

## City of Littleton

### Minutes of Proceeding

#### Littleton Licensing Authority

May 5, 2010

The Littleton Licensing Authority met in a special session on Wednesday, May 5, 2010, at the Littleton City Center, 2255 West Berry Avenue, Littleton, Colorado.

**THOSE PRESENT:** Bill Bradish - Chairperson  
Earl Gunia - Vice Chairperson  
John Cole - Authority Member  
Victoria England - Authority Member  
Donovan O'Dell - Authority Member  
Andrew Cole - Authority Member

**THOSE ABSENT:** Susan Price - Authority Member

**ALSO PRESENT:** Suzanne Staiert – City Attorney  
Kirsten Crawford – Assistant City Attorney  
Richelle Work - Deputy City Clerk  
Wendy Heffner – City Clerk  
Kim Steen – Police Sergeant

1. **CALL MEETING TO ORDER**

Chairperson Bradish called the meeting to order at 6:00 p.m.

2. **ROLL CALL**

Upon a call of the roll, six members were present. Authority Member Price was absent. A quorum was declared. The following business was transacted.

3. **MINUTES**

4. **AGENDA**

**Action:** Approved as submitted

5. **SETTING NEIGHBORHOOD BOUNDARIES AND SCHEDULING APPLICATION HEARINGS** – None

6. **CONSIDERATION OF OTHER APPLICATIONS AND REQUESTS**

(a) **MODIFICATION OF PREMISES** - None

(b) **TRANSFER OF OWNERSHIP** - None

(c) **MANAGER'S REGISTRATION** - None

(d) **SUMMARY SUSPENSION** - None

(e) **CHANGE OF CORPORATE STRUCTURE** – None

(f) **CHANGE OF LOCATION** - None

(g) **RENEWAL APPLICATION** - None

7. **FINDINGS OF PROBABLE CAUSE AND SCHEDULING SHOW CAUSE HEARING**

- None

8. **LICENSE APPLICATION HEARINGS** - None

9. **SHOW CAUSE HEARING** - None

10. **GENERAL BUSINESS** - None

11. **MEDICAL MARIJUANA DISPENSARY LICENSE APPLICATION HEARINGS**

a. MDTHC LLC

DBA: THE HEMP CENTER

2430 WEST MAIN STREET

Mike Lynch, attorney for applicant, Jim Van Diest, and Melissa Van Diest appeared for the applicant.

Attorney Staiert entered the following city exhibits into the record:

Exhibit A - Affidavit of posting of premises

Exhibit B - Proof of publication

Exhibit C - Licensing Authority Communication with Attachments

Exhibit D - Public Hearing Sign-in sheet

It was moved by AUTHORITY MEMBER GUNIA, seconded by AUTHORITY MEMBER JOHN COLE TO ADMIT EXHIBITS A-D.

Ayes: Authority Members Bradish, John Cole, Gunia, England and O'Dell

Nays: None

Absent: Authority Member Price

MOTION CARRIED: 5 to 0

Attorney Michael Lynch advised the board that The Hemp Center opened on November 1, 2009, applied for their sales tax license on 9/16/09, and executed their lease on 9/13/09. To begin, all receipts were hand written, as it took awhile for the computer system to be up and working, which happened on November 20, 2009 and have since had computer generated receipts. The submitted receipts were redacted with some information for privacy. Affidavits have been submitted showing sales on November 2.

Authority Member Gunia asked for their procedure on dealing with underage persons who come into store.

James Van Diest stated that no one under 18 is permitted in center. There is a sign posted on the front entrance saying no one under 18 admitted. If someone did come in, they would be asked to leave, if they refused, the police would be called or the panic buttons would be used which alert ADT Security.

Authority Member England asked how they know that a certain receipt matches up to the affidavits.

Attorney Lynch said that receipt numbers are matched up to customer numbers. He also stated that there is no on-site growth.

Melissa Van Diest explained the setup of the business, security systems, and storage of product. She also explained the procedure for checking for proper documentation and ID.

Authority Member England stated that the only supporting evidence to show they were open on November 1 is a handwritten receipt and affidavit.

Attorney Lynch stated that they also filed November sales tax reports when due in December 2009.

Authority Member John Cole stated they are showing one receipt dated September 15, and one affidavit dated September 5.

Authority Member England stated that the sales tax is reported for the entire month of November, but shows nothing specific to the date of sales.

Attorney Lynch stated that if they had known they needed to have more specific proof, they might have done that, but the city only requires monthly sales tax reporting.

Authority Member Gunia stated that the report filed by Zoning says that the lighting is being worked on to be compliant.

Melissa Van Diest explained the lighting situation and that they are waiting to hear from their landlord regarding the lighting.

Authority Member Gunia stated that this means they do not currently comply with lighting, but believe they are compliant with everything else.

Melissa Van Diest explained their packaging and receipts. She also explained training for employees and procedures when dealing with customers.

Authority Member John Cole asked if there is any official training available for dispensaries.

James Van Diest explained that there are not presently any organizations that do training. He stated they have the customer sign a document saying they will not sell or give away the marijuana.

Melissa Van Diest explained that all staff is trained and they have an Herbalist on staff.

Authority Member Andrew Cole asked for explanation on what is listed on the receipt.

Melissa Van Diest explained that the first few lines are the name and address, crossed out for confidentiality. Then the receipt shows the strain and weight, and any other product they may have purchased, discounts, final cost, initials of employee and signature of customer.

It was moved by AUTHORITY MEMBER GUNIA, seconded by AUTHORITY MEMBER BRADISH TO ADMIT EXHIBIT E - Affidavits.

Ayes: Authority Members Bradish, John Cole, Gunia, England and O'Dell

Nays: None

Absent: Authority Member Price

MOTION CARRIED: 5 to 0

Chairperson Bradish opened the public hearing.

Dy Austin spoke in favor of the Hemp Center. She is the Herbologist that is on site to help customers.

Authority Member Bradish asked if she was on staff on the first day of business. Ms. Austin stated she was not brought on staff until after Christmas.

Brandy Richhart spoke in favor of The Hemp Center.

Irv Manning spoke in favor of The Hemp Center. He volunteers at the location, but was not there for the first day of business day.

Melissa Van Diest explained the procedure for customers, which requires the patient to sign a document that designates The Hemp Center as their caregiver.

Attorney Staiert asked what the procedure is for a customer who does not yet have their card from the state. She asked for their procedure if the 35-day period has not yet passed.

Melissa Van Diest stated that it is their understanding that the patient has 60 days to send in their letter to the state, as long as they have a copy of their application, the certification from the doctor, and proof they have sent it in to the state, they will be served.

Attorney Lynch stated that the procedure they were advised to use does not require they wait 35 days. He stated they have not yet had this happen; every customer has been outside the 35 days.

Authority Member Gunia asked about sales to customers on the Western slope.

James Van Diest explained that he is a caregiver in Telluride and anything taken there and sold is taxed in Littleton. Some of their product is grown in Telluride, and then brought to Littleton to be sold.

It was moved by AUTHORITY MEMBER GUNIA, seconded by AUTHORITY MEMBER JOHN COLE TO TABLE WITH THE RIGHT TO FURTHER QUESTION THE HEMP CENTER.

Ayes: Authority Members Bradish, John Cole, Gunia, England and O'Dell

Nays: None

Absent: Authority Member Price

MOTION CARRIED: 5 to 0

b. JND LLC

DBA: A CUT ABOVE

2690 WEST MAIN STREET UNIT C

Warren Edson, advisory counsel and Jake Dovenspike appeared for the applicant.

Attorney Staiert entered the following city exhibits into the record:

Exhibit A - Affidavit of posting of premises

Exhibit B - Proof of publication

Exhibit C - Licensing Authority Communication with Attachments

Exhibit D - Public Hearing Sign-in sheet

It was moved by AUTHORITY MEMBER GUNIA, seconded by AUTHORITY MEMBER JOHN COLE TO ADMIT EXHIBITS A-D.

Ayes: Authority Members Bradish, John Cole, Gunia, England and O'Dell

Nays: None

Absent: Authority Member Price

MOTION CARRIED: 5 to 0

Attorney Edson stated that first sale was 11/3/09, the lease was signed on 10/05/09, and the sales tax license was applied for on 10/22/09. Mr. Daniels was the first customer they sold to and have an affidavit from him, which has already been admitted as part of the record.

Authority Member Gunia asked how they would handle an underage person coming in.

Jake Dovenspike stated they have a decal on their window stating no one under 18 is allowed in the store. They have a security system where a person must push a button on the door, converse through a speaker, and cannot come into the building until someone lets them in. There are three full color video cameras outside, and five inside the building, recorded and watched off site, door sensors, video intercom, reinforced walls, and a safe that is bolted down. Product is stored in the safe; which also has an alarm system. The building is connected to office spaces above and a warehouse. At this time, the upstairs is vacant.

Authority Member Bradish asked why the security is so extensive.

Attorney Edson recommended the security to them, as there have been issues with dispensaries in California.

Authority Member John Cole asked if they would be doing home delivery.

Jake Dovenspike said there is no delivery and no doctor on the premises.

Authority Member England stated that their only evidence of being open is the affidavit and sales tax document.

Authority Member Gunia stated that Mr. Dovenspike stated at the January 5, 2010 City Council meeting that their opening date was 12/22/09.

Jake Dovenspike stated that he said that because City staff said they came to the store on 12/22/09 and said they were not operational at that time. He was clarifying that they were operational on that date, but that was not their opening date.

Authority Member O'Dell stated that during his testimony in front of Council, he stated he was seeing patients on an appointment only basis, which does not fit into the definition of operational.

Jake Dovenspike stated that all their business is done by appointment only, so that would be their regular business hours.

Authority Member Andrew Cole asked if the sale made on 11/4 was a cash sale or credit card sale.

Jake Dovenspike stated it was a cash sale.

Ian Daniels stated that Delbert Scaggio is his caregiver and has a store in Colorado Springs. He was called by their receptionist and advised that they were now operational in Littleton

and could come there for product. He started coming to the store in Littleton on November 4. He called and set up appointment. Mr. Daniels stated he called the Littleton store and asked if he could come by. He came down and used the intercom system to get into the building, had to show ID, card, etc., before getting in door, then purchased with cash on 11/4/09.

Jake Dovenspike stated they have designated a space for growth and will start growing and selling in store.

Authority Member England asked what types of payment are accepted.

Jake Dovenspike said that they only accept cash and credit cards, no personal checks. He addressed the security system and stated that if the main phone line is out, they have cell phone backup.

Authority Member Andrew Cole asked when they started accepting credit cards.

Jake Dovenspike said they did not have credit card machine until recently. All receipts were cash.

Authority Member Gunia asked where the receipt was for the November sale.

Jake Dovenspike stated he does not know where the original receipt is.

Attorney Staiert asked if the intercom system was functional on November 4.

Jake Dovenspike explained the intercom system and signage in place now, but was not sure of the exact systems in place on 11/4. He stated that there were only three sales in November.

Attorney Staiert asked if Mr. Dovenspike spoke to code enforcement on 12/23/09 when they came out to the business.

Jake Dovenspike said he was not there, so he did not talk to code enforcement. The business was open at that time, but no signage was on the building at that time.

Attorney Staiert asked if they were the primary caregiver for Mr. Daniels.

Jake Dovenspike stated that his business partner, Delbert Scaggio is the caregiver. They would only take walk-in business if there were no other customers there. A person would have to show the original doctor referral, proof they sent in to the state and Colorado ID. The only time they would accept this proof before 35 days would be if they could verify with the doctor.

Attorney Staiert asked how they would know if a person had been denied for their card if they do not verify with the state.

Attorney Edson stated that the state had advised them that they can serve anybody with their application, regardless of how long they have waited, and would sell based on their

application and doctor's recommendation.

Attorney Staiert asked if construction was being done on 12/23/09.

Jake Dovenspike stated that construction was going on, but they still helped customers.

Attorney Staiert showed a photo that was taken on 12/23/09 by code enforcement, showing there was no intercom at that time.

Jake Dovenspike said he does not know the exact date the intercom was installed.

Attorney Staiert said that when Mr. Daniels spoke earlier, he said that he used the intercom on his first visit in November; but that could not have been possible if the intercom was not yet installed.

Jake Dovenspike stated that is correct.

It was moved by AUTHORITY MEMBER GUNIA, seconded by AUTHORITY MEMBER JOHN COLE TO ADMIT EXHIBIT E – photograph of building.

Ayes: Authority Members Bradish, John Cole, Gunia, England and O'Dell

Nays: None

Absent: Authority Member Price

MOTION CARRIED: 5 to 0

Authority Member Gunia asked Mr. Daniels if when he first went there, did he you use intercom.

Mr. Daniels said he was confused and thought that the board wanted to know if they had an intercom system at all, not only did they have it when he first went there. He does not know when it was installed. He said he called Jake Dovenspike to come for an appointment and again called him on his cell phone from outside to tell him he was there. They were doing construction at the time, but he did his transaction in the back office.

Jake Dovenspike said this is a minor detail, as he bought everything before December and was working on the store, but he does not know which day it was installed. The receptionist that called Mr. Daniels is from the Colorado Springs store. Mr. Daniels called his cell phone and he then opened door to let him in. He brought merchandise into the store once he got his city sales tax license. He explained that the product is packaged in Ziploc bags, with the product type written on the bag and a warning sticker placed on the bag.

Chairperson Bradish opened the public hearing.

Jeff Culbertson, attorney for Mother Nature's Miracle addressed the board. He stated that on



the application, question #9 was checked "No" that none of the applicants has ever been issued a medical marijuana license, but Mr. Daniels said that Mr. Sgaggio is his caregiver. Mr. Sgaggio is listed as one of the applicants, so is this truthful? He stated that there are also two other A Cut Above stores in Pueblo and Colorado Springs. Through a freedom of information act, he obtained a copy of a letter from Jake Dovenspike that was written to the City of Littleton. The letter was given to Authority Members, but was not admitted as an exhibit.

Jake Dovenspike stated he was open in November, but did not have a sign up.

Delbert Sgaggio stated that the Colorado Springs store does not have a license, and the Denver license was not applied for yet when the Littleton application was filled out.

Attorney Culbertson also stated that they had not pulled building permits before doing their construction.

Attorney Staiert said that at the time of inspection, they were in compliance. She stated the city would not be presenting testimony about building permit issues.

Jake Dovenspike stated that at first, he was working his job from 10pm – 8am, and then went in for appointments at A Cut Above during the day.

Authority Member Andrew Cole asked if they could produce any sales tax receipts for November.

Jake Dovenspike said they reported their November sales tax in January.

Dave Adams spoke in favor of A Cut Above and all of the dispensaries, and thinks the City should allow all six to stay open.

Nima Mousavizadeh spoke in favor of A Cut Above. He stated he volunteers at the store.

Zachary McCall signed up but did not wish to speak.

Bryan Guinn spoke in favor of A Cut Above.

Jason Smith spoke in favor of A Cut Above.

Zachary Huge spoke in favor of A Cut Above. He stated that he reserves his rights for a caregiver. He signs his caregiver rights over each time he purchases from someone, but reserves the right to designate at any time. He is his own caregiver, and can grow his own marijuana or can purchase from a caregiver.

Dustin Campbell spoke in favor of A Cut Above.

Authority Member Andrew Cole asked for clarification on the state law.

Attorney Staiert stated that the law says a caregiver cannot be himself or herself. Our ordinance only allows sales of medical marijuana from a dispensary if that dispensary is designated as the primary caregiver. A caregiver must be more than a person who just sells marijuana. The Licensing Authority needs to keep this relationship in mind when making findings.

Attorney Edson stated that this does not apply.

Attorney Staiert stated that our ordinance adopts the definition as in the constitution and the dispensaries in Littleton should be using that as defined in the ordinance.

Pam Hall, Zoning Official, stated that staff went to A Cut Above to do an inspection on 12/23/09; there was a fresh layer of snow with no visible tracks into the parking lot other than theirs. They went to the door, knocked, tried to get in, but could not get anyone to come to door. There was no signage and no intercom. They took a photo, which has been admitted into evidence, which accurately reflects how the location looked on that day. She stated that there was no signage and a person could not get in, so it appeared that the place was not open for business. They were there for about 10 minutes, looking to see if there was security system, but did not see anything. It looked like they were doing renovations, but could not tell what type of business was there. Staff was instructed to go to all six dispensaries and see if they were operational on that date.

It was moved by AUTHORITY MEMBER GUNIA, seconded by AUTHORITY MEMBER BRADISH THAT THE QUESTION OF WHETHER A CUT ABOVE WAS OPERATIONAL AS OF DECEMBER 22, 2009, BE POSTPONED UNTIL MAY 12, 2010 AT 6:00 P.M., AFTER ALL SIX PUBLIC HEARINGS HAVE OCCURRED AND ALL REMAINING MATTERS WITH RESPECT TO CONSIDERATION OF THE LICENSE APPLICATIONS HAVE BEEN CONSIDERED.

Ayes: Authority Members Bradish, John Cole, Gunia, England and O'Dell

Nays: None

Absent: Authority Member Price

MOTION CARRIED: 5 to 0

c. I & S LLC  
DBA: CANNAMART  
72 E. ARAPAHOE RD

Robert Hoban, attorney, Stan Zislis and Igor Kaminer appeared for the applicant.

Attorney Staiert entered the following city exhibits into the record:

Exhibit 1 - Affidavit of posting of premises  
Exhibit 2 - Proof of publication

Exhibit 3 - Licensing Authority Communication with Attachments

Exhibit 4 - Public Hearing Sign-in sheet

It was moved by AUTHORITY MEMBER JOHN COLE, seconded by AUTHORITY MEMBER ENGLAND TO ADMIT EXHIBITS 1-4.

Ayes: Authority Members Bradish, Cole, Gunia, England and O'Dell

Nays: None

Absent: Authority Member Price

MOTION CARRIED: 5 to 0

Attorney Hoban stated that the lease was executed on 11/2/09 and the sales tax license was applied for on 11/3/09. On 11/9/09 they contacted contractors for build-out. The first sale at this location was on 11/12/10. They have outstanding issues with lighting in the shopping center and with the wording of their sign. The applicant will do whatever the city tells them to do on the signage.

Authority Member England stated that they have hand-written receipts for 11/12, 11/14 and 11/17, but affidavits are dated 12/18/09. She stated she does not see affidavits to back up the November receipts. She also asked about the Greenwood Village location.

Attorney Hoban stated there were two prior locations, Greenwood Village and Centennial. They never dispensed out of Greenwood Village, only did consulting. That location was shut down and moved in to Centennial. The City of Centennial gave a cease and desist in October, saying medical marijuana dispensaries were not allowed in the city. That case is still pending.

Authority Member O'Dell stated that Mr. Zislis testified in Arapahoe County court on 12/18/09 stating that they were not open for business yet.

Stan Zislis said he made that statement, but it was because they were not ready for a rush of business and had not publicized that they were open. He had no idea that sales were going on there, but his staff was available seven days a week for their current customers from the Centennial office. When he testified in December, he meant that "open for business" meant having a finished building, etc., but they were open and helped limited customers. He stated he does not know whom they sold to in November to be able to get affidavits from them. They were only open to pre-existing patients from Centennial in November, no new patients. He stated that on legal advice from several attorneys, they did not keep a ledger in November. They started keeping a ledger when the ordinance went into effect in Littleton.

Authority Member Gunia asked what happens if an underage person comes in to business.

Stan Zislis stated that upon entrance, a person comes directly into a waiting room. Anyone can walk into the lobby, but cannot go through the second door until someone comes to get them. It is clearly post on the outside of the door that no one under 18 is allowed. There is a

small area on site for growth of marijuana.

Authority Member England asked if all of the November sales were cash transactions.

Stan Zislis stated that the sales were all cash and continue to be all cash at this time. They may choose to take checks, but it is not a regular practice. They may take credit cards in the future when everything is final, but are only doing cash transactions at this time. He said all personnel were trained by trial and error, they do not do home delivery, and there is no doctor on site.

Authority Member Bradish asked where the product is kept.

Stan Zislis said it is kept in the dispensing area during business hours and put into the safe when closed.

Igor Kaminer said they have a 13-camera surveillance system.

Authority Member Gunia asked if Mr. Zislis was unaware of the November sales.

Stan Zislis said he had told his employees to help customers as needed and was open for regular hours, but was not aware of the sale at the time.

Authority Member O'Dell asked when their signage went up.

Stan Zislis stated the signage went up in January, but had internet advertising prior to that in *Westword* on 12/18/09 for new patients. Advertising to existing clientele was done prior to that through phone and email. Their grant opening was scheduled for 12/22/09.

Attorney Staiert asked if they could obtain affidavits from their regular clients that came to the Littleton location in November, and if so, to submit supplementary documents prior to next week showing those sales.

Stan Zislis explained their procedure for checking documentation. He stated they do not confirm with a doctor or wait 35 days before selling to a person. They check documents every time a person comes in and they will ask for updated documents if they do not have them on record.

Igor Kaminer stated they had a visit from Littleton Police officers in early January. They discussed certificates and applications and what needed done to check these documents. One of the officers had just completed a 2-day training session regarding cards and certifications and said that it was stressed that the Department of Health is behind on application processing, dispensaries need the doctor's certification, and past 35 days needs a certified mail receipt, or proof the state had received the paperwork.

Chairperson Bradish opened the public hearing. No one spoke.

It was moved by AUTHORITY MEMBER GUNIA, seconded by AUTHORITY

MEMBER BRADISH THAT THE QUESTION OF WHETHER CANNAMART WAS OPERATIONAL AS OF DECEMBER 22, 2009, BE POSTPONED UNTIL MAY 12, 2010 AT 6:00 P.M., AFTER ALL SIX PUBLIC HEARINGS HAVE OCCURRED AND ALL REMAINING MATTERS WITH RESPECT TO CONSIDERATION OF THE LICENSE APPLICATIONS HAVE BEEN CONSIDERED.

Ayes: Authority Members Bradish, John Cole, Gunia, England and O'Dell

Nays: None

Absent: Authority Member Price

MOTION CARRIED: 5 to 0

It was moved by AUTHORITY MEMBER GUNIA, seconded by AUTHORITY MEMBER BRADISH THAT THE QUESTION OF WHETHER THE HEMP CENTER, A CUT ABOVE AND CANNAMART WERE OPERATIONAL AS OF DECEMBER 22, 2009, BE POSTPONED UNTIL MAY 12, 2010 AT 6:00 P.M., AFTER ALL SIX PUBLIC HEARINGS HAVE OCCURRED AND ALL REMAINING MATTERS WITH RESPECT TO CONSIDERATION OF THE LICENSE APPLICATIONS HAVE BEEN CONSIDERED.

Ayes: Authority Members Bradish, John Cole, Gunia, England and O'Dell

Nays: None

Absent: Authority Member Price

MOTION CARRIED: 5 to 0

Attorney Staiert explained that testimony will be taken from all six dispensaries tonight and tomorrow and the public hearings will not be closed because there may be additional testimony heard at next week's meeting, which will have to do with the rest of the criteria as well as operational dates. Obviously if one applicant does not meet criteria, that will change the order. That is why no decisions will be made until that night. The board anticipates they would make motions to approve applications in the order of operational.

12. **SHOW CAUSE HEARINGS FOR LIQUOR CODE VIOLATIONS** - None

13. **SHOW CAUSE HEARINGS FOR MEDICAL MARIJUANA DISPENSARY VIOLATIONS** - None

14. **REPORTS**

a) **Staff** – None

**Assistant City Attorney** – None

**City of Littleton**

Littleton Licensing Authority

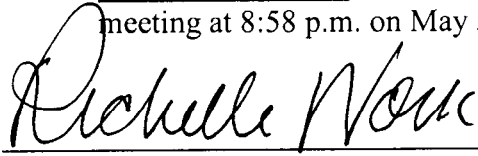
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b) **Authority Members** – None

c) **Chairperson** – None

12. **ADJOURNMENT** – There being no further business, Chairperson Bradish adjourned the meeting at 8:58 p.m. on May 5, 2010.

A handwritten signature in cursive script that reads "Richelle Work". The signature is written in black ink and is positioned above a horizontal line.

Richelle Work

Deputy City Clerk/Recording Secretary