

**OFFICE OF THE DIRECTOR OF THE DEPARTMENT OF EXCISE AND LICENSES
CITY AND COUNTY OF DENVER, COLORADO**

RECOMMENDED DECISION

**IN THE MATTER OF THE APPLICATION OF CH II, LLC, DOING BUSINESS AS
TERPS ‘N’ PURPS, FOR A MEDICAL MARIJUANA CENTER LICENSE FOR THE
PREMISES KNOWN AND DESIGNATED AS 285 SOUTH PEARL STREET, DENVER,
COLORADO, BFN 2015-0005184**

This matter came on for hearing on October 26 and 31, 2016, pursuant to an application filed by CH II, LLC, doing business as Terps ‘N’ Purps (“Applicant” or “CH II”), for a medical marijuana center license for the premises known and designated as 285 South Pearl Street, Denver, Colorado.

The Applicant was represented at the hearing by attorneys Tom Downey, John Jennings and Kira Suyeishi of the law firm Ireland, Stapleton, Pryor & Pascoe, PC. The Denver Department of Excise and Licenses (“the Department”) was represented by Assistant City Attorney Cristina DiMaria. Protestant, Rebecca Wiggins, a resident of the designated neighborhood, was represented by attorney James Beimford. The West Washington Park Neighborhood Association (“WWPNA”), a registered neighborhood organization, appeared by its representatives, Nicholas Amrhein, President, and Charlotte Winzenburg, board member, to oppose issuance of the requested license. Mr. Jolon Clark, Denver City Councilman for District 7, also appeared to oppose issuance of the requested license.

After reviewing the testimony and exhibits received into evidence, as summarized below, and applying existing law, the Hearing Officer enters the following findings of fact, conclusions of law, and recommended decision:

Grounds for denial of a medical marijuana center license

1. The Colorado Medical Marijuana Code, article 43.3 of title 12, C.R.S. (“CMMC”) authorizes local governments to enact ordinances or regulations which impose a local licensing requirement for medical marijuana centers, including restrictions on the time, place, manner, and number of marijuana businesses. C.R.S. section 12-43.3-301(2).
2. Pursuant to the CMMC, the Denver City Council adopted the Denver Medical Marijuana Code, sections 24-501 through 24-515, article XII of chapter 24 of the Denver Revised Municipal Code (“D.R.M.C.”), which governs the licensing of medical marijuana businesses in the City and County of Denver. D.R.M.C. section 24-507(a) provides that the Director of the Department of Excise and Licenses shall deny any application for a medical marijuana

center license that “is not in full compliance with the Colorado Medical Marijuana Code, this article XII, and any other applicable state or city law or regulation.”

3. This application was submitted to the Department on August 10, 2015, and it is subject to the requirements of D.R.M.C. section 24-508.5 for a public hearing prior to the issuance of the license. (Order issued by the Deputy Director of the Department in this application, dated August 9, 2016). D.R.M.C. section 24-508.5(c) also specifies the grounds for denial, and standards for issuance, of a new medical marijuana center license as follows:
 - (2) In addition to the standards set forth in paragraph (3) of subsection (c) of this section, the director has authority to refuse to issue any medical marijuana center license for good cause subject to judicial review. For purposes of this subsection (c), the term "good cause" means:
 - a. The applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of the Colorado Medical Marijuana Code or any rule and regulations promulgated pursuant thereto or this article XII or any rules and regulations promulgated pursuant to this article.
 - b. With respect to a second or additional medical marijuana center license proposed by the same applicant the director shall consider the effect on competition of the granting or disapproving or additional licenses to such licensee, and no application for a second or additional license that would have the effect of restraining competition shall be approved.
 - c. For applications to license any medical marijuana center in the same location where any medical marijuana center has previously been licensed, evidence that the licensed premises have been previously operated in a manner that adversely affects the public health, welfare or safety of the immediate neighborhood in which the establishment is located.
 - d. Evidence that the issuance of the license will adversely impact the health, welfare or public safety of the neighborhood in which the medical marijuana center is proposed to be located.
 - (3) In addition to the standards set forth in paragraph (2) of subsection (c) of this section, the applicant shall establish the need for the license by a preponderance of the evidence and the director shall also consider:
 - a. The reasonable requirements of the neighborhood and the desires of the adult inhabitants as evidenced by petitions, remonstrances, or otherwise;
 - b. The number and availability of other medical marijuana centers in or near the neighborhood under consideration; and
 - c. Whether the issuance of such license would result in or add to an undue concentration of medical marijuana center licenses and, as a result, require the use of additional law enforcement resources.

4. D.R.M.C. section 24-508(b) specifies prohibited locations for medical marijuana centers. As relevant here, section 24-508(b)(2) states that no medical marijuana center license shall be issued for any location “[w]ithin one thousand (1,000) feet of any school, with the distance computed by direct measurement in a straight line from the nearest property line of the land used for the school to the nearest portion of the building in which the medical marijuana center is located.”
5. There is a “grandfathering” exception to this distance prohibition within 1000 feet of a school, for “any location where the director previously issued a medical marijuana dispensary license under article XI of this chapter 24, a licensed dispensary commenced operations at the subject location, and a licensed medical marijuana dispensary or center has existed in continuous operations at the subject location since the time of original licensing.” D.R.M.C. section 24-508(b)(2).
6. The Hearing Officer concludes that the Applicant has the burden of proof to establish the qualifications for licensure. D.R.M.C. section 24-508.5(c)(3) expressly provides that “the applicant shall establish the need for the license by a preponderance of the evidence...” By analogy, the Department’s Policies and Procedures Pertaining to Retail Marijuana Licensing, Section III.A.2., expressly provides that “The applicant has the burden of proof for issuance of the license.” Also, by analogy from appellate authority on liquor licensing, the Applicant bears the burden to establish a prima facie case for issuance of a liquor license, and if it does so, the burden of proof shifts to the opposition to show why the license should not be issued. *Southland Corp. v. City of Westminster*, 746 P.2d 1353, 1355 (Colo. App. 1987). If the opposition then fails to present evidence sufficient to justify denial of the license, the license should be issued. *Id.*
7. The Hearing Officer recommends that this application should be denied based upon the following grounds:
 - (i) The proposed location violates the distance prohibition in D.R.M.C. section 24-508(b)(2), because it is within 1000 feet of a Denver Public School, and therefore the application should be denied pursuant to D.R.M.C. sections 24-507(a) and 24-508.5(c)(2)a.
 - (ii) Issuance of the requested license will adversely impact the health, welfare and public safety of the neighborhood, and therefore the application should be denied pursuant to D.R.M.C. section 24-508.5(c)(2)d.
 - (iii) The Applicant has not established by a preponderance of the evidence that there is a need for this license to meet the reasonable requirements of the neighborhood, and therefore the application should be denied pursuant to D.R.M.C. section 24-508.5(c)(3)a.
 - (iv) The Applicant has not established by a preponderance of the evidence that adult inhabitants of the neighborhood desire the issuance of this license, and therefore the application should be denied pursuant to D.R.M.C. section 24-508.5(c)(3)a.

Exhibits admitted into evidence

8. The following exhibits were admitted into evidence by the Hearing Officer:

- Applicant's Exhibit A-1, a map of the designated neighborhood re witness (RN);
- Applicant's Exhibit A-2, a map of the designated neighborhood re witness (JS);
- Applicant's Exhibit A-3, a map of the designated neighborhood re witness (LD);
- Applicant's Exhibit A-9, the Hearing Posting Affidavit, affirming that the premises were posted for a minimum of ten consecutive days, from September 24, 2016 through October 25, 2016;
- Applicant's Exhibit A-10, Amended Applicant Letter from the Department, dated July 15, 2016;
- Applicant's Exhibit A-11, a Letter from the Department to the Applicant, dated August 10, 2016;
- Applicant's Exhibit A-14, a map of the designated neighborhood, showing the residences of Applicant's medical marijuana patients;
- Applicant's Exhibit A-15, eight pages of color photos showing the Applicant's premises at 285 South Pearl Street;
- Applicant's Exhibit A-16, pre-filed petitions with signatures in support of the application;
- Applicant's Exhibit A-17, Applicant's Objection to Opposition Petitions Filed July 29, 2016, which is dated August 5, 2016;
- Applicant's Exhibit A-18, Applicant's Objection to Opposition Petitions, which is dated September 30, 2016;
- City's Exhibit C-1, the Notice of Publication, showing that notice of the hearing was duly published, and notifying all interested parties of their right to appear at a hearing on the license application;
- City's Exhibit C-2, a map of the designated neighborhood;
- City's Exhibit C-4, the Notice and compliance check;
- City's Exhibit C-5, three pages, showing the floor plans of the designated premises;
- Protestant's Exhibit P-1, Request to Vacate Hearing with Exhibits 1 through 24, collectively labeled as pages 001 through 098, submitted to the Department by Protestants;
- Protestant's Exhibit P-2, Response to Applicant's Expedited Motion to Vacate Hearing for Lack of Subject Matter Jurisdiction, with Exhibit B to the Response (Exhibit A omitted), submitted to the Department by Protestants;
- Protestant's Exhibit P-3, a map showing the locations of licensed medical marijuana centers and retail marijuana stores, in the vicinity of 285 South Pearl Street;
- Protestant's Exhibit P-4, a memo dated August 5, 2016, from Michael J. Hickman, Deputy General Counsel for Denver Public Schools, to the Director of the Department of Excise and Licenses, objecting to this application, with pages labeled as 111 through 117;
- Protestant's Exhibit P-5, a letter dated August 3, 2016, from Bill Kurtz, Chief Executive Officer of DSST Public Schools, and Brad White, School Director of DSST: Byers, to Stacie Loucks of the Department of Excise and Licenses, objecting to this application;

- Protestant's Exhibit P-6, a letter dated July 26, 2016, from Suzannah Brown, Chair of Byers STP, to Stacie Loucks of the Department of Excise and Licenses, objecting to this application;
- Protestant's Exhibit P-7, a letter dated August 5, 2016, from Julie Groves attorney practicing at Groves Law, LLC, to Sharon Kinvig of the Department, objecting to this application;
- Protestant's Exhibit P-8, an email dated September 16, 2016, from Rebecca Wiggins to Sharon Kinvig of the Department, objecting to this application;
- Protestant's Exhibit P-9, a sworn and notarized affidavit from Lou Ann Garland, dated September 16, 2016;
- Protestant's Exhibit P-10, Medical Marijuana Establishment License Application for a license renewal, dated August 13, 2014, submitted by Cannabis for Health, at the location of 285 South Pearl Street;
- Protestant's Exhibit P-11, letter from Jolon Clark, Denver City Councilman for District 7, to the Department of Excise and Licenses, urging the denial of this license application;
- Protestant's Exhibit P-12, a letter from The West Washington Park Neighborhood Association, to the Director of the Department of Excise and Licenses, dated August 3, 2016, urging the denial of this license application;
- Protestant's Exhibit P-13, a letter from WWPNA authorizing Nicholas Amrhein or Charlotte Winzenburg to represent the position of the WWPNA at the hearing on this license application;
- Protestant's Exhibit P-14, pre-filed petitions with signatures in opposition to this application; and
- Protestant's Exhibit P-15, Protestants' Objections to Applicant's Petitions, which is dated September 30, 2016.¹

Background

9. This application for a new medical marijuana center at the location of 285 South Pearl Street, Denver, was submitted to the Department on August 10, 2015, by the Applicant, CH II, LLC, doing business as Terps 'N' Purps. Exhibit P-1, pp. 085-087, New License Application for a Medical Marijuana Establishment. The sole member and 100% owner of the Applicant, CH II, LLC, is RV Holdings, LLC. Mr. Rostislav Vaisman is the sole member and 100% owner of RV Holdings, LLC. *Id.* at p. 086.
10. Mr. Vaisman testified that he also owned and operated Cannabis for Health, LLC, a medical marijuana center, at the location of 285 South Pearl Street, in Denver for almost 3 1/2 years, beginning in 2012.
11. On October 23, 2014, Mr. Vaisman, on behalf of Cannabis for Health, LLC, submitted an application to the Department for a transfer of a medical marijuana establishment license from 285 South Pearl Street to 4801 West Colfax Avenue in Denver. Exhibit P-1, p. 047. On

¹ Applicant's Exhibits A-4 through A-8, A-12 and A-13, and City's Exhibit C-3 were marked for identification, but not offered into evidence. Protestant's Exhibit P-16, was offered but not admitted into evidence.

August 10, 2015, the Department issued a Business-Professional License for license number 2010-BFN-1045425, to Cannabis for Health, LLC, for the location of 4801 West Colfax Avenue, Denver. Exhibit P-1, p. 052.

12. Mr. Vaisman testified that the transfer of the medical marijuana center license from South Pearl Street to West Colfax Avenue was effective on August 10, 2015. He testified that the last day of medical marijuana sales at 285 South Pearl Street was on August 9, 2015, and that he began sales of medical marijuana at the West Colfax location on August 10, 2015.
13. On October 28, 2013, Mr. Vaisman and Cannabis for Health submitted an application to the Department for a retail marijuana store license at 285 South Pearl Street in Denver, which would be a co-terminus situation, where there is no physical separation or dividing wall between the then-existing medical marijuana sales and the proposed retail marijuana sales. Exhibit P-1, pp. 016-018.
14. D.R.M.C. section 6-211(c) prohibits retail marijuana stores within 1000 feet of a school, “with the distance computed by direct measurement in a straight line from the nearest property line of the land used for school to the nearest portion of the building in which the retail marijuana store is located.”
15. In processing this application for a retail marijuana store license, a Department Inspector measured a distance of 628 feet from the proposed retail location at 285 South Pearl Street to the Byers School at 150 South Pearl Street. According to the Inspector’s memo, the measurement was performed using the Denver GIS mapping system, “by direct measurement in a straight line from the nearest property line of the land used for school to the nearest portion of the building in which the retail marijuana store is located.” Exhibit P-1, p. 024.
16. Consequently, the Department Director issued an Order of Denial dated December 18, 2013, concerning the application by Cannabis for Health for a retail marijuana store license at 285 South Pearl Street, on the grounds that the proposed location was in violation of D.R.M.C. section 6-211(c), in that it was within 1000 feet of the Byers School at 150 South Pearl Street. Exhibit P-1, pp. 026-027.

The proposed location is prohibited by D.R.M.C. section 24-508(b)(2)

17. The Hearing Officer concludes that the proposed location at 285 South Pearl Street is a prohibited location, pursuant to D.R.M.C. section 24-508(b)(2), because it is within 1000 feet of a Denver Public School, and the grandfathering exception does not apply.
18. It is undisputed that the Denver Public Schools (“DPS”) operates a charter school, Denver School of Science and Technology - Byers (“DSST-Byers”) at the location of 150 South Pearl Street in Denver. Exhibits P-4 and P-6.
19. Mr. Brad White, school principal for DSST-Byers, testified that the school began operations at 150 South Pearl Street with the 2014-2015 academic year, beginning in August 2014. During the current (2016-2017) school year, there are 600 students enrolled in grades six

through nine. The school will add one year of high school in each future year until 2019, when it will enroll students in grades six through twelve. The school has an enrollment capacity of 1000 students for grades six through twelve. Mr. White also testified that there is not a need for this license; that he desires that this application be denied; and that granting this application would have a negative impact on the health, safety, and welfare of the students, which is addressed in paragraph 70 below.

20. The Denver Public Schools, through multiple representatives, objects to the issuance of this license on the ground that the proposed location is within 1000 feet of the DSST-Byers School. These representatives include Mr. Michael J. Hickman, Deputy General Counsel for Denver Public Schools, who testified at the hearing, and wrote the letter that is admitted into evidence as Exhibit P-4; Mr. Bill Kurtz, DSST Public Schools Chief Executive Officer, who co-signed the letter with Mr. Brad White, that is admitted into evidence as Exhibit P-5; and Ms. Suzannah Brown, Chair of the DSST-Byers STP, which is the parent organization for the school, who wrote the letter that is admitted into evidence as Exhibit P-6.
21. There is a distance prohibition of 1000 feet from a school for both medical marijuana centers (pursuant to D.R.M.C. section 24-508(b)(2)) and for retail marijuana stores (pursuant to D.R.M.C. section 6-211(c)). Both ordinances specify the same method of calculating the distance from the proposed marijuana business to the school, *i.e.*, “by direct measurement in a straight line from the nearest property line of the land used for the school to the nearest portion of the building in which the medical marijuana center is located.”
22. Using this measurement method, the Department has previously calculated that the distance from 285 South Pearl Street to the Denver Public School at 150 South Pearl Street is a distance of 628 feet. The Department Director has previously ruled that 285 South Pearl Street is a prohibited location for a retail marijuana store, because it is within 1000 feet of a school. Exhibit P-1, pp. 024, 026-027. Further, on cross-examination, Mr. Vaisman testified that he was aware that the location of 285 South Pearl Street was within 1000 feet of a school.
23. The Hearing Officer finds and concludes that the proposed location for this medical marijuana center at 285 South Pearl Street is a distance of 628 feet from the DSST-Byers School at 150 South Pearl Street, using the measurement method required by D.R.M.C. section 24-508(b)(2). Therefore, the Hearing Officer also concludes that the proposed location at 285 South Pearl Street is a prohibited location, pursuant to D.R.M.C. section 24-508(b)(2), because it is within 1000 feet of a Denver Public School.
24. To be eligible for the grandfathering exception to this distance prohibition, the applicant for a medical marijuana center license must meet three conditions: (i) the Department Director previously issued a medical marijuana dispensary license for the same location; (ii) a licensed dispensary commenced operations at the same location; and (iii) a licensed medical marijuana dispensary or center has existed in “continuous operations” at the same location since the time of original licensing. D.R.M.C. section 24-508(b)(2).

25. The term “continuous operations” as used in section 24-508(b) is defined by section 24-508(b)(7), which was added to the Denver Medical Marijuana Code by Ord. No. 912-15, section 20, adopted February 8, 2016. “Continuous operations” is defined by section 24-508(b)(7) as follows:
- (7) For purposes of this subsection (b), the term "continuous operations" means that the regular sale of medical marijuana has occurred at the subject location without interruption by a medical marijuana center licensed under article XII of chapter 24 in compliance with all state and city laws, and any regulations adopted pursuant thereto. Prima facie evidence that a medical marijuana center has not existed in continuous operation shall include:
 - a. Any suspension or cessation of the sale of medical marijuana at the subject location lasting longer than ninety (90) consecutive days; or
 - b. Any period during which the subject location is owned, leased or otherwise occupied for a use other than the sale of marijuana; or
 - c. Expiration, nonrenewal, surrender, transfer of location, or revocation of the state or local medical marijuana license issued for the subject location.
26. The Hearing Officer concludes that the evidence clearly shows that the Applicant has not met the third condition for grandfathering, *i.e.*, that there has been a licensed medical marijuana dispensary or center that has existed in continuous operations at the location of 285 South Pearl Street since the time of original licensing.
27. As noted above, Mr. Vaisman testified that the transfer of the medical marijuana center license for Cannabis for Health, from 285 South Pearl Street to West Colfax Avenue, was effective on August 10, 2015. He testified that the last day of medical marijuana sales at 285 South Pearl Street was on August 9, 2015, and that he began sales of medical marijuana at the West Colfax location on August 10, 2015.
28. The evidence is undisputed that there have been no sales of medical marijuana at the location of 285 South Pearl Street since August 10, 2015, a period of more than 14 months. This is prima facie evidence, pursuant to D.R.M.C. section 24-508(b)(7)a., that a medical marijuana center has not existed in continuous operations, because there has been a cessation of medical marijuana sales lasting longer than 90 consecutive days.
29. The evidence is also undisputed that there has been a transfer of location for the medical marijuana center license issued to Cannabis for Health from the location of 285 South Pearl Street to West Colfax Avenue. This is also prima facie evidence, pursuant to D.R.M.C. section 24-508(b)(7)c., that a medical marijuana center has not existed in continuous operations.
30. Applicant’s attorney has argued that the definition of “continuous operations” in D.R.M.C. section 24-508(b)(7) should not be applied to its application because this definition was

added to section 24-508 by Ord. No. 912-15, section 20, adopted February 8, 2016, nearly six months after the Applicant filed this application.

31. The Hearing Officer concludes that whether or not the definition in D.R.M.C. section 24-508(b)(7), which provides examples of prima facie evidence of the lack of “continuous operations,” is applied here, the result is the same, and the evidence is clear that a licensed medical marijuana center has not been in continuous operations at 285 South Pearl Street since the time of original licensing. The three conditions for grandfathering in D.R.M.C. section 24-508(b)(2), as outlined in paragraph 24 above, were also in effect at the time that Applicant submitted its application on August 10, 2015. Thus, “continuous operations” was always a condition for grandfathering (although without the examples of prima facie evidence that were added to the ordinance in February 2016). The Hearing Officer concludes that this is not a close issue concerning the lack of continuous operations, where it is undisputed there have been no sales of medical marijuana at 285 South Pearl Street for a period of more than 14 months.
32. Applicant’s attorney has argued that it qualifies for grandfathering and it has been in continuous operations at 285 South Pearl Street, because of the transfer of its medical marijuana center license from South Pearl Street to 4801 West Colfax Avenue, which became effective on August 10, 2015, the day after it stopped selling medical marijuana at the South Pearl Street location. Applicant’s argument is based upon Mr. Vaisman’s testimony that he proceeded in this manner based upon the direction of prior counsel for the Applicant, and in consultation with the Department.
33. The Hearing Officer concludes that this argument is without merit to establish continuous operations. First, Mr. Vaisman’s testimony did not identify any employee of the Department who made an assurance about continuous operations, and certainly the Applicant had the opportunity to present testimony from a Department employee on this subject, which it failed to do. Further, Mr. Vaisman’s testimony failed to establish any specificity about who, when, and what he was allegedly told by a Department employee about continuous operations or grandfathering. Finally, there is no other testimony or exhibit in the record, and no documentation from the Department, to corroborate Mr. Vaisman’s testimony that the timing of this license transfer would establish continuous operations.
34. Applicant’s attorney has argued that the Department failed to follow proper procedure in determining that the Applicant’s proposed location at 285 South Pearl Street is prohibited. Applicant argues that when processing other applications for marijuana businesses, a Department Inspector performs a measurement of the distance between a proposed location and nearby schools; when a proposed location is within 1000 feet of a school, the Department Inspector then sends a memo to the Department Director which states the measurement in number of feet between the proposed location and the nearby school; based upon the Inspector’s memo, the Department Director issues an Order of Denial, and the Applicant has the right to a hearing on the issue of whether the proposed location is prohibited.
35. The Hearing Officer agrees that the procedure outlined by the Applicant is generally followed by the Department with respect to other applications for marijuana businesses. However, the

Hearing Officer concludes that this sequence of processing an application is not required by the Denver Medical Marijuana Code. The Hearing Officer further concludes that the procedure followed by the Department with respect to this application is fully authorized by the Denver Medical Marijuana Code. D.R.M.C. section 24-508.5(c)(2) and (3) set forth the various issues that are relevant at a public hearing on a new license application, including a prohibited location based upon D.R.M.C. sections 24-508.5(c)(2)a, and 24-508(b)(2).

36. The Hearing Officer also concludes that the Applicant was clearly on notice that the issue of a prohibited location would be considered at the public hearing. On August 3, 2016, the Protestants filed a motion to vacate the “needs and desires” hearing because the application violates the proximity restriction regarding schools. On August 9, 2016, the Department issued an Order which denied this motion and clearly put all parties on notice that “any party in interest may present evidence or testimony regarding the standards of denial located in D.R.M.C section 24-508.5(c)” at the public hearing on the application. Then, Applicant filed a motion *in limine* to preclude evidence or argument about the proximity issue at the “needs and desires” hearing. On October 25, 2016, the Department issued an Order which denied this motion and again clearly put all parties on notice that “good cause” to deny a license application, as defined by D.R.M.C. section 24-508.5(c)(2), would be relevant at the public hearing.
37. The Hearing Officer therefore recommends that this application be denied pursuant to D.R.M.C. sections 24-507(a) and 24-508.5(c)(2)a., on the grounds that the proposed location violates the distance prohibition in D.R.M.C. section 24-508(b)(2), because it is within 1000 feet of a Denver Public School.

Petitions supporting the application

38. On September 15, 2016, the Applicant pre-filed ten petitions in support of this application. (Exhibit A-16). Applicant’s petitions contain the signatures of 417 people in support of the application.
39. On September 30, 2016, Protestant filed her Objection to Applicant’s Signatures in Favor of License. (Exhibit P-15). The Hearing Officer has considered each of these objections and sustains the following objections as described in Exhibit P-15:
 - On page 1, section 1), 23 signatures are disqualified; 22 signatures identified in subparagraphs a-c, and e-w are outside of the designated neighborhood; one signature identified in subparagraph d is a duplicate of a signature on p. 036, l. 16;
 - On page 2, section 2), 8 signatures identified in subparagraphs a-h are disqualified because they are duplicates;
 - On page 2, section 3), 6 signatures identified in subparagraphs a-f are disqualified because the individual first signed a petition opposing the application;
 - On pages 2 and 3, section 4), 52 signatures identified in subparagraphs a-zz are disqualified because of a lack of complete legal address, including the unit number in a multi-unit building;

- On pages 3 and 4, section 5), 9 signatures identified in subparagraphs a-i are disqualified because the address does not exist;
- On page 4, section 6), 5 signatures identified in subparagraphs a-e are disqualified because the address is illegible;
- On page 4, section 7), 4 signatures identified in subparagraphs a-d are disqualified because of incomplete name or address.

40. There are a total of 107 signatures disqualified, bringing the total of signatures in support of the application to 317.

Witnesses in support of the application

41. Ms. Maria Denton testified in support of the application. She is over the age of 21, and has been a resident of the designated neighborhood since May 2016. She has no financial interest or family connection with the Applicant. Ms. Denton testified that she does not consume medical marijuana, and has not purchased medical marijuana at Applicant's prior business at 285 South Pearl Street, Cannabis for Health. She testified that there is a need in the designated neighborhood for the issuance of this license. She believes that the Applicant would operate lawfully, and that granting the license would have no negative impact on the health, safety or welfare of the neighborhood.
42. Mr. Brian Hibbard testified in support of the application. He is over the age of 21, and has been a resident of the designated neighborhood since November 2014. He has no financial interest or family connection with the Applicant. Mr. Hibbard testified that he has multiple sclerosis and has had a prescription for medical marijuana since 2010. He testified that medical marijuana treats many of his symptoms, and he was a customer at Cannabis for Health a few times. He believes that they provided very good customer service, and he was able to walk to that location. He testified that there is a need in the designated neighborhood for the issuance of this license. On two occasions, he purchased medical marijuana from B-Good, which is the only other medical marijuana center in the designated neighborhood. Mr. Hibbard testified that B-Good's medical marijuana is more expensive, and they provided poor customer service, and it did not meet his needs. On cross-examination, Mr. Hibbard testified that he has purchased medical marijuana at many places since August 2015 when Cannabis for Health closed. He personally desires the issuance of this license. Mr. Hibbard testified that he did not observe any illegal conduct or on-site public consumption of marijuana when Cannabis for Health was in business. He believes that the Applicant would operate lawfully, and that granting the license would have no negative impact on the health, safety or welfare of the neighborhood.
43. Mr. Michael Cole testified in support of the application. He is over the age of 21, and has been a resident of the designated neighborhood for 2 1/2 years. He has no financial interest or family connection with the Applicant. Mr. Cole testified that he owns a retail marijuana cultivation business in Pueblo. He testified that he does not consume medical marijuana. Mr. Cole testified that there is a need in the designated neighborhood for the issuance of this license. On cross-examination he testified that he is not aware of other medical marijuana centers in the area. He personally desires the issuance of this license. He believes that the

Applicant would operate lawfully, and that granting the license would have no negative impact on the health, safety or welfare of the neighborhood.

44. Four witnesses testified *en masse* in support of the application. All of the witnesses are over the age of 21, and are either residents or a business manager in the designated neighborhood. None of them have a family connection with the Applicant. They do not have a financial interest in the Applicant, but one *en masse* witness, Gregory Kayne, is an employee of the Applicant. *En masse* witness Pierre Crepeau is a medical marijuana patient. He testified that he was a prior customer at Cannabis for Health, and that the business operated lawfully. Mr. Crepeau testified that he has also purchased medical marijuana at B-Good, which was more expensive than the product sold at Cannabis for Health. The *en masse* witnesses testified that there is a need in the designated neighborhood for the issuance of this license, and that they personally desire the issuance of the license. They testified that granting the license would have no negative impact on the health, safety, or welfare of the neighborhood.
45. In closing argument, Applicant's attorney argued that it was prejudiced when the Protestant's *en masse* witnesses were allowed to testify out of order, before the Applicant presented its case in chief with its *en masse* witnesses in support of the application. Applicant's attorney argued that some of its *en masse* witnesses, who signed the sign-in sheet in support of the application at the public hearing on October 26, did not testify because they had left the hearing room by the time the Applicant's attorney presented the *en masse* witnesses in support of the application.
46. The Hearing Officer concludes that this objection is without merit. First, the record is clear that when the Protestant's attorney requested to call its *en masse* witnesses out of order, the only objection made by the Applicant's attorney was a general objection that it had the burden of proof. The Applicant's attorney did not object at that time to any specific prejudice, including that any of its *en masse* witnesses would be unavailable if their testimony were delayed by the time taken up by the *en masse* testimony of the Protestant's witnesses. Secondly, the delay caused by taking *en masse* testimony from the Protestant's witnesses was about one hour, which is not an unreasonable burden for the Applicant, and the *en masse* witnesses for both sides testified in the same evening. More importantly, the delay in calling the Applicant's *en masse* witnesses was also the result of its attorney's decision to call four separate witnesses in its case in chief, before calling its *en masse* witnesses, rather than calling the *en masse* witnesses first. Because of the large crowd of witnesses protesting the application and the fact that some of them brought children to the evening hearing, it was a reasonable exercise of discretion to allow those witnesses to testify *en masse* first, who would then have the opportunity to leave the hearing. Finally, the Hearing Officer has reviewed the sign-in sheets supporting the license, and notes that there are signatures of three individuals with addresses within the designated neighborhood who did not testify in the Applicant's *en masse* group (Marsden, Bowman, and Sullivan). Therefore, at most, the Applicant would have had seven *en masse* witnesses total, including the four who actually testified.
47. Amanda Carvatt, the Manager of Cannabis for Health on West Colfax, testified that she circulated supporting petitions for two weeks, and that one person asked to remove her

signature from a supporting petition because of concern for her children. Also, a business owner within the designated neighborhood had agreed to testify in support of the application and then changed her mind because she was concerned about losing business from neighbors who opposed the application.

48. Mr. John Seckman testified in support of the application. As described below, he has experience in law enforcement, in marijuana regulation, and in the marijuana industry. He was offered as an expert witness in the subject of the impact of marijuana businesses on the health, safety and welfare of neighborhoods. Protestant objected to the proposed expert testimony. The Hearing Officer ruled during the hearing that Mr. Seckman would not be allowed to offer an expert opinion about whether this proposed marijuana location would have a negative impact on the health, safety and welfare of the neighborhood. The Hearing Officer also ruled that Mr. Seckman would be allowed to offer a lay opinion on this subject.
49. To be admissible as an expert opinion under C.R.E. 702, the witness must have “scientific, technical, or other specialized knowledge.” In determining whether testimony is lay or expert, the critical inquiry is whether a witness' testimony is based upon "specialized knowledge." *People v. Veren*, 140 P.3d 131, 137 (Colo. App. 2005). Lay witness opinion testimony is proper only if the opinions or inferences "do not require any specialized knowledge and *could be reached by any ordinary person*." *Id.* (emphasis added). In deciding whether an opinion is one that could be reached by any ordinary person, courts consider whether ordinary citizens can be expected to know certain information or to have had certain experiences. *Id.* Courts also consider "whether the opinion results from 'a process of reasoning familiar in everyday life,' or 'a process of reasoning which can be mastered only by specialists in the field.'" *Id.* (quoting *People v. Rincon*, 140 P.3d 976, 983 (Colo. App. 2005)).
50. In this case, the Applicant called witnesses in support of its application who included residents of the neighborhood, and Mr. Vaisman, the owner. All of these lay witnesses testified to the same opinion as Mr. Seckman—that granting this license would not have a negative impact on the health, safety, and welfare of the neighborhood. Since this opinion can be reached by any ordinary person, it is not properly the subject of expert testimony.
51. Mr. Seckman is the managing partner of John Seckman and Associates, which is a business management and evaluation company for marijuana businesses. He was employed as a police officer by the Denver Police Department for ten years, including an assignment to the Vice and Narcotics Squad, and he also worked as a special investigator for the State Attorney General's Office, before the de-criminalization of medical marijuana, and the legalization of retail marijuana. He was also employed by the State Marijuana Enforcement Division in charge of licensing and background checks for applicants for marijuana licenses, and he also worked on regulatory policies, rules, and procedures for security requirements for marijuana businesses. Mr. Seckman was employed subsequently as the Executive Director of Live Well, LLC, the largest marijuana business in the U.S., where he was responsible for acquisition decisions. Based upon these qualifications, the Applicant sought to qualify Mr. Seckman as an expert witness concerning the impact of marijuana businesses on the health, safety and welfare of neighborhoods.

52. Mr. Seckman testified that he reviewed population data and crime statistics for the City of Denver and for the zip code of 80209, where Cannabis for Health had operated. Mr. Seckman testified that the City's population increased by slightly more than 10% between 2011 and 2015, and that the population of the zip code 80209 also increased by approximately 10% during the same time period. Mr. Seckman testified that throughout the City, traffic accidents increased by 12% during the same time period, and that traffic accidents in the designated area increased by 2%. He testified that crime increased by 79% throughout the City and by 1% in the designated area, from 2011 to 2015. Mr. Seckman testified that reports of public disorder increased by 52% city-wide, and there was no increase in public disorder reports in the designated area, during that time period. He testified that reports of illegal sales, manufacture and possession of drugs increased by 337% throughout the City, and that there were 14 such reports in the designated area in 2011, and 15 such reports in 2015. Mr. Seckman testified that property crimes increased by 14% throughout the City, and they decreased by 13% in the designated area. He testified that in his experience, the security measures required by state and local authorities for marijuana dispensaries, including exterior lighting and video cameras, tend to have a deterrent effect on crime. Mr. Seckman also testified that minors cannot enter the premises of a medical marijuana center without a "red card" (which is issued by the State for individuals with a medical marijuana prescription).
53. Mr. Seckman also testified about data from City of Denver agencies concerning ordinance violations for zoning, building code and neighborhood inspection issues. Mr. Seckman testified that the only violation that he found concerning 285 South Pearl Street was for a lack of snow removal in 2014. He testified that the City Department of Public Works had no record of any request about parking restrictions or traffic speed control regarding 285 South Pearl Street. Mr. Seckman also testified that the City Department of Environmental Health had no record of any complaint concerning noise or odor at 285 South Pearl Street. Mr. Seckman testified that he checked data showing that property values throughout the City increased at the same rate as property values in the zip code 80209, presumably during the time period of 2011 through 2015. Mr. Seckman offered a lay opinion that granting this license would have no negative impact on the health, safety or welfare of the neighborhood.
54. On cross-examination, Mr. Seckman testified that he was not aware that the proposed location is within 1000 feet of a school, and that he has no experience with the acquisition of a marijuana business within 1000 feet of a school. Mr. Seckman also testified that there were reported crimes at 285 South Pearl Street while Cannabis for Health was operating, and these crimes included a burglary in August 2012, a threat reported in October 2012, a burglary in November 2012, and a disturbance call in October 2013. Mr. Seckman also testified that any reduction in crime in the designated neighborhood during the time that Cannabis for Health was operating cannot be attributed to the fact that the medical marijuana center was open.
55. Mr. Vaisman, the Applicant's owner, testified that he currently operates a medical marijuana center and a retail marijuana store at 4801 West Colfax Avenue in Denver. Mr. Vaisman testified that he offers two strains of proprietary medical marijuana. One of the strains is used for treatment of nausea and other symptoms experienced by cancer patients. Another

strain is an anti-depressant and it is also used to treat migraine headaches, which Mr. Vaisman believes is more effective than other medical marijuana strains. Mr. Vaisman testified that Exhibit A-14 shows 109 medical marijuana patients residing in the designated neighborhood who formerly patronized Cannabis for Health until it closed in August 2015. He testified that many of the former Cannabis for Health patients now travel to Mr. Vaisman's medical marijuana center on West Colfax to purchase medical marijuana, and they support re-opening the 285 South Pearl Street location.

56. Mr. Vaisman testified that if the medical marijuana center license is issued for CH II, there are several benefits for patients, when compared to B-Good, the other medical marijuana center in the designated neighborhood. CH II, doing business as Terps 'n' Purps will be open seven days a week, and B-Good is not open seven days a week. Mr. Vaisman testified that Terps 'n' Purps will have lower prices than B-Good. Terps 'n' Purps will offer the two proprietary strains of medical marijuana that are not offered at other centers.
57. Mr. Vaisman also testified about the policies and procedures that the Applicant will follow to comply with marijuana laws and regulations. If this license is granted, the center will be open from 11:00 am to 7:00 pm, daily. The last patient will be admitted at 6:45 pm. Patients will be required to sign a pledge to refrain from on-site consumption of medical marijuana, and from public consumption of medical marijuana, and from loitering on the premises. Mr. Vaisman testified that he has never had an instance of consumption on the licensed premises, and he would call the Denver Police if a patient violated the law. He will provide training to employees about the requirements of state and local laws and about valid forms of patient identification. He has developed standard operating procedures consistent with these requirements that employees are required to follow. All patients will be required to present a valid form of identification, and an electronic scanner will be used to validate forms of identification. Mr. Vaisman plans to hire a compliance officer if this application is granted. The Applicant will comply with requirements for interior and exterior video cameras and the storage of video recordings, and with requirements for packaging product sold to patients. He testified that the exterior will be well-lit, and that marijuana will be stored in a locked safe that is bolted to the floor. There are three parking spaces for patients in the back of the center, and on-street parking is also available. Mr. Vaisman also testified about the photos included in Exhibit A-15, of the premises at 285 South Pearl Street, which show that he maintained the upkeep of the exterior of his premises in 2014 and 2015, and compared them to photos taken before he rented the premises which show that the property was not as well-maintained.
58. Mr. Vaisman testified that he believes there is a need in the designated neighborhood for the issuance of this license, that residents of the designated neighborhood desire the issuance of the license, and that issuance of the license would have no negative impact on the health, safety, or welfare of the neighborhood.

Petitions opposing the application

59. On July 29, 2016, the Protestant pre-filed 85 pages of petitions in opposition to this application. (Exhibit P-14). Protestant's petitions contain the signatures of 610 people who oppose the application.
60. On August 5, 2016, Applicant filed its Objection to Opposition Petitions Filed July 29, 2016 (Exhibit A-17). Then on September 30, 2016, Applicant filed an additional Objection to Opposition Petitions (Exhibit A-18). The Hearing Officer notes that the objections raised by Applicant in Exhibit A-17 were repeated in Exhibit A-18, and Exhibit A-18 also made additional objections.
61. The Hearing Officer sustains the objections raised in Exhibit A-18, paragraphs 4, 6, 7 and 8, to the extent that those signatures are identified here, and otherwise overrules those objections:
- 2 signatures are outside of the designated area (p. 3, l. 16; p. 60, l. 8)
 - 2 signatures are duplicates and do not include the signers' age (p. 23, ll. 11, 12)
 - 1 signature does not include the signer's age (p. 12, l. 3)
 - 5 signatures have an illegible address (p. 13, l. 22; p. 23, l. 8; p. 35, l. 6; p. 47, l. 22; p. 83, l. 15)
62. In Exhibit A-18, paragraph 1, the Applicant objects that 385 signatures were obtained in petition packets that had a "Warning" page with the incorrect hearing date of July 22, 2016, allegedly in violation of the Department's Evening Petition Circulation Instructions. Applicant is correct that by letter dated July 15, 2016, the Department issued its "Amended Applicant Letter – Evening Hearing" (Exhibit A-10) which rescheduled the hearing from July 22, 2016, to August 10, 2016, and that some (but not all of the signatures) to which the Applicant objects were gathered after July 15, with a Warning page that has the earlier hearing date of July 22, 2016, rather than the then-current hearing date of August 10. Nevertheless, the Hearing Officer overrules this objection because the Applicant has not demonstrated any prejudice by this date discrepancy in the Protestant's petitions.
63. In Exhibit A-18, paragraph 2, the Applicant objects that 125 signatures were obtained in petition packets that had a "Warning" page where the earlier hearing date of July 22 was printed, and then crossed out and revised by handwriting with the then-correct hearing date of August 10. Applicant claims that the petitions with this type of "Warning" page do not meet the requirements of the Evening Petition Circulation Instructions. The Hearing Officer overrules this objection because this hand-written revision does not establish a violation of the Evening Petition Circulation Instructions.
64. In Exhibit A-18, paragraph 3, the Applicant objects that 258 signatures in Protestant's petitions were obtained prior to July 23, 2016, which is the date to begin circulating new petitions that is specified in Exhibit A-10, "Amended Applicant Letter – Evening Hearing," a letter from the Department to the Applicant and registered neighborhood organizations ("RNO"), dated July 15, 2016. The Hearing Officer takes official notice of the earlier

Applicant letter which was sent to the Applicant and the RNO's, dated June 21, 2016, which instructed the parties that they could begin circulating petitions on July 3, 2016, and informed the parties that the public hearing would be held on July 22, 2016. The purpose of having a two-day delay after public notice is posted on an Applicant's proposed location is to give all parties equal time to collect petition signatures.

65. The Hearing Officer notes that the Applicant actually began circulating its petitions *before* the earliest date shown on the Protestant's petitions. Applicant's earliest petition signature is dated July 4, 2016 (Exhibit A-16), and Protestant's earliest petition signature is dated July 5, 2016 (Exhibit P-14). The Hearing Officer notes that both sides obtained petition signatures after July 3, 2016, as instructed in the original Applicant letter dated June 21, 2016. Therefore, the Hearing Officer will not disqualify any signatures from either side's petitions based upon the date signed, because both sides have had equal time to collect petition signatures.
66. In Exhibit A-18, paragraph 5, the Applicant objects to 73 signatures which were gathered from a condominium building at 130 Pearl Street, which the Applicant claims were gathered in violation of the building's No Soliciting policy. In Exhibit A-18, there is an Exhibit E with two emails from two people who did not testify at the public hearing, which mention a No Soliciting policy at 130 Pearl Street. Although the emails are admitted into evidence, the Hearing Officer concludes that they have limited weight, because they provide little information about how the Protestants actually gathered the signatures from 130 Pearl Street. The Hearing Officer's view is that if building residents, who signed the petition in opposition to this application, wanted the petition circulator to adhere to the No Soliciting policy, they would not have signed the petition. Although Applicant in Exhibit A-18 states that it "made no attempt to gather signatures in the complex due to this prohibition," this contention is contradicted by the Applicant's petitions (Exhibit A-16) which have two signatures from residents of 130 Pearl Street in support of its application (identified in Exhibit P-15, pp. 2 and 3, para. 4)o. and 4)ss). The Hearing Officer therefore overrules this objection.
67. There are a total of 10 signatures disqualified, bringing the total of signatures opposed to the application to 600.

Witnesses opposing the application

68. Denver City Councilman Jolon Clark testified in opposition to the application. He represents Council District 7, which includes the proposed location of 285 South Pearl Street. Councilman Clark also sent a letter to the Department opposing this application, which is admitted into evidence as Exhibit P-11. In his letter, Councilman Clark stated in part:

The residents around this location have spoken loud and clear while voicing that there is neither a need nor a desire for this store at this location. The area is in close proximity to South Broadway which is one of the most densely saturated places in all of Denver for dispensaries and has no shortage of retail or medical marijuana outlets. This additional location would not bring any additional benefit to the neighborhood, and as the residents have expressed, it

would adversely affect the safety and quality of life in the neighborhood....I would urge you to deny the license on the basis of a lack of need or desire for an additional medical marijuana outlet in the area.

69. Councilman Clark testified that, in general, he is supportive of the marijuana industry, and he has not previously opposed any marijuana licenses in his City Council District. He testified that he strongly opposes this application because he has received an “overwhelming” number of emails and phone calls from constituents opposing this license because there is not a need or a desire for this license. He testified that he has not received any calls from constituents about their lack of access to medical marijuana, and he does receive many calls from constituents about their lack of access to other services. Councilman Clark testified that the licensing system should be balanced in approving and locating marijuana businesses, and the concepts of needs and desires have been adopted to achieve that balance. He testified that, in his experience, the level of opposition in this case is unprecedented, and it is so great, that if this level of opposition is not sufficient to show a lack of needs and desires of the community, then the standard cannot be met. Councilman Clark also testified that the distance prohibition with respect to schools was adopted by the City Council as a recognition that there is an inherent threat to the health, safety, and welfare of children and the neighborhood, where marijuana centers are located within 1000 feet of a school.
70. Mr. Brad White, the school principal for DSST-Byers (paragraph 19 above), also testified in opposition to this application. As the principal of a school within the designated neighborhood, Mr. White is a party-in-interest. Mr. White also co-signed the letter sent to the Department, dated August 3, 2016, on behalf of DSST-Public Schools, which opposes this application, and was admitted into evidence as Exhibit P-5. This letter states the DPS policy which prohibits students from possession, distribution, use, or sale of drugs, alcohol, or tobacco on school grounds, in school vehicles, or any place where it interferes with the educational program and operations of the school, or the health and safety of the community. Mr. White testified that DSST-Byers follows the DPS drug, alcohol and tobacco policy. He testified that there are many concerned school parents and school staff members who are opposed to this application. Mr. White testified that many of these school parents attended the October 26 hearing on this application. He testified that upholding the ordinance prohibition on this proposed location for a medical marijuana center will help the school to uphold its drug and alcohol-free policy. Mr. White testified that he and other DPS school principals want a safe zone around schools which will assist them in meeting their responsibility to keep students safe and healthy while they are in school. He testified that there is an RTD bus stop very close to the proposed location at 285 South Pearl Street, which is used by many students. He testified that there are hundreds of students who walk or drive past the proposed location at 285 South Pearl Street every day on their way to and from school. He also testified that students use the alley behind 285 South Pearl Street, where the parking spaces are located for the medical marijuana center. Mr. White testified that there is not a need in the designated neighborhood for this medical marijuana center; that he desires that this application be denied; and that granting this application would have a negative impact on the health, safety and welfare of the students.

71. Mr. Mark Bowers testified in opposition to this application. He is over the age of 21, and he has owned the property at 280 South Pennsylvania Street in the designated neighborhood since October 2009. Mr. Bowers operates an architecture business at this address which employs 12 professionals. His business is directly across the alley from 285 South Pearl Street, where Cannabis for Health had previously operated. Mr. Bowers testified that there were four different incidents in 2014 and in the spring and summer of 2015, when patients of Cannabis for Health caused problems which negatively impacted the health, safety, and welfare of his business. He testified that there were repeated problems with patients of Cannabis for Health who parked in the parking lot belonging to Mr. Bowers, which is at the rear of his property and posted with No Parking signs. Mr. Bowers described an incident in the fall of 2014, when he observed a young professional female employee leave his office and go to their office parking lot, where a stranger's car was parked. Two young men approached the female employee and there was a brief encounter, and then the female employee returned to the office and was in tears. She told Mr. Bowers that the young men invited her to party, and made rude gestures that offended her. Mr. Bowers then spoke to the owner of Cannabis for Health and asked him to inform his patients not to use Mr. Bowers' parking lot. However, the incidents continued. In the fall of 2014, another employee of Mr. Bowers returned to the office and found a stranger's car parked in their parking lot. The employee parked behind this car, and when he returned to the parking lot later that day, his car had been damaged by the other vehicle that backed into his vehicle while leaving the parking lot. In the spring of 2015, Mr. Bowers again noticed a vehicle illegally parked in his parking lot, and he approached the occupants and asked them to leave. The occupants refused to move their vehicle. In the summer of 2015, there was another incident when a Cannabis for Health patient parked his car in Mr. Bowers' parking lot, and Mr. Bowers asked him to move. The individual urinated in public in the parking lot, and left beer bottles in the parking lot. Mr. Bowers testified that there were typically one or two people every day from Cannabis for Health who illegally parked in his parking lot, and on Friday afternoons there were often a dozen people using his parking lot. Mr. Bowers testified that he would see some of these people leaving the back door of Cannabis for Health, or coming from that direction. These patients left trash in Mr. Bowers' parking lot, and caused car door dings to his employees' vehicles, and also exhibited rude behavior. Mr. Bowers did call the Denver Police a few times about the parking problems, and DPD did not respond. As a result of these problems, Mr. Bowers implemented an office policy where no employee went to their parking lot alone. Mr. Bowers testified that when Cannabis for Health closed in August 2015, all of these problems stopped, and there has not been one similar incident since then. He is concerned that if this application is granted, these problems will resume. Mr. Bowers testified that there is not a need in the designated neighborhood for this medical marijuana center because there are other marijuana dispensaries within 1.2 miles, and that he desires that this application be denied.
72. Ms. Charlotte Winzenburg testified in opposition to this application on behalf of the West Washington Park Neighborhood Association, a registered neighborhood organization with approximately 425 households which are dues-paying members. Ms. Winzenburg is a board member of WWPNA, and she has served on the WWPNA zoning committee for more than 18 years. She has also been a resident of the designated neighborhood since 1975, and she has been a member of WWPNA for 40 years. The proposed location for this medical

marijuana center is within the boundaries of WWPNA. Ms. Winzenburg testified about how WWPNA followed its standard procedure regarding this application. When WWPNA received notice from the Department of Excise and Licenses regarding this application, the zoning committee contacted nearby neighbors of the proposed location and provided them with information about the application, and invited them to the zoning committee meeting where this application would be discussed. The zoning committee meeting was held on June 28, 2016, and despite bad weather, six neighbors and committee members attended the meeting. Mr. Vaisman also attended this meeting on behalf of the Applicant, and he made a presentation, and then there were questions and answers. Mr. Vaisman then left the meeting, and those present discussed the application, and all neighbors opposed it. Then the WWPNA board met on July 5, 2016, and board members voted on July 13, 2016 to oppose this application. Ms. Winzenburg and others circulated the petitions in Exhibit P-14, and Ms. Winzenburg described the neighbors' reaction to this application as "incredibly strong opposition." Ms. Winzenburg testified that she has not previously seen this many signatures on petitions opposing a liquor or marijuana license application. She also testified that there are other applications for marijuana licenses that WWPNA has not opposed, and has entered into Good Neighbor Agreements with the licensee.

73. WWPNA sent a letter dated August 3, 2016, to the Department, opposing this application, which is admitted into evidence as Exhibit P-12. The letter states in part, that "Neighbors from all over the designated area of interest have indicated strong opposition to this license." The letter states that the opposition is shown by 610 signatures collected on petitions opposing the license, and that "Neighbors who signed petitions often said that they didn't oppose marijuana but that the neighborhood had too many marijuana stores and this location is too close to a school and is inappropriate." The letter also states that the proposed location is prohibited because it is within 1000 feet of a Denver Public School, and a medical marijuana business has not been in continuous operations at 285 South Pearl Street.
74. Ms. Julie Groves testified in opposition to the application. Ms. Groves is an attorney practicing law at Groves Law, LLC, located at 281 South Pearl Street, immediately next door to the proposed medical marijuana center at 285 South Pearl Street. Ms. Groves' law practice emphasizes elder law and estate planning, and many of her clients are elderly. Ms. Groves sent a letter dated August 5, 2016, to the Department, opposing this application, which is admitted into evidence as Exhibit P-7. Ms. Groves' letter states a number of reasons why she "vehemently" opposes this application. She states that she purchased her property in April 2016, after the prior medical marijuana center had closed. She states that there is not a need for this license because there are four other medical marijuana dispensaries very close to the proposed location: 135 South Broadway (7 blocks), 432 South Broadway (8 blocks), 985 South Logan Street (9 blocks), and 80 South Pennsylvania Street (3 blocks). Ms. Groves' letter also states that there is not a need for this license because there are 202 licensed medical marijuana dispensaries in the City and County of Denver to serve 15,275 medical marijuana card holders, and that this is an average of 75 patients per dispensary. Ms. Groves' letter states several reasons why she believes that granting this license would have a negative impact on the neighborhood. She believes that the location is not appropriate for a medical marijuana center because of the nearby location of the DSST-Byers School and the bus stop used by many school children which is about 50 feet from the proposed location. She also

states that there are middle school-aged children living in the 200 block of South Pearl Street where the proposed medical marijuana center would be located. Ms. Groves' letter also notes that her neighbors described past problems with the patients of Cannabis for Health, including hostile behavior, traffic and parking problems, and public consumption of marijuana. Ms. Groves testified that her elderly clients have expressed concerns about going to her law office if the medical marijuana center is licensed next door.

75. Ms. Mona Ahmed testified in opposition to this application. Ms. Ahmed is over the age of 21 and she has resided within the designated neighborhood at 224 South Pennsylvania Street since 2010. She shares an alley with the Applicant's proposed location at 285 South Pearl Street, and she testified that many other residences also share this alley. Ms. Ahmed testified that the 200 blocks of South Pearl Street and South Pennsylvania Street are primarily residential, and there are 19 children and teens living on these blocks. She testified that neighborhood children and school children use the alley. She testified that when Cannabis for Health was in business, it had a negative impact on the neighborhood. Ms. Ahmed testified that she observed Cannabis for Health patients driving too fast down the alley when arriving at or leaving the parking lot at the rear of the marijuana center, and she observed a lot of traffic in the alley. Ms. Ahmed described the traffic as causing a safety problem for her husband and small child who ride a bicycle in the alley. She testified that these problems stopped when Cannabis for Health closed. Ms. Ahmed testified that when Cannabis for Health was open, there was also increased traffic on Pearl Street for patients using the front entrance, and this was a significant concern to her. Ms. Ahmed testified that five of her neighbors observed public consumption of marijuana when Cannabis for Health was open, and this is a concern to her because of the potential for children's access to an illegal drug. Ms. Ahmed testified that there is not a need for this medical marijuana center, because there are other medical marijuana centers nearby. She testified that she does not hold a medical marijuana "red card." Ms. Ahmed testified that she does not desire the issuance of this license because of the traffic and safety problems in the alley, and her neighbors' reports about public consumption of marijuana, and the proximity to the school.
76. Ms. Rebecca Wiggins testified in opposition to this application. Ms. Wiggins resides with her husband and two middle school-aged children at 277 South Pearl Street, two properties away from the proposed location for the medical marijuana center. Ms. Wiggins and her husband also sent the email to the Department, dated September 16, 2016, opposing this application, which is admitted into evidence as Exhibit P-8. Ms. Wiggins' email states that they purchased their home in May 2016, after Cannabis for Health closed. She states that they purchased their home with the knowledge that a medical or recreational marijuana dispensary could not be located within 1000 feet of a school. Ms. Wiggins' email states that they had friends residing on their block when Cannabis for Health was open, and she and her husband "were aware that there was a significant amount of foot and car traffic, people smoking marijuana in front of the dispensary, cars being broken into, and a general odor." Ms. Wiggins' email states that these problems have not occurred on her block since the medical marijuana center has been closed. Ms. Wiggins' email states that "The street is a quiet street with lots of young children and families. We are comfortable with our children walking in the neighborhood, riding their bikes around, and playing in the front yard. There

is not significant traffic, there are not people loitering, there has not been any crime since we have resided in our home and there is no odor.”

77. Forty-two witnesses testified *en masse* to oppose the application. All of the witnesses are either residents or business owners in the designated neighborhood. The *en masse* witnesses testified that there is not a need in the designated neighborhood for the issuance of this license; that they personally do not desire the issuance of this license; and that granting the license would have a negative impact on the neighborhood.
78. Counsel for the Protestant also asked that it be noted for the record that a group of sixteen people who are parents of DSST-Byers students appeared at the hearing in opposition to the application.

The neighborhood does not desire this license

79. The opposition to this application is compelling, not only in the large number of opponents, but in the reasons for their opposition. The evidence showing that residents and business owners and managers do not desire the issuance of this license substantially outweighs the evidence of those who desire the issuance of the license. First, there are 600 signatures on petitions opposing this license, and there are 317 signatures on petitions supporting this license. While the numbers of people for or against an application are not controlling as to the needs and desires of the designated neighborhood, nevertheless the numbers are persuasive. See *Goehring v. Board of County Commissioners*, 469 P.2d 137, 138 (Colo. 1970).
80. Secondly, neighborhood representatives, including Denver City Councilman Jolon Clark, and the West Washington Park Neighborhood Association have expressed strong opposition to this application on behalf of their constituents or members. Councilman Clark described the level of opposition as “unprecedented” and “overwhelming.” Ms. Winzenburg, on behalf of WWPNA, who has more than 18 years of experience with liquor and marijuana licensing, testified that she has not previously seen this many signatures on petitions opposing a license application. Third, there was strong opposition to this application from the School Principal and the parent organization at DSST-Byers School, and from the DPS administration.
81. Fourth, the neighborhood residents who attended the public hearing in opposition to this application far out-numbered the residents attending the public hearing in support of the application. There were 42 witnesses who testified *en masse* in opposition to this application. The Hearing Officer inadvertently did not administer an oath before these 42 people testified *en masse*. Counsel for the Applicant did not make a timely objection to the lack of oath, and raised his objection only in closing argument. The Hearing Officer concludes that this objection should go to the weight given to the *en masse* testimony, and not to its admissibility because of the provisions of D.R.M.C. section 24-508.5(c)(3)a. which expressly states that the need and desire for this license may be “evidenced by petitions, remonstrances, or otherwise.” While a remonstrance is generally understood as a document evidencing opposition to an application, the dictionary definition also encompasses acts which evidence opposition. The Hearing Officer concludes that the presence of people at the

public hearing, who signed the sign-in sheets in opposition to this application and testified *en masse*, may be considered in determining the needs and desires of the neighborhood. Even setting aside the *en masse* testimony, the Hearing Officer reaches the same conclusion that a preponderance of the evidence establishes that the neighborhood does not desire this license. The Hearing Officer also notes that on the sign-in sheets for the public hearing which are part of the record of this proceeding, for those opposing this application, there are 16 signatures of residents who reside either in the 200 block of South Pearl Street, which is on the same block as the proposed medical marijuana center, or on the even-numbered side of the street in the 200 block of South Pennsylvania Street, which shares the alley with the Applicant's proposed location. In contrast, a review of the sign-in sheets for those supporting the application, shows only one signature of a resident in the 200 block of South Pearl Street (Elia), and he explained on the record that he had signed the wrong sign-in sheet and was opposed to the license. Thus, the residents most affected by the proposed location of this medical marijuana center are clearly opposed to this application. In addition, the testimony of Ms. Mona Ahmed, Mr. Mark Bowers and Mr. Brad White, and the email sent by Ms. Rebecca Wiggins, and the letter sent by Ms. Julie Groves provided persuasive reasons why they do not desire this license.

82. The Applicant presented only one witness who gave a reason why he desires the issuance of this license—Mr. Brian Hibbard who was a patient of Cannabis for Health “a few times.” The other two witnesses, Ms. Maria Denton, who has been a resident of the neighborhood only for several months, and Mr. Michael Cole, gave no reason why they desire the issuance of this license. There were only four *en masse* witnesses who testified that they desired the issuance of this license.
83. The Hearing Officer concludes that the Applicant has not established by a preponderance of the evidence that adult inhabitants of the neighborhood desire the issuance of this license, and therefore recommends that the application should be denied pursuant to D.R.M.C. section 24-508.5(c)(3)a.

The evidence does not establish the need for this license

84. D.R.M.C. section 24-508.5(c)(3)a. requires the Applicant to establish by a preponderance of the evidence the “need for the license” to meet the “reasonable requirements of the neighborhood.” This ordinance requirement is borrowed from the Colorado Liquor Code. *See e.g.*, C.R.S. section 12-47-301(2)(a). In the liquor licensing context, the reasonable requirements of the neighborhood refers to the “thirst needs” of the neighborhood. *Tavella v. Eppinger*, 383 P.2d 314, 315 (Colo. 1963). The Applicant must show that existing similar licenses in the designated neighborhood are not adequate to meet the needs of the designated neighborhood. *Id.*
85. Counsel for the Applicant argued that only witnesses who are consumers of medical marijuana should be allowed to testify about the needs of the neighborhood for the proposed license. In support of this position, counsel cited *Nat'l Convenience Stores v. City of Englewood*, 556 P.2 476 (Colo. 1976). In the liquor licensing context, the Department has adopted a policy that the testimony of a non-drinker is relevant to the desires of the

neighborhood but not to the needs of the neighborhood. City and County of Denver Department of Excise and Licenses Policies and Procedures Pertaining to Liquor, 3.2 Beer and Cabaret Licenses, Section I.B.3.b. The Hearing Officer concludes that this requirement for a witness to be a consumer of the substance should not be applied in medical marijuana hearings because the use remains illegal under federal law, and the Colorado Constitution, Article XVIII, Section 14, which de-criminalized the use of medical marijuana, confers confidentiality on the records of medical marijuana patients that are in the possession of the state health agency.

86. In this case, the Applicant presented evidence that it has two unique strains of medical marijuana which it offered when it operated previously at 285 South Pearl Street, and which it continues to offer at its location on West Colfax Avenue. However, there was no testimony from any witness that he actually uses one of the unique strains of medical marijuana. Further, there is no testimony from any witness that they were unable to purchase medical marijuana, or had any difficulty purchasing it, since August 2015 when Cannabis for Health closed on South Pearl Street.
87. The parties have stipulated that there is one other medical marijuana center within the five-block designated area, which is B-Good, at 80 South Pennsylvania Street. Applicant's witnesses testified that the medical marijuana sold at B-Good is more expensive than the product sold by the Applicant, and that the Applicant will be open seven days a week, and B-Good is not. The Hearing Officer concludes that the Applicant's offering of medical marijuana at a lower price and an additional day of operation is not sufficient to meet the Applicant's burden of proof regarding the need for this license when weighed against the Protestant's evidence.
88. According to D.R.M.C. section 24-508.5(c)(3)a., and *Goehring v. Board of County Commissioners, supra*, petitions are relevant not only to show the desires of the neighborhood, but also to show the need for the license. As discussed above, there are 600 signatures on petitions opposing the issuance of this license, which are relevant to show that there is not a need for this license. Additionally, the Protestant's evidence cited in the previous section of this Recommended Decision is also relevant to show that there is not a need for this license.
89. D.R.M.C. section 24-508.5(c)(3)b. also authorizes the Department to consider the number and availability of other medical marijuana centers near the designated area. The letter from Ms. Groves, Exhibit P-7, states the addresses of three other medical marijuana dispensaries (in addition to B-Good), which are only seven to nine blocks from this proposed location. Further, this letter states that there are 202 licensed medical marijuana dispensaries in the City of Denver which serve 15,275 medical marijuana "red card" holders, with an average of 75 patients per dispensary, which in Ms. Groves' view indicates that there is no need for an additional dispensary.
90. The Hearing Officer also notes the legislative history in the amendments to the Denver Medical Marijuana Code, where the City Council states that "the number of registered patients who are lawfully authorized to purchase medical marijuana has remained static for

several years both in Denver and statewide.” (Council Bill No. CB16-0291, adopted April 25, 2016).

91. The Hearing Officer concludes that the Applicant has not established by a preponderance of the evidence that there is a need for this license to meet the reasonable requirements of the neighborhood, and therefore recommends that this application should be denied pursuant to section 24-508.5(c)(3)a.

Issuance of this license will adversely impact the health, welfare, and safety of the neighborhood

92. The Applicant presented evidence through Mr. Seckman about crime and traffic accident statistics in Denver and in the designated neighborhood for the years 2011 to 2015, which reflect that crime and traffic accidents increased by a smaller rate in the designated neighborhood than in the City as a whole. Mr. Seckman also testified that there were no citizen complaints or violations reported to City of Denver agencies which were related to 285 South Pearl Street involving zoning, building code, noise, odor, parking, traffic, or neighborhood inspection issues. Mr. Seckman testified that the issuance of this license would not adversely impact the health, safety and welfare of the neighborhood. The Hearing Officer finds it remarkable that Mr. Seckman was unaware of one of the most important facts in this case, that the proposed location is only 628 feet from a school, and because of this deficiency, the Hearing Officer believes that his opinion is entitled to less weight. Mr. Vaisman testified that he requires patients to sign a pledge that they will comply with state law; they will not consume marijuana on the premises or in public; they will not sell or give away marijuana; and they will not loiter.
93. Protestant presented testimony from Ms. Ahmed and Mr. Bowers who had observed repeated problems with Cannabis for Health patients, involving speeding and additional traffic in the alley which is used by pedestrians and cyclists, including children, and problems with property damage to vehicles, public urination, littering, and hostile behavior. The problem was serious enough that Mr. Bowers implemented the office policy that no employee went to their parking lot alone. Ms. Ahmed and Mr. Bowers testified that the problems they previously observed have not occurred since Cannabis for Health closed in August 2015.
94. There was also testimony by Ms. Ahmed that five of her neighbors observed public consumption of marijuana when Cannabis for Health was open, and this is a concern to her because of the potential for children’s access to an illegal drug. Ms. Wiggins’ email (Exhibit P-8) and Ms. Groves’ letter (Exhibit P-7) also state that neighbors had reported that Cannabis for Health patients consumed marijuana in public. Counsel for the Applicant objected to this testimony on hearsay grounds. Generally, administrative hearings need not comply with the strict rules of evidence. *McPeck v. Colo. Dept. of Social Services*, 919 P.2d 942, 945 (Colo. App. 1996). Hearsay is admissible in a licensing hearing if it is sufficiently reliable and trustworthy and as long as the evidence possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. *Industrial Appeals Comm’n v. Flower Stop*, 782 P.2d 13, 18 (Colo. 1989). Applying these principles here, the Hearing Officer concludes that the statements of Ms. Ahmed and Ms. Wiggins about public consumption of marijuana are sufficiently reliable and trustworthy, given that they have the

responsibility for the welfare of children in their households, they live in very close proximity to the proposed location, and they were otherwise credible witnesses who can be relied upon to reasonably assess information that they have received. The Hearing Officer concludes that the statements of Ms. Groves are also sufficiently reliable and trustworthy, given that she operates a law firm next door to the proposed premises, she has elderly clients, and she was an otherwise credible witness with the professional training and experience to reasonably assess information that she has received.

95. Protestant also presented testimony from Mr. Brad White, the School Principal of DSST-Byers, that this proposed location which is less than 1000 feet from the school, will adversely impact the health, welfare and safety of the school children, because a safe zone is needed around the school, and the proposed location would hinder the school's ability to uphold its drug and alcohol-free policy.
96. The Hearing Officer therefore recommends that this application be denied pursuant to D.R.M.C. section 24-508.5(c)(2)d., on the grounds that issuance of the requested license will adversely impact the health, welfare, and public safety of the neighborhood.

ACCORDINGLY, having considered the evidence in its entirety, it is concluded by the weight thereof that there is good cause pursuant to D.R.M.C. section 24-508.5(c)(2)a. and section 24-508(c)(2)d., to deny this application for a medical marijuana center license to be located at the premises known and designated as 285 South Pearl Street, Denver, Colorado; and it is further concluded that the Applicant, CH II, LLC, doing business as Terps 'n' Purps, has not sustained its burden, pursuant to D.R.M.C. section 24-508(c)(3)a., to show that there is a need for the applied-for medical marijuana center license to meet the reasonable requirements of the neighborhood, and that residents, business owners and managers within the designated neighborhood desire that the license issue. **Therefore, it is recommended that the license application be denied.**

RECOMMENDED this 17th day of November, 2016.

/s/ Suzanne A. Fasing
Suzanne A. Fasing
Hearing Officer

Any party in interest may file objections to the foregoing Recommended Decision within ten (10) calendar days from the date above. All filings shall be made by email to EXLRecordsManagement@denvergov.org and CAOExciseandLicense@denvergov.org, and Ashley.Kilroy@denvergov.org copying the Assistant City Attorney, Cristina.DiMaria@denvergov.org, and any additional parties listed below.

If a party in interest does not have access to email, objections shall be submitted in writing to the Director, Dept. of Excise and Licenses, 201 W. Colfax Ave., Dept. 206, Denver, CO 80202.

The Director of the Department of Excise and Licenses will issue a **FINAL DECISION** in this matter following review and consideration of the Recommended Decision, and if applicable, any objections.

CERTIFICATE OF SERVICE

The undersigned hereby states and certifies that one true copy of the foregoing Recommended Decision was sent via email, on the date above, to the following:

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/s/ Suzanne A. Fasing_____
Suzanne A. Fasing
Hearing Officer