



City of Santa Barbara California

CITY OF SANTA BARBARA PLANNING COMMISSION

RESOLUTION NO. 008-18

118 NORTH MILPAS STREET

APPEAL OF THE DECISION OF THE STAFF HEARING OFFICER

APRIL 5, 2018

APPEAL BY PETE DAL BELLO OF THE DECISION OF THE STAFF HEARING OFFICER TO NOT REVOKE OR SUSPEND THE STOREFRONT COLLECTIVE DISPENSARY PERMIT ISSUED TO THE CANOPY, 118 NORTH MILPAS STREET, APN 017-091-016, C-G COMMERCIAL GENERAL ZONE, GENERAL PLAN DESIGNATION: COMMERCIAL / HIGH RESIDENTIAL (MST2015-00319)

On December 20, 2017, the City's Staff Hearing Officer held a revocation hearing and decided not to revoke the Medical Marijuana Storefront Collective Dispensary Permit at 118 North Milpas Street. On January 25, 2018, Pete Dal Bello filed an appeal of the Staff Hearing Officer's decision to not revoke the permit. A public hearing was held for the Planning Commission to hear the appeal. The project includes interior and exterior tenant improvements to the existing commercial building. The project has an active building permit; however, construction is not completed, nor has the dispensary begun operating.

The discretionary application approved for this project is a Storefront Collective Dispensary Permit (SBMC § 28.80.030).

The Environmental Analyst has determined that the project is exempt from further environmental review pursuant to the California Environmental Quality Act Guidelines Section 15301(a), Existing Facilities.

WHEREAS, the Planning Commission has held the required public hearing on the above appeal, and the Appellant as well as, the Attorney for Ryan Howe and The Canopy were present.

WHEREAS, 2 people appeared to speak in favor of the appeal, and 3 people appeared to speak in opposition thereto, and the following exhibits were presented for the record:

1. Staff Report with Attachments, March 29, 2018
2. Site Plans
3. Correspondence received in support of the project:
 - a. Peter Candy, Santa Barbara CA

NOW, THEREFORE BE IT RESOLVED that the City Planning Commission:

- I. Denied the appeal and upheld the decision of the Staff Hearing Officer, as outlined in the Staff Report dated March 29, 2018, making the following findings and determinations:
 - A. While the Planning Commission generally has authority to uphold, modify, or reverse the decision of the Staff Hearing Officer on appeal, this is not the case in this situation. The language found in SBMC Section 30.185.250.M.4 limits the action that the Planning Commission may take if it finds that a transfer or attempt to transfer a storefront dispensary permit occurred (either directly or indirectly). Pursuant to Section 30.185.250.M.4, if an attempted transfer is found "the permit shall be deemed revoked." The Planning Commission determined that there was not an attempt to

transfer ownership or control of the dispensary or permit in violation SBMC § 28.80.130.B, the the permit is not revoked.

II. The Planning Commission found that the Staff Hearing Officer did not commit an error in reaching her decision to not revoke or suspend the permit, nor did the Staff Hearing Officer abuse her discretion in reaching her conclusions. Therefore, the Planning Commission upheld the decision of the Staff Hearing Office and adopted the following findings of fact and conclusions of law as its own:

A. FINDINGS OF FACT

In 2015, Ryan Howe engaged Joseph Allen as corporate counsel to perform legal work for Canopy, including incorporating and organizing Canopy Club, Inc. (Page 2 of Peter Candy Opposition Brief dated December 18, 2017 and Page 2 of Exhibit A of said Brief.)

1. On May 13, 2015, Articles of Association for Canopy Club, Inc. an Unincorporated Non-Profit Patient Collective were executed by Ryan S. Howe, Paul Semonian, Thomas Martin, and Stanlee P. Cox. The Articles of Associations for Canopy Club, Inc. state that the “organizers shall maintain all books, records and funds of the collective. The organizers shall appoint officers and employees to act for the collective and to keep and preserve the funds and property of the collective.” (Bates stamp 083-084)
2. On June 4, 2015, Joseph Allen filed Articles of Incorporation for Canopy Club, Inc. a Non Profit Mutual Benefit Corporation with the California Secretary of State. (Page 2 of Peter Candy Opposition Brief dated December 18, 2017)
3. The Articles of Incorporation for Canopy Club, Inc. a Non Profit Mutual Benefit Corporation were executed on May 13, 2015 by Paul Semonian, Ryan S. Howe, Stanlee P. Cox, and Thomas Martin. (Bates stamp 211-212)
4. On July 15, 2015, Ryan Howe, Founder and Chairman of Canopy Club, Inc. submitted an Application for a proposed Storefront Medical Marijuana Dispensary to be located at 118 N. Milpas, Santa Barbara. (Bates stamp 219) The Application included a Dispensary Storefront Application, Executive Summary and Operations Plan (Operations Plan) dated November 18, 2015. (Bates stamp 012-086)
5. The Operations Plan identifies Ryan Howe as the sole management member of Canopy Club, Inc. (Bates stamp 017)
6. The Operations Plan identifies Joseph Allen, Attorney at Law, as the designated Agent for Service of Process. (Bates stamp 017)
7. The Operations Plan provides that the “organization is represented by Joseph Allen and will act in full compliance with the law, regulations, and conditions set by the ordinance. No provisions of any code, condition of a city issued permit, or any other or state laws regulation or order or any condition imposed by permits issued in compliance of those laws in the City of Santa Barbara will be violated by Canopy.” (Bates stamp 023)

8. The Operations Plan establishes a Membership Advisory Council “to advise and consult with the Founder, Ryan Howe, in specific areas related to each Advisors expertise.” The Membership Advisors are identified as Ryan Steven Howe, Stanlee Pannelle Cox, and Thomas Lyle Martin. (Bates stamp 028-029)
9. The Operations Plan states that “other than Ryan Howe, Membership Advisors are only be (sic) members of Canopy, and do not serve as management, employees, or on the Board of Directors for the organization.” (Bates stamp 028)
10. The Operation Plan states that “Mr. Howe will not transfer ownership or control of his Storefront Collective Dispensary Permit to another person or entity unless and until the transferee obtains an amendment to the permit from the Staff Hearing Officer pursuant to the permitting requirements of this Chapter.” and further states “It is understood that any attempt to transfer our Storefront Collective Dispensary permit without permission, either directly or indirectly, is a violation of this Chapter, and the permit shall be deemed revoked.” (Bates stamp 038)
11. The Operations Plan includes a signed statement under the penalty of perjury that Ryan Steven Howe is the founder of Canopy Club Inc.; that Ryan Howe has personal knowledge of the information contained within the Application; that the Application was completed under the supervision of Ryan Howe and Sean Michael; and that the information contained within the Application is true and correct. (Bates stamp 086)
12. On January 20, 2016, the Staff Hearing Officer reviewed and approved the Operations Plan dated November 18, 2015, and issued a Storefront Collective Dispensary Permit to Canopy Club, Inc. subject to conditions. The Conditions that needed to be satisfied prior to the operation of the Dispensary under the permit did not authorize or require the inclusion of additional management members or corporate officers. (Bates Stamp 087 - 094)
13. On March 17, 2016, the Planning Commission issued a Storefront Collective Dispensary Permit to Canopy Club, Inc. subject to conditions. (Bates Stamp 095 - 101)
14. On May 3, 2016, Mary K. Bock filed a Statement of Information for Canopy Club, Inc. with the California Secretary of State identifying Ryan S. Howe as Chief Executive Officer and Chief Financial Officer and Thomas Martin as Secretary of the Corporation. (Bates Stamp 213)
15. Mary K. Bock was Joseph Allen’s legal assistant. (Page 2 of Exhibit B to Peter Candy Opposition Brief dated December 18, 2017 and Ryan Howe testimony, Staff Hearing Officer public hearing December 20, 2017)
16. In the normal course of Joseph Allen’s work, Ms. Bock would file the Statement of Information for Joseph Allen’s clients. (Page 2 of Exhibit B to Peter Candy Opposition Brief dated December 18, 2017)

17. On May 10, 2016, the City Council issued a Storefront Collective Dispensary Permit to Canopy Club, Inc. subject to conditions. The Conditions set forth in the Council Resolution No. 16-064 did not authorize a change in management members or corporate officers. (Bates stamp 102-186 and 187-210)
18. On July 29, 2016, Mary K. Bock filed a Statement of Information for Canopy Club, Inc. with the California Secretary of State identifying Ryan S. Howe as Chief Executive Officer and Chief Financial Officer and Danielle Winkler as Secretary of the Corporation. (Bates Stamp 214)
19. Ryan Howe stated that Danielle Winkler was his Executive Assistant for approximately eight to nine months. (Testimony by Ryan Howe, Staff Hearing Officer public hearing December 20, 2017)
20. On December 20, 2016, Ryan Howe submitted a revised "Operating Plan and Application Final Submission to the Staff Hearing Officer December 20, 2016." (revised Operations Plan) which incorporated changes required by Council Resolution No. 16-064. (Exhibit L to City Attorney's Brief)
21. The revised Operations Plan dated December 20, 2016, included a revised Director's Statement signed 12-20-2016 by Ryan Howe, under the penalty of perjury, that Ryan has personal knowledge of the information contained within the Application, that the Application was completed under the supervision of Ryan Howe and attorney Joseph Allen and, that the information contained within the Application is true and correct. (Exhibit L, City Attorney's Brief, page 60)
22. The revised Operations Plan dated December 20, 2016, continues to identify Joseph Allen, Attorney at Law, as the designated Agent for Service of Process and that the "organization is represented by Joseph Allen and will act in full compliance with the law, regulations, and conditions set by the ordinance. No provisions of any code, condition of a city issued permit, or any other or state laws regulation or order or any condition imposed by permits issued in compliance of those laws in the City of Santa Barbara will be violated by Canopy." (Exhibit L, City Attorney's Brief, pages 6 and 12)
23. On June 27, 2017, an application was filed with the City requesting amendments to the approved Operations Plan. One of the requested amendments to the approved Operations Plan and Application was to add four additional Management Members. (Bates stamp 225-228)
24. On September 22, 2017, Ryan Howe filed a Statement of Information for Canopy Club, Inc. with the California Secretary of State identifying Ryan S. Howe as Chief Executive Officer, Secretary, and Chief Financial Officer. (Exhibit C to Peter Candy Opposition Brief dated December 18, 2017)
25. Ryan Howe recalls an initial meeting of the Incorporators and written minutes being prepared, however, Ryan Howe has searched his records and determined that Canopy's

corporate records and corporate minute book were misplaced and now lost. (Page 2 of Exhibit A to Peter Candy Opposition Brief dated December 18, 2017)

26. Ryan Howe states he was unaware of the filings of the two Statement of Information forms with the Secretary of State and that he did not authorize Joseph Allen to file the two Statements of Information with the Secretary of State changing the corporate officers. (Page 2 of Exhibit A to Peter Candy Opposition Brief dated December 18, 2017)
27. Ryan Howe states that neither Mr. Martin nor Ms. Winkler were ever elected or appointed as an officer of the Corporation. (Page 2 of Exhibit A to Peter Candy Opposition Brief dated December 18, 2017)
28. Joseph Allen has searched his records and determined that Canopy's corporate records and corporate minute book were misplaced and now lost. (Page 2 of Exhibit B to Peter Candy Opposition Brief dated December 18, 2017)
29. Joseph Allen cannot recall anything associated with the May Statement of Information or the July Statement of Information. (Page 2 of Exhibit B to Peter Candy Opposition Brief dated December 18, 2017)
30. Ryan Howe acknowledges that Joseph Allen's role as a Corporate Attorney was to file a Statement of Information for Canopy Club, Inc. (Testimony by Ryan Howe, Staff Hearing Officer public hearing December 20, 2017)

B. CONCLUSIONS OF LAW

1. Ryan Howe was the Applicant for Canopy Club, Inc. as defined in SBMC§30.185.250.B (formerly §28.80.020) and the sole Management Member identified for Canopy Club, Inc. as defined in SBMC §30.185.250.B.4 (formerly §28.80.020.D) and provided for in the approved Operations Plan dated November 18, 2015.
2. Per SBMC §30.185.250.B.4 (formerly SBMC§28.80.020.D), a Management Member is defined as "*a Medical Marijuana Collective member with responsibility for the establishment, organization, registration, supervision, or oversight of the operation of a Collective including, but not limited to, members who perform the functions of president, vice president, director, operating officer, financial officer, secretary, treasurer, or manager of the Collective.*" Therefore, as a sole Management Member, Ryan Howe was the sole Corporate Officer approved by the City.
3. The Canopy Club, Inc. is the permittee as defined in SBMC§30.185.250.B (formerly §28.80.020).
4. Joseph Allen was corporate counsel for Canopy Club, Inc. from approximately 2015 to December 2016 (Page 2 of Peter Candy Opposition Brief dated December 18, 2017 and Exhibit L, City Attorney Brief dated December 15, 2017)

5. The revised Operations Plan dated December 20, 2016 includes a statement, signed under penalty of perjury, by Ryan Howe that he has personal knowledge of the information contained in the Canopy Club Medical Marijuana Storefront Collective Dispensary Application, that the information contained therein is true and correct, and that the application has been completed under the supervision of Ryan Howe and Joseph Allen. That signed statement, when taken together with the statement in the Operations Plan indicates that Joseph Allen represented Canopy Club, Inc.
6. There is a written process for the appointment of officers outlined in the Articles of Association. Although, the Articles of Association for Canopy Club, Inc. require the original organizers to maintain all books, records and funds of the collective, no corporate records or corporate minutes have been provided in this appeal.
7. As the sole Management Member and Corporate Officer, Ryan Howe had the responsibility to be aware of the filings on behalf of Canopy Club, Inc.
8. Ryan Howe testified that he was not aware of the Statements of Information, the filings of the Statement of Information forms were not correct and that neither Mr. Martin nor Ms. Winkler were ever elected or appointed as officers of the corporation. (Page 2 of Exhibit A to Peter Candy Opposition Brief dated December 18, 2017) Ryan Howe testified that he is aware of the process required to request amendments to the approved Operations Plan, including the addition of new Management Members. (Testimony by Ryan Howe, Staff Hearing Officer public hearing December 20, 2017) Ryan Howe's action to file an amendment to the approved Operations Plan to incorporate new Management Members on June 27, 2017 illustrates his knowledge of the requirement to request City approval for changes in Management Members. In the absence of documentary evidence illustrating how that submittal came about, I find that the filings of the May Statement of Information indicating Thomas Martin as Secretary and the subsequent July Statement of Information by Mary Bock, Joseph Allen's legal assistant, exceeded Joseph Allen's scope of authority in filing the Statements of Information and do not constitute an attempt to transfer control of the Storefront Collective Dispensary Permit.

C. DECISION

Ryan Howe testified that he was not aware nor did he request that Joseph Allen file Statements of Information with the California Secretary of State in the summer of 2016. Also, it could not be explained why two Statements of Information were filed two months apart by the assistant of Joseph Allen, which gives credence that there was some confusion and it was a situation where Ryan Howe was not aware of what was occurring. Evidence was also presented that there was concerns over Joseph Allen's representation and that he was also suspended by the State Bar. Moreover, the filed Statements of Information by itself do not constitute a transfer or an attempt to transfer ownership of the storefront dispensary permit. Ryan Howe testified that he is aware of the process required to request amendments to the approved Operations Plan, including the addition of new Management Members and his action to file an amendment to the approved Operations Plan to incorporate new Management Members on June 27, 2017 illustrates his knowledge of the requirement to request City approval for changes in Management Members.

Therefore, pursuant to SBMC § 30.185.250.M.4, the Planning Commission deems the Storefront Collective Dispensary Permit issued to SBPCHC not revoked or suspended based upon the foregoing Findings of Fact and Conclusions of Law. This decision may be appealed to the City Council within 10 calendar days of the date of this decision pursuant to SBMC § 1.30.050

This motion was passed and adopted on the 5th day of April, 2018 by the Planning Commission of the City of Santa Barbara, by the following vote:

AYES: 6 NOES: 0 ABSTAIN: 0 ABSENT: 1

I hereby certify that this Resolution correctly reflects the action taken by the City of Santa Barbara Planning Commission at its meeting of the above date.



Krystal M. Vaughn, Commission Secretary

4/5/18

Date

PLEASE BE ADVISED:

THIS ACTION OF THE PLANNING COMMISSION CAN BE APPEALED TO THE CITY COUNCIL WITHIN TEN (10) CALENDAR DAYS AFTER THE DATE THE ACTION WAS TAKEN BY THE PLANNING COMMISSION.