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SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2012-053585

07/23/2012

HONORABLE MICHAEL D. GORDON

CLERK OF THE COURT  
M. MINKOW  
Deputy

WHITE MOUNTAIN HEALTH CENTER INC

JEFFREY S KAUFMAN

v.

COUNTY OF MARICOPA, et al.

PETER PETER MUTHIG

KEVIN D RAY

**UNDER ADVISEMENT RULING  
PRELIMINARY INJUNCTION GRANTED**

Pursuant to Rule 65 of the Arizona Rules of Civil Procedure and Rule 65(h), the Court hereby grants Plaintiff's request for a Preliminary Injunction and sets forth the reasons for its issuance.

The Court looks to the traditional equitable criteria for issuing a preliminary injunction which are:

1. A strong likelihood of success on the merits;
2. The possibility of irreparable harm to the Plaintiff if relief is not granted;
3. A balance of hardships favoring the Plaintiff; and
4. In certain cases, advancements of public interest.

In examining the evidence, the Court adopts the parties' Stipulated Statement of Facts, jointly executed on July 19, 2012. The Court makes the following conclusions of law:

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- The Court finds there are serious questions about whether Defendants Arizona Department of Health Services (ADHS) and Will Humble, its Director, have the lawful authority to withdraw, deny or reject Plaintiff's application for a dispensary registration certification.
- While the application has a deficiency, that deficiency is incurable because the deficiency is caused by co-defendant Maricopa County. Specifically, ADHS regulations impose a requirement that the local jurisdiction provide documentation confirming zoning compliance. *See* A.A.C. R9-17-304(6) (requiring zoning restriction documentation for a dispensary registration certificate).<sup>1</sup>
- Plaintiff alleges and Defendants do not dispute that co-defendant Maricopa County has categorically refused to examine whether Plaintiff's proposed site meets zoning requirements or if there are such requirements at all. Thus, it will not provide any documentation. Without the documentation, Plaintiff cannot cure its deficient application.<sup>2</sup>
- The weight of the evidence is that Plaintiff's certification would be granted were it not for co-defendant Maricopa County's refusal. Plaintiff has provided sworn evidence of its compliance with zoning regulations and no evidence has been presented to the contrary.
- The Court rejects Defendants' position that Plaintiff has an adequate remedy at law and will not suffer irreparable harm.
- Addressing the adequacy of legal remedies, *i.e.*, the administrative appeal process, that avenue is patently futile. ADHS regulations clearly require the zoning certification. *See id.* Director Humble and the ADHS must follow its own rules. *See City of Chandler v. Arizona Dep't of Transportation*, 167 P.3d 122 (Ariz. Ct. App. 2007) (holding that "an administrative agency has a duty to follow its own rules and regulations."). Thus, a ruling from a Court of competent jurisdiction appears necessary to resolve this dispute.
- Finally, Plaintiff will likely suffer irreparable harm without the relief requested. Plaintiff loses the right to continue to pursue a dispensary license during this cycle of applications. This is an important fact given that Plaintiff is the only applicant in the Community

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<sup>1</sup> This regulation imposes a requirement that the applicant provide "[d]ocumentation from the local jurisdiction that there are no local zoning restrictions or that the dispensary's location is in compliance with any local restrictions."

<sup>2</sup> Defendants admit that the lack of the zoning certification is the only deficiency in Plaintiff's application.

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Health Analysis Area (CHAA)<sup>3</sup> No. 49. Thus, if Plaintiff is otherwise qualified, Plaintiff would be the only applicant for this CHAA.

IT IS THEREFORE ORDERED that Defendants ADHS and Will Humble, Director of Arizona Department of Health Services, are hereby enjoined from withdrawing, denying, or otherwise rejecting Plaintiff's application for a dispensary registration certificate based on the failure to comply with A.A.C. R917-304(6) (2012).

IT IS FURTHER ORDERED THAT Plaintiff shall serve a copy of this Preliminary Injunction on Defendants ADHS and Director Will Humble forthwith, by regular mail or in person.

IT IS FURTHER ORDERED AFFIRMING the \$100.00 bond set in this matter.

IT IS FURTHER ORDERED that this Preliminary Injunction shall remain in effect until further order of the Court.

IT IS FURTHER ORDERED signing this minute entry as the formal order of this Court.

/s/ Michael D. Gordon

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MICHAEL D. GORDON  
JUDGE OF THE SUPERIOR COURT

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.

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<sup>3</sup> The specific CHAA at issue is CHAA No. 49 in the Sun City area. The time for filing additional applications has passed, and the preliminary injunction ordered *herein* places no hardship on the Defendant.