

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

RECOMMENDED 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.

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.

This matter came on for hearing on December 6, 2016, pursuant to prior notice concerning applications filed by RJJ Morrison, LLC, dba Native Roots Bear Valley (Applicant or Native Roots), for both a medical marijuana center (center) license and a retail marijuana store (store) license to be located at the premises known and designated as 3150 S. Sheridan Blvd., Unit 2, Denver, Colorado.

The Applicant was represented at the hearing by its attorneys, Tom Downey and John E Jennings, III. The Licensing Authority of the City and County of Denver (City) was represented by Assistant City Attorney Cristina DiMaria. GRE Bear Valley, LLC (Bear Valley or shopping center) was represented by its attorney, Steven W. Kelly. City Council Member Kevin Flynn appeared as a party in interest *ex officio*. Katrina Rueschhoff, Sarah Starnier, Christopher Keller, Julia Bourlakov, and Kelly McCarthy testified at length as parties in interest. Representatives of three Registered Neighborhood Organizations (RNOs)—Harvey Park Improvement Association (HPIA); Pinecrest Village Improvement Association (PVIA); and Bear Valley Improvement Association (BVIA)—presented the positions of their respective RNOs as set forth below. Three persons testified *en masse* in favor of the applications. Twenty-four persons testified *en masse* in opposition to the applications.

After reviewing the testimony and exhibits received into evidence, as summarized below, and applying existing law, the Hearing Officer finds, concludes, and recommends as follows:

1. The Applicant is a Colorado company in good standing and authorized to do business in the State of Colorado.
2. Pursuant to the Revised Municipal Code of the City and County of Denver, Council Member Kevin Flynn was given notice of the hearing. The following registered neighborhood organizations (RNOs) were given notice of the hearing: Denver Neighborhood Association,

Inc.; Inter-Neighborhood Cooperation; BVIA; PVIA; and HPIA. Notice of these applications and the hearing was properly posted as required by law, and posting was verified by the City on November 17, 21, 23, and 28; and December 2 and 5, 2016.

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

- City Exhibits C1 through C6;
- Applicant's Exhibits A1-11¹;
- Bear Valley Exhibits BV1, 2, 3, 4, 5, 6, 7, 9, 10, 12, 14, 15, 16, 17, and 18²;
- Flynn Exhibits P1-P12; and
- Bourlakov Exhibits 1 and 2.

All witnesses were sworn-in to testify.

4. Jon Boord is one of the owners of, and general counsel to, the Applicant. He is over the age of 21. Native Roots is a family of legal entities that employs 650 people, operates in 12 jurisdictions, and holds 160 State and local licenses related to medical and recreational marijuana. It operates 14 medical marijuana centers and 12 retail marijuana stores³ in Colorado at 17 locations. Native Roots has established legal compliance as its number one priority company-wide. To that end it employs a chief compliance officer who oversees a staff of 12 persons dedicated to compliance. Native Roots works closely with local law enforcement, sharing video when asked. All employees of Applicant go through three days of training upon initial hire, and then move to a shadowing program where they are assigned to follow a more experienced employee. Once fully trained, the new hires are allowed to work individually. Employees receive periodic, ongoing training and are provided with written materials that contain Native Roots' standard operating procedures.
5. Native Roots has had some violations in the past. On one occasion, its store in Aspen sold marijuana to a person under the age of 21. The employee making the sale and that person's manager were fired, and Native Roots instituted additional training on this matter. Other violations include a signage issue and an ongoing odor issue in Boulder; some non-compliant packaging found in inventory in Eagle/Vail; tardy Metrc reports to the State Marijuana Enforcement Division (MED); and a sign issue in Denver. It has a pending criminal citation issued by Denver concerning the issue of the amount of marijuana assigned to individuals at a medical grow facility. With the exception of these infractions, Mr. Boord believes that Native Roots is presently operating in full compliance with all applicable laws, and it will make any structural changes to its operations that may be necessary to maintain full compliance.
6. Mr. Boord describes the area around the proposed location as a mix of commercial and residential, located at the intersection of Hampden and Sheridan, which are two main arterials.

¹ A2 was admitted except for the emails from persons residing outside the Designated Area.

² BV18 was admitted except for the emails from persons residing outside the Designated Area.

³ The terms "recreational marijuana" and "retail marijuana" are used interchangeably in this Decision. The former term is used more commonly outside of Denver, while the Denver Revised Municipal Code uses the latter term.

The building is located on property adjacent to Bear Valley Shopping Center, a commercial shopping center from whom it purchased the building. During the negotiation to purchase the building from the shopping center, Native Roots did not disclose its plans to open a center and store. This is consistent with how it has purchased real estate in the past, as it believes it enables it to buy real estate at market value without having to pay a marijuana “tax” or premium. Mr. Boord believes that Native Roots has experienced this phenomenon in the past, with sellers inflating prices once the intended purpose becomes known. Native Roots submitted commercial leases in support of its applications, with the lessor being the real estate arm of the family of Native Roots companies, and the lessee being the Applicant. These leases had been executed before the lessor had closed on the property, which Native Roots describes as its normal operating procedure.

7. Applicant currently has its corporate headquarters in the building, and it purchased the building with the idea of combining the headquarters with a medical marijuana center and retail marijuana store. It is a 13,000 square foot building on two levels, and Native Roots proposes putting the center and store on the upper level. Mr. Boord notes that Native Roots has 3700 medical marijuana patients State-wide, and he believes some of these will use the new location. There is no other medical marijuana center or retail marijuana store located in the Designated Area; the nearest one is 1.8 miles away. Mr. Boord believes that Applicant offers a truly unique service, combining a concierge-type service with its proprietary strains of marijuana that no one else can provide. Native Roots caused petitions to be circulated within the Designated Area, obtaining over 500 signatures supporting each application⁴. It also reached out to HPIA and BVIA, and it entered into a Good Neighbor Agreement with HPIA. See Ex. A-5, discussed below. Should the applications be granted, Native Roots will continue to engage with its neighbors, and it will operate lawfully. Mr. Boord does not foresee any negative impact on the health, safety, or welfare of the neighborhood if the applications are granted.
8. David Cuesta is the chief compliance officer of Native Roots, where he oversees a staff of 12 persons in the compliance area. He is over the age of 21. Prior to coming to work for Applicant, Mr. Cuesta was a criminal investigator for the State MED, where his duties included ensuring that licensees were complying with State law and MED rules. Should these applications be granted, he would have ultimate responsibility for ensuring full compliance with all legal requirements. Mr. Cuesta stated that Native Roots will ID every customer twice: at reception before accessing the sales floor and again at the point of sale. Vertical IDs will not be accepted, and any employee selling marijuana improperly, such as to persons under the age of 21, will be terminated. Applicant will maintain video surveillance as required by MED, and it will call police should any of its employees observe any criminal activity such as smoking marijuana outside the store. Native Roots does not have security guards at its stores, in an attempt to avoid physical confrontations. It has never had a robbery attempted during open hours at any of its 17 locations. There have been some after-hours break-ins, but no marijuana or cash has ever been taken. Native Roots maintains motion sensor alarms, panic buttons, broken glass alarms, and seismic vibration detectors at its outlets as security measures and would maintain similar measures at the proposed location.

⁴ Objections were filed against 61 of the signatures supporting a medical center, and against 56 of the signatures supporting a retail store. Granting these objections leaves 463 signatures in support of the medical center and 466 signatures in support of a retail store.

9. Mr. Cuesta reviewed some crime data he got from the Denver Police Department. See Exhibits A-10 and A-11. He looked at the area surrounding a different shopping area at 7870 W. Quincy, where Native Roots opened an outlet in August 2015. He compared the 15 months prior to August 2015 with the subsequent 15 months. The total number of crimes decreased. He contrasted this with the same time periods for City Council District 2, a larger area containing the shopping area, and noted that the total number of crimes increased. From this data, Mr. Cuesta concluded that the opening of the new store would have a positive impact on the health, safety, and welfare of the neighborhood. Mr. Cuesta conceded that there may be many causes contributing to the decrease in crimes in the shopping area, but he believes that the increased surveillance provided by the Native Roots outlet is a major contributor. Mr. Cuesta also provided some data on the dollar value of both medical and retail marijuana sales. The data show a continued upward trend, although the trend line is clearer for retail than it is for medical.
10. Katrina Rueschhoff resides in the Designated Area and is over the age of 21. She is active in her neighborhood association, and she attended a community event sponsored by the Applicant. Ms. Rueschhoff is familiar with Bear Valley Shopping Center and the proposed location for the center and store. She thinks it is a good one, located near a bar and liquor store in the commercial center. The location is partly hidden from street view, and she thinks it fits in with the overall context. Ms. Rueschhoff believes that opening the center and store would create jobs in the neighborhood, and she thinks it might help to decrease the population of transients in that portion of the shopping center. She believes that the opening of the corporate headquarters has already positively impacted the area, and she thinks the store and center would build on this. Ms. Rueschhoff has spoken with many of her neighbors about the applications, and she has heard both positive and negative comments. Some neighbors would like to have marijuana available in the shopping center to make it more of a one-stop-shopping experience. Ms. Rueschhoff thinks that Native Roots would operate lawfully, and she thinks that granting the applications would have a positive impact on the health, safety, and welfare of the neighborhood.
11. Sarah Starnier is the general manager of the Doghouse Tavern, located in the rear of the Bear Valley Shopping Center and very near the proposed location of the center and store. She is over the age of 21. The Tavern has a clientele consisting of long-time customers as well as some new, younger customers. Ms. Starnier has been to the corporate headquarters of Native Roots and is familiar with its operations. The headquarters has been instrumental in cleaning up the area since it opened. She thinks the proposed location is a good one that fits in well with the setting. Ms. Starnier believes that opening the center and store will increase foot traffic in the area, which would benefit not only her business but all of the businesses in the area. She thinks that the center and store would meet a need in the neighborhood by providing Native Roots' unique service, and she believes that the Native Roots brand carries a certain cachet that other brands do not. Ms. Starnier thinks Applicant would operate lawfully, and she thinks that granting the applications would have a positive impact on the health, safety, and welfare of the neighborhood.

12. Christopher Keller resides in the Designated Area, and he is over the age of 21. He is active in his neighborhood, attending neighborhood meetings, walking his dogs, and conversing with neighbors. Mr. Keller also frequents Bear Valley Shopping Center. Mr. Keller did some research to answer some questions he had. He was unable to find any evidence that opening the center and store would increase underage consumption of marijuana; increase crime in the area; or have a negative impact on the economy or community, such as increasing unemployment or decreasing property values. He therefore does not think that opposition on those grounds is warranted, and he has no personal reservations about granting the applications. Mr. Keller notes that there are no other medical marijuana centers or retail stores in the Designated Area, and he would like Bear Valley Shopping Center to be a one-stop shopping experience which includes marijuana. Mr. Keller thinks that the proposed center and store would bring increased customer traffic to the shopping center and will bring more jobs to the area. He believes the neighborhood needs, and he personally desires, that the applications be granted. If they are, Mr. Keller thinks there will be a positive impact on the neighborhood.
13. Julia Bourlakov has lived in the Designated Area for 11 years, and she is over the age of 21. She opposes both applications. Ms. Bourlakov notes that the neighborhood has lots of older people as well as families with young children. Her neighbors feel there are too many marijuana outlets in the area, and she agrees. Ms. Bourlakov notes the close proximity of a playground and park, just under the bridge along the creek from the proposed location. She does not think there is a neighborhood need for, nor does she personally desire, either a medical marijuana center or a retail marijuana store as proposed in these applications. She circulated petitions among her office workers, and 14 signed in opposition to the center and 13 signed in opposition to the store. See Exhibits B1-2.
14. Kevin Flynn is the Denver City Council member from District 2, which includes the shopping center, and his district office is located in the shopping center. He is over the age of 21. Mr. Flynn opposes the applications on several grounds. He believes that the Department violated its own procedures as well as the Denver Municipal Code in allowing the medical center application to be amended to change locations. He thinks the retail store application should not have been accepted and consolidated with a pending medical center application, rather than an existing center.⁵ And Mr. Flynn is convinced that the applicants have not shown by a preponderance of the evidence that the neighborhood needs or desires either a medical center or a retail store.
15. Mr. Flynn reviewed data on existing marijuana outlets, and he found 14 existing licensees within a 3-mile radius of the proposed location. He concedes that most people will not walk three miles to shop, but he notes it is a short drive to these facilities. See Ex. P-8. The farthest that any resident in the Designated Area is from a marijuana outlet is under 2 miles. Mr. Flynn believes that Denver is saturated with medical marijuana centers, since only 14% of red card holders⁶ live in Denver, yet 40% of all medical centers are in Denver. Concerning the evidence of neighborhood needs and desires, Mr. Flynn points out that the petition signatures in

⁵ Mr. Flynn agrees with the rationale set forth in more detail in Bear Valley's Motion For Decision Denying Applications.

⁶ A "red card holder" is a person who has obtained authorization from the MED to purchase medical marijuana.

opposition to the center (806) and store (838)⁷ far outnumber the petition signatures supporting them. The number of residents of the Designated Area testifying in opposition to the applications (24) far outnumbered the witnesses in favor of the application (three, two of whom are affiliated with the Applicant.)

16. Kelley McCarthy is the manager of Bear Valley shopping center, and she is over the age of 21. She spoke with all of the businesses in the shopping center, and 16 out of 25 oppose the applications. Ms. McCarthy sees no need for a medical center as proposed, and she personally does not desire one. Bear Valley shopping center has had between 75 and 100 requests to locate marijuana related businesses in the shopping center, and it has refused all of them. It would not have sold the buildings to Native Roots had it known of Native Roots' intentions to open a center and store there. Ms. McCarthy thinks granting the applications will be bad for business and make it harder to deal with the existing problems with transients in the area. She believes that granting the applications will have a negative impact on the health, safety, and welfare of the neighborhood.
17. Xochitl Gaytan is the Interim President of HPIA, an RNO whose boundaries encompass the proposed location. HPIA signed a Good Neighbor Agreement with Applicant, and HPIA neither supports nor opposes the applications. Rob Collins is the President of PVIA, an RNO whose boundaries encompass the proposed location. By a vote of 9-0, the board of PVIA voted to oppose both applications. Richard Saiz is the President of BVIA, an RNO whose boundaries encompass the proposed location. At a meeting of the full membership, the members voted 69-3 to oppose the applications.
18. As noted above, 24 residents of the Designated Area testified briefly that they were over the age of 21, they did not think there was a neighborhood need for either a center or a store, nor did they personally desire either one. Three witnesses, two of whom have the same address of 3150 S. Sheridan Blvd. as the Applicant, testified that the neighborhood needed, and they personally desired, both a store and a center.
19. Taken as a whole, the evidence fails to establish by a preponderance of the evidence that there is a need for either a medical marijuana center or a retail marijuana store to meet the reasonable requirements of the neighborhood; nor was it established by a preponderance of the evidence that the residents and owners and managers of businesses in the Designated Area desire the requested licenses to issue. While Native Roots was successful in obtaining a large number of petition signatures in support of the applications, there were significantly and substantially more petition signatures opposed to the application. Even more telling, 24 residents of the Designated Area came out on a cold and snowy evening to testify en masse to the lack of a need or desire for either a center or a store. Three persons testified en masse that there was a need and desire, and as noted above, two are affiliated with the applicant. While there is not a store or center in the Designated Area, there are many marijuana outlets within a few minutes' drive. Applicant attempted to define its proposed service as unique, in offering both a concierge type service and proprietary strains, but the testimony was summary in nature and did not actually describe either the concierge service or the proprietary strains. Applicant also attempted to justify need on the basis of the need of the traveling public, since it is located at

⁷ These numbers reflect the valid signatures, after subtracting for sustained challenges.

the intersection of two arterial roadways. But the traveling public need travel only a few more minutes to find marijuana outlets. Applicant presented testimony of the desire for one-stop shopping. However, this was hearsay, in that neither witness suggesting this testified that they would do so. The witnesses did not describe what type of shopping the marijuana shopping would be paired with. Also, the proposed location is not in the shopping center itself, but rather around back is a separate building, which more likely would entail two stops for those driving.

ACCORDINGLY, having considered the evidence in its entirety, it is concluded by the weight thereof that the Applicant RJJ Morrison, LLC, dba Native Roots Bear Valley has failed to sustain its burden to show that, pursuant to the Denver Medical Marijuana Code and the Denver Retail Marijuana Code, there is a need for either the requested Medical Marijuana Center License or the Retail Marijuana Store License to meet the reasonable requirements of the neighborhood; failed to sustain its burden to show that the residents and owners and managers of businesses within the Designated Area desire that the licenses be issued; and failed to sustain its burden to show that approval of the Application would not be injurious to the health, welfare, or public safety of the Designated Area.

Therefore, it is Recommended that the Applications be DENIED.

RECOMMENDED this 22nd of December, 2016.

/s/ Ken F. Kirkpatrick
Ken F. Kirkpatrick
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 the Department at CAOExciseandLicense@denvergov.org and EXLRecordsManagement@denvergov.org, copying the Assistant City Attorney 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., Room 2.H.9, 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/ Ken F. Kirkpatrick

Ken F. Kirkpatrick

Hearing Officer