

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

In the Matter of)	
)	
TAKU LANES, LLC)	OAH No. 19-0196-ABC
_____)	Agency No. 5095

DECISION

I. Introduction

In 2011, Taku Lanes, LLC was granted a recreational site (Rec Site) license to serve beer and wine at its bowling center.¹ At that time, the Alcoholic Beverage Control Board (Board) had an expansive interpretation of the settings for Rec Site licenses. Over the years, the Board has revisited its interpretation of the statutory requirements for the Rec Site license.

When Taku Lanes applied to renew its Rec Site license for the 2018-2019 year, the Board provided Taku Lanes notice that the business did not meet the statutory definition for a Rec Site license. However, the Board granted what it termed a final extension, with the advisement that it would deny any subsequent application renewals if the factual circumstances surrounding the license remained the same.

After its application for a 2019-2020 license renewal was denied as not meeting the Rec Site license criteria, Taku Lanes appealed. Because the evidence at hearing established that Taku Lanes does not meet the statutory requirements for a Rec Site license, the decision to deny Taku Lanes' Rec Site renewal application is affirmed.

II. Factual and Procedural History

A. Pre-Alaska Club Board

The Board is responsible for controlling the manufacture, barter, possession, and sale of alcoholic beverages in Alaska.² It administers various types of licenses and permits related to alcoholic beverages, including beverage dispensary licenses, restaurant or eating place licenses, pub licenses, golf course licenses, club licenses, special event permits, and caterer's permits, and each of which is separately defined by statute.³

The Rec Site license is defined in AS 04.11.210 as follows:

¹ Ms. Price purchased the business from her brother in 2011. He had the recreational site license for 6 years prior to her purchase of the business.

² AS 04.06.090(a); AS 04.06.080; AS 04.11.080.

³ *Id.*

- (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.

Thus, under the current statute, a Rec Site license is 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.”⁴

Historically the Board broadly interpreted the Rec Site definition and granted Rec Site licenses liberally.⁵ In 2010, the Board began reevaluating the Rec Site license requirements.⁶ The process was slow, but the Board gradually adopted a more precise interpretation of the statute’s requirements. However, the Board’s development of a narrower position on Rec Site licenses was not without controversy.⁷

After the Board denied the renewal application of the Alaska Club DBA Summit’s (*Alaska Club*) Rec Site license, the ensuing decision on appeal concluded that, while the Board has the discretion to interpret the Rec Site license statute, “the Board’s actions in continuing to renew all other non-conforming Rec Site licenses, while denying non-renewal to the Alaska Club DBA Summit alone, are so arbitrary as to not withstand constitutional scrutiny.”⁸ In the *Alaska Club* decision, the Board acknowledged the need to develop and apply a uniform process for consideration of Rec Site renewal applications.

B. Post-*Alaska Club* Board changes

Following the 2016 *Alaska Club* decision, as well as the November 17, 2017 Sunset Review of the Board legislative audit (2017 Audit), the Board began reevaluating the qualifications of every Rec Site license.⁹ Alcohol and Marijuana Control Office (AMCO)

⁴ The statute has remained essentially unchanged since its enactment in 1969. A bill amending the statute was passed by the Alaska legislature in May 2019, and, as of the date of the proposed decision, is awaiting transmittal to the governor.

⁵ *In re Alaska Club DBA Summit*, (16-200-ABC)(ABC Board December 2016), available at <https://aws.state.ak.us/OAH/Decision/Display?rec=6325>

⁶ *Id.* *Alaska Club* provides an extensive history of the evolution of the Board’s interpretation of the Rec Site license.

⁷ *Id.*

⁸ *Id.*

⁹ Exhibit B.

Records and Licensing Supervisor Mikal Milton flagged all Rec Site license renewal applications and then sent to the Board for review.¹⁰

To balance the statutory compliance issues addressed in *Alaska Club* with the potentially significant impact on the business applying for the renewal, AMCO notified each noncompliant Rec Site licensee at the time of their renewal application that their business did not comply with the existing language of the Rec Site statute, but nonetheless granted a final renewal.¹¹ The intent of this multi-step process was to offset the immediate impact to the business, and provide an opportunity for the business to either obtain a different license or become compliant with the Rec Site requirements.¹²

Of those that applied for a renewal of the Rec Site license for the 2018-2019 renewal period, six licensees – including Taku Lanes – were identified as not meeting the statutory requirements.¹³ Each – including Taku Lanes – received the same form letter notifying the applicant of lack of statutory compliance and future denial without a change in circumstance.¹⁴ These businesses were advised they could still submit applications, but their applications would go straight to the Board and not be granted an interim approval, as they previously had.¹⁵

During the 2019-2020 application process, of the six previously notified of the final renewal, three were denied, two obtained different types of liquor licenses (so the Rec Site license expired), and one did not reapply.¹⁶ None of the non-compliant renewal licenses was granted.

C. Taku Lanes’ renewal application for a recreational site license

Taku Lanes is a bowling establishment in Juneau, Alaska. In its most recent Rec Site license application, it described its business operation as follows:

Taku Lanes is a bowling center that holds recreational bowling league play and bowling tournaments. The Fall season runs August to December; Winter season runs January to May and the Summer season runs April to August. Taku Lanes also holds a seasonal dart league which runs October 1 to December 2nd, and January 1 to March 2. The bowling center operates Sunday, Monday, Wednesday and Thursday 3-9 pm. Taku Lanes is open Tuesday, Friday and Saturday noon to midnight. The bowling tournaments are usually held Saturday and Sundays from 9 am to midnight.¹⁷

¹⁰ Exhibit A p. 37; Ms. McConnell testimony.

¹¹ Exhibit A p. 11; Ms. McConnell testimony.

¹² Ms. McConnell testimony.

¹³ Exhibit A p. 37

¹⁴ Ms. McConnell testimony; Exhibit A p. 37.

¹⁵ Exhibit A p. 37.

¹⁶ Ms. McConnell testimony.

¹⁷ Exhibit A p. 7.

Taku Lanes was first issued a Rec Site license more than ten years ago and has held one since that time. It is undisputed that Taku Lanes has not restricted the sale of beer and wine to tournament and league play but has instead sold beer and wine without regard to specifically scheduled events.

Taku Lanes received notice on March 23, 2017 that its 2018-2019 renewal would be the last renewal for its Rec Site license.¹⁸ At that time, LLC owner Cindy Price emailed AMCO to express confusion about the changed interpretation of the Rec Site statute, and inquired about her appellate rights.¹⁹ In response, AMCO Director Erika McConnel explained that, because Taku Lanes' Rec Site license renewal application had been granted, there were no appellate rights at that time, but that, if she were denied in the future, she would have an opportunity to appeal at that time.²⁰

Taku Lanes submitted its 2019-2020 Rec Site license renewal application on December 24, 2018, without having made any changes to its operation.²¹ Along with the application form Ms. Price attached a statement (reprinted above) describing the operation.²² There was no indication as to any restrictions on the hours or scheduling of alcoholic beverage sales, and no suggestion that Taku Lanes had altered its operations in the previous year.²³

The renewal application was scheduled for consideration before the Board on February 19, 2019.²⁴ A notice issued in advance of that meeting explained that “all recreational site licenses are being brought for separate consideration so that the ABC Board can assess their compliance with the Recreational Site statute.”²⁵

The Board denied the 2019-2020 renewal application, concluding that a “renewal of the license would violate the restrictions pertaining to the particular license under this title.”²⁶ Taku Lanes, in accordance with the notice of appellate rights, submitted a Notice of Defense and requested a hearing. An evidentiary hearing was held on April 23, 2019. AMCO was represented

¹⁸ Exhibit A p. 11.

¹⁹ Exhibit A pp. 12 -15. At that time there were no appellate rights because the last renewal was granted. However, she was advised that if Taku Lanes applied again, she would be entitled to a hearing on the matter.

²⁰ Exhibit A pp.12-14.

²¹ Exhibit A pp. 2-7

²² Exhibit A p. 7.

²³ Exhibit A p. 7.

²⁴ Exhibit A p. 31.

²⁵ Exhibit A p. 31.

²⁶ Exhibit A pp. 33-37; AS 04.11.330(a)(6); AS 04.11.210.

by Assistant Attorney General Harriet Milks. Ms. Price represented herself. Testimony was taken from Ms. Price and from AMCO Director Erika McConnell. Exhibit A, B, and C were admitted without objection,²⁷ and the record initially closed April 23, 2019.

In early June 2019 a status conference was held to address the parties' view of the impacts on this case, if any, of SB 16. That bill, passed by the legislature at the end of the legislative session and now awaiting transmittal to the governor, contains a "grandfather clause" for previously issued Rec Site licenses. Taku Lanes did not participate in the status conference.²⁸ Counsel for AMCO opined that a decision on the merits of this case should issue notwithstanding the passage of SB 16, and that the Board could ultimately determine the effect of that bill on this matter if the bill is signed. This decision follows.

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.²⁹ The Director issues or renews all licenses and permits at the direction of the Board.³⁰ However, 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.³¹ AS 04.11.330(a) sets forth nine categories under which the Board "shall" deny a license renewal application. These require the Board to deny a renewal application where renewing the license would "violate the restrictions pertaining to the particular license under [Title 4]."³²

If the Board votes to deny a renewal of a license, as it did here, the licensee is entitled to an administrative hearing conducted under Alaska's Administrative Procedure Act.³³ If an administrative hearing is requested and granted, evidence is taken under oath and a more complete body of evidence is collected, allowing a more rigorous testing of factual matters than in the first round. AS 21.06 places no constraints on parties raising new matter, such as new factual support

²⁷ AMCO submitted the 18-page Administrative Record (AR) as Exhibit A. Subsequently, AMCO submitted two other items, the 2017 legislative audit and a copy of *Alaska Club DBA as Summit* but pmarked them as Exhibits 39 and 40. The matter was clarified by marking Exhibit 39 as Exhibit B, and Exhibit 40 as Exhibit C.

²⁸ Notice was provided to Ms. Price, but efforts to reach her by phone for the status conference were unsuccessful.

²⁹ AS 04.11.210(b); AS 04.11.270, AS 04.11.680.

³⁰ AS 04.06.080. Ms. McConnell testified that one of the changes the Board made regarding Rec Site licenses was it did not defer authority to her to issue interim Rec Site licenses until the Board could convene. All Rec Site license were sent directly to the Board for a decision.

³¹ AS 04.11.470; AS 04.11.510(b)(2); 3 AAC 304.150.

³² AS 04.11.330(a)(6).

³³ AS 04.11.510(b)(1).

for the result they seek or new legal explanations. 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.”³⁴

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.³⁵ Following the hearing, unless there is a delegation (which has not occurred here), the matter then returns to the Board for a final decision.³⁶

B. Alaska Statute 04.11.210, as currently drafted, does not encompass the type of “recreational activity” occurring at the Taku Lanes.

As discussed above, the Rec Site license 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.

A Rec Site license contemplates beer and wine sales during a discrete time period and for a limited time surrounding that event. It cites examples such as “baseball games, car races, hockey games, dog sled racing events, or curling matches.”³⁷ The similarities in these events are that spectators come to a location for a brief period of time to enjoy a beverage while observing the activity; they then leave and the sale of beer and wine ends.

Taku Lanes describes its business operation and qualification for Rec Site license as follows:

Taku Lanes is a bowling center that holds recreational bowling league play and bowling tournaments. The Fall season runs August to December; Winter season runs January to May and the Summer season runs April to August. Taku Lanes also holds a seasonal dart league which runs October 1 to December 2nd, and January 1, to March 2. The bowling center operates Sunday, Monday.

³⁴ *In re Fantasies on 5th Avenue, LLC* OAH No. 16-0898 at p. 22 (November 2016). <https://aws.state.ak.us/OAH/Decision/Display?rec=26> citing *In re Palmer*, OAH No. 09-0133-INS (Director of Insurance 2009), at pp. 6-7 available at <https://aws.state.ak.us/OAH/Decision/Display?rec=2088> (describing this decision-making paradigm in the context of professional licensing cases)

³⁵ *Alaska Alcoholic Beverage Control Board v. Malcolm, Inc.*, 391 P.2d 441, 444 (Alaska 1964).

³⁶ Of note, the July 21, 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 requested a hearing. Because a hearing was timely requested, the Board’s decision on renewal will not become final until the conclusion of proceedings. See AS 44.62.520(a)(2).

³⁷ AS 04.11.210 (c).

Wednesday and Thursday 3-9 pm. Taku Lanes is open Tuesday, Friday and Saturday noon to midnight. The bowling tournaments are usually held Saturday and Sundays from 9 am to midnight.³⁸

Taku Lane describes its sale of beer and wine as year-round with spectators and participants alike consuming beer and wine both during tournaments and league play, and outside those events. Unlike a baseball game that sells beers on the day of the game or a dog sled race that sells beer at a concession stand during the race, Taku Lanes' sale of beer and wine is determined simply by the hours of the business's operation.³⁹ Because Taku Lanes' sale of beer and wine is inconsistent with the Rec Site license criteria, the denial of the renewal of Taku Lane's Rec Site license is required.⁴⁰

Ms. Price did not assert that Taku Lanes satisfies the statutory requirement for a Rec Site license.⁴¹ Her own description of the business, in her renewal application, sets forth no limit on beer and wine sales other than annual hours of operation. She does not restrict beer and wine sale to league nights or to observers of tournaments. Rather, Ms. Price simply argued that she will lose her business if she is unable to sell beer and wine. While her plight is sympathetic, this does not make her eligible for a Rec Site license. In fact, the reason the Board granted a year grace period to all Rec Site license applicants even when the business did not meet the requirements was to give owners time and notice to find an alternative. Ms. Price's argument of loss of business does not overcome her ineligibility for the type of liquor license she seeks.

IV. Conclusion

Following *Alaska Club's* decision and the 2017 legislative audit, the Board has applied a strict interpretation of the Rec Site license statute. Ample notice was provided to non-complying licensees of the need to either rework their business model or seek a different type of license. Taku Lanes did neither. Because Taku Lanes does not satisfy the criteria for a Rec Site license, the denial of its Rec Site renewal application is affirmed.

DATED: June 19, 2019

By: *Signed*

Hanna Sebold
Administrative Law Judge

³⁸ Exhibit A p. 7.

³⁹ Exhibit A p. 7.

⁴⁰ AS 04.11.330(a)(6).

⁴¹ Ms. Price did not raise any arguments, such as those raised in *Alaska Club*. However, based on the new procedure of evaluating all Rec Site licenses to apply the Board's stricter interpretation of the statute uniformly to all like applicants, the arguments raised in *Alaska Club* do not apply to Taku Lanes.

Non-Adoption Options

B. The undersigned, in accordance with AS 44.64.060 (e)(3), revises the enforcement action, determination of best interest, order, award, remedy, sanction, penalty, or other disposition of the case as follows:

While the Board agrees with the legal reasoning of the decision, in light of SB 16, which provides that, effective immediately, AS 04.11.210 prohibits the denial of certain recreational site licenses, denying Taku Lanes' recreational site license is not appropriate because Taku Lanes had a valid recreational site license between January 2018 and March 31, 2019.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 9th day of July, 2019.

By: *Signed* _____
Robert Klein
Chair, Alaska 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.]