

**THE DEPARTMENT OF EXCISE AND LICENSES
DENVER, COLORADO**

FINAL DECISION

IN THE MATTER OF THE APPLICATION OF RJJ MORRISON, LLC, DBA NATIVE ROOTS BEAR VALLEY, FOR A MEDICAL MARIJUANA CENTER LICENSE FOR THE PREMISES KNOWN AND DESIGNATED AS 3150 SOUTH SHERIDAN BLVD., UNIT 2, DENVER, COLORADO (2014-BFN-0004224)

IN THE MATTER OF THE APPLICATION OF RJJ MORRISON, LLC, DBA NATIVE ROOTS BEAR VALLEY, FOR A RETAIL MARIJUANA STORE LICENSE FOR THE PREMISES KNOWN AND DESIGNATED AS 3150 SOUTH SHERIDAN BLVD., UNIT 2, DENVER, COLORADO (2016-BFN-0004373)

Procedural History

On December 6, 2016, a hearing was held on the Applications of RJJ Morrison, LLC, doing business as Native Roots Bear Valley, for a medical marijuana center license and retail marijuana store license at the premises known and designated as 3150 S. Sheridan Blvd., Unit 2, Denver, Colorado.

On December 22, 2016, the Hearing Officer issued a Recommended Decision denying the Application.

On January 3, 2016, Councilman Kevin Flynn submitted "Objections to the Recommended Decision" ("Flynn Objections"). Also on that date, Steven Kelly submitted "Objections to the Recommended Decision" ("Opposition Objections").

Notably, the Applicant failed to file Objections to the Hearing Officer's Recommended Decision within ten days of the decision.

Findings and Conclusion

The Director of the Department of Excise and Licenses (the "Director"), upon review of the entire record, including the meaningful objections, finds no factual or legal grounds to overturn the Hearing Officer's findings or recommendation.

- 1. The record supports the Hearing Officer's conclusion that the neighborhood neither needs nor desires that the license be issued.**

The evidence adduced at the hearing establishes that the neighborhood neither needs nor desires that the medical marijuana center or retail marijuana store licenses be issued at the proposed

location. Recommended Decision, ¶ 19. The vast majority of witnesses testifying at the hearing were in opposition to the license. A total of 29 individuals testified in opposition to the Application. This number included: Councilman Flynn, representative of District 2; Ms. Bourlakov, a resident of the neighborhood; Ms. McCarthy, a business owner in the neighborhood; two representatives of Registered Neighborhood Organizations that voted to oppose the license; and 24 residents who testified *en masse*. Recommended Decision, ¶ 13-16. This is compared to the seven witnesses who testified for the Applicant, three of whom were affiliated with the Applicant and one who did not reside or own or manage a business within the neighborhood. Recommended Decision, ¶ 10-12, Flynn Objections, ¶ 4.

The testimony from each of the Opposition's witnesses makes clear that the needs of the neighborhood are presently met by other marijuana centers and stores near the neighborhood, which are within a few minutes' drive. Recommended Decision, ¶ 19. The Applicant did note that its proposed services would be unique, that it would offer proprietary strains of marijuana, and that it would meet the needs of the traveling public. *Id.* However, the Applicant failed to produce a single witness who testified that they actually needed or desired the Applicant's unique services or proprietary strains, or that they were unable to purchase marijuana or had any difficulty purchasing marijuana in the neighborhood. Flynn Objections, ¶ 5. Finally, as noted by the Hearing Officer, the travelling public need only travel a few more minutes to find a marijuana establishment. Recommended Decision, ¶ 19.

In addition to testimony at the hearing, the Department also received 816 petitions in opposition to the center license and 849 petitions in opposition to the store license. On the other hand, the Department received 435 petitions in support of the center application and 439 petitions in support of the store application. While the numbers of people for or against an application are not controlling regarding the needs and desires of the neighborhood, the number of signatures is a factor that may be considered by the licensing authority. *See Vigil v. Burress*, 404 P.2d 147, 148 (Colo. 1965); *see also Goehring v. Board of County Commissioners*, 469 P.2d 137, 138 (Colo. 1970). In this case, the Department received substantially more signatures opposing the issuance of the license than supporting the issuance.

For all these reasons, the Director hereby adopts the Hearing Officer's conclusion that the Applicant failed to sustain its burden to show that there is a need for either the requested medical marijuana center license or the retail marijuana store license. The Director also finds that the Applicant failed to sustain its burden to show that the residents or owners and managers of businesses within the neighborhood desire that the licenses be issued.

2. The Director finds good cause to deny the license because the Applicant did not have possession of the Premises at the time of Application and the Application contained false information.

During the hearing, Opposition also raised concerns that the Application contained false statements because the Applicant did not have proof of possession of the premises at the time of Application, and should therefore be denied for "Good Cause" pursuant to D.R.M.C. §§ 6-212(c)(2) and 24-508.5(c)(2).

The D.R.M.C. grants the Director authority to refuse to issue any medical marijuana center or retail marijuana store license for "good cause." D.R.M.C. §§ 24-508.5(c)(2) and 6-212(c)(2). In part, "good cause" includes evidence that the "applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of the Colorado Medical Code or any rule and regulations promulgated pursuant thereto or [the Denver Medical Marijuana Code] or any rules and regulations pursuant [thereto]." D.R.M.C. § 24-508.5(c)(2)(a).

D.R.M.C. §§ 24-507(a) and 6-210(a) state that "[t]he director shall deny any application for a license...that is not in full compliance with the Colorado Medical Marijuana Code [or Colorado Retail Marijuana Code], this article XII [or article V], and any other applicable state or city law or regulation. The director shall also deny any application that contains any false or incomplete information."

D.R.M.C. §§ 24-507(b) and 6-210(b) require "[p]roof of possession of the licensed premises" for all local license applications. Additionally, D.R.M.C. § 32-11(5) states "No license authorized under this code shall issue unless all other specific requirements of the terms of the provisions relating to the application for the particular license sought have been met."

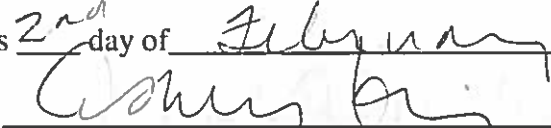
At the hearing, the Applicant admitted that the lease submitted with the Applications, pursuant to the "proof of possession" requirements, had been executed before the purported landlord owned the property. Recommended Decision, ¶ 6, Opposition's Objections, page 2. Therefore, the Director finds that the Applicant failed to comply with D.R.M.C. §§ 24-507(b), 6-210(b), and 32-11(5) because it did not have proof of possession of the premises at the time it submitted the applications. The Director also finds that the Applicant violated D.R.M.C. §§ 24-507(a) and 6-210(a) because the applications contained false information.

For both of these reasons, the Director hereby concludes that there is good cause to deny the Application pursuant to D.R.M.C. §§ 24-508.5(c)(2) and 6-210(c)(2).

The Director recognizes that this hearing presented a unique circumstance in that the applications for both the medical marijuana center and the retail marijuana store were at issue. Although both types of applications require a public hearing, the Director further recognizes that while a neighborhood may "need and desire" a medical marijuana license to issue, the same neighborhood may not "need and desire" a retail marijuana license to issue. That said, the Director finds that Applicant failed to establish that the neighborhood needs or desires the issuance of either type of license in this case.

Accordingly, the applications of RJJ Morrison, LLC, doing business as Native Roots Bear Valley, for a medical marijuana center license and retail marijuana store license for the premises known and designated as 3150 S. Sheridan Blvd., Unit 2, Denver, Colorado are hereby DENIED.

SO ORDERED this 2nd day of February, 2019.



Ashley Kilroy, Executive Director
Department of Excise and Licenses

CERTIFICATE OF MAILING

The undersigned hereby states and certifies that one true copy of the foregoing Final Decision was sent via email on the 3rd day of February, 2017 to the following:

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CERTIFICATE OF INTER-OFFICE MAILING

The undersigned hereby states and certifies that one true copy of the foregoing Final Decision was deposited in the City and County of Denver inter-office mail system on the 3rd day of February, 2017 to the following:

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Dept. of Excise and Licenses