

APPROVED AS SUBMITTED 6/9/10
City of Littleton

Minutes of Proceeding
Littleton Licensing Authority

May 12, 2010

The Littleton Licensing Authority met in a regular session on Wednesday, May 12, 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
Donovan O'Dell - Authority Member
Andrew Cole - Authority Member

THOSE ABSENT: Susan Price - Authority Member
Victoria England - Authority Member

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

EXECUTIVE SESSION

It was moved by AUTHORITY MEMBER JOHN COLE, seconded by AUTHORITY MEMBER BRADISH TO CONDUCT AN EXECUTIVE SESSION PURSUANT TO C.R.S. SECTION 24-6-402(4)(B) TO RECEIVE LEGAL ADVICE FROM CITY ATTORNEYS

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

Nays: None

Absent: Authority Members Price and England

MOTION CARRIED: 4 to 0

Authority Members adjourned the Executive Session and moved into the Regular Session in the Council Chamber.

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, five members were present. Authority Members Price and England were absent. A quorum was declared. The following business was transacted.

3. MINUTES

(a) Minutes of Regular Meeting April 14, 2010

Action: Approved as submitted

It was moved by AUTHORITY MEMBER JOHN COLE, seconded by AUTHORITY MEMBER O'DELL TO APPROVE THE MINUTES AS SUBMITTED.

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

Nays: None

Absent: Authority Members Price and England

MOTION CARRIED: 4 to 0

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 FINDINGS/DETERMINATION OF MEDICAL MARIJUANA LICENSES

Authority Chairperson Bradish stated that due to the impending approval of State House Bill 10-1284, which imposes state level conditions on medical marijuana dispensaries, the Authority will issue contingent approval to the four selected dispensaries, conditional upon, among other things, a concurrent approval from the state and additional city requirements, such as 35-day waiting period, specifically, "if more than 35 days have passed since the date the patient or primary caregiver filed his or her medical marijuana program application and the state health agency has not yet issued or denied a state registry identification card, a copy of the patients primary caregiver's application along with proof of the date of submission shall be in the patient's or primary caregiver's possession at all times that he or she is in possession of any form of marijuana until the state health agency issues or denies the registry application card. In additional, compliance with 3-20-1 and that the registry obtain approval by the state Licensing Authority and pass the FBI criminal background check.

It was moved by AUTHORITY MEMBER JOHN COLE, seconded by AUTHORITY MEMBER BRADISH TO ACCEPT EXHIBITS A-E FROM CANNAMART, THE HEMP CENTER, GREEN MOUNTAIN CARE, BLUE SKY CARE, AND A CUT ABOVE.

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

Nays: None

Absent: Authority Members Price and England

MOTION CARRIED: 4 to 0

Authority Chairperson Bradish stated that while the authority is reviewing the exhibits, he would review a couple of understandings on how the Authority will come to the definition of operational. Operational shall mean first open for active business on a certain date; engaged in the collection of sales tax; holding regular hours of operation; and available to provide products and services. The process of the city ordinance that this Authority is following in terms of determining who the four who will be licensed will be as follows: applications shall be processed by the city in order of receipt; applications shall first be processed for dispensaries having obtained a sales tax license by 12/22/09; and by the order in which the dispensary became operational. The issue we will deal with is who became operational and when.

Authority Members called for clarification from applicants.

Jake Dovenspike spoke representing A Cut Above.

Authority Member Gunia asked if it is still the contention of the applicant that they were operational on 11/4/09.

Jake Dovenspike stated they had the first sale on 11//04/09.

Authority Member O'Dell stated that at the last hearing, testimony was given that the

business was conducting business via appointments only.

Jake Dovenspike stated this was and still is the way they conduct business. He stated this is their business plan and considers operating by appointment to be operational.

He stated they do not have a receipt from the sale 11/4/09, but have an affidavit from the customer and paid sales tax from that sale.

Authority Member O'Dell stated that there was conflicting testimony on security equipment and door buzzer at the last hearing. Code enforcement came on 12/22 and the buzzer was not working then.

Jake Dovenspike stated that the customer knows the building by using that system, so he believes that he was speaking about the setup in general, but not specific to that day.

Stan Zislis spoke representing Cannamart.

Authority Member Gunia asked if Cannamart is willing to change the sign to be compliant with city code. He also asked about the status of the lighting. He asked if their contention is that they were operational on 11/12/09 and that his idea of "open" and "operational" are different.

Stan Zislis stated that they received a letter last week that their landlord was communicating with city, he has ordered the photometric study and the landlord has committed to take care of coming into compliance with the lighting.

Laura Lowden spoke representing Blue Sky Care Connection.

Authority Member Gunia stated that Blue Sky Care had their first sale on 11/3/09, paid sales tax for November, but still needs to come into compliance with lighting.

Laura Lowden stated that they have contacted their landlord several times, but they have not received any response. She said they are not sure what to do, or how get the building owner to be compliant. She stated they no longer have a doctor on site.

Authority Member O'Dell asked about entrance through the rear entrance and do they have security cameras at that entrance.

Laura Lowden stated that the outside entrances do not have cameras, the cameras are just within their own suites. The rear door is not locked and the public can enter the building through that door.

Authority Member Gunia said that there was testimony at the public hearing that there was no sale in November.

Laura Lowden stated they had a contract with two caregivers to provide to customers, that the first sale was on 11/2/09, and they paid sales tax for that sale.

Authority Member Gunia said there was conflicting testimony of who owns the business.

Laura Lowden stated that dispute is currently in the court system. The business documents are all in the names of Laura Lowden and Richard Martinez.

Howard Zall spoke representing Green Mountain Care.

Authority Member Gunia stated he was concerned about the grow area not exceeding 20%, as it is currently at 19.69%.

Howard Zall stated he would do whatever it takes to satisfy the board.

Authority Member John Cole stated he is concerned about the report of receipts. He does not see visual individual receipts, just a list.

Howard Zall stated it is a Quickbooks report. If they provided names, they would be violating HIPA requirements.

Authority Member Gunia stated that Green Mountain LLC began in May, at that point in time the person submitting sales tax payments was a felon.

Howard Zall stated that he resigned in December or January in anticipation of the requirement of no felony convictions.

Authority Member Gunia asked if the business has changed at all since he left.

Howard Zall stated that the business has the same debts and same operations as when he was part of it.

Authority Member Bradish stated he is familiar with Quickbooks and recognizes the report as a Quickbooks report.

James Van Diest spoke representing The Hemp Center.

Authority Member Gunia asked about compliance with lighting.

James Van Diest stated that the landlord has a contractor and the lighting would be in compliance soon.

Authority Member Gunia stated that the testimony and exhibits show that the first sale was on 11/2/09 and sales tax was paid for November 2009.

Authority Chairperson Bradish called a recess at 6:34 p.m.

The meeting was reconvened at 6:39 p.m.

Janene Nachtsheim spoke representing Mother Nature's Miracle.

Janene Nachtsheim submitted a letter from the landlord regarding permission from the landlord for a medical marijuana dispensary to be conducting business at that location and asked that it be submitted as an exhibit.

Authority Member Gunia commended Ms. Nachtsheim on the presentation of documents to the board.

It was moved by AUTHORITY MEMBER GUNIA, seconded by AUTHORITY MEMBER BRADISH TO ACCEPT EXHIBIT F FROM BLUE SKY CARE.

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

Nays: None

Absent: Authority Members Price and England

MOTION CARRIED: 4 to 0

Janene Nachtsheim stated that the landlord is working on compliance with the city on lighting. She stated they were operational on 9/12/09, with their first sale on 9/16/09 and regular business hours 9/12/09.

Authority Member Bradish asked about the affidavit submitted by Eli Fuentes saying he purchased from them on 9/23/09.

Janene Nachtsheim stated they do not know the exact date, just that it occurred during that week.

It was moved by AUTHORITY MEMBER GUNIA, seconded by AUTHORITY MEMBER BRADISH TO CLOSE THE PUBLIC HEARINGS ON ALL CASES.

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

Nays: None

Absent: Authority Members Price and England

MOTION CARRIED: 4 to 0

Authority Members discussed the cases.

Authority Member Gunia stated that City Council directed the Authority to decide on four dispensaries based on when they became operational. He stated that based on the information provided, Green Mountain Care was the first to become operational in July 2009. All Authority Members agreed.

Authority Member Gunia stated that based on the information provided, Mother Nature's Miracle was the second to become operational in September 2009. All Authority Members agreed.

Authority Member Bradish stated that based on the information provided, The Hemp Center was the third to become operational on November 2, 2009. All Authority Members agreed.

Authority Member Gunia stated that based on the information provided, Blue Sky Care was the fourth to become operational on November 3, 2009. All Authority Members agreed.

Authority Member Gunia stated that based on the information provided, he believes that A Cut Above was the fifth to become operational on November 4, 2009. Authority Member John Cole agreed.

Authority Member O'Dell stated that he has difficulty with the November 4 date due to some conflict in the testimony. Because of this, he has Cannamart as fifth to become operational, not only because of sales, but because of his understanding of operational for A Cut Above being by appointment only.

Authority Member Andrew Cole asked Authority Member O'Dell to clarify operational order as fifth and sixth rather than fourth and sixth.

Authority Member John Cole stated he has no problem if someone is open by appointment only, but also was using when sales tax paid was paid. He stated that A Cut Above paid sales tax for the month of November.

Authority Member O'Dell also stated that since security measures were not in place, he does not consider it operational.

Authority Member John Cole believes that all dispensaries have to be in compliance with the ordinance, but that is different matter, operational function depends on sales and sales tax. He still believes A Cut Above was operational before Cannamart.

Authority Members Gunia and Bradish also feel that operating by appointment only is allowable, and feel that A Cut Above is operational as fifth and Cannamart is operational as sixth.

It was moved by AUTHORITY MEMBER GUNIA, seconded by AUTHORITY MEMBER JOHN COLE TO APPROVE AND GRANT LICENSES TO GREEN MOUNTAIN CARE, MOTHER NATURE'S MIRACLE, THE HEMP CENTER AND BLUE SKY CARE CONNECTION, CONTINGENT UPON APPROVAL BY THE STATE OF COLORADO, THAT THESE FOUR DISPENSARIES WERE THE INITIAL FOUR DISPENSARIES TO BECOME OPERATIONAL IN THE CITY OF LITTLETON, CONDITIONAL APPROVAL WITH THE FOLLOWING CONDITIONS, MUST HAVE 35-DAY RULE INTO EFFECT, IF NO APPROVAL WITHIN 35 DAYS CANNOT SELL, COME INTO FULL COMPLIANCE WITH THE CITY ORDINANCE, AND MUST COMPLY WITH ALL

STATE REQUIREMENTS.

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

Nays: None

Absent: Authority Members Price and England

MOTION CARRIED: 4 to 0

It was moved by AUTHORITY MEMBER GUNIA, seconded by AUTHORITY MEMBER JOHN COLE THAT THE LICENSES BE DENIED FOR A CUT ABOVE AND CANNAMART.

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

Nays: None

Absent: Authority Members Price and England

MOTION CARRIED: 4 to 0

The licensing Authority has approved Green Mountain Care, Mother Nature's Miracle, The Hemp Center and Blue Sky Care contingent upon the conditions described earlier.

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

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

14. **REPORTS**

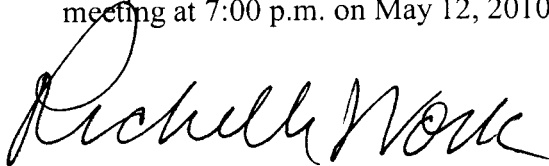
a) **Staff** – None

Assistant City Attorney – None

b) **Authority Members** – None

c) **Chairperson** – None

12. **ADJOURNMENT** – There being no further business, Chairperson Bradish adjourned the meeting at 7:00 p.m. on May 12, 2010.



Richelle Work
Deputy City Clerk/Recording Secretary