



MEMORANDUM

TO: Robert Klein, Chair and
Members of the Board

DATE: January 31, 2016

FROM: Cynthia Franklin
Director, ABC Board

RE: The Summit #5004

This is an application for renewal to which we have received one or more public objections. The stated reason for the objection is that the Summit does not meet the statutory requirements for a recreational site license.

Date objection received	January 19, 2016
Notice given for hearing?	Yes, 20 days notice given in public notice for this meeting
Statutes/Regulations Applicable	AS 04.11.470; AS 04.11.210; AS 04.11.330(a)(6) and (a)(1); AS 04.11.537
Question before the board	<ol style="list-style-type: none">1) The board should consider whether renewal of the license would violate the restrictions pertaining to the particular license under this title (recreational site license 04.11.210) pursuant to AS 04.11.330(a)(6)2) The board should consider, after a review of all relevant information, whether the renewal of the license would be in the best interest of the public pursuant to AS 04.11.330(a)(1)3) The board may use any objection and the reaction of the public and local governing body to the license, as ascertained after holding the hearing under AS 04.11.510(b)(2) to assist in its determination of the answer to question number 2 above.
Board Action	<p>Options:</p> <ol style="list-style-type: none">1) Renew license2) Deny; issue written findings of fact in support of decision per AS 44.62

Alcohol Beverage Control Board
Atwood Building,
550 West 7th Ave., Suite 1600,
Anchorage, AK 99501

January 18, 2016

Re: Objection to the renewal of License 5004. A Recreational Site license for The Summit

Members of the Board,

AS 04.11.210 provides: Recreational Site License

- (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.

I object to the renewal of The Summit's recreational site license because it clearly does not comply with the language of the statute and was erroneously granted by the Board in the first place.

The Summit is a fitness center for adults 21 years old or above. It is located immediately adjacent to and is connected to an Alaska Club location that has no such adult age limitations. The Summit operates like most fitness clubs in that there is a membership fee that allows members access to the facilities during hours that the club is open which is seven days a week from early in the morning to late evening during the week and somewhat more limited hours on the weekend. The facilities include many common fitness club features such as a locker room, various fitness equipment including free weights, treadmills and other fitness machines. The two facilities offer a variety of classes and activities most, if not all, of which occur in spaces accessible from both the Summit and the Alaska Club.

First of all, participating as a member of the Summit is not an "event". Members arrive and leave at various times during the day. Other than the hours the club is open there are no set times for participating nor are there any special activities or other happenings which could reasonably be considered an "event". That the statute intended such an interpretation is confirmed by the allowance of beer and wine sales "one hour before and after a recreational event". This makes no sense at the Summit since there is no hour before or after anything that happens there other than when it opens and closes. Would The Summit be allowed to sell wine and beer an hour before they open and an hour after they close each day under this license? The fact that this would seem to be allowed under this interpretation of the statute furthers the nonsensical nature of granting this license.

But most telling is the failure of the Summit to meet the requirements to be considered a "recreational site". Section (c) describes a number of qualifying locations none of which are anything like the Summit. The examples are all time limited events that people go to in groups to participate in or observe. People

gather at the site, observe or participate in the event together and depart when it is over. At the Summit, individuals attend throughout the hours of operation and have no common group interest in when or what occurs there. The only aspect of the Summit that qualifies as "regularly held" is that the club is open every day, throughout the day, every day of the week, every week of the year. Finally, there is no "season" to the Summit. Again, it is open all year long every day of the year (some holidays excluded).

To continue to grant the Summit this license not only goes far beyond the clear intent of the legislation but opens the door to an exponential expansion of this license type as there is no end to what other businesses or activities could claim to be "recreational" in nature under an interpretation of the law that would allow the Summit this license. Certainly all fitness clubs, yoga studios, cycling studios, dance studios and other "exercise" type locations would be similar and entitled to a license. Note also that the statute does not require that access to the entire site or location be limited to those 21 years old or older and in fact all of the sites listed as legitimate recreational sites in the statute allow underage individuals to attend the events. All these other venues I have listed would have to do is have a designated drinking area with controlled access. Beyond these obvious extensions of the law, many other businesses could claim to be a "recreational" site. Since physical exertion by participants is not required by the statute why wouldn't nail salons, tanning salons, craft shops with classes or an endless array of businesses qualify? If anyone could open a dance floor, call it a recreational site, get a license to sell beer and wine as long as they were open and had a designated area it would destroy the population based system envisioned by the legislature. The possibility of endless expansion is exactly why even CHARR objected to such an expansive reading of the statute.

Finally, little harm will come to the Summit if this license is not renewed. The infrastructure costs consist of a mini refrigerator and the legally required signage. The time they have had this improperly granted license should have already more than allowed them to recover their minimal investment.

Hopefully the board will reconsider its implied interpretation of the statute that allowed it to grant this license the first time and adopt a reasonable interpretation of the statute and deny this renewal.

I am placing a copy of this objection in the mail today to The Summit 11001 O'Malley Center Drive, Anchorage, Alaska 99515.

Thank you for your consideration and service on the Board.

Sincerely,

Jeff Jessee
11024 Bow Circle
Anchorage, Alaska 99515