

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

ITEM #19-06

IN THE MATTER OF AN APPLICATION BY:

45006 Yukon Inc. o/a Andrea's Hotel

**FOR SUB-CLASS 2 CANNABIS RETAIL LICENSE
*Cannabis Control and Regulation Act, SY 2018, c. 4***

DECISION

PLACE AND DATE OF 1st HEARING: 912 Lakeview Avenue, Watson Lake, YT August 29, 2019 at 9:30a.m.

CONTINUATION OF HEARING September 27, 2019

PRESENT IN PERSON:

Board

Mieke Leonard – Vice-Chair

Shari Borgford – Member

John Farynowski – Member

Applicant(s)

Rowena Shannon, Corporate Officer / Operations Manager, 45006 Yukon Inc. o/a Andrea's Hotel

Sandy Sierra, Secretary, 45006 Yukon Inc. o/a Andrea's Hotel

Jordan Teters, Community Member, Watson Lake

Mickey Thomas, Engineer, Liard Engineering and Management

Objector

Dalyce Stubenberg

Secretary

Jennifer Roach

PRESENT BY PHONE:

Yukon Liquor Corporation

Will Tewnion – Director, Regulatory Services

Scott Hindson – Licensing and Compliance Officer

Date of Decision: August 7, 2020

OVERVIEW

On, July 3, 2019, the President of the Yukon Liquor Corporation received an application (the "Application") from 45006 Yukon Inc. (the "Applicant") for a sub-class 2 Cannabis Retail License (the "License") under the *Cannabis Control and Regulation Act* (the "Act"). Pursuant to the Application, the Applicant is requesting the issuance of the License for "Andrea's Hotel", at 516 Adela Trail in Watson Lake.

The Application was deemed complete by the President on July 17, 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 by placing ads in the Yukon News on July 19, 26 and August 9, 2019. Public notice was also posted on the Yukon Liquor Corporation web page and Yukon Liquor Corporation Facebook page, and letters were sent to the local municipality, Town of Watson Lake, and to the local First Nation government, Liard First Nation.

Members of the public were given the opportunity to object to the Application during the four-week objection period, which ran until 4:30pm on August 16, 2019.

Within the objection period, the President received one objection (the "Objection") from Dalyce Studenberg (the "Objector") by email on August 6, 2019.

The President delivered a copy of the Objection to the Board. Upon receiving a copy of the objection, the Board served a notice to the Applicant, the Objector, and the President on August 20, 2019, that a hearing would be held on August 29, 2019, to consider the Objection.

Pursuant to *section 32*, the hearing proceeded as scheduled on August 29, 2019, at 9:30am (the "Hearing"). The Applicant, Rowena Shannon was accompanied by Sandy Sierra, Jordan Teters, Mickey Thomas. The Objector, Dalyce Studenberg attended. The Director of Regulatory Services of the Yukon Liquor Corporation, and an Inspector from Yukon Liquor Corporation also both attended by phone.

On September 27, 2019, the hearing continued at the Yukon Liquor Corporation boardroom at 9:30am in Whitehorse, Yukon. The applicant, Rowena Shannon was accompanied by Sandy Sierra and Andrew Shannon. The Director of Regulatory Services of the Yukon Liquor Corporation and a licensing and compliance officer from the Yukon Liquor Corporation also attended by phone.

On October 9, 2019, the Board requested evidence supporting compliance with environmental health regarding the property septic field, a copy of the building inspection report, legal decisions relating to previous investigations, allegations or charges for the last ten years, and reference letters in relation to community service and good character for Andrew Shannon, Rowena Shannon and Sandy Sierra.

In November 2019, the Board received information regarding instances of peculiarities with tax declarations to Yukon government, Department of Finance, from Andrea's Hotel (45006 Yukon Inc.)

On December 5, 2019, the Board continued the Hearing with a phone interview with a reference for Andrew Shannon, given by Father Suresh of St. Anne's Catholic Church in Watson Lake, Yukon.

On December 6, 2019, the Board continued the hearing with a phone interview with a reference for Andrew Shannon, given by R. Magun of the Liard First Nation near Watson Lake, Yukon.

Between January to April 2020, the Board received documentation substantiating a history of financial non-compliance and surety bonds between the Yukon Government and 45006 Yukon Inc.

ISSUE

Taking into account the Application, the Objection, further submissions made by the Applicant, further submissions provided on behalf of the Applicant, the relevant considerations set out in section 2 of the Act, the public interest, and the conformity of the Application to requirements set out in the Act 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, the Objection, the Applicant's response to the Objection and taking into account the relevant considerations enumerated in section 1 of the Act, the requirements imposed by the legislation, and after determining that a grant of the licence would not be in the public interest, the Board has decided to refuse to grant a license for the premises located at the proposed location.

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, 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 2, 3, 4, 5, 6, 7, 8, 10, 14, 15; 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 President's inspection report, the Objector's written Objection, and the Applicant's reply to the Objection.

The Board also considered the information provided before and after the second hearing by the Applicant, the references provided by the Applicant, the responses from the aforementioned referees, and additional information brought to the Board's attention due to a recent non-compliance with the Yukon government, Department of Finance. All evidence presented in writing and orally were considered.

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 granting of this license is not in the public interest. The Application for a license is refused.

“Relevant Considerations” (as defined in the Act, section 2)

(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,

There are 16 liquor licenses in Watson Lake, with the nearest one to the proposed premises being the New Nugget Restaurant at 607 Frank Trail. There are no cannabis retail licenses in Watson Lake at this time.

(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 population of the Watson Lake area is 1,482; Yukon’s total population is 40,962. These numbers are as of March 31, 2019 according to the Yukon Bureau of Statistics. According to the Yukon Visitor Information Centre attendance report for May to September 2018, 27,682 persons visited Watson Lake, with approximately 393,760 visiting the Yukon. These totals include travelers entering or returning through Yukon via Canada Border Services Agency.

In comparison, the Winter Report estimates that approximately 399,779 people visited the Yukon between October 1 and April 30, 2018.

A number of popular events occur annually in the Watson Lake area. Examples include the February Kiki Karnival, kids’ hockey tournament, and Men’s Hockey Tournament. This proposed retail operation could serve the broader Watson Lake area population, as well as parts of Northern British Columbia. It is reasonable to assume that a retail cannabis outlet would also serve various events held in the area.

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

The Board reviewed the information provided by in the Application, which detailed that the operation will provide basic employment of additional staff and economic benefit to 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 public notification period was held July 19 to August 16, 2019. In addition, the following organizations were made aware of the public notification period:

- Town of Watson Lake
- Liard First Nation

Within that public notification period, there was one Objection received. The Objector asserted that the new premises would infringe on an existing water well on the Objector's property, causing a health issue.

- (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 detailed the intent to spend funds to establish the premises, resulting in a temporary boost to the local economy for construction labor and materials. The Applicant detailed in their projected budget on an investment in renovations, furnishings, supplies, security, software and labor.

- (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 Act requires a cannabis retail store to be a minimum of 150 m from an elementary or secondary school. The Johnson Elementary School is 1.02 km from the proposed premises, and the Watson Lake Secondary School is 1.06 km from the proposed premises.

The Application identifies that the proposed premises is under construction, therefore, no inspection with respect to sanitation is feasible at the time of the application.

(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 Board has reviewed the financial information provided and at the time of the Application, it appears that the Applicant had the requisite resources to establish a retail cannabis operation. Since the submission of the second Application to the Board, dated July 3, 2019, it was noted that persons on the Applicants' behalf, notably, Sandy Sierra was quoted in the media that the company has spent \$500,000 in building the store and getting it ready to open and is losing money with every day that passes.

Further to this, it was noted that the Applicant was required to establish a surety bond of \$90,000 however, Mr. Sierra informed the Board that as per the financial status and affairs of Andrea's Hotel, nothing of vital importance has changed to date subsequent to their compliance to the bond requirement imposed by the Tax Bureau and Department of Finance, Yukon government.

This conflicting information leads the Board to question the financial responsibility and sustainability of the corporation in relation to retail cannabis.

Notwithstanding these recent changes in the financial status of 45006 Yukon Inc., the Board has serious concerns about the Applicant's President, who holds the authority to direct the work of the designate to the proposed operation, and who also has the ability to modify the authority of the delegation of the current corporate officer identified.

Through evaluation of the evidence, the Board has concerns that the Applicant will be unable to be a licensee in good standing based on the evidence presented.

The President of 45006 Yukon Inc. has a history of not following laws and regulations. Such violations, although it did not disqualify the Applicant during the review in accordance with the legislation, demonstrates a long and active history of an offending nature.

During the second hearing, the President of 45006 Yukon Inc. admitted to further recent issues and complaints that he had received involving wages, his involvement in the Yukon Nominee Program, and allegations of business misconduct.

In light of this information, the Board requested reference letters for Rowena Shannon, Sandy Sierra and Andrew Shannon.

The Board received several references letters based on a uniform reference letter template, which was the same for all three Applicants, and bore no personal or relevant information as to the Applicants' character. This has led the Board to infer that the Applicants drafted the letters and simply had the referees sign them. As the Board found

the reference letters to be generic in nature, it requested interviews of those individuals who provided reference for the President of 45006 Yukon Inc.

The Board interviewed two referees, one referee from St. Anne's Catholic Church in Watson Lake, and one referee who self-identified with Liard First Nation. Upon completing both interviews, the Board determined that the information provided was not persuasive of the President of 45006 Yukon Inc.'s good character.

The Board found, during questioning, that the reference letters were not prepared by the referees. Further, one referee was not aware that the reference was for the Applicant to sell cannabis products. Moreover, the referee was not involved in the Applicant's business and had no working knowledge of their business practices. This led the Board to question the authenticity of the referees knowledge of the president's character.

Upon interviewing the second referee, the Board was informed that the referee's wife had designed the reference letter for her spouse only, which contradicted the fact that all references letters received were exactly the same. This led the Board to question the reliability of the reference provided. The Board confirmed that the referee was not representing Liard First Nation, as had been indicated on the reference letter to the Board, and was not authorized to represent Liard First Nation on the subject. Through additional questioning, it was evident he was providing a personal reference only.

Based on the information presented to the Board regarding the President of 45006 Yukon Inc.'s history, the Board is not assured that the President of 45006 Yukon Inc., a key individual in the operation of the corporation, is of good character. The president is the leading executive of the corporation, and the Board is concerned that the extensive history of non-compliance, investigations and complaints demonstrate a lack of good character. Most recently, the requirement to secure a bond due to findings from a routine compliance review for tobacco product sales indicates a continuing pattern of non-compliance. The Board views these actions as not demonstrating good character, and not in the public interest. As such, the Board does not consider the President of 45006 Yukon Inc., the president of the corporate Applicant, to be of sufficiently good character to be responsible for a retail cannabis license.

Further, despite a resolution by the board of directors of 45006 Yukon Inc., indicating that Rowena Shannon as the authorized signatory of the Corporation pertaining to the acquiring of a cannabis retail license, the resolution does not ensure that after a license has been awarded, the President of 45006 Yukon Inc. will not have significant authority or involvement if a license were to be issued. It was noted in the evidence that no shares have been issued for this corporation and no balance of decision making resulting from a shareholder structure is in place.

This leads the Board to conclude that there are no assurances in place that the President of 45006 Yukon Inc. would have limited involvement in the business.

(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,

Based on the information provided by the Applicant, the proposed premise is available for a term of the license application period.

(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 Applicant currently holds a Food Primary – All # 3526, Liquor Primary – All # 3806, and Off Premises liquor # 3807. These licenses are operated by 45006 Yukon Inc.

The Applicant has a history of infractions related to license # 3806. A very recent infraction resulted in the requirement for a surety bond of \$90,000 related to a review of tobacco sales practices.

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

The Applicant has an extensive business history, and has provided information regarding restricted access by intoxicated and/or underage persons, inventory control and management, transportation of cannabis, security and video surveillance systems, record keeping, reporting and retention, training, staffing, diversion from the illicit market, signage, returns, and restriction of consumption on site. Despite the information contained in the application, the Board is not satisfied that these measures would be followed due to the history of investigations, complaints, and recent non-compliances.

Statutory Requirements

Based on the deficiencies highlighted above, the Board does not find the Application to be in conformity with the requirements of the Act and accompanying regulations. The key concern of the Board is that it has not been demonstrated that the President of 45006 Yukon Inc. is of good character, and as the president, he is likely to have considerable influence over the manner in which the business would operate.

The Objections

The President of the Yukon Liquor Corporation received a written objection, from Dalyce Stubenberg (the “Objector”) on August 6, 2019.

The Objector attended the hearing on August 29, 2019, at 09:30am. Their objection can be summarized/reproduced as follows:

The Objector cannot provide unequivocal support for the Application, in particular because the facility may impact on the water quality of the well on the adjacent property.

Issues Raised By the Objector(s)

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

- municipal issue of property septic field

Analysis of the Objection

1. The Objector alleges that the proposed premises will infringe on and create problems for the water well located on her adjacent property.

The Board finds that the Objection is not within its jurisdiction, as set out in the Act.

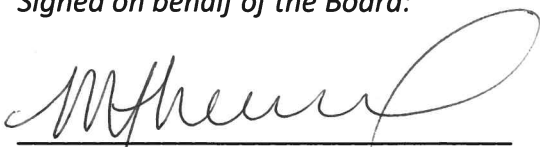
Public Interest

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 NOT granting the licence to the Applicant.

CONCLUSION

This application required the Board to undertake several additional steps, including requesting reference letters to obtain additional information about the Applicant, interview providers of the reference letters, and to consider the information received very carefully. While the Applicant did satisfy some of the criteria for a licence, the Board did not find that the Applicant's President is of good character and is concerned with the level of interference and direction by the individual if a license were to be issued. Based on this careful review, the Board reached its final decision to refuse to grant a sub-class 2 licence.

Signed on behalf of the Board:



Mieke Leonard, Vice-Chair, Cannabis Licencing Board