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

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| APPLE NINE HOSPITALITY MANAGEMENT, INC. dba HOME2 SUITES ANCHORAGE | ) | OAH No. 24-0428-ABC |
| | ) | Agency No. AM-24-1521 |
| | ) | |
| | ) | |

**DECISION ON SUMMARY ADJUDICATION**

## I. Introduction

Under Alaska law, the number of alcoholic beverage package store licenses available within an organized municipality is limited to one license for every 3,000 people living within its boundaries. Under this cap, the Alcoholic Beverage Control Board (the "Board") cannot issue more than 97 package store licenses within the Municipality of Anchorage (the "Municipality"). The Board must deny any license application where issuance of the requested license would result in this cap being exceeded.

In April 2024, Apple Nine Hospitality Management, Inc. ("Apple Nine"), applied for a package store license that would allow it to operate a small liquor store within a hotel it owns in midtown Anchorage. The Board later denied this application based on its determination that there were no more available licenses. In making this determination, the Board counted three pending applications that were in "delegated status" against the 97-license cap. In this context "delegated status" refers to applications the Board has approved for issuance by the director of the Alcohol and Marijuana Control Office ("AMCO") after applicants have constructed their establishments and complied with all administrative requirements.

In this appeal Apple Nine asserts that the Board's method of calculating the number of available package store licenses is prohibited by statute, and that its application should have accordingly been approved. Apple Nine also raises two ancillary questions: (1) whether Apple Nine's application should have been considered as "competing" with that of another applicant who was seeking the 97$^{th}$ and final license; and (2) whether that competitor's application was improperly approved by the Board under AS 04.11.510(a). Both Apple Nine and AMCO have filed motions seeking summary adjudication on these questions of law.

As detailed below, the Board's methodology for determining the number of available licenses is permissible under the applicable statutes, and the ancillary arguments raised by Apple Nine are not meritorious. Accordingly, Apple Nine's motion for summary adjudication is

DENIED, and the motion filed by AMCO is GRANTED. Based on these rulings, the Board's denial of Apple Nine's package store license application is AFFIRMED.

## II. Legal Background

### *A. The Statutory License Cap*

The sale and distribution of alcohol in Alaska is "thoroughly and strictly regulated," with the number and type of liquor licenses limited by population and geographical area.[1] All of the statutory provisions relevant to this dispute are located within Title 4 of the Alaska Statutes, which "governs the sale and distribution of alcoholic beverages."[2] The key provision here is AS 04.11.400, which provides in relevant part:

> (a) Except as provided. . . a new license may not be issued and the board may prohibit relocation of an existing license
>
> * * * * *
>
> (2) inside an established village, incorporated city, or unified municipality if, after the issuance or relocation, there would be inside the established village, incorporated city, or unified municipality
>
> (A) more than one restaurant or eating place license for each 1,500 population or fraction of that population;
> (B) more than one brewery retail, one winery retail, and one distillery retail license for each 9,000 population or fraction of that population; or
> (C) more than one license of each other type. . . for each 3,000 population or fraction of that population . . . .

A related statute – AS 04.11.320(a)(7) – requires the Board to deny any application for a license if "issuance of the license is prohibited under AS 04.11.400(a)." Thus, once the Board determines that the cap has been reached for a given license type, it cannot approve new license applications until an existing license is revoked or surrendered, or additional licenses become available through population growth.[3]

### *B. Priority and Competition Among License Applicants*

There are no statutes directly setting out the procedures to be followed when there are multiple applications for a limited number of available licenses. The Board has adopted regulations to fill this gap, under which applications are considered for approval in the order they

---

1 *Rollins v. State, Dep't of Revenue, Alcoholic Beverage Control Bd.*, 991 P.2d 202, 209 (Alaska 1999).
2 *Id.* at 208.
3 3 AAC 305.040(1) – (3).

are received.[4] However, in situations where there is only one available license, and multiple applications are submitted for that license within "the 30-day period beginning on the date when the board received the first application," then those applications are deemed to be "competing applications."[5] These competing applications are first evaluated to see if any must be disqualified due to non-compliance with other statutes or regulations.[6] From there, the Board will deny all but one of the applications submitted by persons or businesses that are affiliated with one another.[7] If there is more than one application remaining at that point, the Board will consider which are most in the public interest. If the Board determines that two or more of the remaining applications are equally in the public interest, it will conduct a drawing to determine the winning applicant.[8]

*C. "Delegated Status"*

Under the Board's statute and regulations, businesses wanting to operate a package liquor store must satisfy numerous administrative requirements before they can be issued a license allowing them to sell alcohol to the public. Some of these requirements – such as obtaining public health and safety approvals required by state law or local ordinances – may require inspection of business premises after those have been fully constructed.[9] Before the construction of a new package store can even begin, most cities and municipalities in Alaska require special use permits (or other types of zoning approvals) that often require the investment of considerable time and money to obtain.[10] For understandable reasons, businesses are reluctant to make these substantial up-front expenditures without knowing in advance that they will receive a license at the conclusion of this administrative process.[11]

To relieve license applicants of these uncertainties, the Board has adopted the practice of approving license applications based on information the applicant provides regarding the planned location and layout of a proposed establishment.[12] At the time of this approval, AMCO's director

---

4 While this approach is not directly set out as such in the Board's regulations, it is implicit within 3 AAC 305.100. Notably, Apple Nine does not challenge this aspect of the Board's procedures here.

5 3 AAC 305.100(c)(1)(B).

6 3 AAC 305.105(c).

7 3 AAC 305.105(b).

8 3 AAC 305.105(e) and (f).

9 *See, e.g.,* 3 AAC 305.030. Additionally, within the Municipality of Anchorage inspections of business premises may be required following the construction or renovation of business facilities to ensure compliance with building safety standards. *See generally* AMC 23.10.101.2.

10 *See, e.g.,* AMC 21.30.040 (requiring a special land use permit issued by the Municipal Assembly following extensive public notice, consultation with Municipal officials, and meetings with local community councils).

11 These issues were noted by Board members when Apple Nine's application was being considered. *See* AMCO 000164, 39:28–39:52.

12 According to AMCO, the Board has been following this practice since "at least 2010." AMCO Motion for Summary Adjudication at 2, n.7; AMCO 000783–003168, 003426–003437.

is delegated authority to formally issue the license after the establishment has been constructed, and the applicant has complied with all administrative requirements.[13] During the interim between the Board's approval of the application, and final issuance of a license by AMCO's director, the application is considered to be in "delegated status."

The obvious benefit of this process is that it allows applicants to spend the money required to construct their establishments, and obtain required local government approvals, knowing that a license will be issued after all the administrative boxes have been checked. According to AMCO, the Board has been following this administrative process for nearly 15 years, if not longer.[14] Apple Nine does not argue that this procedure is prohibited by statute, nor that it is an improper exercise of the Board's administrative discretion.[15]

## III. Facts

Apple Nine is a Virginia corporation that owns a Home2 Suites hotel located in midtown Anchorage.[16] On April 19, 2024, Apple Nine applied for a package store license that would allow it to operate a small liquor store area located within the lobby of this hotel.[17]

This application was preceded by a series of emails between Apple Nine's attorney and AMCO staff regarding the number of available package store licenses available within the Municipality. On February 28, 2024, Apple Nine was advised that there were "2-3 package stores available."[18] On March 11, AMCO staff provided a clarifying update that only one package store license was still available and that there were "some applications that came in."[19] When Apple Nine's attorney later contacted AMCO staff on March 25 to ask if that license was still available, she was advised, "We may be at the limit but any received now would be competing applications."[20]

After Apple Nine submitted its application on April 19, its attorney again contacted AMCO to ask how many licenses were still available. In response, AMCO staff advised that of the 97 available licenses within the MOA, 93 licenses had been issued, and 3 other applications

---

13 This delegation is authorized by AS 04.06.090(b) and 3 AAC 305.030.

14 According to AMCO, the Board has been following this practice since "at least 2010." AMCO Opening Brief at 2, n.7; AMCO 000783–003168, 003426–003437.

15 AMCO 000164, 48:52–49:17.

16 AMCO 000018 and 000090.

17 AMCO 000091 – 102.

18 AMCO 0000108.

19 AMCO 0000107.

20 *Id.*

approved by the Board were in delegated status – which meant that, by AMCO's count, only 1 license was still available. As for that last available license, AMCO staff advised:

> Two of these applications – not Apple Nine's – were received the exact same day, 2/8/24, they are considered competing application. Apple Nine's was received 4/19/24. Under the regulations, Apple Nine's… application is not part of the competing equation.[21]

The competing applications referenced by AMCO staff were filed on February 8, 2024, by a subsidiary of Northern Hospitality Group, Inc., which does business as 49th State Brewing ("49th State").[22] These applications sought licenses that would allow 49th State to open a package store in the terminal of Ted Stevens Anchorage International Airport. Since 49th State wanted to locate this store in a location where it could make sales from the same location to customers in both the secure and nonsecure areas of the terminal, it applied for two separate licenses while working with AMCO staff to determine whether one license would suffice.[23]

Following a review of these applications by AMCO staff, on June 18, 2024 Apple Nine and 49th State were both issued identical letters advising that their applications "appear to be in order" and would be placed on the Board's agenda for consideration during a regularly scheduled Board meeting on June 25.[24] These letters advised:

> If you have not yet received all necessary approvals, such as a local license, conditional use permit, site plan review, Fire Marshal approval, or Department of Environmental Conservation approval, you should continue to work with those local or state agencies to get the requirements completed. Your application may be considered by the board while some approvals are still pending. However, your license will not be finally issued and ready to operate until all necessary approvals are received and a preliminary inspection of your premises by AMCO enforcement staff is completed.[25]

Prior to this meeting, AMCO staff provided the Board with a memorandum which advised that there were 93 active licenses within the Municipality, with three other available licenses taken by applications in delegated status (two of which had been in delegated status for over two years).[26] The memorandum went on to provide:

> On this agenda, there are three new applications for package store. If the board counts the license applications already approved but in delegation into the license cap metric, there is only one license available.

---

21 AMCO 000104.
22 AMCO 000207 – 216 (Application #2278) and AMCO 000217-222 (Application #2279).
23 AMCO 003909.
24 AMCO 000299 (Apple Nine); AMCO 00388 – 89 (49th State).
25 *Id.*
26 AMCO 000204.

> If only one license is available, two of the three applications on this agenda would be considered competing applications. The third application came in past the 30 days to be considered competing. Still, the applicant of the third application would like the board to consider it.[27]

During the June 25 meeting, the Board considered all three of the pending license applications together. Before voting on these applications the Board heard from Apple Nine's counsel, who argued that four package store licenses were available at that moment, not just one. As counsel explained to the Board, the language of AS 04.11.400(a) only speaks to licenses, not applications. Given this, Apple Nine asserted that the Board had no legal basis for counting applications in delegated status as the equivalent of an issued licenses when calculating the number of available licenses. Based on this statutory language, Apple Nine claimed that the Board was obligated to keep approving incoming applications (assuming those were otherwise acceptable) until such time as four of the "delegated status" applicants had completed the steps required to get their licenses issued by AMCO's director.[28]

Apple Nine acknowledged this would result in an unpredictable competition where applicants in delegated status were pitted against each other in a race to the administrative finish line. While recognizing the challenges this would present for applicants, Apple Nine portrayed this as an advantageous and reasonable interpretation of the statutory language since it would encourage applicants to quickly take the steps required to get their licenses issued.[29]

Apple Nine's sole focus was the method by which the Board calculates the number of available licenses under AS 04.11.400(a). Consistent with this, Apple Nine advised that if its application were approved, it would request that it be placed in delegated status while undertaking construction of its liquor store and securing necessary approvals from municipal officials.[30]

Board members did not concur with Apple Nine's proposed interpretation of the statute. As Board chair Dana Walukiewicz explained, reasonable business operators (along with their lenders) would be unwilling to pursue construction of new facilities without prior assurances of obtaining a license at the conclusion of the administrative process. He also noted that the competition between applicants advocated by Apple Nine would be a significant departure from the Board's past practice.[31]

---

27 AMCO 000204 – 000205.
28 AMCO 000164 at 30:20 – 38:20, 47:10 – 50:45.
29 *Id.*
30 AMCO 000164 at 37:20 – 38:00.
31 AMCO 000164 at 38:30 – 40:15.

Following this discussion, the Board voted to approve one of the applications submitted by 49th State, which was then placed into delegated status. Apple Nine's application was then denied under AS 04.11.320(a)(7) based upon the Board's conclusion that no other package store licenses were available within the Municipality.[32] This appeal followed.

## IV. Discussion

Before addressing the legal questions that Apple Nine has raised here, it is important to note the aspects of the Board's procedures that it is *not* challenging. Specifically, Apple Nine is *not* challenging the Board's procedure of approving license applications and then placing them in delegated status. Nor does Apple Nine contend that the Board's policy of considering license applications in the order they are received violates applicable laws or regulations. Instead, three narrow questions of law are presented by the parties here:

(1) Is the Board prohibited from counting applications in delegated status as the functional equivalent of issued licenses when calculating the number of licenses available under of AS 11.41.400(a)?

(2) Was the Board obligated to treat the applications submitted by Apple Nine and 49th State as "competing applications" under 3 AAC 305.100?

(3) Is Apple Nine entitled to reconsideration of the applications at issue here since the Board acted before Municipal officials had been given a full 60 days in which to submit protests?

For the reasons detailed below, the answer to all three of these questions is "no."

### *A. Nothing in the plain text of AS 04.11.400(a) requires the Board to use a specific methodology when calculating the number of available licenses.*

In straightforward fashion, AS 11.41.400(a) prohibits the Board from issuing a new package store license inside a unified municipality if "after the issuance" there would be "more than one license . . . for each 3,000 population or fraction of that population." Since the word "application" does not appear in the text of this statute, Apple Nine contends that it flatly prohibits the Board from counting anything other than issued and active licenses when determining if an incoming license application must be denied due to the lack of any available licenses. Instead, Apple Nine claims the Board has a statutory obligation to keep approving otherwise acceptable applications until such time as all available licenses of that type have been issued. Apple Nine views this interpretation as best fulfilling a purported legislative goal of

[32] AMCO 000162.

having licenses expeditiously issued until no more are available.[33] The fact delegated status applications have been approved by the Board, and will presumably lead to the issuance of licenses in the future, is completely irrelevant under Apple Nine's analysis.

Whether the language of AS 04.11.400(a) supports Apple Nine's position is a question that must be resolved through statutory interpretation. When interpreting statutes, the overriding goal is to "utilize reason, practicality, and common sense, taking into account the plain meaning and purpose of the law as well as the intent of the drafters."[34] The proper interpretation of a statute is one that "gives meaning to every part of the statute without producing harsh and unrealistic results."[35] Whenever possible, "all sections of an act are to be construed together so that all have meaning and no section conflicts with another."[36]

In addition to these general rules, the interpretation of statutes within Title 4 must also take into account the broad authority the legislature has delegated to the Board to "control the manufacture, barter, possession, and sale of alcoholic beverages in the state."[37] With this, the legislature specifically authorized the Board to adopt regulations governing the "procedures for the issuance. . . of licenses, endorsements, and permits."[38] As the Alaska Supreme Court has noted, when it comes to the sale and distribution of alcoholic beverages, "[t]he board's authority in this field is complete."[39] Consistent with this approach, a notable aspect of Title 4 is that when the legislature wants the Board to follow specific procedures in fulfilling its assigned duties, these are typically set out in clear and unambiguous manner.[40]

Analysis of AS 04.11.400(a) must begin by "ascertaining . . . whether the language of the statute is clear or arguably ambiguous."[41] This is an essential first step under Alaska law, which utilizes a sliding-scale approach where "the plainer the statutory language is, the more convincing the evidence of contrary legislative purpose or intent must be."[42] When a statute's meaning

---

33 Apple Nine Opening Brief at 12 (without citing to any authority for the proposition, Apple Nine asserts that the "Alaska legislature wants alcohol licenses issued until none remain").

34 *Marathon Oil Co. v. State, Dep't of Nat. Res*., 254 P.3d 1078, 1082 (Alaska 2011) (citations omitted).

35 *Jones v. Short*, 696 P.2d 665, 667 (Alaska 1985) (citations omitted).

36 *In re Hutchinson's Estate*, 577 P.2d 1074, 1075 (Alaska 1978).

37 AS 04.06.090(a).

38 AS 04.06.100(b)(2).

39 *Boehl v. Sabre Jet Room, Inc*., 349 P.2d 585, 588 (Alaska 1960).

40 *See, e.g.,* AS 04.11.510 (procedures for approving applications for new licenses or transfers of existing ones); AS 04.11.535 (procedures applicable to license revocation and suspension proceedings); AS 04.11.480 (procedures for local government protests).

41 *Henrichs v. Chugach Alaska Corp*., 260 P.3d 1036, 1041 (Alaska 2011); *FDIC v. Laidlaw Transit, Inc*., 21 P.3d 344, 351 (Alaska 2001).

42 *State v. Fyfe* , 370 P.3d 1092, 1095 (Alaska 2016).

appears clear and unambiguous, "the party asserting a different meaning bears a correspondingly heavy burden of demonstrating contrary legislative intent."[43]

Apple Nine reads AS 04.11.400(a) as obligating the Board to follow a very specific procedure where every new license application that otherwise meets statutory and regulatory criteria must be approved until such time as the last available license is issued. However, this is not actually supported by the sparse wording of the statute. Instead, all the statute does is forbid the Board from issuing more than a given number of certain license types within a unified municipality – nothing more, nothing less. In this respect the statute operates in the same fashion as a highway speed limit. While a speed limit clearly caps how fast motorists are allowed to drive, it is silent as to the type of electronic or mechanical device they must utilize to measure their speed. In the same manner, AS 04.11.400(a) limits the number of certain license types the Board may issue without specifying the procedures it should utilize to ensure compliance with those limits.

Other portions of AS 04.11.400 demonstrate that when the legislature wants to limit the Board's procedural discretion, it will do so in clear and unambiguous manner. For example, in subsection (j), the legislature defined how the Board will determine the population of a given area. In subsection (n), the legislature defined how the word "radius" should be interpreted where it appears in the statute. In subsections (f) and (k) the legislature provided detailed guidance as to when, and how, the Board may allow certain categories of licensees to transfer their licensed location notwithstanding the caps set out in other portions of the statute. In a statutory context such as this, it is difficult to construe the simple text of AS 04.11.400(a) as requiring the Board to utilize any specific methodology for calculating the number of available licenses. This legislative silence should not be regarded as surprising or noteworthy. There is simply no need for a legislative body to address every conceivable procedural detail when it has created and expressly empowered a regulatory body to deal with such matters.[44]

Since the plain text of AS 04.11.400(a) does not require the Board to follow any particular method when calculating the number of available licenses, Apple Nine's proposed interpretation

---

[43] *State v. Planned Parenthood of the Great Northwest*., 436 P.3d 984, 992 (Alaska 2019)

[44] *See generally Matanuska-Susitna Borough v. Hammond*, 726 P.2d 166, 168 (Alaska 1986) (agencies have authority to interpret statutory terms the legislature chose not to define); *Bradshaw v. State, Dep't of Admin., Div. of Motor Vehicles,* 224 P.3d 118, 122 (Alaska 2010) (same).

of the statute must be rejected unless it can meet the "correspondingly heavy burden of demonstrating contrary legislative intent."[45]

*B. The wording of past alcohol control statutes does not control the interpretation of AS 04.11.400(a).*

Apple Nine claims the evolution of Alaska's alcohol control laws reveals a specific intent on the legislature's part to control how the Board counts the number of available licenses under AS 04.11.400(a).[46] Some brief historical background is required to understand the flaws in this argument.

Post-prohibition efforts to regulate the sale of alcohol in Alaska began in 1933 with territorial statutes creating a "Board of Liquor Control" that was tasked with regulating the manufacture and sale of alcoholic beverages.[47] This Board was abolished in in 1953, but was later reconstituted by the Territorial Legislature in 1957 as part of package of laws that included ACLA § 35-4-13, which provides in pertinent part:

> No application for a license shall be approved . . . for any location within an incorporated city and not licensed at the time of application where the total of licensed premises in the aggregate at one time would exceed one license of each type for each 1,500 population of fraction thereof within such city[.][48]

This statute was carried over into Title 4 of the newly created Alaska Statutes following statehood, with the powers of the Board of Liquor Control being transferred to a newly created Alcoholic Beverage Control Board in 1959.[49]

In 1980, the legislature again rewrote Alaska's alcohol control laws. In doing so the legislature enacted AS 04.11.400(a), which has not been modified in a manner meaningful to this dispute through the present.[50] In comparing the 1957 statute to the current language of AS 04.11.400(a), Apple Nine attaches great significance to the fact the earlier statute used the term "application for a license," while the current statute does not. Apple Nine views this as proof positive that when the legislature was enacting AS 04.11.400(a) back in 1980, it did so with the very specific intent of preventing the Board from counting anything other than fully issued licenses when calculating the number of available licenses that remained. Apple Nine offers

---

45 *Planned Parenthood*, 436 P.3d at 992.
46 Apple Nine Opening Brief at 13 – 15.
47 *See Sabre Jet*, 349 P.2d at 588-89, which provides an interesting summary of Alaska's pre-statehood alcohol control laws.
48 Exhibit B to Apple Nine's Opening Memorandum.
49 *Sabre Jet*, 349 P.2d at 589.
50 SLA 1980, ch. 131, § 2.

nothing further in the way of legislative history, nor any judicial interpretations of these statutes, to further support its position.

The biggest problem with Apple Nine's argument on this point is that the differences between the two statutes are much more grammatical than they are substantive. In the absence of specific legislative history or judicial authority to the contrary, there is no meaningful distinction between an earlier statute which states that "no application for a license will be approved" and a later statute written decades later which provides that "a new license may not be issued." These are just slightly different ways of communicating the same concept – the Board will not issue more licenses than is permitted by law. Apple Nine does not offer anything to suggest that the legislature had cause to attach any significance to the slight differences between the 1958 and 1980 statutes. As one leading legal commentator has observed, in this type of context "it is unrealistic to assume that a legislature has in mind all prior acts relating to the same subject whenever it enacts a new statute" absent some indication to the contrary.[51]

Apple Nine's argument also fails to account for the fact ACLA § 35-4-13 was enacted as part of a much simpler regulatory scheme that bears little resemblance to the substantive and procedural requirements the legislature later adopted in Title 4. A careful reading of the older statute reveals a charmingly antiquated process where an applicant presented the Liquor Control Board with an application and a recommendation from the city in question – along with "five references . . . as to the integrity of the applicant." The applicant then appeared at a hearing where "the Board shall consider the application . . . and give its judgment which shall be final."[52] To the extent there was any lapse of time between the Liquor Control Board's approval of a license, and the later issuance of that license, it is not referenced in the materials Apple Nine submitted here. Current license applicants can only dream of a process so informal and abbreviated as that outlined by ACLA § 35-4-13.

In support of its argument here, Apple Nine asserts that the Board's interpretation of AS 04.11.400(a) should begin with ACLA § 35-4-13 and from there "give effect to the legislature's clear intent to exclude terms or phrases from later versions of the same [statute]."[53] As authority for its position, Apple Nine cites *Roberge v. ASRC Constr. Holding Co.*[54] In that case the Alaska Supreme Court discussed a rule of statutory interpretation with the Latin title of *expressio unius*

---

51 2B Sutherland Statutory Construction § 51:1 (7th ed.).
52 Apple Nine Opening Brief, Exhibit B.
53 Apple Nine Opening Brief at 16.
54 503 P.3d 102, 109 (Alaska 2022).

*est exclusio alterius*, which is the legalistic way of expressing the common sense notion that "where certain things are designated in a statute, all omissions should be understood as exclusions."[55] Based on this interpretive rule, Apple Nine contends that meaningful conclusions can be drawn the fact the statute passed by the Territorial Legislature in 1957 included the word "application," while the statute enacted by the Alaska Legislature over two decades later did not.

What Apple Nine fails to note, however, is that when the rule of *expressio unius est exclusio alterius* "is used to contrast two sets of legislative language, it is usually in the context of two sections of the same statute or closely related statutes, *not two completely separate statutory schemes*."[56] In particular, the rule offers little meaningful guidance when "when applied to two acts passed far apart in time."[57] This means that Apple Nine's reliance on the holding of *Roberge* and the rule of *expressio unius est exclusio alterius* is misplaced here.

Accordingly, little weight can be attached to the fact the Territorial Legislature in 1957 chose slightly different words than the Alaska Legislature did in 1980 when restricting the number of certain license types that the Board can permissibly issue.

### *C. Apple Nine's Proposed Interpretation of AS 04.11.400(a) Would Lead to "Glaringly Absurd Results"*

Further detracting from Apple Nine's proposed interpretation of AS 11.41.400(a) is the chaotic process for issuing new licenses that would ensue as a result. As Apple Nine candidly acknowledged before the Board, under its interpretation of the statute the process for issuing new licenses would be transformed into an unpredictable "free for all" where applicants in delegated status raced each other to the administrative finish line.[58] To win this race, applicants would be motivated to construct only the barest possible facilities in a mad scramble to get them completed and ready for inspection before their competitors could do the same. Related proceedings before local government bodies would become equally feverish competitions as applicants worked to quickly obtain necessary approvals and permits while simultaneously trying to block competing applicants from doing the same. Any business that wanted to open a well-designed and carefully constructed facility would have little hope of winning this race, even if it could raise the business

---

55 *Id.* at 108-09.

56 *Alaska State Commission for Human Rights v. Anderson*, 426 P.3d 956, 964 (Alaska 2018) (emphasis added), citing *Emory v. United States*, 19 Ct. Cl. 254, 269 (Ct. Cl. 1884) ("The different phraseology of different statutes does not give occasion for the application of the maxim *expressio unius exclusio alterius*....").

57 *Anderson* at 964. The Court additionally cited *Moreno Rios v. United States*, 256 F.2d 68, 71 (1st Cir. 1958), for the proposition that the rule "is pretty weak when applied to acts of Congress enacted at widely separated times").

58 AMCO 000164 at 37:30 – 38:30.

capital required to pursue such an uncertain venture in the first place. There is little about this proposed process that serves the public interest.

While conceding that such a competitive process would present significant challenges for license applicants, Apple Nine argues the statute must be construed this way under the general doctrine that businesses should not be allowed to take up Title 4 licenses that they fail to operate.[59] As for applicants who made a substantial investment in facilities after having a license approved, only to lose out to competitors able to reach the finish line first, Apple Nine offers the scant consolation that they can simply buy an existing license from somebody else – which of course presumes there is a pool of readily transferable licenses that can be quickly obtained at minimal cost by disappointed applicants.[60]

As the Alaska Supreme Court has frequently noted, statutes should be construed "so as to avoid results glaringly absurd."[61] Here, there is little room for doubting that the frantic race to the administrative finish line proposed by Apple Nine qualifies as such. While Apple Nine correctly notes that the Alaska Supreme Court has previously recognized that "that the legislature intended to prevent a licensee from holding onto one of a limited number of licenses without operating it," it went on to add an important proviso – "at least beyond a reasonable time necessary to construct or otherwise establish premises."[62] This effectively rebuts Apple Nine's argument that AS 04.11.400(a) must be interpreted and applied in a manner that prioritizes the immediate issuance of licenses over all other considerations.[63]

Beyond the purported need to have every available license issued as expeditiously as possible, Apple Nine offers no meaningful justification for imposing such a chaotic and unpredictable administrative process on businesses seeking licenses whose numbers are capped under AS 04.11.400(a). The minimal benefit of Apple Nine's proposed approach falls well short of justifying the absurd results that would inevitably ensue from it.

---

59 Apple Nine Opening Brief at 17.

60 Apple Nine Reply in Support of Motion for Summary Adjudication at 3-4.

61 *Underwater Const., Inc. v. Shirley*, 884 P.2d 150, 155 n.21 (Alaska 1994). *See also Alaska Railrod Corp. v. Native Village of Eklutna*, 142 P.3d 1192, 1206 (Alaska 2006) ("statutes should not be interpreted to reach absurd results").

62 *Rollins v. State, Dep't of Revenue, Alcoholic Beverage Control Bd.*, 991 P.2d 202, 209 (Alaska 1999)

63 Aside from its citation to *Rollins*, Apple Nine does not offer any support for its repeated contention that the legislature wants every possible Title 4 license issued as quickly as possible.

*D. The legislative structure of Title 4 does not fit with Apple Nine's interpretation of AS 04.11.400(a).*

An additional justification for rejecting Apple Nine's interpretation of AS 04.11.400(a) is the way it fails to fit within the overall structure of Title 4.[64] The starting point for this analysis is AS 04.11.510(a), which requires the Board to "grant or deny an application within 90 days of receipt." The statute goes on to address specific procedures the Board must follow if it denies a license application.[65] The next statute that comes into play here is AS 04.11.320(a)(7), which provides that a license application "shall be denied if . . . issuance of the license is prohibited under AS 04.11.400(a)." While these statutes create a clear road map for the Board to follow when denying a license based on a determination that no more licenses of that type are available, conspicuously absent from Title 4 are any provisions explaining how the Board should rescind the prior approval of a license application due to the intervening issuance of all available licenses. Similarly, while the legislature made a point of noting that AMCO's director can be delegated authority to "issue, renew, transfer, suspend or revoke all licenses . . . at the direction of the board," there is nothing to indicate that the director can either rescind the Board's prior approval of a license application, or be delegated the authority to do so.[66]

Even if one assumes that the Board could fill these statutory gaps through regulations, this cannot disguise the fact that nothing in Title 4 directly or impliedly references the type of highly competitive licensing process that Apple Nine proposes here. To the contrary, the structure and wording of the relevant statutes supports the conclusion that the Board must decide within 90 days of an application being filed whether issuance of the requested license – an administrative event that will not occur until some indeterminate point in the future – would violate the caps set by the legislature.

This sharply contrasts with the approach proposed by Apple Nine, which would require the Board to approve incoming license applications without knowing whether intervening events would make the future issuance of those licenses a prohibited act under AS 04.11.400(a). If this was the approach the legislature truly wanted the Board to follow, then the absence of any statutory language directly authorizing this type of "contingent approval" (or otherwise setting out procedures for nullifying the approved applications of losing competitors) would be strikingly odd given the overall structure of Title 4.

---

64 *See Underwater Const.*, 884 P.2d at 155 (noting that statutes on the same subject matter that are enacted at the same time should be construed in light of one another).

65 AS 04.11.510(b).

66 AS 04.06.080.

*E. The public policy concerns raised by Apple Nine do not justify its proposed interpretation of the statute.*

Apple Nine further contends that its proposed interpretation of AS 04.11.400(a) will serve the public good by preventing the Board from allowing delegated status applicants an unreasonable amount of time in which to construct their facilities and get their licenses operational.[67] As was noted during the Board's consideration of Apple Nine's application, there are no statutes or regulations capping the length of time that an application can linger in delegated status.[68] The fact two of the delegated status applications at issue here were approved over two years ago offers at least some support for Apple Nine's concern on this point.[69]

In response, AMCO notes that the Board monitors delegated status applications to ensure that applicants take timely steps towards getting their licenses issued.[70] And as Board members noted during the June 25 meeting, it is not uncommon for the construction of new establishments to take two or more years to complete.[71]

Ultimately, however, this is a policy argument that cannot be resolved by implying requirements into AS 04.11.400(a) that are not supported by the plain language of the statute, clear legislative intent, or a separate provision within Title 4. As the Alaska Supreme Court has noted, a statute cannot be interpreted as imposing a duty upon an administrative agency "simply because it might be a good idea to do so."[72] Thus, even if it was arguably prudent for the Board to adopt a policy or regulation limiting how long a license application can remain in delegated status, this fails to justify an interpretation of AS 04.11.400(a) that is not supported by the language of the statute.

*F. The Board has the authority to interpret of AS 04.11.400(a) and develop procedures consistent with that interpretation.*

Under accepted principles of administrative law, in situations where an agency must apply a statute for which there is neither legislative history, nor judicial decisions pointing to a specific interpretation, the agency may adopt policies and procedures consistent with its independent

---

67 Apple Nine Opening Brief at 17.
68 AMCO 000164 at 56:30 – 57:00.
69 AMCO 000204.
70 AMCO 000164 at 40:30 – 41:00.
71 *Id.* at 57:30 – 58:00. When considering the steps an applicant must complete for a new establishment before the first nail can be driven (such as obtaining local zoning approvals, commissioning a construction ready design, getting necessary building permits, and ordering specialized equipment) this passage of time appears much more reasonable.
72 *Pruitt v. Office of Lieutenant Governor*, 498 P.3d 591, 603 (Alaska 2021).

interpretation of the statute.[73] If this interpretation "implicates agency expertise or the determination of fundamental policies within the scope of the agency's statutory functions," courts will defer to the agency's interpretation "so long as it is reasonable."[74] If no agency expertise is involved in the interpretation, courts will apply the "substitution of judgment" standard in reviewing it.[75] These rules set the parameters of the Board's discretion here.

Here, the record shows that in denying Apple Nine's proposed interpretation of AS 04.11.400(a), the Board drew upon its particularized expertise to make a policy determination that was clearly within the scope of its statutory functions. The reasons offered by Board members in rejecting Apple Nine's interpretation of the statute were reasonable and logical. There is nothing in the record suggesting that the Board acted improperly, or that it lacked a reasonable basis for adopting a different interpretation of the statute.

The issues presented here are analogous in key respects to those in *Matanuska-Susitna Borough v. Hammond*, where a borough challenged a state agency's interpretation of the word "population" as that appeared in statutes concerning revenue sharing and tax limitation.[76] In upholding the agency's interpretation, the Court noted that in a statutory scheme where the legislature has provided "explicit definitions of difficult terms where it thought them desirable or necessary," it was reasonable to infer that the legislature deliberately left words such as "population" undefined so that the agency could "utilize its expertise to decide which population groups can feasibly and fairly be counted."[77] The Court went on to uphold the agency's interpretation of "population" under the reasonable basis standard, finding that it was consistent with the broad discretion the legislature had delegated to the agency.[78]

Given the absence of any statutory text, legislative history, or policy concerns supporting Apple Nine's proposed reading of AS 04.11.400(a), the Board was properly acting within the scope of its delegated discretion when it chose to count delegated status applications as the equivalent of issued licenses when calculating the number of available licenses. Consistent with the holding of *Matanuska-Susitna Borough v. Hammond*, there is nothing in the record indicating that this was an unreasonable exercise of the broad authority which the legislature delegated to the Board under Title 4.

---

73 *Bradshaw*, 224 P.3d at 122.
74 *Marathon Oil Co*., 254 P.3d at 1082; *Teck Am. Inc. v. Valhalla Mining*, LLC, 528 P.3d 30, 34 (Alaska 2023).
75 *City of Valdez v. State*, 372 P.3d 240, 246 (Alaska 2016).
76 726 P.2d at 168.
77 *Id.* at 175-76.
78 *Id.* at 182.

*G. Concluding Thoughts on the Proper Interpretation of AS 04.11.400(a).*

It is important to note that Apple Nine has not challenged any of the Board regulations that apply in this context, aside from alleging that its proposed interpretation of AS 04.11.400(a) would take precedence over them.[79] Accordingly, a detailed analysis of whether those regulations were properly adopted by the Board need not be undertaken here.

Before the Board, Apple Nine suggested that the practice of approving applications and placing them in delegated status conflicts with AS 04.11.330(a)(3), which requires licensees who are not operating their establishments to seek waivers of the statutory operating requirement.[80] However, Apple Nine is not challenging the Board's current practice with delegated status applications – which makes sense given Apple Nine's admitted intent to take advantage of that process if its application was approved by the Board. This eliminates the need for any detailed analysis of Apple Nine's concerns on this point.

To summarize the various factor analyzed above, Apple Nine's proposed interpretation of AS 04.11.400(a) is unsupported by the plain text of the statute and accepted principles of statutory interpretation. It would completely scramble the Board's current process for approving and issuing new licenses whose numbers are controlled under the statute, with no corresponding benefit save for getting all available licenses issued as quickly as possible – something that has not been recognized by either the Board or the Alaska Supreme Court as an overriding goal within Title 4. To the extent public policy considerations are relevant here, those weigh against Apple Nine's proposed interpretation of the statute.

For these reasons, AS 04.11.400(a) cannot be construed as prohibiting the Board's current methodology for calculating the number of available licenses when determining if an application must be denied under AS 04.11.320(a)(7). This is instead a situation where the Board has the authority to interpret and apply the statute in accordance with its particular expertise in the field of Title 4 licensing. Since there is nothing in the record to indicate that the procedure selected by the Board was based on faulty reasoning or improper motives, it should accordingly be affirmed here.

*H. The Board Correctly Determined that the Applications Submitted by Apple Nine and 49th State Were Not "Competing" for Purposes of 3 AAC.305.100*

Apple Nine additionally contends that the Board should have treated its application, and the application submitted by 49th State, as "competing applications" under 3 AAC 305.100, which provides in relevant part:

---

79 Apple Nine Opposition to AMCO Motion for Summary Adjudication at 5.

80 AMCO 000164 at 34:30 – 35:00.

> (a) If the board receives an application for a license that requires denial because it would exceed the amount of licenses available for that license type under AS 04.11.400(a), the application will be considered "mutually exclusive."
>
> (b) The board will consider, and grant or deny, mutually exclusive applications in the order in which they are received. However, all "competing applications," as defined under (c) of this section, will be treated as if they were received at the same time, and will be considered together.
>
> (c) For the purpose of this section, competing applications are those mutually exclusive applications for licenses, with or without an endorsement, that
>
> > (1) inside a unified municipality, organized borough, or incorporated city;
> >
> > * * * * *
> >
> > > (B) are for the last available license . . . and are received during the 30-day period beginning on the date the board received the first application for the license . . . .

Fortunately, the precise meaning of the arguably ambiguous phrase "mutually exclusive applications" does not have to be analyzed in depth here since AMCO has conceded that the applications of Apple Nine and 49th State should be treated as mutually exclusive.[81] Thus, if the Board were to find that Apple Nine's application was received by the Board within 30 days of when 49th State's application was received, then their applications would be "competing applications." In that event, the Board would be obligated to choose which applicant would receive the last available license under the standards set out in 3 AAC 304.105.

There is no dispute that Apple Nine's application was submitted to the Board on April 19, 2024.[82] Since this was 71 days after 49th State's applications were filed with the Board on February 8, 2024, AMCO contends that Apple Nine's application cannot be regarded as "completing" for purposes of this regulation.[83]

For its part, Apple Nine argues that the date these applications were filed with the Board is wholly irrelevant. Instead, it claims the date of receipt for purposes of 3 AAC 304.100(c)(1)(B) was June 18, 2024, which is when the Board sent identical letters to Apple Nine and 49th State advising that their applications "appear to be in order" and would be placed on the Board's agenda for consideration.[84] Apple Nine claims this interpretation is required to prevent

---

81 AMCO Response to Apple Nine Motion for Summary Adjudication at 21 (noting that "Apple Nine's application is properly considered mutually exclusive").

82 AMCO 000091 – 102.

83 AMCO Response to Apple Nine Motion for Summary Adjudication at 21 – 23.

84 Apple Nine Opening Brief at 20 – 21.

unscrupulous applicants from filing incomplete applications – which are later supplemented before the Board takes action on them – as a means of gaining priority over competing applicants.[85]

This raises the question of when applications are "received" as that term is used in 3 AAC 305.100. Since regulations are interpreted in the same manner as statutes, analysis begins by evaluating 3 AAC 305.100 to determine if its plain meaning is ascertainable from the text of the regulation itself.[86] If there is no ambiguity in the regulation, the plain meaning controls unless the regulation's legislative history points to a different interpretation.[87] Additionally, an agency's regulations must be interpreted in a manner consistent with the statutes on which those regulations are based.[88] Alaska law provides that courts will uphold an agency's interpretation of its own regulation "unless plainly erroneous or inconsistent with the regulation."[89]

Here, the only plausible interpretation of 3 AAC 305.100 is that applications are "received" on the date that they are filed with the Board. Nothing in the regulation's text even impliedly suggests that AMCO staff must review an application for completeness before it is deemed "received." Indeed, within the text of the regulation the Board could easily have inserted language specifying that such a review was required before an application was deemed to have been "received," but it did not. Moreover, such an implied requirement would defeat the regulation's clear intent of creating a system of "first in time, first in right" for new license applications except in the special circumstance where multiple applications for the last available license are received by the Board within a 30-day period.

Further support for this interpretation is provided by AS 04.11.510(a), which requires the Board to grant or deny an application for a new license within "90 days of receipt of the application at the main office of the board." Since the deadline for the Board to take final action on an application is calculated from the date it is filed by the applicant, as a matter of consistency

---

85 Reply in Support of Apple Nine Motion for Summary Adjudication at 5 – 6 (claiming that AMCO's interpretation of the regulation "would permit any would-be applicant to file anything with AMCO to be first in line under 3 AAC 305.100").

86 *Romann v. State, Dep't of Transp. & Pub. Facilities*, 991 P.2d 186, 191 (Alaska 1999) (applying sliding scale analysis to interpretation of regulations); *Tea ex rel. A.T.*, 278 P.3d 1262, 1265 n.17 (Alaska 2012) (same).

87 While the phrase "legislative history" can be confusing in a regulatory context, the Administrative Procedure Act requires agencies to prepare documents explaining the rationale for adopting or modifying a regulation. They must also maintain a record of related public comments. *See* AS 44.62.190 and AS 44.62.215. These are typically the materials relied upon for establishing a regulation's "legislative history."

88 *Davis Wright Tremaine LLP v. State, Dep't of Admin*., 324 P.3d 293, 299 (Alaska 2014).

89 *Trustees for Alaska v. State, Dep't of Nat. Res*., 795 P.2d 805, 812 (Alaska 1990).

it makes sense for the 30-day deadline established by 3 AAC 305.100(c)(1)(B) to begin at this same point.

Apple Nine does not offer any contrary legislative history, nor does it cite any statutes within Title 4 supporting its proposed interpretation of the regulation. This leaves Apple Nine's contention that its interpretation must be adopted to prevent applicants from filing incomplete applications as a means of gaining priority over their competitors. As a general rule, however, courts have held that hypothetical scenarios such as this do not overcome the plain meaning of a statute or regulation.[90] Additionally, Apple Nine's concerns are based on the debatable premise that the Board would not take action to enforce the requirements of AS 04.11.260 (which details the information that must be provided with an application for a new license) and 3 AAC 304.045 (which lists additional information and documents that applicants must provide) to prevent the type of gamesmanship that Apple Nine fears.

While it is possible that the Board might someday face a scenario where an applicant files an incomplete application in hopes of gaining priority under 3 AAC 305.100, there is no allegation that 49th State engaged in such trickery here. Nor has Apple Nine identified any statutory or regulatory provision that would prevent the Board from responding appropriately should this scenario arise in the future. Accordingly, the Board acted properly when, in conformity with the plain text 3 AAC 305.100(c)(1)(B), it chose not to treat Apple Nine's application as "competing" with those filed by 49th State.

*I. The Board substantially complied with the requirements of AS 04.11.510(a).*

Apple Nine's final challenge to the Board's denial of its application rests on AS 04.11.510(a), which provides:

> Unless a legal action relating to the license, applicant, or premises to be licensed is pending, the Board shall decide whether to grant or deny an application within 90 days of receipt of the application at the main office of the board. *However, the decision may not be made before the time allowed for protest under AS 04.11.480 has elapsed, unless waived by the municipality*. (Emphasis added.)[91]

Under AS 04.11.480(a), a "local governing body" must protest a license application "within 60 days of the date of the notice of filing of the application." To ensure that this protest

---

[90] *Truck Ins. Exch. v. Kaiser Gypsum Co., Inc*., 602 U.S. 268, 284 (2024) (noting the general rule that a "parade of horribles argument" cannot overcome the plain language of a statute); *Pruitt*, 498 P.3d at 603 (refusing to modify a "plain-text reading" of a statute based on hypothetical risks that might result).

[91] The Board has adopted a related regulation at 3 AAC 305.090 which provides that the Board "will not grant or deny the application before the time allowed for a local governing body to file a protest . . . unless the local governing body waives its right to protest."

period expires within the 90-day window the Board has to act on an application, AS 04.11.520 provides that notice of an incoming application will be provided to the local governing body within 10 business days of the Board receiving the application.

Unfortunately, the first months of 2024 were a particularly frantic period for AMCO due to a legislative rewrite of Title 4 that took effect on January 1, 2024. While working diligently to adopt new regulations and procedures compliant with the revised Title 4, AMCO staff fell behind in the review and processing of new license applications.[92] Because of this, the Municipality of Anchorage was not provided notice of the applications filed by Apple Nine and 49th State until June 18, 2024.[93] As a result, when these applications were placed on the Board's agenda for consideration during a regular meeting held on June 25, 2024, the 60-day protest period had not yet passed. This was duly noted in the Board's agenda for the meeting, which listed "local governing body response" as a "pending item" for these applications.[94]

Apple Nine now argues that the Board's approval of 49th State's application, and the denial of its application, were actions taken in violation of AS 04.11.510(a). The relief Apple Nine seeks as a result is a reversal and reconsideration of both decisions.[95] While AMCO concedes that the Board's actions did not strictly comply with the requirements set out in the statute, it claims this is a situation covered by the doctrine of substantial compliance. This legal doctrine applies in situations where a party's actions fall short of strict compliance with statutory or regulatory requirements, but nevertheless provide "the same protection that strict compliance would offer."[96]

There are three considerations worth mentioning before analyzing the extent to which the substantial compliance doctrine can be applied here. First, Apple Nine had ample opportunity during the Board's meeting on June 25 to raise any concerns it had regarding the requirements of AS 04.11.510(a).[97] Instead of calling the Board's attention to this issue, Apple Nine chose to remain silent. From this, it is reasonable to infer that if Apple Nine had gotten its application approved, it would not have returned to the Board asking for that decision to be rescinded because the protest period had not run. Thus, to the extent the Board erred in considering these applications when it did, Apple Nine was arguably complicit in that.

---

92 AMCO 003923.
93 AMCO 000158 (Apple Nine); 003908 (49th State).
94 AMCO 000167 – 168.
95 Apple Nine Opening Brief at 21 – 22.
96 *See Jones v. Short*, 696 P.2d 665, 667 n. 10 (Alaska 1985).
97 Apple Nine Opening Brief at 7 (noting that "the Board agenda made clear" that none of the applications had "cleared the Muni's 60-day protest period").

Second, regardless of how this issue is resolved there is no scenario where Apple Nine ultimately benefits as a result. As covered in the prior discussion of 3 AAC 304.100, 49th State was first in line for the last available license because its application was filed over 30 days before Apple Nine's application. There is nothing in Title 4 or the Board's regulations suggesting that a procedural error on the Board's part during the license approval process can strip 49th State of the priority it is afforded under 3 AAC 304.100.

Third, since the June 25 meeting the Municipality has informed AMCO that it will not be protesting 49th State's license application.[98] Given this development, reconsideration of that application on account of concerns regarding the 60-day protest period would seem a pointless procedural exercise.

This background helps guide analysis of AMCO's contention that the Board's failure to strictly comply with AS 04.11.510(a) should be excused under the doctrine of substantial compliance. The Alaska Supreme Court has summarized the doctrine as follows:

> We have adopted the doctrine of substantial compliance in order to carry out legislative intent and give meaning to all parts of a statute without producing harsh and unrealistic results. When applying the doctrine, we consider the purpose served by the statutory requirements because substantial compliance involves conduct which falls short of strict compliance . . . but which affords the public the same protection that strict compliance would offer.[99]

In reviewing the purpose served by the statutory language at issue here, the clear legislative goal was to prevent the Board from issuing licenses before local governments were allowed 60 days in which to pursue a protest. If a license were to issue immediately following the Board's approval of an application, then strict compliance with the statute would be required. Here, however, the Board approved 49th State's application subject to delegation – which meant (among other things) that AMCO's director lacked authority to issue a license before the protest period had expired. Consistent with this, the Board has adopted a regulation providing that "final action" will not be taken on a license until the protest period has expired.[100] While this process falls short of strict compliance with AS 04.11.510(a), it fulfills the legislature's goal of postponing the issuance of new licenses until local governments have been given 60 days in which to submit protests. There is nothing in record or the parties' briefing to suggest that Apple Nine's rights were negatively impacted by this process.

---

98 AMCO 003966 – 968.

99 *N. Slope Borough v. State*, 484 P.3d 106, 118–19 (Alaska 2021) (internal quotes omitted).

100 3 AAC 305.085(b)(1).

What the record does show is that the Board was attempting to make the best of a difficult situation caused by the delayed processing of these applications by AMCO staff. While the Board could have conceivably postponed action on the applications until the protest period had run, this would have arguably conflicted with the accompanying requirement in AS 04.11.510(a) that the Board act on a license application within 90 days. There was no clear way for the Board to strictly comply with the statute's dual mandate that license applications be acted upon within 90 days, but after the 60-day protest period had expired. Given the dilemma it faced, the Board acted in a reasonable manner that appropriately protected the Municipality's protest rights.

For these reasons, this is a situation where it is appropriate to invoke the doctrine of substantial compliance. While the Board failed to follow the strict letter of AS 04.11.510(a), it acted in a manner consistent with the clear legislative purpose of the statute. Accordingly, Apple Nine's request that the Board rescind the actions it took during the June 25 meeting and reconsider the license applications at issue here should be rejected.

## V. Conclusion

For the reasons outlined above, Apple Nine's motion for summary adjudication is DENIED, and AMCO's motion for summary adjudication is GRANTED. Consistent with these rulings, the Board's decision to deny Apple Nine's package store application is AFFIRMED.

DATED: November 5, 2024.

By: _[redacted]
Max Garner
Administrative Law Judge

**Adoption**

The ALCOHOLIC BEVERAGE CONTROL BOARD adopts this decision as final under the authority of AS 44.64.060(e)(l). 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 19th day of November, 2024.

By: [redacted]
Signature

Dena Wojcewicz
Name

Chairman
Title