

City of Littleton

Minutes of Proceeding

Littleton Licensing Authority

May 6, 2010

The Littleton Licensing Authority met in a special session on Thursday, May 6, 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

THOSE ABSENT: Susan Price - Authority Member
Andrew Cole - Authority Member

ALSO PRESENT: Kirsten Crawford – Assistant City Attorney
Suzanne Staiert – City Attorney
Richelle Work - Deputy City Clerk
Wendy Heffner – City Clerk
Russ Hoffman – Police Detective

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 Andrew Cole were 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. MOTHER NATURE'S MIRACLE LLC
DBA: MOTHER NATURE'S MIRACLE
315 W. LITTLETON BLVD.

Jeff Culbertson, attorney, and Janene Nachtsheim 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 Members Price and Andrew Cole

MOTION CARRIED: 5 to 0

Attorney Culbertson and Janene Nachtsheim addressed the Authority. Mother Nature's Miracle became operational in September 2009, executed lease on September 2, 2009 and obtained the sales tax license on September 8, 2009. All departments came and inspected and they passed all inspections.

It was moved by AUTHORITY MEMBER GUNIA, seconded by AUTHORITY MEMBER BRADISH TO ADMIT THE NOTEBOOK WITH SUPPLEMENTAL INFORMATION FROM THE APPLICANT.

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

Nays: None

Absent: Authority Members Price and Andrew Cole

MOTION CARRIED: 5 to 0

Attorney Culbertson addressed the Notebook, pointing to specific items that show that Mother Nature's Miracle was operational. Item 1a was a lease signed September 2, 2009. Item 1b-h is information already submitted showing utilities, bank records, and invoices from October 2009. Item 1d refers to credit card machine services, which includes a copy of a receipt dated November 18, 2009 showing a credit card payment for a sale. Item 2i-j shows sales tax license information and payment of sales tax to the City of Littleton, including September and October sales tax information. Item 2k shows two receipts and affidavits of patients showing purchases in September and October 2009.

Authority Member Bradish asked why the receipt number on the October receipt is a lower number than that of September.

Janene Nachtsheim stated she did not know about the order of the numbers but assumes it was probably a typo.

Attorney Culbertson stated that Item 3 shows the hours of operation. Item 4 shows Mother Nature's Miracle purchases of product. Item 5 shows needs and desires of community with statements from neighboring businesses and letters from patients in support of Mother Nature's Miracle.

Authority Member Gunia asked about the affidavits, specifically what does EF on the affidavits mean?

Attorney Culbertson said he does not know what Mr. Fuentes meant by EF.

Janene Nachtsheim stated the business was open for regular business September 12, 2009. The exterior lighting is being worked on to bring into compliance with the property owner.

Authority Member England asked about employees in the business.

Janene Nachtsheim stated there are always two people in the business, but other than her, they are all volunteers.

Authority Member Gunia asked for a description of how the business looks.

Janene Nachtsheim says there is a sign saying no under 18 is allowed. There is a window to talk with people before letting them in. If someone is asked to leave and does not leave, they would contact the police.

Attorney Culbertson stated that due to the lobby setup, it would be difficult to get in to the dispensary on accident.

Authority Member O'Dell asked who does the counseling and on what basis do they have training or expertise.

Janene Nachtsheim said she does the counseling. She has extensively done research to learn about the uses. There is no doctor on site, but she has one doctor that they can refer patients to. There is 18% of space used for growth on site. They do not allow anyone under 18 in the store at all. All plants are hand watered. There are three cameras, one located in the back room, one in the front lobby, and one outside. There is no access from the rear of building. STD Systems monitors the alarms and video and has a 90-day retention on video. No money is left overnight. They also sell drinks and suckers. They were open 9/12/09, sales tax collected 9/16/09. The packet says opened on 9/8, but was really on 9/12/09. Packaging is in a prescription bottle, labeled for medical marijuana, no resale allowed.

Attorney Staiert asked for a description of what a new customer must do.

Janene Nachtsheim stated that after they come in, they verify their paperwork, ID, physician certification, registry application, and proof of mailing. As of today, they do not accept the paperwork unless at least 35 days old. Patients have to sign a document designating them as their caregiver and it is not a temporary form. They do not do home delivery. All edibles are prepared from chefs in commercial kitchens. The business started recording customer information on January 19, 2010.

Authority Member Gunia asked about the letter from the landlord and if it really gives permission for the medical marijuana dispensary.

Janene Nachtsheim said the letter was intended to show he is aware that it is a medical marijuana dispensary and is to give permission.

Attorney Culbertson said they could supplement with another letter for clarification.

Attorney Staiert asked what type of work the volunteers do.

Janene Nachtsheim said the volunteers consult with customers about different strains if Janene is busy. They always have two people in the shop for security purposes. All volunteers are caregivers and can answer any questions. She does background checks on volunteers through CBI.

Chairperson Bradish opened the public hearing.

Paula Bagley spoke in favor of Mother Nature's Miracle.

Niccole Majors spoke in favor of Mother Nature's Miracle.

Authority Member England asked if the lease contained a provision about liability insurance

to indemnify the landlord.

Janene Nachtsheim said they have liability insurance, which she got the next day after signing the lease. The signage on the building is a smiley face that looks like the cover sheet on the notebook exhibit.

It was moved by AUTHORITY MEMBER GUNIA, seconded by AUTHORITY MEMBER JOHN COLE THAT THE QUESTION OF WHETHER MOTHER NATURE'S MIRACLE 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 Members Price and Andrew Cole

MOTION CARRIED: 5 to 0

b. GREEN MOUNTAIN CARE GROUP
DBA: GREEN MOUNTAIN CARE
5423 S. PRINCE STREET

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 JOHN COLE, seconded by AUTHORITY MEMBER BRADISH TO ADMIT EXHIBITS A-D.

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

Nays: None

Absent: Authority Members Price and Andrew Cole

MOTION CARRIED: 5 to 0

Mark Lewis, attorney for applicant. Green Mountain Care was the first dispensary in Littleton. Sales tax license was issued in June 2009, and that sales tax was paid in July 2009.

Howard Zall, Operating Manager, described the services, procedures, etc., for the dispensary. They first obtained their lease in May 2009, sales tax license in early June 2009, and opened in late June 2009. They began offering only medical marijuana at first, but have since started to supply other wellness services. They have four full-time employees and one part-time employee, one web developer, two accountants, one attorney, and one IT person. Operating hours are M-F 10-7, Sat 9:30-5:30. There is no signage indicating it is a medical marijuana dispensary. They do have a sign in the window saying the business name. This location was previously used as a doctor's office. It is a stand-alone building with a main level and basement. Parking is located in the back, with signs showing limited time to park. A person must go to the door, wait for someone to come and open the door. A security guard does a visual inspection and questions the person before letting them in. Once they come inside, they need to show paperwork. There can be several people inside at the same time. There is a minimum of four people on staff at all times.

Authority Member O'Dell was told by community members that there have been lines of people waiting to get in. This is a concern expressed to him by citizens.

Howard Zall stated that lines have occurred in the past. This issue has been discussed, and they have dealt with this issue. They now set appointments and do not have lines anymore. The area is both commercial and residential building surrounding their building. They do growth on site around 15%. There are eight security cameras, four on the exterior, and four in the interior. Video is sent offsite and is wireless. Product is stored in a safe on site. Employees are patients and caregivers. Patients can grow for themselves, but cannot designate themselves as a caregiver. Customers must fill out paperwork that designates Green Mountain Care as a caregiver only while at that location. They started collecting tax in July, had \$0 sales tax in June. There was a change of ownership from four people to two people. They applied for a new city sales tax license. One of the owners that were changed had a felony record; they redid the sales tax license without that person on 2/10/10. The lease submitted is dated January 12, 2010, in anticipation of the changes.

Authority Member Gunia asked that they provide supplemental information for an exact date of the earliest sales made.

Authority Member England stated that there are no samples of receipts submitted.

Howard Zall said they could produce receipts.

Attorney Lewis said they would provide receipts for July.

Authority Member John Cole said they are claiming June 20 for the first date open, but there are no receipts to document that date.

Attorney Lewis stated that the other person originally in the business, Derek Lewitsky, refused to provide information and was removed from being a member and is no longer involved.

Howard Zall stated his current partner, Mr. Miller, was not an owner since the beginning, but came on in July 2009. The lighting is in compliance. They require customers to show their doctor certification, caregiver form, and copy of application. These are verified against ID. If a person does not have state ID, they must have approved additional documents. They do not require any waiting period. There is a doctor on site.

Attorney Staiert advised them that the city ordinance does not allow a doctor on site.

Howard Zall stated they do not allow anyone under 18 in the building. They do have one patient who has a caregiver that is under 18, but that person is only allowed into the lobby only, not into the dispensary area.

Attorney Staiert asked about the change of LLC and why it was not done prior to February 2010.

Attorney Lewis said they have had problems getting everyone to sign documents and one member refused to sign the indemnification. The person who has a felony record resigned and was not going to be involved and agreed to have name taken off. Later, they received a letter from a competitor's attorney asking for money for that person to not be involved with the business. They felt their only choice was to start an entirely new entity, but this is a continuation of the same business with the same location. They presented a memo from Michael Bullock as exhibit E.

Howard Zall explained the labeling procedures stating that it is only labeled with caution information, not with the type and strain. Edibles are labeled with the amount of marijuana in an item.

Authority Member John Cole asked why they do not label the bags with something saying it is medical marijuana. What if someone loses the item, then someone else would not know if it is marijuana.

Howard Zall said there is nothing on the bag to know what is inside.

Authority Member Gunia asked where the grow area is.

Howard Zall said the grow area is in the basement.

It was moved by AUTHORITY MEMBER BRADISH, seconded by AUTHORITY MEMBER JOHN COLE TO ADMIT EXHIBIT E-G. (Memo, information on business, letter regarding person removed)

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

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Nays: None

Absent: Authority Members Price and Andrew Cole

MOTION CARRIED: 5 to 0

Chairperson Bradish opened the public hearing.

Dallas Ramsden spoke in favor of Green Mountain Care, saying their first visit to Green Mountain Care was in October 2009.

Gerard Holloran spoke in favor on Green Mountain Care, saying they first went there at the end of November 2009.

Clay Rabe spoke in favor of Green Mountain Care.

Cathy Henry spoke in favor of Green Mountain Care.

Barbara Pastroke spoke in opposition of Green Mountain Care. She lives in the senior housing across the street. She came here to understand and learn more, does not understand why so many people coming in and out. She has seen children go into place.

Anthony Charles spoke in favor of Green Mountain Care, saying he started going to Green Mountain Care in November 2009. Mr. Charles explained the labels he has received on his medical marijuana, which did include information about the business and the contents.

Howard Zall said their labeling has changed and now the labels say more than they used to have. He said they do not allow on site use.

Mark Coleman signed in favor of Green Mountain Care, but did not wish to speak.

Robert Suppinger spoke in favor of Green Mountain Care. He started going there in November 2009.

Howard Zall said their product is stored in a safe overnight. He said there is very little waste of plants, they do try to sell the entire plant, and any waste is put into the trash.

Attorney Staiert stated that the letter from the attorney regarding demand for \$150,000 is from the attorney representing the former partner.

It was moved by AUTHORITY MEMBER JOHN COLE seconded by AUTHORITY MEMBER BRADISH THAT THE QUESTION OF WHETHER GREEN MOUNTAIN CARE 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.

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

Nays: None

Absent: Authority Members Price and Andrew Cole

MOTION CARRIED: 5 to 0

- c. BLUE SKY CARE CONNECTION LLC
DBA: BLUE SKY CARE CONNECTION
1449 W. LITTLETON BLVD. #106-107

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 Members Price and Andrew Cole

MOTION CARRIED: 5 to 0

Lauren Davis, attorney and Laura Lowden were present for the applicant.

Attorney Davis presented background information. The lease was signed on October 23, 2009, the sales license on October 21, 2009. The trade name was reserved in September 2009. They took possession of the property on November 1, 2009 and opened for active business November 2, 2009. The first sale was on November 3, and regular hours of operation began in mid-November. Operating hours are 10-7pm Mon-Sat. They have a credit card receipt for a sale dated 12/12/09. The LLC was only registered with Laura Lowden and Richard Martinez. Rachel Gonzales is no longer involved in company. There was an addendum to the lease removing her name. The lease was also amended to not include the requirement of following federal law.

Attorney Staiert asked about a letter that was filed with the city saying the business was exempt from paying sales tax and asked for clarification.

Laura Lowden said she has never seen this letter nor was it written by her or anyone with Blue Sky Care Connection and does not know where came from.

Attorney Davis said there is an ongoing dispute with people previously involved in the business. They do not now know where this letter came from.

Laura Lowden said that regular hours of operation began in late November. The business was open prior to that and they had sales. Security systems, Insurance, and fixtures were all in place on November 1. She described the setup for the two suites. They have a doctor on site for reevaluation purposes. The suites are located on the first floor, towards the back of building. The Parking lot is at rear of building. A customer comes in the back door of the building, and then has to ring a bell to get into the suites. The paperwork is checked at door. Doors to reception area are not always locked, but dispensary area is always locked. There are four cameras, one positioned in the reception area, one in the small hallway on dispensary side, one in the business office, and one in the dispensary. There is a safe kept in the business office. Small amounts of medicine and some cash is kept in the safe. All medicine is locked up after hours. There is no consumption on site, nor growth on site. Customers must go through public hallway to get into the business office and dispensary. Suite 106 is the reception area, where the customer takes care of paperwork, and then they are escorted to Suite 107. They will be putting a camera in the parking lot. There are glass sensors and motion detectors. They sell some edibles that are processed at commercial kitchens and accessories, which are displayed and stored in a locked glass display cabinet in the dispensary area.

Authority Member O'Dell asked for clarification on their job title of Product Specialist.

Laura Lowden said that all caregivers are Product Specialists. They know the medicines and teach the other caregivers and customers about the medicines. Right now, she has 4-5 caregivers working there. There is a monument type sign in the front of the building that says Blue Sky Care Dispensary. The hallway also says the business name and to ring the bell. Suite 107 is posted with a sign saying no one under 18 is allowed in dispensary. They do not encourage people to bring children. Children can wait in the lobby area, but are not allowed to enter into the dispensary. Merchandise is packaged into vials that are childproof, labeled with the business name, medical cannabis warning, product label with strain, weight, type, and that it is not for resale. There is odor control with fans, and no on site growth. Some patients have assigned them as their caregiver, but not all. Customers do have to sign a caregiver contract to purchase from them.

Authority Member Gunia asked about the lighting.

Laura Lowden said the hallway lighting is adequate, but the outside lighting is the problem, and the landlord has not responded.

Attorney Staiert asked if there is a doctor on site.

Laura Lowden said there is sometimes, but not always. Dr. Alan James Mishler was brought in by a doctor referral service. He came in and approved many patients, and then Blue Sky learned that the state was returning paperwork because he was not in good

standing. Blue Sky Care has tried to resolve some cases and is paying for patients to see another doctor.

Attorney Davis said they had a contract with a referral service to provide a doctor on site what was permitted to do marijuana certifications. They were not aware about the problems with Dr. Mishler. They were notified around April 19 and found out he was not permitted. They have had over half of those patients reevaluated. Dr. Mishler was there in January. They have made repeated attempts to get a response from the referral service, but have not gotten any answers.

Attorney Staiert said that the city ordinance prohibits doctor on site.

Laura Lowden stated that customers have to provide a doctor's certification receipt, application with proof of mailing, but do not have a wait period.

Attorney Davis and Attorney Staiert discussed the requirements of the wait period and both interpret the law differently.

Laura Lowden said she does not require a wait period, but will do so if required. She said it is unfortunate that doctors are not legal. They do not have nor ever had any financial arrangements for a doctor to be in dispensary and have never taken money from a doctor or referral company. This was provided as a convenience for the patients.

Attorney Staiert asked why they have not attempted to contact all patients that saw Dr. Mishler to inform them of his status.

Laura Lowden and Attorney Davis said that patients are advised when they come back to the dispensary of the issues with Dr. Mishler, but they do not know the current status of Dr. Mishler with the state, and do not know what else they should do.

Authority Member Bradish asked counsel to move on, as this information does not pertain to the decision being made by this board.

Chairperson Bradish opened the public hearing.

Millissa Tewksbury signed in favor, but did not wish to speak.

Tilden Lozano signed in opposition, but did not wish to speak.

Marian Lund spoke in favor of Blue Sky Care.

Jason Chavez spoke in favor of Blue Sky Care.

Attorney Davis stated that because Ms. Lowden believes in protecting personal information about her patients, she does not have affidavits from any customers.

Robert Supinger signed in favor, but was not present when called.

Mike Henderson spoke to the Authority as a concerned citizen. He was wondering why the city finds it necessary to close two dispensaries down. He spoke in favor of Blue Sky. He went to Blue Sky in February 2010.

Authority Member Bradish told him that was a decision that was not up to the Licensing Authority, they were just tasked with deciding which four will be licensed.

Michael Stonehouse spoke in opposition of Blue Sky Care Connection. He is an owner Blue Sky Care. He stated that the first purchase was 12/3/09. He has pending legal action against Ms. Lowden for fraud.

Attorney Davis and Mr. Stonehouse debated his involvement with the company.

Authority Member John Cole stated this is not proper questioning for this hearing.

Attorney Staiert said there is no right to cross-examine a person in this setting.

Authority Member John Cole asked if Ms. Lowden is aware of any problems with the lease.

Laura Lowden stated she was not aware of any problems with the lease.

Rachel Gonzales spoke to the Authority saying she provided 100% of the financing for Blue Sky Care Connection. She was not speaking against dispensaries, but is concerned with the integrity of this business. She stated the business did not have any sales in November, as they claimed. She was involved with the business until the end of November and no product had been purchased.

Attorney Davis said that Ms. Gonzales was not working at the business, so she does not know when the first sale happened.

Authority Member Bradish said that it appears that the organization has problems that need to be sorted out in a court of law and this board cannot make decisions as to who is right or wrong in these matters.

Attorney Staiert asked if there were sales prior to the e-filing with the Secretary of State amending the articles of incorporation on 11/28/09.

Laura Lowden said there were sales prior to that.

It was moved by AUTHORITY MEMBER JOHN COLE, seconded by AUTHORITY MEMBER O'DELL THAT THE QUESTION OF WHETHER BLUE SKY CARE CONNECTION 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.

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

Nays: None

Absent: Authority Members Price and Andrew Cole

MOTION CARRIED: 5 to 0

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 9:02 p.m. on May 6, 2010.



Richelle Work

Deputy City Clerk/Recording Secretary