



## MEMORANDUM

TO: Marijuana Control Board                      DATE: July 10, 2019

FROM: Erika McConnell, Director              RE: 88 Double Happiness, LLC,  
#10074, Standard Cultivation Facility

**Update:** At the May meeting, the board tabled reconsideration of the denial of this license to determine if the applicant would be in a position to move forward with the license.

### Information provided in May:

On March 13, 2019, I had an informal conference with Mr. Souphanavong (99% owner of 88 Double Happiness LLC) and his attorney, Mr. Amodio. Mr. Souphanavong stated that he still had a tenant in his proposed licensed premises who was operating another successful business. Mr. Souphanavong understands that the industry is rapidly changing and developing, but it appears he is still developing his plan for a cultivation facility in terms of size (number of plants) and focus (strains). He stated that he continues to educate himself on the industry and the regulations.

I informed Mr. Souphanavong that if he provided a letter that answered the following questions, I would put this matter on the agenda for this meeting for the board to reconsider, if it chooses to do so:

1. Why didn't you attend the February meeting to speak to the board?
2. What is the current status of your facility? In January of 2018, you informed the board that you needed to move another business out of the location. Why haven't you done that?
3. If your license was restored, when would you begin operating?
4. What have you done to keep yourself informed regarding changes to the regulations for marijuana facilities? Provide enough information for the board to be confident that you understand the current statutes and regulations.

Attached: Mr. Souphanavong's response  
Mr. Souphanavong's request for an informal conference  
Request to appear at February MCB meeting



April 9, 2019

**VIA EMAIL (erika.mcconnell@alaska.gov) AND U.S. MAIL**

Erika McConnell  
Director, Alcohol and Marijuana Control Office  
550 W. 7<sup>th</sup> Avenue  
Anchorage, Alaska 99501

Re: 88 Double Happiness LLC, License #10074  
Responses to Four Questions Posed

Dear Erika:

As you know, I represent 88 Double Happiness LLC (“88 DH”) and its owner, Bernard Souphanavong (“Souphanavong”). When we met several weeks ago, you asked Souphanavong to provide answers to four questions of concern to the Alaska Marijuana Control Board (“AMCO”) regarding the above-referenced license. In this letter, Souphanavong responds to each of the questions in turn.<sup>1</sup>

1. *Why didn't you attend the February meeting to speak to the board?*

I misunderstood the nature of the request. I did not understand that the board was requiring my attendance at the meeting. I thought that the invitation to attend was purely optional, not mandatory, since the board had already issued the license for 88 DH and I did not have any matters pending before the board at the time.

2. *What is the current status of your facility? In January 2018, you informed the board that you needed to move another business out of the location? Why haven't you done that?*

The current micro green grow business is still in the location. It is a successful and profitable operation. Micro green operations can be anywhere. Cannabis growth operations can only be at select locations. Cannabis should be a higher dollar value product than micro green. This is the opportunity to which I am seeking. There is a new location for the micro green awaiting final Muni Certificate of Occupation. Concurrently, I am exploring various set up options for a cannabis growth facility at the location already approved by AMCO. As you

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<sup>1</sup> The references to “I” or “me” in the responses refer to Bernie Souphanavong, not to undersigned counsel.

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know, no two businesses are the same or equal. Cannabis growth is a new industry confronting new technology, new approaches, new (and changing) rules, new product genres...all of which together pose challenges of great magnitude.

3. *If your license was restored, when would you begin operating?*

My planning for cannabis growth never stopped. 800amp electrical panels have been delivered; Chugach electric and I are evaluating power draw. This is not a simple process as every grow facility has its own functionality. AMCO permit is merely the very first step for a marijuana facility. Municipal approvals cover all of AMCO details and more. It is not uncommon for Muni to run 14 to 20 months to approve a Conditional Use Permit. AMCO board recognizes these time consuming approvals in its guidance titled "Post-Approval Instructions to Marijuana Cultivation Facilities." There is nothing quick and easy with this process.

4. *What have you done to keep yourself informed regarding changes to the regulations for marijuana facilities? Provide enough information for the board to be confident that you understand the current statutes and regulations.*

I've reviewed AMCO's website, and will continue to review it, for relevant changes to the statutes and regulations. AMCO's website provides a user-friendly interface for licensees to stay informed about any such changes to the regulations for marijuana facilities. The website also contains notices about proposed regulatory changes, as well as a helpful FAQ section. I have also reviewed the most recent changes to MCB's regulations, which were effective just last month, on February 21, 2019. Further, since 1991, as a bar owner I have successfully complied with AMCO Alcohol regulations, and any changes to them, relating to liquor licenses.

Finally, I would like to take this opportunity to explain why the board's attempted revocation of DH 88's license (which, as you know, we have appealed) is bad policy. The State should be encouraging entrepreneurs to continue developing successful businesses, not prevent them from doing so. I have owned and operated numerous successful small businesses in Alaska for nearly 40 years, beginning with my first business, Northland Soy Products, in 1981. Further, since 1991 I have operated a successful restaurant and bar business in Anchorage, which has been fully compliant with AMCO rules governing liquor licenses throughout its existence. I have a very good idea what AMCO expects and how to get things done correctly. This proven track record should give the board peace of mind as to my ability to stay abreast of changes to applicable laws, which I will apply as diligently to changes in the laws governing cannabis growth establishments.

Nevertheless, in addition to abiding by the rules, a business requires planning, timing, and sufficient investment to be successful. The first step in the current process is to apply for and

Erika McConnell  
Director, AMCO  
April 9, 2019  
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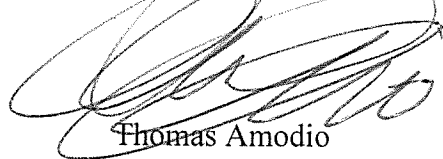
obtain a license to operate a marijuana establishment at a specific Location, which 88 DH successfully did. There is no possible harm to AMCO or the public for 88 DH to be cautious in developing and beginning its operation. To the contrary, it will be of benefit to the community and public when the business is able to operate successfully. There is no reward for a business to be first off the block starting only to have it close prematurely as a result. Again, my 40 years of business track record speaks for itself, AMCO should know of my proven diligence.

I therefore request that the board rescind its "rescission" of DH 88's license, which we believe was inappropriate and unlawful in the first place. Please see the legal issues raised in the appeal letter from my lawyer, Tom Amodio. I have enclosed a copy of that letter for your convenience.

Sincerely,  
Bernie Souphanavong  
Owner, 88 Double Happiness, LLC

Submitted through the undersigned legal counsel.  
Please contact Tom or Bernie if you have any questions regarding these matters.

Sincerely,  
REEVES AMODIO LLC



Thomas Amodio

Enclosure  
Cc: Client (via email)

REEVES AMODIO LLC  
ATTORNEYS AT LAW



March 7, 2019

**VIA EMAIL (erika.mcconnell@alaska.gov) AND U.S. MAIL**

Erika McConnell  
Director, Alcohol and Marijuana Control Office  
550 W. 7<sup>th</sup> Avenue  
Anchorage, Alaska 99701

Re: 88 Double Happiness LLC, License #10074  
Rescission of license for standard marijuana cultivation facility  
And denial of application  
Appeal of AMCO's action and Request for informal conference

Dear Erika:

I am writing on behalf of my client, 88 Double Happiness LLC ("88 DH") and its owner, Bernard Souphanavong ("Souphanavong"), regarding the Alaska Marijuana Control Board's ("AMCO") rescission of its prior approval of 88 DH's license for a standard marijuana cultivation facility, License #10074 (the "License"), and its denial of 88 DH's application for the License. See February 26, 2019 letter from you to 88 DH ("Letter"), a copy of which is enclosed for your convenience. 88 DH hereby formally appeals AMCO's action to rescind its approval and deny the application, and requests an informal conference in accordance with 3 AAC 306.085 at the earliest possible time. Further, should the informal conference prove unsuccessful, please be advised that 88 DH intends to pursue a formal hearing regarding these matters in accordance with 3 AAC 306.090 and AS 44.62.330 *et seq.*

AMCO's action in "rescinding" the license and denying the application is legally defective and thus invalid. The Letter states that the license is being rescinded (and the application denied) because "of the extended period of time without beginning operations between when you license was approved and today, without contact from you." See Letter. Yet AMCO's action is legally unfounded and fatally flawed for several reasons.

First, AMCO's action is defective and invalid because it effectively constitutes a "revocation" of License #10074, and AMCO failed both (1) to follow the required procedure for a revocation, see 3 AAC 306.820; and (2) to provide a valid basis justifying revocation, see 3 AAC 306.810. Indeed, there is no provision in the law for AMCO to "rescind" its approval of a license once granted. Inasmuch as AMCO did not comply with its own rules and regulations, the purported "rescission" must be overturned.

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Director, AMCO  
March 7, 2019  
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Second, neither the statutes nor regulations impose any restriction or limitation regarding the length of time that a licensee must begin operations. *See* AS 17.38 and 3 AAC 306. Notably, in stating the purported grounds for the rescission and denial, AMCO utterly fails to cite any statutory or regulatory provision that contains such a condition. *See* Letter. This is not surprising, however, after you have reviewed the relevant statutes and regulations. Neither of them impose any such condition—that such an “extended period of time” is grounds for rescission or revocation of a license. *See id.* For example, the statutes merely require that an applicant submit an application with information required by regulation. *See* AS 17.38.200. They further provide that “[w]ithin 45 to 90 days after receiving an application or renewal application [for a marijuana establishment], the board *shall* issue an annual registration to the applicant unless the board finds the applicant is not in compliance with regulations enacted pursuant to AS 17.38.190....” AS 17.38.200(d) (emphasis added).<sup>1</sup> Likewise, the regulations require an applicant to provide certain information, and impose certain conditions, but none of them require that an applicant begin operations within a prescribed period of time, or the applicant will forfeit an approved license. *See* 3 AAC 306.020 and 3 AAC 306.420. Since no such condition is found in either the statutes or the regulations, the AMCO’s action also violates fundamental principles of due process of law.

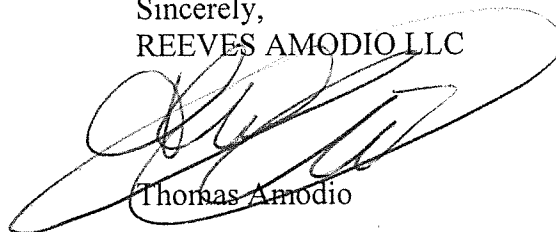
Thus, AMCO’s action has no basis in the laws regulating these matters, *see id.*—therefore it is invalid and legally defective.

We hereby request that AMCO immediately withdraw and/or reverse its action rescinding 88 DH’s license for a standard marijuana cultivation facility, and its related denial of the application for the License.

Absent such a withdrawal or reversal, 88 DH requests an informal conference, in accordance with 3 AAC 306.085, to be scheduled as soon as possible. Should the informal conference fail to correct the purported rescission and denial, 88 DH intends to seek a formal hearing, in accordance with 3 AAC 306.090 and AS 44.62.390(b).

Please contact me if you have any questions regarding these matters.

Sincerely,  
REEVES AMODIO LLC



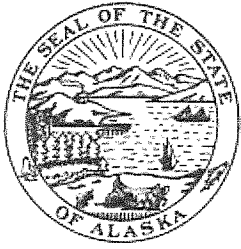
Thomas Amodio

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<sup>1</sup> The board may also refuse to issue the annual registration for a reason not applicable here—if it is notified by the local government that the applicant is not in compliance with applicable ordinances and regulations. *See* AS 17.38.200(d). No such notification occurred here.

Erika McConnell  
Director, AMCO  
March 7, 2019  
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Enclosure  
Cc: Client (via email)



THE STATE  
of **ALASKA**  
GOVERNOR MICHAEL J. DUNLEAVY

Department of Commerce, Community,  
and Economic Development

ALCOHOL AND MARIJUANA CONTROL OFFICE  
550 West 7<sup>th</sup> Avenue, Suite 1600  
Anchorage, AK 99501  
Main: 907.269.0350

February 26, 2019

88 Double Happiness LLC  
DBA 88 Double Happiness LLC  
2905 Tanglewood Drive  
Anchorage, AK 99517

Via: [198suzhiyuen@gmail.com](mailto:198suzhiyuen@gmail.com) and certified mail

Re: 88 Double Happiness LLC, License #10074

Dear 88 Double Happiness LLC:

At their meeting on February 20, 2019, in Juneau, Alaska, the Marijuana Control Board rescinded their prior approval of your license from July 7, 2016, and denied your application for a standard marijuana cultivation facility license in accordance 3 AAC 306.080(a)(6), because of the extended period of time without beginning operations between when your license was approved and today, without contact from you.

Because your license has been denied, you have the right to an informal conference with the director or the board under 3 AAC 306.085, which you may initiate in writing within 15 days of receiving this letter by emailing or sending a letter to me.

The Alaska Administrative Procedure Act, AS 44.62.330 et seq., provides you with a means to appeal the Board's decision. Specifically, AS 44.62.370 and 3 AAC 306.090 allow you to initiate a hearing to determine whether a right, authority, license, or privilege should be granted, issued, or renewed. If you request an administrative hearing, the Office of Administrative Hearings will, at the request of the Board, assign an administrative law judge to hear the matter. You may hire an attorney to represent you in such a hearing, but are not required to.

Please consider this letter as a Statement of Issues as required by AS 44.62.370. If you intend to request a formal hearing, you must notify AMCO, in writing, within 15 days of the date of this notice or within 15 days of the informal conference, should one be requested. A Notice of Defense form is enclosed for the purpose of requesting a formal hearing; however, you may submit any written notice that meets the requirements of AS 44.62.390.

Your Notice of Defense must be sent to:

Administrative Officer  
Alcohol and Marijuana Control Office  
550 West 7th Ave, Suite 1600  
Anchorage, AK 99501



88 Double Happiness LLC #10074

February 26, 2019

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If you do not wish to appeal the Board's decision, you may file a claim for refund of the \$5,000 license fee that was paid with your application, by completing the three highlighted fields of the enclosed Claim for Refund form. The completed form must be sent to the address above.

You may contact me with any questions or to request additional information. However, I cannot provide you with any legal advice.

Sincerely,

A handwritten signature in cursive script that reads "Erika McConnell".

Erika McConnell  
Director

CC: License file  
Municipality of Anchorage

Encl.

**From:** [Marijuana Licensing \(CED sponsored\)](#)  
**Cc:** [Marijuana Licensing \(CED sponsored\)](#)  
**Bcc:** "[gwb@bdealin.com](#)"; "[Vern\\_erickson@hotmail.com](#)"; [Max Funlong](#); "[terdaet@aol.com](#)"; "[seaklabs@gmail.com](#)"; "[adamlee1313@gmail.com](#)"; "[temptllc@gmail.com](#)"; "[greenelephantalaska@gmail.com](#)"; "[kicker204@live.com](#)"; "[kicker204@live.com](#)"; "[silvia@gci.net](#)"; "[james@alaskaraw.com](#)"; "[james@alaskaraw.com](#)"; "[james@alaskaraw.com](#)"; "[molen.seth@turnagainherbco.com](#)"; "[johnheritscko@gmail.com](#)"; "[g.inc.ak@gmail.com](#)"; "[ssusiesfire@msn.com](#)"  
**Subject:** Marijuana Establishment License Application - Consideration at February 2019 Marijuana Control Board Meeting  
**Date:** Wednesday, February 13, 2019 10:44:00 AM

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Dear Licensee,

You have a marijuana establishment license application that has been in "Pending Inspection" status for over six months. Consideration of this matter has been scheduled for the February 20-22, 2019 meeting of the Marijuana Control Board.

The board requires that you be available via phone or in person to discuss why it has been pending for this period of time. Please find a link to our homepage here where call-in information and the agenda is published.

<https://www.commerce.alaska.gov/web/amco>.

If you have questions please direct them to [marijuana.licensing@alaska.gov](mailto:marijuana.licensing@alaska.gov).

Thank You,

Mikal Milton  
Records and Licensing Supervisor  
Alcohol and Marijuana Control Office  
Phone: 907.269.0350  
[alcohol.licensing@alaska.gov](mailto:alcohol.licensing@alaska.gov)  
[marijuana.licensing@alaska.gov](mailto:marijuana.licensing@alaska.gov)



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