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5 **SUPERIOR COURT OF WASHINGTON FOR KITTITAS COUNTY**  
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7 **In the Matter of:**  
8 **The Petition of Kittitas County for a**  
9 **Declaratory Order WSLCB No. 01-2017**  
10

No.  
**ORDER ON APPEAL**  
(Proposed)  
11

12 **I. REVIEW BY THE COURT**

- 13 1.1 This matter was set for hearing on \_\_\_\_\_, 2017 at \_\_\_\_\_.  
14 1.2 Kittitas County was represented by NEIL A. CAULKINS, Deputy Prosecuting Attorney.  
15 1.3 The Washington Liquor and Cannabis Board (LCB) was represented by MARY M.  
16 TENNYSON, Sr. Assistant Attorney General.  
17 1.4 The Court has read and considered the pleadings and the certified record in this matter.  
18 1.5 The pleadings considered by the Court are the Petition For Review, the Certificate of  
19 Agency Record and the material attached thereto, Brief of Appellant Kittitas County,  
20 Respondent's Brief, and the Reply Brief of Appellant Kittitas County.  
21 1.6 After considering the above pleadings and after hearing oral argument, the Court  
22 determined that Kittitas County has carried its burden of proof set forth in RCW  
23 34.05.570(3)(d) and (h)-the LCB order on appeal here is an erroneous interpretation of  
24 the law and contrary to agency rules.  
25 1.7 The Court now enters the following Findings of Fact and Conclusions of Law in support  
26 of its decision:

27 **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

- 28 2.1 Kittitas County filed a timely appeal of LCB Order No. 01-2017 in which it alleged the  
29 LCB's practice of ignoring local zoning, and local objections based thereon, while

1 reviewing marijuana license applications was a violation of the Growth Management Act  
2 (GMA).

3 2.2 In the GMA there is the recognition that “state and local government have invested  
4 considerable resources in an act that should serve as the *integrating framework* for other  
5 land use related laws...” WAC 365-196-010(1)(j).

6 2.3 A part of that integrating framework is the requirement that “applications for both state  
7 and local government permits should be processed in a timely and fair manner to ensure  
8 predictability.” RCW 36.70A.020(7).

9 2.4 A part of that integrating framework designed to ensure predictability is the coordination  
10 for “common goals” to benefit “the health, safety, and high quality of life” for the people  
11 of this state. RCW 36.70A.010.

12 2.5 A part of this integrating framework of predictability and common goals is  
13 RCW 36.70A.103, which says “State agencies shall comply with the local comprehensive  
14 plans and development regulations and amendments thereto adopted pursuant to this  
15 chapter . . . .”

16 2.6 No authority exists for the proposition that the LCB’s licensing functions for marijuana  
17 facilities is exempt from this requirement.

18 2.7 A part of this integrating framework of predictability and common goals is  
19 WAC 365-196-530, which provides that the state shall meet local siting and building  
20 requirements when it is a project applicant; that the state will not administer its programs  
21 in a manner that interferes with local government responsibilities; that state programs are  
22 *required* to take into account local GMA regulations – specifically calling out state  
23 permit issuance functions; and that state programs are to be reviewed and altered as local  
24 regulations evolve to achieve “consistency.”

25 2.8 No authority exists for the proposition that LCB’s licensing functions for marijuana  
26 operations are exempt from this “requirement.”

27 2.9 Part of this integrating framework is Ch. 66.08 RCW, where it states that “all provisions  
28 [of that title] shall be liberally construed for the accomplishment of . . . the protection of  
29 the welfare, health, peace, morals, and safety of the people of the state.”  
RCW 66.08.010.

- 1 2.10 Within this integrating framework, the authority of the LCB is to be liberally construed to  
2 enable it to have “full power to do each and every act necessary to the conduct of its  
3 regulatory functions.” RCW 66.08.050(8).
- 4 2.11 This integrating framework to promote predictability and common goals includes  
5 RCW 69.50.331, which provides that the LCB is to take a “comprehensive” review of an  
6 application and that the LCB has discretion to deny a license based on, “without  
7 limitation,” county objections.
- 8 2.12 Those objections are not limited in scope and they are to be liberally construed to give the  
9 LCB “full power” to do everything necessary to its regulatory function.
- 10 2.13 This integrating framework includes WAC 314-55-165, which specifically provides for  
11 county objections that show a detrimental impact to the “safety, health, or welfare of the  
12 community.”
- 13 2.14 This integrating framework includes WAC 314-55-050(17), which specifically states that  
14 a basis for denial is an LCB determination that “the issuance of the license will not be in  
15 the best interest of the welfare, health, or safety of the people of the state.”
- 16 2.15 These provisions specifically related to the LCB are to be liberally construed to give it  
17 full power to accomplish its regulatory functions.
- 18 2.16 This integrating framework includes case law stating that “the purpose of traditional  
19 zoning is to protect the public health, safety, and welfare.” (*Save Our Rural Environment*  
20 *v. Snohomish County*, 99 Wn.2d 363, 369, 662 P.2d 816 (1983)).
- 21 2.17 Following RCW 34.05.530, (1) the county is the only litigant to this matter, it has, and  
22 will continue to have to dedicate resources in the form of code enforcement and  
23 prosecution unnecessarily because, under RCW 36.70A.103 and WAC 365-196-530, the  
24 LCB is to be coordinating with local GMA efforts and yet is acting at cross-purposes  
25 with them, and thereby harming the county; (2) the county is statutorily an entity the LCB  
26 is to consider the interests of (RCW 69.50.331(7)(c); and (3) a decision ordering the LCB  
27 to consider local zoning would cease the occurrence of state licensure and local zoning  
28 being at cross-purposes and there would no longer be the need for municipal expenditure  
29 of code enforcement resources on matters licensed by the LCB.
- 2.18 Kittitas County has proven that it has standing to bring this appeal.

1 2.19 The court has the authority both to issue a declaratory order (as sought by Kittitas  
2 County) of its own and, alternatively, to order the agency to exercise discretion required  
3 by law under RCW 34.05.574(1).

4 2.20 The LCB order on appeal here is a wholly erroneous interpretation of the law and  
5 contrary to agency rules. RCW 34.05.570(3)(d) and (h).

6 **III. ORDER OF THE COURT**

7 The Court having had the opportunity to read and consider the above listed pleadings, and having  
8 made the above Findings of Fact and Conclusions of Law, it is the Order of this Court that:

9 3.1 The LCB is hereby ordered to consider an applicant's compliance with local zoning  
10 during LCB review of an application for a marijuana license or renewal.

11 3.2 The LCB shall include a "YES \_\_\_ NO \_\_\_" box asking if the application complies  
12 with local zoning in the objection form for municipalities to fill out and turn in to the  
13 LCB.

14 3.3 The LCB shall only approve those licenses marked "YES" by the municipality.

15 3.4 The LCB order on appeal here is hereby reversed as being a wholly erroneous  
16 interpretation of the law and contrary to agency rules. RCW 34.05.570(3)(d) and (h).

17  
18 Entered this \_\_\_\_ day of \_\_\_\_\_, 2017.

19  
20 \_\_\_\_\_  
21 JUDGE OF THE ABOVE ENTITLED COURT

22  
23 Presented by:

24  
25 \_\_\_\_\_  
26 NEIL A. CAULKINS, WSBA #31759  
27 Deputy Prosecuting Attorney

28  
29 (PROPOSED) ORDER– p.4

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