

April 17<sup>th</sup>, 2019

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

**ITEM #19-1**

**IN THE MATTER OF AN APPLICATION BY:**

536646 Yukon Inc.

**FOR (NATURE OF APPLICATION AND JURISDICTION OF THE BOARD):**

Sub-class 1 Cannabis Retail Licence  
*Cannabis Control and Regulation Act, SY 2018, c.4.*

**PLACE AND DATE OF HEARING:** 9031 Quartz Road, Whitehorse, YT  
April 15<sup>th</sup>, 2019 at 1:00p.m.

**PRESENT IN PERSON:**

**Board**

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

**Applicant**

Jordi Mikeli-Jones, President – 536646 Yukon Inc.  
Jeremy Jones, Vice President – 536646 Yukon Inc.

**Yukon Liquor Corporation**

Paul McConnell – President  
Mark Monolis – Inspector  
Jennifer Roach – Executive Assistant

**Yukon Government**

Patricia Randell – Director, Cannabis Implementation & Education

**NOT PRESENT:**

**Objector**

Dan Bushnell

***Note:** In the exercise of its powers regarding licensing matters the Board is an administrative tribunal independent of government and the Corporation. The Board is governed by the principles of natural justice ensuring a fair decision is reached.*

## **OVERVIEW**

On February 20, 2019, the President of the Yukon Liquor Corporation received an application (the "Application") from Jordi Mikeli-Jones and Jeremy Jones, the respective president and vice-president of 536646 Yukon Inc. (the "Applicant") for a sub-class 1 Cannabis Retail License. Pursuant to that Application, the Applicant is requesting the issuance of a Licence for "Triple J's Canna Space", at 211 Wood Street, in Whitehorse, Yukon.

The Application was deemed complete by the President on March 5<sup>th</sup>, 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 in the Whitehorse Star on March 6<sup>th</sup>, 13<sup>th</sup>, 20<sup>th</sup>, and 27<sup>th</sup>, 2019. Members of the public were given the opportunity to object to the Application during the four week objection period, which ran until April 3<sup>rd</sup>, 2019 at 4:30p.m.

Within the objection period, the President only received one objection (the "Objection"), in two emails, from Dan Bushnell (the "Objector") on March 7, 2019.

The President delivered a copy of the Objection to the Board. Upon receiving a copy of the Objection from the President the Board served a notice to the Applicant, the Objector, and the President on April 4, 2019 that a hearing would be held on April 15, 2019 at 1:00p.m. to consider the Objection.

The hearing proceeded as scheduled on April 15<sup>th</sup>, 2019 at 1:00p.m. The President and Applicant attended, but the Objector did not appear. In the Objector's absence, the Board read the written Objection aloud and provided the Applicant with an opportunity to respond.

### **ISSUE:**

Considering the Application, the Objection, the Applicant's response to the Objection, and the relevant considerations set out in section 2 of the Cannabis Control and Regulation Act, SY 2018, c.4. (the "CCRA") 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, the Objection, the Applicant's response to the Objection, 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 1 licence without conditions to the Applicant for the period from the date of the issuance of

this decision until March 31<sup>st</sup>, 2022, for the premises located at 211 Wood Street, in Whitehorse, Yukon.

**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, 21, 25, 26, 27, 28, 29, 30, 32, 33, 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 3, 4, 5, 6, 7, 8, 10, 14; 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, the Objector's written Objection, and the Applicant's oral reply to the Objection. The Board also considered the Relevant Consideration Analysis carried out by the President.

**ANALYSIS OF LAW AND EVIDENCE:**

Section 33 of the *CCRA* directs the Board as follows:

**Decision of board after hearing**

33(1) After the hearing, the board must make one of the following decisions, taking into account the documents received under subsection 30(1), the relevant considerations and any representations of the persons served with notice of hearing:

- (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,
  - (iii) it is not necessary for the licence to contain 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 condition
- (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. (Emphasis Added)

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 representations of persons served with a notice of hearing, 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 license is in the public interest, and that the Applicant has met or exceeded 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 takes notice of the fact that this Application for a Cannabis Retail Licence is the first it has considered. As a result, there are no other Cannabis Retail Licences near the 211 Wood Street location proposed by the Applicant as the retail site (the "Licence Site"). The Board acknowledges the existence of active liquor licenses in the area.

- (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 Licence Site is located 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<sup>st</sup>, and September 1<sup>st</sup>, and 75,700 visitors between October 1<sup>st</sup>, and April 1<sup>st</sup>, of each year.

Although not explicitly required as part of this consideration, the Board takes notice of the fact that the intended location of Triple J's Canna Space is not in a residential area. The Licence Site is in proximity to a hotel, court house, restaurant and café, retail stores, movie theatre 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 provided indicia in its Application materials and again at the hearing held on April 15<sup>th</sup>, 2019, that the proposed "Triple J's Canna Space" will confer an economic benefit on the surrounding area. The Applicant has hired 12 employees, and has made a significant capital investment in the purchase and renovation of the Licence Site. The Applicant has indicated that it intends to donate a portion of its annual profits to local charities and organizations.

The Board accepts these submissions as evidence of anticipated economic benefit, some degree of which has already been conferred on the downtown area. The Board also recognizes that local security, construction, and communication businesses have benefitted from initial capital investments made by the Applicant.

The Applicant further suggests that increased traffic in the area as a result of its retail activities will indirectly benefit other businesses in the area. The Board accepts this as a possible outcome.

**(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. Only one objection was received by the President, which was forwarded to the Board for consideration.

The Board has considered the Objection, and its analysis of the Objection and the Applicant's response is addressed later in this decision.

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

The Applicant indicated that a significant capital expenditure has been made, and further outlay of funds will be required, for the purchase of the building, renovations, equipment, security, staffing, and other costs associated with setting up Triple J's Canna Space.

The Board has no reason to doubt the authenticity of the figures submitted by the Applicant, and observes that significant actual and projected expenditures are associated with Triple J's Canna Space.

**(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 Applicant's Licence Site conforms with City of Whitehorse bylaw restrictions that are currently in effect. The Licence Site is also in conformity with site requirements set out in the Cannabis Licencing Regulations. The Licence Site is approximately 378 meters from Whitehorse Elementary School and 183 meters from Wood Street School, in excess of the 150 meter requirement.

The Board is satisfied that the Applicant has made provision for a robust security system, including video monitoring and alarm components equal to, or greater than, 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 Triple J's Canna Space, and finds the plan to be in accordance with statutory requirements.

As construction of the Licence Site has not been completed, the Board could not verify whether the site was sanitary. However, the detailed and professional nature of Applicant's materials, as well as the comportment of its president and vice-president before the Board on the April 15<sup>th</sup>, 2019 hearing 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.

**(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 Applicant's materials, supplemented by the President's Relevant Consideration Analysis, provide sufficient material for the Board to conclude that the president and vice-president of the Applicant corporation are financially responsible and are otherwise of good character and fit persons to keep and operate the premises and be license holders.

In making this determination the Board relies on the fact that both Jordi Mikeli-Jones and Jeremy Jones underwent vulnerable sector 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 are long-time residents of Yukon, have a history of volunteer involvement in the community, and are the owners of Triple J's Music, Tattoos & Piercing, an established local business. Lastly, the Board recognizes that the Applicant received and submitted letters of support from the owners of several proximate businesses, as well as the Whitehorse and Yukon Chambers of Commerce.

**(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 and contract of purchase and sale for 211 Wood Street in its materials, with "Jordi and Jeremy Jones", principals of the Applicant, as signatories. The Board notes that the contract of purchase and sale appears to be conditional upon licencing, with a prospective closing date of April 1<sup>st</sup>, 2019. The Board understands that the Applicant is currently in possession of the Licence Site, and is in the process of carrying out final renovations.

**(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 Jordi Mikeli-Jones and Jeremy Jones have held temporary liquor licenses in the past, in connection with non-profit events and activities. Neither individual has been the subject of a non-compliance fine or intervention associated with a temporary liquor permit.

**(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 300 page Application submitted and the representations made at the April 15<sup>th</sup>, 2019 hearing, the Board finds that Applicant has planned for, and taken a number of steps to ensure that Triple J's Canna Space is operated in accordance with the statutory conditions.

In particular, the Board observes that the Applicant has:

- developed a detailed policy and procedures manual, as well as an operation plan that address a number of items including:



- the prevention of sales of cannabis products to minors and intoxicated individuals;
- customer education concerning the legal and illegal consumption of cannabis;
- provided a plan for mandatory service training for its staff;
- ensured that its staff attended CannSell training offered through Lift & Co. before a comparative program was available in the Yukon;
- implemented an industry-recognized inventory management system (COVA);
- created a plan for the safe and secure transport of cannabis;
- expressed a willingness to engage additional security services if necessary;
- engaged with the Detachment Commander of the RCMP to better coordinate compliance, and if necessary enforcement, of relevant legislation;
- installed a robust camera and security system, that will be properly advertised to visitors;
- committed to posting necessary signage at the Licencing Site;
- developed a membership model, and will be requiring members to sign a code of conduct which reinforces statutory requirements;
- provided a detailed plan for the return of defective cannabis;
- drew a floor plan consistent with the dedicated cannabis area required by the regulations;
- committed to displaying and selling the product in conformity with the *CCRA* and regulations; and
- set in place hours of operation that fall within regulatory requirements (Monday, Tuesday, Wednesday, Thursday, Saturday from 10am – 8pm, Friday from 10am – 9pm, and Saturday from 11am – 5pm).

Based on these observations, and the Board's thorough review of the Application, the Board is confident that the Applicant has sufficiently arranged for operation of Triple J's Canna Space in a manner consistent with statutory requirements.

**(k) a matter prescribed to be a relevant consideration;**

The Board has not prescribed additional relevant considerations.

***Statutory Requirements***

Generally, and based in large part on the considerations in the above portion of this decision, the Board finds the Application to be in conformity with the requirements of the *CCRA* and the accompanying regulations.

***The Objection(s)***

The President received two emails from the Objector, Dan Bushnell, on March 7, in apparent response to the public notice of the Application circulated by the President on March 6, 2019.

The Objector did not attend the hearing on April 15<sup>th</sup>, 2019 at 1:00p.m. In the Objector's absence, a member of the Board read the Objector's emails aloud, the text of which is reproduced here:

**EMAIL 1 – sent Thursday, March 07, 2019 11:05 AM**

I am concerned with the proposed Cannabis retail location on Wood St.

When the off sales was here activity in Le Page park became overwhelming and was difficult during arts in the park.

Lepafe [sic] park is already a high traffic area for drinking and drugs.

We also experienced a staggering increase in break and enters with the opening of the off sales.

Our building alone was broken into three times in two week. Let's lift this part of downtown up not push it down.

**EMAIL 2 – sent Thursday, March 07, 2019 11:29 AM**

It is also too convenient for folks to buy pot walk across the street and sit in Lepage park. We need to clean that park up not push it down.

***The Applicant's Response***

Jordi Mikeli-Jones and Jeremy Jones were personally present at the hearing on April 15<sup>th</sup>, 2019 and made submissions on behalf of the Applicant in response to the Objection. Mr. and Ms. Jones spoke to: (a) the security measures they have taken to secure the Licensing Site and surveil the surrounding area, (b) their engagement with law enforcement, (c) the positive support they have received from proximate local businesses and organizations in the area, and (d) the steps they have taken to develop client education and staff training policies to encourage responsible consumption of their product.

***Issues Raised By the Objector***

The Board understands the Objection to consist of the following elements:

Granting a licence to the Applicant would:

- 1) Increase the chance of mischief, break and enter, and theft in the area;
- 2) Increase the "overwhelming" activity and foot traffic in the area; and

3) "Push down" the area, instead of "lif[ing] it up".

### ***Analysis of the Objection***

#### **1) Increase the chance of mischief, break and enter, and theft in the area;**

The Applicant has received several letters of support from proximate businesses in the area, including from the owners of Kutter's Hair Salon, Titan Gaming and Collectibles, Java Connection, and Wood Street Ramen, as well as from the Whitehorse and Yukon Chambers of Commerce. These businesses and organizations appear to have a different view from the Objector of the increased risk of crime that will be occasioned by the introduction of a cannabis retail store in the area.

Additionally, it seems that the Applicant has taken concrete steps to reduce the risk of crime in the area. The introduction of security cameras, for example, may have the net effect of reducing the instances of mischief, break and enter, and theft in the area.

The Board acknowledges that the Objector has raised a serious concern, however given the lack of compelling evidence before it, the Board is not persuaded to recognize a causal link between the sale of retail cannabis and the increased risk of mischief, break and enter, and theft in the area.

#### **2) Increase the "overwhelming" activity and foot traffic in the area;**

The Objector's concern related to high foot traffic and activity in the area lacks specificity.

Insofar as the Objector is saying that the introduction of a cannabis retail store to the area would result in the increased presence of people in the area, this could be interpreted as having a positive effect on the downtown core. The Board is inclined to see the economic benefit of increased foot traffic in this area as a good thing.

However, the Objector may be saying that the presence of individuals consuming alcohol and cannabis in an unauthorized fashion will increase if this licence is issued. To that point, the Applicant has indicated it is alive to the issue of the consumption of cannabis in public, and has put policies in place to discourage its members from using cannabis in Le Page Park and outside of their private residences generally. The Board notes that the Applicant has also taken the initiative to talk to the RCMP and has expressed a willingness to engage the services of Fleming Security if it becomes necessary to ensure that its patrons are not consuming cannabis products immediately inside or outside the Licence Site.

### 3) “Push down” the area, instead of lift[ing] it up.”

The Objector has expressed a concern that the introduction of a cannabis retail store located on the Licence Site would not improve the area. The Board observes that this prediction is a matter of opinion that is not shared by other business owners in the area.

Minority status on its own should not result in the dismissal of this particular Objection. The Board also relies on evidence suggesting the good standing and character of the Applicant’s principals, including their long-standing involvement as Whitehorse community members and business owners, to conclude that they hold a stake in the success of the business project associated with this license application, and share the Objector’s care and concern for the surrounding community.

#### ***Public Interest***

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

#### **CONCLUSION**

The Board appreciates the thoroughness of the application, the professionalism and preparedness exhibited by the Applicant at the hearing.

In particular, the Applicant’s thoroughness in meeting and exceeding the requirements imposed by the *CCRA* and accompanying regulations went a long way towards the Board reaching its final decision to grant a sub-class 1 licence without conditions to the Applicant for the period from the date of the issuance of this decision until March 31<sup>st</sup>, 2022, for the premises located at 211 Wood Street, in Whitehorse, Yukon.

*Signed on behalf of the Board:*



**David Sloan**

Chair, Cannabis Licencing Board