



**ARAPAHOE COUNTY
PLANNING COMMISSION
TUESDAY, JANUARY 5, 2010**

MEMBERS

Paul Rosenberg, Chair
Arnold Hayutin, Chair Pro-Tem
Mark Brummel
Kim Herzfeldt, Absent
Brett Larson
Leah Martin, Arrived After Meeting Began
Brian Weiss

OTHERS PRESENT

Tammy King
Jan Yeckes
Ron Hovland
Carol Kuhn
Ron Carl
Terri L. Maulik

ADOPTION OF MINUTES

The motion to adopt the minutes from the November 17, 2009 Planning Commission hearing was made by Mr. Hayutin, duly seconded by Mr. Weiss.

The motion passed unanimously.

OPENING COMMENTS

Ron Hovland said there will be a Planning Commission meeting on January 19, 2010 to discuss rodeos and the zoning regulation changes. There will be two outreach meetings on January 14, 2010 and January 28, 2010 regarding the new Land Development Code (LDC) and other planning that the county is doing. He said Jan Yeckes has a new contract that has been entered into for research on the I-70 Corridor project. He said there was a study session with the Board of County Commissioners this morning about the I-70 Corridor. He reported that all of the perfect players were in attendance and included Adams County Planning, Town of Bennett, and the REAP group. Mr. Hovland said the meeting was very worthwhile and feels the Board of County Commissioners is

pleased with the progress that has been made. He reported that there is one Public Hearing tonight before the Planning Commission. He said Assistant County Attorney Ron Carl is here on behalf of the county tonight.

CONSENT AGENDA

There were no consent agenda items.

REGULAR AGENDA ITEMS

Item 1 – Resolution to Adopt/Extend a Moratorium on Business to Dispense or Grow Medical Marijuana.

Ron Carl, Assistant County Attorney, addressed the Commission regarding a moratorium on medical marijuana. He said the subject has received a lot of media attention lately. He stated that there are more medical marijuana dispensaries in Denver now than there are Starbucks. Mr. Carl said the growth of these businesses seems to be occurring rapidly statewide. He reported that the growth is partially due to the recent changes in federal enforcement policy. He stated that the Obama administration has determined that they are not going to prosecute medical marijuana uses as long as those uses are in compliance with state law. Mr. Carl said, prior to the Obama administration, people were fearful of federal prosecution so there were not a lot of these businesses starting up. He said recently there has been an extreme surge of them. He reported that on December 15, 2009 the Board of County Commissioners (BOCC) determined to take action out of concern that this was a use that wasn't properly addressed or analyzed. He said other local jurisdictions are establishing moratoriums. The staff fears that Arapahoe County may receive a lot of interest and may see a lot of these businesses starting up before we have time to analyze their impact or to address appropriate location sites. He reported that legal staff has analyzed the situation and advised the BOCC to treat the moratorium as something akin to a zoning amendment and to use that procedure to adopt an extension of the moratorium. The BOCC approved a temporary moratorium until January 12, 2010 in order to receive recommendations from the Planning Commission. Mr. Carl reported that the BOCC public hearing has been advertised in The Villager newspaper for January 12, 2010. He stated that the moratorium temporarily prohibits any new land uses associated with growing or dispensing of marijuana after December 15, 2009. He said the current, proposed moratorium would last until June 14, 2010. He said that the legal staff feels this is enough time to research and come up with recommendations. He reported that there will be restrictions proposed. Mr. Carl stated that during the time of the moratorium, with the exception of already existing businesses, no future building or rezoning as regards growing and dispensing of marijuana will be permitted. He stated that individual use, as allowed by the state constitution, would still be permitted.

There was discussion regarding federal law and state law as regards the growing, dispensing, and use of medical marijuana. It was agreed that it is still against federal law; however, the state has legalized medical marijuana and therefore is not enforcing federal law.

The Planning Commission discussed individual use of medical marijuana versus the establishment of a medical marijuana grow-operation or dispensary. The Constitution of the State of Colorado is vague with regards to medical marijuana and the establishment of related businesses. There are several areas in the constitution and law which require further clarification. Many people are interpreting the Colorado Constitution to allow for commercial dispensaries. Except for those jurisdictions who have already adopted land use regulations, the medical marijuana industry is mostly unregulated. Prior to the moratorium, if someone wanted to open a dispensary they were required to follow the same code as any retail business and establish themselves within one of the zone districts appropriate for retail. Similarly, if the business is a growing operation it would have to be located in a zone district that is approved for agricultural or industrial use, depending upon whether the growing business is based indoors or outdoors.

There was further discussion regarding existing businesses who may determine to grow and sell marijuana. The Planning Commission feels there are current loopholes in what little regulation exists. New legislation is expected from the state during the next session. While the county plans to work on the implementation of its own regulations, staff and BOCC expect to receive guidance from new state legislation prior to the moratorium expiring.

The proximity of dispensaries to other businesses and hours of operation were discussed. Existing businesses are grandfathered in and may not feel the effects of new legislation.

The Planning Commission discussed moratoriums and how long they may be imposed. Mr. Carl was unsure how long a moratorium could be in effect. A complete ban was discussed as well as the public's reaction to this issue. Secondary effects, such as crime, were considered. A possible limit to the number of dispensaries was discussed.

Tammy King, Zoning Administrator, addressed the Commission in response to Ms. Martin's inquiry about how many medical marijuana dispensaries currently exist in the county. She said that prior to the moratorium she was receiving anywhere from 8 to 15 calls a day inquiring about where the county would permit dispensaries to open. She reported that, at the time, it was the county's stand that if the business was zoned retail then it could open a dispensary. She stated further that if the area was zoned industrial, then the business could grow medical marijuana. She said that if the area was zoned agricultural, medical marijuana could be grown outside. Ms. King said there was one inquiry from a farmer with 35 acres who thought it would be very profitable to grow that much marijuana. She reported that since the moratorium was imposed there have been two phone calls and one email. She feels the moratorium has slowed the inquiries considerably. Ms. King believes that everyone is taking a wait-and-see approach. She said staff is aware of three dispensaries currently in operation in Arapahoe County. She reported one dispensary is located in Byers (390 W. Front Street). She stated that there is another dispensary located in the 4-Square Mile area (5250 E Yale Ave). Staff is aware of these two dispensaries because of building permits being pulled. She said there is a third business that grows marijuana and wholesales to the dispensaries (Inverness area).

The collection of sales tax was discussed. It is assumed that the state is collecting sales tax from these businesses.

Licensing requirements were discussed. The county does not have any licensing requirements. It makes it very difficult to track grow-ops and dispensaries.

Ms. King reported that she had received an email from a citizen reporting a dispensary. She has yet to research the information to determine if the business is zoned appropriately. If the dispensary is not properly zoned the tenant/property owner will be notified that they may not operate in that space. If the business is properly zoned, then the owners will be required to prove that the business existed prior to the moratorium.

Use of medicinal marijuana was discussed. A recommendation from a licensed physician, who is authorized to prescribe, is required. Once a referral is received then the applicant must register with the Colorado Department of Health and Environment. Ease of access to the drug was considered.

Mr. Larson asked which county staff was working on researching and developing recommendations for medical marijuana land uses restrictions.

The need to be better educated on the issues and have a thorough understanding was discussed. It was agreed that the laws which govern medical marijuana grow-ops and dispensaries are rudimentary. There isn't any real law to follow.

Ms. King said that staff is requesting the moratorium in hopes to use that time to collect data and learn more. She will be attending an all-day seminar to learn the ins and outs of this issue. Several county attorneys will also attend the seminar. Ms. King said staff will be prepared.

There was discussion about the possibility of re-extending the moratorium after six months, should the county find itself unprepared to impose regulations. Staff hopes to get everything done in six months. The Commission spoke about either having code in place, within six months, or banning medical marijuana use entirely.

Mr. Hovland said this is being considered a land use issue. He said the regulations that the county might put in place would probably be generally related to the types of action currently taken with liquor licensing. He said the constitutional amendment says we cannot ban the use of medical marijuana; however, the county may reasonably regulate it. The definition of reasonable regulation will vary between jurisdictions. Mr. Hovland said everyone is waiting to see what, if anything, the state legislature does. He said medical marijuana issues are one of the state legislature's highest priorities. He stated that this is a contentious issue and the law is cloudy. Staff does not have definitive answers for the Planning Commission at this time. The moratorium will allow the county to research and compile a plan. State legislation could impact the County's authority to regulate these businesses at the county level. He said staff supports the moratorium.

Mr. Rosenberg opened the public hearing.

There were no comments from the public.

The public hearing was closed.

The motion was made by Mr. Hayutin that the Planning Commission forward a recommendation to the Board of County Commissioners to approve the draft resolution to adopt/extend a temporary moratorium on Medical Marijuana Land Uses for a period of time up to and including June 14, 2010, based on the findings outlined in the Staff Report to the Planning Commission and findings in the draft resolution.

Seconded by Mr. Weiss.

The motion passed unanimously.

The meeting adjourned at 7:29 p.m.

Paul Rosenberg, Chair

**Terri L. Maulik
Assistant Clerk to the Board**