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Debra A Green
Park County Clerk

**PARK COUNTY, COLORADO
BOARD OF COUNTY COMMISSIONERS
Resolution No. 2014-~~14~~44**

A RESOLUTION DENYING APPLICANT'S MOTION TO EXCLUDE PETITIONS AND MAKING FINDINGS OF FACT, CONCLUSIONS, AND ENTERING AN ORDER DENYING THE APPLICATION OF GRANNY HASH, LLC FOR PARK COUNTY RETAIL MARIJUANA STORE AND RETAIL MARIJUANA CULTIVATION FACILITY LICENSES.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF PARK (the "BOCC" or the "Board") THAT the following ruling on the Applicant's motion to exclude petitions, and findings of fact, conclusions and order are hereby adopted.

MOTION TO EXCLUDE PETITIONS

On October 23, 2014, nearly a month after the conclusion of the hearing in this matter and following the conclusion of the public deliberations conducted by the BOCC on October 22, 2014, the Applicant's legal counsel submitted a document entitled "Motion to Exclude Petitions" (the "Motion"). The gist of the Motion is that the various petitions submitted at the public hearing in this case, together with a map prepared by County staff depicting the location of the signers of the petition, should be excluded pursuant to Rule 403 of the Colorado Rules of Evidence or, alternatively, that the petitions and map should be excluded for failure to comply with the requirements of the Colorado statutes pertaining to initiative and referendum petitions, C.R.S. § 1-40-101 *et seq.* Applicant seeks the exclusion not just of petitions submitted in opposition to its application for retail marijuana establishment licenses but also exclusion of the petitions that Applicant itself introduced into evidence at the public hearing.

The Motion is DENIED for several reasons.

First, the Motion is untimely. If the Applicant objected to its own petitions it should not have offered them into evidence in the first place. By offering them the Applicant waived any objection to their admissibility or to the BOCC's consideration of them. The objection to the admissibility of Applicant's own evidence nearly a month after it was submitted is also untimely

As to the petitions in opposition to the application, Applicant could have and should have objected to their admissibility at the time of the hearing. The Motion, submitted nearly a month after the hearing and only after the BOCC's deliberations which resulted in direction to the County Attorney to prepare a resolution denying the application, is untimely and could be denied on that basis alone. The BOCC notes in this regard that the Applicant received the maps compiling the signatures received into

evidence some three weeks before filing its Motion and did not object to the mapping even though its attorneys were specifically invited to do so by the County Attorney.

Second, C.R.E. 403 has no applicability in this proceeding. The Colorado Rule of Evidence apply only to “proceedings in all courts of the State of Colorado.” C.R.E. 101 and 1101 (emphasis added). It is settled law in Colorado that the rules of evidence applicable to court proceedings do not apply in administrative hearings such as the September 25, 2014 hearing in this matter. *Woodrow v. Wildlife Commission*, 206 P.3d 835, 838 (Colo. App. 2009) (“administrative hearings need not comply with the strict rules of evidence”); *Fueston v. City of Colorado Springs*, 713 P.2d 1323, 1326 (Colo. App. 1985); *Monte Vista Professional Bldg., Inc. v. City of Monte Vista*, 35 Colo. App. 235, 238, 531 P.2d 400, 401 (Colo. App. 1975). Thus, the Applicant’s argument that the petitions should have been excluded pursuant to C.R.E. 403 lacks merit for the reason that C.R.E. 403 has does not apply in this matter.

Third, even if C.R.E. 403 applied here, the BOCC finds that the petitions are not unfairly prejudicial or that any prejudicial effect is outweighed by the probative value of the evidence.¹ The BOCC further finds that the petitions and the map are neither confusing not misleading but are, instead, understandable and quite helpful in determining whether this application meets the applicable criteria for issuance of retail marijuana licenses.

Park County ordinance No. 2013-1, at subsection 7(h), states as follows:

(h) Before entering a decision approving or denying the application for a local license, the local licensing authority may consider, except where this ordinance specifically provides otherwise, the facts and evidence adduced as a result of its investigation, as well as any other facts, the reasonable requirements of the neighborhood for the type of license for which application has been made, the desires of the adult inhabitants of the neighborhood under consideration, the number, type and availability of retail marijuana establishments located in or near the premises under consideration, and any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed.

The petitions submitted by the Applicant and the opponents in this matter are highly probative of “the desires of the adult inhabitants of the neighborhood” and are, in fact, the traditional method for establishing such desires under the virtually identical language in the Colorado Liquor Code. C.R.S. § 12-47-301(2)(a). See also *Hauf Brau v. Board of County Commissioners*, 145 Colo. 522, 359 P.2d 659 (1961).

Conversely, the BOCC perceives no *unfair* prejudice from the admission into evidence of the petitions and, indeed, perceives no prejudice at all. It is difficult to

¹ C.R.E. 403 allows a court to exclude evidence where “its probative value is substantially outweighed by the danger of unfair prejudice.”

reconcile Applicant's current argument that the petitions are unfairly prejudicial with the Applicant's actions in itself procuring and offering petitions into evidence.

Fourth, Applicant's argue that the petitions should be excluded because they do not conform to the requirements of the Colorado statute governing initiative and referendum petitions. C.R.S. § 1-40-101 *et seq.* In other words, the Applicant appears to argue that its own petitions, as well as those submitted by the opponents, must be ignored because they do not comply with statutory requirements that, on their face, do not pertain since this is not an initiative or referendum. That argument lacks any conceivable merit. The informality of the petitions offered by the Applicant and the opponents may have some limited bearing on the weight of that evidence, but it has nothing to do with its admissibility. The fact that the petitions do not contain information required in initiative and referendum petitions is entirely immaterial.

For all of the reasons set forth above the Motion to Exclude Petitions is denied.

FINDINGS OF FACT, CONCLUSIONS AND ORDER

FINDINGS

1. This matter comes on for hearing upon the application of Granny Hash, LLC ("Applicant" or "Licensee") for Park County retail marijuana store and retail marijuana cultivation facility licenses at the subject site.
2. The application is complete and contains all the information required by Park County Ordinance No. 2013-1. The Board further finds that the Applicant, its officers and shareholders are of good moral character.
3. Notice of a public hearing on the application was given in the manner prescribed by Section 7(f) of Ordinance No. 2013-1.
4. A public hearing was held on the application on September 25, 2014, at which the Applicant and all interested parties were allowed to present testimony and evidence regarding the application and particularly the criteria for issuance of a license set forth in Ordinance No 2013-1.
5. The Applicant presented testimony regarding the proposed retail marijuana establishment and several personas testified in favor of the application. Applicant also introduced a petition in favor of the issuance of the licenses.
6. Many persons in interest appeared to testify against the application and a petition was presented in opposition to the issuance of the proposed licenses.

CONCLUSIONS

1. Based on the evidence adduced at the public hearing the Board concludes that there is sufficient evidence to allow it to conclude that the reasonable requirements of the neighborhood are not being met by existing retail marijuana establishments.

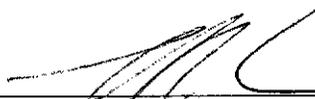
2. The Board further concludes, however, that there was persuasive evidence that the desires of the adult inhabitants of the neighborhood oppose issuance of the license and that the requirements for the issuance of a retail marijuana store license and a retail marijuana cultivation license for this location have not been met. The BOCC notes that, while the petitions submitted at the hearing in this matter were certainly considered, they were not the only probative evidence supporting the Board's conclusion. The testimony presented by persons in interest at the September 25, 2014 hearing together with other evidence adduced at that hearing was competent and persuasive that the desires of the adult inhabitants of the neighborhood do not support issuance of these licenses.

ORDER

Based on the Findings and Conclusions set forth above, the application for a retail marijuana store license and a retail marijuana cultivation license is DENIED.

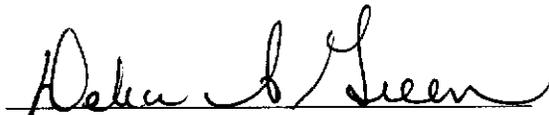
Moved, seconded, and approved this 6th day of November, 2014.

PARK COUNTY BOARD OF COUNTY COMMISSIONERS



Mark Dowaliby, Chairman

ATTEST:


County Clerk