Beverage Control Board*, 524 P.2d 657 (Alaska 1974).

150 *Rollins*, 991 P.2d at 211.

151 *Rollins v. Alcoholic Beverage Control Board*, 991 P.2d 202, 207 (Alaska 1999).

152 *Gates v. City of Tenakee Springs*, 822 P.2d 455, 462 (Alaska 1991).

153 *Id*., 822 P.2d at 462.

154 To the extent that the Alaska Club contends that it should have received notice that the Board had changed its interpretation on recreational site licenses, Club representatives were present at Board meetings where the Board's evolving views of the Rec Site statute were discussed. The Club cites no legal authority to support its claim that it was entitled to further notice of the Board's evolving views, and has not established that the lack of formal notice constitutes a denial of procedural due process.

hearing, and was permitted to present testimony as well as the arguments of counsel. And the Club has now received an additional hearing under the Administrative Procedure Act, where it was permitted to call witnesses, cross-examine witnesses, present evidence, rebut opposing evidence, and present the oral and written arguments of counsel.[155] The Alaska Club has not shown it was denied procedural due process.

The Club also argues it was denied substantive due process. Substantive due process requires that governmental actions be reasonable and not arbitrary. However, "[t]he standard for establishing a substantive due process violation is rigorous. A due process claim will only stand if the state's actions 'are so irrational or arbitrary, or so lacking in fairness, as to shock the universal sense of justice.'"[156] The Alaska Club contends that the Board's changed interpretation of the Rec Site license statute violates its right to substantive due process, arguing that "rights should not be eliminated by governmental action where to do so is unreasonable or unfair."[157] The Board's evolving interpretation of the Rec Site license statute does not amount to a due process violation. Plainly, interpreting the statutes it is charged with implementing is a legitimate purpose of the Board, as is remedying its own previous errors in the interpretation of those statutes. The Alaska Club has not shown that the Board's evolved interpretation of the Rec Site license statute has violated its right to substantive due process.

To the extent that the Alaska Club argues against the Board's strict interpretation of AS 04.11.210 being only applied to the Alaska Club's renewal applications, and not to any other existing recreational site licensees' renewal applications, this argument implicates equal protection issues, not substantive due process issues, so is addressed below.

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155 Not squarely at issue here, but noteworthy, is whether the Board should be confiscating a non-renewed license at the time of its initial decision under AS 04.11.510, as opposed to waiting until that non-renewal decision becomes final under the Administrative Procedure Act. The renewal procedure statute is silent on this issue. The Board's practice has been to implement its non-renewal decision immediately – directing the licensee to immediately stop operating the license – even though the licensee then has the opportunity for a formal hearing conducted under the APA prior to the Board's decision becoming "final." *See* AS 04.11.510(b)(1) (right to a hearing conducted under the APA); AS 44.62.520(a)(2) (decision on APA matter becomes final 30 days after Board action on proposed decision, unless Board orders earlier effective date). Given the purpose of the APA hearing under the Board's regulatory scheme – as described above – to ensure that the Board has full information before making its final decision, and given the significance of the existing licensee's property interest (e.g. unlike that of a first-time applicant), the Board may want to consider revisiting this aspect of its procedures for non-renewals. However, this particular issue is one neither squarely raised in this case, nor for which any remedy would exist at this time. Accordingly, it is not necessary to specifically decide whether the Board's enforcement of its February 2016 decision before that decision became final under the APA implicates procedural due process concerns.

156 *Church v. State, Dep't of Revenue*, 973 P.2d 1125, 1130 (Alaska 1999) (quoting *Application of Obermeyer*, 717 P.2d 382, 386–87 (Alaska 1986)).

157 Alaska Club prehearing brief, p. 21.

F. Does the Board's selective enforcement of the recreational site license statute – in such a way that only the Summit's non-conforming license was rejected for renewal – violate the Club's right to equal protection of the laws?

The Alaska Club also contends that the Board's selective enforcement of the Rec Site statute – denying the Club's renewal application based on the decision to strictly construe the statute, while continuing to grant other non-conforming license-holders' renewal applications – violates its right to equal protection of the law.

1. Equal protection overview

The Equal Protection Clause of the Alaska Constitution guarantees "that all persons are equal and entitled to equal rights, opportunities, and protection" under the law and administration of the State.[158] In situations involving economic rights, the constitutional guarantee of equal protection generally requires equal treatment of persons "similarly situated."[159] While differently situated parties may be treated differently from one another, "provided that such treatment is rationally related to legitimate [governmental] objectives," the constitutional guarantee of equal protection forbids irrational and arbitrary classification.[160] "In order for a classification to be valid under Alaska's equal protection test, it must be reasonable, not arbitrary, and must bear a fair and substantial relation to a legitimate governmental objective."[161]

The specific equal protection claim raised in this case is the Board's selective enforcement of the Rec Site statute. Selective enforcement of a statute or regulation runs afoul of the constitutional guarantee of equal protection where an agency purposefully discriminates based on an arbitrary or otherwise improper classification.[162] The Alaska Club argues that the Board's selective enforcement of the statute to deny its renewal application based on non-conformity with the statute, while continuing to grant renewals to comparably non-conforming licensees, violates its right to equal protection. In cases alleging that the Board's nonrenewal decision violated an applicant's right to equal protection by selective enforcement, the Alaska Supreme Court has held that "in order to make a prima facie case that the Board selectively enforced [a statutory]

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158 ALASKA CONST. art. I, § 1; *see also* ALASKA CONST. art. I, § 7 (due process guarantee). Likewise, the Fourteenth Amendment to the United States Constitution mandates that no state "deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. Amend. XIV, § 1. This requires that "all persons similarly circumstanced [...] be treated alike" by any state action. *F.S. Royster Guano Co. v. Va.*, 253 U.S. 412, 415 (1920).

159 *State, Dep't of Nat. Res. v. Alaska Riverways, Inc.*, 232 P.3d 1203, 1219 (Alaska 2010).

160 *See generally*, *Mathis v. Sauser*, 942 P.2d 1117, 1123-1124 (Alaska 1997); *State v. Anthony*, 810 P.2d 155 (Alaska 1991); *Wilson v. Municipality of Anchorage*, 669 P.2d 569, 572 (Alaska 1983).

161 *Wilson v. Municipality of Anchorage*, 669 P.2d 569, 572 (Alaska 1983).

162 *Rollins v. State, Dept. of Revenue, Alcoholic Beverage Control Board*, 991 P.2d 202, 210 (Alaska 1999); *Rollins v. State, Dept. of Public Safety*, 312 P.3d 1091, 1999 (Alaska 2013) (quoting same).

requirement, [an applicant] would have to show that the Board intended to discriminate against [the applicant] based on an arbitrary or unjustifiable classification."[163] The party alleging the equal protection violation "has the initial burden of producing evidence demonstrating discriminatory intent."[164]

2. Evidence of selective enforcement

The Director's prehearing brief argued that the Board's action was constitutionally permissible because the Board had properly chosen to "exercise its authority to deny renewal of outstanding non-traditional recreational site licenses, including the Summit's, based on its best interpretation of the statute and the legislative audit[.]"[165] Regrettably, however, the evidence at hearing clearly demonstrated that the Board – through its staff – has not been "denying renewal of outstanding non-traditional recreational site licenses . . . based on its best interpretation of the statute." Rather, the Board's staff has continued to renew those licenses without any analysis or review.

Even while the Board was rejecting new Rec Site licenses as inconsistent with the new stricter reading of the statute, license renewals by the Summit and other licensees continued to be granted. This was so, apparently, because the Board staff was not bringing any renewal applications to the Board's attention unless a protest or an objection was received.[166] Thus, although the Board's November 2014 audit response letter stated that "the Board now carefully reviews each [Rec Site license] application and issues only those licenses which adhere to the [Rec Site license] statute," that was and is not the practice being followed for *renewal* applications.[167] Absent a protest or objection, staff do not bring renewal applications before the Board – even in the case of renewal applications for the type of activity-based Rec Site licenses the Board had decided and declared that it did not want to issue.[168]

Of the small, well-known, easily identifiable group of licensees that fit the Director's description – "outstanding non-traditional recreational site licensees" – the Board's staff has made no attempt to deny renewal of these licenses. It is only in the case of the Alaska Club that staff

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163 *Rollins v. State, Dept. of Revenue, Alcoholic Beverage Control Board*, 991 P.2d 202, 210 (Alaska 1999); *Rollins v. State, Dept. of Public Safety*, 312 P.3d 1091, 1999 (Alaska 2013) (quoting same).

164 *Barber v. Municipality of Anchorage*, 776 P.2d 1035, 1040 (Alaska 1989); *State v. Reefer King Co.*, 559 P.2d 56, 64-65 (Alaska 1976), modified on reh'g, 562 P.2d 702 (Alaska 1977).

165 Director's prehearing brief, p. 15.

166 Franklin testimony.

167 Franklin testimony.

168 Franklin testimony; Oates testimony.

has brought the renewal application before the Board. Once the Alaska Club's application was before the Board, of course, the Board did "exercise its authority to deny renewal" of the Summit's "non-traditional recreational site license . . . based on its best interpretation of the statute." Of all the previously-issued "non-traditional recreational site licenses," however, *only* the Summit's license has been subjected to this analysis.

The Summit was not the only activity-based recreational site license up for renewal in 2016. Also up for renewal were the Rec Site licenses held by Beluga Billiards, Diamond Bowl, and Arctic Valley Ski Area. The Summit was the only Rec Site license reviewed by the Board, the only Rec Site renewal application to which the strict interpretation of the statute was applied, and the only Rec Site renewal application denied by the Board. Of note, while Director Franklin observed that the Summit had been "specifically called out by the legislative audit" as an improperly-granted Rec Site license, other licensees similarly "called out" as outside the statute's scope – such as bowling alleys and billiard halls – were renewed without review by the Board. Further complicating this analysis is that there is no evidence or suggestion that staff are selectively reviewing Rec Site license renewals at the Board's direction, or even that the Board is specifically aware of the continued renewals by staff of other "non-traditional recreational site licenses" in a manner that appears completely contradictory to the Board's stated intent to curtail such licenses.

3. Equal protection analysis

The question, then, is whether this selective enforcement of the statutory requirements violates the Alaska Club's right to equal protection. The Alaska Supreme Court has long held that "laxity in the enforcement of [a law] in other cases . . . would not constitute a denial of equal protection" against the law's enforcement in a particular case.[169] Thus, even if a City only enforces an ordinance against one resident, while failing to enforce it against similarly-situated neighbors, the Court has not found unconstitutional selective enforcement "in the absence of evidence of discriminatory intent."[170] "An agency need not – indeed, often cannot – apply a statute simultaneously to all similarly situated parties to avoid violating the equal protection clause so long as it is not intentionally discriminating against any party."[171]

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169 *Nelson v. State*, 387 P.2d 933, 935 (Alaska 1964).

170 *Luper v. City of Wasilla*, 215 P.3d 342, 348 (Alaska 2009) (citing *Rollins*, 991 P.2d at 210) ("[E]ven assuming Luper's assertions that the city did not enforce the relevant ordinances against her neighbors are true, we have held that mere failure to enforce an ordinance against others similarly situated does not itself prove selective enforcement in the absence of evidence of discriminatory intent.").

171 *State, Dept. of Natural Resources v. Alaska Riverways, Inc.*, 232 P.3d 1203, 1220 (Alaska 2010).

The Director relies on this body of case law to defend the rejection of the Alaska Club's renewal application for nonconformity with the narrowly construed statute while, indisputably, no other Rec Site renewal application was similarly reviewed. The Director relies in particular on the Alaska Supreme Court's two *Rollins* decisions, both of which involved this Board. But the *Rollins* cases are distinguishable in several key respects.

Ms. Rollins held a beverage dispensary license but was unable to secure a location from which to operate it. After granting her several waivers of the operating requirement, the Board denied her request for another waiver and then revoked the license. Ms. Rollins appealed, ultimately leading to the first *Rollins* decision, in 1999. In *Rollins I*, the Supreme Court rejected Ms. Rollins' equal protection argument based on selective enforcement, finding there was no "evidence to show that Ms. Rollins was treated differently than other license holders who had violated the 30-day operating requirement."[172]

Here, of course, there is precisely such evidence. The evidence is undisputed that the Alaska Club has been treated differently from other Rec Site license holders whose licenses fall outside the strict statutory interpretation espoused by the Board. This, the Club contends, makes it a "class of one" for purposes of an equal protection analysis.

Further, in *Rollins I*, the Alaska Supreme Court remanded the matter for consideration of relief from judgment in light of contradictions between the Board's averments in Superior Court (that other licensees had similarly lost their licenses after previously being granted waivers) and the Director's statement in another context (that Ms. Rollins was "the first to be affected" by the Board's decision to begin a stricter enforcement of its consecutive waiver policy). On remand to the Superior Court in *Rollins I*, Ms. Rollins appears to have ultimately prevailed in Superior Court on her selective enforcement claim.[173]

The United States Supreme Court has "recognized successful equal protection claims brought by a 'class of one,' where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment."[174] Where a party is purposefully subjected to differential treatment of a kind that is "irrational and wholly arbitrary," the Court has held that an equal protection claim may lie,

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172 *Rollins v. State, Dept of Revenue, Alcoholic Beverage Control Board*, 991 P.2d 202, 210 (Alaska 1999).

173 See *Rollins II*, 312 P.3d at 1093 ("On remand, the superior court granted Rollins relief from its earlier judgment and reversed the Board's denial of the waiver application.").

174 *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (citing *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923), and *Alleghany Pittsburgh Coal Co. v. Commission of Webster Cty.*, 488 U.S. 366 (1989)).

separate and apart from whether or not the differential treatment arises from some "subjective ill will."[175]

Under the selective enforcement test articulated in *Rollins I*, the Club must show that the licensing action intentionally discriminated against it based on an "arbitrary or unjustifiable classification." What the "class of one" analysis clarifies is that the "discrimination" need not be based on a protected classification (e.g., discrimination based on race); rather, the inquiry is whether the intentional distinction singling out this licensee from others similarly situated is based on a classification that is "wholly arbitrary" or otherwise unjustifiable.

The Alaska Club argues that its right to equal protection has been violated by being treated as a "class of one," in that there is a group of equally non-conforming licensees whose renewal applications have not been subjected to the same strict statutory interpretation the Board has applied to *only* the Alaska Club's renewal application. The Alaska Club argues that this differential treatment is arbitrary and capricious. While not discounting the incredible pressures under which the Director and her staff have been working in the aftermath of marijuana legalization, it is hard to disagree. It is undoubtedly true that the staff has been overwhelmed by the crush of work created by the legalization of marijuana. But the approach being followed with regard to Rec Site license renewals is so wildly inconsistent with the Board's stated intent to strictly construe the statute as to be "wholly arbitrary."

The staff has chosen to bring to the Board's attention only those renewal applications as to which protests or objections are received. This would be a reasonable approach to liquor license renewals generally. Broadly construed, there is a "fair and substantial relationship" between the classification – whether or not an application has been objected to – and the legitimate governmental objectives – ensuring that the Board carries out its duties under Title 4, but also streamlining the process where it is feasible to do so. As a general matter, differentiating between those renewal applications to which an objection has or has not been received bears a fair and substantial relationship to the Board's interests.

The inquiry, however, does not end there. In the specific case of Rec Site licenses, the Board has repeatedly stated over the course of several years that it rejects its previous broad reading of the Rec Site license statute, and intends to strictly construe the statute moving

[175] *Olech*, 528 U.S. at 565.

forward.[176] In light of the Board's stated intent to strictly construe the Rec Site statute, and particularly given the very small number of Rec Site licenses, it is irrational for Board staff not to be pulling all activity-based Rec Site licenses out of the "renewal river" for review by the Board. Under the facts of this case, the classification being employed is irrational.

The Director contends that the Alaska Club is not a "class of one" because no other Rec Site license holder is exactly like the Alaska Club, and because only the Alaska Club license renewal application received an objection. Neither of these facts change the class of one analysis under the unique facts presented here. Federal courts have emphasized the need for "class of one" claimants to "show an extremely high degree of similarity between themselves and the persons to whom they compare themselves."[177] The Seventh Circuit Court of Appeals requires a "class of one" challenger to be "identical in all relevant respects or directly comparable in all material respects" to his comparators.[178] The reason for this stringent similarity requirement is to avoid reading a constitutional claim into "almost every executive and administrative decision."

Here, the stated basis for nonrenewal is that the Summit's Rec Site license does not comply with the strict construction of the statute. On its face, this is a perfectly acceptable reason for non-renewal of a license. However, the evidence in the record suggests that the Club is directly comparable in this respect with other nonconforming licenses that not only were not denied, but that were not even reviewed. While the Club, as a "class of one" claimant, must show a very high degree of similarity with those to whom it compares itself, that burden is met here.[179] There is considerable evidence in the record that Board members, auditors, and objectors have all identified a group of similarly non-conforming Rec Site licenses, all of which are viewed as being outside the scope of the statute. The stated basis for the objection and for the non-renewal of the Club's license is the Club's nonconformity with the statute, in a way that is indistinguishable on this record from other Rec Site licensees who originally obtained their Rec Site licenses while the statute was more broadly construed.

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176 Somewhat troublingly, both the Board and the Commissioner responded to legislative audit concerns by reporting that *all* Rec Site license applications were being subjected to strict scrutiny, yet the evidence presented at hearing shows this is not the case.

177 *Clubside, Inc. v. Valentin*, 468 F.3d 144, 159 (2d Cir. 2006).

178 *U.S. v. Moore*, 543 F.3d 891, 896 (7th Cir. 2008).

179 What is not required, as the Director suggests, is to so narrowly construe the similarity requirement as to make it meaningless – requiring, for example, that the Club show that other "fitness centers" had and were allowed to keep Rec Site licenses. It would be unfair to read the requirement so narrowly as to automatically place the Alaska Club in its own category.

That alleged nonconformity with the strictly construed statute is the "material respect" for purpose of evaluating the similarity between the Alaska Club and other licensees whose renewal applications were approved without review. Of all the nonconforming Rec Site licensees – identified, for example, in the legislative audit – only the Alaska Club has been singled out for nonrenewal based on that nonconformity. Under the narrow and unique facts of this case, this differential treatment – singling out the Alaska Club while leaving untouched and unexamined all other equally non-conforming Rec Site licenses – is so arbitrary as to violate the Club's right to equal protection.

This decision is, of course, a Board decision. In finding that the preliminary decision earlier this year to single out the Alaska Club was a violation of equal protection, the Board undoes that violation and restores the level playing field for Rec Site licensees. Going forward, the Board can apply its new, more correct interpretation of AS 04.11.210 to all future renewal applications, treating applicants the same.

IV. Conclusion

The facts of this case are troubling, in that the evidence shows that the staff is treating renewal license applications in a manner that is inconsistent with the Board's clearly stated objectives on Rec Site licenses. At the same time, the narrow question of whether the Alaska Club would otherwise be legally entitled to renewal of its license appears to clearly favor nonrenewal. But the Board cannot so selectively enforce the statute as to create a "class of one," which, in the narrow and unique facts of this case, it appears to have done.

While the Board is within its authority to decide it will narrowly construe the Rec Site statute, and to deny non-conforming renewal applications accordingly, it cannot apply the statute in that manner only as to this licensee, while ignoring precisely the same issue as to the remaining "activity-based" licensees. However, nothing in this decision should be read to endorse the broad view of the Rec Site license statute promoted in the April 2011 policy memo, nor the Board's adoption of that policy in the absence of an APA rulemaking process. Nor should this decision be read to suggest that the Board erred in answering the legal question whether license No. 5004 is outside the scope of AS 04.11.210. Nonetheless, because the Board, in evaluating the Club's

renewal application, failed to afford the Club equal protection of the laws, the denial of its renewal application for 2016-2017 must be reversed.

DATED: September 29, 2016.

By: *Signed*
Cheryl Mandala
Administrative Law Judge

Adoption of Revised Decision (AS 44.64.060(e)(3))

The Alcoholic Beverage Control Board, in accordance with AS 44.64.060(e)(3), revises the remedy or other disposition of the case as follows:

> The Alaska Club's application to renew Recreational Site License No. 5004 is granted; the license will be renewed for license years 2017-2018.

The Board adopts the proposed decision, so revised, as final.

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 12th day of December, 2016.

By: *Signed*
Bob Klein, Chair
Alcoholic Beverage Control Board

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]