

June 3rd, 2019

DECISION OF THE CANNABIS LICENSING BOARD (the "Board")

ITEM #19-2

IN THE MATTER OF AN APPLICATION BY:

Ninetails Cannabis Inc.

FOR:

Sub-class 2 Cannabis Retail Licence for Ninetails Cannabis Inc. at 204 C Main Street, Whitehorse Yukon, Cannabis Control and Regulation Act, SY 2018, c.4

Board

David Sloan – Chair
Mieke Leonard – Vice-Chair
Shari Borgford – Member
James Lindsay – Member
John Farynowski – Member

Applicant

Ninetails Cannabis Inc.
(Jonathan Marcotte, President)

OVERVIEW

On, March 29, 2019, the President of the Yukon Liquor Corporation received an application (the "Application") from Ninetails Cannabis Inc. (the "Applicant") for a Sub-class 2 Cannabis Retail Licence (the "Licence"). Pursuant to the Application, the Applicant is requesting the issuance of the Licence for Ninetails Cannabis Inc., at 204 C Main Street, Whitehorse Yukon (the "Premises").

The Application was deemed complete by the President on April 5, 2019. Accordingly, the President delivered a copy of the Application to the Cannabis Licensing and Review Board (the "Board") and circulated public notice of the Application which began on April 8, 2019 in the Whitehorse Star.

Members of the public were given the opportunity to object to the Application during the four-week objection period, which ran until May 6, 2019 at 4:30pm.

No objection was received. As such, the Board reviewed the Application pursuant to section 31 of the Cannabis Control and Regulation Act SY 2018, c. 4 (the "CCRA")

ISSUE

Taking into account the Application, the relevant considerations set out in section 2 of the CCRA, the public interest, and the conformity of the Application to requirements set out in the CCRA and accompanying Regulations, will the Board:

- (a) grant the licence;
- (b) grant the licence subject to conditions; or
- (c) refuse to grant the licence?

DECISION

Having considered the Application, and taking into account the relevant considerations enumerated in section 1 of the CCRA, the requirements imposed by the CCRA and accompanying Regulations, and after determining that a grant of the licence would be in the public interest, the Board has decided to issue a Sub-class 2 licence without conditions for the period from the date of the issuance of this decision until March 31, 2022 for the Premises.

LAW

In reaching its decision on the issue, the Board considered the following legislation:

Cannabis Control and Regulation Act, SY 2018, c.4., and in particular sections 1, 2, 16, 17, 21, 25, 26, 27, 28, 30, 31, 53, 55, 57, 79, 80;

Cannabis Control and Regulation General Regulation, O.I.C. 2018/184., and in particular, sections 4, 7, 11, 12, 14;

Cannabis Licensing Regulation, O.I.C. 2019/42., Section 3;

Cannabis Licensing Regulation, O.I.C. 2019/43., and in particular sections 2, 3, 4, 5, 6, 7, 8, 10, 16; and

Cannabis Licensing Regulation, O.I.C. 2019/45., Section 2.

EVIDENCE BEFORE THE BOARD:

The Board considered the written Application submitted by the Applicant and the Relevant Consideration Analysis carried out by the President of the Yukon Liquor Corporation (the "President").

ANALYSIS OF LAW AND EVIDENCE:

Section 31 of the *CCRA* directs the Board as follows:

Decision of the Board

31(1) If no objection to the granting of the licence has been served under subsections 29(1) and (2), the board must make one of the following decisions, taking into account the application received under paragraph 27(6)(b) and other documents received under subsection 30(1) and the relevant considerations:

- (a) to grant the licence, for the licence period that it determines, that contains no conditions additional to the statutory conditions, if satisfied that
 - (i) the requirements of this Act and the Regulations have been complied with,
 - (ii) to grant the licence would be in the public interest, and
 - (iii) it is not necessary for the licence to contain any additional conditions;
- (b) to grant the licence, for the licence period that it determines, on the conditions additional to the statutory conditions that the board determines to be appropriate, if satisfied that
 - (i) the requirements of this Act and the Regulations have been complied with,
 - (ii) to grant the licence would be in the public interest, and
 - (iii) it would be beneficial for the licence to contain those additional conditions;
- (c) to refuse to grant the licence, if not satisfied that
 - (i) the requirements of this Act and the Regulations have been complied with, or
 - (ii) it would be in the public interest to grant the licence.

The "documents received under subsection 30(1)" include:

Consideration of Application

30(1) Without delay after the service described in subsection 29(2), the president must give the following documents to the board, and a copy of them to the applicant:

- (a) any comments on the application or the applicant that the president may have, including with respect to the licence period of the licence applied for;
- (b) any objection served on the president within the four weeks referred to in subsection 29(1);
- (c) a report of an inspection or investigation arranged for under subsection 27(7);
- (d) any other relevant information of which the president is aware (Emphasis Added).

The "**relevant considerations**" referred to in section 33(1) of the *CCRA* are defined in section 2 of the *CCRA*:

"relevant considerations", in relation to an application for a licence, means the following:

- (a) the number of licences, and of different types of licences, in the area in which the premises where it is proposed that cannabis would be sold are situated,
- (b) the population of the area, including
 - (i) seasonal variations in the population, and
 - (ii) variations in the population both in the immediate area where the premises are situated and more distant areas capable of being served by the premises,
- (c) any economic benefit in the area that could reasonably be expected to flow from the business of the sale of cannabis,
- (d) the expressed views of the population, both in the immediate area surrounding the premises and more distant areas capable of being served by the premises, of the need for, or desirability of, licensed premises in the area, including the need to serve the projected travelling public in the area,
- (e) the amount of the actual or projected capital expenditure made or to be made by the applicant in relation to the premises,
- (f) whether the premises
 - (i) conform to the requirements of all relevant enactments,
 - (ii) are constructed so as to be sanitary and secure, and
 - (iii) are otherwise suitable for the carrying on of the business of the sale of cannabis in a reputable way,
- (g) the extent to which the applicant is financially responsible and is otherwise of good character and a fit person to keep and operate the premises and to be a licensee,
- (h) whether the applicant is the owner of, or the lessee for a term of at least the proposed licence period of the licence of, the premises,
- (i) the compliance history of the applicant in relation to the conditions of a licence, a licence under the Liquor Act, or a licence under an Act regulating cannabis or liquor in another jurisdiction, held by the applicant before or at the time of the application,
- (j) the sufficiency of the arrangements proposed by the applicant for operating and controlling the premises in accordance with the statutory conditions,
- (k) a matter prescribed to be a relevant consideration.

Taken together, these sections of the *CCRA* require the Board to grant or refuse a licence, with or without conditions, based on a review of the documents in its possession, and after taking into account the relevant considerations, determining that the requirements of the *CCRA* and accompanying Regulations have been complied with, and deciding whether or not a grant of the licence would be in the public interest.

In accordance with the reasons that follow, and taking into account the relevant considerations prescribed by the *CCRA*, the Board is satisfied that the grant of this licence is in the public interest, and that the Applicant has met the requirements of the *CCRA* and accompanying Regulations.

Relevant Considerations

- (a) the number of licences, and of different types of licences, in the area in which the premises where it is proposed that cannabis would be sold are situated,**

The Board acknowledges the existence of active liquor licences in the area and one cannabis licence greater than 100m from the Premises.

- (b) the population of the area, including**

- (i) seasonal variations in the population, and**
- (ii) variations in the population both in the immediate area where the premises are situated and more distant areas capable of being served by the premises,**

The Premises is in the downtown core of Whitehorse, Yukon. The Board accepts that the population of Whitehorse is approximately 31,527, and that there are approximately 3,108 residents living in the downtown core.

As a popular tourism destination, the Whitehorse population fluctuates considerably year-round. Based on a Tourism Yukon assessment of visitor populations in 2012, the Territory receives approximately 317,200 visitors between June 1, and September 1, and 75,700 visitors between October 1, and April 1, of each year.

Although not explicitly required as part of this consideration, the Board takes notice of the fact that the intended location of the business is not in a residential area. The Premises is in proximity to multiple hotels, restaurants and cafés, retail stores, and other businesses and offices in the downtown core.

- (c) any economic benefit in the area that could reasonably be expected to flow from the business of the sale of cannabis,**

The Applicant has indicated that the proposed business will confer an economic benefit on the surrounding area. The Applicant will employ several full time equivalent permanent employees. The Applicant projects to spend a considerable amount on annual salaries for those employees. The Applicant entered a lease agreement for the Premises and has projected a significant capital investment for renovations to the Premises.

The Board accepts these submissions as evidence of anticipated economic benefit. The Board also recognizes that local security, construction, and communication businesses will benefit from the initial capital investments to be made by the Applicant.

- (d) the expressed views of the population, both in the immediate area surrounding the premises and more distant areas capable of being served by the premises, of the need for, or desirability of, licensed premises in the area, including the need to serve the projected travelling public in the area,**

The Board observes that the President circulated public notice of the Application in a manner consistent with the service and notice requirements set out in the *CCRA*. The *CCRA* provides a formal process for receiving the expressed views of the population within the specified time period, which the President followed.

No formal objections or other comments were received in regards to this application during the specified time period.

(e) the amount of the actual or projected capital expenditure made or to be made by the applicant in relation to the premises,

The Application references a significant initial capital expenditure. The Applicant has indicated these funds are required for the renovations, equipment, security, and other costs associated with establishing the business.

The Board has no reason to doubt the authenticity of the figures submitted by the Applicant.

(f) whether the premises

- a. conform to the requirements of all relevant enactments,**
- b. are constructed so as to be sanitary and secure, and**
- c. are otherwise suitable for the carrying on of the business of the sale of cannabis in a reputable way,**

The Board understands that the Premises conforms with City of Whitehorse bylaw restrictions that are currently in effect. The Premises is also in conformity with site requirements set out in the Regulations. The Premises is approximately 836 meters from Whitehorse Elementary School and 465 meters from Wood Street School.

The Board is satisfied that the Applicant has made provision for a security system, including video monitoring and alarm components, that satisfy the requirements set out in the *CCRA* and accompanying Regulations. The Board has reviewed the Applicant's floor plan, display plan, and other materials associated with the proposed layout of the business and finds the plan to be in accordance with the *CCRA* and Regulations.

The Board has reviewed the operational plan in the Application which discussed inventory control and retail operation management, transport of cannabis, security and surveillance, information management, returns, prevention of onsite consumption, and diversion prevention and find the Applicant's plan to be compliant with *CCRA* and accompanying Regulations.

As construction of the Premises has not begun, the Board could not verify whether the site was sanitary. However, the contents of the Application suggest that the Applicant will carry out the business of the sale of cannabis in a reputable way that includes operating a sanitary retail space.

For these reasons and based on the strong understanding of the *CCRA* and Regulations demonstrated in the Application, the Board is satisfied that the Applicant has established suitable parameters for carrying on the sale of cannabis in a reputable way.

(g) the extent to which the applicant is financially responsible and is otherwise of good character and a fit person to keep and operate the premises and to be a licensee,

The Application, supplemented by the President's Relevant Consideration Analysis, contains sufficient material for the Board to conclude that the president and shareholders of the Applicant are financially responsible and are otherwise of good character and fit persons to keep and operate the Premises and be licence holders.

In making this determination the Board relies on the fact that the Applicant's president, Jonathan Marcotte, and his shareholders underwent criminal record checks in association with the Application, the results of which confirm no criminal conviction history.

In addition, the Board observes that these individuals have relevant post-secondary education with combined work experience in law, public health, and project management. One member holds experience with cannabis industry clients including start-up cannabis retail operations in other parts of Canada.

All have volunteer experience in non-profit organizations and all are free from significant personal debt and have strong employment histories.

(h) whether the applicant is the owner of, or the lessee for a term of at least the proposed licence period of the licence of, the premises,

The Applicant submitted an executed lease agreement for 204C Main Street in its materials. The lease agreement is for a term of just over 5 years. The Board observes that the Applicant is set to take possession of the Premises on June 1, 2019, after which the Applicant has indicated it will begin to carry out renovations in the space.

(i) the compliance history of the applicant in relation to the conditions of a licence, a licence under the Liquor Act, or a licence under an Act regulating cannabis or liquor in another jurisdiction, held by the applicant before or at the time of the application,

The President informed the Board that neither the Applicant, Mr. Marcotte nor the shareholders have previously held liquor licences in the Yukon.

(j) the sufficiency of the arrangements proposed by the applicant for operating and controlling the premises in accordance with the statutory conditions,

Based on the Application, the Board finds that Applicant has planned for the operation and control of the Licence Site in accordance with the statutory conditions.

In particular, the Board observes that the Applicant has:

- developed a detailed operating plan that address a number of items including:
 - prevention of sales of cannabis products to youth;
 - prevention of access by and sale to intoxicated persons;
 - inventory control and retail operation management;
 - a reasonable commercial cannabis transportation plan, including compliant procedures and record-keeping;
 - customer education concerning the legal and illegal consumption of cannabis;
 - installation of a surveillance and security system, that will be properly advertised to visitors;
 - mandatory service and online training (as provided by Yukon Liquor Corporation) for its staff;
 - provided a detailed plan for the return of defective cannabis;
- committed to posting necessary signage at the Licensing site;
- drew a floor plan consistent with the Regulations;

- committed to displaying and selling cannabis in conformity with the *CCRA* and Regulations;
- committed to diversion prevention, including regular auditing, video surveillance, movement of cannabis within the Premises, and plan to impose quick departure post-purchase; and
- has proposed hours of operation that fall within regulatory requirements (Monday, Tuesday, Wednesday, Thursday, from 10am – 8pm, Friday and Saturday from 10am – 9pm, and Sunday from 10am – 6pm).

Based on these observations, and the Board's review of the Application, the Board is confident that the Applicant has sufficiently arranged for operation, management, and control of the Premises in a manner consistent with the statutory conditions.

Statutory Requirements

The Board finds the Application to be in conformity with the requirements of the *CCRA* and the accompanying Regulations.

Public Interest

The Board is satisfied that on balance, and taking into consideration all of the evidence before it, the public interest will be served by granting the licence to the Applicant.

CONCLUSION

Considering that construction has not begun on the Premises, and employee training has not taken place, the Board is granting an unconditional licence with the expectation that the Applicant's Premises and employees will be developed and trained in accordance with the plan laid out in the Application.

The Board expects the Applicant to work with the President and inspectors to ensure that the Premises and staff meet or exceed the specifications proposed in the Application and the requirements of the *CCRA* and accompanying Regulations.

Signed on behalf of the Board:



David Sloan

Chair, Cannabis Licensing Board