

File Number: PROJ 21-0001
Date Received: 3/18/21

Receipt No.: 29953
Amount: \$239⁰⁰/₁₀₀

APPEAL FORM

(For more information, see Section 130.52.090 of the Zoning Ordinance)

Appeals must be submitted to the Planning Department with appropriate appeal fee. Please see fee schedule or contact the Planning Department for appeal fee information.

APPELLANT Charles Willett and Tahoe Honey Company
ADDRESS 11260 Donner Pass Road, Suite C1 #305, Truckee, CA 96161
DAYTIME TELEPHONE (510) 701-9596

A letter from the Appellant authorizing the Agent to act in his/her behalf must be submitted with this appeal.

AGENT Myles G. Taylor
ADDRESS Parker Law Group Attorneys 555 Capitol Mall, Suite 1230, Sacramento, CA 95814
DAYTIME TELEPHONE (916) 996-0400

APPEAL BEING MADE TO: Board of Supervisors Planning Commission

ACTION BEING APPEALED (Please specify the action being appealed, i.e., approval of an application, denial of an application, conditions of approval, etc., and specific reasons for appeal. If appealing conditions of approval, please attach copy of conditions and specify appeal.)

Meyers Commercial Cannabis Retail Selection Scoring issued March 5, 2021

2021 MAR 18 PM 1:31
RECEIVED
PLANNING DEPARTMENT

DATE OF ACTION BEING APPEALED March 5, 2021

[Signature] Signature 3/16/21 Date

APPEAL OF CCPA 20-0011

Sec. 130.52.090 - Appeals.

Any decision by the review authority of original jurisdiction may be appealed by the applicant or any other affected party, as follows:

- A. An appeal must be filed within 10 working days from the decision by the review authority by completing the appeal form and submitting said form together with the applicable fee, as established by resolution of the Board, to the Department. The appellant shall clearly identify on the appeal form the specific reasons for the appeal and the relief requested.
- B. The hearing body for the appeal shall consider all issues raised by the appellant and may consider other relevant issues related to the project being appealed. The hearing body for the appeal shall be as follows:
 1. All decisions of the Director are appealable to the Commission and then to the Board.
 2. All decisions of the Zoning Administrator and the Commission are appealable to the Board.
 3. All decisions of the Board are final.
- C. The hearing on an appeal shall be set no more than 30 days from receipt of a completed appeal form and fee. If the Board meeting is canceled for any reason on the date on which the appeal would normally be heard, the appeal shall be heard on the first available regularly-scheduled meeting following the canceled meeting date. The 30-day time limitation may be extended by mutual consent of the appellant(s), the applicant, if different from the appellant, and the appeals body. Once the date and time for the hearing is established the hearing may be continued only by such mutual consent.
- D. In any appeal action brought in compliance with this Section, the appellant(s) may withdraw the appeal, with prejudice, at any time prior to the commencement of the public hearing. For the purposes of this Section, the public hearing shall be deemed commenced upon the taking of any evidence, including reports from staff.
- E. Upon the filing of an appeal, the Commission or the Board shall render its decision on the appeal within 60 days.
- F. No person shall seek judicial review of a County decision on a planning permit or other matter in compliance with this Title until all appeals to the Commission and Board have been first exhausted in compliance with this Section.

2021 MAR 18 PM 1:31
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PLANNING DEPARTMENT

Charles Willett
Tahoe Honey Company
11260 Donner Pass Road, Suite C1 #305
Truckee, CA 91616

March 15, 2021

Via Electronic & Overnight Delivery

bldgdept@edcgov.us
planning@edcgov.us
cannabisinfo@edcgov.us

El Dorado Planning Department
2850 Fairlane Court
Placerville, CA 95667

Re: Appeal of Meyers Commercial Cannabis Retail Application Scoring

El Dorado Planning Department:

I, Charles Willett, authorize attorney Myles G. Taylor (SBN 298687), Parker Law Group Attorneys, APC, to act on my and Tahoe Honey Company's behalf with respect to the Appeal of the Meyers Commercial Cannabis Retail Application.

Sincerely,



Charles Willett

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PLANNING DEPARTMENT
2021 MAR 18 PM 1:31



Cash Register Receipt

County of El Dorado

Receipt Number
R29953

| DESCRIPTION | ACCOUNT | QTY | PAID |
|--|--------------------------------|-----------------------|-----------------|
| ProjectTRAK | | | \$239.00 |
| PROJ21-0001 | Address: 3160 US HWY 50 | APN: 034323010 | \$239.00 |
| APPEALS FEES | | | \$239.00 |
| ALL APPEALS | 3720200 0240 | 0 | \$239.00 |
| TOTAL FEES PAID BY RECEIPT:R29953 | | | \$239.00 |

Date Paid: Thursday, March 18, 2021
Paid By: Parker Law Group
Cashier: ADM2
Pay Method: CHK-PLACERVILLE 61922

PARKER LAW GROUP

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March 15, 2021

Myles Taylor
myles@parlawgroup.com

Via Electronic & Overnight Delivery

bldgdept@edcgov.us
planning@edcgov.us
cannabisinfo@edcgov.us

El Dorado Planning Department
2850 Fairlane Court
Placerville, CA 95667

Re: Appeal of Meyers Commercial Cannabis Retail Application Scoring

El Dorado Planning Department:

This office represents Charles Willett and Tahoe Honey Company with respect to the Meyers Commercial Cannabis Retail Application. This letter accompanies my clients' appeal of the scoring decision issued on March 5, 2021.

Sincerely,



Myles G. Taylor
Parker Law Group Attorneys, APC

MGT:zp
Enclosures

RECEIVED
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2021 MAR 17 PM 4:14

RECEIVED
PLANNING DEPARTMENT
2021 MAR 17 PM 4:14

FROM:
Myles G. Taylor, SBN 298687
Kaitlyn M. Bigoni, SBN 308455
PARKER LAW GROUP ATTORNEYS, APC
555 Capitol Mall, Ste. 1230
Sacramento, CA 95814
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Email: myles@parlagroup.com

Attorneys for Applicant
CHARLES WILLETT and TAHOE HOME COMPANY

TO:
El Dorado County Planning Department
2850 Fairlane Court
Placerville, CA 95667
planning@edcgov.us

APPEAL OF THE DECISION OF

EL DORADO COUNTY PLANNING AND BUILDING DEPARTMENT

MEYERS COMMERCIAL CANNABIS RETAIL APPLICATION

Application No. CCPA20-0011

Appeal of Decision
Applicant No. CCPA20-0011
Page 1 of 24

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I. INTRODUCTION

This appeal is brought by Tahoe Honey Company and Charles Willett (“Willett”) as applicant for the Meyers Commercial Cannabis Retail License Pre-Application and concerns the application process and scoring issued by the County of El Dorado Planning and Building Department (“Planning Department”) on March 5, 2021. Namely, this appeal contends that the application scoring was carried out inconsistent with and in violation of the Planning Department’s own scoring criteria, that certain applications should have been disqualified for failure to fulfill the filing criteria, and that the Planning Department has failed to adhere to applicable ordinance and state law concerning conditional use permit procedures.

II. BACKGROUND AND HISTORY OF MEYERS CANNABIS RETAIL APPLICATION SUBMISSION

A. Initial Licensing for Unincorporated Areas of the County

Previously, El Dorado County amended its Municipal Code (hereafter the “Code”) to allow certain cannabis retail locations in unincorporated parts of the County. The Code change allowed for only seven cannabis retail location licenses permitted for unincorporated portions of El Dorado County. Mr. Willett had sought to apply for a retail storefront as part of the original seven licenses, intended for Meyers. In 2019, Creighton Avila of the Planning Department told Mr. Willett that it was unclear if current planning would permit a retail operation in Meyers and uncertain if a change that Mr. Willett was suggesting would be approved. Mr. Avila, however, instructed Mr. Willett that he would be put on the wait list for a license.¹ (Willett Decl. ¶¶ 2-3.)

Because of Creighton Avila’s comments regarding the wait list, and specifically that Mr. Willett was “first” on the list, Mr. Willett did not apply for one of the original seven licenses allotted for unincorporated El Dorado County and instead worked closely with Brendan Ferry and the Meyers Advisory Council to propose amended rules and zoning to allow a cannabis retail storefront in Meyers. (Willett Decl. ¶ 4.)

B. Meyers Advisory Council Meetings

On July 29, 2019, Mr. Willett attended a meeting of the Meyers Advisory Council² in order to suggest changes or approval for variances in order to allow for a cannabis retail location in Meyers. (Willett Decl. ¶ 5.)

During this time period, Mr. Willett was discussing the matter with members of the Meyers Advisory Council, including Jude Wood,³ Amanda Ross, and Carl Fair. Mr. Willett also met with Rene Breic, head of the Meyers Community Foundation, and spoke with Sue Novasel, member of the County Board of Supervisors. (Willett Decl. ¶ 6.)

Mr. Willett’s suggestion seemed to have gained some support, as at the next Meyers Advisory Council meeting on October 2, 2019, there was extensive discussion of potential changes. While Meyers was apparently unintentionally left out of the El Dorado cannabis regulations, there was discussion of the

¹ See Exhibit 1 for a printout of the El Dorado County Cannabis Retail Application page reflecting that there is a wait list. (Willett Decl. ¶ 3, Exhibit 1.)

² As referenced below, Gregory Daum, a ten percent owner of applicant Embarc Meyers, is a member of the Meyers Advisory Council.

³ Applicant is informed and believes that Jude Wood has a financial interest in “Embarc Tahoe, LLC”, the partner organization to the unregistered “Embarc Meyers, LLC” operating a cannabis retail operation in South Lake Tahoe, California.

benefits of amending Meyers' regulations and plan in order to allow a cannabis retail location. When the discussion was opened up to the public, Mr. Willett spoke up and stated that if he were permitted to open a cannabis retail location, he would commit a portion of sales to the Meyers Community Foundation and other economic benefits to the County and Meyers community.

Starting in 2018 and well into 2019, Mr. Willett began investigating potential properties to host a commercial cannabis retail store. This included investigating the building holding the At Altitude Training Center, a local gym and popular part of the community. Mr. Willett spoke at length with Brendan Ferry about the gym building's potential viability. However, due to the love for the gym by the community, and how replacing it with a cannabis retail business would not be cohesive to the Meyers Area Plan, Mr. Willett looked for alternative locations. After assessing other sites, Mr. Willett focused on the site of Bob Dog's Pizza, which was ultimately submitted as part of his application (discussed *infra*). (Willett Decl. ¶ 7.)

On November 5, 2019, at the Meyers Advisory Council meeting, community members again raised the topic of commercial cannabis was again brought up. Mr. Willett joined in the conversation and discussed the potential for retail locations. On January 14, 2020, Meyers Advisory Council raised the topic again briefly.

On April 22, 2020, the Meyers Advisory Council met and discussed the specific possibility for a Meyers cannabis location, in the context of the changing El Dorado County zone ordinance amendments. They discussed limitations as a result of the El Dorado County Code, as well as concerns regarding whether the new revenue would stay within the community of Meyers. Mr. Willett spoke and commented that if he operated in Meyers, he would like to contribute a portion of funds to a nonprofit that would benefit the community.

C. (Pre-)Application Process

Once El Dorado County approved the zoning changes, it did not honor the wait list where Mr. Willett had been told he was "first" on the list. Instead, the Planning Department released a "pre-application" process with scoring criteria. (Willett Decl. ¶ 8.)

The Meyers Pre-Application for Commercial Cannabis Retail Selection (hereafter the "Meyers Pre-Application") required applications be submitted by June 30, 2020. Mr. Willett went to great pains to ensure that his application met and exceeded all of the requirements and was timely submitted.

In addition to Mr. Willett/Tahoe Honey Company, there were two other applicants: (i) Embarc Meyers, LLC⁴ and (ii) 20200628 420-0001 LLC. Embarc Meyers, LLC is purported to be owned by Lauren Carpenter and Gregory Daum, listing also Christina Wilson an officer (collectively referred to herein as "Embarc"). The applicant 20200628 420-0001 LLC is owned by Charles Boldwyn (collectively referred to herein as "Boldwyn").

The Planning Department represented that the decision would be made by October 1, 2020.

On September 29, 2020, the Planning Department informed Mr. Willett that the County was unable to process the background check information provided by retail cannabis applicants. (Willett Decl. ¶ 9, Exhibit 2.) On October 9, 2020, the County followed with an email, requesting that the applicants self-report and

⁴ As discussed below, Embarc Meyers LLC was not a registered entity with the State of California when it applied, having only been registered on March 5, 2021.

disclose all relevant criminal history. Applicants were given until October 16, 2020 to submit this criminal history disclosure. (Willett Decl. ¶ 10, Exhibit 3.) As this information had already been included in the retail cannabis application, Mr. Willett was understandably confused. However, in an effort to comply, he requested a full background check with the FBI, which confirmed that Mr. Willett had already fully disclosed any criminal background in his initial application. (Willett Decl. ¶ 11.)

D. Delays in Rendering Decision Due to Purported Background Review Issues

On October 9, 2020, Mr. Ferry wrote in an email to all applicants:

Dear Meyers Pre-Applicant,

As you are aware, the County is not yet able to complete the Background Check process through our Sheriff's Office in order to finish scoring pre-applications for the commercial retail cannabis location in Meyers. Therefore, the County is asking pre-applicants to self-report and disclose all relevant criminal history by listing offenses for all "owners" that will be part of the business. Please note that an actual livescan will be conducted at the application stage and failure to accurately disclose relevant criminal history will be considered during the permitting process. If you have any question as to your criminal history, you can obtain a copy of your criminal history information as a Personal Record Review directly from the California Department of Justice at <https://oag.ca.gov/fingerprints/recordreview> and the Federal Bureau of Investigation at <https://www.fbi.gov/services/cjis/identity-history-summarychecks>.

Please do not provide a copy of either of these reports to the County as the County is not legally able to consider your Personal Record Review.

The scoring process requires disclosure of "relevant" infractions, misdemeanors, and felonies of all "owners." For purposes of a commercial cannabis application, a "relevant" infraction, misdemeanor, or felony is one that the Sheriff's Office determines "makes it more likely than not that any amount of funding for the operation will be or was derived from illegal activity or because the criminal history or other information discovered in the background check of an owner or spouse of an owner weighs against the owner's trustworthiness or ability to run a legal business in compliance with all regulations, including but not limited to the risk of involvement or influence by organized crime, prior convictions involving controlled substances or violent crimes, the likelihood that sales and income will not be truthfully reported, or the risk that cannabis will be illegally provided or sold to individuals under the age of 21." Because the Sheriff's Office determines what is a relevant infraction, misdemeanor, or felony, you should report any and all infractions, misdemeanors, or felonies in your record so the Sheriff's Office may determine whether it is relevant. Failure to disclose an infraction, misdemeanor, or felony because you do not believe it is relevant will be considered a failure to accurately disclose your relevant criminal history. If you are unsure whether something in your record constitutes an infraction, misdemeanor, or felony, please disclose as much information as you have, including the charge and resolution of the charge, including any fines or jail time imposed.

Under the County Code, an "owner" is defined as "any person that constitute an 'owner' under the regulations promulgated by the Bureau of Cannabis Control and (1) a person with any ownership interest, however small, in the person applying for a permit, unless the interest is solely a security, lien, or encumbrance; (2) the chief executive officer of a nonprofit or other entity; (3) a member of

the board of directors of a nonprofit entity; (4) a person who will be participating in the direction, control, or management of the person applying for a permit, including but not limited to a general partner of a partnership, a non-member manager or managing member of a limited liability company, and an officer or director of a corporation; or (5) a person who will share in any amount of the profits of the person applying for a permit or has a financial interest, as defined by the regulations promulgated by the Bureau of Cannabis Control, in the person applying for the permit." If your application is scored first and it is later determined during permitting that you did not accurately disclose the relevant criminal history of all "owners" for your business, the scores will be recalculated and your application will be disqualified if you no longer score first with all "owners" included. Similarly, if the "owners" of your business change from the owners identified for preapplication scoring, your application will be rescored at the time of permitting and the scores will be recalculated and your application will be disqualified if you no longer score first.

Please provide the requested information no later than Friday October 16th via email to Deputy Steven Casper at caspers@edso.org. If you are unable to obtain your Personal Record Review by October 16 and need to do so, please let me know before October 16 and the deadline will be extended until you have obtained this record for your own use. As soon as all pre-applicant information is received, the County will complete the scoring process and notify applicants of their standings.

Thank you very much for providing this additional information.

(Willett Decl. ¶ 10, Exhibit 3.) On October 13, 2020, Mr. Willett wrote in an email to Mr. Ferry:

Hi Brendan:

I'm very confused about this request for a few reasons. This appears to be asking for the same information that was requested within El Dorado County Sheriff's Office Commercial Cannabis Operating Permit and Background Application. Section 5 of that document identified that information must be provided for "owners", including managers, supervisors, employees, and financial interest holders. Background Investigation Questionnaire, Questions 1, 2, and 3 already requested criminal background information on this.

I was informed by El Dorado County Senior Planner, Aaron Mount, that the information was already provided to the Sheriff's office in his email to me on September 10, 2020, so it is my understanding the Sheriff's office already has this information as part of my application.

I am unclear and quite concerned because this request for information is made 9 days after the decision was supposed to be made. The County webpage with the application information states "Pre-Applications that are not deemed complete during the review period will be provided one 5 business day window for corrections to be made and may be resubmitted." **From my Public Records Act Request, I am aware that other applicants have not completed the handwritten Background Investigation Questionnaire and failed to submit all the information required before the pre-application deadline of June 30, 2020. This looks like a "do over" for those that did not complete the application material timely and properly based on the posted rules for the Meyers Pre-Application.**

Can you please clarify what has prompted this change in the procedures for the Meyers Pre-Application, as well as what information this request is seeking beyond what was required in the

initial application? If there is additional information beyond what I was told the Sheriff's department already received for my pre-application, I would like to request an extension of time if I am being asked to submit more material because the deadline of October 16, 2020 does not provide enough time to respond to this.

(Willett Decl. ¶ 12, Exhibit 4 [emphasis added].) On October 14, 2020, Mr. Ferry wrote in an email to all applicants:

Dear Meyers Pre-Applicant,

I apologize for any confusion on my request for information for a background check as much of that information was already requested on the Sheriff's Office's Cannabis Business License Permit and Background Application form that was included in your original submission. While those forms provide much of the information, they were intended to supplement the background check performed through Live Scan. As you are aware, the Cannabis Business License Permit and Background Application inquired whether each owner has been convicted of an infraction, misdemeanor, or felony, but did not inquire about the number of each of those offenses. For scoring, the number is relevant. The Cannabis Business License Permit and Background Application form also only requested information for the past seven years for infractions and misdemeanors, but the scoring criteria is not limited to seven years. We also want to give all applicants the opportunity to confirm the information disclosed since the Live Scan is not yet available for the Sheriff's Office to confirm that information and even an erroneous omission at this stage may now result in disqualification. We thus ask that you submit the information as originally requested so that we can complete the scoring based on the number of each offense.

(Willett Decl. ¶ 13, Exhibit 5.) On October 15, 2020, Mr. Willett wrote in an email to Mr. Ferry:

Hi Brendan,

I am still unclear of what is being requested here. I already provided the information per the application instructions, listing the matters that are now being requested because they were already within the scope of what was asked. I do not see what supplemental information is being requested at this time.

Further, the original background check questionnaire instructions state, "If you are dishonest in your answers, fail to fully answer any question, or misstate any material facts, you will be disqualified from consideration." We are confused as to why we are now being told that you "... also want to give all applicants the opportunity to confirm the information disclosed...". This seems to be a direct contradiction to the pre-application process.

To clarify, we want to cooperate, but we are not agreeing that any changes are proper to what was published for the application and scoring when we submitted the application in June.

...

(Willett Decl. ¶ 14, Exhibit 6.) The same day, Mr. Ferry wrote in an email to all applicants:

I received additional questions about why the self-disclosure is requested in addition to that in the pre-application materials. At the time of pre-application, we anticipated the Sheriff's Office would have Live Scan access to complete the background check and score the applications based on the

criteria disclosed. As you know, this is not currently available.

We are asking for self-disclosure so the scoring can be completed and ask that you complete the self-disclosure as I have already described. While much of this information was included in the Sheriff's Office's Cannabis Business License Permit and Background Application form, the form did not seek all infractions and misdemeanors because it only asked for the past seven years. Also the "yes" or "no" format of the form did not expressly request that you list the number of each infraction, misdemeanor, and felony. While you may have included this information in the Cannabis Business License Permit and Background Application form, I have recused myself from reviewing or scoring the application materials, so I cannot review the forms to check. If your Cannabis Business License Permit and Background Application form included all infractions, misdemeanors, and felonies for each owner, including those more than seven years old and the number of each, you can let me know and I will ask the Sheriff's Office to score your application based on that information.

...

(Willett Decl. ¶ 15, Exhibit 7.)

After confirming that the FBI and California DOJ background checks did not have further information to disclose, Mr. Willett had a letter sent, per the request, to Deputy Sheriff Steven Casper re-disclosing the same information from the Background Application. (Willett Decl. ¶ 11.)

E. Planning Department Issues Scoring

On March 5, 2021, the El Dorado Planning and Building Development Planning Division notified the applicants of the selection results. (Willett Decl. ¶ 16, Exhibit 8.) The initial scoring was as follows:

| Pre-app File # | Applicant | Distance to a Residence | Security Plan | Odor Control Plan | Background Check | Plan to Prevent Theft and Access | Total |
|----------------|---------------------|-------------------------|---------------|-------------------|------------------|----------------------------------|-------|
| CCPA20-0011 | Tahoe Honey Company | 3 | 4 | 4 | 1 | 4 | 16 |
| CCPA20-0012 | Charles Boldwyn | 1 | 5 | 3 | 5 | 5 | 19 |
| CCPA20-0013 | Embarc | 2 | 4 | 5 | 5 | 4 | 20 |

Mr. Willett had previously made a Public Records Act Request to the County for the Meyers Pre-Application submissions after the close of the application deadline of June 30, 2020. The County thereafter released copies of the application materials.

This appeal contends that the Planning Department improperly considered and scored the applications based on their own published rules, standards, and procedures.

III. (PRE-)APPLICATION RULES AND STANDARDS

Per the El Dorado County Planning Services page, the "Meyers Commercial Cannabis Retail Selection & Award Procedures – Merit Based Review & Scoring" was to be decided on the basis of five criteria, each scored equally. (See Willett Decl. ¶ 17, Exhibit 9, as saved on June 10, 2020.) El Dorado County required

that each applicant submit a completed Commercial Cannabis Retail Pre-Application form, a Supplemental Submittal Information for Commercial Cannabis Retailer form, and a Security Plan and Background Check form along with the Pre-Application payment of \$1,558 by 5:00 PM, June 30, 2020.

The review criteria included:

- (1) Distance to a Residence;
- (2) Security Plan;
- (3) Odor Control Plan;
- (4) Background Check; and
- (5) Plan to prevent theft and access to cannabis and cannabis products by individuals under the age of 21 unless they have a valid medical cannabis card.

The page further described the scoring range as follows:

- A score of 1 barely meets the minimum standards to be considered complete;
- A score of 2 marginally goes beyond minimum standards;
- A score of 3 exceeds minimum standards but is still an average plan;
- A score of 4 is greater than average but less than the best plan; and
- A score of 5 is the best possible submittal.

Per the scoring information, “applications will be scored in each of the above criteria areas based on their completeness, thoughtfulness, creativity, and ability to be meet and/or exceed the standards outlined in the County’s application forms.”

Each of the five criteria was further broken down to apply the application scoring specifically to each of the criteria:

Distance to a Residence

- A location that is directly adjacent to a Residence will be given a score of 1.
- A location that is between 1 and 100 feet from a Residence will be given a score of 2.
- A location that is between 101 and 200 feet from a Residence will be given a score of 3.
- A location that is between 201 and 300 feet from a Residence will be given a score of 4.
- A location that is greater than 301 feet from a Residence will be given a score of 5.

Security Plan

- A security plan that barely meets the minimum standards to be considered complete for the property’s security will be given a score of 1.
- A security plan that marginally goes beyond minimum standards for the property security will be given a score of 2.
- A security plan that exceeds minimum standards but is still considered an average security plan for the subject property and for surrounding properties will be given a score of 3.
- A security plan that provides a greater than average but less than the optimal amount of security both at the property and for surrounding properties will be given a score of 4.
- A security plan that provides the best possible security both at the property and for surrounding properties will be given a score of 5.

Odor Control Plan

- An odor control plan that barely meets the minimum standards to be considered complete to control odor at the site and does not address odor control between properties will be

given a score of 1.

An odor control plan that marginally goes beyond minimum standards to control odor both at the property and between surrounding properties will be given a score of 2.

An odor control plan that exceeds minimum standards but is still considered an average odor control plan to control and limit odor at the subject property and between surrounding properties will be given a score of 3.

An odor control plan that provides a greater than average but less than the optimal amount of odor control both at the property and between surrounding properties will be given a score of 4.

An odor control plan that provides the best possible odor control both at the property and between surrounding properties will be given a score of 5.

Background Check

An applicant with a total of three or more relevant infractions or misdemeanors or one felony conviction on the background checks for all owners will be given a score of 1.

An applicant with two relevant infractions or misdemeanors on the background checks for all owners will be given a score of 2.

An applicant with one relevant misdemeanor on the background checks for all owners will be given a score of 3.

An applicant with one infraction on the background checks for all owners will be given a score of 4.

An applicant with an absolutely clean background check for all owners will be given a score of 5.

For purposes of a commercial cannabis application, a relevant infraction, misdemeanor, or felony is one that the Sheriff's Office determines "makes it more likely than not that any amount of funding for the operation will be or was derived from illegal activity or because the criminal history or other information discovered in the background check of an owner or spouse of an owner weighs against the owner's trustworthiness or ability to run a legal business in compliance with all regulations, including but not limited to the risk of involvement or influence by organized crime, prior convictions involving controlled substances or violent crimes, the likelihood that sales and income will not be truthfully reported, or the risk that cannabis will be illegally provided or sold to individuals under the age of 21.

Plan to prevent theft and access to cannabis and cannabis products by individuals under the age of 21 unless they have a valid medical cannabis card

A plan that barely meets the minimum standards to be considered complete for preventing theft and access to cannabis products by individuals under the age of 21 will be given a score of 1.

A plan that marginally goes beyond minimum standards for preventing theft and access to cannabis products by individuals under the age of 21 will be given a score of 2.

A plan that exceeds minimum standards but is still considered an average for preventing theft and access to cannabis products by individuals under the age of 21 will be given a score of 3.

A plan that provides a greater than average but less than the optimal amount of detail for preventing theft and access to cannabis products by individuals under the age of 21 will be given a score of 4.

Retail Pre-Application form, a Supplemental Submittal Information for Commercial Cannabis Retailer form and a Security Plan and Background Check form along with the Pre-Application payment of \$1,558 by 5:00 PM, June 30, 2020.” (Exhibit 9 [emphasis added].)

The Supplemental Submittal Information form itself states, “The following supplemental information must be provided with all applications for Commercial Cannabis Retailer facilities. **If all the information is not provided, the application will be deemed incomplete and will not be accepted.**”

As Embarc failed to submit the Supplemental Submittal Information form as part of its application submitted before June 30, 2020. As a result, Embarc must be disqualified as an applicant.

b. Incomplete Background Application

One component of the Meyers Pre-Application was a criminal background check. Via the County’s website, El Dorado County provided a 31-page PDF of the Cannabis Business License Permit and Background Application (hereafter “Background Application”).

Page 1 of the Background Application provides:

APPLICANT BACKGROUND AND DOCUMENTATION REQUIREMENTS

...

To obtain a Commercial Cannabis Permit **all information specific to all applicants, owners and persons having financial interest**, as well as detailed information relating to commercial cannabis operations as provided in this application and in El Dorado County Ordinance Number 5067, 5107, 5109, 5110, 5111, and 5112 **must be provided**. All questions on this application must be answered completely and truthfully. **Any incomplete information may result in a delayed or a denied application** and/Commercial Cannabis Operating Permit. ...

(Emphasis added.) Page 2 of the Background Application provides:

Criminal History Checks

...

All applicants, owners and persons with financial interest of a cannabis business must submit to a criminal history check prior to the initial issuance of a business license or employee ID card. **This includes all applicants, owners and persons having financial interest, of a cannabis operation.** All renewal applications must be received within ten El Dorado County Sheriff’s Office business days prior to expiration.

Please list all names in the table provided on the following page (attach additional pages if necessary).

(Emphasis added.) Page 19 of the Background Application provides:

Background Investigation Questionnaire

...

Please read and answer all of the following questions. **All of the answers must be in your handwriting. You may not type the answers to the questions. YOU ARE ADMONISHED TO**

ANSWER ALL OF THE QUESTIONS TRUTHFULLY AND COMPLETELY. If you are dishonest in your answers, fail to fully answer any question, or misstate any material facts, you will be disqualified from further consideration.

(Emphasis added.) Page 26—the last page—of the Background Application provides:

Certification

I hereby certify that all of the answers provided and statements made in this questionnaire are true and complete. **I understand any misstatements of material fact, omissions, incomplete answers, or inaccurate responses will subject me to disqualification or dismissal.**

The Embarc application is clearly typed, in direct violation of the Background Application instructions. The County required that the document be completely handwritten.

By failing to handwrite the application, Embarc failed to fully complete the form per its instructions, and as a result should be disqualified or scored a zero.

c. Failure to Sign Background Application Materials

In addition to not filling out the Background Application by hand, Embarc's Background Application was not signed with a wet-ink signature. Instead, it appears to be a digital image of a signature signed likely with a touch screen device such as a smartphone. This is clear from the signatures for Property Site and Security Compliance Authorization:

| | |
|---|------------------|
|  _____ | 6/30/20 _____ |
| (Owner/Authorized Agent Signature) | (Date) |

Statement of Perjury:

| | | |
|--|---|-----------------|
| APPLICANT SIGNATURE  | TITLE (Applicant/Property Owner) Chief Executive Officer | DATE 6/30/20 |
|--|---|-----------------|

Declarations and acknowledgements:

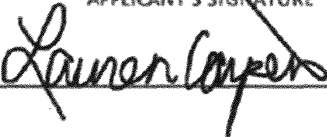
| | |
|--|-----------------|
| APPLICANT'S SIGNATURE  | DATE 6/30/20 |
|--|-----------------|

///

///

///

Background Investigation Release:

| | |
|--|-----------------|
| APPLICANT'S SIGNATURE  | Date 6/30/20 |
|--|-----------------|

and Application Certification:


Signature of Applicant

6/30/20
Date

Each of these signatures is an identical image. There must be some indication that electronic signatures are acceptable for said signatures to be valid. The Background Application here, in fact, requires handwritten applications. This would therefore make wet-ink signatures necessary for the Background Applications.

Because Embarc did not complete the forms with signatures per instructions, the applicant should be disqualified or scored a zero.

d. Failure to Include Other Owners and Persons with Financial Interest in Background Document Submissions

Per the requirements stated by the Background Application itself, all applicants must complete a Background Application, a Background Investigation Release, and a Background Investigation Questionnaire. This includes submissions for each “owner.”

The Embarc application includes a Background Application, Background Investigation Questionnaire, and Background Investigation Release for *only Lauren Carpenter*. However, it identifies Gregory Daum and Christina Wilson as additional owners. It further identified Ms. Carpenter’s spouse on the application. It does not identify or disclose any spouse of Gregory Duam or Christina Wilson. Yet, Mr. Daum, Ms. Wilson, and Ms. Carpenter’s spouse (nor the undisclosed spouse of the other owners) did not submit any background information for review by the posted deadline of June 30, 2020.

Per the last page of the Background Application, omissions “will subject [the applicant] to disqualification or dismissal.”

Because Embarc failed to include the background information for each owner, as required, the applicant must be disqualified or scored a zero.

e. Proposed Location Violates El Dorado Municipal Code Section 130.41.300(4)(C)

El Dorado Municipal Code Section 130.41.300(4)(C) states:

Location. A commercial cannabis activity authorized under this section shall not be located within 1,500 feet from any school, school bus stop, place of worship, park, playground child care center, youth-oriented facility, pre-school, public library, licensed drug or alcohol recovery facility, or licensed sober living facility...

The school busses for Lake Tahoe Environmental Science Magnet School, South Tahoe High School, and South Tahoe Middle School use a stop located at “Tahoe Paradise Golf Course/Holiday Market”.

Embarc Meyer’s proposed location is located **across the street** from the “Tahoe Paradise Golf Course/Holiday Market” bus stop with full visibility between the two. This location is well within the 1,500-foot required distance required by El Dorado Municipal Code 130.41.300(4)(C).⁵

As a result of its closeness to the golf course, market, and school bus stop, this makes Embarc’s plan for prevention of theft and access by persons under age 21 even more crucial. Yet, they have failed to include such a plan.

f. Applicant Embarc Meyers Did Not Lawfully Exist at the Time of Applying

Embarc applies on behalf of Embarc Meyers, LLC. However, no such entity existed as of June 30, 2020.

The application includes *FORM A Identifying Information (Required for ALL Applicants)*. For Embarc, it identified the applicant named as Embarc Meyers LLC. It identified type of ownership as “Limited Liability Company (LLC)”. It then lists its owners as Lauren Carpenter at 90% and Gregory Daum at 10%.

Below box (f), the form states, “If the applicant is other than a natural person ..., the applicant must provide documentation regarding the nature of the entity ...”

Embarc failed to include any such documentation to show the nature of the entity. That is because it did not exist. There were no records with the California Secretary of State to verify the existence of this company. In fact, Embarc Meyers LLC was only formed as of March 5, 2021, confirming that it falsely represented itself as an existing company at the time of applying.

Embarc must be disqualified as an applicant because it did not exist at the time of applying and failed to submit required documentation. The representations provided in the application regarding its status are false.

2. 20200628 420-0001 LLC (Charles Boldwyn)

a. Incomplete Background Application

As with Embarc’ Background Application, Boldwyn typed his application answers, rather than writing them by hand, as required by the Background Application instructions.

Further, public records show that Boldwyn has some minor criminal violations in his history. While these crimes themselves would not constitute “relevant” matters per the published criteria for scoring, the General Questions of the Background Investigation Questionnaire specifically ask, “Have you ever been detained, questioned, investigated, or arrested for suspicion of having committed a criminal act, whether or not you were convicted?” and “Have you ever been contacted by the police for any reason not previously discussed?” Boldwyn answered “No” to each of these questions. However, having been subject to at least one criminal charge in the past, the “No” answers were false and/or incomplete.

Boldwyn also omitted information from his “previous commercial cannabis employment history.” He listed

⁵ The proximity to a school bus stop also makes the need for a plan for prevention of access by individuals under age 21 even more important, which as discussed *infra* is absent from Embarc’s application.

only Harvest Health and Recreation and Haven for his commercial cannabis employment history. However, a very brief internet search shows that he has also worked at a cannabis company called ShowGrow.

Boldwyn's application was incomplete and should be disqualified.

b. Failure to Sign Background Application

Like Embarc, Boldwyn also signed the Background Application digitally, without the use of a "wet" signature.


Property Site and Security Compliance Authorization:




(Owner/Authorized Agent Signature) 6/27/2020

(Date)

Statement of Perjury:

| | | |
|--|---|-------------------|
|  APPLICANT SIGNATURE | MANAGING MEMBER TITLE (Applicant/Property Owner) | 6/27/2020 DATE |
|--|---|-------------------|

Declarations and acknowledgements:

| | |
|---|--------------------|
|  APPLICANT'S SIGNATURE | 06/27/2020 DATE |
|---|--------------------|

Background Investigation Release:

| | |
|--|--------------------|
|  APPLICANT'S SIGNATURE | 06/27/2020 DATE |
|--|--------------------|

and Application Certification:



Signature of Applicant 06/27/2020

Date

Because Boldwyn did not sign the background application documents, the application was incomplete and should have been disqualified.

c. El Dorado Municipal Code Section 130.41.300(4)(C)

Similar to the issue raised with Embarc, the school bus stop located at "Tahoe Paradise Golf Course/Holiday Market" also necessarily disqualifies Boldwyn's proposed cannabis retail location. Not only is there a

chapel (i.e. a place of worship—identified in the ordinance) on the property itself, but the property also shares a parking lot with the relevant school bus stop. This is the type of scenario that El Dorado Municipal Code Section 130.41.300(4)(C) was presumably intended to prevent.

B. Tahoe Honey Company's (Charles Willett) Application Should Have Been Scored Substantially Higher

In contrast to Embarc and Boldwyn, Tahoe Honey Company/Willett submitted an application that not only met, but exceeded the standards provided. The application was complete and submitted all required documents and followed the posted instructions. As provided below, Tahoe Honey Company/Willett were, however, improperly scored too low on several matters based on the published criteria.

1. Background Check Scoring

As provided above, the Planning Department posted that a “relevant infraction, misdemeanor, or felony” for the background application is one that “makes it more likely than not that any amount of funding for the operation will be or was derived from illegal activity” or tends to “weighs against the owner’s trustworthiness or ability to run a legal business in compliance with all regulations.”

Mr. Willett explained in his Background Application that more than 20 years ago he was pulled over on the way to a concert at age 19 carrying concentrated cannabis. This resulted in a charge of New York Penal Code 220.06, Criminal Possession of a Controlled Substance. Seven years later, he obtained a “Certificate of Relief from Disabilities” related to this charge. (See Willett Decl. ¶ 18, Exhibit 10.)

A two-decade old charge from a teenager carrying cannabis product to a Phish concert is hardly a “relevant” charge based on the criteria provided by the Planning Department. In no way does it indicate that funding is resulting from criminal activity, nor does it weigh against Mr. Willett’s trustworthiness or ability to run a legal business. Mr. Willett has no other infractions, misdemeanors, or felonies in his past. In fact, the conduct from his one criminal matter would not constitute a felony in California. As Mr. Willett has demonstrated in the 20 years since then, the above-described event constituted a youthful error.

As provided in the application, Mr. Willett graduated with a bachelor’s degree in Business Administration with a concentration in Small Business Management and Entrepreneurship from Virginia Commonwealth University. He has created multiple successful businesses before moving from the east coast to California and has since then sought to participate in the lawful cannabis industry.

Further, Mr. Willett and Tahoe Honey Company are actively running a properly licensed cannabis delivery company in the town of Truckee, California. He was approved by both the city and state through their licensing processes. This weighs strongly in favor of showing both that funds from criminal activity would not be used for Meyers retail business and that he has clear trustworthiness and ability to run a legal business.

All of this information is not only relevant but necessary to be considered for any complete assessment of any background check score. It also weighs heavily against any negative finding based on the relevancy criteria provided by the Planning Department.

The Planning Department improperly assigned Mr. Willett a 1 out of 5 score for the Background Check criteria. Mr. Willett’s score should be revised to a 5 of 5 score for the Background Check criteria.

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2. Odor Control Plan Scoring

The Planning Department assigned Mr. Willett a “4 out of 5” score on his Odor Control Plan. Mr. Willett’s plan is clearly the most meticulous, thorough, and exacting, and was deserving of a 5 out of 5 score. Mr. Willett retained an expert in odor control in order to ensure that his plan covered all needed elements of a competent plan.

The odor control plan breaks down odor control by locations where odor might develop, as well as by what different odors might occur. Odor mitigation techniques are provided, specific to the type of activity (i.e. handling, storage, and processing). The proposed odor filtration system is the top of the line with regard to particle and odor removal, which will filter the entire space in each room every minute. Unlike the other applicants, Mr. Willett provided an in-depth schedule and log for maintenance of the odor control equipment. Finally, he also provided guidelines for actions to be taken upon receipt of an odor complaint, a consideration neglected by the other applicants.

3. Plan to Prevent Theft and Access Scoring

The required plan to prevent theft and access to cannabis and cannabis products by individuals under the age of 21 unless they have a valid medical cannabis card (hereafter “diversion prevention plan”), is another instance where Mr. Willett’s proposal shines in comparison with the others.

Mr. Willett’s diversion prevention plan breaks down the intended outcomes of the plan into (1) the prevention of minors without a medical cannabis card from accessing cannabis products, and (2) the prevention of product diversion. Each of these intended outcomes are broken down further by mechanisms to further the intended outcome.

The diversion prevention plan provides several safeguards intended to ensure that only those who should have access to cannabis have such access, and that products are not diverted or stolen. The plan is thorough, provides for multiple levels of security, and seems to consider all of the most likely avenues through which inappropriate access or diversion might occur.

4. Scoring Based on Thoughtfulness and Creativity

Mr. Willett put extensive time and care into his application. He truly wants to benefit the Meyers community, and that is reflected in his application. Additionally, his scores on criteria were not properly assessed based on thoughtfulness and creativity of the application.

For example, Mr. Willett is the only applicant to apply for a microbusiness license. This inclusion was used specifically to further the community interests and to benefit the local community and create additional jobs. Simply opening a retail location creates a minimum number of jobs and moves revenue out of the community by requiring more products be purchased from businesses elsewhere. Mr. Willett’s business plan instead involves doing each of these in-house, on a microbusiness scale, which creates more jobs and keeps the revenue almost entirely in the Meyers community. Notably, Mr. Willett spoke with Mr. Ferry at the Planning Department about the inclusion of manufacturing and distribution as part of the authorizing ordinance, and Mr. Ferry had previously commented this was viewed as a positive idea. (Willett Decl. ¶ 19.)

In addition to applying for a microbusiness, Mr. Willett went to great lengths to ensure that his application would benefit the community of Meyers. He also selected a location that would not result in losing a treasured community asset—the At Altitude gym. Mr. Willett discussed issues of location previously and

carefully selected the proposed position in the Tahoe Honey Company application for these reasons.

C. Embarc and Boldwyn's Applications Should Have Been Scored Substantially Lower

Turning back to the other applications, El Dorado County's webpage provided that "applications will be scored in each of the above criteria areas based on their completeness." The only complete application is Mr. Willett's. Neither Embarc nor Boldwyn's applications are complete and should have been disqualified. If allowed to be considered, Embarc and Boldwyn should have received zeros for the Background Check section of the selection criteria, for failing to properly complete the Background Application. Embarc should also have received a zero for its failure to submit a required plan to prevent theft and access to cannabis and cannabis products by individuals under the age of 21 unless they have a valid medical cannabis card and a zero for failing to provide the supplemental submittal form. Below are additional matters for which the other applicants were improperly scored too high.

1. Embarc Meyers

a. Odor Control Plan Scoring

Of the 80 pages provided by Embarc for its odor control plan, only 10 pages were content actually created as a plan. The remaining 70 pages are comprised of the "Cannabis Environmental Best Management Practices Guide" by Denver Health & Environment. The vast majority of this guide is not even relevant to odor control.

Unfortunately, the content actually created by Embarc is also distinctly lacking in quality. Embarc largely refers to the "Best Practices" for odor control, without any real applicability to the intended use. The score assigned was too high and without a legitimate basis for doing so.

b. Plan to Prevent Theft and Access Scoring

Here, Embarc entirely neglected to create a required diversion prevention plan. Instead, it only briefly mentions diversion prevention in its "Business Plan."

In its Business Plan, Embarc refers to the "importance" of diversion and states that it will be utilizing Blaze software, which will "implement exhaustive measures and policies to prevent product diversion, theft and loss." However, Embarc provides no explanation of these "exhaustive measures" or how Blaze will prevent access or diversion.

Blaze, in fact, is simply a Point-of-Sale software system. Its own terms of service only indicate that an account user must be "18 years of age or older" (not 21 years), that "[y]ou are responsible for keeping your account and password secure", and that "[y]ou are responsible for all Content and activity that occurs under your Services account." (See <https://www.blaze.me/terms-and-conditions/>.) Additionally, Blaze's Service Level Agreement contains no terms whatsoever regarding security, theft prevention, or related relevant topics. (See <https://www.blaze.me/service-level-agreement/>.) There is nothing inherent in the Blaze software that would work to prevent access from persons under the age of 21. As a result, Embarc was, in effect, submitted no plan whatsoever.

Based on Embarc's failure to submit a diversion prevention plan, it should have received a "1" or "0" score for this section.

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c. Scoring Based on Thoughtfulness and Creativity

At the August 26, 2020 meeting of the Meyers Advisory Council, many Meyers community members spoke out regarding the placement of the potential cannabis retail locations. Largely, the consensus was that the At Altitude Training Center⁶ is an essential part of Meyers and its community. There were numerous comments by the public referencing that this gym and business were important parts of the community.

Following extensive community appeals for the gym to remain, individuals representing Embarc (including the applicants) stated that they intended to work with the gym in order to partner and co-locate the two businesses. However, it appears that Embarc did not intend to share the space between the cannabis retail location and the gym, nor is it clear that such a shared space would be permissible under applicable laws and regulations.

The day after the El Dorado Planning Department announced the scoring results for the Meyers cannabis retail location, At Altitude posted online, making a plea to the Meyers community at large. At Altitude asked Meyers community members to attend the final public hearing before the Embarc application is approved, and to speak out against the location.⁷ (Willett Decl. ¶ 20, Exhibit 11.)

These are factors relating to the thoughtfulness of Embarc’s application, including demonstrating it would not be a good addition to the community to operate at the proposed location. Although the Planning Department represented that “thoughtfulness” and “creativity” would be considered in rendering the scores, it did not consider these aspects in scoring the Embarc’s application.

2. Boldwyn

a. Odor Control Plan Scoring

In scoring the odor control plans, the County clearly saw the distinct shortcomings in Boldwyn’s plan, as the scorers awarded him a ‘3’. However, this score is still too high. Boldwyn’s plan is four pages long, stating simply that he will utilize HVAC odor filtration, will store inventory in such a way as to prevent odor, and will conduct an odor audit every 30 days. This plan is insufficient and insubstantial. A score of a ‘3’ is too high.

b. Plan to Prevent Theft and Access Scoring

Boldwyn’s “Diversion Prevention Plan” is under a page long. It lists out different ways that diversion might occur and strategies that might be used to prevent diversion. It does not provide any explanation as to what techniques Boldwyn intends to utilize.

The Diversion Prevention Plan further states: “Included with this application is an Operating Plan and Security Plan each of which have large portions dedicated both directly and indirectly to policies, procedures, training programs, and conditions of employment designed to prevent the unauthorized diversion of cannabis regardless of the reason.” However, neither the Operating Plan or Security Plan have actual sections dedicated to diversion prevention. Both simply refer vaguely to preventing diversion with no real application or analysis.

⁶ The proposed location for Embarc Meyers.

⁷ Embarc, in a further attempt to gain community support for their application, stated that “[t]he cannabis business could bring 30 new jobs to Meyers.” However, in the Embarc Meyers application, there are a proposed “six (6) full-time employees and eight (8) part-time employees.”

The plan is deficient yet, received a '4', which is substantially too high.

D. El Dorado County Did Not Comply with Applicable Law regarding Conditional use Permits

1. Pre-Application Process

El Dorado Code Section 130.41.100(4)(F) states that “An application for a Commercial Cannabis Use Permit shall be submitted in accordance with Article 5, Section 130.51.020.”⁸ The following section goes on to outline the application requirements, which perfectly match those requirements for the Meyers’s Pre-Application, as outlined in the Pre-Application materials.

Pursuant to the Code Section 130.51.090, a “Pre-Application” is a “conceptual review prior to the submittal of development applications”. It does not contemplate that a “pre-application” can be used as a competitive procedure to limit the number of applicants who may apply. Nowhere in the El Dorado County Code does it refer to the Cannabis Retail Pre-Application. Rather, the Code refers to the Cannabis Retail Application. A review of the Code provides no indication that the “Pre-Application” process is intended to be used as an applicant selection process. Rather, it appears to be intended to be a process by which both potential applicants and the County streamline the actual application process.

The Meyers “Pre-Application” is in fact an “Application” process pursuant to the Code, and thus must be treated as such. Any other interpretation under the law would render the “pre-application” an attempt to deprive due process afforded under the law.

2. Notice to Interested Parties

Code Sec. 130.41.100(4)(B) requires that:

Prior to the hearing before the Planning Commission, notice of the application shall be provided pursuant to Section 130.04.015. If a commercial cannabis activity is proposed within a one-half mile radius of an incorporated city or county, notice of and an opportunity to comment on the application for the Commercial Cannabis Use Permit shall be provided to the applicable city or county before the permit is considered by the Planning Commission

Unfortunately, Section 130.04.015 was repealed as of September 1, 2020. Therefore, it is unclear what the current notice requirements for El Dorado are applicable. However, California Government Code §§ 65090-65095 notice requirements require 10 days prior notice before a public hearing. Notice must be provided to the property owner of the subject property, and owners of property within 300 feet of the subject property, as well as other interested parties.

Mr. Willett received no notice certain prior Meyers Advisory Council meetings, including the meeting of August 26, 2020, at which there was extensive discussion of the applications and the proposed retail cannabis locations. Multiple representatives of Embarc were present and utilized the meeting as a chance to gauge public approval. Mr. Willett was entitled to notice that would have provided him with the same opportunity. (Willett Decl. ¶ 21, Exhibit 12.)

3. Pre-Application Review and Scoring

Section 130.50.021 states that Conditional Use Permit applications are to be reviewed by the Director and Zoning Administrator, with the decision to be made by one of the two, on the basis of complexity of the

⁸ Article 5, Section 130.51.020 is the standard conditional use application.

project.

Section 130.51.040 states, "Application information shall be distributed to appropriate County departments, local, state, and federal agencies, interested organizations and individuals, and any other party whom the Department finds could provide relevant comments on the potential effects of the project."

While Section 130.51.040 allows for application review and input from "appropriate County departments", the decision-making power is held by either the Director or Zoning Administrator. This is not how the Meyers Pre-Application review took place. Instead of receiving insight from various relevant departments, the decision-making power was delegated to said departments, by allowing them to score various sections of the applications. As scores were used to directly select the winning applicant, they were clearly not used solely for "relevant comments". The El Dorado Director and Zoning Administrator improperly delegated their decision-making ability to these departments.

E. El Dorado County Violated California Law in the Application and Selection Process

Conditional Use Permits allow a city or county to consider special uses within zoning districts. These uses are permissible under the California Constitution so long as they do not conflict with California state powers. (California Constitution, Article XI, Section 7; *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176.)

As per El Dorado Code Section 130.41.100(4)(A), a Commercial Cannabis Use Permit "shall be treated as a Conditional Use Permit under Section 130.52.021." Thus, the Meyers Pre-Application process must comply with California law regarding Conditional Use Permits.

1. Public Hearings are Required for Conditional Use Permit Applications

A public hearing must be held on applications for a conditional use permit. (California Code Section 65905). At a minimum, advance public notice, an opportunity to be heard, and a fair hearing are constitutional due process rights as explained in *Horn v. County of Ventura* (1979) 24 Cal.3d 605.

A "fair hearing" is "a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in the inferior tribunal, ..." (Code Civ. Proc. § 1094.5(a). A fair administrative hearing affords a reasonable opportunity to be heard. (*Pinheiro v. Civil Service Com. for County of Fresno* (2016) 245 Cal.App.4th 1458, 1463.)

While public hearings were held by the Meyers Advisory Council regarding the cannabis retail permits in general, there was no formal hearing process by which applicants presented their project plan and were afforded an opportunity to be heard regarding said project plans.

2. Authority to Rule on Conditional Use Permits Cannot be Delegated without Standards of Guidance

The authority to consider conditional use permits may be delegated to commissions or other administrative bodies, however such delegations must include standards of guidance. (*Stoddard v. Edelman* (1970) 4 Cal.App.3d 544).

Here, there was no official delegation of authority or standards of guidance. The Director or Zoning Administrator merely farmed out different portions of the scoring to various departments. This falls well short of the requirements in *Stoddard* for standards of guidance.

3. Decisions on Conditional Use Permits Must be Supported by Findings of Fact

Written "findings of fact" are required in order to support the decision of the hearing body to approve or deny a conditional use permit (*Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506). If the decision is challenged, a court will examine the evidence supporting the findings to determine whether the hearing body abused its discretion when acting on a conditional use permit. Such an abuse of discretion is to be found when: (1) the agency did not proceed in a manner prescribed by law; (2) the agency's decision is not supported by findings; and (3) the agency's findings are not supported by evidence in the administrative record.

The closest thing to a "finding of fact" provided in support of the decision is simply the scoring rankings. There was no evidence supporting the findings that would allow a reviewing body to adequately consider the basis on which the County's various scoring parties made their decision. The Planning Department delegated its fact finding authority by way of the scoring criteria. As discussed at length above, the County did not proceed in a manner proscribed by its own code, the decision is not supported by the findings, and the findings are not supported by the evidence of the applications. Pursuant to *Topanga*, the County of El Dorado blatantly abused its discretion.

4. Concerning Activities Regarding Re-Submittal of Information

As raised above, the County did not release scores by October 1, 2020 as planned. It instead faced delays reportedly due to Background Application scoring. Because Embarc and Boldwyn's applications were incomplete, this should not have been an issue. However, as raised by Mr. Willett at the time in his concerns, the confusing request to supplemental information with coaching emails about multiple "owners" appeared, and still does appear, to have been an invitation for a "do over" for the other applicants. Curiously, despite the unavoidable insufficiencies of the Background Application submitted by both Embarc and Boldwyn as of the deadline of June 30, 2020, both applicants scored a "5 out of 5" while Mr. Willet/Tahoe Honey Company scored a "1 out of 5." This issue is raised for purposes of this appeal to preserve the issues involving the *prima facie* case of improperly, impartial handling and reserves the right to investigate and raise the matter further in the event legal action is required.

V. CONCLUSION

The decision awarding the cannabis retail location is not supported by the relevant facts. There has been a clear abuse of discretion.

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Applicant Tahoe Honey Company/Willett requests that the Planning Department disqualify applicants Embarc and Boldwyn (or in the alternative, revise the scores lower as required), revise the score for appellant applicant based on the issued addressed herein, and confirm that Tahoe Honey Company/Willett is the highest scoring applicant for the Meyers Pre-Application. In the alternate, Tahoe Honey Company/Willett assert that the application process violated county ordinances and state laws regarding the issuance of conditional use permits through improper delegation of authority and failure to provide due process, and other violations of law.

DATED: March 15, 2021

PARKER LAW GROUP ATTORNEYS, APC



MYLES G. TAYLOR

KAITLYN M. BIGONI

Attorneys for Applicant, CHARLES WILLETT
and TAHOE HONEY COMPANY

Declaration of Charles E. Willett

I, Charles E. Willett, declare:

1. I am the majority owner of Tahoe Honey Company, applicant for a retail cannabis permit through the Meyers Pre-Application for Commercial Cannabis Retail Selection (hereafter the “Meyers Pre-Application.”) process. I make this declaration from my personal knowledge. If called to testify as a witness, I could and would do so competently.

2. Attached as **Exhibit 1** is a printout of the El Dorado County Cannabis Retail Application page reflecting that there is a wait list.

3. Attached as **Exhibit 2** is an email dated September 29, 2020, I received from the County of El Dorado Planning and Building Department (“Planning Department”).

4. Attached as **Exhibit 3** is an email dated October 9, 2020, I received from Brendan Ferry at the Planning Department, as well as my email reply from October 13, 2020.

5. Attached as **Exhibit 4** is an email dated October 14, 2020, I received from the Planning Department.

6. Attached as **Exhibit 5** is my reply to the Planning Department, dated October 15, 2020.

7. Attached as **Exhibit 6** is an email dated October 15, 2020, I received from the Planning Department.

8. Attached as **Exhibit 7** is an email dated March 5, 2021, I received from the Planning Department.

9. Attached as **Exhibit 8** is a printout of the Meyers Pre-Application main webpage.

10. Attached as **Exhibit 9** is a copy of my State of New York Certificate of Relief from Disabilities.

11. Attached as **Exhibit 10** is a screenshot of the At Altitude Training Center Facebook page, including a post that is dated March 6, 2021.

12. Attached as **Exhibit 11** is an email dated August 31, 2020, I sent to Brendan Ferry regarding not receiving notice of the August 26, 2020 Meyers Advisory Council meeting, as well as his response.

13. When I originally sought to apply for one of the El Dorado County cannabis retail location licenses, Creighton Avila of the Planning Department told me that the license might not apply to Meyers. He stated that I would be put on the wait list for a license. I had subsequent discussions with Mr. Avila and Mr. Ferry where I was specifically told I was first on the wait list. I attended and participated in many of the meetings of the Meyers Advisory Council in 2019 and 2020. This included a meeting July 29, 2019, October 2, 2019, November 5, 2019, January 14, 2020, and April 22, 2020.

14. After the Planning Department requested this information, subject to my understanding it was not seeking new information or giving anyone a “do over” on submitting proper application information, I requested a full background check from the FBI, which confirmed I had already fully disclosed the information in my application. I had a letter sent to Deputy Sheriff Steven Casper re-disclosing the same information from my Background Application.

Declaration of Charles Willett
Applicant No. CCPA20-0011
Page 1 of 2

15. In or around Summer 2019, I met with several of the members of the Meyers Advisory Council including Jude Wood, Amanda Ross, and Carl Fair. I also met with Rene Breic, head of the Meyers Community Foundation, and spoke to Sue Novasel, member of the County Board of Supervisors.

16. I considered the building where the At Altitude Training Center is located as a potential retail location, had my real estate agent meet with Greg Daum, the owner of the gym property, and engaged in conversations with Brendan Ferry regarding the gym property. However, ultimately, I decided on the site of Bob Dog's Pizza instead, which was better for the community.

17. I worked closely with the Meyers Advisory Council to propose amended rules and zoning to allow a cannabis retail storefront in Meyers. This is reflected on the public meeting minutes posted.

18. Once the zoning was approved, El Dorado County did not honor the wait list. Instead, the Planning Department released a "pre-application" process with scoring criteria, which I understand was prepared with the Meyers Advisory Council, on which applicant Greg Daum sits as a member.

19. I previously addressed with Mr. Ferry at the Planning Department about creating a microbusiness in Meyers. He said he talked to his supervisors and that it was a positive idea.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 14, 2021 in Truckee, California.



CHARLES E. WILLETT

EXHIBIT “1”



MENU **Planning Services Menu**

Planning Services

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[Commercial Information](#)

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[Personal Cultivation](#)

[Meyers Retail Applications](#)

[Cannabis Enforcement Violations & Appeal Hearings](#)

Cannabis Retail Applications

The County will only be taking seven (7) cannabis retail storefront applications. At this time, the County has accepted all seven (7) applications. The County is maintaining a waiting list for anyone interested in a cannabis retail storefront. If an applicant drops out or his/her application is incomplete/unacceptable, the County will contact the first person/organization on the waiting list.

To request to be added to the waiting list, please email: cannabisinfo@edcgov.us.

For commercial cannabis applications please visit the following website:

<https://www.edcgov.us/Government/planning/Cannabis/Pages/Cannabis---Commercial.aspx>

For potential retail storefront locations in the unincorporated Tahoe area in El Dorado County, please contact Brendan Ferry at 530-573-7905.



El Dorado
County



Home



I Want To



Government



Doing
Business



Living



Visiting



Err
Se

MENU

Planning Services Menu

© County of El Dorado | Emerald Bay background photo by Rod Hanna



EXHIBIT “2”

----- Forwarded message -----

From: **Brendan Ferry** <brendan.ferry@edcgov.us>

Date: Tue, Sep 29, 2020 at 4:03 PM

Subject: Meyers Commercial Cannabis Process

To: Tahoe Honey Co <tahoehoneyco@gmail.com>

CC: Aaron Mount <aaron.mount@edcgov.us>, Breann Moebius <breann.moebius@edcgov.us>, Tiffany Schmid <tiffany.schmid@edcgov.us>

Hi Charles,

Unfortunately, we have hit some internal delays related to our current ability to do background checks for commercial cannabis licensing and therefore we won't be able to rank the Meyers applicants by October 1st.

I apologize for this delay. I will be in touch as soon as I know more about our new timeline.

Take Care,

Brendan Ferry
Deputy Director
Tahoe Planning & Stormwater Division

El Dorado County
Planning & Building Department
924 B Emerald Bay Rd.
South Lake Tahoe, CA 96150
(530) 573-7905
brendan.ferry@edcgov.us

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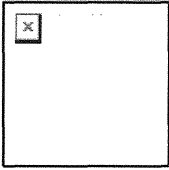


EXHIBIT “3”

From: Tahoe Honey Co <tahoehoneyco@gmail.com>
Sent: Tuesday, October 13, 2020 12:58 PM
To: Brendan Ferry
Subject: Re: Alternate Background Check Process - Meyers Commercial Retail Cannabis Location

Hi Brendan:

I'm very confused about this request for a few reasons. This appears to be asking for the same information that was requested within El Dorado County Sheriff's Office Commercial Cannabis Operating Permit and Background Application. Section 5 of that document identified that information must be provided for "owners", including managers, supervisors, employees, and financial interest holders. Background Investigation Questionnaire, Questions 1, 2, and 3 already requested criminal background information on this.

I was informed by El Dorado County Senior Planner, Aaron Mount, that the information was already provided to the Sheriff's office in his email to me on September 10, 2020, so it is my understanding the Sheriff's office already has this information as part of my application.

I am unclear and quite concerned because this request for information is made 9 days after the decision was supposed to be made. The County webpage with the application information states "Pre-Applications that are not deemed complete during the review period will be provided one 5 business day window for corrections to be made and may be resubmitted." From my Public Records Act Request, I am aware that other applicants have not completed the handwritten Background Investigation Questionnaire and failed to submit all the information required before the pre-application deadline of June 30, 2020. This looks like a "do over" for those that did not complete the application material timely and properly based on the posted rules for the Meyers Pre-Application.

Can you please clarify what has prompted this change in the procedures for the Meyers Pre-Application, as well as what information this request is seeking beyond what was required in the initial application? If there is additional information beyond what I was told the Sheriff's department already received for my pre-application, I would like to request an extension of time if I am being asked to submit more material because the deadline of October 16, 2020 does not provide enough time to respond to this.

Please let me know with respect to these questions.

On Fri, Oct 9, 2020 at 11:13 AM Brendan Ferry <brendan.ferry@edcgov.us> wrote:

Dear Meyers Pre-Applicant,

As you are aware, the County is not yet able to complete the Background Check process through our Sheriff's Office in order to finish scoring pre-applications for the commercial retail cannabis location in Meyers. Therefore, the County is asking pre-applicants to self-report and disclose all relevant criminal history by listing offenses for all "owners" that will be part of the business. Please note that an actual livescan will be conducted at the application stage and failure to accurately disclose relevant criminal history will be considered during the permitting process. If you have any question as to your criminal history, you can obtain a copy of your criminal history information as a Personal Record Review directly from the California Department of Justice at <https://oag.ca.gov/fingerprints/record-review> and the Federal Bureau of Investigation at <https://www.fbi.gov/services/cjis/identity-history-summary-checks>. **Please do not provide a copy of either of these reports to the County as the County is not legally able to consider your Personal Record Review.**

The scoring process requires disclosure of "relevant" infractions, misdemeanors, and felonies of all "owners." For purposes of a commercial cannabis application, a "relevant" infraction, misdemeanor, or felony is one that the Sheriff's Office determines "makes it more likely than not that any amount of funding for the operation will be or was derived from illegal activity or because the criminal history or other information discovered in the background check of an owner or spouse of an owner weighs against the owner's trustworthiness or ability to run a legal business in compliance with all regulations, including but not limited to the risk of involvement or influence by organized crime, prior convictions involving controlled substances or violent crimes, the likelihood that sales and income will not be truthfully reported, or the risk that cannabis will be illegally provided or sold to individuals under the age of 21." Because the Sheriff's Office determines what is a relevant infraction, misdemeanor, or felony, you should report any and all infractions, misdemeanors, or felonies in your record so the Sheriff's Office may determine whether it is relevant. Failure to disclose an infraction, misdemeanor, or felony because you do not believe it is relevant will be considered a failure to accurately disclose your relevant criminal history. If you are unsure whether something in your record constitutes an infraction, misdemeanor, or felony, please disclose as much information as you have, including the charge and resolution of the charge, including any fines or jail time imposed.

Under the County Code, an "owner" is defined as "any person that constitute an 'owner' under the regulations promulgated by the Bureau of Cannabis Control and (1) a person with any ownership interest, however small, in the person applying for a permit, unless the interest is solely a security, lien, or encumbrance; (2) the chief executive officer of a nonprofit or other entity; (3) a member of the board of directors of a nonprofit entity; (4) a person who will be participating in the direction, control, or management of the person applying for a permit, including but not limited to a general partner of a partnership, a non-member manager or managing member of a limited liability company, and an officer or director of a corporation; or (5) a person who will share in any amount of the profits of the person applying for a permit or has a financial interest, as defined by the regulations promulgated by the Bureau of Cannabis Control, in the person applying for the permit." If your application is scored first and it is later determined during permitting that you did not accurately disclose the relevant criminal history of all "owners" for your business, the scores will be recalculated and your application will be disqualified if you no longer score first with all "owners" included. Similarly, if the "owners" of your business change from the owners identified for pre-application scoring, your application will be rescored at the time of permitting and the scores will be recalculated and your application will be disqualified if you no longer score first.

Please provide the requested information no later than Friday October 16th via email to Deputy Steven Casper at caspers@edso.org. If you are unable to obtain your Personal Record Review by October 16 and need to do so, please let me know before October 16 and the deadline will be extended until you have obtained this record for your own use. As soon as all pre-applicant information is received, the County will complete the scoring process and notify applicants of their standings.

Thank you very much for providing this additional information.

Brendan Ferry
Deputy Director
Tahoe Planning & Stormwater Division

EXHIBIT “4”

----- Forwarded message -----

From: **Brendan Ferry** <brendan.ferry@edcgov.us>

Date: Wed, Oct 14, 2020 at 1:50 PM

Subject: Re: Alternate Background Check Process - Meyers Commercial Retail Cannabis Location

To: Brendan Ferry <brendan.ferry@edcgov.us>

CC: Tahoe Honey Co <tahoehoneyco@gmail.com>, Embarc Meyers <embarcmeyers@gmail.com>, Charles Boldwyn <cboldwyn@gmail.com>, Tiffany Schmid <tiffany.schmid@edcgov.us>, Breann Moebius <breann.moebius@edcgov.us>, Aaron Mount <aaron.mount@edcgov.us>, Steven Casper <caspers@edso.org>

Dear Meyers Pre-Applicant,

I apologize for any confusion on my request for information for a background check as much of that information was already requested on the Sheriff's Office's Cannabis Business License Permit and Background Application form that was included in your original submission. While those forms provide much of the information, they were intended to supplement the background check performed through Live Scan. As you are aware, the Cannabis Business License Permit and Background Application inquired whether each owner has been convicted of an infraction, misdemeanor, or felony, but did not inquire about the number of each of those offenses. For scoring, the number is relevant. The Cannabis Business License Permit and Background Application form also only requested information for the past seven years for infractions and misdemeanors, but the scoring criteria is not limited to seven years. We also want to give all applicants the opportunity to confirm the information disclosed since the Live Scan is not yet available for the Sheriff's Office to confirm that information and even an erroneous omission at this stage may now result in disqualification. We thus ask that you submit the information as originally requested so that we can complete the scoring based on the number of each offense.

Thank you again for your time.

Brendan Ferry
Deputy Director
Tahoe Planning & Stormwater Division

El Dorado County
Planning & Building Department
[924 B Emerald Bay Rd.](https://www.edcgov.us)
[South Lake Tahoe, CA 96150](https://www.edcgov.us)
(530) 573-7905
brendan.ferry@edcgov.us

On Fri, Oct 9, 2020 at 11:13 AM Brendan Ferry <brendan.ferry@edcgov.us> wrote:

Dear Meyers Pre-Applicant,

As you are aware, the County is not yet able to complete the Background Check process through our Sheriff's Office in order to finish scoring pre-applications for the commercial retail cannabis location in Meyers. Therefore, the County is asking pre-applicants to self-report and disclose all relevant criminal history by listing offenses for all "owners" that will be part of the business. Please note that an actual livescan will be conducted at the application stage and failure to accurately disclose relevant criminal history will be considered during the permitting process. If you have any question as to your criminal history, you can obtain a copy of your criminal history information as a Personal Record Review directly from the California Department of Justice at <https://oag.ca.gov/fingerprints/record-review> and the Federal Bureau of Investigation at <https://www.fbi.gov/services/cjis/identity-history-summary-checks>. **Please do not provide a copy of either of these reports to the County as the County is not legally able to consider your Personal Record Review.**

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Please provide the requested information no later than Friday October 16th via email to Deputy Steven Casper at caspers@edso.org. If you are unable to obtain your Personal Record Review by October 16 and need to do so, please let me know before October 16 and the deadline will be extended until you have obtained this record for your own use. As soon as all pre-applicant information is received, the County will complete the scoring process and notify applicants of their standings.

Thank you very much for providing this additional information.

Brendan Ferry
Deputy Director
Tahoe Planning & Stormwater Division

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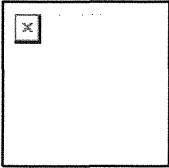


EXHIBIT “5”

From: Tahoe Honey Co <tahoehoneyco@gmail.com>
Sent: Thursday, October 15, 2020 10:49 AM
To: Brendan Ferry
Subject: Re: Alternate Background Check Process - Meyers Commercial Retail Cannabis Location

Hi Brendan,

I am still unclear of what is being requested here. I already provided the information per the application instructions, listing the matters that are now being requested because they were already within the scope of what was asked. I do not see what supplemental information is being requested at this time.

Further, the original background check questionnaire instructions state, "If you are dishonest in your answers, fail to fully answer any question, or misstate any material facts, you will be disqualified from consideration." We are confused as to why we are now being told that you "...also want to give all applicants the opportunity to confirm the information disclosed...". This seems to be a direct contradiction to the pre-application process.

To clarify, we want to cooperate, but we are not agreeing that any changes are proper to what was published for the application and scoring when we submitted the application in June.

Because of this, can you please confirm with me at least a two week extension to provide materials to October 30, 2020? If there is a request for supplemental information, I want to make sure that my company and its owners can provide that, but I am still unclear what new information is being requested and do not want to be faulted on this.

Thank you kindly,

Charles

On Wed, Oct 14, 2020 at 1:50 PM Brendan Ferry <brendan.ferry@edcgov.us> wrote:
Dear Meyers Pre-Applicant,

I apologize for any confusion on my request for information for a background check as much of that information was already requested on the Sheriff's Office's Cannabis Business License Permit and Background Application form that was included in your original submission. While those forms provide much of the information, they were intended to supplement the background check performed through Live Scan. As you are aware, the Cannabis Business License Permit and Background Application inquired whether each owner has been convicted of an infraction, misdemeanor, or felony, but did not inquire about the number of each of those offenses. For scoring, the number is relevant. The Cannabis Business License Permit and Background Application form also only requested information for the past seven years for infractions and misdemeanors, but the scoring criteria is not limited to seven years. We also want to give all applicants the opportunity to confirm the information disclosed since the Live Scan is not yet available for the Sheriff's Office to confirm that information

and even an erroneous omission at this stage may now result in disqualification. We thus ask that you submit the information as originally requested so that we can complete the scoring based on the number of each offense.

Thank you again for your time.

Brendan Ferry
Deputy Director
Tahoe Planning & Stormwater Division

El Dorado County
Planning & Building Department
924 B Emerald Bay Rd.
South Lake Tahoe, CA 96150
(530) 573-7905
brendan.ferry@edcgov.us

On Fri, Oct 9, 2020 at 11:13 AM Brendan Ferry <brendan.ferry@edcgov.us> wrote:

Dear Meyers Pre-Applicant,

As you are aware, the County is not yet able to complete the Background Check process through our Sheriff's Office in order to finish scoring pre-applications for the commercial retail cannabis location in Meyers. Therefore, the County is asking pre-applicants to self-report and disclose all relevant criminal history by listing offenses for all "owners" that will be part of the business. Please note that an actual livescan will be conducted at the application stage and failure to accurately disclose relevant criminal history will be considered during the permitting process. If you have any question as to your criminal history, you can obtain a copy of your criminal history information as a Personal Record Review directly from the California Department of Justice at <https://oag.ca.gov/fingerprints/record-review> and the Federal Bureau of Investigation at <https://www.fbi.gov/services/cjis/identity-history-summary-checks>. **Please do not provide a copy of either of these reports to the County as the County is not legally able to consider your Personal Record Review.**

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Thank you very much for providing this additional information.

Brendan Ferry
Deputy Director
Tahoe Planning & Stormwater Division

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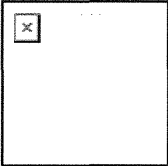


EXHIBIT “6”

----- Forwarded message -----

From: **Brendan Ferry** <brendan.ferry@edcgov.us>

Date: Thu, Oct 15, 2020 at 2:44 PM

Subject: Re: Alternate Background Check Process - Meyers Commercial Retail Cannabis Location

To: **Brendan Ferry** <brendan.ferry@edcgov.us>

Hello Meyers Pre-Applicant,

I received additional questions about why the self-disclosure is requested in addition to that in the pre-application materials. At the time of pre-application, we anticipated the Sheriff's Office would have Live Scan access to complete the background check and score the applications based on the criteria disclosed. As you know, this is not currently available.

We are asking for self-disclosure so the scoring can be completed and ask that you complete the self-disclosure as I have already described. While much of this information was included in the Sheriff's Office's Cannabis Business License Permit and Background Application form, the form did not seek all infractions and misdemeanors because it only asked for the past seven years. Also the "yes" or "no" format of the form did not expressly request that you list the number of each infraction, misdemeanor, and felony. While you may have included this information in the Cannabis Business License Permit and Background Application form, I have recused myself from reviewing or scoring the application materials, so I cannot review the forms to check. If your Cannabis Business License Permit and Background Application form included all infractions, misdemeanors, and felonies for each owner, including those more than seven years old and the number of each, you can let me know and I will ask the Sheriff's Office to score your application based on that information.

Thank you for your patience while we strive to move the scoring process forward while ensuring a fair procedure that adheres to the scoring criteria as originally disclosed.

Brendan Ferry
Deputy Director
Tahoe Planning & Stormwater Division

El Dorado County
Planning & Building Department
[924 B Emerald Bay Rd.](mailto:brendan.ferry@edcgov.us)
[South Lake Tahoe, CA 96150](mailto:brendan.ferry@edcgov.us)
(530) 573-7905
brendan.ferry@edcgov.us

On Wed, Oct 14, 2020 at 1:50 PM Brendan Ferry <brendan.ferry@edcgov.us> wrote:

Dear Meyers Pre-Applicant,

I apologize for any confusion on my request for information for a background check as much of that information was already requested on the Sheriff's Office's Cannabis Business License Permit and Background Application form that was included in your original submission. While those forms provide much of the information, they were intended to supplement the background check performed through Live Scan. As you are aware, the Cannabis Business License Permit and Background Application inquired whether each owner has been convicted of an infraction, misdemeanor, or felony, but did not inquire about the number of each of those offenses. For scoring, the number is relevant. The Cannabis Business License Permit and Background Application form also only requested information for the past seven years for infractions and misdemeanors, but the scoring criteria is not limited to seven years. We also want to give all applicants the opportunity to confirm the information disclosed since the Live Scan is not yet available for the Sheriff's Office to confirm that information and even an erroneous omission at this stage may now result in disqualification. We thus ask that you submit the information as originally requested so that we can complete the scoring based on the number of each offense.

Thank you again for your time.

Brendan Ferry
Deputy Director
Tahoe Planning & Stormwater Division

El Dorado County
Planning & Building Department
924 B Emerald Bay Rd.
South Lake Tahoe, CA 96150
(530) 573-7905
brendan.ferry@edcgov.us

On Fri, Oct 9, 2020 at 11:13 AM Brendan Ferry <brendan.ferry@edcgov.us> wrote:

Dear Meyers Pre-Applicant,

As you are aware, the County is not yet able to complete the Background Check process through our Sheriff's Office in order to finish scoring pre-applications for the commercial retail cannabis location in Meyers. Therefore, the County is asking pre-applicants to self-report and disclose all relevant criminal history by listing offenses for all "owners" that will be part of the business. Please note that an actual livescan will be conducted at the application stage and failure to accurately disclose relevant criminal history will be considered during the permitting process. If you have any question as to your criminal history, you can obtain a copy of your criminal history information as a Personal Record Review directly from the California Department of Justice at <https://oag.ca.gov/fingerprints/record-review> and the Federal Bureau of Investigation at <https://www.fbi.gov/services/cjis/identity-history-summary-checks>. **Please do not provide a copy of either of these reports to the County as the County is not legally able to consider your Personal Record Review.**

The scoring process requires disclosure of "relevant" infractions, misdemeanors, and felonies of all "owners." For purposes of a commercial cannabis application, a "relevant" infraction, misdemeanor, or felony is one that the Sheriff's Office determines "makes it more likely than not that any amount of funding for the operation will be or was derived from illegal activity or because the criminal history or other information discovered in the background check of an owner or spouse of an owner weighs against the owner's trustworthiness or ability to run a legal business in compliance with all regulations, including but not limited to the risk of involvement or influence by organized crime, prior convictions involving controlled substances or violent crimes, the likelihood that sales and income will not be truthfully reported, or the risk that cannabis will be illegally provided or sold to individuals under the age of 21." Because the Sheriff's Office determines what is a relevant infraction, misdemeanor, or felony, you should report any and all infractions, misdemeanors, or felonies in your record so the Sheriff's Office may determine whether it is relevant. Failure to disclose an infraction, misdemeanor, or felony because you do not believe it is relevant will be considered a failure to accurately disclose your relevant criminal

history. If you are unsure whether something in your record constitutes an infraction, misdemeanor, or felony, please disclose as much information as you have, including the charge and resolution of the charge, including any fines or jail time imposed.

Under the County Code, an "owner" is defined as "any person that constitute an 'owner' under the regulations promulgated by the Bureau of Cannabis Control and (1) a person with any ownership interest, however small, in the person applying for a permit, unless the interest is solely a security, lien, or encumbrance; (2) the chief executive officer of a nonprofit or other entity; (3) a member of the board of directors of a nonprofit entity; (4) a person who will be participating in the direction, control, or management of the person applying for a permit, including but not limited to a general partner of a partnership, a non-member manager or managing member of a limited liability company, and an officer or director of a corporation; or (5) a person who will share in any amount of the profits of the person applying for a permit or has a financial interest, as defined by the regulations promulgated by the Bureau of Cannabis Control, in the person applying for the permit." If your application is scored first and it is later determined during permitting that you did not accurately disclose the relevant criminal history of all "owners" for your business, the scores will be recalculated and your application will be disqualified if you no longer score first with all "owners" included. Similarly, if the "owners" of your business change from the owners identified for pre-application scoring, your application will be rescored at the time of permitting and the scores will be recalculated and your application will be disqualified if you no longer score first.

Please provide the requested information no later than Friday October 16th via email to Deputy Steven Casper at caspers@edso.org. If you are unable to obtain your Personal Record Review by October 16 and need to do so, please let me know before October 16 and the deadline will be extended until you have obtained this record for your own use. As soon as all pre-applicant information is received, the County will complete the scoring process and notify applicants of their standings.

Thank you very much for providing this additional information.

Brendan Ferry
Deputy Director
Tahoe Planning & Stormwater Division

El Dorado County
Planning & Building Department
924 B Emerald Bay Rd.
South Lake Tahoe, CA 96150
(530) 573-7905
brendan.ferry@edcgov.us

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--
Charles E. Willett
Tahoe Honey Company
530-386-6168
@TahoeHoneyCompanyCA
www.tahoehoneycompany.com

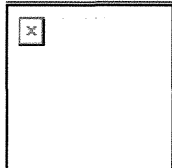


EXHIBIT “7”

From: Aaron Mount <aaron.mount@edcgov.us>
Date: Fri, Mar 5, 2021 at 11:00 AM
Subject: CCPA20-0011 Meyers Commercial Cannabis Retail Selection merit based scoring
To: <tahoehoneyco@gmail.com>
CC: Christopher Perry <christopher.perry@edcgov.us>, Brendan Ferry <brendan.ferry@edcgov.us>

Dear applicant,

The El Dorado County Planning and Building Department has released the Meyers Commercial Cannabis Retail Selection merit based scoring. After receiving input from the County's Sheriff's Department, Air Quality Management District and the Planning Division, the Planning and Building Department announced the finalist from a shortlist of three applications. Scores were based on the following equally-rated criteria: Distance to a residence, security plan, odor control plan, background check, and plan to prevent theft and access to cannabis and cannabis products by individuals under the age of 21 unless they have a valid medical cannabis card. The selected applicant must submit a full Commercial Cannabis Retail Application and the associated application fee within 5 business days of being notified of their selection.

Please review the attachment and contact me if you have any questions or concerns.

Aaron Mount
Senior Planner

County of El Dorado
Planning and Building Department
2850 Fairlane Court
Placerville, CA 95667
(530) 621-5345 / FAX (530) 642-0508
aaron.mount@edcgov.us

EXHIBIT “8”



Planning Services

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Meyers Commercial Cannabis Retail Selection & Award Procedures – Merit Based Review & Scoring

NEW - The El Dorado County Planning and Building Department has released the Meyers Commercial Cannabis Retail Selection merit based scoring. After receiving input from the County's Sheriff's Department, Air Quality Management District and the Planning Division, the Planning and Building Department announced the finalist from a shortlist of three applications. Scores were based on the following equally-rated criteria: Distance to a residence, security plan, odor control plan, background check, and plan to prevent theft and access to cannabis and cannabis products by individuals under the age of 21 unless they have a valid medical cannabis card. The selected applicant must submit a full Commercial Cannabis Retail Application and the associated application fee within 5 business days of being notified of their selection.

- [Meyers Commercial Cannabis Retail Selection Merit Based Scoring](#)

The following are procedures for submitting application materials and for scoring and selecting a candidate to go through the conditional use permit (CUP) process for the one (1) available commercial cannabis retail license in Meyers, CA. There is a cap of one (1) commercial cannabis retail storefront in Meyers based on the El Dorado County Board of Supervisors' May 12, 2020 amendments to County



Applicants must submit a completed [Commercial Cannabis Retail Pre-Application form](#), a

[Supplemental Submittal Information for Commercial Cannabis Retailer form](#) and a [Security Plan and Background Check form](#) along with the Pre-Application payment of \$1,558 by 5:00 PM, June 30, 2020. Applicants must email Brendan Ferry at brendan.ferry@edcgov.us to schedule an appointment to drop off the application materials at 924 B Emerald Bay Road, South Lake Tahoe, CA 96150 prior to that date. The Pre-Application fee is non-refundable.

Pre-Applications that are not deemed complete during the review period will be provided one 5 business day window for corrections to be made and may be resubmitted.

Pre-Applications will be reviewed by County staff with expertise in the corresponding fields and numerically scored by a multi-departmental, blind panel based on the following equally-rated criteria:

- Distance to a Residence
- Security Plan
- Odor Control Plan
- Background Check
- Plan to prevent theft and access to cannabis and cannabis products by individuals under the age of 21 unless they have a valid medical cannabis card

On a spectrum from 1 to 5, with 1 being the lowest score and 5 being the highest score, applications will be scored in each of the above criteria areas based on their completeness, thoughtfulness, creativity, and ability to be meet and/or exceed the standards outlined in the County's application forms. The scores from the five criteria above will then be added together and the applicant that receives the maximum score out of a possible 25 points will be selected to submit a full application for the commercial cannabis retail location in Meyers. A ranked list of applicants based upon total scores will be established. In the event of a tie, the applicant able to proceed will be selected by a lottery drawing. There is no appeal to the lottery drawing.

The scoring criteria are generally described as follows:

1. A score of 1 barely meets the minimum standards to be considered complete
2. A score of 2 marginally goes beyond minimum standards
3. A score of 3 exceeds minimum standards but is still an average plan
4. A score of 4 is greater than average but less than the best plan
5. A score of 5 is the best possible submittal

The following explains the specific scoring criteria for each criterion:

Distance to a Residence

1. A location that is directly adjacent to a Residence will be given a score of 1.
2. A location that is between 1 and 100 feet from a Residence will be given a score of 2.
3. A location that is between 101 and 200 feet from a Residence will be given a score of 3.
4. A location that is between 201 and 300 feet from a Residence will be given a score of 4.
5. A location that is greater than 301 feet from a Residence will be given a score of 5.

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1. A security plan that barely meets the minimum standards to be considered complete for the property's security will be given a score of 1.
2. A security plan that marginally goes beyond minimum standards for the property security will be given a score of 2.
3. A security plan that exceeds minimum standards but is still considered an average security plan for the subject property and for surrounding properties will be given a score of 3.
4. A security plan that provides a greater than average but less than the optimal amount of security both at the property and for surrounding properties will be given a score of 4.
5. A security plan that provides the best possible security both at the property and for surrounding properties will be given a score of 5.

Odor Control Plan

1. An odor control plan that barely meets the minimum standards to be considered complete to control odor at the site and does not address odor control between properties will be given a score of 1.
2. An odor control plan that marginally goes beyond minimum standards to control odor both at the property and between surrounding properties will be given a score of 2.
3. An odor control plan that exceeds minimum standards but is still considered an average odor control plan to control and limit odor at the subject property and between surrounding properties will be given a score of 3.
4. An odor control plan that provides a greater than average but less than the optimal amount of odor control both at the property and between surrounding properties will be given a score of 4.
5. An odor control plan that provides the best possible odor control both at the property and between surrounding properties will be given a score of 5.

Background Check

1. An applicant with a total of three or more relevant infractions or misdemeanors or one felony conviction on the background checks for all owners will be given a score of 1.
2. An applicant with two relevant infractions or misdemeanors on the background checks for all owners will be given a score of 2.
3. An applicant with one relevant misdemeanor on the background checks for all owners will be given a score of 3.
4. An applicant with one infraction on the background checks for all owners will be given a score of 4.
5. An applicant with an absolutely clean background check for all owners will be given a score of 5.

For purposes of a commercial cannabis application, a relevant infraction, misdemeanor, or felony is one that the Sheriff's Office determines "makes it more likely than not that any amount of funding for the operation will be or was derived from illegal activity or because the criminal history or other information discovered in the background check of an owner or spouse of an owner weighs against the owner's trustworthiness or ability to run a legal business in compliance with all regulations, including but not limited to the risk of involvement or influence by organized crime, prior convictions



application process there will be a more in-depth background check process.

Plan to prevent theft and access to cannabis and cannabis products by individuals under the age of 21 unless they have a valid medical cannabis card

1. A plan that barely meets the minimum standards to be considered complete for preventing theft and access to cannabis products by individuals under the age of 21 will be given a score of 1.
2. A plan that marginally goes beyond minimum standards for preventing theft and access to cannabis products by individuals under the age of 21 will be given a score of 2.
3. A plan that exceeds minimum standards but is still considered an average for preventing theft and access to cannabis products by individuals under the age of 21 will be given a score of 3.
4. A plan that provides a greater than average but less than the optimal amount of detail for preventing theft and access to cannabis products by individuals under the age of 21 will be given a score of 4.
5. A plan that provides the best possible detail for preventing theft and access to cannabis products by individuals under the age of 21 will be given a score of 5.

The County will post the ranked scores list and will notify applicants of their standing no later than October 1st, 2020.

The selected applicant must submit a full Commercial Cannabis Retail Application and the associated application fee within 5 business days of being notified of their selection.

If the selected applicant fails to submit a complete Application and applicable payment within 5 business days of being notified, that applicant will be disqualified and the applicant that scored second will be given the opportunity to submit a full application and payment within 5 business days of notification.

After the full application has been deemed complete by the County, the applicant will follow the outlined Conditional Use Permit process .

In the event that no qualified applicants are selected during the first 30-day submittal period, a second 30-day application submittal window will be opened by the County that follows the same process.

Appeals – any applicant that submitted a timely and complete pre-application may file a written appeal to the El Dorado County Planning Commission to challenge the scoring decision made by the Planning & Building Department within 10 business days of the notification of scoring results. The burden of establishing by satisfactory factual proof the applicability and elements of a challenge to the application process or decision shall be on the applicant. The applicant must submit full information in support of their appeal. Failure to raise each and every issue that is contested in the written appeal and provide appropriate support evidence will be grounds to deny the appeal and will also preclude the applicant from raising such issues in court. Failure to file a timely appeal shall constitute a failure to exhaust administrative remedies that shall preclude such person from challenging the application process or decision in court.



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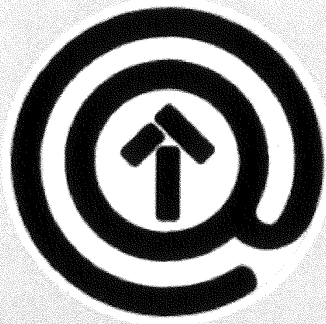
Employee

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EXHIBIT “9”



At Altitude Training Center

@altitudetrainingcenter

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At Altitude Training Center

March 6 at 9:32 PM · 🌐

After the news of the County's Decision yesterday there has been a lot of confusion, and uncertainty for what it means for the GYM. EMBARC has won the initial application scoring. That means they get a Conditional Use Permit. Now they must submit another application/business plan for the the location to the county planning commission. If they meet no opposition and get approval, Then they could potentially move forward on the property, and The Gym would be displaced, or have to move. Before the planning commission makes a final decision there will be at least one public meeting with the planning commission. The public hearing will be a opportunity for the community to voice their opinion. Bottom line: Until otherwise told, I'll be running business as usual @altitude. See you at the GYM!!

<http://southtahoenow.com/.../county-releases-results-meyers-c...>

"The three- Embarc, Charles Boldwyn and Tahoe Honey Company - are vying for the single cannabis retail business being allowed in the Meyers town center. With 20 points, Embarc, who has a cannabis business in South Lake Tahoe, lead the group, followed by Boldwyn with 19 points and Tahoe Honey with 16. Embarc has proposed going into the current gym location. Boldwyn was purchasing the old wedding chapel for his business, and Tahoe Honey Company was planning on going into the pizza business. All three are on U.S. 50 in Meyers."

SOUTHTAHOENOW.COM

County releases results for Meyers Commercial Cannabis businesses

EL DORADO COUNTY, Calif. - After months of waiting, the El Dorado County Planning and Building Department has released the...



EXHIBIT “10”



STATE OF NEW YORK
ALBANY COUNTY COURT CLERK'S OFFICE NOV 21 2007

ALBANY COUNTY JUDICIAL CENTER
 8 LODGE STREET - ROOM 113
 ALBANY, NEW YORK 12207
 (518) 265-5777
 FAX (518) 448-3888

RECEIVED
 CHARLES J. GENESE

CHARLES E. FLEMING
 CLERK

FRANZISCA A. MARCHESE
 ASSOCIATE COURT CLERK

FAMELA B. CLICKNER
 DEPUTY CLERK

DAVID D. DUNNWAY
 ASSOCIATE COURT CLERK

November 16, 2007

Mr. Charles J. Genese, Esq.
 Agency & Counsel at Law
 PO Box 688
 Wilton, NY 14561

Re: People vs. Charles E. Wilcott
 Certificate of Relief from Disabilities
 Index # DA 079-00

Dear Mr. Genese:

Enclosed is an original Certificate of Relief from Disabilities signed by Hon. Stephen W. Herrick, Albany County Court Judge. Copies are being forwarded to NYS Division of Criminal Justice Services, Albany County Probation Department, Albany County District Attorney, and one will be filed under index number DA 079-00 at the Albany County Clerk's Office.

The original certificate should be kept by you. I have attached copies embossed with the Albany County seal to be used for job applications, etc. If I can be of any other assistance with respect to this matter please call me at (518) 265-5777.

Yours Sincerely,

Viviane Cariboney
 Senior Court Officer Assistant

Scc:
 Counselor: NYA DCJS
 Albany Probation
 Albany County District Attorney

| SA 519-00 STATE OF NEW YORK CERTIFICATE OF RELIEF FROM DISABILITIES | | FOR JUDGE OR BOARD OF PAROLE District, File, or Case Number (if any): 00-000 | |
|---|--|--|--|
| <p>This certificate is issued to the holder to grant relief from all or certain existing disabilities, disabilities or bars to employment advantages imposed by law by reason of his conviction of the crime or of the offense specified herein.</p> <p>This certificate shall NOT be deemed nor construed to be a pardon.</p> <p>SEE REVERSE SIDE FOR EXPLANATION OF THE LAW GOVERNING THIS CERTIFICATE.</p> <p>The Original Certificate is to be presented to the person to whom awarded. One copy is to be retained by the issuing agency, and one copy is to be filed with the U.S. Dir. Of Criminal Justice Services, Antelope Park, Silverdale Park, Albany, N.Y. 12242.</p> | | | |
| 1. Applicant | HOLDER OF CERTIFICATE 2. Last Name: WILKEY CHARLES E | | 3. NYID Number (Print) 4. NYID Number (Machine) 5. NYID Number (Handwritten) 973685P |
| 4. Date of offense for which convicted | 5. Date of arrest | 6. Date of sentence | |
| PC 220.60 (2) TENCHY CRIM. POSSE. CONTROLLED SUBSTANCE 3 rd OFFENSE | 9/10/2000 | 11/15/2000 | |
| 7. Court of Jurisdiction (State, Fed., Term, Venue) | 8. Certificate issued by: | | |
| ALBANY COUNTY COURT JOEL L. ROSEN | ALBANY COUNTY COURT <input checked="" type="checkbox"/> COURT INCARCERATED BY NO. 7 <input checked="" type="checkbox"/> STATE BOARD OF PAROLE | | |
| 9. Date the Certificate issued | 10. If this Certificate replaces Certificate of Relief from Disability previously issued, give date of previous Certificate (Date): | | |
| 15 NOVEMBER 2007 | | | |
| 11. CHECK ONE OR MORE: This Certificate shall: | | | |
| <input checked="" type="checkbox"/> Remove the holder's disabilities and all disabilities and bars to employment, including the right to be eligible for public office, by virtue of the fact that this Certificate is issued at the time of sentence. The State of Sentence in this case is in compliance with the State Certificate Issues. | | | |
| <input type="checkbox"/> Remove the holder of all disabilities and bars to employment, including the right to be eligible for public office. | | | |
| <input type="checkbox"/> Remove the holder of the disabilities, disabilities or bars to employment. | | | |
| 12. <input checked="" type="checkbox"/> This Certificate shall be considered temporary until: | | | |
| <input type="checkbox"/> This Certificate shall be considered temporary until: _____ After this date, a new certificate must be issued by the issuing court or parole board, the District Court and the parole board. A certificate of disability and/or other bars to employment shall be issued to the holder of this certificate if the holder is not eligible for a new certificate. | | | |
| District, File, or Case Number (if any): | | Issued by (Name and Title): HON. STEPHEN W. HERRON COUNTY COURT JUDGE | |
| District, File, or Case Number (if any): | | | |
| 13. Sex | 14. Color | 17. Height | 18. Date of Birth (Month, Day, Year) |
| <input type="checkbox"/> Male <input type="checkbox"/> Female | | 5' 0" 0" in. | 9/15/1980 |

Form DP-20-51 (Rev. 07/97)

EXHIBIT “11”

----- Forwarded message -----

From: **Brendan Ferry** <brendan.ferry@edcgov.us>

Date: Tue, Dec 8, 2020 at 4:18 PM

Subject: Re: Aug. 26th MAC Meeting

To: Tahoe Honey Co <tahoehoneyco@gmail.com>

Hi Charles,

The next MAC meeting will be next Tuesday Dec 15th. 4-6 PM. I still haven't sent the agenda, but will by tomorrow. You'll get the zoom link. Minutes should be posted this afternoon or tomorrow for the August meeting. Sorry for the delay!

Brendan Ferry
Deputy Director
Tahoe Planning & Stormwater Division

El Dorado County
Planning & Building Department
[924 B Emerald Bay Rd.](#)
[South Lake Tahoe, CA 96150](#)
(530) 573-7905
brendan.ferry@edcgov.us

On Tue, Dec 8, 2020 at 2:32 PM Tahoe Honey Co <tahoehoneyco@gmail.com> wrote:

Hey there Brendan,

I am following up on this original email from back at the end of August about the MAC meetings. I have continued to check the website link that you provided and I still do not see a few things listed.

1. There still is no schedule put up or any way to see when the next listed meeting is and at what time. So I was wondering when that next meeting is?
2. There still are no meeting minutes or records from the last meeting on August 26th, 2020 and I am just wondering when those anticipate being put up?

Thanks so much for your help with this information!

All the best,

Charles

On Mon, Aug 31, 2020 at 5:07 PM Brendan Ferry <brendan.ferry@edcgov.us> wrote:
Hi Charles,

All is fairly well here, thanks. Hope things with you and the new baby are as good as they can be in these crazy times! The smoke has been a bummer for sure. So, yes the MAC met on Wed. last week - I'm not sure why you didn't hear about it? I've got you on the outreach list for those meetings. I had a standard cannabis update item on the agenda that I thought would last about 5 minutes. But, it did get controversial on the gym property. Lots of their members called into the meeting and were adamant about not having a dispensary in that location. The other two locations came up really only in passing. We'll be posting notes on the meeting soon. FYI our Meyers page moved - it is located here now:

https://www.edcgov.us/Government/TPS/meyers/Pages/meyers_main_info.aspx

Application scoring is happening. We had a delay because Creighton left the County for another job and the background check process has been slower than we thought. We need to get it done in the next few weeks though.

Take Care,

Brendan Ferry
Deputy Director
Tahoe Planning & Stormwater Division

El Dorado County
Planning & Building Department
[924 B Emerald Bay Rd.](#)
[South Lake Tahoe, CA 96150](#)
(530) 573-7905
brendan.ferry@edcgov.us

On Mon, Aug 31, 2020 at 1:23 PM Tahoe Honey Co <tahoehoneyco@gmail.com> wrote:
Hey there Brendan,

I hope all is well with you this summer! We have not been able to get outside as much as we'd like with all this intense smoke from the fires! It's really crazy this year!

I just heard about the MAC meeting that took place last Wednesday the 26th that I did not get word about ahead of time. I was told the topic concerned cannabis applications, so I am confused how I did not get any info about this happening? Is the Meyers

Advisory Council not using the email list to provide notice anymore? I tried to look up where notice of this was posted and I cannot find anything.

Just pretty bummed out about missing this because I've made all attempts to be present to every MAC meeting for the past two years, even when the topics were not cannabis related....so I just don't know what happened here?

Thanks so much,

Charles

--

Charles E. Willett
Tahoe Honey Company
530-386-6168
@TahoeHoneyCompanyCA
www.tahoehoneycompany.com



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Charles E. Willett
Tahoe Honey Company
530-386-6168
@TahoeHoneyCompanyCA
www.tahoehoneycompany.com



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Charles E. Willett
Tahoe Honey Company
530-386-6168
@TahoeHoneyCompanyCA
www.tahoehoneycompany.com

