



Meeting Date 2/14/2023

Staff Report
CUP 17-001 and Variance 20-011

History:

On March 23, 2022 a Code Enforcement Letter was sent out to Owner of Monte Fiore Nicholas Perrino for being in violation of CUP 17-001 and Variance 20-011 for the following issues:

1. Failure to report excise taxes of any by the 20th of every month.
2. Two separate instances of Non-sufficient funds.
3. Filing an amendment to the existing CUP 17-001 of the change of ownership from a partnership to a sole proprietorship.

This went before the Planning Commission on March 24, 2022. At that meeting the Planning Commission made a recommendation to begin the process of revoking CUP 17-001 to the Huerfano County Board of County Commissioners. At the BOCC Meeting on April 12th, 2022, the County Commissioners unanimously voted that Monte Fiore had until June 1st to come into complete compliance with the following conditions:

1. Property Taxes are paid up to date as well as any interest due.
2. Excise taxes are paid up to date along with all penalties.
3. Land Use application be filed with the Land Use department to amend the CUP to reflect the change of ownership.

As of April 20, 2022 Monte Fiore had come into compliance as was recommended by the BOCC.

History of compliance issues:

1. Monthly reporting of any/all sales need to be done and into Huerfano County Treasurer's office or Finance office no later than the 20th of each month. Monte Fiore did not do any reporting or pay any excise taxes for the months of June, July, or September of 2022. The reporting that was done in November was filed on the incorrect paperwork and Kim Trujillo our Finance officer reached out to Monte Fiore requesting the correct paperwork be submitted. As of today there has been no response to her email.
2. There has been no further movement on amending the CUP 17-001 from a partnership to a sole proprietorship, as it was supposed to go back to a partnership with different partners. An application from the new owners from MED was received in June 2022. In September 2022, Mr. Perrino and stated he was waiting on the transaction from interested parties for a new partnership.
3. It was brought to the attention of the Land Use office that at the Huerfano County tax lien sale on November 17th, 2022 that property that Monte Fiore operates on had a tax lien of \$90,872.66, which was paid by some other individual.
4. It was also brought to the Land Use Office that there is also a Federal tax lien against the property is the amount of \$417,262.87.

The case was sent to the information to the Planning Commission for review and recommendation.

Planning Commission Recommendation:

1. On December 8 the Planning Commission unanimously voted to recommend that the Huerfano County Board of County Commissioners begin the revocation of CUP 17-001 and Variance 20-011.

Board of County Commissioners Action:

1. On December 20th, 2023 a motion was made by Commissioner Galusha to give Monte Fiore until February 1, 2023, to come into complete compliance with Huerfano County or CUP 17-0001 and Variance 20-011. Roll call vote with Commissioners Galusha and Andreatta with a “YES” vote and Chairman Cisneros “NO”. (See Attachment 1 BOCC Minutes 12-20-2022.)

Further Findings – February, 2023:

1. The amount paid each month does not reflect what was reported for that corresponding month (see attached spreadsheet from January 2022-November 2022). The difference between what was reported as owed and what was paid was -\$41795.99. (Please refer to Attachment 2 Monte Fiore YTD).
2. Resolution 18-06 governing the administration and enforcement of marijuana excise tax. Commercial marijuana cultivation establishments are to pay an excise tax of 5% of sales and submit Excise Tax and Reporting Forms by the 20th of each month. See attachment 3 Resolution on HC Marijuana Excise Tax.

Staff Report Update – February 2023:

1. On December 30th, 2022, a letter was sent out by the Huerfano County Land Use Office, both by email and certified letter with return receipt, notifying Monte Fiore of the January 31 deadline to come into compliance and outlining what needed to be done to come into compliance. (Please refer to attachment 4 Certified Letter and Attachments)
2. On January 3rd, 2023 a payment was made to the Las Animas-Huerfano Counties Health Department for the annual inspection fee of \$385.00 as well as \$75.00 in late payment fees. This was confirmed by Robin Sykes of the Las Animas-Huerfano Counties health department. (Please refer to Attachment 5 confirmation email from Health Department)
3. In November of 2022 Monte Fiore reported \$6,543.56 in excise tax due and paid \$533.08. (Please refer to Attachment 2 Monte Fiore YTD).
4. In December of 2022 Monte Fiore reported \$3,226.05 in excise tax due and had not made payment as of 2/9/2023. (Please refer to Attachment 2 Monte Fiore YTD).
5. The total excise tax due to Huerfano County to date with the compounded interest and missed/declined payments is \$62,550.25. (Please refer to Attachment 2 Monte Fiore YTD).
6. The required paperwork for December was due January 20th, 2023 and was received February 2nd, 2023 (Please refer to Attachment 6 email excise paperwork turned in)
7. On January 11th an email was sent to all of the active Grows with the attachment of Resolution 18-06. The email alerted recipients of the need to file paperwork by the 20th of each month regardless of whether any sales were made. (Please refer to Attachment 7 email sent to active grows)
8. On January 31, 2023 Huerfano County Code Enforcement conducted an inspection (Please refer to Attachment 8 Site inspection) of the property as was presented in the letter to come in to compliance. The

following were the findings (answers to questions were provided by the staff on site at the time of inspection). (Please refer to Attachment 8 Site Inspection)

- a. No plants were being grown on site.
 - b. All plants that were being grown on site, in the last inspection that was conducted by Huerfano County Code Enforcement have been destroyed and the employees claim there are records of this process, though none were presented.
 - c. They are only buying trim from other grows (no names were provided). This trim is having the liquid extracted from it and through a very sophisticated process turned into an oil that will be used for edibles and vapes.
 - d. They are in compliance with the 10,000 gallons of water as listed in their CUP 17-001. (Please refer to Attachment 9 CUP 17-001 Conditions).
9. Monte Fiore keeps recordings from video surveillance of all areas are backed up to September of 2021. (Please refer to Attachment 8 Site Inspection)

Staff Comments - February 2023:

1. Monte Fiore did not meet the deadline of February 01, 2023 set by the Board of County Commissioners. We received the paperwork for the excise taxes for December on February 03, 2023, for which we have yet to receive payment. (Please refer to Attachment 6 email excise paperwork)
2. There was no communication from anyone from Monte Fiore until Code Enforcement contacted Ennis Perinno, the Office Manager, to schedule an inspection of Monte Fiore. (Please refer to Attachment 2 Monte Fiore YTD)
3. On Friday February 10th, 2023, Ennis Perinno, the Office Manager, sent a proposal for a payment plan they would like to start. (Please refer to Attachment 10 Monte Fiore Proposal). This is not outlined in this report, but it should be noted that any such proposed payment plan would need BOCC approval since the deadline had been missed. .
4. If The Board of County Commissioners does approve a payment plan, the plan should be updated to reflect the current amount of 62,550.25 currently owed to Huerfano County for 2022.
5. If the Board of County Commissioners decides to approve the payment plan. If MED were to revoke any of Monte Fiore's Colorado State Licenses numbers (404-00623, 404R-00394, and 403R-01062), they would need to keep to the agreement of the payment plan and any future missed excise taxes until all money owed to Huerfano County is paid in full.
6. Going forward, any missed/late payments will have the maximum penalty 50% added to what is owed to the Huerfano County, as defined in Resolution 18-06 Section 6, number 3 on page 3 of the Resolution. (Please refer to Attachment 3 Resolution on HC Marijuana Excise Tax (1))
7. Staff recommends that any violations going forward be reported to the Colorado Marijuana Enforcement Division upon annual compliance review and license renewal.
8. Staff hours put into working on this case will be billed to Monte Fiore in accordance with Section 18.1.3 of the Huerfano County Marijuana Regulations, which read:

***Operating Fee Deposit.** At the time of application acceptance, each applicant must deposit a refundable operating fee deposit with the County in the amount of \$10,000 per Conditional Use Permit. This deposit shall be deposited and maintained in a separate account and drawn upon and used by the County to recover the County's costs and expenses in administering the Conditional Use Permit. Such costs and expenses may include, but shall not be limited to, County staff time, the procurement and maintenance of compliance tools and devices,*

outside review agencies and professional services. Upon request, the County shall provide an annual statement to the applicant for each deposit provided by the applicant, reflecting the current balance of the deposit and the amounts and identified purpose(s) of any withdrawals since the last statement. Following the complete discontinuation, abandonment, revocation or transfer of a Conditional Use Permit, the County shall refund any unused amount of the deposit to the applicant with an accounting of its balance over time. Each applicant to assume responsibility for an existing Conditional Use Permit as a transferee must deposit a new refundable operating fee deposit with the County in the amount of \$10,000 per Conditional Use Permit.

Attachments:

1. Attachment 1 BOCC Minutes 12-20-2022
2. Attachment 2 Monte Fiore YTD
3. Attachment 3 Resolution on HC Marijuana Excise Tax (1)
4. Attachment 4 Certified Letter and Attachments
5. Attachment 5 confirmation email from Health Department
6. Attachment 6 email excise paperwork turned in
7. Please refer to Attachment 7 email sent to active grows
8. Please refer to Attachment 8 Site Inspection
9. Please refer to Attachment 7 CUP 17-001 Conditions
10. Please refer to Attachment 10 Monte Fiore Proposal