DSD STEERING DOCUMENT

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How to use this index. Addresses are listed alphabetically by street name, then by number. A property is listed on every page where its address appears, including passing references, so a single entry may cover both the project's own hearing record and later mentions elsewhere. Spelling and abbreviation vary in the source; variants of the same address have been merged under one entry.

Compiled 5 October 2026 by automated extraction of the page text of this document. It is a finding aid, not a record: verify any page before relying on it.

TRAVELLING VERSION — 5 OCTOBER 2026. This is a dated, edited version of the DSD Steering Document originally compiled 13 May 2024. It is NOT the 13 May 2024 document and must not be cited as it. Three passages of the compilers' commentary have been removed and replaced, in place, with a bracketed note stating what was removed and why. Nothing in the underlying hearing record — no minutes, testimony, report number, resolution, vote or project datum — has been altered, and no page has been added or removed; this version runs to the same 362 pages as the original. The removals are listed verbatim in the accompanying EDIT LOG. This document remains a compilation prepared by its authors, interleaving City of San Diego hearing material with their own commentary. It is not a City record, and its commentary is not evidence of the matters it asserts.

DSD Steering Document

An in-depth review and analysis of the City of San Diego Adult Use Cannabis Licensing Process from 2014 forward.

By

Darryl Cotton @ 151Farmers.org

May 13, 2024

This Development Services Department (DSD) Steering Document takes hundreds of thousands of pages of documents, years' worth of public testimony and, using hyperlinks and its search feature, brings information to the reader's attention on a City of San Diego, Adult-Use, project-by-project basis. It was created by what Amy Sherlock, and I saw as an appalling situation in corrupt pay-to-play cannabis licensing that harmed not only us but what we came to see as a much larger group who were touched, in some way or form by that process.

With Amy the corruption became apparent through ongoing litigation involving a dispensary her late husband had been instrumental in acquiring, whereby Amy was being excluded from those proceedings. While tracking that case, it wasn't until attorney Gina Austin filed an interlocutory appeal where we saw just how much and how valuable the information was in there. What could be seen in that appeal was that not only did ownership and operating relationships rely on oral over written agreements, but the court also believed that putting a receiver into the affairs would somehow allow operations to continue and profits to be maintained until such time that the case would be adjudicated. As of this writing, that case is still ongoing and not wholly relevant to what will be found in this Steering Document before you, but for the purpose of context I would strongly encourage the reader to visit the Appeal Steering Doc in this link. Many of the names you'll find within the Appeal Steering Doc will be found here in the DSD Steering Doc.

If you are one of those who have been harmed in the application process and would be interested in recovery, we would ask those willing to participate in this effort be willing to provide an affidavit with any supporting evidence to be used in substantiating those claims. Contact me @ 151DarrylCotton@gmail.com for additional information.

INTRODUCTION

On September 9, 2014 the San Diego City Attorney issued a memo detailing their office had 40 illegal "pot shops" cases in process at the time. When the city responded to these unlicensed cannabis activities by adopting Medical Marijuana Consumer Cooperatives (MMCC) zoning regulations and through subsequent amendments the process to obtain those licenses was to establish what was supposed to be

a fair and transparent method to assure only those who qualified through a fair and transparent application process would be able to obtain those licenses. With the benefit of hindsight, we can now analyze just how well that process has worked.

The purpose of this document is to provide evidence that can be derived from the processing of adult-use cannabis licenses in the City of San Diego through the appeals process and identify anomalies where they can be found. This document compiles all City of San Diego Planning Commission and Hearing Officer records from 2014 thru 2023, in chronological order, which could be found online relative to cannabis licenses, applications, the appeals, those who opposed them, those who were in support of them and associated hyperlinks to related San Diego Municipal Code (SDMC) CUP Processing documents such as Project/CUP Numbers and Appeals procedures.

At the time this document was created all the links to those government sites worked. This document will be updated as more information becomes available. One should rely on the date posted underneath the title to assure the most current version is being viewed.

SEARCH WORDS

This document relies on a search feature that when typing in a search word (Use Control F on your keyboard) which will take you through this document and to any of the related links that stem from that search word. **Recommended search words:**

1_conflict 2_child-oriented 3_Charles Alexander 4_Tradeworx 5_gaming the system 6_financial conflict recusal 7_598124 8_primary use 9_erroneous and misleading 10_Team Austin 11_vote to deny 12_1319996 13_strangest 14_fair and equitable 15_Cespedes 16_ingress/egress 17_ round peg 18_368509 19_Public testimony was closed 20_DSD is not our friend 21_Luis Herrera 22_validity 22_ethics 23_ADA compliant 24_gospel 25_proxies 26_wacky mole 27_ministerial process 28_full public noticing 29_procedural defects and unfairness 30_AB-374 31_attorneys and lobbyists 32_ Brown Act violations 33_League of California Cities 34_Zobal-Zoback 35_I don't normally agree with the opponents to a dispensary 36_Property Line Variant 37_creative lawyering 38_quicksand 39_suspend 40_incorrectly applied 41_strawman appellants 42_illegitimate 43_unsavory industry tactics 44_system being gamed 45_fait accompli 46_manipulated 47_integrity 48_unbelievable maneuvers 49_leapfrog 50_Permit Streamline Act 51_bust either way 52_financial conflict of interest 53_underhanded 54_valid sensitive use church 55_Writ of Mandate 56_it is flawed 57_getting back to the sign 58_smallest conveyable unit 59_CEQA is foreclosed 60_consistent with the Land Development Code 61_The CUP That Never Was 62_Testimony Transcript 63_because of parking 64_unusually high number 65_piecemeal 66_Certified Transcript 67_126.0305 68_Big Deep Breath 69_I'll be honest 70_in terms of background checks 71_is set and is standard 72_it was a fair process 73_clearing up their mess

74_criminal cabal 75_I'm rather confused 76_you're SOL 77_I think somebody messed up 78_what a court would look at 79_what was the loophole 80_I think this is really confusing 81_methodical and transparent process 82_fairness in this application process 83_inconsistency and fraud 84_steering the process 85_scoring system 86_non-resident speakers 87_the appellant is completely suspect 88_we simply cannot be inconsistent 89_mudslinging 90_as it is changed regularly 91_381308 92_comply with the state requirements 93_Pallamary 94_plain language of the Ordinance 95_veiled threat 96_Pandora's Box 97_latitude as well 98_142.0540(a) parking exemptions 99_absolutely no access 100_Obtuse

A CEQA PRIMER

The California Environmental Quality Act (CEQA) gets its own search feature and explanation: When you Control F "No Nora" we get into what is required to post CEQA determinations rights to appeal and the time frame one has to appeal a DSD decision. The Public View Appeal Notices that were issued under SAP numbers were done intermittently or not at all. For example, in their December 2014 Report to the Planning Commission for The Green Alternative @ Page 1, DSD describes their decision as "categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures. This project is not pending an appeal of the environmental determination. The environmental exemption determination for this project was made on August 14, 2014, **circulated for public review** *[emphasis added]*and the opportunity to appeal that determination ended on August 28,2014." The problem with this "circulated for public review" statement is that in this case DSD only filed a Notice of Exemption @ Page 33 with the County Recorder.

If you check on each and every one of the cannabis related CUP applications herein, DSD not only gives them ALL a CEQA pass they don't consistently circulate the Notice of Right to Appeal Environmental Determination (NORA) with the accompanying SAP Numbers to prove that circulation occurred. As an example, this August 2014 SAP - NORA Statement can be seen on Page 22 which is uniquely numbered and serves as Public Notice for the specific 3452 Hancock MMCC application.

What's important to remember is that in November 2016 Proposition 64, The Control, Regulate and Tax Adult Use of Marijuana Act had established, in the first paragraph of that Act, the environmental protections would be foundational to what adult-use or "recreational" cannabis law would do to change unlicensed cannabis activities to licensed. Specifically @ Page 4 it states; "**SECTION 2. FINDINGS AND DECLARATIONS. A.** Currently in California, nonmedical marijuana use is unregulated, untaxed, and occurs without any consumer or environmental protections. The Control, Regulate and Tax Adult Use of Marijuana Act will legalize marijuana for those over 21 years old, protect children, and establish laws to regulate marijuana cultivation, distribution, sale and use, and will protect Californians **and the environment** *[emphasis added]* from potential dangers. It establishes the Bureau of Marijuana Control within the Department of Consumer Affairs to regulate and license the marijuana industry."

I believe, and the evidence contained herein will support it, the City of San Diego has not taken their public health and environmental responsibilities seriously. In their mad rush to collect the taxes that would be forthcoming from these new licensees, they have ignored and sidestepped the environmental impact of the application process, the public notification of those "exempt" determinations or even a

2019 Supreme Court of California decision, UMMP v CITY Of SAN DIEGO that required the City to treat these applications as projects (they all have project numbers) and protect the environment through the use of CEQA reports that would qualify the proposed business for that location.

SECTION ONE: UNRESOLVED ISSUES

1.0) Is Commissioner Douglas Austin any relation to Attorney Gina Austin or her husband, Designer Alan Austin of Austin and Associates? Douglas Austin. CEO AVRP Skyport AVRP Skyport

1.1) 2016/06/13 SD Union Tribune Article: Commissioner Austin fined for ethics violation. How is Austin allowed to stay on the Planning Commission?

criminal complaint*1.2) [EDITORIAL REMOVAL — 5 October 2026. A question linking a named private individual to a criminal complaint has been removed from this version. No document in the record connects that person to any criminal matter, and the question was unanchored to any identified complaint. It is withdrawn. The item number is retained so the numbering of this section is unchanged.]*

1.3) Commissioner Austin, on his 2014 Form 700 Statement of Economic Interest filing, shows a greater than $10K source of income to AVRP Studios, Inc his architectural firm. Why did Commissioner Whalen not recuse himself from the Pickwick and Sunrise projects?

1.4) Why did Commissioner Peerson need to recuse herself for a financial conflict of interest on the 6220 Federal Blvd. vote? How many other marijuana licensing decisions would have been influenced in whatever her financial relationship was with those parties involved in the 6220 project? 2:00:17 Commissioner Peerson

(a) What is Peerson's relationship with former Development Services Director, Marcela Escobar-Eck, Peerson's husband Ted Shaw of the Atlantis Group? San Diego Reader May 2, 2013

1.5) Commissioner Peerson reported Form 700 income to Atlantis Group in excess of $10K from adult-use applicants Aaron Magagna, San Diego Health and Wellness and their attorney Gina Austin of Austin Legal Group in matters where Peerson has a financial conflict of interest in these decisions.

2.0) At the December 15, 2016 Planning Commission hearing, Item 1, Scott Chipman commented on possible Conflicts of Interest by two members of the Planning Commission @ 14:35. In his comments, Mr. Chipman names Commissioners Whalen and Wagner as being possibly conflicted stating;

"On Friday November 4th at the San Diego County Planning Commission announced that he was there representing Good Earth Plant Company and then supported an agreement that would put no CAP on the cultivation of marijuana. Anthony Wagner, at the same meeting, said that Wagner Consulting and Land Use Public Health and Safety Firm represented a contingency of responsible cultivators and went on to talk about how his representation should affect the decisions that day.

These are highly questionable acts that either of these two Commissioners should be hearing and making decisions on marijuana policy if they are also operating as representatives or consultants to marijuana business entities. In addition, any relationship these two Commissioners have with marijuana industry interests should be put into question and all votes and decisions they have made in recent years on marijuana issues should be in question.

We formally ask the City Attorney to open an investigation into potential conflicts of interest and call on these Commissioners to recuse themselves from any decisions or discussions on marijuana regulations until that investigation is complete. You can contact me at 619.990.7480."

2023/09/18 Potential Conflicts of Interest Documentation.

Commissioner Wagner's Statement of Economic Interests FORM 700 Filings

2013-WAGNER-Statement-of-Economic-Interest-FORM-700 Wagner shows no special interest cannabis money having been received.

2014-WAGNER-Statement-of-Economic-Interest-FORM-700 Wagner shows no special interest cannabis money having been received.

2015-WAGNER-Statement-of-Economic-Interest-FORM-700 Wagner shows no special interest cannabis money having been received.

2016-WAGNER-Statement-of-Economic-Interest-FORM-700 Wagner shows no special interest cannabis money having been received. This contradicts what Mr. Scott Chipman brought to the Planning Commission in their December 15, 2016 Hearing in Item 1 of the Agenda and as can be heard in his public testimony that hearing where @ 14:40 he describes both Commissioner Wagner and Whalen's possible conflicts of interest and asks the Deputy City Attorney Shannon Thomas, who was present at that hearing, to investigate these charges.

What is significant here is that Wagner makes this statement in 2016 and the industry contribution does not show up in filings until the 2017 filing. To our knowledge, no investigation was ever dopickne by the City Attorney's Office and Wagner would spend his entire time on the Planning Commission without ever having had recused himself on a cannabis related appeal.

2017-WAGNER-Statement-of-Economic-Interest-FORM-700 Per Scott Chipman, Anthony Wagner would brag about how much money was coming through his door from the "pot people." He specifically named the Southern California Responsible Growers Council as has been highlighted in this public filing. This is disturbing because Wagner was actively lobbying for these cannabis interests while being seated on a decision-making body of the City of San Diego and without having disclosed those contributions from these groups until 2017.

Commissioner Whalen's Statement of Economic Interests FORM 700 Filings

2014-WHALEN-Assuming-Office-Statement-of-Economic-Interests-FORM-700 Whalen shows no special interest cannabis money having been received.

2015-WHALEN-Statement-of-Economic-Interests-FORM-700 Whalen shows no special interest cannabis money having been received.

2016-WHALEN-Statement-of-Economic-Interests-FORM-700 Whalen shows no special interest cannabis money received. In his Page 13 attachment he lists a $10K or greater contribution to J. Whalen Associates, Inc from Good Earth Plant Company. This is the cannabis special interest that Scott Chipman refers to on

December 15, 2016 @ 15:00 during his public comments under Item 1 of the City of San Diego Planning Commission Hearing.

Mr. Chipman raises statements he heard Wagner state, while at a Friday, November 4, 2016, San Diego County Planning Commission Hearing, that he was there representing Good Earth Plant Company on behalf of an agreement that would put no CAP on cannabis cultivation licenses.

It should be noted that no other cannabis associations or businesses are listed on any other Whalen Form 700 statements for either Commissioner Whalen or his business J. Whalen Associates, Inc. except for this 2016 filing. And while Commissioner Wagner was at this same San Diego County Planning Commission Hearing, Wagner does not report his income until his 2017 Form 700 filing.

2017-WHALEN-Statement-of-Economic-Interests-FORM-700 Whalen shows no special interest cannabis money having been received.

2018-WHALEN-Statement-of-Economic-Interests-FORM-700 Whalen shows no special interest cannabis money having been received.

2019-WHALEN-Statement-of-Economic-Interests-FORM-700 Whalen shows no special interest cannabis money having been received.

2020-WHALEN-Statement-of-Economic-Interests-FORM-700 Whalen shows no special interest cannabis money having been received.

2021-WHALEN-Statement-of-Economic-Interests-FORM-700 Whalen shows no special interest cannabis money having been received.

2022-WHALEN-Leaving_Office-Statement-of-Economic-Interests-FORM-700 Whalen shows no special interest cannabis money having been received.

2.1) At the December 15, 2016 Planning Commission hearing, Item 1, Attorney Bob Ottilie comments on Recusal of Commissioner Wagner @ 17:29. Mr. Ottilie's comments mirror that of Mr. Chipman's in that there are possible conflicts of interest but, as an attorney goes further stating:

Commissioner Haase: So, Bob as I understand it, this is related to an item on our agenda today, but you want to talk about process only. Is that correct?

Ottilie: Well, I do, and I've been told by both the City Attorney and by you that it was too late to address this issue on the Agenda Item. That's why I put it in before the meetings.

Haase: I understand, and I believe that comment was related to the project itself. So, maybe we were splitting a hair here.

Ottilie: All I want to do is raise a conflict issue that I think has been well documented in correspondence that I've tried to share with all the Commissioners but which your Chair and the City Attorney have precluded you from sharing with you which is somewhat unprecedented in my 36 years of practicing law.

Sometimes conflicts are bias arise during a hearing. I'm an attorney. We try lawsuits. You have a right to challenge any judge for any reason when you're assigned to a court room but most challenges to judges occur, if they occur, for bias that arises during the hearing. You raise it during the hearing. It's not a novel concept.

So that's all we're trying to do in that letter I've been trying to distribute for a day to each of you that I've been precluded from doing so. So, I'm going to give the letters to Mr. Whalen and ask him to pass them down the list. *[See the 12/13/2016 Ottilie Letter to Wagner requesting his recusal and the 12/14/2016 Ottilie follow up letter to Chairman Haase.]*

I understand that the record was closed, but that's the evidentiary record. We have a serious due process issue. You may agree with my clients or disagree, but you need to address it because if you don't, it'll have to be addressed in court and it's addressed in court we might win we might lose but we could resolve all that today.

I've done this once before with a City Commission. I've been on 6 City Commissions. I've Chaired City Commissions. I Chair a City Commission right now. It's not a difficult thing, you just have to analyze it and make a determination. We challenge Gil Cabrera at the Ethics Commission. I was representing a City Council Member who was before the Ethics Commission. Mr. Cabrera had made a statement. We came here. Nobody kept us from distributing our materials. The Ethics Commission thought it was important to look at. They looked at it and Mr. Cabrera voluntarily stood up and said 'I think he's right. There's a perception of bias. I should recuse myself.' Had he not done so we would have set a hearing and the panel would have made a decision. But that's the process you need to follow.

So, it's well documented. It's cited to the record. There's a lot of law and it goes to this issue of the role you play when you sit, essentially as a judge in a quasi-judicial proceeding. This hearing on this item as it related to the liquor license at the 7-11, you're acting in a judicial capacity. So, what you can do in that capacity is entirely different from what you can do if you're debating policy. Or what the City Council does when they vote on issues. You can't be an advocate. You can't present your own evidence. You can't qualify yourself as an expert. You certainly should not be talking off the record as was the case here with one side *[who exactly is he referring to?]* without disclosing that in the process.

All this is raised pretty meticulously, there's some good law in there even if you disagree with my assessment. I think it will be good for your files. I know Mrs. Thomas (Deputy City Attorney) will appreciate that because the City Attorney is always hammering upon us, when you're in a quasi-judicial role it's a whole different world.

So, I'd like to disseminate these to you, and I'd like you to consider recusing Mr. Wagner from the completion of the matter. If you do, by law, I think you have to start the hearing over again and I apologize for that. *[Robert Ottilie has had longstanding clashes with the Ethics Commission as reported in this July 15, 2015, San Diego Union Tribune article which calls him 'disruptive.']*

Haase: Thank you for the testimony. We will be discussing this when the Item comes before us.

Deputy City Attorney Thomas: So public comment, as Mr. Ottilie noted, has been closed on that Item. We are speaking of Item 9 on today's agenda. So public comment is closed. There are people who submit comments in writing after that comment period is closed and other people show up at non-agenda public comment to speak to the Item. I understand Mr. Ottilie's concerns are procedural and not to the facts of

the item however, if we are going to consider discussion of non-agenda public comment then I believe in fairness to the public and also to the applicant. The hearing needs to be reopened so people can discuss and debate this nuance that has just arisen before the Planning Commission.

Commissioner Quiroz: May I say something?

Haase: I want to make sure we don't get astray from our agenda and where we're at but go ahead.

Quiroz: I just want to state for the record that I actually received this in an email this morning and I gather it had not been put forward to any of the other Commissioners, so I just wanted to state that I've seen it already.

[I find it noteworthy that Commissioner Quiroz made it clear, for the record, that she had seen the Ottilie letter and of all the Commissioners present she was the only one that publicly acknowledged the conflicts that were raised in that letter.

I believe that in addition to the issues raised in this section the financial relationships between these Commissioners and the consulting companies they own, as reported and perhaps more importantly not reported, on the Form 700's, needs to be fully investigated because the adult-use cannabis licensing system in San Diego was largely established based on their votes. If certain Commissioners were compromised that meant that the process was fundamentally flawed and a significant number of people were denied their rights under a process that would, under no circumstances, award them a license.]

3.0) How can CUP Owners names be in a company name not an individual? Did the company qualify? How was the company background checked? Will a Delaware Corporation qualify as an owner if the owners aren't divulged in the DE Corporation? CONDITIONAL USE PERMIT NO. 2071481.

3.1) How do certain CUP owners, such as Ebon Johnson qualify for a CUP when they have arrests and litigation for operating unlicensed cannabis businesses and drug activities stemming from 2010 forward?

> 3.1.1:2014/09/08 City of San Diego Active Cases re Unlicensed Cannabis Activities _ Ebon Johnson in Items 36 and 37
>
> 3.1.2:https://151farmers.org/wp-content/uploads/2018/04/23-06-13_Ebon-Alee-Johnson-TruthfinderReport.pdf
>
> 3.1.3: EJ Marketing-Ebon Johnson Project No. 368343 Information Sheet How is that an attorney, such as Jessica McElfresh, can be Johnson's representative Point of Contact when he has this record?

3.2) Why are some Adult-Use projects processed on an EXPEDITED basis and others are not?

3.3) The Hearing Officer is just one person. There is no vote. How is that legal?

3.4) The approved applicant will file an Appeal just to tie up the information that would be given to the Planning Commission. Often, they withdraw the appeal at the last minute and the Planning Commission can't even issue a ruling.

4.0) San Diego Union Tribune April 4, 2023 regarding Jesus Cardenas, former Chief of Staff to Councilmember Stephen Whitburn, resigning from office and what we now have as adult-use cannabis law and regulation in San Diego? Cardenas ran Grassroots Resources and had to step down as Chief of

Staff when it became known he was continuing to do business while Grassroots license had been suspended by state tax officials. The potential conflicts of interest between his consultancy group and the City's adult-use licensing Ordinances must be further understood.

(a) February 20, 2023 San Diego Union Tribune re Grassroots Resources and the relationship between Margin Victories and Grassroots should be explored as well as the late 2022 Democratic party $760K payments to Margin Victories.

(b) Jesus Cardenas and Grassroots; 2021-CA Form 700 Statement of Economic Interest

4.1) What role did Councilmember Whitburn's staff, Jacob O'Neil play in taking the heat for adult-use ordinance changes that were actually proffered by Cardenas and Grassroots?

4.2) What other lobbying groups were used to influence adult-use law and regulation in San Diego that come up in the Steering Document?

Bartell and Associates
Rath Miller Public Affairs
Alliance for Responsible Medicinal Access (ARMA)
United Patients Alliance
Greater Los Angeles Collective Alliance
Americans for Safe Access (ASA)
The Atlantis Group
The Downtown San Diego Partnership
The Association of Cannabis Professionals

4.3) What was/is Catalyst Cannabis's relationship with the City in setting adult-use cannabis policy and regulation?

4.4) What role did City of Chula Vista Councilmember Andrea Cardenas play in coordination with her brother Jesus Cardenas in implementing certain cannabis policy and regulations through the 'stacking' of the City Councils and their agencies.

4.5) Do the coordinated cannabis industry efforts begin with City Attorney Jan Goldsmith and can a timeline of event be established that show Ordinance developments in violated the Brown Act?

(a) A pattern of corruption in local government is being uncovered by reports of then Mayor Kevin Faulconer engaging in the sale of an asbestos ridden high-rise at 101 Ash Street to the City of San Diego and his having made a commission, while in office on that sale. This type of activity, along with what was being done in areas such as adult-use cannabis licensing represents a pattern of arrogance and self-enrichment that is staggering in scale.

4.6) The state Alcohol and Beverage Control (ABC) has licensee guidelines that would revoke a licensee if they had even been convicted of a drunk in public charge. What does the City do to maintain that type of ongoing or even a background clearance of moral turpitude behavior?

5.0) See Commissioner Haas's statement on page 3 of 4 on the May 10. 2018 minutes. He is describing PRECISELY why the City and all their abandoned properties, needs to take a hard look at what we're doing with our 151 Farms.

SECTION TWO: LAW, STATUTES AND REGULATIONS

2013/10/01: Memorandum MS 59; City Attorney Memo re Withdrawal of Administrative Appeals

2014/09/18: Memorandum MS 59: City Attorney Memo re Report of Status of Enforcement of Marijuana Dispensaries.

2015/01/08: Memorandum MS 59; City Attorney Memo re Environmental Appeals of Proposed Medical Marijuana Consumer Cooperatives.

2019/08/19 UMMP v City of San Diego CA SUPREME COURT Decision re CEQA Determinations.

2019/09/26: Development Services Department Update on Cannabis Permitting.

2019 CEQA PROCESS FLOW CHART @ page 358 on the browser or 295 on the document which shows that CEQA exemptions require "Lead agency gives public notice of availability of Negative Declaration." As can be seen by a review of all projects DSD gave CEQA exemptions to, whether or not these were truly Negative Declaration projects, DSD did not provide Public Notice of the appeal rights in the form which identified that specific project (as exampled here) by SAP or I.O. number.

2019 CEQA Section 15060. PRELIMINARY REVIEW @ page 211 on the browser or 148 on the document states, among other things; "Once an application is deemed complete, a lead agency must first determine whether an activity is subject to CEQA before conducting an initial study. An activity is not subject to CEQA if: (1) The activity does not involve the exercise of discretionary powers by a public agency ***[the granting of cannabis licenses is a discretionary act]***; (2) The activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; or (3) The activity is not a project as defined in Section 15378.

2019 CEQA **LEAD AGENCY** ENVIRONMENTAL CHECKLIST @ page 372 on the browser or 309 of the document shows what the 2019 Environmental Checklists Items were. It would be interesting to know what they were during the pre-2019 application approvals. An all encompassing item exists in MANDATORY FINDINGS OF SIGNIFICANCE @ page 390 on the browser or page 327 on the document which states; "**c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?"** This alone would take into account anything that had been raised in objections to the project which would have removed the project from a negative declaration status.

2019 CEQA Section 15182. PROJECTS PURSUANT TO A SPECIFIC PLAN @ page 285 on the browser or page 222 on the document states specific criteria that would exempt a project from a CEQA review. Of note this Section is not referenced in any of the DSD exemption determinations.

2019 CEQA Section 15301. EXISTING FACILITIES @ page 334 on the browser or page 271 on the document defines, among other things, CEQA is required where "Additions to existing structures provided that the addition will not result in an increase of more than: (1) 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less; or (2) 10,000 square feet if: (A) The project is

in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and (B) The area in which the project is located is not environmentally sensitive."

2019 CEQA Section 15303. NEW CONSTRUCTION OR CONVERSION OF SMALL STRUCTURES @ page 336 on the browser or page 273 on the document, which limits the CEQA exemptions to no more than 2,500 sq-ft projects and "… and the conversion of existing small structures from one use to another where only minor modifications are made in the **exterior** of the structure." Of note, all DSD CEQA exemption determinations relied on this section of the California Environmental Quality Act.

2019 CEQA Section 15378. PROJECT @ page 351 on the browser or 288 on the document defines PROJECTS as, among other things, "(a) "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following: (1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, **enactment and amendment of zoning ordinances,** *[here it could be argued that the enactment of an adult-use ordinance in the City of San Diego would fall under this mandated CEQA determination to acquire ANY license issued in the City of San Diego]* and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100-65700.

2019 CEQA Section 15387. URBANIZED AREA @ Page 354 on the browser page 291 on the document describes what DSD is relying on when classifying their CEQA exemptions on this section instead of the 15303 section which limits the exemption to, among other things, projects not exceeding 2500 sq-ft in improved space.

2021/12/02 City of San Diego Report to the Planning Commission: AMENDMENTS RELATED TO CANNABIS OUTLETS, PROCESS 5.

2022/November Development Services Information Bulletin (IB-505) APPEALS PROCEDURES

SDMC § 112.0310 CEQA Noticing Requirements @ Page 12

SECTION THREE: 2014-2023 SAN DIEGO PLANNING COMMISSION CANNABIS RELATED MINUTES

2014/12/18 Planning Commission Minutes

00:04 Chairperson Golba Opens the Meeting

00:24 Mike Westlake, Development Services Department (DSD) describes two, not three as can be seen below requests for continuances. "First Item is Item No. 10 the second Item is Item No. 11" *[The continuance was a last-minute request when the Applicant saw how many people were there in opposition or because they were actually short a quorum.]*

2014/12/18: Item 9: A Green Alternative Appeal of Hearing Officer's 2014/10/15 ITEM 6 decision

18 speaker slips submitted in favor – Irene Olvera Gomez, Lance Rogers, Zachary T. Lazarus, Douglas Cristafo, David R. Blair, Julie Gallari, Cheri Hass, Jill Schrecongost, Joe Esposito, Bob Waldes, Michelle Peters Coville, Christopher Cronin, James Chong, Janet Matula, Dina Urveta, Amanda Aragon, Ivan Ramirez and Ember McGowan

2 speaker slips submitted in opposition – Barbara Gordon and Judi Strang

HEARING OFFICER ITEM 6 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-14-058. RESOLUTION NO. HO-6747

Project No: 368304

51:29 Commissioner Golba The applicant [Peterson] requests a continuance and thanks staff for the "remarkable job they did in moving this project through the system so fast. *[Hmmm. Why did DSD move this project through the system so fast?]*

52:05 Vicki Estrada, Estrada Land Planning, Agent for the Applicant on behalf of the continuance citing "this is a very important issue really would like to have the entire commission present. I know there's a lot of people in the audience on both sides and I hate to do that, and the media as well. It is such an important issue we would respectfully request a continuance to the next available Planning Commission date."

52:56 Commissioner Golba "To frame this for the Commission, I am sitting on a boat load of speaker slips both for and against. With each one getting 3 minutes we would go well past the time that we would have a quorum here to decide this."

53:17 Commissioner Wagner presents a Motion to Continue to January 29, 2014.

59:40 Barbara Gordon, Appellant "Well I'm sorry that it's not going to be heard today. We have so many people who have taken their time to come down here. We have all these people from South Bay that are opposed to the project, we have San Diegans for Safe Neighborhoods, what do we do? People don't have endless days to take off for this project to come down and express their opinions."

1:01:22 Carol Green "I'm not opposed to the continuance, but I would request that the speaker slips be put into the record in case those here today cannot make it to the continued date."

1:02:03 Commissioner Whalen When people come next time I want to hear where the residences are because when I see non-resident speakers it makes me wonder what's going on here.

Golba: Generally speaking, the speaker slips do have that information as well too when they fill it out properly. We can enforce that from the podium as well.

1:02:24 Commissioner Quiroz I have to agree with the last speaker and request that we do move the copies of the speaker slips to the next hearing for the record.

Golba: I would agree. We have way too many speakers and if we open this up today, we won't have all the Commissioners so in fairness to everyone the vote will be to schedule this at our next meeting on the 29th where we can be guaranteed having all 7 of us chime in on this item.

COMMISSION ACTION: COMMISSIONER WAGNER MADE THE MOTION TO CONTINUE THIS ITEM TO JANUARY 29, 2015. Commissioner Whalen seconded the motion. The motion passed by a vote of 7-0 with Commissioners Golba, Haase, Austin, Quiroz, Peerson, Wagner and Whalen voting yea.

2015/01/29 Planning Commission Minutes

2015/01/29: ITEM 6: A Green Alternative Appeal Hearing Officer's 2014/10/15 ITEM 6 decision.

18 speaker slips submitted in favor – Irene Olvera Gomez, Lance Rogers, Zachary T. Lazarus, Douglas Cristafo, David R. Blair, Julie Gallari, Cheri Hass, Jill Schrecongost, Joe Esposito, Bob Waldes, Michelle Peters Coville, Christopher Cronin, James Chong, Janet Matula, Dina Urveta, Amanda Aragon, Ivan Ramirez and Ember McGowan

2 speaker slips submitted in opposition – Barbara Gordon and Judi Strang

HEARING OFFICER ITEM 6 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-14-058. RESOLUTION NO. HO-6747

DSD CONTACT: Edith Guiterrez

PROJECT NUMBER: 368304

DSD TO HEARING OFFICER RECOMMENDATION: HO-14-058 "APPROVE Conditional Use Permit No. 1298258"

HEARING OFFICER: Ken Teasley @ page 49

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-14-083 @ Page 1 "DENY the appeal and UPHOLD the Healing Officer's decision to APPROVE Conditional Use Permit No. 1298258."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures. This project is not pending an appeal of the environmental determination. The environmental exemption determination for this project was made on August 14, 2014, circulated for public review and the opportunity to appeal that determination ended on August 28, 2014.

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: No NORA Public Circulation Record was found. A Notice of Exemption was filed with the County Recorder @ Page 24.

APPELLANT: Barbara Gordon

Issues on Appeal

Page 7: Appeal Application from Barbara Gordon

Page 33: Notice of Exemption filing. "REASONS WHY PROJECT IS EXEMPT: The City of San Diego conducted an environmental review that determined that the project would not have the potential for causing a significant effect on the environment. The project meets the criteria set forth in CEQA Section 15303, which allows for the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. In addition, the exceptions listed in CEQA Section 15300.2 do not apply."

[When this CEQA determination was challenged in a 2014 case, UNION OF MEDICAL MARIJUANA PATIENTS,INC., v CITY OF SAN DIEGO (37-2014-00013481-CU-TT-CTL) and through the SUPREME COURT OF CALIFORNIA (S238563) decision in August 19, 2019, in which the Court found that the City of San Diego's interpretation of any cannabis related licensing would not qualify as a "project" thus would not require a CEQA determination to be incorrect. The Court's response to their arguments was that "The California Environmental Quality Act, Public Resources Code sections 21000 et seq. (CEQA), applies to "projects," a term defined by statute. In general, a project is an

activity that (1) is undertaken or funded by, or subject to the approval of a public agency and (2) may cause "either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (Pub. Res. Code, § 21065.)

Because the City found CEQA inapplicable to the Ordinance's enactment, it conducted no environmental review prior to its adoption. The City's finding explained its reasoning: "The . . . Ordinance is not subject to [CEQA] . . . , in that it is not a Project . . . . Adoption of the ordinance does not have the potential for resulting in either a direct physical change in the environment, or reasonably for[e]seeable indirect physical change in the environment. Future projects subject to the ordinance will require a discretionary permit and CEQA review, and will be analyzed at the appropriate time in accordance with CEQA." This as well as what will be found in every single adult-use cannabis project that the City of San Diego processed relied on this logic, even after the Supreme Court decision having not abided by the rule of law that had been imposed on them.

While no cannabis license applications have required that an environmental review be conducted the courts have determined that if a party was to challenge the City's Notice of Exemption they would have 10 days to do so (see page 41) or that decision would stand.]

OWNER: Roll Drive Limited Partnership is listed as Owner Ownership Disclosure Statement @ Page 47 showing % IRE Enterprises, Michael A. Volt, President

APPLICANT: Dr. David R. Blair and Douglas Christofo listed as Tenants @ Page 46

CUP NUMBER: 1298258

CUP HOLDER: David R. Blair

SITE DEVELOPMENT PERMIT NUMBER: NA

STATUS: Issued on 2015/02/03

CITY COUNCIL DISTRICT: 8

PLAN AREA: Otay Mesa

STAFF: Edith Gutierrez

Speaker slips in favor of the project, opposed to appeal submitted by Greg Magdoff, Rick Krowkowski, Chris Seigel, Leticia Olvera, Bertram Roberts, Laura Perches, Alex Scherer, Michelle, Beauchaup, Douglas Luke, David M, Yova Garces, JoAnne DiRito, Daniel Tideman, Theresa M. DiRito, Terence E. Hagans, Laurie A. Hagans, Wendy Faucett, Catherine Behan, Kelley Taylor, Carolyn Mooney, Darlene Morlett, Charles Torok, Anita Burch, Holly Parker, Debbie Sposato, Cindy Elliott, Michael Kuester, Jeff McCall, Melissa Cronin, Margaret Gibert, Chris Cronin, Lance Rogers, Paul Nager, Terrie Best, Lynne Sandoval, Martha Sullivan, Cynara Velazquez, Scott Levin, James Schmachtenberger, Marcee J. Levin, Michael Volt, David R. Blair, Vicki Estrada, Sgt. Susan Billard, Dr. Robert Walder, Zachary T. Lazarus, Joe Esposito, Janet Matola, Paul Mueller, Pearl Ayon, Anjanette Perkins, Ivan Ramirez, Ember McGowen, Douglas Cristofo, Dale Walder, Jaron Haynes, Irene Gomez and Nick.

Speaker slips in opposition to the project were submitted by Raquel Moran, Katie Poponyak, Carol Green, Jan Asaro, Dean Scott, Christine Griffiths, Peggy Walker, Bertha Alicia Gonzalez, Judi Strang, Scott Chipman, Maria Ofelia Angel, Jon I. Fellers, K. Lippitt and Barbara Gordon.

10:08 Commissioner Golba opens ITEM No. 6

11:24 Edith Gutierrez and Chris Larson DSD Project Presentation "as this is our first appeal of an MMCC to be brought forth I have included a brief background on state law, the discretionary process, the regulations and then I will present the appeal item…MMCCs must have a 1,000 foot separation from other MMCCs, minor oriented facilities, schools, churches and 100 feet from residential zones *[here is Gutierrez, in her own words, stating that residential separation of sensitive use is not measured to the property line but to the zone. This will be important later in the 4337 Home Ave testimony to Commissioner Boomhower where she states the DSD position is to measure between the property lines. Clearly in January 2015 what the Ordinance requires for DSD to properly gauge that distance.]*…all notices containing the Project Managers information were mailed and posted per the land development requirements…staff is recommending to deny the appeal and uphold the Hearing Officer's decision to approve the CUP."

21:30 Commissioner Whalen "Is there any question about the standing of the appellant to raise the appeal?

A: (Shannon Thomas, City Attorney) "Any interested person or the applicant can file an appeal of the decision made by the Hearing Officer. The definition of an interested person is somebody who was present at the hearing and expressed interest at that hearing. Ms. Gordon was present at that meeting."

25:50 Barbara Gordon in favor of the appeal citing " I don't think this is an appropriate place for a business to sell marijuana out of a storefront."

28:06 Scott Chipman in favor of the appeal citing "regarding the process, because someone files an appeal that does not mean that those are the only arguments for an appeal because once an appeal is filed there may be other people who want to appeal but their choosing not to because there's an appeal that will give them an opportunity to speak and I am certainly one of those…I do think there is some bias in the staff reports…public safety is a land use issue…we are appalled at the pot shop approval process. It's abusing communities by ignoring public safety, the public safety determination is nonexistent. It's a bureaucratic checking of boxes…doing no real research providing no real evidence…SANDAG designates this area as a level 8 in terms of crime issues and that was not in the report. Why not? We know it. The County knows it. Why doesn't staff know it…Look, think about it, why are these people lining up to sign up for these applications when they don't even know what the final Ordinance or the requirements are even going to look like? Why? Because they don't care what the regulations are going to be. It doesn't matter to them because they're going to make money. It's all about money and I've had multiple City Councilman tell me personally, privately, in the halls, they know it's about money. The reason you are a citizen board is to provide a non-bureaucratic, human perspective on these types of issues. Public safety should be our highest priority. Please make it so and deny this CUP."

36:40 Judi Strang in favor of the appeal citing "…to the mostly small latino owned businesses that surround the proposed MMCC this is a horrible thing to happen to them."

38:17 Bertha Alicia Gonzalez in favor of the appeal citing "I wish this City would consider being a good neighbor with Mexico. Mexican families who visit us are very family oriented. They bring their children. I wish that you take that into consideration and do not give them the CUP as a privilege to operate in that area."

40:40 Peggy Walker in favor of the appeal citing "I feel that this is an inappropriate use for this center as it is a family-oriented center…I feel like the existing businesses are sacrificial lambs of a highly paid, well financed marijuana lobby."

42:48 Christine Griffiths in favor of the appeal citing "I have worked in an office building where there had been an illegal pot shop and it was definitely a negative experience for myself and the other businesses in my building… we had issues of safety with armed robberies during the middle of the day."

44:38 Dean Scott in favor of the appeal citing "I'm very concerned about the safety of the businesses around the proposed pot shop…i think the greatest predictor of responsible business behavior is present or current behavior. In fact, if you google the 2335 Roll Street the second item that comes up and for several other items afterwards is a marijuana storefront and its services, including deliveries. I think it is well within your directives that any storefront applicant should already not be engaged in illegal behavior as this particular applicant is."

45:48 Jan Asaro in favor of the appeal citing "this is so not a heavy industrial area. I'm so surprised it's been zoned with that title…I don't believe that the spirit of the pot shop ordinance has been met when putting these businesses in a family and children-oriented area. I ask that the permit be denied."

47:05 Carol Green in favor of the appeal citing "This is a community center where there is a Duty-Free store next to the proposed pot store. The Duty-Free store owner said having a pot shop next to them is a big problem as those who would buy marijuana in the US would, in some cases, take that marijuana into into Mexico where it is illegal. Please deny the permit."

48:45 Katie Poponyak in favor of the appeal citing "my concern is that this is a high crime area. It is the highest in physical disorder…I feel it's a disaster to put a pot shop in the middle of all that. It's already an area that needs some work."

49:58 Raquel Moran in favor of the appeal citing "this project is too close to Mexico and creates more problems…some of the people who support this don't live in our community. Please deny the permit."

52:30 Commissioner Wagner just to clarify, this question is to staff. It has been alluded to that the store is in operation. Can you confirm if that is the case?

A: (Edith Gutierrez) We went out there yesterday and the space is vacant. They are not open.

54:30 Dr. David R. Blair, Applicant in opposition to the appeal citing "I have taught 41 business ethics classes. We know right from wrong. We know what the Ordinance says. The reason that we floated to the first position is because every time the City requested something from us, we doubled it…I have touched the lives of thousands and thousands of young folks and I hope you will support our application."

57:43 Vicki Estrada in opposition to the appeal citing "I have been standing at this podium since 1975 presenting projects from Balboa Park to Barrio Logan but not once in all those years have I had a chance to work on a project that really directly improve somebody's pain and the reason I say that is I was asked by this extraordinary group of people to help obtain a conditional use permit? I did not hesitate because my wife Linda suffers very bad fibromyalgia, migraine and complex regional pains and was on daily massive doses of morphine derivative drugs when I suggested she go see a doctor about medical marijuana. She did. She got her card and now she's down to one day a month on dilantin. I have seen

firsthand the benefits of this…heavy industrial does allow commercial in it. It is a commercial use within an industrial zone…"

1:02:44 Sgt. Susan Billard, Security Expert and Law Enforcement Officer in opposition to the appeal citing "In Portland we have marijuana stores next door to schools and playgrounds. The biggest call I ever get at one of these shops is a shoplift. We don't have the overwhelming presence of crime around these medical marijuana shops. I have not been to an armed robbery with a shootout…for me, as a law enforcement officer and a mother of two, the setbacks you have in your Ordinance to schools, parks churches and residences would be ideal in Portland. We don't have those setbacks…"

1:05:44 Greg Magdoff, Founder PharmLabs in opposition to the appeal citing "Green Alternative has demanded they take the extra step to insure the health and safety of their patients through laboratory testing."

1:06:40 Zachory Lazarus co-founder of the Green Alternative, in opposition to the appeal citing "recently our application to conduct our cooperative has been appealed from someone who possesses a negative stigma against cannabis. This person doesn't give reason or any factual findings in her grounds for appeal…when given the privilege to operate with our conditional use permit, we will operate safely, ethically and serve patients in need of medical grade cannabis. We will facilitate prosperity, will better the quality of life of the patient community within the greater San Diego area. our non-for-profit community outreach intends to set the benchmark for others to follow. We will create new jobs. We will create new taxable income for the City and with your permission we'll give back to the City."

1:09:40 Dr. Robert Walder, Chief Medical and Financial Officer, Green Alternative in opposition to the appeal citing "there are multiple studies that provide a different opinion as to crime. The University of Texas at Dallas says that there is no correlation between medical marijuana legalization and any crime increases. This particular study tracked the crime rates across all 50 states between the years 1992 to present where 11 states had legalized marijuana for medical use…these results suggest that the density of medical marijuana dispensaries may not be associated with increased crime rates or that measures dispensaries take to reduce crime will prevent possible motivated offenders."

1:12:55 Vicki Estrada "With that it concludes our presentation. If you have any clarifying questions, we are available for that."

1:23:03 Commissioner Golba "Thank you for that Mrs. Estrada. I applaud you. That is, in 7 days, the quickest turnaround in this diversive products I've ever seen a consultant do in their lives. I can't even imagine that. (applause) *[This is a preferential nod, reinforced by the applause, from the Chairperson to someone and their group that is still in front of the Commission seeking a decision.]*

1:27:29 Michael Voight, Property Owner in opposition to the appeal citing "we enjoy a high occupancy rate because we choose our tenants carefully…the applicant is the right applicant, and they will do a good job…I care about the community and this is the right tenant at the right time at the right location."

1:29:36 Cynara Velazquez in opposition to the appeal citing "the zones that MMCCs are allowed in are very limited. There are 16-18 planning zones in San Diego. Of those zones, the only IL-31, IL-11, CC-21, CC-22, CC-23, CR-21 and CO-22 zones would allow for this use. That's a very limited number of zones… when you throw in the sensitive use setbacks you're left with a very small area of the City where these locations can exist. So small in fact that there is no possibility of even having an MMCC in districts 4, 5 or

9…it is extremely hard to find a location that meets that criteria…this is what the Ordinance was intending…the Green Alternative is not in violation of any statute or Ordinance that would prohibit them from running a delivery service. ”

1:34:48 Martha Sullivan in opposition to the appeal citing “it’s about time, 20 years since the passage of Prop 215.”

1:36:04 Terri Best, Americans for Safe Access (ASA) in opposition to the appeal citing “an ASA letter to urge the Planning Commission to deny the appeal from an out of area resident…a non-stakeholder should not be allowed to intervene at the last minute and disrupt the carefully researched decision of the City.”

1:38:25 Lance Rogers, Attorney in opposition to the appeal citing ”I’m very familiar with the law…and am honored to represent the Green Alternative and will work tirelessly to make sure this project stays in compliance.”

1:40:50 Margaret Gibert, from the Alliance for Responsible Medicinal Access (ARMA) in opposition to the appeal citing “…the appeal is baseless and the appellants simply disagree with the will of the voters which made medical marijuana legal…please reject this appeal.”

1:44:22 Michelle Beauchaup in opposition to the appeal

1:45:21 Dr. Laura Purchase in opposition to the appeal citing “I’m a board certified psychiatrist…we need to get street drugs out of the street… the threat to public safety are overdoses and not treating the chronic health issues such as cancer, seizures, HIV…not all doctors are unethical.”

1:47:52 Dr. Bertram Roberts husband of Dr. Purchase in opposition to the appeal citing “I support this medical cannabis movement. We need to have choices.”

1:48:56 Chris Seigel United Patients Alliance in opposition to the appeal citing “both of my parents passed away from cancer and firsthand I was able to see how cannabis made their lives more enjoyable and it took them off of the heavy opiates. Please reject the completely baseless appeal and support this applicant.”

1:50:31 Rick Krawkoski (wheelchair bound) cannabis patient activist in opposition to the appeal citing “addressing the opposition, basically these are non-profit organizations. There is no selling and buying, there is reimbursing for the medicine…we want to be taxed and regulated…studies come through everyday on the medical efficacy…they want to put in place patient-based standards…”

1:55:18 Commissioner Wagner “It’s been 18 years since CA made the choice, by voting on Prop 215, to regulate and create safe access for medical marijuana… I do not believe that medical cannabis dispensaries are exacerbating the problem of youth access to cannabis…make no mistake that the appellants in this case, San Diego Safe Neighborhoods and their appeal is absolutely a swift boat adulteration and perversion of public health and safety prevention. And the biggest flaw is making the comparison between illegal, nonconforming, not zoned appropriately dispensaries, that you are shutting down like whack a mole and a legal dispensary that has a system of checks and balances that an illegal dispensary does not have…it’s an apples and oranges comparison…the legalization of marijuana is, in either 2016 or 2018, a reality…with that I would like to make a motion to support the Hearing Officer’s decision and deny the appeal.” Seconded by Commissioner Quiroz

2:18:14 Commissioner Quiroz "…this Planning Commission does not have the authority to override the municipal code because of our own personal beliefs. I need to ask some questions which are just basic questions.

Q: The law requires the applicant to be a cooperative organized as a consumer cooperative per state law. Is it?

A: (Edith Gutierrez, DSD) That is correct.

Q: The law allows only 4 Medical Marijuana Consumer Cooperatives or MMCCs in each Council District. Are there currently 4 permitted MMCCs in District 8?

A: There are none

Q: The City Council determined that MMCCs are designated as commercial services. Does the Otay Community Plan allow for commercial services on this site?

A: Yes

Q: Is there anything in the General Plan that would prohibit an MMCC on this site?

A: No

Q: Is there anything in the Community Plan that would prohibit an MMCC on this site?

A: No

Q: Did the Community Plan Group vote to approve this application?

A: Yes

Q: Does the CUP require the applicant to comply, in full, with SDMC Section 141.0614(a-i)?

A: Yes

2:20:58 Commissioner Quiroz "…I find that the City Council has codified their belief that if all requirements of the code are met, that the development will not be detrimental to the public health safety and welfare but will in fact promote and protect the citizens of this City. I find that the proposed development complies with the land development code because it is a commercial service and those services are allowed…I find that the City Council has codified that this use is appropriate at the proposed location. Furthermore, I cannot find that the tenants were denied due process since notices were mailed, placed in publications at the site. The tenants had no need to talk to the Hearing Officer since (1) the Project Managers information was included and (2) the Hearing Officer presides over a quasi-judicial hearing and so ex parte communications would have been inappropriate. I understand the appellants misgivings. there are compelling arguments to be made on both sides of this issue but that is not relevant at this hearing today. As a Planning Commissioner I do not have the luxury of an opinion nor do I have the authority here to ignore the law. The fact is that the applicant has met all of the requirements placed on them by the laws passed by the City Council and so I will be approving this Motion today."

2:22:34 Commissioner Haase questions and suggestions for bilingual notices that include the Spanish community. Q&A;

Q: Can the City impose conditions on the applicant if they're is the potential for creating odors or anything else?

A: (Shannon Thomas, City Attorney) The City can pursue noxious odor as a nuisance. There are thresholds under CEQA for odors, this was found to be exempt from further review under the California Environmental Quality Act.

Q: Then to staff, if there were a problem with nuisance odors because it was something we simply didn't anticipate, is that something that can be remedied through code compliance or something else?

A: (Chris Larson, DSD) There are regulations contained in Chapter 14 of the Land Development Code that deal with air contaminant regulations including smoke and other things that could be enforced by the City.

Q: This is our very first facility for us to make a decision on to make sure that we do it right and that's why it's a Conditional Use Permit to deal with these potentially secondary impacts.

2:31:15 Commissioner Golba "And I think for the record I noticed on our upcoming agenda, Vicki is bringing us an adult entertainment in Balboa Park next week (laughs and Vicki is wagging her finger at him during this) for the trifecta. No for the record I'm joking there so before someone takes that seriously. She's trying to prove how multi-dimensional she truly is."

2:31:40 Commissioner Whalen " Most of what I was going to say has already been said but there are a couple of points I'd like to make. This certainly hasn't been rushed. After 20 years and a lot of work here we are. If this is at least an important if not a historic decision that is setting precedent for all the facilities that are to follow, I'm pleased to be here for this. I hesitate to say that we want to end this on a high note (laughs) it's a good day. I have to say for the record I find the appellants' arguments unpersuasive. Frankly they made arguments for legal dispensaries by talking about what is going on at the illegal ones and if you're not going to put it in this location, where could you put it? And I do want to disclose that on the way down here I was on the phone with the County's Planning Director [Mark Wardlaw] and it came up in the discussion and they've had no problems with their facilities so far in the County and he encouraged us to move ahead. *[I find this to be an odd comment and one that needs to be checked out further. At that time the County had not been issuing licenses as there was a moratorium in place. For the County Planning Director to have made that sort of passing comment to Commissioner Whalen is not in concurrence with County policy at the time, especially when it is a comment being used to influence Commissioner Whalen's decision.*

My takeaway from this entire hearing is that the decision to grant the permit had already been made. What the Commission was doing, and I would not be surprised if they had already rehearsed the Q&A and issues with the applicant side and staff (there were no hiccups in any of Q&A's (Everyone was prepared. To this point consider Commissioner Quiroz's seemingly prepared statement beginning at 2:18:14 and the Q&A exchange she had with staff, was to get this through despite the opposition presence in a good cop (Quiroz) bad cop (Wagner) prepared response by the Planning Commission and DSD. When you also consider the rapport and show of support Chairperson Golba had with Vicki Estrada @ 1:23:03 or the joke he is making at 2:31:15 that is meant to show Estrada's talents in front of the Commission it's clear there is a working arrangement between these parties. And while these may seem like innocent remarks they should not be coming from the Chairperson who has the power to influence the hearing. Instead, what we

have was a Commission response that seems to create a sense of what had to be done and to chastise the appellant for bringing on the appeal. We saw the "highly qualified" applicant, with enormous numbers in support, march forward into the new world of Control, Tax and Regulate cannabis in San Diego. This is fine unless it was rehearsed and my sense, based on an analysis of the hearing, is that it was. It was a fait accompli designed to set the tenor of future applications (sadly it has) and the resistance that might come from those in opposition.]

2:32:54 Commissioner Peerson ``It's really our job to listen and to make an informed decision. You may not know it but we're volunteers, we're appointed by the mayor and confirmed by the City Council and we represent the City. We may live and work in various neighborhoods, but we represent all City residents. I want to applaud the property owner and tenant that you're the first to come before us *[more salutations from the Commission]* because you've met and exceeded the CUP requirements…you've also set the bar very high. I will now be looking for the same from others that come forward, so I want to say for the record this is what I want all facilities to uphold in order for me to make the findings of a Conditional Use Permit for the health and safety of the residents in San Diego. I want to thank the people that came forth to talk on behalf of a patient's perspective. The importance of reputable service and safe products is paramount. It is medical marijuana…this has been a very thoughtful and open debate. I appreciate everyone's input. The findings in my opinion can be met. There are no deviations requested. The location is appropriate, and I will support the project and deny the appeal."

2:34:30 Commissioner Austin "I applaud the debate that has gone on.

Q: What happens in enforcement if over the course of the next 5 years conditions are not met?

A: (Edith Gutierrez, DSD) There is an amendment in place in Chapter 4 regarding enforcement action if the conditions are not met.

A: (Shannon Thomas, City Attorney) There are already existing remedies in the Land Development Code if the permit conditions are not complied with which would go through the Neighborhood Code Compliance division for resolution.

2:37:46 Commissioner Golba I think this is important on our first one of who knows how many we end up seeing that we get it right and that we take the time to lay out our position. I do think this is a good example and I commend the applicant for bringing this forward that very well meets all the requirements, and beyond what we're supposed to see here. In many respects this may be the easiest one we see as far as location and land use principles alone, certainly the applicant's willingness to meet and exceed those requirements…we don't have a personal opinion on these matters. We're here to judge this on a land use decision…unless anybody else has any comments let's go ahead and vote. The Item passes 7-0." (Applause)

COMMISSION ACTION: COMMISSIONER WAGNER MADE THE MOTION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO APPROVE CONDITIONAL USE PERMIT NO. 1298258 WITH TWO MODIFIED CONDITIONS. CONDITION NO. 16 SECURITY SHALL INCLUDE OPERABLE CAMERAS AND A METAL DETECTOR TO THE SATISFACTION OF THE SAN DIEGO POLICE DEPARTMENT, ALARMS, AND AN ARMED SECURITY GUARD (THE ARMING OF THE GUARD IS SUBJECT TO THE SATISFACTION OF THE DEVELOPMENT SERVICES DEPARTMENT, THE SAN DIEGO POLICE DEPARTMENT, AND THE OFFICE OF THE CITY ATTORNEY). THE ARMED SECURITY GUARD SHALL BE LICENSED BY THE STATE OF CALIFORNIA AND

BE ON THE PREMISES 24 HOURS A DAY, SEVEN DAYS A WEEK. THE SECURITY GUARD SHOULD ONLY BE ENGAGED IN ACTIVITIES RELATED TO PROVIDING SECURITY FOR THE FACILITY, EXCEPT ON AN INCIDENTAL BASIS. CONDITION NO. 20. THE OWNER/PERMITTEE OR OPERATOR SHALL MAINTAIN THE MMCC, ADJACENT PUBLIC SIDEWALKS, AND AREAS UNDER THE CONTROL OF THE OWNER OR OPERATOR, FREE OF LITTER AND GRAFFITI AT ALL TIMES. THE OWNER OR OPERATOR SHALL PROVIDE FOR DAILY REMOVAL OF TRASH, LITTER, AND DEBRIS. GRAFFITI SHALL BE REMOVED WITHIN 24 HOURS. Commissioner Quiroz seconded the motion. The motion passed by a vote of 7-0 with Commissioners Golba, Haase, Austin, Quiroz, Peerson, Wagner and Whalen voting yea.

2015/03/03 CITY COUNCIL ENVIRONMENTAL APPEALS ITEMS 330-335

6:57:10 Edith Gutierrez, DSD Project Manager and Anna McPherson, DSD Senior Environmental Planner re the Appeals for, and the validity of, the Environmental Health Determinations

ITEM 330: City Council Minutes for CEQA Appeal @ LIVING GREEN COOP MMCC, Project No. 379530

2015/02/12: DSD Memo to City Council re CEQA Determination at 8863 Balboa Ave.

7:35:15 Ted Griswold with Procopio, Cory, Hargreaves & Savitch LLP speaks in favor of the appeal. "…that grant of an exemption is not absolute…this project in this location designed as it is…very unusual layout in an unusual location with a lot of traffic coming in and out of here…do the math, find out how much of a parking problem this is going to be ***[these are the exact arguments that could and should have been made at 6220 Federal Blvd. Today we see the increase in injury-accidents that have occurred since that license was issued]***

7:38:05 Scott Chipman speaks in favor of the appeal. "…public health and safety is covered under CEQA…"

7:41:52 Barbara Gordon speaks in favor of the appeal. "…we are seeing an increase in plastic vials being improperly disposed of in our schools and parks…there are environmental, health and safety consequences to granting these licenses…"

7:43:07 Carol Green speaks in favor of the appeal. "…our youth are buying cannabis from licensed dispensaries…"

7:45:10 Judi Strang speaks in favor of the appeal. "…the City Attorney has an active case against this dispensary as they are operating unlicensed…they just recently closed…it's wise to do business with those who do not have a reputation for operating illegally and breaking the law."

7:45:43 Robin Madaffer (Counsel for the Applicant-San Diego Land Lawyers) speaks in opposition to the appeal.

7:46:50 Mary Nuesca, Office of the City Attorney references the code enforcement issue the City is having with this applicant and how that issue should have "no action" effect on the CEQA determination.

7:47:34 Councilmember Scott Sherman asks DSD staff if it's common practice to exempt a project from CEQA when the overlay zone type A requires it? "I know the City Attorney has warned us about a few things here but let's just say I have some serious problems with this applicant as they try to use the legal process to dealy everything to get through the CUP process… they can say they're operating legally but we all know they're not…not exactly good business partners…" With that being said he puts forth a motion to deny the appeal on CEQA grounds only.

7:48:41 Councilmember Myrtle Cole speaks to her past and current concerns about the city working with applicants who had been previously sanctioned for operating illegal dispensaries. Ms. Cole overcomes her objection by agreeing to deny the appeal and rely on Staff's determination that a CEQA report is not necessary for this project. "I do not believe the City should be obligated to approve permits for businesses that have shown total disregard for the law, being a former police officer, I don't agree with that…why should we reward a business for breaking the law…" Council voted 7-1 to approve the denial with Councilmember Lorie Zapf voting NO to uphold the appeal.

MOTION BY SCOTT SHERMAN TO DENY THE APPEAL AND UPHOLD THE ENVIRONMENTAL DETERMINATION. Second by Myrtle Cole.

Passed by the following vote:
Yea: Sherri Lightner, Todd Gloria, Myrtle Cole, Mark Kersey, Chris Cate, Scott Sherman, David Alvarez;
Nay: Lorie Zapf;
Recused: (None);
Not Present: Marti Emerald.

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ITEM 331: City Council Minutes for CEQA Appeal @ GLASS TEK Entities MMCC, Project No. 368509

8:00:39 ITEM 331 - CEQA Appeal for GLASS TEK ENTITIES MMCC

8:03:34 Scott Chipman in support of the appeal mentions another health hazard "cannabis cardiotoxicity."

8:06:21 Judi Strang in support of the appeal had confused ITEM 333 with ITEM 331. This is the "chain of pot shops" with multiple applications she is referring to. "all the appeals have been filed by competing pot shops, applicants and their attorneys."

8:08:02 Janet Asaro in support of the appeal that these locations are somewhat the "least offensive locations…marijuana businesses are in the commission of violating federal law on a daily basis"

8:10 Carol Green in support of the appeal "Make good decisions for our community.' The appeal is denied on a 8-0 yes vote.

MOTION BY CHRIS CATE TO DENY THE APPEAL AND UPHOLD THE ENVIRONMENTAL DETERMINATION. Second by Todd Gloria.

Passed by the following vote:
Yea: Sherri Lightner, Lorie Zapf, Todd Gloria, Myrtle Cole, Mark Kersey, Chris Cate, Scott Sherman, David Alvarez;
Nay: (None);
Recused: (None);
Not Present: Marti Emerald.

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ITEM 332: City Council Minutes for CEQA Appeal @ SD Health & Wellness MMCC, Project No. 369478

7:02:47 Judi Strang in favor of the appeal

7:04:30 Scott Chipman in favor of the appeal "these are a checkbox approval…do not backdoor legalize marijuana as you are doing."

7:10:43 Carol Green in favor of the appeal. "BHO is being manufactured somewhere"

7:12:17 Councilmember David Alvarez brings a motion to deny the appeal "per the conclusions presented by staff under Section 15303 of CEQA Guidelines." The motion was carried unanimously on a 8-0 vote.

MOTION BY DAVID ALVAREZ TO DENY THE APPEAL AND UPHOLD THE ENVIRONMENTAL DETERMINATION. Second by Sherri Lightner.

Passed by the following vote:
Yea: Sherri Lightner, Lorie Zapf, Todd Gloria, Myrtle Cole, Mark Kersey, Chris Cate, Scott Sherman, David Alvarez;
Nay: (None);
Recused: (None);
Not Present: Marti Emerald.

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ITEM 333: City Council Minutes for CEQA Appeal @ 7625 Carroll Road MMCC, Project No. 370687

7:50:10 ITEM 333 - CEQA APPEAL for 7625 CARROLL RD.

7:51:00 Anna McPherson, DSD Environmental Specialist explains how although this project is larger than the 2500 sq-ft CEQA exemption it is located in an "urbanized area", citing Section 15060 and 15387 which she believes makes this project CEQA exempt under Section 15303.

7:53:05 Scott Chipman in support of the appeal speaks about the City of Vallejo not accepting taxes from medical cannabis businesses.

7:55:12 Carol Green in support of the appeal speaks about the environmental impact she cites issues with drugged driving, the limited parking and access.

7:55:45 Judi Strang in support of the appeal echoes Carol Green's statement that the parking is horrific for this project. The project is located on the second floor and the building has no elevator. She goes on to bring up "the the applicant, Michael Rollins of Rollins Construction Consulting is listed on 4 different projects. When asked at a previous hearing where Michael Rollins was, the response was 'he's just a front for the organization.' So again, I have concerns about the ethics of the people opening the pot shops, having fronts for their applications…"

7:57:04 Arado Calla in opposition to the appeal states that Judi Strang has mistaken his project with another one.

7:57:38 Matt Compton in opposition the appeal representing the Carroll Rd application stating that he believes the appeals are a delay tactic being used by their District 6 competition and that while they are 100% ADA compliant how it that the competing projects are not ADA compliant but are serious contenders to licenses being sought under a first come first served basis? "If they are not ADA compliant,

how did they get to this point?" Councilmember CATE follows with questions to staff re what steps the applicants need to take assuming the appeal is denied and follows with a motion to deny the appeal. It is seconded and passed on a 8-0 yes vote to deny the appeal

MOTION BY CHRIS CATE TO DENY THE APPEAL AND UPHOLD THE ENVIRONMENTAL DETERMINATION. Second by Sherri Lightner.

Passed by the following vote:
Yea: Sherri Lightner, Lorie Zapf, Todd Gloria, Myrtle Cole, Mark Kersey, Chris Cate, Scott Sherman, David Alvarez;
Nay: (None);
Recused: (None);
Not Present: Marti Emerald.

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ITEM 334: City Council Minutes for CEQA Appeal @ 8863 Balboa Ste E MMCC, Project No. 368347

2015/02/12_DSD to City Council Memo re CEQA Appeal

7:13:29 8863 Balboa Ste E MMCC CEQA APPEAL

7:16:28 Alexander Garza in opposition to the appeal. He gives an emotional show of support for the applicant, Michael "Biker" Sherlock.

7:19:00 Scott Chipman in favor of the appeal. "I'm flabbergasted…what is wrong with the city?…there is an elephant in the room…what you are doing is wrong…who would you point your fingers at when these things go wrong? It's you!"

7:22:47 Carol Green in favor of the appeal. "do you feel like you're swimming upstream…consider the rest of your ordinance…I'm sure it's going to be all green lighted."

7:24:35 Judi Strang in favor of the appeal. "the problems that pot shops are going to bring that are really going to affect the environmental quality in the neighborhoods in which they're located."

7:26:10 Adrian Kwitkowski in opposition to the appeal and on behalf of the applicant. "Our project team includes our Manager Michael Sherlock, our Architect Ahbay Schweitzer and our attorney Evelyn Heidelberg with Procopio, Cory, Hargreaves & Savitch LLP (Evelyn works for herself now at Heidelberg Law @ 858.357.3476)

7:27:01 Councilmember Chris Cate brings a motion to deny the appeal. It was carried unanimously on an 8-0 vote.

7:28:07 Councilmember Todd Gloria describes why he votes to deny the appeal as these are CEQA exempt projects.

MOTION BY CHRIS CATE TO DENY THE APPEAL AND UPHOLD THE ENVIRONMENTAL DETERMINATION. Second by Scott Sherman.

Passed by the following vote:
Yea: Sherri Lightner, Lorie Zapf, Todd Gloria, Myrtle Cole, Mark Kersey, Chris Cate, Scott Sherman, David Alvarez;
Nay: (None);
Recused: (None);
Not Present: Marti Emerald.

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ITEM 335: City Council Minutes for CEQA Appeal @ 3487 Kurtz MMCC, Project No. 368326

8:15:57 3487 KURTZ ST MMC CEQA Appeal

8:18:56 Scott Chipman in support of the appeal citing staff recommendations for the City Council "choosing to tie your own hands with CEQA exemptions that do not take into consideration public health issues…this industry, more than any other industry, in the State of California is out of control…we have to make every mistake ourselves,,,"

8:22:20 Judi Strang in support of the appeal citing this is another ADA issues with the proposed pot store being located on the second floor in a building without an elevator.

8:24:05 Carol Green in support of the appeal discusses how the CEQA analysis should take into consideration public health and safety concerns.

8:27:32 Councilmember Lorie Zapf asks for her memory to be refreshed. "These applicants, there are a lot of them, is it really first come first served. Edith Gutierrez then responds as to how these are processed only in the order in which they are received…I reluctantly make a motion to deny the appeal based on staff recommendation." Smart Growth and Land Use will be following up with those issues that would go to public health and safety issues. The motion to deny the appeal passes 8-0.

MOTION BY LORIE ZAPF TO DENY THE APPEAL AND UPHOLD THE ENVIRONMENTAL DETERMINATION. Second by Sherri Lightner.

Passed by the following vote:
Yea: Sherri Lightner, Lorie Zapf, Todd Gloria, Myrtle Cole, Mark Kersey, Chris Cate, Scott Sherman, David Alvarez;
Nay: (None);
Recused: (None);
Not Present: Marti Emerald.

2015/03/12 Planning Commission Minutes

2015/03/12: **ITEM 8: 3452 Hancock MMCC (Point Loma Consumer Patient Cooperative)** Appeal Hearing Officer's 2014/12/03 ITEM 8 decision.

11 speaker slips submitted in favor – Mike Sherlock, Mike Ryan, Adam Knopf, Abhay Schweitzer, Margaret Gibert, Alexander Garza, Matthew Freeman, Gina Austin, Gia-Rose Strada, Jim Bartell and Kristine M. Byers

22 speaker slips submitted in opposition –Scott Chipman, Joy Greenfield, Brandy Siebuhr, Robert Jones, Dana Gagnon, James Schmactenberger, Duane Bernard, Hank Monroe, Courtney Bernard, Peggy Walker,

Gerald Gilbert, Mike Shapouri, Kathy Lippett, Carol Green, Thomas Perkins, Anjanette Perkins, Donna Jones, Janet Asaro, Karen Lenyoun, Hollie Holda, Greg Hobb and Jessica McElfresh

HEARING OFFICER ITEM 8 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-14-072. RESOLUTION NO. HO-6758

DSD CONTACT: Edith Guiterrez

PROJECT NUMBER: 368344

DSD TO HEARING OFFICER RECOMMENDATION: HO-14-072 "APPROVE Conditional Use Permit No. 1377388."

HEARING OFFICER: Ken Teasley

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-15-015 "Deny the appeal and Uphold the Hearing Officer's decision to Approve Conditional Use Permit No. 1377388 with modified conditions."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19, Section 15303, New Construction or Conversion of Small Structures. This project is not pending an appeal of the environmental determination. The environmental exemption determination for this project was made on August 27, 2014, the opportunity to appeal that determination ended on September 11 , 2014."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24004654 @ Page 22.

APPELLANT: Scott Chipman and Donna D. Jones, Esq. Shepard, Mullin, Richter & Hamilton, LLP. on behalf of D&D Cooperative

Issues on Appeal

Page 4: "The City of San Diego's Development Services staff reviewed the 1,000 foot radius map and 1,000 foot spreadsheet exhibit provided by the applicant identifying all the existing uses. Staff determined that the proposed MMCC met all applicable development regulations, including the minimum distance requirements. Although there may be children present at nearby businesses, they do not meet the definition of minor-oriented facility. "Minor-oriented facility" means any after school program, teen center, club for boys and/or girls, children's theater, children's museum, or other establishment where the primary use is devoted to people under the age of 18. Primary use means the allowed use on a premises that occupies a majority of the area of the premises.

Page 6: The applicant is currently affiliated or operating an illegal dispensary. Staff Response: Per SDMC Section §121.0311, a violation of the Land Development Code authorizes the City to withhold issuance of City permits for site specific applications. The proposed MMCC located at 3452 Hancock Street does not have an open Code Enforcement Violation. Staff has verified that the 832 square foot tenant space is currently being used as an office and not an unpermitted marijuana dispensary. Please refer to the letter from Gina M. Austin, Esq. (Attachment 16 at page 92) regarding the applicant's past affiliation with a dispensary.

Pages 31-33: TECHNE Abhay Schweitzer of Team Austin) architectural stamped drawing of site plans. *[This is one of the most obvious omissions Schweitzer didn't bring up during the 6220 Federal Appeal. If it wasn't necessary to have a licensed CA architect stamp your drawings why did Schweitzer do so and not insist the 6220 drawings had been stamped. This ultimately led to the "competing" 6220 project being approved and his 6176 Federal Blvd. project, being denied as it was within 1,000 ft of the 6220 project.]*

Page 36: Ownership Disclosure Statement showing Sinner Brother Inc., as the owner, signed by John Rickards, President on 04/23/2014. *[Several years later a class action lawsuit was filed against Adam Knopf et al and neither Sinner Brother Inc or Rickards are to be found. Instead the shell companies named in the complaint are management companies owned by Gina Austin clients, such as Salam Razuki who could not qualify for a license as he had been sanctioned for running illegal dispensaries and would go on to be convicted in federal court for conspiracy to kidnap his partner, Ninus Malan, in these dispensaries but would assert his undisclosed ownership "on paper" interests (see pages (5:22-6:15) by use of the strawman practice.*

The Class Action ended up in an agreed payment to those who had not been paid as members of Knopf's not-for-profit cooperative. The problem with ANY kind of agreement that went to not having distributed those members shares is that Knopf, and all the Team Austin participants i.e the shell companies, were violating the law by treating this dispensary as a for-profit enterprise.]

Page 37: Ownership Disclosure Statement showing Point Loma Patient Consumer Cooperative as the owner, signed by Adam Knopf on 04/23/2014.

Page 43: Valley View Casino Center letter to Edith Gutierrez re their opposition to the new MO project citing, among other things the heavy traffic and congestion from their swap meet business that will only be exacerbated with the addition of a high-volume cannabis dispensary along this Thorofare. This acknowledgment of how parking and congestion has not been dealt with very well by DSD and the Planning Commission is illustrated in this statement years later by Commissioner Whalen @ 2:31:55 on the 6220 Federal Blvd. project.

Page 49: In conjunction with Jessica McElfresh…same day applicants.

Page 50: The process that is being followed is inequitable and arbitrary. [This is a recipe for pay-to-play corruption.]

Page 51: "A number of issues must be examined when reviewing a Cooperative application in order to make the required CUP findings, as well as meet the requirements under the MMCC Ordinance. This includes, but is not limited to, suitability of the buildings proposed to house the Cooperative, **owner and operator's criminal and professional background, whether the applicant has previously or is currently operating an MMCC cooperative in violation of the City's rules and regulations,** [emphasis added] physical onsite restrictions (i.e., access/egress, traffic circulation, ADA compliance, convenience and configuration of parking, security camera visibility), and the appropriateness of the physical location in the context of the surrounding neighborhood and uses." [McElfresh represents Geraci in the 6220 Appeal and he had been sanctioned for operating an MMCC in violation of City's rules and regulations.]

Page 52: “C. The Fact Applicants Currently Operate or Are Affiliated with Dispensaries which Are Operating Illegally, in Violation of the City's Municipal Code.”

Page 54: “This is an opportunity for the City to take the lead in promoting the rights of the community and of patients who may benefit from medical cannabis by selecting the very best Cooperatives possible - and not those who by virtue of expedience, accident, or arbitrariness have been placed at the front of the line. The City would be better served by considering the merits of each prospective MMCC application, rather than its order in line pursuant to a less than clear, orderly, and transparent review process.”

Page 68: Kurtz Street Cooperative Appeal Application

Page 69: Attorney Timothy D. Martin on behalf of Kurtz Street Cooperative cites the reason for his Appeal was that, “The Project Application and The Staff Report Recommending Approval of the Project Were Based On Materially Erroneous and Misleading information.”

Page 70: “Unfortunately, City staff relied upon this erroneous and misleading information in their preparation of the Staff Report for the Project (REPORT NO. H0-14-072) (the "Report"), and also in the CUP Resolution and other pertinent Project review documents and did not perform any independent review to verify the accuracy of this information.”

“By relying upon and repeating various factual errors and inaccuracies regarding the Project and the Project site, the Report and other Project documents were and are fatally flawed. Notwithstanding his receipt of this critical information at the December 1 2014 hearing, the Hearing Officer failed to consider these issues, and approved the CUP for the Project on December 3, 2014. Thus, the Hearing Officer's decision was based on factual errors, and the findings underpinning the Project's CUP are not supported by relevant facts.”

[This is a pattern in DSD when they have already decided who is going to get the CUP and who is not.]

Page 92: Attorney Gina Austin’s reply to Appeal issues.

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-15-015 at page 6. “Staff recommends the Planning Commission deny the appeal and uphold the Hearing Officer's decision with the modified conditions.”

OWNER: Sinner Brother, Inc. @ Page 36 John Rickards, President

APPLICANT: California Consumer Cooperative CA 8667898 @ Page 37 with Point Loma Patient Consumer CO-OP as Tenant

CUP NUMBER: 1377388

SITE DEVELOPMENT PERMIT NUMBER:

CUP HOLDER: Adam Knopf

STATUS: Issued 04/08/2015

CITY COUNCIL DISTRICT: 2

PLAN AREA: Midway/Pacific Highway Corridor

STAFF: Edith Gutierrez

Speaker slips in favor of the project, opposed to appeal submitted by Michael Morton, Kristine Byers, Gina Austin, Alec Dixon, Abhay Schweitzer, Tiffany Knopf, Adam Knopf, Adrian Kwiatkowski, Nathan Winorur, Tamara Leetham, Andy Lambert, Brad Talbert, Michael Sherlock, Bradford Harcourt, Margaret Gibert.

Speaker slips in opposition to the project, in favor of the appeal submitted by Cynara Velazquez, Chris Siegal, Roberto Torres, Humberto Peraza, Ashlee Santos, Will Senu, Dale Boyer, L. Williams, Chris S, Corey B, Chet W, Donna Jones, Hollie Holda, Gregg Holda, Linda Nunes, Thomas Perans, Luis H, Jessica McElfresh, Marcos Getchell, Anjanette Perkins, Peggy Walker, Daniel Smith, Barbara Gordon, Nancy Logan, Judy Strang, Benjamin Zobal, David Demien, Rado Kalla, Scott Chipman, Kathy Lippitt, Karina Ledesma, Lydia Espinosa, Lance Rogers, John Panique, Steve Dillon, Joy Greenfield, Tim Martin, Gerald Gilbert, Mike Shapouri, Marcee Levin, Scott Levin, Dana Gagnon, James Schmachtenberger, Courtney Winters, Lavell B, Alec Thomas, D Bernard, Nick S, Eric B, Chris G and Louie H.

1:01:15 Commissioner Golba opens Item No. 8

1:02:05 Edith Gutierrez and Chris Larson of DSD present "Can you give me the definition of Minor Oriented Facility? The City Attorney provides that.

1:21:25 Tim Martin (Attorney) in support of the appeal citing "lack of information in the application and really wasn't looked at by the planning staff…what I want to identify as 3 or 4 very significant legal deficiencies with the project that individually and certainly collectively could form the basis for a very defensible approval of the appeal and a denial of the project…citing SDMC Section 126.0305 (b) the proposed development will not be detrimental to public health safety and welfare…it's commonly owned by the Sinner Bros…frankly I don't know how this was missed, it wasn't discussed at all in the application or the staff analysis and it's simply not true that these 4 parcels are not being operated as a common facility…I want to give some flavor as to the procedural defects and unfairness in this process as it relates to this application…strawman fake appeal that was put in at the last minute which allowed this applicant to leapfrog 4 months ahead of the others…I don't know exactly what's going on but you need to look at who benefits from, this is not a coincidence and someone has gamed the system, someone has played dirty pool and the City has effectively countenanced that unfair effect and it leads a rational observer to question the fairness of this application, this process and of all the applications…the fact is is that this applicant, there is a lot of evidence that has been brought to bear by others that this applicant has engaged in dirty tricks and has aspects of, including the primary applicants role in some illegal or improper activities that are relevant to the current determinations…it's clearly not the right site…"

1:35:43 Gerald Gilbert in support of the appeal speaks about the technicality of a lot merger which does not pass the litmus test without an involuntary merger of the 4 lots, with all buildings touching to form one, and all owned by one owner. "Once a building touches it becomes one structure."

1:39:40 Donna Jones refers her client Holly Holda - (Donna Jones Law) to speak in support of the appeal. "…nor will it help the community having an operator like Adam Knopf run a cooperative when he's already shown time and time again, he clearly doesn't care what the laws are…by being open illegally the past few years and recently in the past two weeks got shut down by City officials. Clearly the City would not want someone like this to run such a fragile new business.

1:46:05 Donna Jones speaks about the necessary background review and "we doubt that he would pass that background review…but at that point it's too late. Maybe the operator cannot operate that facility but you still have a permit granted to 3452 Hancock Street which is blocking anyone else within 1,000 feet of that location from proceeding with their application…as someone else has pointed out, it's questionable how 3452 jumped ahead in the process…we suspect it was due to the City's interpretation of Minor-Oriented Use which we were being told was an issue in our application but later it was determined that it was not an issue with the 3452 application yet we still lost our place in the process over this…the system isn't transparent enough to know why were behind 3452 when we had been ahead of them…it's confusing, inequitable and lacking transparency. "

2:06:50 Cynara Velazquez on behalf of United Patients Alliance in support of the appeal citing that the 3 competing applicants to 3452 all had been deemed "frivolous CEQA appeals" to tie up the applicants and push them behind the 3452 application, which 'escaped' the CEQA appeal an unfair advantage should it be approved. Please delay or deny this applicant so you can make the best decision amongst all 4 applicants. You have the DSD recommendation, but you are an independent body and you do have the right to make your own decision."

2:12:02 Dale Boyer in support of the appeal citing "the City's licensing process is being gamed, that the City isn't doing it's diligence to make sure the licenses are being held correctly that an independent investigator found in violation of SD Land Development Code 1210311."

2:15:09 Lance Rogers in support of the appeal on behalf of Joy Greenfield of the competing Light the Way Cooperative citing there has been staff error. "…there was an error in her NORA brought to DSD's attention by this applicant's attorney [Gina Austin] which had to be republished and during that 10 days there were mysterious strawman appeals filed which put her 4 months behind 3452 while the CEQA appeal had to be heard. The process has been unfair…this Commission has the authority to remedy that to which these 4 applicants are operating in a vague process that has allowed those who have gamed the system and that this Commission consider that Knopf was engaged in the operation of an unlicensed dispensary in January of 2015. The relevance is that it goes to affect public health and safety and welfare of this Conditional Use Permit…that is a condition, that is a component for your consideration."

2:20:05 Scott Chipman in support of the appeal citing "the City Council has put you [Planning Commission] in a difficult situation. They've put us all in a very difficult situation that allows drug dealers to sell marijuana in our communities and this is not appropriate…there's an ineffective enforcement process that allows drug dealers to operate for many months even years in a cat and mouse game that generates thousands of dollars in profits for the illegal business operators each day…our biggest concern is public health and safety…how come the background checks aren't done before the land use approval…How do we even know the people who are applying will qualify in the long run…you are a citizen review committee, you are the safety net for land use issues which impact public welfare. Allowing drug dealers to open a business is dangerous to public health and safety…neither Proposition 215 or SB 420 provided for the retail sales of marijuana…Adam Knopf was operating an illegal pot shop at 2830 Lytton Street… where is the process where we're going to shake out these people who have already proven themselves unworthy of the City's trust…what you should really be doing is going back to the City Council and tell them this is wrong you fix this and then lets and to fix it and then let's make decisions."

2:24:50 David Demian on behalf of 7625 Carroll Rd MMCC in support of the appeal citing "the applicant's backgrounds are relevant at the hearing and that this decision is not happening in a vacuum. All the competing applications should be weighed at the same time."

2:28:10 Benjamin Zobal in support of the appeal citing that he was asked to file CEQA appeals to delay the 3 competing applicants so that only one license could be granted in this region. *[What is telling is that he says he's uncomfortable naming those who put him up to this. Who would have benefitted? Adam Knopf and Team Gina Austin of course. Where are those appeals Benjamin filed?*

1) *3430 Hancock Street: On September 30, 2014, Benjamin Zoback filed a DS-3031 Appeal Application. What's particularly interesting about this appeal is he is spelling his name differently than he did at the 03/12/2015 Planning Commission hearing and he won't identify who is behind his strawman appeals as he's "uncomfortable naming them." Does his discomfort have anything to do with the fact that Zoback's appeal is stamped received by the City and Edith Gutierrez doesn't list Zoback as an appellant in the DSD Report to the Commission?*

   The only reason it's being seen here is because the 3430 applicant, Thomas Perkins, had been sent a copy of the DS-3031 appeal application which he saved and provided to us for this documentation. Why didn't Perkins attorneys bring up the fact that Zoback was using this tactic to delay Perkins' spot in the queue? Perhaps Perkins will have more to say on this. One school of thought could be the delay was made WITHOUT the Zoback appeal ever going before the City Council and DSD simply claiming that Perkins was behind Knopf in their Cycle Reviews. That would be my guess because to appeal 3430 Hancock and not 3452 might have raised some questions at City Council and most certainly would have looked bad for the record.

   To be clear, Thomas Perkins was unaware of these processing implications and anomalies until he started reviewing all the CUP project processes in August 2023 along with the Zobal/Zoback testimony with the authors of this Steering Document.

2) *3515 Hancock Street: On January 13, 2015, Resolution No. 309477 denied the appeal by Benjamin Zoback and upheld the environmental determination.*

3) *4645 DeSoto Street: On January 13, 2015, Resolution No. 309474 denied the appeal by Benjamin Zoback and upheld the environmental determination.*

4) *3225 Bean Street: On January 13, 2015, Resolution No. 309471 denied the appeal by Benjamin Zoback and upheld the environmental determination.*

5) *Certified Transcript of the Demian and Zobal Testimony*

6) *November 21, 2014, San Diego Union Tribune: New strategy of filing trivial appeals mars pot shop approvals. "The first nine appeals were filed by Benjamin Zoback, who the attorneys raised suspicions about. Zoback, who hasn't returned phone calls from U-T San Diego, isn't listed on any of the pot shop applications, but the attorneys suggested he could be working for applicants trying to block their competitors."*

2:29:20 Judy Strang in support of the appeal citing the CEQA appeals have created a jam-packed number of applicants, from multiple districts that are being delayed while others have not.

2:30:38 Nancy Logan, Victims Panel Unit of MADD in support of the appeal citing "that drug driving is a growing problem with 30% of drivers in fatal crashes having one or more drugs in their system with marijuana being the most prevalent." *[with what looks to be the passage of AB-374 there will be onsite consumption, entertainment, and packaged food. Ms. Logan's concerns will only have increased with the advent of these relaxed conditions for the licensees]*

2:31:50 Barbara Gordon Friday Night Live, Youth Advisor, in support of the appeal citing "the City's ordinance does not go far enough to protect the public nor our kids."

2:33:08 Daniel Smith in support of the appeal citing the Navajo Planners which he has turned down 300 projects that wanted to set up cannabis shops but that lack of parking and the impact on neighboring businesses was the denying factor.

2:34:24 Peggy Walker in support of the appeal citing "as illegal pot shops start to close down I'm concerned that these buyers and dealers are going to transfer over to the licensed dispensaries…that only those licensees who have demonstrated ethical behavior be considered for these licenses."

2:38:10 Adrian Kwiatkowski in opposition to appeal citing "…we have 100% clearance of all City cycle review issues…"

2:40:06 Michael Morton AIA, as the architect of record he is in opposition to the appeal citing the "simple site…832 sq-ft space which is perfectly adequate for our dispensary and is a simple modest dispensary that conforms to all the criteria of the ordinance…the exterior lighting is shielded so that light won't be bleeding over to the other spaces *[clearly a problem on the 6220 Federal site as detailed within SDMC §142.0740(b) with a May 22, 2023 email to Councilmember Monica Montgomery (with no response and a June 6, 2023 @ 1:40:20 to City Council where I address these and other issues in the City of San Diego's cannabis licensing program and as detailed in; Could This Happen in La Jolla. A District 4 CUP Comparison. Of note, Michael Morton is a licensed architect who attended this hearing and was the architect of record for 6176 Federal. His client was Larry Geraci. Neither Geraci, or Morton, attended either the hearing, or the appeal, on the 6220 Federal project.]*

2:42:26 Kristy Beyers licensed architect in the State of California and a LEED accredited professional in opposition to the appeal citing "I have been the sustainable design consultant for the project and LEED coordinator…to create a 'healthy environment that fosters wellness and healing, to be good neighbors and kind stewards of the environment…" *[this is an 832 sq-ft Tenant Improvement that has not one but two licensed architects on the project. The entire goal of LEED certification is a noble one but this presentation talks about installing LED lights and solar panels. That is a purposeful distraction so that Beyers can speak to what a great neighbor they are going to be. All while "gaming the system and denying the other 3 competing CUP applicants a chance to be fairly considered since they are delayed on CEQA appeals, which ironically enough, 3452 was given a CEQA exemption and they are NOT on CEQA appeal!]*

2:43:45 Gina Austin, Attorney of Record in opposition to the appeal citing "as her client is the first applicant to come before the Planning Commission it has made it for a difficult decision for the Commissioners to make today and we realize that but I want to give you a bit of information as to why we do 'win the beauty contest' when compared to the competing applications…this project goes above and

beyond what was or is required by the staff or the Commission for a CUP…the first is the sustainable design that Kristy just spoke to you about…this will be the first LEED certified project for a medical marijuana cooperative in the country…these features are going to enhance the environment…as to the issue of fairness, they're right, the process is not perfect but we all knew what we were getting into when we got involved in this process, that it was going to be a horse race. We ended up as the first horse and should not be punished for that…Mr. Knopf never was involved in an illegal operation."

2:51:25 Adrian Kwiatkowski finishes the group presentation by stating "In conclusion, the reality is the other applicants are making a desperate attempt to delay our CUP for their own advantages. None of the allegations that have been raised have been substantiated or have anything to do with the action you have before you today. The project has been approved and recommended by the Planning Group, by the Hearing Officer and by City Staff. Please support this project."

2:55:00 Commissioner Quiroz remarks that this commission cannot overwrite the municipal code which was put in place by the City Council. "Our job here is to make the findings. I find that this facility is not a pot shot and that there will be no on-site consumption. I have no authority to override the laws put in place by the City Council. Therefore, I cannot uphold Mr. Chipman's appeal…I move that this Commission deny the appeal of Mr. Chipman. Deny the appeal of D&D. Uphold the appeal of KSC thus deny the CUP." The motion is made and seconded.

3:00:29 Commissioner Whalen remarks that the City Council needs to review the Ordinance to address the fairness of it.

3:01:53 Commissioner Austin seconds to uphold the appeal and hopes "that the City Council is paying attention to this because I think the process is flawed."

3:02:50 Commissioner Haase remarks that parking amongst all the commercial retail cannabis outlets within, for example industrial zones should be consistent with the 5 per 1,000 sq-ft to be a standard for these CUP's. This is an intelligent request which requires an expanded look into inadequate parking when one zone differs from another, yet the use is the same regardless of the zone. "I'm inclined to use a higher parking ratio because the nature of this new use is more commercial with a higher parking requirement than industrial. And that's my concern…I think the 36-month holding pattern to secure the responsible parties background check…I can't find anything 'beautiful' about this process…I prefer there be a much shorter window on complying with all sections of municipal code before this permit were to expire because as it stands today, this will stop any other use from being implemented if this permit is granted. No one else can do anything…I have a health finding here, this meant for medical purposes…obviously we have a process we're struggling with." *[This is an excellent exchange between Haase and the City Attorney over how the process is being manipulated!]*

3:20.41 Commissioner Wagner interrupts re a Michael Morton question and exhibit stating entrance and exits related to ADA parking and access; "I find it frustrating, calculated and contrived that this document appears in the last 30 seconds of the conversation."

3:22:27 Commissioner Peerson lambasts Michael Morton and Gina Austin citing their frustration and how this presentation goes to integrity…the process is flawed…this is the wrong use for this site, and I will be voting to deny the project."

3:24:33 Commissioner Wagner drills down on the primary and secondary entrances, the manager's safe room, number of armed security guards and the break room. In response to those questions are Abhay Schwitzer, Michael Morton and Adrian Kwiatkowski ending with Kwiatkowski responding they will do as the Commission pleases.

3:32:43 Chairperson Golba remarks "…people are doing unbelievable maneuvers to get this permit..don't have to stretch this far to imagine these ending up in the courts after we act eventually, I would want to act strictly on the advice of the City Attorney…is parking legal in this alley (staff answers no)…checkmate everyone else in line…"

3:39:22 Commissioner Austin remarks "…public health and safety is the issue that I see here I look at this is very clear the entry is off the alley. It is going to encourage people to access this dispensary from an unsafe situation. Handicapped or not. Based on what I'm seeing right now I cannot see how I can do anything except uphold the appeal."

3:41:40 Commissioner Wagner remarks "we can't hold applicants to anything that is not in the land development code."

3:47:10 Commissioner Quiroz remarks "the entrance is proposed off of Pickett Street. I am not going to walk down a dark alley. This is extraordinarily dangerous." Motion to uphold the appeal and deny the CUP.

3:51:00 Commissioner Haase remarks that he does not have all the information in front of him, so he supports a motion to continue.

COMMISSION ACTION: COMMISSIONER WAGNER MADE THE MOTION TO CONTINUE THIS ITEM TO MARCH 19, 2015. Commissioner Whalen seconded the motion. The motion passed by a vote of 4-3 with Commissioners Golba, Haase, Wagner and Whalen voting yea and with Commissioners Austin, Quiroz and Peerson voting nay.

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2015/03/12: ITEM 9: ZENN SD MMCC Appeal Hearing Officer's 2014/12/03 ITEM 7 decision.

10 speaker slips submitted in favor – Ken Cole, Chris Cronin, Melissa Cronin, Scott Levin, Marcee Levin, Joe Esposito, Margaret Gibert, Paul Nager, Lance Rogers and Shanna Droege

10 speaker slips submitted in opposition – Robert Dean, Karen Lenyoun, Peggy Walker, Stephen Cline, Janet Asaro, Barbara Gordon, Will Senn, Carol Green, Scott Chipman and Kathy Lippett

HEARING OFFICER ITEM 7 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-14-071. RESOLUTION NO. HO-6757

DSD CONTACT: Sammi Ma

PROJECT NUMBER: 373481

DSD HO RECOMMENDATION: HO-14-071 "APPROVE Conditional Use Permit No. 1310456."

HEARING OFFICER:

DSD PLANNING COMMISSION RECOMMENDATION: PC-15-016 "Deny the Appeal and Uphold the HO APPROVAL."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19, Section 15303, New Construction or Conversion of Small Structures. This project is not pending an appeal of the environmental determination. The environmental exemption determination for this project was made on August 27, 2014, the opportunity to appeal that determination ended on September ll, 2014

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24004633 @ Page 29.

APPELLANTS: Scott Chipman and Stephen Cline, Esq.

Issues on Appeal

Page 38: Scott Chipman's Appeal

Page 39: Ownership Disclosure Statement, Victoria Dupont, Tenant

Page 40: Ownership Disclosure Statement, Owner: Black Mountain Center LP, Tim Haidinger, Mgr.

Page 41: Appeal Application from Scott Chipman

Page 42: **"**Vista Hill's facility, while providing treatment and recovery services for adults, accommodates and provides protection for the Child Welfare Services 'foster care children for mental health issues. There are 20 active cases each of which includes two or three siblings. There can be up to 50-60 kids on any given day being cared for in their facility."

Page 43: Letter from Valley View Casino to Edith Gutierrez in opposition to the proposed MO citing " The proposed development will not comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code. As described above the proposed development is in violation of the spirit of the CUP which requires 1,000 foot separation, measured between property lines, from: public parks, churches, child care centers, playgrounds, libraries, minor oriented facilities, because there are many children coming and going from this location."

"The proposed pot shop location will exacerbate the problems for residents and neighboring businesses and their patrons. *According to assertions from potential MMCC operators, expectations for daily customers may be 90 or more customers per day. The demand for available parking will compromise the ability of other nearby businesses to accommodate their clients, customers, and patrons."*

Page 47: Appeal Application from attorney Donna D. Jones

Page 48: Vista Hill Letter to Edith Butierrez re their opposition to the MO as they are a minor-oriented facility.

Page 51: Stephen Cline Appeal Application. "The proposed project was presented at only one meeting which combined the informational presentation and the vote. It did not have a separate noticed hearing which identified that a vote would be taken. This is a potential violation of the Brown Act."

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-15-016 "**Deny** the appeal and **Uphold** the Hearing Officer's decision to Approve Conditional Use Permit No. 1377388 with modified conditions."

OWNER: Black Mountain Center LP, Tim Haidinger, Mgr.

APPLICANT: Victoria DuPont

CUP NUMBER: 1310456

OWNER: None shown in Customer Information

CUP HOLDER: None shown

SITE DEVELOPMENT PERMIT NUMBER:

STATUS: Created-Expired.

CITY COUNCIL DISTRICT: 6

PLAN AREA: Kearny Mesa

STAFF: Edith Gutierrez

Speaker slips in favor of the project, opposed to appeal submitted by Margaret Gibert, Martha Sullivan, Cynara Velazquez, Chris Siegel, Roberto Torres, Marcee Levin, Scott Levin, Clarice Gorden, Vicki Estrada, Janet Matula, Joe Esposito, Shanna Droege, Lance Rogers, Chynna Parks, Luana Farrar, Victoria DuPont, Ken Hanaoka, Douglas Gismond and Paul Nager.

Speaker slips in opposition to the project, in favor of the appeal submitted by Scott Chipman, Robert Dean, Karen Lenyoun, Stephen McCamman, Michael Rollins, Sarah Urich and Gova Ceballos, Angela Rave, Barbara Gordon, Peggy Walker, Nancy Logan, Jan Asaro, David Damion, David Demion, Kathy Lippitt, Judi Strang, Irma Contreras, Joseph Diaz, Stephanie Kinman and Karen Scott.

4:37:08 Commissioner Golba opens ITEM 9 with DSD Staff, Edith Gutierrez's presentation.

4:43:16 Commissioner Wagner Are there any ordinances that address "line queuing" which is meant to consider cars waiting to get into the lot and park.

A: (Edith Gutierrez) There is nothing in the municipal code that addresses that. However, there is a condition that states no loitering. We require that be posts *(She did not understand the question or was diverting the legitimate issue of inadequate parking]*

4:48:05 Stephen McCamman on behalf of Stephen Cline in favor of the appeal "The main thing as you've heard before, is about the integrity of the process. This application in particular strikes several notes where the process for other applicants standpoint was compromised at point after point after point. They were the first even though they were 3 or 4 months late in appealing, somehow, they were able to leapfrog other applicants who were in the first come first serve line and move ahead very quickly. Our biggest concern is that the Planning Community and the local agenda items staff report noted the agenda on July 16th, that meeting was in fact, not heard. So, what we have is a group that, contrary to every other applicant, only had one meeting with the local planning board. They did not have to have an open hearing or an informational and go to action. Every other group had at least two informational sessions and then

they had the action item. This group, for some reason, was able to go directly to the action item. The agenda item on that day, per the Brown Act, required to post announce the agenda item 72 hours before the hearing. That agenda item was checked the morning of and it was not on the agenda. Steve Cline wrote a letter to the City Attorney and the City alleging these Brown Act violations and there was absolutely no response. We are very curious as to how, the maneuver at that level, allowed them to leapfrog, when these other ones were caught in the queue at the local planning committee meeting…integrity of process is our biggest concern…what they were able to day is violate the deem of completion…we also support the Vista Hill minority sensitive use and support them in their contention it's a minority use oriented issue.

4:50:42 Commissioner Golba

Q: Since you're representing one of the appellants, can you tell me where they attempted to see the agenda for the CPG that it wasn't posted or wasn't up to date?

A: As I'm checking it was online.

Q: The City's website or a CPG website?

A: It was the City's website.

Golba: Thank you. I appreciate that clarification.

4:51:22 Robert Dean CEO Vista Hill Foundation in support of the appeal citing "I understand that this is a land use decision, but I want to put it on the record that if approved, this MMCC will be located within 60 feet of child psychiatric services that are offered on our premises."

4:53:39 Scott Chipman in support of the appeal citing " Just to be sure you're aware, our biggest concern here is that the Ordinance itself does not provide adequate safety and that's why we are calling upon the Planning Commission to react and use its discretion and say we need a better Ordinance. We need better protections…there is certainly a lot of cart before the horse going on here in terms of not getting the Ordinance completely flushed out before we start issuing permits and of course the minor-oriented facility needs to be further clarified. We're calling upon this body to identify Vista Hill as a minor-oriented facility."

4:55:04 Karen Scott in support of the appeal citing "schools near the project."

4:55:59 Stephanie Kinman in support of the appeal citing "…this minor oriented facility is confusing. Chuck E Cheese Mission Statement is 'where a kid can be a kid.' If that doesn't represent what that location caters to I don't know what else could."

4:57:06 Erma Contreras Vista Hill, in support of the appeal citing the youth and families they serve."

4:58:39 Judi Strang in support of the appeal citing "I was at Vista Hill yesterday and I just want to reemphasize, 60 feet. It couldn't possibly be closer these two buildings…Vista Hill is the leading contractor for mental health services to the foster care youth and if ever there was a facility that was meant for young people, it's Vista Hill and that somehow the [DSD] interpretation left them out, this is your opportunity to look at the language of the municipal code as it refers to establishments that serve those primarily under the age of 21."

4:59:45 Kathleen Lippitt in support of the appeal citing "I'd like to see, what has been found recently is that the marijuana dispensary Ordinances in and of themselves, further contribute to an increase in recreational use beyond just medicalizing marijuana." *[In November 2016 CA voters approved Prop 64 which legalized recreational marijuana. All these licensees were aware that was coming.]*

5:02:22 David Demian, Esq. in support of the appeal citing "I represent the applicant for 7625 Carroll Road in this district. We are one of now five applicants coming forward. We have a hearing with the Hearing Officer coming up in April and this process, with first come first served, is nowhere required by the Land Development Code or the Permit Streamline Act. It is not. And the decision to process applications in this fashion has the same effect as an action taken to process these permit applications in a different fashion, with each of the permit applicants heard at the same time. As was done by the Community Planning Group in Mira Mesa, who heard all the applicants at the same time prior to making their recommendations as to which are the safest applicants. In this case, the applicant being next to the Vista Hill Foundation is not the best applicant for this district."

5:03:56 Jan Asaro in support of the appeal.

5:05:12 Nancy Logan in support of the appeal.

5:06:35 Peggy Walker in support of the appeal.

5:07:52 Barbara Gordon in support of the appeal.

5:09:12 Goba Ceballos in support of the appeal.

5:11:08 Vicki Estrada in opposition to the appeal introduces Shanna Droege, "my mother and I will be the responsible parties for the conditional use permit of ZENN SD COOPERATIVE." - "I'm Vicki Estrada President of Estrada Land Planning..all the uses required to be outside the 1,000 feet boundary are well outside that boundary... our site is located in predominantly industrial and business park...nobody is going to argue Vista Hill does great stuff...they serve a critical function...but to be sure we hired a private investigator for 3 days to see if kids really go in there...based on the website and what we were able to observe it appears to be mainly an administrative facility...in the 3 day period we only observed 1 child going in there...if it really is a child dominated facility you would think there would be more than 1 child entering the facility over a 3 day period..."

5:16:31 Clarice Gordon, Omni Security in opposition to the appeal citing "I;ve never been to a robbery at a dispensary. They're well secured. People know that. As far as a safeguard to the community they're about as safe as you can get."

5:20:57 Cynara Velazquez United Patients Alliance on behalf of Chris Siegel, President of United Patients Alliance in opposition to the appeal citing "...we support this application. This is one of our members. We feel that they represent the best of this community meeting and exceeding the standards set forth in the Ordinance...Per the Ordinance Vista Hill is not a youth oriented facility nonetheless there is worry about the impact to children. Let me refer to the Ordinance. the Ordinance says that a medical marijuana facility may only have a sign with the name of the establishment. No advertising. No green crosses. Nothing else announcing the establishment. In other words these locations must be discreet. The sign with the name is supposed to be in a single color. There's no reason why children would be drawn to this location would even know this location even exists. That is our goal as an industry and as an organization. We are to be

discreet providers of medicine to those who need it…At this point we have only established 16 locations that would meet every criteria the CUPs could qualify at. That is less than what was intended by City Council which was 32 and I believe would be far less than the actual patient base in San Diego."

5:23:17 Martha Sullivan in opposition to the appeal citing "I really appreciate you and the staff being so deliberate with this process now that we finally have a permitting system for medical marijuana dispensaries. It's critical that we have these now and we're able to have safe access for medical marijuana patients in the City of San Diego. I commend you for sticking with the process. I just want to make a comment to those who keep opposing medical marijuana dispensaries that have been legal in California since 1996, if you want to regulate medical marijuana the way we regulate alcohol and prescription drugs, you should support taking marijuana off the federal Schedule One of prohibited drugs. That'll do it."

5:24:49 Margaret Gibert Alliance for Responsible Medicinal Access in opposition to the appeal citing "ZENN SD respected the law. A fact affirmed by a skilled set of public servants. They deserve your support. Please reject this appeal and don't allow these frivolous attempts at subverting the will of our communities."

5:25:50 Commissioner Wagner I'm going to start with the easiest one, with regard to the appeal by Mr. Stephen Cline, I find it not to be based in fact…with regards to the Brown Act, while the community planning groups make every attempt to stay within the requirements of the Brown Act there is a question as to whether or not, because it's a recommendation they are required to act on the Brown Act anyway. Just ask Governor Brown in the gutting of the Brown Act last year. *[I think this interpretation may fall short of what is/was required of the Brown Act and what the Planning Commission is relying on their being exempt by only offering a recommendation.]* So I don't find there to be any merit to the appellant Mr. Cline. Going to the appellant Mr. Chipman, Mrs. Estrada you have a power point presentation that shows aerial views of Vista Hill and the project. Can you come up and let's get staff to comment on these.

Q: I'm interested in what looks to be a fence line. Both of your facilities share a main entrance that uh…

A: (Vicki Estrada) We do not share the same entrance.

Q: Bear with me. Both of your facilities have a main entrance that faces the South. Is that correct?

A: Correct.

Q: So you're exiting Vista Hill you would look behind yourself to see your particular marijuana dispensary. If you're entering Vista Hill it would be in the periphery of your left vision. Is that correct?

A: Ah it depends on where you are because as you see from Image 4, there is a pretty big screen you can't really see…

Q: Can you show me…

A: Yes go to…keep going down [*Edith is running the presentation for Vicki and what is being seen in this graphic is an artist illustration of what they propose the view would be on Clairemont Mesa Blvd facing East. Today there is a divider island that separates East/West traffic. This illustration based on what was there in 2015 may be inaccurate]*

Q: Do you have any pictures of the fence line?

A: I do not. Do you have google earth and internet?

Q: That would be great. I'd like to see the fence line. Can we pull that up?

A: There you go. You can see the street view.

Q: Once again can you define a minor-oriented facility and then further define primary?

A: The minor-oriented facility means any after school program, teen center, club for boys and girls, children's theater, children's museum or other establishment where the primary use is devoted to people under the age of 18.

Q: How does Vista Hill not fit that criteria?

A: I think I thought of this more along the lines of a club for boys and girls. Similar use for a club for boys and girls might be a YMCA and a YMCA services adults and children where a club for boys and girls provides services to boys and girls and from our perspective the Vista Hill provides services to both adults and minors. It's not specifically geared towards minors. Had it been a facility strictly for minors we would have said this is a minor-oriented facility.

Q: While you guys are bringing that up [the Google Earth street view] I want to make one more finding. With regards to Mr. Chipman's appeal, I can find that the proposed development will fit within the General Plan and the Land Use Plan. I still want to get to public health and safety. I find that it does not deviate from the Land Development Code. Mr. Dean, can you come up?

Q: (to Mr. Dean) So in that particular picture sir is your building the one that barely shows the Vista Hill sign?

A: (Mr. Dean) Correct.

5:33:33 through 5:40:33 this really has to be seen and heard. Commissioner Wagner engages in a lengthy, wandering, line of inquiry and questioning that puts Vicki Estrada into Edith Gutierrez's chair as she attempts to bring up Google Earth and come up with a visual barrier solution that meets the needs of Vista Hill traffic not being able to see the ZENN SD business. At points you can hear some on the Commission whispering how proficient Estrada is in managing Google Earth. Creating a visual barrier here also increases the chances that a pedestrian or another vehicle would not be seen thus creating an accident hazard. *[IMO this line of questioning, intent on finding the solution and sending Vista Hill home with some kind of win is astonishing. The DSD finding is that this is not a minor-oriented facility. Why the compromise with some sort of visual barrier? This actually may be where the genesis of Path of Travel measurements began]*

5:43:11 Commissioner Austin "…I think what's being proposed is about as good as we're going to do at least I'm glad at what looks to be a pretty good physical barrier between Vista Hill and the project. I think I'm comfortable with denying the appeal."

5:44:44 Commissioner Haase "I'm actually pretty comfortable with the determination that Chuck E Cheese is a restaurant. The last time I was there they sell beer. If there has to be a bright line somewhere that would be it. I do have a question though and it has to do with Vista Hill and the whole 1,000 foot search around the property.

Q: Will that search turn up any Conditional Use Permits that might have been granted for churches or day care centers?

A: (DSD) It should. The applicant provided us with a list of everything within 1,000 feet, we also did independent research using our project tracking system, using the internet, using Google Map. We believe we caught everything.

Q: That would probably be my biggest concern. We've got churches in industrial zones. We have a lot of things permitted by Conditional Use. You can look at the Land Use. You can look at the zoning using our historic records as well and validating that so I'm assuming that Vista Hill itself does not have a Conditional Use Permit that says something about providing services to children?

A: No. *[The speaker hesitates and both he and Gutierrez look extremely uncomfortable with this. My guess is they are relying on an argument that since Vista Hill didn't have a CUP for minor-oriented activities the sensitive use zoning would not apply. First off, who in the hell would ever know you need this type of permit to protect your land use rights and if that is the hill the Commission is going to plant its flag on, why go through the whole visual barrier element of the approval?]*

Haase: "Because that would change my attitude about my position on that. OK that's very helpful and it gives me a lot more confidence in that. *[hmm he needed confidence]* Lastly Mrs. Estrada I know you're trying to make us happy that doesn't mean that it's good planning. I do have a concern about erecting walls and fences and how they restrict visibility between properties. I understand the concern brought up by Vista Hill but I also believe there is a benefit in having visibility between properties…so while I appreciate the offer the reason it's open today is because we like to have our commercial properties open.

A: (Estrada) My feeling on this, from a visual standpoint, I wouldn't want to have all these enclaves as such. I think that what I was hearing was it would be a barrier to keep people from walking through *[yup. this is where Path of Travel was born]*…I don't envision something 6 feet high…I agree with you Mr. Haase that I would not want to have a barrier and create essentially unsafe activity where right now you have a lot of visible activity. There's a fine balance working with your request there's something I believe we can do to achieve both *[nonsense]*

Q: I thought I heard a 6 foot fence. That seems to be the most harsh solution. Something that might include landscaping and things like that. I'd like to use a little planning judgment there.

A: There's already irrigation there. Putting vines and making it a greenscreen I agree with you.

Q: There seems to be some landscaping there today. I'd hate to see that landscaping be lost for a 6 foot wall.

A: I won't let that happen.

Haase: I didn't think you would. Thank you. *[This is a Planning Commissioner working out a solution that they already determined was not an issue with Vista Hill not being considered a minor-oriented facility. They don't have a CUP. A private detective surveyed the site for 3 days and found 1 child entering the building but with this conversation a solution still needs to happen and they are leaving it up to Estrada to come up with it. Astonishing at many levels!]*

5:50:10 Commissioner Peerson More Q&A regarding the patio, visibility and how to treat the barrier visibility issue.

5:54:53 Commissioner Whalen Same as above but there is a suggestion that instead of a barrier wall there be barrier landscaping.

COMMISSION ACTION: COMMISSIONER WAGNER MADE THE MOTION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO APPROVE CONDITIONAL USE PERMIT NO. 1310456 WITH MODIFIED CONDITIONS. Commissioner Whalen seconded the motion. The motion passed by a vote of 7-0 with Commissioners Golba, Haase, Austin, Quiroz, Peerson, Wagner and Whalen voting yea.

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2015/03/12: ITEM 10: 658 East San Ysidro MMCC, Appeal Hearing Officer's 2014/12/17 ITEM 6 decision

STAFF: Edith Gutierrez

7 speaker slips submitted in favor – Juan Guzman, Wayne Scherer, Pearl Ayon, Marcos Perez, Jessica McElfresh, Jorge Perez and Stephen McCamman

30 speaker slips submitted in opposition – Samuel Suarez, Bertha Gonzalez, Barbara Gordon, Nancy Logan, Peggy Walker, Janet Asaro, Carol Green, Kathy Lippett, David Guererro, Judi Strang, Beatriz Robles, Patricia Perez, Tina Casanova, Antoino Martinez, Luisa Rodriguez, Gina Escamilla, Alicia Jimenez, Luis Carrillo, Raquel Moran, Salvador Cisneros, Olga Espinoza, Geronima Espinoza, Jason Walls, Arturo Velazquez, Cesar Velazquez, Ofelia Angez, In Young Ho, Rosala Whalen, Enrique Friedman and Matticida Boron

HEARING OFFICER ITEM 6 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-14-078. RESOLUTION NO. HO-6763

DSD CONTACT: Edith Guterriez

PROJECT NUMBER: 368312

DSD TO HEARING OFFICER RECOMMENDATION: HO-14-078 "APPROVE Conditional Use Permit No. 1298246."

HEARING OFFICER: Ken Teasley

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-15-017 "**Deny** the appeal **Uphold** the Hearing Officer's decision to Approve Conditional Use Permit No. 1298246."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19, Section 15303, New Construction or Conversion of Small Structures. This project is not pending an appeal of the environmental determination. The environmental exemption determination for this project was made on October 31, 2014, the opportunity to appeal that determination ended on November 17, 2014."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24004630 @ Page 23

APPELLANT: Jason Wells and Bertha Alicia Gonzalez

Issues on Appeal

Pages 34-35: Community Planning Committee 8-1 Vote to Deny.

Page 37: Appeal Application by Jason M-B Wells OBO San Ysidro Business Association

Page 38: San Diego Municipal Code (SDMC) Section 141.0614 requires a 1,000 ft separation, measured between property lines, from: public parks, churches, child care centers, playgrounds, libraries, minor oriented facilities, other medical marijuana consumer cooperatives, residential care facilities and schools. If approved, this MMCC will be physically adjacent to Bargain Mart - who specializes in children's clothing. This proposed MMCC will be next to a minor-oriented facility IN VIOLATION OF SDMC Section 141.0614.

Page 43: Appeal Application from Bertha Alicia Gonzalez

Page 55: Attorney Jessica McElfresh Appeals Reply Letter on behalf of San Diego Alternative Treatment Center (SDATC), and its directors, including Wayne Scherer.

OWNER: Lighthouse Family Trust @ Page 36

APPLICANT: Wayne A. Scherer

CUP NUMBER: 1298246

SITE DEVELOPMENT PERMIT NUMBER:

CUP HOLDER: Wayne A. Scherer

STATUS: Issued 2015/05/11

CITY COUNCIL DISTRICT: 8

PLAN AREA: San Ysidro

STAFF: Edith Gutierrez

Speaker slips in favor of the project, opposed to appeal submitted by Ashlee Santos, Courtney Winters, James Schmachtenberger, Duane Bernard, Erik Boyer, Stephen McCammen, Daniel Orozco, Ethan James Blair, Carl Fiorica, Kyle Martin, Alpha Special Service, Antonio Perez, Kenneth Mum, Douglas Gorman, Odette, Ariza, Chris Siegel, Terrie Best, Martha Sullivan, Ken Sobel, Margaret Gibert, Pamela Lopez, Mac Lopez, Yamileth Bolanos, Sam Humezd, Humberto Peraza, Roberto Torres, Scott Levin, Marcee Levin, Jessica C. McElfresh, Gregory Hood, Wayne Alexander Scherer, Cynara Velazquez, David Najera, Will Greene, Marcos Perez, John Lomas and Dana Gagnon.

Speaker slips in opposition to the project, in favor of the appeal submitted Ofelia Angel, Raquel Moran, Olga Espinoza, Antonio Martinez, Jan Asaro, Judi Strang, Peggy Walker, Scott Chipman, Jason M.B Wells, Josephine Hamada, Steve Hamada, Bertha Alicia Gonzalez, Kathy Lippitt and Nancy Logan.

6:05:20 Commissioner Golba introduces Items 10 and Staff Presentation.

6:12:47 Commissioner Whalen requests applicant clarification.

6:13:51 Jessica McElfresh (Applicant Counsel) to clarify drawings related issues.

Whalen: Quite ample.

6:16:09 Commissioner Quiroz questions applicant request clarification.

Whalen: Tells McElfresh to improve the quality of her exhibits.

6:18:35 Bertha Gonzalez in support of the appeal citing location and minor-oriented impact.

6:25:02 Josephine Hamada retired teacher in support of the appeal citing "this is a 24/7 border crossing with high volume family and children traffic."

6:27:01 Jason Wells Executive Director San Ysidro Business Development and Appellant in support of the appeal citing "the DSD parking ratio is inaccurate…you're adding businesses without increasing parking… I won't go from the standpoint of uses with the City's terms for 'commercial use' is as broad as 'child-oriented' is slim…

6:30:01 Peggy Walker in support of the appeal recommending "CPED requirement for SDPD input on crime prevention design"

6:3:25 Judi Strang in support of the appeal citing "horrible parking and it's a plaza and a family crossing. I concur with the businesses around the proposed pot shop and that existing businesses will move away from a pot shop."

6:32:49 Olga Espinoza in support of the appeal citing children safety.

6:33:57 Raquel Moran in support of the appeal citing children safety.

6:36:37 Nancy Logan in support of the appeal citing "this truly is a little plaza. You'll see the little markets, the children's shoes and backpacks. We have visited these sites but others here live there. Please listen to them and grant this appeal."

6:38:10 Jessica McElfresh in opposition to the appeal citing "we will complying with those measures that insure the safety of patients and the broader community…There are annual audits the City can request, in addition to background checks you have to be a statutory consumer cooperative, testing and it sets forth very clearly the process for which the regulatory permit can by yanked, which you can only have for 1 year and they need to be renewed every year. A Conditional Use Permit is for 5 years."

6:45:30 Humberto Barrajas United Patients Alliance in opposition to the appeal

6:47:27 Yamileth Bolanos Patient-Operator for Pure Life in Los Angeles and the founder and President of the Greater Los Angeles Collectives Alliance and am in opposition to the appeal citing "215 is the law of the state. If this organization meets the regulatory requirements…the Ordinance was created to protect children."

6:50:12 Pamela Lopez in opposition to the appeal citing "my doctor told me there was nothing more they could do for me. Instead of getting hooked on pain pills I looked for the alternative in medical cannabis and all it does is minimize the pain and help me sleep. I don't want to get hooked on prescription medicine and need safe access to medical cannabis."

6:52:26 Margaret Gibert Alliance for Responsible Medicinal Access in opposition to the appeal.

6:53:42 Ken Sobel in opposition to the appeal citing "I was able to help my mother and father who were wracked with pain with cannabis treatment…I am a lawyer and I have opened dispensaries in Arizona."

6:55:00 Martha Sullivan in opposition to the appeal citing "the benefits of medical marijuana and the expert advice that they will get from a dispensary when searching for cannabis treatments."

6:56:45 Terri Best representing Americans for Safe Access in opposition to the appeal citing "here are some of the victims who have had their lives turned upside down by being charged criminally for their use of medical cannabis…these are the consequences of denying safe access,,,destruction of your property, the arrest of sick and dying patients and the ruining of lives."

6:59:18 Cynara Velazquez United Patients Alliance in opposition to the appeal citing "nobody is within 1000 feet…there will be one in Barrio Logan, Logan Heights, Otay Mesa and San Ysidro, exactly as this Ordinance intended."

7:01:09 Kenneth Morell in opposition to the appeal citing "As a parent of 4, at one time I shared the appellants' concerns. Today I am the new face of medical marijuana. I'm the caregiver for my daughter. Medical marijuana has been a lifesaver…they are professional in every way."

7:02:25 Wayne Alexander Scherer Board Member-Applicant in opposition to the appeal citing "we can stimulate the economy by hiring local San Ysidro residents, by drawing more people to San Ysidro…we may have a positive impact on the community…we have prioritized outreaching to the community…we met with a local church to answer questions…we see ourselves as a goodwill service to the community."

7:07:19 Commissioner Wagner comments

7:11:02 Commissioner Haase comments and reintroduce Scherer to question his commitment to contributing to expanding the local economy.

COMMISSION ACTION: COMMISSIONER WAGNER MADE THE MOTION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO APPROVE CONDITIONAL USE PERMIT NO. 1298246 WITH MODIFIED CONDITIONS. Commissioner Whalen seconded the motion. The motion passed by a vote of 6-0-1 with Commissioners Golba, Haase, Austin, Quiroz, Wagner and Whalen voting yea and with Commissioner Peerson absent.

2015/03/19 Planning Commission Minutes

2015/03/19: **ITEM 8: 3452 Hancock St. MMCC** Continued from 2015/03/12

See Planning Commission Hearing of 2015/03/12 ITEM 8 earlier in the Steering Doc for all Project Files and Appeals information. (Control F the Project Number for easy access.)

Project No: 368344

No speaker slips in favor of the project were submitted.

No speaker slips in opposition to the project were submitted.

2015/09/19 ITEM 8 Planning Commission Video (Audio Only) @ 1:02:09

Public Comments were closed for this hearing.

1:03:16 Gina Austin presenting citing the changes that have been made since the last hearing include accessibility from both Hancock and Pickett, the addition of an extra security guard during operations and one that stays 24/7, we have the maximum number of parking spots that SDMC allows. "We submitted all the background check paperwork yesterday for the City Manager to make a determination. We will have that determination within 2 weeks…we have revised the floor plan so that it is safe and secure within the building if you're entering from two different sides…"

1:12:17 Commissioner Wagner makes a motion to accept staff and applicant's modifications. It was seconded.

1:13:04 Commissioner Whalen states that Commissioner Wagner took the words out of his mouth.

1:13:09 Commissioner Quiroz states that the resubmission of the drawings requires the Planning Commission to have those redesigned drawings 7 days in advance of the hearing. Since that was not done here it would "seem to me that a motion must be made to suspend the permanent rules of the Planning Commission before allowing this item to be heard…I'm wondering if there are any representatives from the appellants here…

1:14:07 One of the appellants James Faulconer (?) representing the appeal from the Kurtz Street Cooperative is asked by Commissioner Quiroz when he received a copy of the redesigned drawings and he states he never did.

1:14:45 Another appellant, Jessica McElfresh representing D&D Cooperative "Miss Jones is not here today but she filed the appeal on behalf of our mutual client, D&D Cooperative. I have not received the drawings or filed a modified appeal."

1:16:33 Commissioner Quiroz, as it relates to handicap access, asks Edith Guiterrez if, from her review of the project, can you tell me where the nearest bus stop and trolley stations are? Guiterrez was unable to answer that question. Quiroz was and the distances and access were an issue. *[of note, there is no public transportation to support the 6220 Federal project which was approved]* When Gutierrez attempts to qualify her statement that there is a sidewalk is there so Quiroz, who does not own a car, gives Gutierrez a reality check on how Hancock does not have sidewalks leading to the dispensary and anyone wanting to walk to the dispensary would have to do so on the road. There are also no curb ramps allowing wheelchair/walker access. "This is a medical marijuana facility that offers its services to people who are sick and disabled. The properties immediately adjacent to the proposed dispensary have utility poles in the middle of the sidewalk. No ambulatory challenged individuals can access the new dispensary. Had the appellants been able to make an appeal based on these challenges I believe those appeals would have been as valid as they have always been. I also believe that now Mr. Chipman's claim of this being a "pot shop" is absolutely true."

1:22:03 Commissioner Peerson states that the changes which have been made have cleared those issues up but she still has a significant issue with a minor-oriented facility being within what she believed to be the 1,000 foot setback of 3452 Hancock. *[this is a good exchange in minor-oriented exhibits. Another major issue in 6220 Federal is that the applicant is responsible for identifying these facilities in the application. In the case of 6220 the applicant did not identify 2 minor oriented facilities within that 1,000 feet.]*

1:29:02 There is a discussion re the obstacles Quiroz had brought up and the discussion is how the applicant can only be responsible for the access issues on their project. Outside of their project would be the City of San Diego's responsibility.

1:36:10 Commissioner Wagner compliments DSD staff telling them they brought their "A game" to the hearing…performing at your finest… there are glaring challenges with the definition of minor oriented facility and how that is measured, and the definitions embedded in the facility, particularly the primary portion…"

COMMISSION ACTION: COMMISSIONER WAGNER MADE THE MOTION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO APPROVE CONDITIONAL USE PERMIT NO. 1377388 WITH MODIFIED CONDITIONS. Commissioner Whalen seconded the motion. The motion passed by a vote of 4-2-1 with Commissioners Haase, Austin, Wagner and Whalen voting yea and with Commissioners Quiroz and Peerson voting nay and with Commissioner Golba absent. *[Of Note: 3452 was the only Project continued on the 03/12/15 Planning Commission Hearing. There were no speaker slips filed in favor or in opposition. 3452 was the only MMCC project to be heard on 03/19/2015]*

2015/05/28 Planning Commission Minutes

ITEM – 1: ANNOUNCEMENTS/PUBLIC COMMENT - ISSUES WITHIN THE JURISDICTION OF THE COMMISSION NOT PREVIOUSLY HEARD:

Scott Bernet commented on the MMCC project process.

12:01 Scott Bernet, citing problems with the way the CUPs are processed, reads a letter sent to the Planning Commission from Attorney Stephen Cline. "This office currently represents Glass TEK Entities MMCC, Project No. 368509. At present our client's application was denied at the Hearing Officer on April 22 as the 4th and final application for District 6 was approved earlier on the same hearing agenda, 8863 Balboa Avenue. At present both permits are pending appeal before you on or about June 25th. An issue has arisen in regard to these two applications that quite frankly will repeat itself with other applications in other districts as this is a new process and there is little precedent to rely on. I've reached out to both Deputy city Attorney Shannon Thomas and City staff person handling both permit applications, Edith Gutierrez for some clarification as to how to resolve this issue. In doing so my hope was substantial litigation involving the City could be avoided if the City were to acknowledge this problem exists and determine how to resolve it without damaging any of the permit applicants.

My email attachments outlining this issue were sent to both Ms. Thomas and Ms. Gutierrez on Tuesday, May 12th. As of today's date, *[May 28th]* I have received no acknowledgement or response of any kind. I have also attached an additional email I received from legal counsel for the Montgomery Field Business Condo Association which further supports my position on this issue.

I firmly believe that it is in the best interest of both the City and all MMCC applicants to resolve this issue short of prolonged and expensive litigation. It is a problem that will repeat itself due to the 4 permit per district limitation within the applicable Ordinance. Your attention to this matter would be greatly

appreciated and should I receive no response of any kind I will then have no choice but to pursue immediate legal action. Very Truly Yours. Stephen G. Cline"

The issue is, did the Ordinance suggest that it was 4 CUPs that were approved or 4 operating MMCCs in each district? Because we have a difference between the CUP process and people actually being able to get a building permit. So, if an applicant gets a CUP but then ultimately isn't able to get a building permit for whatever reason, what happens to the applicant that was in the No 5 or 6 position? They would have been denied as we've already been denied once, so I think you understand the problem.

There is someone interrupting from the dais with a question we could not hear to which he replies.

Bernet: Ok so right now we're dealing with just the discretionary process for these MMCCs, correct? The CUP process. What happens if you approve 4 CUPs, which you've already done, and at the end of the CUP process No. 5 is denied because they say there are already 4 in the district. But that's not 4 in th district. That's 4 discretionary approvals not 4 building permits for actual operating MMCCs. What happens if say the No. 4 position gets the CUP approved but is unable, as we believe very strongly in this case, to acquire the building permit because of some underlying issues? No. 4 is denied a building permit now you only have 3 applicable MMCCs in the district where there were supposed to be 4 but the No. 5 was denied which means his process is over. So, what does he have to do, start over again? That doesn't make any sense. So we've proposed a solution to that which is in the letter. I don't think you need to answer that today but we're asking you to think about it and how to address the issue.

16:29 Commissioner Golba This is a non-agenda item; it's not noticed so we're really not supposed to be discussing it. We could ask a clarification question which Commissioner Wagner did to understand the issue but we can't further evaluate it today.

16:45 Commissioner Wagner I have a clarifying question for Edith Gutierrez. Edith, to date, of all of the dispensaries we've approved conditionally, with conditional use permits, have any of them run afoul of the operational standards that are set forth in a different section of the municipal code?

A: (Gutierrez) So to date, we have 1 that is in operation. There's 3 others that have been approved. One of them has cleared the background check process. The other two have not started the background check process. *[Why wouldn't you conduct a background check process before you accept the CUP application?]*

Wager: Perfect. Thank you, ma'am. *[This question has nothing to do with Bernet's point that while a CUP may be granted the building permit may not be granted as there could be an underlying issue which prevents it from being issued.]*

17:35 Justin Navalle It has come to our attention that the appellant for the appeal of 3433 Pickwick has submitted certain records that contain my applicants personal information including social security and driver license numbers and other sensitive matters. We'd like to request this information be redacted from the record as it violates government code section 6254(c).

ITEM # 2 - REQUESTS FOR CONTINUANCE AND/OR ITEMS TO BE WITHDRAWN:

ITEM # 14 - 3485 NOELL STREET (CC3) MMCC – PROJECT NO.368319 – WITHDRAWN

ITEM #15 - 3385 SUNRISE STREET MMCC – PROJECT NO.368337 – CONTINUED TO JUNE 25, 2015

ITEM # 16 - 7128 MIRAMAR ROAD (EJ MARKETING) MMCC– PROJECT NO.368309 – CONTINUED TO JUNE 18, 2015

ITEM #17 - 3571 PACIFIC HIGHWAY (PATIENTS ALTERNATIVE-MIDDLETOWN) MMCC – PROJECT NO.368295 – WITHDRAWN

* * *

2015/05/28: ITEM 8: 3421 Hancock St. MMCC Appeal Hearing Officer's 2015/03/25 ITEM 5 decision.

ITEM 5 STAFF: Edith Gutierrez

4 speaker slips submitted in favor – Margaret Gibert, Joy Greenfield, Stephen Dillion and Joe Esposito

2 speaker slips submitted in opposition – Scott Chipman and Jay Davis

HEARING OFFICER ITEM 5 ACTION PROJECT DENIED. Report NO. HO-15-028. RESOLUTION NO. HO-6795

DSD CONTACT: Edith Gutierrez

PROJECT NUMBER: 368301

DSD TO HEARING OFFICER RECOMMENDATION: HO-15-028 "APPROVE Conditional Use Permit No. 1287800. (NOTE: There are four competing MMCCs within 1,000 feet of each other on today' s docket. The Hearing Officer can approve only one of these MMCC's pursuant to the San Diego Municipal Code's 1,000-foot minimum distance separation requirement)."

HEARING OFFICER: Ken Teasley

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-15-052 Deny the appeal and Uphold the Hearing Officer's decision to Deny Conditional Use Permit No. 1287800.

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures on August 29, 2014. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on January 13, 2015."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24004640 @ Page 28. *[Of note, the DSD Report to the Hearing Officer claims this NORA was provided as Attachment 8 on Page 4. That Notice was not provided to the Hearing Officer, only the Planning Commission.]*

APPELLANT(S): Peggy Joy Greenfield

Issues on Appeal

Page 33: Community Planning Group Distribution Form

Page 35: Ownership Disclosure Statement, PJ Greenfield, Owner

Page 43: Appeal Application for Peggy Joy Greenfield citing violations of SDMC Section 126.0305.

In their Recommendation to the Planning Commission @ Page 3, "Staff is recommending denial of the project as it fails to meet the SDMC's minimum separation requirement prohibiting MMCCs from

operating within 1,000 feet of another MMCC. The proposed MMCC is not consistent with the SDMC's purpose and intent to protect public safety, does not comply with the regulations of the Land Development Code and is not located at an appropriate location."

OWNER: PJ Greenfield @ Page 35

APPLICANT: Peggy Greenfield

CUP NUMBER: 1287800

SITE DEVELOPMENT PERMIT NUMBER:

CUP HOLDER: None

STATUS: Canceled-Abandoned

CITY COUNCIL DISTRICT: 8

PLAN AREA: Southeastern San Diego

STAFF: Edith Gutierrez

Speaker slips in favor of the project, in favor of the appeal submitted by Lance Rogers, Joe Esposito, Joy Greenfield and Janet Matula.

Speaker slips in opposition to the project, in favor of appeal submitted by Scott Chipman.

24:27 Commissioner Golba opens Item 8 including a DSD staff report by Edith Gutierrez recommending denial as the project site is within 1,000 feet of an approved MMCC *[3452 Hancock]*.

27:19 Scott Chipman is opposed to the project and opposed to the appeal.

27:55 Lance Rogers, Esq. In favor of the project and in favor of the appeal, citing issues with the Brown Act and Open Meetings Act for the approval of Project No. 368344 *[3452 Hancock St]* on March 19th. The current crux of that argument is there is approval March 12th with the site plan that was not finalized. Public testimony closed. It continued for 1 week until March 19th. There was no public testimony, and they knew a substantially changed site plan was submitted to this Commission which was then approved. It's our position that this violates the Brown Act. To remedy this violation, we are requesting that this body rescind the CUP issued on March 19th which would then obviously change the playing field for those applicants before you today. This may require continuance until the next regularly calendared meeting at which time we can all provide additional evidence with regard to these projects. *[I reached out to Lance, first by phone and we spoke about him providing me a copy of that letter he sent regarding the Brown Act violations. In a follow-up email to Lance he replied he could not access or provide me with that letter.]*

30:02 Joe Esposito, Estrada Land Planning representing applicant is in favor of the project and in favor of the appeal citing this applicant is across the street from one that you've already approved *[3452 Hancock Street on 03/19/2015]* This applicant, Light the Way owns the building. It is a good facility for them to use. We're cleared for the 1,000-foot radiuses. The entire area is all light industrial or some commercial mixed-use…I want to go over this timeline. It's become a bit of an issue*[@ 33:18]* Our main issue was when the NORA was originally issued for our applicant was 08/29/2014 with the 10 day appeal period 9/15/2014. On 9/12/14 we were notified that there had been a mistake and that it had to be reissued with a new date

and a new review period which made it end on 9/29/2014 which also caused it to get into that CEQA appeal fiasco that somebody put together. We strongly feel that the applicant should not be paying, that was not our mistake. That NORA was a City mistake and is paying for it by being swept up in all the controversy that's going on now.

34:03: Commissioner Golba I'd like the City Attorney to comment on the ability for us to approve the prior application based on the changes that were presented to this body.

34:12 Shannon Thomas, City Attorney What we are talking about is a project that was previously approved by this body. Not this particular project. As you will recall there was a project *[3452 Hancock Street]* which had some concerns with access from the street and access from an alleyway on the other side of the structure. The Planning Commission expressed its concerns which I believe actually came out as a result of community comments and comments during the process. The applicant provided a revised design and the Planning Commission directed the applicant to go back and finalize or further refine that proposal. Public comment was closed. The project came back and was considered in its revised form by the Planning Commission.

The Brown Act requires that public comment be allowed for matters on the agenda, but the Brown Act also allows the legislative body to set regulations on the comment and on the running of the meeting such that the work of the body can actually get done. The Brown Act does not require an ongoing dialogue or conversation between the members of the legislative body and the members of the public. The Brown Act requires, at most, a 20-word summary of the item to be considered or the business to be transacted. So if in fact the City stuck to that 20 word summary there would be very little notice given to the public what might be going on at any given meeting.

The parameters of the project were properly noticed. The public commented on that all through the process and the Commission certainly could have approved the project at the first hearing with conditions placed on it and would never have seen the drawings that they were interested in and that would have been acceptable under the Brown Act as well.

36:04 Commissioner Wagner I'd like to make a motion to deny the appeal and uphold the Hearing Officer's decision to deny Conditional Use Permit No. 1287800 based on the fact that I cannot make the findings because the MMCC is within 1,000 feet of another MMCC.

36:38 Commissioner Quiroz As I said at the time that we were dealing with this, I do agree with attorney Lance Rogers on the Brown Act issue. But at the moment it's not something I can deal with *[why not?]* I'm confused Ms. Gutierrez because the appeal states that Section 126.0305 *[See page 5]* was not defined correctly by City staff to the Hearing Officer and your response was that there is already something within 1000 yards *[feet]* but it doesn't seem to me tat that is what the appeal is arguing. Can you explain to me why you think that is what the appeal is arguing?

A: (Gutierrez) One of the issues that was brought up was that the definition of a medical marijuana consumer cooperative is in conflict with the Chapter 14 regulations regarding the separation requirements and so *[draws a big deep breath, shaking voice and fidgety hands]* to respond to that is, Chapter 4 is separate from the requirements of the separation which is Chapter 14. And so I did not address that issue because, um, well, I, I guess I should have addressed that issue we already uhm resolved that at the Hearing Officer where we explained that it was two separate uhm decisions. Chapter 14 has nothing to do

with the uhm Chapter 4 definition. I don't know if that was clear, and I don't know if you, Shannon, *[Shannon Thomas, City Attorney she looks to help for]* want to clarify that? *[Chris Larson, DSD is sitting next to Edith during this flailing attempt to justify DSD biased handling of Gina Austin's 3452 Hancock CUP. Watch his facial expressions as he listens to Edith try and respond to Quiroz. At one point he has to put his head in his hands. It's clear that any instructions Gina might have given Edith in terms of how to address this issue were not well understood and did not roll off her tongue.]*

38:24 Commissioner Quiroz I just don't think that you're answering the question because the appeal states SDMC Section 1260305 was not defined correctly. There is nothing in here, in the appeal, that speaks to the 1,000 feet and I'm being asked to uphold an appeal that doesn't speak to the 1,000 feet that you're discussing. It seems to me like you're assuming there is something going on in the appeal, but the appeal doesn't actually say it.

A: (Interruption by Chris Larson, DSD) Chris Larson, Project Manager Development Services Department, uhm I'll try and explain how we go through the process. We receive appeals and sometimes they're clear. I would agree that this is a pretty vague appeal *[You would agree with what? Edith's ham-handed response. Nice try, Larson. There was NOTHING unclear about the appeal and the SDMC Section 126.0305 cited in that appeal that DSD could somehow construe as a sensitive use setback response. Pathetic!]* and all we did as staff is thought, *[stumbles]* what we thought they were raising. Even in the public testimony I heard, I didn't hear anything specifically about that code section. uhm if we interpreted what their appeal issues were, I don't know because I haven't heard anything different from the applicant. Excuse me from the appellant.

39:34 Shannon Thomas I don't recall *[convenient]* this specific item at Hearing Officer but a common issue that is raised throughout the appeals is that there is no such thing as a medical marijuana consumer cooperative until both permits have been obtained. Therefore, you can't be within 1,000 feet of a cooperative unless that cooperative has both permits. So, I can't speak to what Ms. Greenfield meant when she filled the form out. Perhaps her representative could further clarify if we're all missing the mark on what the issue is.

40:10 Commissioner Quiroz I looked at all the other ones of course and the other comments state specifically what the issue is and it's what you're saying to me but for me I need to be able to agree with the appeal and I can't…I cannot understand…you know the appeal itself is not saying to me what it is saying to you. I need somebody to tell me why they're appealing the issue or the project and because I'm unable to do that with this appeal I am going to go along with Commissioner Wagner's issue to motion to deny the appeal. *[It's clear from these exchanges that Commissioner Quiroz really wrestled with this and actually raised extremely relevant processing issues that she did not fully grasp instead relying on Commissioner Wagner's decision to simply deny the appeal.]*

41:02 Commissioner Haase This is slowly coming back to me now because I actually Chaired that meeting. To the attorney *[Lance Rogers]* just a clarification in your memo or letter. You referenced a May 12th meeting; I think you meant the March 12th meeting. You referenced a May 19th meeting; I think you meant a March 19th meeting. I'm referring to your letter of May 28th. I think it's important we all understand that this did not happen a week ago. Per your letter it happened back in March. I understand we're all going fast but it was March. I do recall the project. I do recall the action that was a very detailed discussion about the concerns about the building itself. I do believe that there were not substantial changes. They were responding to our comments that were raised by the community and by the

Commission. I don't see substantial changes that would, in my opinion, somehow there is a totally different project that was not noticed. I appreciate the comments from the City Attorney on that. Thank you.

42:20 Commissioner Peerson I was trying to get my thoughts together. I just want to be clear because we have a lot of items ahead of us that I think we're going to have repeated discussion. So, before us is a land use decision and we're expected to make the 4 findings in order to either grant approval or denial. But this is actually one of two steps. The second step would be an operational permit with other criteria that then would need to be checked off to then get a building permit. Am I understanding that?

A: (Gutierrez) That is correct.

Q: So, before us today is just the land use decision based on the CUP?

A: Correct.

W: Because I know we're going to hear a lot of the same comments. I've been reading the material. It's a flawed process. I'll be honest, I'm uncomfortable with it. I did not approve the prior Hancock project *[3452]* uhm but based on the material before me, as a land use decision, I will go ahead and uhm uhm support the motion, but I just wanted to get on the record that we have a two-step process here and I don't know that we are the body to resolve it. At some point, to the speakers Mr. Rogers and Mr. Esposito there's a great potential that a land use decision is made the second operational permit isn't granted and then there's going to be this ripple effect. Am I understanding that properly?

A: That is correct.

Q: OK, but before us today is the CUPs making those findings from a land use decision only.

A: Correct.

Q: Thank you.

43:52 Commissioner Golba Seeing no further requests to speak we have a motion by Commissioner Wagner with a second by Commissioner Whalen to uphold the appeal. If there is no further discussion let's go ahead and vote on that item, please.

[unintelligible comment to the Chair]

Golba: Sorry, deny the appeal. See I was the first one to blow it on the speaker slips myself. So there. So much for my lecture.

COMMISSION ACTION: COMMISSIONER WAGNER MADE THE MOTION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO DENY CONDITIONAL USE PERMIT NO. 1287800. Commissioner Whalen seconded the motion. The motion passed by a vote of 7-0 with Commissioners Golba, Haase, Austin, Quiroz, Peerson, Wagner and Whalen voting yea.

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2015/05/28: ITEM 9: 3486 Kurtz St. MMCC Appeal Hearing Officer's 2015/03/25 ITEM 6 decision.

ITEM 6 STAFF: Edith Gutierrez

3 speaker slips submitted in favor – Magaret Gibert, Gerald Gilbert, and James Schmachtenberger

2 speaker slips submitted in opposition – Scott Chipman and Jay Davis

HEARING OFFICER ITEM 6 ACTION: PROJECT DENIED. Report NO. HO-15-029. RESOLUTION NO. HO-6796

PROJECT NUMBER: 368321

DSD CONTACT: Edith Guttierez

DSD TO HEARING OFFICER RECOMMENDATION: HO-15-029 "APPROVE Conditional Use Permit No. 1292271. (NOTE: There are four competing MMCCs within I ,000 feet of each other on today's docket. The Hearing Officer can approve only one of these MMCC's pursuant to the San Diego Municipal Code's 1,000 foot minimum distance separation requirement)."

HEARING OFFICER: Ken Teasley

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-15-053 "Staff is recommending denial of the project as it fails to meet the SDMC's minimum separation requirement prohibiting MMCCs from operating within 1,000 feet of another MMCC. The proposed MMCC is not consistent with the SDMC's purpose and intent to protect public safety, does not comply with the regulations of the Land Development Code and is not located at an appropriate location."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures on September 2, 2014. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on January 13, 2015.The scope of the Hearing Officer's decision only includes the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24004639 @ Page 25

APPELLANT(S): Kurtz Street Cooperative PC-15-053, 1 of 3 PC-15-053, 2 of 3 PC-15-053, 3 of 3

Issues on Appeal:

Page 1: Appeal Application from Dana Gagnon @ 760.212.9538

Page 2: In his letter to the City Planning Commission, Attorney Timothy D. Martin argues that the process has been unfair. "Additionally, it is clear by examining the totality of circumstances relating to both the Project and the 3452 Hancock St. project, as well as to the other proximate competing projects, that the City's entire permitting process for MMCC in the Midway area has been grossly mishandled. KSC asserts that the City has committed prejudicial abuse of discretion as a result of the arbitrary and capricious manner that it has implemented the City's medical marijuana ordinance (and related provisions of the Code).

"...the issuance of a CUP to the 3452 Hancock St. applicant cannot serve to disqualify KSC from obtaining a CUP to operate at 3486 Kurtz St. pursuant to §1 41.0614 (a)(l), until and unless 3452 Hancock St. commences to validly transfer medical marijuana to its patients at that location." [In BECK v KNOPF et al the case relied on the fact that the defendants did NOT treat their business as a not-for-profit medical cannabis enterprise. That case ended with Knopf having to agree to make those distributions which he had not been doing.]

“II. The Appeal Was Filed on a Fraudulent Basis and is Entirely Motivated by Competitive Goals A. Appeal Was Filed Fraudulently and Should be Voided on That Basis.

The Appeal was filed with the City Clerk on September 16, 2014, by the Appellant who in a September 29, 2014 identified himself as "Patrick O. Cespedes Bomer of 2255 Seaside Ave., San Diego, CA 92107." The Appellant also provided the City with a purported e-mail address of Podasoda@hotmail.com and a phone number of (760)-636-6332. Appellant provided this information on the City's Development Permit/Environmental Determination Appeal Application (Form DS-3031), and purportedly signed at the bottom, under penalty of perjury, that all of the information he supplied (including the names and addresses) was true and correct.

Notwithstanding Appellant's assertions, my client and I have confirmed that most, and possibly all, of the information supplied by Appellant is untrue and incorrect. First, Appellant gave his name on the DS-3031 as "Patrick 0. Cespedes Bomer," but on the City's Official Receipt he gave the name "Patrick Cespedes." Second, and more importantly, Appellant stated that his address is "2255 Seaside Ave., San Diego, CA 92107." As an initial matter, we have confirmed that there is no 2255 Seaside Ave. in San Diego, but there is a 2255 Seaside St...Thus, it is clear that Appellant, under penalty of perjury, provided the City with an untrue and incorrect address in his AppeaL

Additionally, Appellant's purported e-mail address and phone number are both likely suspect. We personally attempted to communicate with Appellant via the e-mail address he provided, but with no success. Various attempts to confirm the accuracy of Appellant's Hotmail account have been fruitless to date. Also, we attempted to call Appellant multiple times via the phone number he provided. Most of these attempts went to a voicemail with no identifying message. On one occasion (September 25, 2014) we did reach a man who directly answered our phone call. This person was not willing to provide his full name, and we cannot confirm whether it was Patrick 0. Cespedes Bomer (or anyone using any version of that name). That person asked that we call him back the next day, which we did. However, he did not answer our follow-up call, nor did he answer any other subsequent telephonic attempts. Additionally, he has not called us back in response to our multiple voice messages.

In summary, the accuracy and truthfulness of the information provided by the Appellant is completely suspect and cannot serve as the proper basis for an "interested party" appeal. We understand that the City does not routinely require an interested party seeking to file an appeal to provide a copy of his/her valid Driver's License. Accordingly, we question whether the City took even the most basic steps to ensure that the Appeal was, in fact, validly filed by an identifiable person with a real address/contact information. While this basic screening should have been done prior to accepting the Appeal, we urge the City at this time to expeditiously attempt to verify Appellant's name and contact information, to ensure the validity of the Appeal. To the extent that all of some of Appellant's information cannot be verified, we request that the City take all necessary steps to invalidate and void the Appeal, on the basis that it was fraudulently made.

Additionally, review of the Appeal itself reveals that Appellant is not motivated by any concern regarding the potential for environmental impacts from KSC's project, nor is he arguing for the need for or propriety of further environmental assessment of the project. To the contrary, the entire basis for the Appeal is articulated by Appellant as follows: "The 15303 Exemption is Limited to Buildings up to 2,500 SF. The Subject Building is Described as 4,367 SF, so the CEQA exemption

15303 does not Apply. Another Exemption May Apply." Thus, the Appeal fails to state any facts or even opinions suggesting that the KSC project could, under any circumstance, result in significant environmental impacts. Similarly, the Appeal fails to argue that the KSC project should be subject to any further, substantive environmental assessment by the City pursuant to CEQA. The Appeal even acknowledges that other CEQA exemptions "may apply." As a consequence, this is not an instance where an interested member of the public has reasonably articulated a "fair argument" that a project warrants additional environmental scrutiny in order to comply with the mandates of CEQA. To the contrary, the Appeal merely states that the City may have misapplied one specific CEQA exemption as the basis for its Environmental Determination, while fully acknowledging the potential applicability of another CEQA exemption (e.g., §15301). This fact leads to the inescapable conclusion that Appellant's motivation in filing the Appeal is not based on a concern for the environment, or any similar worthy goal, but rather seeks to delay KSC as a purely competitive tactic. Accordingly, the City should promptly seek to void the Appeal on the basis that it was filed for an improper purpose, under both CEQA and the City's Municipal Code.

Page 3: "1. The MMCC located at 3452 Hancock Street cannot serve to disqualify this application (3486 Kurtz Street) pursuant to SDMC Section 141.0614(a)(l) until and unless 3452 Hancock Street commences to validly transfer medical marijuana to its patients at that location. Consequently, the Hearing Officer's denial was based on factual error.

Staff Response: San Diego Municipal Code (SDMC) Section 126.0108 grants the applicant of a development permit 36 months to initiate utilization of the permit. The approved Conditional Use Permit (CUP) for 3452 Hancock Street MMCC was recorded by the San Diego County Recorder's Office on April 3, 201 5, the MMCC Permit (background checks) was approved and issued on May 1, 2015, and ministerial permits for building, electrical, mechanical and plumbing are currently being reviewed by City staff.

2. The City 's approval process in the Midway area has been implemented in a fundamentally unfair manner. A competitor arranged to have someone file frivolous appeals of the Environmental Determination. Additionally, 3452 Hancock Street is substandard, the applicant submitted inaccurate information, and was involved in the operation of an ongoing illegal medical marijuana facility.

Staff Response: The newly adopted MMCC Ordinance does not provide guidelines on how to process competing applications, therefore staff has managed all MMCC applications on a first-come, first served basis. Environmental appeals are processed per SDMC Section 112.0520 guidelines. The CUP for 3452 Hancock MMCC was approved by the Planning Commission on March 19, 2015, and that project met all development regulations and findings pursuant to the San Diego Municipal Code." [Of note the Staff Response makes no mention of the ongoing illegal medical marijuana facility claim]

Page 25: Owner Disclosure Statement showing Dana Gagnon, Tenant

Page 41: Attorney Jessica McElfresh letter to Hearing Officer Kenneth Teasley arguing that the decision should be delayed because DSD erred on multiple projects CEQA determinations. "All of these applicants had moved through the application process alongside, ahead of, or just behind the applicant for 3452 Hancock Street. City staff concluded that all of these projects qualified for

Exemption 15303 of the California Environmental Quality Act. Many of these applicants - including my client, D & D Cooperative - would be presenting their projects at this hearing alongside 3452 Hancock Street, if nearly all of these applications had not been appealed for review by the San Diego City Council. The reason for these appeals was beyond the control of the applicants: allegedly, Development Services erred by exempting these projects from CEQA or chose the wrong exemption."

Page 48: Attorney Timothy D. Martin to the City Planning Commission states; "VI. Applicant's Documented Ongoing Involvement in Illegal Marijuana Dispensary At its March 12, 2015, hearing, the Commission was presented with the findings of two separate reports prepared by licensed private investigators. Each of these reports, conducted at separate time frames within the last several months, reflects strong evidence that applicant Adam Knopf is still actively involved in the operations of an illegal dispensary in the City. This illegal dispensary - Point Loma Patients Association, located at 2830 Lytton St. - is currently the subject of a Code enforcement action by the City, which seeks to permanently shut it down. The Commission should weigh this compelling new evidence heavily in its determination as to whether the applicant will operate the Project in a manner that fully complies with all applicable laws and regulations. Given that the applicant's track record indicates that he is not willing to comply with these applicable laws and regulations, the only prudent course of action for the Commission now is to reject this applicant to operate a licensed medical marijuana facility in the City. To do otherwise will undermine the City's medical marijuana ordinance, and all of the hard work undertaken by others to comply with these laws and regulations."

OWNER: Ownership Disclosure Statement @ Page 32 *[This is the strangest Ownership Disclosure Statement I have ever seen. How did this get processed at all?]*

APPLICANT: Dana Gagnon @ Page 1

CUP NUMBER: 1292271

SITE DEVELOPMENT PERMIT NUMBER:

CUP HOLDER:

STATUS: Canceled - Abandoned

CITY COUNCIL DISTRICT: 2

PLAN AREA: Midway/Pacific Highway Corridor

STAFF: Edith Gutierrez

Speaker slips in favor of the project, in favor of the appeal submitted by Gerald Gilbert, Dana Gagnon and Cynara Velazquez.

Speaker slips in opposition to the project, in favor of the appeal submitted by Scott Chipman and Gina Austin.

45:46 Commissioner Golba opens Item 9 with a DSD staff presentation recommending denial as the project site is within 1,000 feet of an approved MMCC *[3452 Hancock]*.

48:38 Scott Chipman opposed the project.

49:15 Gerald Gilbert I'm going to build on some of the discussion that was happening earlier. The introduction with the non-agendized item and the discussion. We bring it up in our appeal. Staff has addressed it. We understand Staff's position.

One of the things that we're concerned about is simply this. This is a very unique process. Very unique *[shakes head and laughs]* I don't think anyone in this county has gone through a process similar to this. There's locational criteria. There are performance criteria that ultimately is going to determine what's these facilities. The one restricting factor is the limitation of 4. After today's hearing, the action that you take, if you deny the appeal, our project is dead. There's no movement forward. So, since these being a unique process, we're going to ask for a unique solution. Which is, approve our conditional use permit with a condition that simply states that if 3452 does not get implemented, that we would still have the opportunity to move forward.

Our project was denied simply on the fact that locational criteria. Everything else was fine. As a matter of fact, we think our project is better than all the ones that are within the district. Again if 3452 doesn't get implemented, we'd have to start all over and we'd have this mad rush again to try and get that spot. The reason why I'm bringing this to your attention and couching it this way is that oddly enough, the landlord of the owner of our property was approached by the 3452 applicants about our lease arrangement. I don't know what the details were, I didn't speak to them, but they were interested in our lease. I don't know. That just tells me that something's going on. I don't know what's going on but if 3452 doesn't get implemented we'd like to have the ability to move forward. And that's our request before you today.

52:07 Commissioner Golba I think right off the bat I'd like staff to address this body's ability to sort of keep a project alive conditional upon the performance of a prior approval and if we would have any remote mechanism to do that act? *[This is not an unreasonable request and would simply be a matter of cold filing the project with a time frame window for the other project to perform under their second permit. This is not rocket science folks and you've acknowledged that the first-come-first served is a flawed process. To help correct this would it be asking too much to accommodate an applicant who may get a shot at renewing their application if one of the approved fails to perform? As you'll see by the vote this Commission led by this DSD would not agree to it.]*

A: (Gutierrez) We don't have a mechanism to do that. To keep applications on a waiting list, however, I do want to mention that 3452 has completed the background check, has obtained their MMCC permit and has obtained all their building permits and is proposing to open the first week of July.

Golba: Alright thank you for that clarification.

52:54 Commissioner Wagner I'd like to make a motion to deny the appeal and uphold the Hearing Officer's decision to deny the Conditional Use Permit No. 1292271 based on the fact that we previously approved 3452 Hancock. Commissioner Whalen seconds.

53:12 Commissioner Whalen I believe there was a speaker walking up as you were closing public testimony and if staff can check to see if that's the case regarding this project? *[how often does the Planning Commission reopen public comments? This must have been some important speaker.]*

Commissioner Wagner: I would love the opportunity to hear from Ms. Austin. I'd love the opportunity to also rescind my motion if the secondary would let that so that Ms. Austin and her delinquent paper can come speak.

Commissioner Golba: Actually Ms. Austin, compared to how we treated the attorneys two weeks ago, you're getting off Scot free. So…*[laughs]*

53:56 Gina Austin I simply wanted to let the Commission know that I do represent 3452 Hancock Street. I am here if there are any questions and let you know that we are not delinquent in any way with our moving forward with the project. The CUP is issued and recorded. All of the background checks are done. We are getting ready to open. The improvements are being done. If the Commission has any questions, I am available. *[Where was this kind of support when Abhaya had to argue the 6220 appeal. Attorney Jessica McElfresh and James Bartell sat silent at the hearing.]*

55:00 Commissioner Whalen I would like to get a little direction from City Attorney and staff. This process is not what I thought people had in mind when it was approved. Is there a way for us to request that we reopen the Ordinance and address some of these issues that are being brought up repeatedly, or is this just the way we're going? I'd just like to hear some staff, City Attorney commentary on what do you think we should be doing?

Shannon Thomas, Deputy City Attorney responds that it would have to be put forth to the City Council.

56:33 Commissioner Quiroz I agree that this process has put everybody in a very difficult position *[with the exception of Gina Austin that is]* but we are going to have to find a way to deal with this because it's going to keep coming up. In this case I find that 3486 Kurtz Street that the appeal has merit. Whether we like it or not, the appellant is correct. That at the time the Hearing Officer made his decision the 3452 Hancock project was not yet an MMCC as defined by the Municipal Code.

The CUPs that have been coming through under the information only 'the issuance of this discretionary permit alone does not allow the immediate commencement or continued operation of the proposed use on this site.' As 3452 was approved it seems to me that it is not an MMCC until it has completed all of its necessary backing.

I also agree with the appellant that its place in line must be maintained. I agree with their argument that the process has been implemented in a fundamentally unfair manner…I won't be able to approve the motion as it stands because I believe the appeal actually has merit.

59:59 Commissioner Peerson I have a question, if the project is denied, can the applicant come back on the same site, do modifications to the project and resubmit?

A: (Gutierrez) Yes, they would have to resubmit a new application.

Q: Is there a way they can have standing and keep their original submittal date to stay in the queue?

A: We don't have a process in place for that. *[no because that means you couldn't sell to those who had paid you to fast track i.e., prioritize certain applications over others.]*

Pearson: I support Commissioner Whalen's and Commissioner Quiroz's comments that I believe we should put this on a future Planning Commission agenda for discussion…We do have a flaw in the system… because people in good faith have put projects forward, have spent time and money and we should find

a way to improve how this process is done *[I would agree. It could start with Planning Commissioners, like you Commissioner Peerson, not having a financial interest in one of the dispensaries.]* because I think that the manner in which we're having to look at these projects is very uncomfortable to me and I will be approving the motion but with reservations.

1:01:14 Commissioner Haase There are a number of times what ends or starts processes such as an application being deemed complete and a final approval by a decision-making body on issuance of a building permit. I', very comfortable that at this point in time we have made the decision that the final discretionary decision by the body, either the Hearing Officer or the Planning Commission, essentially counts as a project being approved. Otherwise, we're going to create a rush or some sort of race at the building department to get a building permit *[Nonsense. Once the CUP is approved it's not like anyone in the 5th or greater place could apply for a building permit with a 3-year window for the permittee to move forward and acquire any of the requisite remaining permits. This is a completely vacuous argument designed to keep control between DSD, the Hearing Officer and/or the Planning Commission, which as we can see is at the very root of these issues.]* So somewhere the buck has to stop. I'm comfortable that it stops here. Our decision is counted as one of these facilities. There's a number of good questions being raised when you have a limited commodity and a lot of demand. Such as 'what if a project is never built and what is that process?' and I don't think we can decide that here today.

I do have a question though and that has to do with our obligations under the Permit Streamlining Act. Is there a point if an applicant saw that their project was going to be denied and continued to ask for a continuance or not bring that project to hearing? Is there a point under the Project Streamlining Act we would have to act, or it would be deemed approved?

A: (Gutierrez) We do have a policy in place regarding maintaining applications once, after 90 days, they are not active, we can close that application.

Haase: But if they remain active is that our answer to the Permit Streamlining Act then? That we would close the application?

A: Yes, if there was inactivity, we would close it.

1:04:20 Commissioner Austin I have a question for Commissioner Quiroz. What did you see as the difference between the appeals in Item no 8 and Item no 9?

A: (Quiroz) Appeal No. 8 made an argument that the findings were not correct, but it wasn't specific to what those issues were. And in my opinion our first job is to uphold or deny the appeal. Not to decide for ourselves whether or not there should be other issues which should be or could be appealed. And so, in Item No. 8, I couldn't uphold the appeal because I didn't agree with the appeal that had been put forward. And nobody had put forward the argument that was put forward under Item No. 9. Does that make sense?

Austin: Yes, that makes sense. Thank you. Again, let me make sure I understand the consequences if we're to uphold the appeal in this case. What would happen?

A: (Gutierrez) This project is done. It's completed.

Austin: It's completed then. So, if we uphold the appeal…

A: I'm sorry, I'm sorry if you uphold the appeal, it would be in conflict because we already have another application that has been approved.

Austin: Ok. Thank you.

1:05:57 Commissioner Golba Ok I just want to kind of run with that thought process. If we did in fact, as a body, uphold the appeal and essentially approve the project, where would they go? Eventually, we've heard testimony that 3452 is very close, hypothetically 3452 is scheduled to open July 1st, in a month. What would happen between today and that July 1st? Would this application be thrown out by DSD staff? We may run into this on every single one today so I'd like to use this as the test case, to beat it death and figure out what we can do. If we did act in that fashion, would it stay in limbo until July 1st up until the consummation of 3452 and it would be de facto denied by staff at that point?

1:07:04 Morris Stye, Development Services I don't think that's a good course to take with regard to the process because you're in essence saying that you're waiting for another subsequent action to take place when the way this has proceeded it's been based on the discretionary approval Commissioner Haase was just mentioning. That is the decision point. Once it's been approved that's the way the process has been going so it doesn't seem to warrant approving and have a project that was put before you in limbo for something we haven't been waiting for to this point. All we've been waiting for is the decision by the final body and that's the Planning Commission on these appeals. We have not then been waiting after that final decision for any ministerial building permit to be approved. So it doesn't make sense to put this project in that position when we haven't done that heretofore.

Golba: And I'm not requesting we modify any motion or anything like that. I'm just trying to clarify. If the 3452 Hancock which was approved by this body has what a 3-year lifespan to that CUP?

Gutierrez: To utilize it. Yes.

Golba: So, we have the luxury of sitting here today and we have something that's near-term of a July 1st proposed opening. It's very easy for us to get our arms around it. But if in fact that applicant wanted to go ahead and surf in Fiji for two years he could and come back and then decide to get serious about opening it and in the meantime all these other projects would be sitting there in this semi-conscious state, on life support somewhere and we'd run into all kinds of things like the 90-day window top deem an applicant terminated. We'd run into problems with the Permitting Streamlining Act. In essence it makes for an easy conversation on this particular example but there are hypotheticals out there that make this just another disaster of essentially putting projects on the back burner. Correct?

Gutierrez: Correct. *[I don't agree with any of this. Anyone who has gone to the trouble of acquiring one of these CUPs and the subsequent building permit is going to open that business ASAP. For Golba to bandying this about with Gutierrez and her affirming it seems like they either don't understand the dynamics of what is at play here or they are purposefully confusing the discussion for the benefit of all those who would be appealing their projects at this hearing.]*

1:09:09 Shannon Thomas, City Attorney I just wanted to remind you all that in the 9th update the code was amended to explain and expand on what utilization of a permit means. That will be effective on the 5th of July. It does not require that the doors be open, and a facility be accepting customers or functioning for its ultimate purpose. There are numerous smaller steps that can achieve utilization.

Golba: Alright and just one follow up Edith. If we were to deny the appeal and uphold the Hearing Officer's decision this morning, it's the final by Planning Commission with this application. Are they held to a year standard that they can't resubmit without a substantially different project? Let's say there's an earthquake and 3452 is swallowed into the earth. Would this applicant be able to submit this application again?

Gutierrez: Yes, the application could then be resubmitted. *[What are they talking about!? If there was an earthquake, then 3452 and their insurance would rebuild at that location. To suggest that the CUP is lost because of an Act of God is so far removed from what can and does happen, I can only further scratch my head as to what this entire exchange was meant to accomplish.]*

Thomas: I believe there used to be a requirement that people wait a year and I did also want to correct I think I said the code is to be effective July 5th, it's June 5th.

1:10:40 Commissioner Haase This is for the attorney. I need to go back to Appeals 101. Our consideration of an appeal is on all the evidence of the project, not just the appeal?

Thomas: You basically hear the project anew. Obviously, your attention is drawn to the issues the appellant puts forth as problems, but other issues may arise during the public comment and the findings are made if the project is approved in total. The conditions need to support the findings.

Haase: So, all the facts are taken into account in our decision and to Commissioner Austin's comment if a fact is, it's within 1,000 feet of another use that's a fact for this project and for any project.

Thomas: That is correct. You basically hear that the project, and I did touch on that in the memo I wrote about administrative appeals, the City's process currently doesn't really put any parameters on the substance of the appeal. We have basic procedural requirements and that's about it.

COMMISSION ACTION: COMMISSIONER WAGNER MADE THE MOTION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO DENY CONDITIONAL USE PERMIT NO. 1292271. Commissioner Whalen seconded the motion. The motion passed by a vote of 6-1 with Commissioners Golba, Haase, Austin, Peerson, Wagner and Whalen voting yea and Commissioner Quiroz voting nay.

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2015/05/28: ITEM 10: 3225 Bean St. MMCC Appeal Hearing Officer's 2015/03/25 ITEM 7 decision.

ITEM 7 STAFF: Edith Gutierrez

6 speaker slips submitted in favor – Margaret Gibert, Oscar Urteaga, Guy Marsala, Jeff Goh, Brad Sonnenburg and Cynthia Morgan

13 speaker slips submitted in opposition – Scott Chipman, Jay Davis, Lance Rogers, Franco Saspe, Rigo Navarro, Oscar Ragh, George Diaz, George Phillip Diaz, Judi Strang, Kavaughn Baghbeh, Jeff Barfield, Karen ZoBell and Carol Carpenter

HEARING OFFICER ITEM 7 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-15-030. RESOLUTION NO. HO-6797

DSD CONTACT: Edith Gutierrez

DSD PROJECT NUMBER: 368324

DSD TO HEARING OFFICER RECOMMENDATION: HO-15-030 "APPROVE Conditional Use Permit No. 1293933. (NOTE: There are two competing MMCCs within 1,000 feet of each other on today's docket. The Hearing Officer can approve only one of these MMCC's pursuant to the San Diego Municipal Code's 1,000-foot minimum distance separation requirement)."

HEARING OFFICER: Ken Teasley

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-15-054 "Uphold the appeal and Reverse the Hearing Officer's decision to Approve Conditional Use Permit No. 1293933."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures on September 16, 2014. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on January 13, 2015. The scope of the subject hearing only includes the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24004650 @ Page 22

APPELLANT(S): George P. Diaz and Carol Carpenter and Scott Chipman

Issues on Appeal

Page 4: DSD responds to how competing applications are processed on a first come first served . basis and the processing order changes as the application goes through the review process, hearings and appeals. *[This is a provable lie. DSD takes favorites and a simple review of how the 6176 Federal Blvd. CUP was processed in comparison to the 6220 CUP proves that without a doubt.]*

Page 5: "Staff is recommending denial of the project as it fails to meet the SDMC' s minimum separation requirement prohibiting MMCCs from operating within 1,000 feet of another MMCC. The proposed MMCC is not consistent with the SDMC's purpose and intent to protect public safety, does not comply with the regulations of the Land Development Code and is not located at an appropriate location."

Page 29: Notice of Right to Appeal Environmental Determination

Page 37: Ownership Disclosure Statement

Page 38: Appeal Application by George P. Diaz

Page 39: Attorney Lance Rogers letter to the Planning Commissioners citing numerous issues within the Appeal which include there being a skate park within 1,000 feet of the proposed dispensary.

Page 58: Appeal Application by Carol Carpenter

Page 59: Karen Zobell's statement in support of Carol Carpenter's appeal stating in part: "THE MMCC ORDINANCE AND INFORMATION BULLETIN 170 LACK A FAIR AND EQUITABLE PROCESS FOR GETTING A PROJECT TO HEARING. THERE ARE PROBLEMS INHERENT IN THE CURRENT

PROCESS THAT RESULT IN INCONSISTENT REVIEW, A DENIAL OF DUE PROCESS AND FAVORS THOSE PROJECTS THAT PROPOSE THE LEAST IMPROVEMENT AND THEREFORE, ARE SUBJECT TO MINIMAL QUALITATIVE REVIEW AND DELAY…THE CITY ALSO SHOULD EVALUATE THE QUALIFICATIONS OF THE PROPOSED OWNER AND OPERATOR OF ANY PROJECT APPROVED PURSUANT TO THE MMCC ORDINANCE…THE BEAN STREET APPLICATION IS AN EXAMPLE OF AN APPLICANT THAT WAS ALLOWED TO SUBMIT A DEFICIENT APPLICATION AS PART OF THE STEP ONE: INITIAL SCREENING; ALLOWED TO MOVE FORWARD TO STEP TWO: SUBMITTED COMPLETENESS REVIEW; AND ALLOWED TO CORRECT ANY SUBMITTAL DEFICIENCIES AS PART OF STEP THREE: FULL SUBMITTAL. RATHER THAN BEING REJECTED AT THE OUTSET, AS WAS DESCRIBED IN THE MARCH 2014 IB 170 ” **Very well said Ms. Zobell!**

Page 65: Appeal Application by Scott Chipman

OWNER: Floyd and Opal Bentley Trust @ Page 1 Opal Bentley Trustee

APPLICANT: Matthew Feinstein @ Page 1

CUP NUMBER: 1293933

SITE DEVELOPMENT PERMIT NUMBER:

CUP HOLDER: Matthew Feinstein @ Page 20

STATUS: Created

CITY COUNCIL DISTRICT: 2

PLAN AREA: Midway/Pacific Highway Corridor

STAFF: Edith Gutierrez

Speaker slips in favor of the project, opposed to appeal submitted by Marcos Getchell, Clinton Pyatt, Jeff Goh, Jesus Cardenas, Cynara Velazquez, Gina Austin, Clint Pyatt, Jeff Gho, Cynthia Morgan-Reed, Oscar Uteaga and Brad Sonnenberg.

Speaker slips in opposition to the project, in favor of the appeal submitted by Scott Chipman, Sharon Julian, George Diaz, Lance Rogers, David Diaz, Kelly Hayes and Phillip Diaz, Jeff Barfield, Tara Lindhardt, Ted Griswold, Nicole Alex, Carol Carpenter and Kavaughn Bughbeh.

1:24:33 Commissioner Golba calls Item No. 10 with Edith Gutierrez DSD presentation.

1:31:51 Commissioner Wagner Chris *[Larson, DSD]* how far away is the ‘alleged’ *[Wagner almost spits this out]* skate park from the dispensary?

A: I’m sorry I don’t know the exact dimension.

Q: Can you look it up sometime in the next 20-30 minutes and be able to tell me the exact length? That would be meaningful. Maybe after public comment we put a Google arrow over it to see how far it is. Next does the park have ADA access?

A: I visited the skate park, and I don’t recall it being accessible.

Q: And it does have a porta potty, correct?

A: I don't recall if there's a restroom. There are trash cans filled with beer cans and a variety of things…

Q: Is this maintained by the City?

A: No.

Q: And did the City make that structure?

A: The City did not construct it however the City did permit it.

Q: Can you walk me back to how long that particular skate park was built and delinquent before the City issued permits?

A: Going off my memory, I remember construction starting in the late 90's. I remember it being identified as an issue. I believe somewhere in your packet it was discussed with the City's Land Use and Housing Committee. Eventually Park and Recreation became involved with it and DSD issued an engineering permit for it to be located within the right of way.

Q: Last question. Does Park and Recreation allocate any budget dollar to that skate park?

A: I'm not aware of them currently doing it and I want to add that it's not on a list of playgrounds that Park and Recreation Department has.

1:34:00 Commissioner Whalen I just want to disclose an ex parte communication from the applicant and their representative on this. It won't affect my ability to decide.

1:34:13 Commissioner Haase Yes Edith. I appreciate you going through the details in the appeal but I want to step back and look at the entire project based upon the new information as it's characterized in the staff report. Is the only reason now to deny the project and uphold the appeal is because the City is determined that it is the owner of the property where the skate park is located?

A: (Gutierrez) That is correct.

Q: There's nothing else?

A: No. It meets all the other requirements.

Q: So this is based upon a determination that because of that ownership this now meets the definition of playground?

A: (Larson) The definition of playground really has three parts, and we were aware of the skate park the entire process. I thought it would be described as a minor-oriented facility. I visited it several times in the past year. I never saw any children using the skate park. It's not a park. It's not designated as a park. It wasn't until after the Hearing Officer decision that the appellant started providing information to us.

There are three parts to the definition of playground. The first is that it is owned or operated by the City. We're able to now say that the City owns the land that the skate park is on. Another part is that it contains play equipment. I don't know how to get around monkey bars and half pipes. And the third issue is intended to be used by children. I've never seen children using it. But there have been photographs of children using it and I'm sure children have used it. It's just based on these 3 I would say that these are

the vague requirements. I don't know if when this definition was adopted people thought about what the ramifications to the Washington Street Skate Park would be. I think this is a very similar issue to all the issues with this process and how to handle it. So here we are at this late state calling something a playground which doesn't seem like a playground.

Haase: I appreciate that explanation. There is some judgment that needs to be exercised by staff in making this decision. I just want to understand clearly though and maybe I'll phrase it a little differently, if it was determined this was not owned by the City of San Diego, or if ownership was acquired by some other entity would it qualify as a playground under this definition according to staff's analysis?

A: No it would not. If it's owned by someone else then it wouldn't be…*[Didn't Larson just say a minute earlier owned or operated by the City of San Diego? And why ask this question anyway? The City DOES own this land.]*

Haase: It begs a number of other questions and I think that will be central to my discussion on this project. Because it seems to be the only issue based on your response to all the appeal items. Thank you.

1:37:30 Commissioner Wagner Madam City Attorney do we possess…*[there is a 6 minute back and forth with the City Attorney, Chris Larson and Commissioner Golba over does the City own the land (they do) and were there any minors present]*

1:43:46 Commissioner Austin I think you've answered most of my questions…It seems like with most of these MMCCs we've been stuck with technical definitions as in guiding our decisions and from everything I see I couldn't imagine you wouldn't have adolescents there, those under the age of 18.

1:44:59 Commissioner Whalen I live near this place. I've been by probably a million times in the last 15 years and it's not for kids. At all. If I was parent would I let my kid there? Oh my God are you kidding? No way. But if the definition is vague I'd like to ask the attorney if we can interpret it because I don't consider it a minor-oriented facility.

A: (Shannon Thomas, City Attorney) I don't think anyone is claiming it's minor-oriented. There is another disqualifying factor that is the subject of the discussion and that is whether it's a playground.

Q: It doesn't have any equipment except for the concrete for skateboards. So, it's another troubling item.

1:46:09 Commissioner Boomhower Can we see Staff's picture of the skatepark again? And my last question is when is the last time code compliance was at the skatepark to evaluate the safety of like take a look at that fencing. That fencing does not appear to be within any sort of code.

A: (Guiterrez) I'm not aware of an open code enforcement case.

1:47:20 Commissioner Austin One final question. Assume for a minute that this was a place frequented by minors and children, but it wasn't owned by the City then it wouldn't qualify as a playground.

Thomas: It's owned or operated so under a different scenario the City did not own it but operated it, it will still fall within the definition.

1:49:02 Scott Chipman Opposed to the project citing "just as a reminder, today's Reader has 20 plus ads for pot shops…I think having been to every hearing on the marijuana retailers, I'd like to remind the Commission that there is and never has been shown the necessity for 4 pot shops in each council district."

1:51:26 Sharon Julian I'm a handicap person and there is no access for the handicap. What these places are for medical patients and access is something that needs to be considered.

1:53:32 George Diaz We're all in favor of the appeal and agree with Staff's determination. I'm also a property owner in the Midway/Pacific corridor and probably drive past that skatepark 5 times a day. I do frequently see minors there. I'm also the appellant which inside the packet I submitted video and photographic evidence showing families with their children as well as professional skateboarders who are minors that use the park as well.

1:54:30 Cynthia Morgan-Reed I represent the applicant for the MMCC. This is not an issue as to whether or not the City owns the property. At the Hearing Officer stage, Staff Chris Larson admitted that he did already know that it was owned by the City. This is not an issue of whether or not it's a minor-oriented facility. We would please ask that you not consider that since it was never raised on the appeal. It's simply a matter of is this a skateboard park or a playground. It is clearly, without controversy, a skateboard park. Skateparks are not disallowed under a 1,000-foot setback. For some odd reason to us that we can't explain to you, perhaps Staff can they decided to change their opinion from approval at the Hearing Officer when they knew it was a skatepark and they knew it was City owned to an appellant filing an appeal showing that it was City owned and now determining that it's a playground and not a skatepark. If it is a skatepark, which we contend it is, it is not disallowed under the MMCC Ordinance.

2:01:30 Jeff Barfield, Esq. representing the appellant, Carol Carpenter This CUP must be denied…the proposed use is not appropriate at the proposed location…these facilities serve a large number of customers resulting in long lines…the design deficiencies are present with this project occurring in an area that is already deficient in parking and situated along a high speed, one way, frontage road.

2:09:19 Tara Lindhart, Esq. is opposed to the CUP because it is an inappropriate location and not ADA compliant.

2:13:50 Jeff Barfield So what does this all mean? The appropriate findings could not be made by the Hearing Officer. The Hearing Officer limited his discussion and his review, apparently, to whether or not there was compliance with code requirements. But this is a discretionary decision. That's why findings are required. Because once Staff gets done that it's ok it fits with the zone it's then up to the decision-making body and now you, to make the determination is it right for that? You're being asked to ignore the issues we bring up in our appeal and only look at a skatepark issue to make this decision. We don't think that's really responsible. We're asking that you take a look at these issues and give them a lot of credence because I know that you've talked in other hearings about public health and safety and what can you really do about it? I haven't really heard people bring up this issue but it's absolutely critical to the findings you have to make in order to approve a CUP. Pick another location. There's nothing you can do when you have a bad location.

2:16:10 Gina Austin discusses the skateboard park as a playground determination. Our opinion is that the skatepark does not fall into the playground definition.

2:20:03 Cynara Velazquez in support of the project arguing that it is ADA compliant and is not being used by minors.

2:25:32 Commissioner Wagner My question goes to the City Attorney. Can you walk me through the competing definitions of a skate park and a playground?

A: (Shannon Thomas, City Attorney) There is no definition of a skate park in the Land Development Code and as it relates to the project in front of you, we've gone over some of the separation requirements for different types of uses for dispensaries, playgrounds, parks, minor-oriented. The definition of a skate park may exist somewhere else in the code or in state law or in a dictionary is not mutually exclusive with the definition of a playground in the Land Development Code.

2:27:55 Commissioner Quiroz I have read the letters from Mrs. Morgan-Reed, so they have been included in my consideration. Let me speak to the sex offenders. Anybody who lives in City Heights knows that any of the sex offenders live close to parks and playgrounds. It is not something that is a huge issue. We need parks and playgrounds, and we have sex offenders. Sometimes there's not much you can do about it.

In my opinion a skateboard park is a playground. The two are not mutually exclusive. We need areas for our children to play and skateboarding is playing. This idea that because people illegally skateboard on streets that streets are playgrounds is not compelling. You have to do it legally for it to be a playground. as such, in my opinion, the project does not meet the code for minimum distance so I would make the motion that we accept Staff recommendation, uphold the appeal and reverse the Hearing Officer's decision to approve Conditional Use Permit No. 1293933.

2:31:41 Commissioner Haase The definition of a playground is a three-prong test right now. And I think there are situations where a playground would not meet that test… So, I can see the consternation we're all having with this definition. But where I come down on this is the language that states intended to be used by any person under the age of 18 years old. The history of this site is not parents wanting to open a cute little skate park for their kids. It was meant for skateboarders. Not children. That's where I see the difference between Staff's determination and right now, I don't see that to be the case.

Who is responsible for maintaining the park?

A: (Chris Larson, DSD) It's the Washington Street Park Skateboard Association.

Q: To me this appears to be primarily an adult-oriented facility. As to the issues with criminal behavior versus code compliance. I think we need to be clear on that as to who we send out. But from a strict code compliance standpoint it sounds like they got all the required permits and it's permitted legally.

Thomas: I just wanted to clarify, it's used or intended to be used. It's not just what the original intent was but also the current use.

Haase: I understand. I'm reading the language in the definition of the code.

Thomas: It is in there. Used or intended to be used.

Haase: Would it be appropriate for me to interrupt that to be used by those primarily under 18 years of age?

Thomas: It doesn't use the reference to the word 'primarily.' The minor-oriented definition does.

Haase: That's where we have some latitude, I think. The fact that someone under 18 uses it therefore makes it a playground, I disagree with that. There's certain things kids and adults can enjoy together. Does that make everything a playground? And that's what we're here to try and answer.

2:36:14 Commissioner Haase Cynthia if you want to comment why it's not an issue if this is determined to be a playground for the current operators?

A: (Cynthia Morgan-Reed, Esq.) We did contact the current operators and he declined to come today. They worried about them being associated with medical marijuana. They didn't want to get involved in this issue. But there is included in my letter in Exhibit C a Union Tribune article that was done in 2006 that only quotes folks that are adults, 35 years of age as using the park. But we do agree that the City, at some point in the future, could use the Encroachment Agreement to shut down the park. Either because it's not in compliance due to alcohol/marijuana use, code compliance the City does have that right and ability as well as losing their governmental immunity if that is a playground.

Haase: I understand we have an Encroachment Removal Agreement, and we can exercise that based on how they're maintaining or using the property such as criminal behavior on the property. My interest is, does a determination today fundamentally change the rules that this organization has been operating this under? Would the City have to intervene if they wanted to keep it open? Where are we heading on this path by this decision?

A: Yes. That would be my interpretation because the Health and Safety Code 115800 it was passed for the opportunity to allow government agencies to adopt, basically verbatim the language the City has adopted in their Municipal Code the provisions of 115800 which states 'if you post signs that state skating equipment is necessary and skate at your own risk' and technically state law doesn't allow anyone under the age of 12 to use this 'playground' but the City's own Ordinance does allow those under the age of 12 to use it if they are accompanied by an adult. That statute was passed for the specific provision for allowing governmental immunity. It would be my opinion today that if the City is now saying, for the first time ever on record that this is a playground, that if someone gets hurt at that 'playground' the City will not have governmental immunity because it has determined it is not a skatepark.

Hasse: Ok Thank you. I feel like I'm falling down the rabbit hole here.

Larson: I discussed this with Park and Rec and their opinion is it's not a playground because it's not listed on their list of playgrounds.

Thomas: We're not saying it's not a skateboard park, we're saying that the definition of a skateboard park and a playground are not mutually exclusive.

Haase: I'm trying to focus on if the Park and Recreation Department says this is not a playground by their definition, regardless of owner then it's now an opinion by folks whose opinion I rely upon. What is and what isn't.

[There is a 10-minute conversation involving a traffic engineer, Larson and Haase regarding parking. If this is of interest, pull up the video because this is a project that would have been exempt from onsite parking regulations.]

2:47:20 Commissioner Peerson I agree with the speakers in our role as a Land Use decision and a Conditional Use Permit is a discretionary action so I will discuss two parts. The skatepark and the Findings. Based on the definition in the SDMC of a playground, I believe that a sloped concrete designed park is a playground. I will be voting to deny the Conditional Use Permit because I can't make Findings 2 and 4 due to unsafe conditions to provide access to the facility from both Bean Street and the frontage road as

evidenced in the drawings provided to us today. The proposed development will be detrimental to the public health, safety and welfare and the proposed use is not appropriate at the proposed location.

2:48:55 Commissioner Whalen I think this is a situation where reasonable people can differ. I don't consider it a playground and as long as Staff thinks the ADA issues can be resolved I'm not going to be supporting the motion.

2:49:15 Commissioner Austin This, like a lot of the issues we've dealt with, have been sticky and imperfect but based on what I can see as the definitions and what we're left to work with, I will be supporting the motion.

2:49:45 Commissioner Golba Mr., Larson, in your interaction with Park and Rec, you said it was through email, did they elaborate on whether the site was a playground, did they cite specifically where they could support their position that it was not a playground or was it based more upon that site not being on their list for maintenance that would have formed that opinion?

A: (Larson) It was the latter. It has to do with City documents not noting it as a playground. Who's responsible for maintenance. It was more their perspective from an operational standpoint than from a definition.

Q: Just to be clear, the City does not maintain this park?

A: Correct.

Golba: I think this is a tough one. Clearly, it's a skatepark. The higher-level criteria is it a playground? We've heard testimony both ways. The lifespan of this CUP is 5 years. We have to look at it from at least a 5-year perspective.

2:53:12 Commissioner Wagner Edith can you show me another picture of that skatepark? The inside. Is this ADA compliant?

A: (Larson) I don't believe it would meet the accessibility requirements of Title 24 or the ADA.

2:54:47 Commissioner Quiroz I'll respond to that. The ADA only requires that the majority of City parks and playgrounds be accessible. They don't have to make them all accessible.

COMMISSION ACTION: COMMISSIONER QUIROZ MADE THE MOTION TO UPHOLD THE APPEAL AND REVERSE THE HEARING OFFICER'S DECISION TO APPROVE CONDITIONAL USE PERMIT NO. 1293933. Commissioner Peerson seconded the motion. The motion passed by a vote of 4-3 with Commissioners Golba, Austin, Quiroz and Peerson voting yea and with Commissioners Haase, Wagner and Whalen voting nay.

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2015/05/28: ITEM 11: 3430 Hancock St. MMCC Appeal Hearing Officer's 03/25/15 ITEM 8 decision.

ITEM 8 STAFF: Edith Gutierrez

11 speaker slips submitted in favor – Margaret Gibert, Donna Jones, Hollie Holda, Melissa Crowin, Chris Crowin, Gregg Holda, Anjanette Perkins, Linda Nunes, Thomas Perkins, Marcos Getchell and Jessica McElfresh

2 speaker slips submitted in opposition – Scott Chipman and Jay Davis

HEARING OFFICER ITEM 8 ACTION: PROJECT DENIED. Report NO. HO-15-031. RESOLUTION NO. HO-6798

DSD CONTACT: Edith Gutierrez

PROJECT NUMBER: 368291

DSD TO HEARING OFFICER RECOMMENDATION: HO-15-031 "APPROVE Conditional Use Permit No. 1291991. (NOTE: There are four competing MMCCs within 1,000 feet of each other on today's docket. The Hearing Officer can approve only one of these MMCC's pursuant to the San Diego Municipal Code's 1,000 foot minimum distance separation requirement)."

HEARING OFFICER: Ken Teasley

DSD TO PLANNING COMMISSION RECOMMENDATION:PC-15-055 "Deny the appeal and Uphold the Hearing Officer's decision to Deny Conditional Use Permit No. 1291991."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures on September 17, 2014. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on January 13, 2015. The scope of the Hearing Officer's decision only includes the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION: SAP No 24004628 @ Page 24

APPELLANT(S): Attorney Donna D. Jones on behalf of D&D Cooperative

Issues on Appeal

Page 35: Ownership Disclosure Statement

Page 43: Appeal Application by attorney Donna D. Jones citing:

1. Factual Error. There is no Medical Marijuana Consumer Cooperative within 1,000 feet of this location.
2. Conflict with Other Matters. The Hearing Officer's decision to deny the CUP is in conflict with the Municipal Code and/or a City Council policy.
3. Finding Not Supported. The finding that this Applicant's proposed project location is within 1,000 feet of another Medical Marijuana Consumer Cooperative is not supported.

OWNER(S): WELLS-SAN MARCOS, LP, Keith Courtney Mgr & CAROLYN COURTNEY Gift Trust by Thomas Courtney Trustee @ Page 17

APPLICANT: D & D Cooperative, Inc., Linda Nunes @ Page 1

CUP NUMBER: 1291991

SITE DEVELOPMENT PERMIT NUMBER:

CUP HOLDER: D&D Cooperative Inc., Linda C. Nunes, Secretary @ Page 18

STATUS: Canceled - Abandoned

City Council District: 2

Plan Area: Midway/Pacific Highway Corridor

Staff: Edith Gutierrez

Speaker slips in favor of the project, in favor of appeal submitted by Hollie Holda, Gregg Holda, Maria Severson, Anjanette Perkins, Thomas Perkins, Donna Jones, Marcos Getchell and Jessica McElfresh.

Speaker slips in opposition to the project, in favor of appeal submitted by Scott Chipman.

2:57:12 Commissioner Golba opens Item 11 with a DSD Staff presentation.

3:00:14 Scott Chipman in opposition to the project in favor of the appeal citing "the vast majority of those who frequent these dispensaries are not medical cannabis patients but people on skateboards."

3:01:30 Donna Jones, Esq. I want to incorporate Lance Rogers' arguments that he made earlier today about the Brown Act. We were denied the opportunity to comment on the significant changes that were made to 3452 Hancock.

3:05:15 Thomas Perkins D&D Cooperative I want to start by saying we were the first to apply. We were the first to go to the Midway Planning Group. When people were scheduled to go to DSD on October 29th, we're kind of stunned what's happening here. Our attorneys contacted Edith and Edith said she was going to put projects that did not have minor-oriented before everyone else, put them up first. So I kind of took that as steering the process. And then again on March 12th, Chris Larson said that IS-11 did not need sidewalks. Most of our Cycle Reviews were about a sidewalk and a pole. If we didn't need any of these sidewalks why did we have the cycle reviews? *[Mr. Perkins summed it up with DSD's 'steering the process' comment. DSD was actively involved in seeing the 3452 Hancock project approved and Jessica McElfresh, Esq. (one of two) who represented Mr. Perkins in the SDPD CPTED Review @ page 36 actively engaged in sharing information with other attorneys in an effort to keep their clients in check while the preferred project went through the process relatively unobstructed. It would be nice to see the emails between DSD and Perkins.]*

3:06:51 Hollie Holda emails and project confusion

3:06:34 Commissioner Wagner I would like to make a motion to deny the appeal and uphold the Hearing Officer's decision to deny the Conditional Use Permit No. 1291991

3:08:00 Commissioner Quiroz I'm going to very briefly repeat my position from Item No. 9. The appellant is correct. The appeal filed by Donna Jones has merit and should be upheld. However the City cannot approve the CUP unless and until the 3452 Hancock Street project has failed to use its permit by the deadline. So the application cannot be approved or denied until 3452 has completed its process in one way or another. Once again I believe we must uphold the appeal and send the application back to the Hearing Officer to be placed on hold until such time as the 3452 Hancock Street project has transferred medical marijuana pursuant to the Municipal Code or it has passed the deadline given for the use of the CUP, whichever is earlier and that the Hearing Officer should preserve D&D Co-operatives place in the CUP approval process.

3:09:10 Commissioner Whalen I continue to be uncomfortable with this Ordinance in general. I do think we have to support the motion. I don't like the way the Ordinance is playing out. Frankly I think this is

probably a better project than 3452 but it came first and in my view once a discretionary permit is granted that's the trip point not the ministerial element of it because that could go on forever. Just like subdivisions. So I'll stop there.

3:09:46 Commissioner Peerson I agree that the project being proposed has merit. I did not approve the facility at 3452 Hancock and having said that, I will repeat myself for the record that the process is flawed but it is the process that we have to abide by. Now unfortunately this project is within 1,000 feet of an approved facility so I will be denying the CUP based on that.

COMMISSION ACTION: COMMISSIONER WAGNER MADE THE MOTION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO DENY CONDITIONAL USE PERMIT NO. 1291991. Commissioner Austin seconded the motion. The motion passed by a vote of 6-1 with Commissioners Golba, Haase, Austin, Peerson, Wagner and Whalen voting yea and with Commissioner Quiroz voting nay

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2015/05/28: ITEM 12: 3433 Pickwick St. MMCC Appeal Hearing Officer's 2015/03/25 ITEM 9 decision

ITEM 9 STAFF: Edith Gutierrez

16 speaker slips submitted in favor – Margaret Gibert, Michael Rollins, Matthew Boone, Dana Boone, Doug McCrady, Peter Eguia, Crystal Bowman, Sarah Bybee, Erin Cerascero, Peachy Ruane, Alan Powell, Nicholas Summerville, Stephen Cline, Itza Hernandez, Dylan Sanchez and Justin Navalle

15 speaker slips submitted in opposition – Scott Chipman, Jay Davis, Carol Green, Cynara Velazquez, Oscar Urteaga, Donna Jones, Brad Sonnenburg, Jeff Goh, Marcos Getchell, Guy Marsala, Jocelyn Maggard, Reynaldo Pisano, Steven Veach and Donna Jones

HEARING OFFICER ITEM 9 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-15-032. RESOLUTION NO. HO-6799

DSD CONTACT: Edith Gutierrez

PROJECT NUMBER: 368351

DSD TO HEARING OFFICER RECOMMENDATION: HO-15-032 "Deny the appeal and Uphold the Hearing Officer's decision to Approve Conditional Use Permit No. 1298482 and Site Development Permit No. 1339753."

HEARING OFFICER: Ken Teasley

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-15-056 "Deny the appeal and Uphold the Hearing Officer's decision to Approve Conditional Use Permit No. 1298482 and Site Development Permit No. 1339753."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures on September 24, 2014. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on January 13, 2015. The scope of the Hearing Officer's decision only includes the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24004645 @ Page 29

APPELLANT(S): Jay Davis and attorney Donna D. Jones

Issues on Appeal

Page 39: Community Planning Committee Vote to Deny 6-3

Page 41: Ownership Disclosure Statement

Page 47: Appeal Application of Jay Davis

Page 49: Appeal Application of attorney Donna D. Jones on behalf of Med Box citing;

1. Factual Error. There is no Medical Marijuana Consumer Cooperative within 1,000 feet of this location.

2. Conflict with Other Matters. The Hearing Officer's decision to deny the CUP is in conflict with the Municipal Code and/or a City Council policy.

3. Finding Not Supported. The finding that this Applicant's proposed project location is within 1,000 feet of another Medical Marijuana Consumer Cooperative is not supported.

4. New Information. There is new information which was not considered bv DSD Staff or the Hearing Officer.

OWNER: Kyu M. and Kum S. Hwang @ Page 20

APPLICANT: Douglas McCrady @ Page 1 [Louis C. Gonzales, Austin and Associates listed as an Agent]

CUP NUMBER: 1298482

SITE DEVELOPMENT PERMIT NUMBER: 1339753

CUP HOLDER: Douglas McCrady @ Page 21

STATUS: Canceled - Abandoned

CITY COUNCIL DISTRICT: 8

PLAN AREA: Southeastern San Diego

STAFF: Edith Gutierrez

Speaker slips in favor of the project, opposed to appeal submitted by Justin Navalle, Leslie Parker, Doug McCrady, Anthony Banello, Jessica Albee and Cynara Velazquez.

Speaker slips in opposition to the project, in favor of appeal submitted by Nancy Logan, Steve Veach, Hayley Grunvald, Donna Jones, Oscar Urteaga, Brad Sonnenburg, Jeff Goh, Marcos Getchell, Clint Pyatt, Barbara Gordon, Scott Chipman and Marsha Lyon.

3:47:30 Commissioner Golba opens Item 12 with DSD Staff report.

3:50:30 Commissioner Whalen I have to disclose an ex parte communication with the attorney for the applicant and I had a question on the Staff Report if Staff could comment on the commentary, we've gotten a crime disqualifying Mr. McCrady from being a Responsible Person. Is that an issue or not?

A: (Gutierrez) Again that's in the ministerial part and the CUP runs with the land, the applicant can always change.

Q: The applicant can change during the process?

A: It could change during the process and then after the permit has been recorded it could still change. The separate permit, the MMCC permit, which is the background could be a different responsible person.

3:51:33 Scott Chipman Yes, we agree that this is a seriously flawed process. Probably not on the same reasons…and you've got to ask yourself, why this mad scramble? There must have been $100K spent today in presentations, lawyers, land use experts. For what? Because everyone wants to be the first, the 1 of 4 philanthropists to provide marijuana to seriously ill people?

I was at a recent meeting of 150 lawyers having their annual dinner and I asked; do any of you think that seriously ill people are getting their marijuana through these dispensaries? Please raise your hand. Not one hand went up.

This mad scramble is about money. Even this very Commission has identified the reasons for distributing the marijuana with such terms as 'the marijuana business, the industry, a lot of money is to be made, competition, demand, it's a commodity.'

The issuing of marijuana cards is rife with fraud. We encourage the denial of the permit.

3:55:32 Barbara Gordon We ask you to deny this shop.

3:57:20 Donna Jones, Esq. in support of the appeal citing "I wanted to start by addressing an issue that was raised earlier today as far as a submittal that I made previously which was originally made to the City back in mid-March by another attorney, that did include some information about Mr. McCready. I am more than happy to resubmit this afternoon a redacted version and ask that you redact any personal information from that.

On to the merits. This is not like the situation we discussed on Hancock earlier today because Pickwick does not yet have its final Land Use Permit. Here Pickwick and my clients *[MedBox]* site, Sunrise, are on the same docket giving you the opportunity to hear them both on the same day. Moreover, the Planning Commission that looked at both of these sites rejected Pickwick by a 6-3 vote and supported the Sunrise site. So, I believe, for reasons that will become clear, this permit should be rejected and Sunrise, which you'll hear about later, supported for this area.

The required Findings cannot be made here because the site adversely affects the Land Use Plan. Would be detrimental to the health, safety, and welfare of both the patients and those that live and work in the area, is not appropriate at this location and is incompatible with the existing and planned uses on adjoining properties and would be a disruptive element in the neighborhood.

The Community Planning Group rejected the Pickwick application. The Hearing Officer ignored the Planning Group and the issues raised with this site and approved the application because it was the first one through the City process.

The City and this Commission have all recognized the importance of the Community Group in the Planning Process. Since they are an integral part of the City's process and held in high regard, this is an opportunity to make that clear. Despite being in the right zone and without prohibited uses within the proscribed distances, the project before you does not and cannot meet all of the required Findings. To ignore everything except the fact that it made it through the Staff first and that it meets the zone and distance requirements and approve this for only those reasons will put those who need access to medical marijuana in this area at risk.

As mentioned before, the applicant for this site may be changed because we doubt whether he could have obtained the medical marijuana permit given the conviction for grand theft.

4:02:52 Haley Grunvald, Esq. I'm an attorney at Sheppard Mullin with extensive experience in ADA access litigation. I am in support of the appeal and opposed to the project. This site I had a chance to review yesterday, and my certified expert's report are included in what you have received today. This project is a hazard to the disabled community.

4:07:02 Steve Veach I believe the Hearing Officer made a mistake in not listening to the public and to the Southeastern Planning Group recommendations on March 25th. I ask you to overturn the Hearing Officer's decision to support the application for an MMCC on Pickwick Street and support the application for the one on Sunrise Street.

These medical marijuana dispensary operators are not all equal. The communities have big concerns. The decision to award an MMCC should not be based merely on which application got in first. After carefully reviewing the facts the community planning group supported the MedBox application at 3385 Sunrise Street . You should also do that.

4:09:25 Nancy Logan I do have to agree with the previous speaker regarding the Pickwick location. After having been to that location I don't think an ill or fragile person would want to go there. It's not a safe place.

4:10:55 Justin Navalle This project complies with the City of San Diego's standards for a co-op. All of the findings for a Conditional Use Permit can and should be denied. The appeal should be denied.

4:19:03 Cynara Velazquez Edith just kind of made my point that there are 2 Items that are on today's agenda, 2 possible applicants both having received recommendations for approval from all staff and all agencies with one exception being the community planning group did not support Pickwick because of its size, location and lack of parking while they did support Sunrise. As such it may behoove the Planning Commission to hear both applications on the agenda today before deciding which application gets your approval.

4:20:12 Commissioner Whalen The first thing I've noticed is how it spotlights the poorer parts of our city have worse infrastructure for these baseline facilities than the newer and better equipped areas. I'm not sure there is much we can do about that. The second point I want to make is a question to the City Attorney's Office. We're criticized for not being able to make a decision based on the merits of competing projects. This is the first situation we've been in where we do have 2 projects that are on the agenda on the same day. If I were to say I like the second one better does that mean I have to vote against the first one to have the second one considered or is there some mechanism that you can foresee to work this out?

A: (Shannon Thomas, City Attorney) Well as I've noted before, there isn't any sort of scoring system to judge which ones are better assuming they meet the basic criteria and assuming the findings can be made. So, what you would be trying to do is hear one project, suspend voting on that, hear another project and then go back to the first one. You'd have to think through procedurally on how you'd want to handle that. You can either make or not make the findings for a project again assuming that the more objective criteria are met.

Whalen: Woah *[laughs]* Ok….

Thomas: So, in other words, it's up to you to make the decision.

Whalen: Fabulous. And for Edith, in Item 15 the Planning Group says it does not include a page which they said was attached with their conditions. I was just wondering if it might be possible for us to have a look at that while we're thinking about this. Because I don't know if I'm talking out of school here or not but I prefer the second one over this one and if there's evidence that supports that we should have it in front of us. I really don't know what everybody else wants to do about it.

A: (Gutierrez) So just to clarify you're saying that in the Community Planning Group Minutes there's something that references an attachment that is not in there?

Whalen: Yes. It's called Attachment 10 maybe. It's in Item 15's packet where in the Community Planning Group it says in the conditions "see statement attached" and I don't see one.

Thomas: One suggestion I do have is to keep the record clear while we're hearing one item that we hear that one item and the record that goes with that one item. So, we're on 12 at this point.

Whalen: Right. It's just that if we had this it would help.

Gutierrez: We're going to try and track it down.

Whalen: Thank you. *[What this exchange shows is that there is no scoring system. The Commission needs to make a decision on the project based on which one gets to them first and there is no way that in May of 2015 they can legally weigh, try as they might, one project against the other.]*

Gutierrez: Are you referring to Item 15 or Item 12?

Whalen: It's an Item in 15 that helps me on 12. That's the problem.

4:23:39 Commissioner Wagner Edith I want to find every possible way to support the Community Planning Group. A lot of my questions pertain to fairness in this application process. From what I can gather, Items 12 and 15 were heard by the Community Planning Group at the same time. At this juncture, in this hearing right now, why did 12 come before 15?

A: (Gutierrez) It was just because of the process. When they completed the process. The review when their NORA was posted before 15.

Q: By how many days?

A: OK so Pickwick was posted on September 24th and Sunrise was posted on October 8th.

Q: How many days is that in between?

A: Almost 2 weeks.

Wagner: I share Commissioner Whalen's concern. So often the Planning Commission gets socked in the eye for not taking into consideration the Community Planning Groups and when comparing apples to apples, within 2 weeks' time and the Community Planning Group who is going to be stuck with this for at least the next 5 years, I'd like to give them that autonomy and authority to be part of that decision making process. So, I'll tell you that the thing that weighs most heavily for me right now would be that Community Planning Group. So, I absolutely share Commissioner Whalen's concern with that. I always feel awful when we have Community Planning Group members show up and we vote in a contrary fashion. This is one opportunity to really reward the Community Planning Group members that take part in these land use decisions *[Alternatively the same can be said when Community Planning Groups are bought off and manipulate the system with Group's position as in the 6220 Federal project where they submit a blank form @ Page 28 with just the Chairs signature]* That does weigh heavily on my ability to make the findings with this particular item.

4:26:36 Commissioner Quiroz I have to agree. I read the Community Groups position and their reasoning for it and it's clear that the community is not just trying to stop any MMCCs in their area because they have approved another facility that is quite close to the one before us. but the Community Group is adamant that this location is inappropriate for such a use and would present all kinds of dangers to customers, residents and other persons working at the other properties on this street. I wonder Mrs. Gutierrez if you heard those concerns from the community.

A: Yes, I did.

Q: Did you visit the premises to see how accurate these concerns were?

A: I did not do a site visit. I used Google Maps to view the site.

Q: Did you discuss their issues with the Hearing Officer?

A: I just provide all the information to the Hearing Officer including the Community Planning Group's recommendation and the Hearing Officer is the one who makes the decision. *[This is a big problem for the City and this process. What is being brought up is how the Hearing Officer in this case is not being made aware that a competing CUP was approved by the Community Planning Group and the other was not. Why is this a problem? Because in the 6220 Appeal the project was CONSISTENTLY compared to the 6176 CUP application which had not even been before the Community Planning Group or a Hearing Officer. The inconsistency and fraud is hugely apparent under just this analysis compared to the 6176 and 6220 Federal Blvd. Projects. This is manifestly displayed in DSD Project Mgr's. Cherlyn Cac's comparisons, at the Hearing Officer testimony the Community Planning Group speakers and the fact both of these were Firouzeh Tirandazi/Gina Austin projects. If you want to see the pinnacle of fraud and pay-to-play corruption in this process you need look no farther. It's so bad that the Planning Chairperson Peerson have to recuse herself @ 2:00:20 due to financial conflict of interest in the 6220 project!]*

I think what we have to remember is that there are 2 issues here before us. Does it meet the Municipal Code for MMCCs, and can we make the findings for the actual project itself? I think the issue with respect to the location there has been a lack of discussion of that. I'm actually concerned about the picture we've been given of the current property because when you read the Southeast San Diego PDO, this violates the PDO in all kinds of different ways and I am concerned that the owner has allowed that to continue for as

long as it has and it worries me that they would not be too worried about if the new tenant would be violating the code or the PDO as well.

I've looked at the Community Planning Group and the arguments made by the Appellant, Mrs. Jones and I do find that most of her arguments are compelling…

4:29:25 I do have to agree that allowing someone who has been found guilty of a crime of moral turpitude to be approved creates a danger to the customers, the residents and other businesses. And this is clearly an issue since the Municipal Code specifically requires a background check to disallow who has such a conviction to operate an MMCC. If it's known beforehand that that danger exists there seems to be, to me, no way of making a finding that this will not be detrimental to the public health and safety.

I do find that the appeal by Mrs. Jones has merit, the Community Planning Group gave clear, considered and reasonable objections to this specific location of this MMCC and so I would move that the Commission uphold the appeal. Based on the arguments put forward by the Planning Group and the Appellant I cannot make CUP Finding No. 2, that this project is not detrimental to public safety. I cannot make CUP Finding No. 4, that this is an appropriate use for the location. I cannot make the site development permit Section 2, Finding No. 2 that it will not constitute a disruptive element and finally, I cannot make SDP Section 2, Finding No. 3 that this will not be detrimental to the safety and welfare of the residents and the other properties in the vicinity. Therefore, I would also move that this Commission deny the CUP No. 1298482 and the Site Development Permit No. 1339753.

4:31:05 Commissioner Austin I did want to get a little bit more information about the parking. They're providing 2 parking spaces. We've had a discussion in the past that I believe Commissioner Haase brought up about if you really have a retail facility, what typically is needed because this comes into the judgment of public safety and welfare that this is really a retail use what's likely to be the parking demand?

A: (Gutierrez) That is correct. This site is less than 10K sq-ft and therefore they're not required to provide parking, however they are providing 2 off-street parking spaces.

Whalen: I understand that part. Maybe I'll ask this question to Commissioner Haase. Do you remember where we ended up on that debate? Looking at a situation that already looks like it's pretty sketchy and unsafe, the reality of what the real parking requirement will add to that.

Haase: In the project I recall it was a single building used by two different uses and we wanted to make sure that both uses had adequate parking. Staff came back and established that there was adequate parking overall. I do acknowledge that in some of these cases we're looking at the underlying zone and not the parking of say a commercial use and a higher generation rate.

Austin: I was just curious. I don't think I need to use this as a reason to deny this. I'm going to support the motion.

4:33:08 Commissioner Peerson I support the community concerns they've raised, and I do not believe that Findings No's. 2 and 4 can be made. I would support the appeal and deny the CUP.

4:33:35 Commissioner Haase In order to deny this project we need to put on the record why and what are the reasons to do that? If in fact, we do uphold the appeal then I will be very rigorous applying these same standards to the other project in this district. These two projects are several hundred feet apart. You can easily walk between them in a few minutes if you're ambulatory, to either one of these. Issues of

crime apply to both. If there's a parking issue with one, I will apply that same standard to the second and that may be the reason I deny the second one as well. **We simply cannot be inconsistent in how we apply rules because the community says we like one better than the other**.*[emphasis added.]*

This is not a beauty contest. We've had this discussion. So, I'd ask my colleagues to be rigorous in that decision. Whatever we do on this project, we apply the same rigorous standards. Because in my opinion from looking at this, they're not that dissimilar because of their location. They are so close to each other and there has to be something substantive in the difference between these two locations. Thank you.

4:35:02 Commissioner Golba I do want to see us be consistent as we review these, and I harken back to the now legendary 3452 Hancock Street project which started all this, and I'm surprised this project got off as easy as it did if you remember the criteria, we were trying to hold them to. If memory serves me, they were providing 8 spaces. This one provides 2. Two. And we talked on that project about the ability of what kind of demand this might generate and where will the alternate parking go and we had this lengthy discussion about street parking and the accessibility, issues that might arise with that and coming down an alley. I mean this sort of looks more like an alley than a street. It's a half-finished street almost. We talked about public transit. The ability to get here or be dropped off…just a very poor infrastructure. So, when reviewing it and based upon us having to make it on the Findings, I do as well, terribly struggle with Findings 2 and 4. In the case of health, safety and welfare the discussion we had on Hancock was rather incriminating for that project which was far and away better than this application. Any motion that I might support that would uphold the appeal and deny the project would be based solely on this project. I would never vote for this project based on something that was coming that was better. We are supposed to sit here and review a project on its own merits. Can you make the Findings or not? We're a Land Use body. It's time to make a decision based on what's before us. We either support it or we don't. So in that sense I struggle mightily with Findings 2 and 4 as far as this being an appropriate location. I will hold the next project to the exact same standards, and I would have no problem denying both if neither one, in my eyes, make those Findings, in this case, specifically Findings 2 and 4.

4:37:40 Commissioner Peerson Just to respond and to be more specific. I completely agree Chairman. I look at every project individually. I'm not looking at it as a beauty contest. We were instructed very clearly not to compare any project regardless of where they are in the City, whether they are within 1,000 feet of each other or not is irrelevant as I look these projects over. *[How do you square this statement with your investing in 6220 Federal and ruling on competing MMCCs/MOs applications in the City?]*

4:39:53 Douglas McCrady We weren't picked by the Community Planning Group, and I found that we were approved by the public Hearing Officer. I reached out to the Community Planning Group and let them know that I wanted to be an integral part of the community. That if we could do anything to be an integral part of the community, I spoke with Rinaldo who by the way who is the head of that specific district. I said we would be ok to open in our present location if possible, I would apply to move to the other location where they had voted for Sunrise. *[This is a telling statement. McCrady was indicating that he had a relationship with the competing CUP that might allow him to move over there. Under normal circumstances that would not be an option.]* I said it might be difficult but let me see if it's something we can do. He said well that site won't work either. I said what do you mean? He said both of the neighbors across the street, they don't want anything to do with it. I went and spoke with both of them. I explained to them who I am and how I wanted to be an integral part of the Stockton neighborhood and they said they don't have a problem with it whatsoever and they believe that the Community Planning Group at the

time chose to go with the other party *[Sunrise]* because they weren't as far along as us and by choosing them, they were choosing nothing. Rinaldo wanted to pick the one who wasn't winning because they didn't want to pick anyone who won.

As it's gone with the Community Planning Group, they pick the one they like best or they pick none because they're opposed to marijuana. There are multiple reasons why they pick what they actually do pick. I believe that it wasn't based on the merits. Our presentation at the time was presented by Paul Brickford (?) that's no longer part of the team. I think if we were able to approach the Community Planning Group at this time and show them our interior drawings which are beautiful…the Sunrise location does not have a handicap spot. We have two.

4:43:21 This has been a pretty tumultuous process. I'm retired from the Navy by the way because I have Multiple Sclerosis. At any rate there's been a lot of mudslinging. My private information, as you know my Social Security Number, my Driver's License and other information, was presented to the public record and public documents. The founder of MedBox *[Vincent Mehdizadeh]* has been brought up on numerous charges of grand theft and they are the people who are funding this specific project. So now I have to… *[McCrady just states that Medbox has funded his project. Coupled with his statement earlier that if Pickwick wasn't an acceptable location, he would attempt to move into the Sunrise location smacks of gamesmanship by Medbox and as can be seen later in the Sunrise Appeal, Gina Austin.]*

Golba: *[interrupts]* Sir, if we can keep it towards the merits of your project, we don't want to deteriorate so…

McCrady: We're talking about one project better than another. *{While denied the Pickwick CUP McCrady went on to receive a MPF CUP at 4655 Ruffner Street in 09/07/2019 under Project No. 604122. The Ownership Disclosure Statement for that project, also appealed, can be found in the Report to the Planning Commission @ page 27.]*

Whalen: And what does your land use consultant have to say?

4:44:12 Julie Hamilton, Esq I represent The Greenery. I was brought in late in the game and have been advising them on the land use issues. I'm a little bit surprised to have to take up some of the mudslinging and I want to throw the mudslinging away.

I think there are issues on both sides, and I want to assure you that the Greenery is going to use a responsible party that meets all of the requirements…

4:45:27 Commissioner Golba Seeing no further requests to speak we do have a motion by Commissioner Quiroz with a second by Commissioner Wagner which would be to uphold the appeal and to deny the project. Let's vote.

COMMISSION ACTION: COMMISSIONER QUIROZ MADE THE MOTION TO UPHOLD THE APPEAL AND REVERSE THE HEARING OFFICER'S DECISION TO DENY CONDITIONAL USE PERMIT NO. 1298482 AND SITE DEVELOPMENT PERMIT NO. 1339753. Commissioner Wagner seconded the motion. The motion passed by a vote of 7-0 with Commissioners Golba, Haase, Austin, Quiroz, Peerson, Wagner and Whalen voting yea.

[Commissioner Austin, on his 2014 Form 700 Statement of Economic Interest filing, shows a greater than $10K source of income to AVRP Studios, Inc his architectural firm. Why did Commissioner Whalen not recuse himself from this item?]

* * *

2015/05/28: ITEM 13: 4645 De Soto St. Appeal Hearing Officer's 2015/03/25 ITEM 10 decision

ITEM 10 STAFF: Edith Gutierrez

9 speaker slips submitted in favor – Margaret Gibert, Marianne Greene, Stephanie Green, James Vinson, O. Kwan, Un Chong, Chris Pratt, Lynne D. Pratt and Jim Pratt

7 speaker slips submitted in opposition – Scott Chipman, Jay Davis, Francis Fellen, Lynn Chisnell, Marcie Beckett, Carol Green and Kathleen Lippitt

HEARING OFFICER ITEM 10 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-15-033. RESOLUTION NO. HO-6800

DSD CONTACT: Firouzeh Tirandazi

PROJECT NUMBER: 368309

DSD TO HEARING OFFICER RECOMMENDATION: HO-15-033 "APPROVE Conditional Use Permit No. 1292095."

HEARING OFFICER: Ken Teasley

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-15-057 "Deny the appeal and Uphold the Hearing Officer's decision to Approve Conditional Use Permit No. 1292095."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures on September 26, 2014. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on January 13, 2015. The scope of the Hearing Officer's decision only includes the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION: SAP No. 24004658 @ Page 30.

APPELLANT(S): Jay Davis, Brian J. Curry, Chair of the Pacific Beach Community Planning Group & Lynn Chisnell on behalf of Price Self Storage

Issues on Appeal

Page 1: Mission Bay Cooperative, Inc., Un Sik Chong

Page 44: Ownership Disclosure Statement

Page 51: Appeal Application from Jay Davis

Page 52: Appeal Application from Pacific Beach Planning Group, Brian J. Curry, Chair

Page 53: Appeal Application from Price Self Storage, Lynn Chisnell

1. No access to proposed location. Access to the proposed location is only available across Price Self Storage's private property. The applicable access easement was granted only to Dewey Real Property Management Co., Ltd. (the predecessor to the current owner) and only contemplated limited traffic from Dewey's employees during morning and evening hours. The proposed dispensary, however, will attract regular vehicular, pedestrian and bicycle traffic at all hours of the day. In fact, the proposal contemplates sixty-two (62) individual vehicular trips through the easement area in the AM hours alone. The easement cannot be exercised in this manner, as it would materially increase the burden on the Price Self Storage property. As a result, the anticipated change in the volume and type of traffic over the easement area would constitute a violation of the existing access easement agreement.
2. Proposed location would substantially increase traffic relative to existing capacity. Moving trucks, delivery trucks and Price's customers will be competing for very limited space with ali-day vehicular, pedestrian and bicycle traffic to the proposed dispensary, significantly increasing the risk of accidents and slowing down access to/from Price's business.
3. Inadequate Parking. The proposed designated off-street parking area will require vehicles to use the same congested access area to back out and turn around while exiting the proposed dispensary, creating further congestion and safety hazards.

Page 70: Attorney Marianne O. Greene, representing Mission Bay Cooperative, replied to the appeals.

OWNER: Pratt Family Trust, James Gordon Pratt and Lynne D. Pratt, Trustees @ Page 20

APPLICANT: Mission Bay Cooperative, Inc., Un Sik Chong @ Page 21

CUP NUMBER: 1292095

SITE DEVELOPMENT PERMIT NUMBER:

CUP HOLDER: Mission Bay Cooperative, Inc., Un Sik Chong @ Page 21

STATUS: Issued on 09/04/2015

CITY COUNCIL DISTRICT: 2

PLAN AREA: Citiwide

STAFF: Edith Gutierrez

Speaker slips in favor of the project, opposed to appeal submitted by Cynara Velazquez, Marianne Greene, Rick Turner, George Agganis, Joe Esposito, Stephanie Green, James Vinson, O Kwon, Randy Robbins, Bruno Larios, U Chong, Brian Longmore, Chris Pratt and Jim Pratt.

Speaker slips in opposition to the project, in favor of appeal submitted by Lynn Chisnell, Frances Fellers, Barbara Gordon, Judi Strang and Scott Chipman.

4:46:28 Commissioner Golba opens up Item No. 13 with a DSD staff presentation.

5:04:16 Scott Chipman in opposition to the project, in favor of the appeal citing "We are adamantly opposed to this project because we have been the community that has had the bulk of the dispensaries. At one time we had over 25. We still have some operating illegally. As they closed down, they reopened.

This is not about medicine. This City has decided to put this medical face on drug use. We're adamantly opposed. This is a completely inappropriate site.

5:06:30 Judi Strang

5:09:30 Barbara Gordon

5:11:25 Lynn Chisnell VP Finance for Price Self Storage

5:19:50 Marianne Greene, Esq. I'm the attorney for the applicant. We agree with the Staff recommendation to deny the project appeals and affirm the Hearing Officer's approval…Our project complies with the City's General Plan, with the Pacific Beach Community Plan, with Section 126.0305 governing CUPs, and Section 141.0614 governing medical marijuana cooperatives and we believe the appeals are meritless. *[In short Ms. Greene delivers one of the best appeal responses I have seen. For anyone interested in how to best set forth the presentation this would be a great place to start from. She nailed it.]*

5:33:48 Commissioner Wagner This is directed to Ms. Greene. How do you respond to Price Self Storage wanting to trip your application up and hold your feet to the fire on the project access?

A: (Greene) Access during construction will not be impeded. Price's appeal is just a recitation of the issues they have against the project but just on different letterhead. We think the motivation behind the appeal is to force the owner to sell.

[The remaining time is devoted to the differences between Kevlar covered exterior wall material versus block wall and the need for 1 or 2 security guards when there is only one entrance/exit which should consider "one of the better security plans that we've seen." As well as the applicants plan to tear down a building to make more room for parking. The Commission appreciates that because in previous projects parking was usually inadequate. City Attorney Thomas recites the language that dictates the terms and conditions with regards to armed guards and SDPD response times to an armed robbery in a "target rich environment."]

In the Report to the Planning Commission @ Page 2: "The site located at 4645 DeSoto Street has two buildings totaling 7,675 square feet. Building 1 is 5,960 square feet and Building 2 is 1,715 square feet. Approximately 5,205 square feet of Building 1 will be demolished and the remaining 755 square feet will be integrated to Building 2. The proposed MMCC will be 2,470 square feet on a 0.22-acre site. The MMCC site is located at 4645 De So to Street, west of Interstate 5, south of Garnet Avenue and east of Mission Bay Drive (Attachment 2). The site is in the IS-1-1 Zone and Coastal Height Limitation Overlay Zone within the Pacific Beach Community Plan Area."

5:59:28 Commissioner Golba describes his reasons for supporting the project is the fact that there is so much parking being made available makes the finding for its appropriate use, acceptable for this location. Ya know, tearing down a good chunk of an existing building to create parking is something we're probably not going to see often in this arena of all the projects [eyes roll] we approve. *[What this indicates to me is that the <10K sq-ft parking exemption in SDMC § 142.0540 (As of May 2023 it's now 15K sq-ft to be parking exempt) is not something the Planning Commission supports for retail cannabis. This project is under 10K sq-ft and Commissioner Golba gives them points for creating the number of parking spaces they are proposing when, by the convoluted SDMC, they would not have had to provide any.]*

COMMISSION ACTION: COMMISSIONER WAGNER MADE THE MOTION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO APPROVE CONDITIONAL USE PERMIT NO. 1292095. Commissioner Quiroz seconded the motion. The motion passed by a vote of 4-0-3 with Commissioners Golba, Haase, Quiroz and Wagner voting yea and with Commissioner Austin recusing and with Commissioners Peerson and Whalen absent.

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2015/05/28: ITEM 14: 3485 Noell St. (CC3) MMCC Appeal Hearing Officer's 2015/03/25 ITEM 11 decision

ITEM 11 STAFF: Edith Gutierrez

2 speaker slips submitted in favor – Margaret Gibert and C.A. Marengo

12 speaker slips submitted in opposition – Scott Chipman, Jay Davis, Arden Anderson, Carl Frederick Heunefeld, Gary Schifrin, Franco Saspe, Lance Rogers, Oscar Rayle, George Diaz, George Phillip Diaz, Rigo Navarro, Brian Custer and Cynthia Morgan-Reed

HEARING OFFICER ITEM 11 ACTION: PROJECT DENIED. Report NO. HO-15-034. RESOLUTION NO. HO-6801

DSD CONTACT: Edith Gutierrez

DSD PROJECT NUMBER: 368319

DSD TO HEARING OFFICER RECOMMENDATION: HO-15-034 "APPROVE Conditional Use Permit No. 1287855."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures on October 8, 2014. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on January 13,2015. The scope of the Hearing Officer's decision only includes the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24004637 @ Page 27

HEARING OFFICER: Ken Teasley

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-15-058 "1. Deny the appeal and Uphold the Hearing Officer's decision to Deny Conditional Use Permit No. 1287855; and 2. Do not adopt Negative Declaration No. 368319, as staff is recommending denial of the project."

APPELLANT(S): Claude Anthony Marengo, Principal @ Marengo Morton Architects

Issues on Appeal

Page 29: Marengo Morton Architects Site Plan

Page 32: Ownership Disclosure Statement

Page 39: Appeal Application of Claude Anthony Marengo

OWNER: NOELL LA PLAYA PROPERTIES, Frances H. Golden, Trustee @ Page 17

APPLICANT: Brent Mesnick @ Page 1

CUP NUMBER: 1287855

SITE DEVELOPMENT PERMIT NUMBER:

CUP HOLDER: Brent Mesnick @ Page 17

STATUS: Canceled - Abandoned

CITY COUNCIL DISTRICT: 2

PLAN AREA: Midway/Pacific Highway Corridor

STAFF: Edith Gutierrez

No speaker slips in favor of the project were submitted.

Speaker slips in opposition to the project, in favor of appeal submitted by Scott Chipman, David Diaz, Lance Rogers, Kelly Hayes, George Diaz and Phillip Diaz.

COMMISSION ACTION: THIS ITEM WAS WITHDRAWN.

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2015/05/28: ITEM 15: 3385 SUNRISE STREET MMCC Appeal Hearing Officer's 2015/03/25 ITEM 12 decision

ITEM 12 STAFF: Edith Gutierrez

9 speaker slips submitted in favor – Margaret Gibert, Brad Sonnenburg, Jeff Goh, Guy Marsala, Donna Jones, Oscar Urtega, Jocelyn Maggard, Reynaldo Pisano and Steven Veach

3 speaker slips submitted in opposition – Scott Chipman, Jay Davis and R. Anthony Mahavier

HEARING OFFICER ITEM 12 ACTION: PROJECT DENIED. Report NO. HO-15-035. RESOLUTION NO. HO-6802

DSD CONTACT: Edith Gutierrez

PROJECT NUMBER: 368337

DSD TO HEARING OFFICER RECOMMENDATION: HO-15-035 "APPROVE Conditional Use Permit No. 1298376 and Site Development Permit No. 1319996. (NOTE: There are two competing MMCCs within 1,000 feet of each other on today's docket. The Hearing Officer can approve only one of these MMCC's pursuant to the San Diego Municipal Code's 1,000 foot minimum distance separation requirement)."

HEARING OFFICER: Ken Teasley

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-15-059 "Uphold the appeal, Reverse the Hearing Officer's decision and Approve Conditional Use Permit No. 1298376 and Site Development Permit No. 1319996."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures on October 8, 2014. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on January 13, 2015. The scope of the Hearing Officer's decision only includes the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24004647 @ Page 27

APPELLANT(S): Donna Jones on behalf of Med Box

Issues On Appeal

Page 44: Ownership Disclosure Statement [No tenant information provided]

Page 50: Appeal Application Attorney Donna D. Jones representing MedBox citing:

1. Factual Error. There is no Medical Marijuana Consumer Cooperative within 1,000 feet of this location
2. Conflict with Other Matters. The Hearing Officer's decision to deny the CUP is in conflict with the Municipal Code and/or a City Council policy.
3. Finding Not Supported. The finding that this Applicant's proposed project location is within 1,000 feet of another Medical Marijuana Consumer Cooperative is not supported.

OWNER(S): SAM J. & SUSAN L. CECil @ Page 1 and/or Ralph Clinton Pyatt @ Customer Information

APPLICANT: Alternative Health Cooperation, Inc., Jacqueline Stein @ Page 1 and/or Willie Senn as POC

CUP NUMBER: 1298376

SITE DEVELOPMENT PERMIT NUMBER: 1319996

CUP HOLDER: Ralph Clinton Pyatt Pages 19 - 20 of the CUP do not show Pyatt's name. or ALTERNATIVE HEALTH COOPERATIVE, INC., Jacqueline Stein @ Page 58 *[Why is there a conflict here?]*

STATUS: Issued on 09/18/2016

CITY COUNCIL DISTRICT: 8

PLAN AREA: Southeastern

STAFF: Edith Gutierrez

PLAN AREA: Southeastern San Diego

STAFF: Edith Gutierrez

Speaker slips in favor of appeal, in favor of the project submitted by Donna Jones, Hayley Grunvald, Marcos Getchell, Oscar Urteaga, Brad Sonnenberg, Jeff Goh, Clint Pyatt, Cynara Velazquez, Marcos Getchell, Steven Veach, Julie Hamilton, Justin Navalle, Leslie Gaunt and Mario Cadto.

Speaker slips in opposition to the project, in favor of appeal submitted by Scott Chipman.

6:03:44 Commissioner Golba opens Item No. 15 but has to leave.

6:08:42 Commissioner Haase takes over and the matter is continued to June 25, 2015.

6:13:43 Julie Hamilton, Esq Based on the discussions we've heard earlier there is a certain value in hearing this item today. It is grossly unfair to have put my client and compared my client's co-op to this co-op because it's on the same agenda and have it continued. We would like to have this item heard and would like to have you act on it today.

6:17:17 Commissioner Haase Based on the number of speaker slips we have on this item I don't see how we can get through this before Commissioner Austin has to leave at 4:00. Let's vote on the continuance.

COMMISSION ACTION: COMMISSIONER QUIROZ MADE THE MOTION TO CONTINUE THIS ITEM TO JUNE 25, 2015. Commissioner Austin seconded the motion. The motion passed by a vote of 4-0-3 with Commissioners Haase, Austin, Quiroz and Wagner voting yea and with Commissioners Golba, Peerson and Whalen absent.

[The Commission adjourns without addressing the remaining items on the agenda.]

* * *

2015/05/28: ITEM 16: 7128 MIRAMAR ROAD (EJ MARKETING) MMCC Appeal Hearing Officer's 2015/03/25 ITEM 14 decision

ITEM 14 STAFF: Edith Gutierrez

16 speaker slips submitted in favor – Margaret Gibert, Gerald Gilbert, Mike Shapouri, Ebon Johnson, Chris Siegel, Jessica McElfresh, Rocky Goyal, Will Senn, James Schmachtenberger, Nick Smith, Vendrick Barnes, C. Edwards, Brent Boyer, A. Thomas, Chris Gallardo and Cynara Velazquez

6 speaker slips submitted in opposition – Scott Chipman, Jay Davis, David Damien, Steven Hwang, Stephen Cline and Radoslav Kalla

HEARING OFFICER ITEM 10 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-15-037. RESOLUTION NO. HO-6804

DSD CONTACT: Edith Gutierrez

PROJECT NUMBER: 368343

DSD TO HEARING OFFICER RECOMMENDATION: HO-15-037 "APPROVE Conditional Use Permit No. 1296361."

HEARING OFFICER: Ken Teasley

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-15-060 "Deny the appeal and Uphold the Hearing Officer's decision to Approve Conditional Use Permit No.1296361."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures on October 27, 2014. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on January 13, 2015. The scope of the Hearing Officer's decision only includes the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION: SAP No. 24004659 @ Page 29

APPELLANT(S): Jay Davis, Scott Chipman attorney David S. Demian on behalf of Rick Engebretsen

Issues on Appeal

May 8, 2015 Edith Gutierrez request for continuance

Page 33: Letter from John Horst Mira Mesa Community Planning Group to The City of San Diego, Planning Department requesting, among other things, that only 2 adult-use CUP's be awarded in Mira Mesa and, on Page 37, suggests utilizing a ranking system rather than the 'first-come-first-served' method that DSD currently employs.

Page 39: Ownership Disclosure Statement

Page 46: Appeal Application by Jay Davis

Page 47: Appeal Application by Scott Chipman citing: "7128 Miramar Road appears to be within 1 000' of an existing church Pacific Lighthouse Christian Fellowship @ 7060 Miramar Road and Champion Rhythmics @ 9586 Distribution Avenue appears to be a minor oriented facility."

Page 48: Appeal Application by attorney David S. Demian on behalf of Rick Engebretson.

Page 49: Attorney David S. Demian, Finch Thornton and Baird April 9, 2015 letter to The Planning Commission requesting that the Planning Commission approve this appeal and reverse the Hearing Officer's decision to approve Conditional Use Permit No. 1296361 for EJ Marketing MMCC- Project 368343 citing, among other things:

1. (A) The number of parking spots is inadequate.
2. (B) Parking space size and aisle dimensions are inadequate.
3. (IV)The applicant previously operated an illegal dispensary and continues to operate an illegal delivery service.
4. (V) The recommendations of the Mira Mesa Planning Group should be respected, and this CUP should be heard concurrently with the pending applications in District 6.

Page 58: Attorney David S. Demian, Finch Thornton and Baird, March 25, 2015 letter to The City of San Diego, Development Services Department, Kenneth Teasley, Hearing Officer, requesting that the he exercise his authority to: (i) continue the hearing on the application for a CUP for EJ Marketing MMCC- Project 368343 to April 22, 2015 so that it can be considered relative to the four other applications for CUPs in City Council District 6 set for hearing on that day; and (ii) at such April 22 hearing, take into account the recommendations of the Mira Mesa CPG with respect to those applications for CUPs in the Mira Mesa community so that their time and effort is not wasted and ignored. In the alternative, we request the permit be denied citing, among other things.

1. The Unavailability Of The Project File Prevents Accountability And Verification. On March 5, 2015, this office requested an appointment with City Staff to copy the Project file. On March 10, 2015, we were informed that the Project file would not be available for copying for at least two weeks because City Staff needed it to prepare for this hearing. We requested notification

when the Project file would be available so that we could conduct a meaningful review in advance of this hearing, and City Staff stated they would notify us. However, ultimately, after two rounds of follow up on our part, City Staff stated the Project file would be available at 2 PM on March 24, 2015, the day before this hearing. The result of the delay in access to this file is that we were deprived of our right under the Public Records Act and of our opportunity to conduct a meaningful review of the Project file. The information contained therein would have been insightful as we have already identified potential discrepancies with the Project just on review of the City's Staff Report to Hearing Officer but have not had sufficient time to audit and present them for this hearing.

An initial investigation reveals that in July 2014 the City of San Diego filed a lawsuit against the Project applicant, Green Nectar EJM Cooperative, Inc. dba EJ Marketing dba Green Nectar Co-Op Delivery Service and Mr. Ebon Johnson for "growing, selling and distributing marijuana" in violation of the San Diego Municipal Code and the California Health and Safety Code. The Project applicant agreed to a stipulated judgment to cease operating its illegal dispensary and to pay a $10,000 civil penalty.

2. Ignoring Other Pending Applications Contradicts San Diego Municipal Code § 126.0305. During the December 3rd, 2014, hearing for 3452 Hancock MMCC- Project 368344, the record shows that you asked City Staff if you were allowed to consider whether the application was appropriate.

Rather than consider pending applications clearly relevant to the issuance of a limited number of CUPs, City Staff, without any citation to the Land Development Code, has chosen to treat such current, pending applications as not being part of the process. The result is to undermine the single most important objective of the Land Development Code, which is set forth in the very first provisions of that Code:

"The intent of these procedures and regulations is to facilitate fair and effective decision making and to encourage public participation." (SDMC § 111.0102.) City Staff's determination to hear permits in isolation, while at first blush may appear a reasonable methodology, upon closer inspection is again, not only contrary to the language of the Land Development Code, but violates the guiding principles of the Land Development Process.

Page 65: August 18, 2014, Mira Mesa Community Planning Group Minutes Section II - EJ Marketing presentation by attorney Jessica McElfresh on behalf of applicant Ebon A. Johnson, Sr.

Page 95: Paul A. Joelson, Architect at Joelson Vail Associates, LLC., performs an analysis of the application and supporting documents relative to the proposed Medical Marijuana Consumer Cooperative (MMCC). The focus of this analysis pertains to the applicant's area computation of the buildings and existing parking stall count on the site plan. In sum his finds were that "The applicant's site plan is inaccurate and does not reflect current conditions."

Page 114: Superior Court of San Diego: City of San Diego v Ebon Johnson et al Case No. 37-2014-00022324-CU-MC-CTL alleges Defendant GREEN NECTAR EJM COOPERATIVE, INC. (GREEN NECTAR) is a California corporation organized and existing under the laws of the State of California, according to the records of the California Secretary of State. Plaintiff is informed and

believes GREEN NECTAR is doing business as EJ MARKETING and/or GREEN NECTAR CO-OP DELIVERY SERVICE in Suites 202 and/or 300 of the PROPERTY.

Defendant EBON JOHNSON (JOHNSON) is an individual and resident of the 7 County of San Diego, State of California. JOHNSON is the agent for service for GREEN 8 NECTAR and sole proprietor of EJ MARKETING. Plaintiff is informed and believes JOHNSON is growing, selling and distributing marijuana from Suites 202 and/or 300 at the PROPERTY.

OWNER: REAL OUTRAGEOUS PARTNERS, LLC, Ralph Rischman, Steve Blumkin, and Ross Margolin, Partners @ Page 18-19.

APPLICANT: GREEN NECTAR EJM COOPERATIVE, INC., Ebon A. Johnson, Sr. (Permittee) Director and Ross Margolin, Partner @ Page 19 [See Section 1 Section 3.2 re Mr. Ebon Johnson Sr. and his background.]

CUP NUMBER: 1293631

SITE DEVELOPMENT PERMIT NUMBER:

CUP HOLDER: Ebon A. Johnson Sr.

3.2.1:2014/09/08 City of San Diego Active Cases re Unlicensed Cannabis Activities _Ebon Johnson in Items 36 and 37

3.2.2:https://151farmers.org/wp-content/uploads/2018/04/23-06-13_Ebon-Alee-Johnson-TruthfinderReport.pdf

3.2.3: EJ Marketing-Ebon Johnson Project No. 368343 Information Sheet How is that an attorney, such as Jessica McElfresh, can be Johnson's representative Point of Contact when he has this record?

STATUS: Issued 09/04/2015

CITY COUNCIL DISTRICT: 2

PLAN AREA: Citywide

STAFF: Edith Gutierrez

Speaker slips in favor of the project, opposed to appeal submitted by Jessica McElfresh.

Speaker slips in opposition to the project, in favor of appeal submitted by Scott Chipman.

COMMISSION ACTION: COMMISSIONER WHALEN MADE THE MOTION TO CONTINUE THIS ITEM TO JUNE 18, 2015. Commissioner Wagner seconded the motion. The motion passed by a vote of 7-0 with Commissioners Golba, Haase, Austin, Quiroz, Peerson, Wagner and Whalen voting yea.

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2015/05/28: **ITEM 17: 3571 PACIFIC HIGHWAY (PATIENTS ALTERNATIVE MIDDLETOWN) MMCC** Appeal Hearing Officer's 2015/03/25 ITEM 15 decision

ITEM 15 STAFF: Edith Gutierrez

5 speaker slips submitted in favor – Margaret Gibert, Kavaughn Baghbeh, Carol Carpenter, Jeff Barfield and Karen ZoBell

9 speaker slips submitted in opposition – Scott Chipman, Jay Davis, Kathleen Lippett, Franco Saspe, Lance Rogers, Oscar Rayle, George Diaz, George Phillip Diaz and Rigo Navarro

HEARING OFFICER ITEM 15 ACTION: PROJECT DENIED. Report NO. HO-15-038. RESOLUTION NO. HO-6805

DSD CONTACT: Edith Gutierrez

PROJECT NUMBER: 368295

DSD TO HEARING OFFICER RECOMMENDATION: HO-15-038 " APPROVE Conditional Use Permit No. 1292502. (NOTE: There are four competing MMCCs within 1,000 feet of each other on today's docket. The Hearing Officer can approve only one of these MMCC's pursuant to the San Diego Municipal Code's 1,000 foot minimum distance separation requirement)."

HEARING OFFICER: Ken Teasley

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-15-061 "Deny the appeal and Uphold the Hearing Officer's decision to Deny Conditional Use Permit No. 1292502."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures on November 7, 2014 (Attachment 8). An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on January 13, 2015. The scope of the Hearing Officer's decision only includes the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24004636 @ Page 25

APPELLANT(S): Carol Carpenter

Issues on Appeal

Page 3: Staff denial is based on new information citing; "Although 3225 Bean Street MMCC was denied by the Planning Commission, staff cannot recommend approval of this application and it is located within 1,000 feet of the Washington Street Skate Park."

Page 30: Notice of Right to Appeal Environmental Determination

Page 38: Ownership Disclosure Statement

Page 45: Appeal Application by Carol Carpenter

Page 46: Attorney Karen ZoBell of Solomon and Ward letter to DSD on behalf of Patients Alternative Health Center requesting that the City approve the PAHC CUP and implement our suggestions on the process for approval of all MMCC CUPs.

"What is missing from the MMCC Ordinance and IB 170 is a fair and equitable process for getting a project to hearing. There are problems inherent in the current process that result in inconsistent

review, a denial of due process and favors those projects that propose the least improvement and, therefore, are subject to minimal qualitative review and delay...We believe that other applicants were allowed to submit deficient applications as part of the Step One: Initial Screening, allowed to move forward to Step Two: Submitted Completeness Review, and allowed to correct any submittal deficiencies as part of Step Three: Full Submittal, rather than being rejected at the outset, as was described in the March 2014 IB 170.

The City issued Medical Marijuana Consumer Cooperative Information Bulletin 170 (IB 170) in March 2014, which described the application process for the MMCC CUP and set forth the minimum submittal requirements: The March 2014 version required, as part of Step One: Initial Screening that: "Applications missing any of the required submittal items above, required details or fees will not be accepted." (Emphasis included in original). It also stated, in Step Three: Full Submittal: "Full Submittals will be placed on a list based on the completed date and time. This list will be posted on the Development Services Department's website." These statements were deleted from the July 2014 version of IB 170. The revised IB 170 eliminated the express emphasis on strict compliance with minimum submittal requirements, thereby allowing less-than-complete applications to move forward to Step Two and Step Three rather than being rejected. Also, the stated placement on a list of applications, based on completed date and time, appears to be useless as it relates to placement in the queue of projects being reviewed.

The lack of qualitative review fails to adequately address what is most beneficial to a neighborhood and the City: an existing building that proposes no new or updated features and amenities, or a new building that transforms an underutilized and/or neglected site with new architecture, landscape, utilities, frontage, and ADA-compliant walkways. Again, it would be a failure of the discretionary process to not perform a qualitative review, particularly when the number of permits to be granted is severely limited by the ordinance.

OWNER: Gary and Daniel W Diefenderfer, Trustees @ Page 20

APPLICANT: Carol Carpenter, Patients Alternative Health Center Cooperative Inc. @ Page 1

CUP NUMBER: 1292502

SITE DEVELOPMENT PERMIT NUMBER:

CUP HOLDER: Patients Alternative Health Center Cooperative Inc., Carol Carpenter, President @ Page 21

STATUS: Created

CITY COUNCIL DISTRICT: 2

PLAN AREA: Midway/Pacific Highway Corridor

STAFF: Edith Gutierrez

Speaker slips in favor of the project, opposed to appeal submitted by George Diaz, Lance Rogers, David Diaz, Kelly Hayes and Phillip Diaz.

Speaker slips in opposition to the project, in favor of appeal submitted by Scott Chipman.

COMMISSION ACTION: THIS ITEM WAS WITHDRAWN.

2015/06/18 Planning Commission Minutes

2015/06/18: **Item 8: 7128 MIRAMAR ROAD (EJ MARKETING) MMCC**– Continued from 2015/05/28

See Planning Commission Hearing of 2015/05/28 ITEM 16 earlier in the Steering Doc for all Project Files and Appeals information. (Control F the Project Number for easy access.)

PROJECT NUMBER: 368309

STAFF: Edith Gutierrez

Speaker slips in favor of the project, opposed to appeal submitted by Cynara Velazquez, Margaret Gibert, Jessica McElfresh, Mike Shapouri, James Schmachtenberger, Shaun Silva, Clarence Sidbeck, Ben Whittlegay, Ebon Johnson, Brandon MacFarlane, Don Rerretti and Andrea Laparra.

Speaker slips in opposition to the project, in favor of appeal submitted by Carol Green, Barbara Gordon, Scott Chipman, David Demian, Steven Hwang, Heidi Runge and Rick Engebretsen.

1:58:01 Commissioner Golba Opens Item no 8 with DSD presentation.

2:05:13 Guitierrez defines the minor-oriented facility set back issues as defined in SDMC as being "… where the primary use is devoted to people under the age of 18…"

2:06:49 Commissioner Whalen asks if anyone from the Mira Mesa Planning Group is in attendance? *[No one responds. What Whalen goes on to say is that the MMPG actually rated each of the projects to determine which one would be preferred over the others.]*

2:08:16 David Demian representing Rick Engerbretson for a competing permit. Next week all the completing permits will be heard. This is not a fantastic project. This parking site has problems. This project require 5 ADA parking spots and there are only 4.

@ 2:13:38 Demian points out that, based on SDMC § 113.0103 the Gross Floor Area represents 32,195 SF x 4.89 spaces / 1,000 SF requires 157.43 parking spaces. The parking spaces does not meet the minimum requirements even as presented under their newest site plan submitted at the 11th hour. We ask that you deny the appeal.

2:14:57 Barbara Gordon talks about the applicant EJ Marketing having run an illegal dispensary and is being rewarded a license.

2:16:13 Scott Chipman describes "irresponsible behavior by City Council."

2:17:23 Carol Greene re minor-oriented facilities and how the list requirements are examples not exclusive under SDMC confirmed at prior city council meetings. (See SDMC 141.0606 Regulations re Child-Care Facilities and SDMC Section 141.0504 re Cannabis Outlets)

2:19:12 Jessica McElfresh, Esq. This project is previously conforming under SDMC § 113.0103. I'd like to take exception to Mr. Demian's assertion that this is a change in use. It's not a change in use. This has

been a commercial shopping center since its construction. This project, including the parking design was all stamped approved in 1984.

[This presentation is a perfect example of what McElfresh SHOULD have done for Geraci/Schweitzer at 6220. While McElfresh spoke briefly Bartell did not speak at all during the hearing. (See Item 4 on 12/06/18) McElfresh was not hired to assist in the appeal. Putting Schweitzer in charge of the appeal while McElfresh was in attendance is astonishing in that it shows Geraci's true intention to see 6220 approved but to make it look like he had at least tried to have it denied so that he would not have to see the 6176 CUP approved.]

2:29:51 Cynara Velazquez On behalf of the Association of Cannabis Professionals we'd like to speak in favor of this project.

2:31:04 Commissioner Wagner Mrs. McElfresh I have no doubt in my mind that you are a damn fine attorney. You spent so much of your time and your presentation defending the appeal you didn't have any time to tell us what makes your project perfect. I'd like you to come up and take a few minutes to tell us that. That would be meaningful.

2:31:26 Jessica McElfresh, Esq. I appreciate that and thank you for the time. Basically this is a fairly standard medical marijuana consumer cooperative dispensary layout…with the majority of the space for dispensing. Beyond that we intend to fully comply with all the security provisions of both the Land Use and the Health and Safety Ordinances.

2:35:21 Commissioner Wagner With that I can make the findings and deny the appeal and uphold the Hearing Officer's decision to approve Conditional Use Permit No. 1296361. Seconded my Commissioner Whalen.

2:37:58 Commissioner Peerson Per the appellant, the site appears to be within 1,000 feet of a minor-oriented facility with a DSDS explanation that the Gymnastics Academy is not the primary use of the site. That would lead me to believe that in that definition the sensitive use has to be a certain percentage of the occupancy. Can you give us an explanation of that please?

A: (Chris Larson, DSD) Primary use occupies the majority of the use on a premises and that is defined in the municipal code.

Q: The majority being 50% or more?

A: Yes.

Q: And this facility doesn't meet that threshold?

A: No, it does not.

Peerson: One note to staff. We're seeing a lot of these and one thing I look for is that 100 and 1,000 foot MAP. Can we use an aerial rather than an APN map so that we have a better understanding of what's physically there? As I'm reading the report and the APN MAP doesn't help….and with that I would be supporting the project.

2:45:36 Commissioner Quiroz I think if every time we got a new tenant in a multi-tenant facility like this, I think we'd have chaos in the City.

2:52:54 Commissioner Golba compliments Demian for not sliming the opponent with unredacted arrest records in his appeal presentation and keeping it to technical Land Use issues…Let's vote. *[Demian can't very well argue background checks because, as my legal counsel he sold me out in COTTON v GERACI and purposefully and admittedly torpedoed these arguments which were in his moving papers but not in his oral arguments. When confronted in the hallway he said he 'must have had an off day.' I terminated him and took the case over as a pro se litigant.]*

COMMISSION ACTION: COMMISSIONER WAGNER MADE THE MOTION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO APPROVE CONDITIONAL USE PERMIT NO. 1296361 WITH CONDITIONS. Commissioner Whalen seconded the motion. The motion passed by a vote of 5-0-2 with Commissioners Golba, Quiroz, Peerson, Wagner and Whalen voting yea and with Commissioners Haase and Austin absent.

2015/06/25 Planning Commission Minutes

ITEM – 2: REQUESTS FOR CONTINUANCE AND/OR ITEMS TO BE WITHDRAWN:

ITEM # 10 - 4417 RAINIER AVE (LIVING GREEN) MMCC – PROJECT NO. 379530 - WITHDRAWN

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2015/06/25: ITEM 14: 3385 SUNRISE STREET MMCC Continued from 2015/05/28 *(Taken out of order)*

See Planning Commission Hearing of 2015/05/28 ITEM 15 earlier in the Steering Doc for all Project Files and Appeals information. (Control F the Project Number for easy access.)

PROJECT NUMBER: 368337

Speaker slips in favor of the project submitted by Donna Jones, Brad Sonnenberg, Marcos Getchell, Hayley Grunvald, Jeff Goh, Clint Pyatt, Tara Lake, Oscar Urteaga, Christopher Sesi, John Dudek, Steve Veech, Will Senn, Dallin Young and Cynara Velazquez.

Speaker slips in opposition to the project submitted by Scott Chipman, Kathleen Lippitt, Michael Williams, Barbara Gordon, Gina Austin, Jim Bartell, Tamara Leetham, Marialisa, Doug McCrady, Tony Banello, Leslie Parker, Peachy Ruane, Jessica Albee, Justin Navalle, Matthew Grabowski, Lauren Naralle, Nicholas Podimatis and Dylan Sanchez.

23:04 Commissioner Haase Our next Item is 14 which we moved in our agenda Includes Staff presentation by Edith Gutierrez.

27:08 Commissioner Quiroz Aren't there two appeals?

A: (Gutirrez) There is only one appeal.

Q: So how do we deal with a letter that is appealing. Is it taken as advisement?

A: (Shannon Thomas, City Attorney) Which letter are you referring to?

Q: The letter, I can't remember who it was from, regarding the schools.

Thomas: That would just be additional information you can consider, as I think we've talked about before, when you are hearing an appeal, you're hearing the project anew so any issues brought up in writing to the Commission, any issues or questions brought up in public comment all of that is something you can take under consideration and ask for further clarification or information on.

Quiroz: Thank you.

28:14 Commissioner Haase Ok before we get started on this one, we have appeal slips that say in favor of the appeal and opposed to the project. Actually if you are upholding the appeal, it will reverse the Hearing Officer's decision and will approve the project.

Whalen: May I just ask that we put up Staff's recommendation?

Haase: It's right there. The recommendation of Staff is to 'Uphold the appeal, reverse the Hearing Officer's decision and approve Conditional Use Permit No. 1298376 and Site Development Permit No. 1319996.'

If you recall this particular project was denied by the Hearing Officer because of a previously approved project *[Pickwick]*. That was appealed to the Planning Commission. We denied that project which removed the distance requirement and enabled Staff to recommend approval of the project. That was the change in circumstance based upon our decision on the Pickwick project.

30:38 Donna Jones, Esq I represent Medbox. We are here today to ask you to follow the recommendations of both the Community Planning Group and Staff and approve a CUP for a site that is well located, accessible, secure and proposed by operators with established experience in legally operating these types of facilities.

The Hearing Officer denied the site for only one reason. He had already approved a permit for Pickwick, located less than a 1,000 feet away. That denial came despite the Community Planning Group recommendation to deny Pickwick and grant Sunrise its CUP. A recommendation we urge you to follow today.

38:31 Commissioner Haase Let's go to speakers against the project. We have an organized presentation by Gina Austin. You have 10 minutes. Let's go through the speakers who have ceded time to you. Please raise your hand as I call your name; Jim Bartell, Tamara Leetham, Maralisa Samo, Doug McCrady, Tony Banello, Leslie Parker, Peachy Ruane, Jessica Albee, Justin Navalle, Matthew Grabowski, Lauren Naralle and Nicholas Podimatis.

39:31 Gina Austin, Esq. I am here on behalf of a newly revised applicant that just submitted for a new Pickwick location and opposed to this project primarily for the reasons related to parking. But I have a presentation and I believe you have handouts of the slides and I'm going to go through this. I do not believe that the Findings for the CUP can be met, nor the Findings for the Site Development Permit required for this site, and we'll go through these specifically.

First and most importantly, this project fails to comply with the Land Development Code. There is insufficient onsite parking for this location. And I want to take a step back and go through all these various MMCC hearings we've had over the past several months and in each one of these hearings, parking has consistently been an issue. And to date, this Commission has not approved a single project where there

wasn't on-site parking. This would be new. This would be different. I believe Commissioner Haase at the last, on the 28th, when the Pickwick matter was heard, you had stated that the standard is going to be rigorously applied to all subsequent applications. If two onsite ADA accessible parking spaces are inappropriate for the Pickwick location, two offsite, on-street ADA spots are inappropriate for this location. …if we apply the same standards as we have to the previous applicants of low end 2.5 parking spaces per 1,000 sq-ft of retail, this 4,000 sq-ft project would require 11 parking spaces.

There are schools and residences that fall within the 1,000-foot radius…and will be detrimental to public health and safety. *[Gina representing a 'new applicant' and not mentioning Vincent Mehdizadeh obvious issues with the SEC and grand theft charges, or the fact that Sunrise Property Investment, LLC owns 20% of the 3385 Sunrise property see page 6;16-17 where both Salam Razuki and Ninus Malan would have, per SDMC, had to have been disclosed in the application and were not, paints Mrs. Austin into a very compromising position. She had to represent the new applicant at Pickwick so that she could assure these matters weren't brought up by anyone else and Sunrise would get approved. Gina also knew that a >10K sq-ft or less sized project did not have to have on-site parking. These were strawman arguments.]*

49:25 Scott Chipman Just to be clear, San Diegans for Safe Neighborhoods is opposed to the project. We are mildly amused by the greedy, money-grubbing scramble for pot shop sites in the San Diego area. The elephant in the room is this money-grubbing to be the first, or one of the four philanthropists in San Diego that is nothing but, about the money. That's why you see these presentations just like you'd see in a huge development project for some commercial or residential project where people are building for money. This is about money. It's 100% about money. But our primary concern is about health and safety and it's not just about parking, it's really about the sale of marijuana.

The reality is there is absolutely nothing about the operation of these establishments you are approving, including the one in Otay Mesa that is selling popcorn candy and cookies that are all laced with THC. There is nothing different from these operations and the operations of the 200 or so that have been closed down by the City Attorney and Code Compliance. *[Not entirely true Scott. The licensed dispensaries have to give the City and State their cut and the limited licensing gives the marketplace a competitive advantage and spurs efforts to monopolize the industry by corrupt lawyers and government officials who enjoy the pay-to-play bribes that make adult-use its current reality.]* They're going to operate exactly the same. There's no restrictions in the Land Use Code or in the Ordinance that's going to restrict their advertising… All of the things we have seen that have appalled us, none of those are addressed by the Ordinance. That is why this Commission, a Commission of citizens, should say no.

51:52 Steve Veach I am a member of the Southeastern Planning Group and I am in favor of this project. We were given both applications to consider and we chose what we considered the more serious of the applicants and the one before you today, the Medbox-Sunrise project appeared to be the more serious of the two. I'm in favor of that decision and am here to support that.

52:50 Dallin Young I am here on behalf of the Association of Cannabis Professionals. *[This now defunct organization was founded for the express purpose of controlling the application process with strawman appeals. It is believed certain cannabis attorneys and lobbyists were behind its creation.]* This is a highly qualified applicant and has met all the criteria to provide safe access in this zone. They have the complete support of the Community Planning Group, Development Services and our organization. The applicant has extensive experience with security provided in a secure, discreet location that will serve the needs of patients and the community. We ask that you approve this application.

53:30 Cynara Velasquez (ceded time by Will Senn) on behalf of the Association of Cannabis Professionals and we ask that you approve this application. From the statement just made by Gina Austin that the Pickwick application will reapply, this is a first-come, first-served basis. Another application will take another 6 months. Pickwick was denied. We are here now with a project that qualifies. We can not be hedging our bets that something better will be coming.

55:36 Barbara Gordon This project will definitely affect the health and safety of this neighborhood. Please deny the project.

56:23 Commissioner Austin To Staff. The statement that was just made that this is a high crime area. Can you give me some feedback on that compared to other areas we've been looking at? The second question I have is can you be clear on what is required of parking on projects of this size?

A: (Chris Larson, DSD) Unfortunately we don't have the crime statistics but we didn't require them as a part of this. It's not part of the review. I do want to state that crime statistics are usually based on census tract and the population of the census tract and when you're dealing with industrial zoned areas, there's very little population in them so it can skew the percentage of crime rate per people because there's very few people that live in an industrial zoned area.

A: (Edith Gutierrez, DSD) This lot is less than 10K sq-ft and therefore it meets the exemption and doesn't require parking. I do have a transportation engineer available to address any further questions.

Austin: Great, I'd like to hear from the transportation expert.

A: (Cameron Calle (?), Transportation Development) The basic parking requirement in the SouthEastern San Diego area would be 2.5 parking spaces for every 1,000 sq-ft of interior development and that would come up to be 11 parking spaces as a basic parking requirement however there is an exemption for parking in the Municipal Code that allows different parking requirements if the lots are less than 10K sq-ft in size which this is at under 8K sq-ft. In this case, if the applicant chooses, the parking requirement would be zero. No required parking for small lots.

Austin: Let me ask one other question. The other thing I'm confused about is the basement. It looks like there's enough grade differential that the back of this triangular lot has access to below while the other side has access to above. Do we know what use has been planned and is it an issue? I'm worried about that because it looks like there are garage doors to that space.

Larson: Perhaps the applicant can speak to what's planned within there, but as far as this Conditional Use Permit is concerned it would allow uses within the Industrial Zone of the SouthEastern Plan District to occur within that space.

Donna Jones, Esq.: We control the building and we're removing the staircase that was referenced and so there won't be any access or uses on the ground floor. We also have an agreement for 3 parking spaces with the property across the street.

1:01:24 Commissioner Quiroz So far as the church is concerned, it is in an industrial zone, right?

Larson: Yes.

Q: So, it is an illegal use?

A: The zone does not permit it and there's recently an open code enforcement case because of this issue.

Q: It seems to me that the Brookshire Academy seems to be a school which is also an illegal use in the industrial zone.

A: Yes, and I would have the same response as I did with the church.

Q: But the youth building, Trace, did not appear to be a school. Especially based on a decision the Planning Commission made, I think two weeks ago, about the tutoring schools being called professional business not schools. Would you agree?

A: I haven't done a complete analysis. I've looked at their website. It looks to me like they provide high school and trade school services. Maybe portions of their activities are permitted and other portions are not. I'm sure the code enforcement case against that property will make a determination concerning that.

Q: So either they're schools in which case they're not allowed there or they're not schools in which case they're not relevant to the MMCC.

A: Trade schools for adults are allowed in the industrial zone but not the schools for minors.

Q: So, either way we're good?

A: Yes.

Q: They did show a picture of the residential across the street. Perhaps you can speak to that?

A: There are what appears to be two houses directly across the street. I concur with that. This Ordinance prohibits MMCCs with 100 feet of residentially zoned property. Those properties are not zoned residential. They're zoned industrial. They are what is considered previously conforming so we didn't see this as conflicting use within certain proximity to this application.

Q: So, the Municipal Code doesn't say within 100 feet of a residence. It says 100 feet from a residentially zoned area.

A: Yes.

1:11:55 Commissioner Wagner I'm very apprehensive about the parking. No sidewalks. Lack of lighting. I'm very apprehensive of so many variables that are outside of our control to be able to condition this particular dispensary to our satisfaction. That said if there were to be 4 votes, I would want there to be public health and safety conditions that we've had previously to support that. But on its face right now, unless something monumental is said by my fellow Commissioners, I'm not supportive of this dispensary.

1:14:48 Commissioner Austin This is one that is difficult for me and here are my concerns. Part of it is being consistent with our past actions. We have been tough on the other dispensaries in terms of parking. In this case, because the site is 8K sq-ft it slips under the 10K sq-ft exemption otherwise we'd need 11 onsite parking spaces. There are no sidewalks other than directly in front of this and we've been very critical and not passed some in the past because of that…I'm trying to be consistent with our past actions and Commissioner Haase, the last time we denied the neighboring applicant said we're going to have to use the same standards here. Right now, I'm falling on the side that this isn't the appropriate location without absolute knowledge that they've secured that parking. Right now, I'd be voting against Staff

recommendation. *[what part of this, or even Pickwick for that matter, being under 10K sq-ft exemption from ANY onsite parking requirement is he wrestling with?]*

1:16:49 Donna Jones, Esq. I do want to say I have a Letter of Intent signed by the neighboring property that gives us 3 parking spaces in their lot if that would help in your concerns. We are willing to explore any parking requirements Staff will allow us to do. The basement, the back, removing the loading zone, we've made that clear even though the Muni Code does not require us to have any parking and we feel that the City should be making decisions consistent with its Municipal Code and not require more than the Code says is required. We are happy to go to whatever expense is required to provide whatever parking that you think is necessary and that the City Staff is going to allow us to put in.

1:17:31 Commissioner Austin I was just going to say what this really gets down to and in the discussions, we've had in the past is, I really do listen to or pay attention to what is required and not trying to make people do extra but we're trying to make a decision on is this an appropriate site? And so that makes it a little fuzzier. So if there are some things going on there that again may not be consistent with the zoning but you've got two houses across the street. You've got things that are out of compliance, those things I would say yeah if we're going to be strict about them, those things should go away *[or the MMCC isn't allowed to move within 100 feet of them. They were there first, and they are preconforming in that zone.]* I think the houses are grandfathered right? They may be there for a long time but they're there.

So now I look at an issue which is again to me borderline, but we've been pretty strict with the other folks requiring parking and just like we have with security. They aren't in the Ordinance but we've said, 'look we are concerned about security and we don't have a lot of experience with it so we're going to err on the side of being extra safe.' So, if you had those things absolutely agreed to, or had the parking underneath or had something already in place I think I'd be there. I have to admit I'm right on the fence on this thing. But right now, I'm still going to be falling on the wrong side of that fence for you [laughing].

1:19:02 Commissioner Wagner I'd like to make a motion that we uphold the Hearing Officer's to deny Conditional Use Permit No. 1298376 and Site Development Permit No. 1319996 and not support Staff's recommendation.

Haase: Is there a second to Commissioner Wagner's motion?

Austin: Seconded for the sake of discussion. *[This is exactly what Gina would have hoped for]*

1:19:46 Commissioner Haase I think it's important that I talk about my comments on the last project that was about 300-400 feet away from this one. First of all, I do not make the standards of the requirements for these Conditional Use Permits. I was speaking as to how I see my role here in applying the rules and my ability to make the Findings. I also appreciate the comments by the Commissioners regarding issues such as onsite parking versus offsite parking and connectivity of the sidewalks. I do have concerns about a sidewalk to nowhere. Once you're on the sidewalk in front of this building then where do you go?

There is no parking requirement so when the disabled parking spots are given as public parking spots, anyone with a placard can park in that spot which makes it even more of a problem for the applicant because this disabled spot is not dedicated to their business as it would be if it were onsite parking. This adds to my concern as to how we deal with parking for these irrespective of there being no parking requirement, we know that parking is necessary to serve this use in some way shape or form.

We denied Pickwick for another of the same reasons which was a sidewalk that went to nowhere.

I also appreciate some of the creative ideas that have been presented with time parking on the curbs but in reality, it's unenforceable. We don't have the resources to police that.

We don't have a motion. I apologize we do have a motion.

Wagner: Would you like me to say it again?

Haase: The intent of the motion is to deny this location?

Wagner: The intent of the motion is to deny this location. It is in effect the opposite of the Staff Report and supports the Hearing Officer's denial of those conditional uses.

Haase: Maybe you can put the recommendation up so we can get it right. I believe that means we would be denying the appeal and upholding the decision of the Hearing Officer to deny the project.

Wagner: Affirmative. It would be the opposite of Staff's recommendation.

1:24:24 Commissioner Quiroz It's actually a very interesting situation that we find ourselves in because when the Hancock Street project came up there was absolutely no way somebody in a wheelchair could get into that property and that was my reason for voting no and everybody else on the Commission voted yes.

You talk about everybody having the same opportunity, I still believe that that was the wrong decision but at the same time I think that what we're trying to do is to make the Findings. It's not what I agree that the City says that we should not have parking spaces, but we do still have to make the Findings. We make the findings that it was ok for, I can't remember the name of the project that we approved but it was one that was in the industrial zone, and they were arguing about going in and out…

A: (Gutierrez) Are you referring to 3452 Hancock?

Quiroz: No this was one we did a couple of weeks ago.

A: The Pickwick property?

Quiroz: No, it was a property where it was on an industrial and the pathway was owned by somebody…

A: Was it the one in Pacific Beach?

Quiroz: I think so.

Haase: They begin to blur together. I think you're referring to the one in Pacific Beach where there was access at the Storage Area.

Quiroz: Right. And in this one, I don't know if I'm supposed to say this, but I looked at it on Google and I am comfortable that with the onsite parking where it is that this is an acceptable place for people who have disabilities to be able to get there. I am concerned about the lack of lighting, but I have this issue where the City of San Diego, the City Council said they want these in industrial zones and industrial zones tend not to have lighting. If we were to say that we are not going to have any medical marijuana cooperative that doesn't have lighting, then we're going to have a problem because for the most part these industrial zones don't have it.

It's kind of weird because we've all switched places. I understand that. But I honestly believe that this one has the appropriate…I still stick with the 20-minute parking on the curbs. It's a cul-de-sac and when people call up, we have a Parking Enforcement division that responds to those calls.

I won't be approving this motion.

1:28:05 Commissioner Haase Commissioner Quiroz just for clarification I thought you said onsite parking but as proposed this has no onsite parking. Did you mean off-site parking?

Quiroz: I apologize, I meant off-site parking.

1:28:20 Commissioner Austin Just to go back to Hancock Street which I was opposed to and changed my position, but it was after they made specific changes, still it was a dicey deal, but they provided more onsite parking, they reoriented the building so it could be accessed from the other side where there was a sidewalk. Again, I'm trying to be consistent *[laughing]* so I'll be voting for the motion.

1:28:46 Donna Jones, Esq. *[speaking out of order]* Excuse me but to be consistent would allow the continuance just like you gave 3452 Hancock to address your concerns.

Austin: That would have to go to the maker of the motion. Are you willing to consider that because that would be consistent?

1:29:18 Gina Austin, Esq. *[speaking out of order]* If Mrs. Jones can speak out of order may I speak out of order as well?

Haase: You have a moment.

Austin: Pickwick was required to be denied and resubmit a brand-new plan. If they *[Sunrise]* have a new plan they should be required to resubmit.

1:29:35 Commissioner Haase Well we have a motion and a second currently. There's no substitute motion so if there is no further discussion we can vote.

That motion fails by 3-2 because it doesn't achieve the 4 affirmative votes. Based upon that, unless there's a substitute motion, that would be trailed to our next meeting. Is that correct?

Quiroz: I might as well go ahead and at least try it. I don't know if it will work.

Haase: Our choices are starting to narrow.

Quiroz: So, I would make the motion that we move Staff recommendation and approve the CUP.

Wagner: That would be the exact contrary vote that we've already just taken.

Haase: Yes, it would. It's possible something changed in that moment. *[laughing]* That big bang moment.

Wagner: In her wording we would be voting the exact opposite way then as opposed to a yes-no-no-yes.

Haase: Again, I won't try and predict the vote. *[Loud laughs]* You know the Supreme Court surprised us this morning so anything can happen.

Wagner: Can she please repeat her motion?

Quiroz: I'm actually going to add to the motion. I would make the motion that we deny the appeal, reverse the Hearing Officer's decision and approve the Conditional Use and Site Development Permits with the condition that the applicant make an application for the 20-minute street parking and that the usual requirements are put in place because even though Mrs. Jones agreed to them, they're not in the CUP.

Wagner: I would like us to review our parliamentary procedure with regards to the last vote that was just taken and see if this vote we would be taking next is contrary to our bylaws?

Haase: Even though the second motion is 180 degrees from the vote that failed, there is nothing wrong with a second motion being brought to the floor. It's been done. I see nothing wrong and it's still the prerogative of the Commission.

Wagner: Thank you sir.

Haase: Please vote. The motion failed again 2-3. So that was pretty expected. There are only 5 of us here. Clearly, we will benefit from having 2 of our other Commissioners here. this will be trailed to our next meeting on July 9th.

COMMISSION ACTION: COMMISSIONER WAGNER MADE THE MOTION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO DENY CONDITIONAL USE PERMIT NO. 1298376 AND SITE DEVELOPMENT PERMIT NO. 1319996. Commissioner Austin seconded the motion. The motion failed by a vote of 3-2-2 with Commissioners Haase, Austin and Wagner voting yea and with Commissioners Quiroz and Whalen voting nay and with Commissioners Golba and Peerson absent; COMMISSIONER QUIROZ MADE THE MOTION TO UPHOLD THE APPEAL AND REVERSE HEARING OFFICER'S DECISION TO APPROVE CONDITIONAL USE PERMIT NO. 1298376 AND SITE DEVELOPMENT PERMIT NO. 1319996 WITH CONDITIONS. Commissioner Whalen seconded the motion. The motion failed by a vote of 2-3-2 with Commissioners Quiroz and Whalen voting yea and with Commissioners Haase, Austin and Wagner voting nay and with Commissioners Golba and Peerson absent. (The motion automatically trailed to the next meeting, July 9, 2015, as unfinished business.)

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2015/06/25: **ITEM 8: SD HEALTH 7 WELLNESS MMCC** Appeal Hearing Officer's 2015/04/22 ITEM 4 decision

ITEM 4 STAFF: Edith Gutierrez

13 speaker slips submitted in favor – Marcela Escobar-Eck, Margaret Gibert, Danielle Sylvia, Pastor Park, Rocky Goyal, Gina Austin, Mohini Pande, Claire Sanburn, Arvind Patel, Sharda Patel, Manalisa Samo, Sonny Patipar and Danielle Siccia

7 speaker slips submitted in opposition – Peggy Walker, Kathy Lippitt, Barbara Gordon, Hollis W. Lee, Jr., Michael Fultz, Scott Chipman, and Steven Hwang

ITEM 4 ACTION: PROJECT DENIED. Report NO. HO-15-047. RESOLUTION NO. HO-6811

DSD CONTACT: Edith Gutierrez

PROJECT NUMBER: 369478

DSD TO HEARING OFFICER RECOMMENDATION: HO-15-047 "DENY Conditional Use Permit No. 1291580."

HEARING OFFICER: Ken Teasley

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-15-073 "Uphold the appeal, Reverse the Hearing Officer's decision and Approve Conditional Use Permit No. 1291580."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures on November 18, 2014. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on March 3, 2015. The scope of the Hearing Officer's decision only includes the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24004690 @ Page 30.

APPELLANT(S): Rakesh Goyal

Issues On Appeal

Page 35: Community Planning Group, Jeffery Sallen, Chair, Approves by 7-2-0 for a 2 not 5 year trial period.

Page 36: Ownership Disclosure showing only P2 Properties as Owner. No tenant information was provided.

Page 38: Appeal Application of Rakesh Goyal citing "1. Factual Error. The statements of evidence the decision maker relied on when approving the CUP were inaccurate. 2. Findings Not Supported. The decision makers stated findings to deny the CUP are not supported by the information provided to the decision maker."

Page 51: Sarang Church letter stating they are moving outside of the 1,000 feet setback required for CUP approval.

OWNER: P2 Properties, LLC., Sonny Patidar, Member @ Page 18

APPLICANT: San Diego Health & Wellness, Rakesh Goyal @ Page 1 and/or Michael Rollins @ Page 35

CUP NUMBER: 1291580

SITE DEVELOPMENT PERMIT NUMBER:

CUP HOLDER: Rakesh Goyal

STATUS: Issued on 07/21/2015

CITY COUNCIL DISTRICT: 6

PLAN AREA: Kearny Mesa

STAFF: Edith Gutierrez

Speaker slips in favor of the project submitted by Gina Austin, Tamara Leetham, Marialisa Samo, Will Senn, Gary Metelski, Dr. Vasanti Peiris, Mohini Pande, Dr. Quinn Meisinger, Tyler Sherer, Marcela Escobar-Eck, Adam Knopf, Kris Clonin, Melissa Clonin, Greg Magdoff, Eva Advani, Rakesh Goyal, Dr. Sonny Patidar,

Dr.Mike Apadaca, William O Rilio, Jan Foster, Tyler Verdiek, Stephen McCamman, Tim Rubesh, Margaret Gibert, and Cynara Velazquez.

Speaker slips in opposition to the project submitted by Scott Chipman, Kathleen Lippitt, Nancy Logan, Judi Strang, Stephen Cline, Leticia Corona, Javier A. Soriano, David Demian, Ricki Engebretsen, Heidi Runge and Steven Hwang.

1:43:25 Commissioner Haase opens Item 8 with DSD presentation.

Edith Gutierrez: Before I start this item, I just want to give you some general clarifying comments. The next 4 projects before you are in Council District 6. None are within 1,000 feet of each other, and Staff is recommending approval of all 4. Two have already been approved in Council District 6. That only leaves 2 available applications so you can only approve 2 projects on today's agenda in Council District 6.

Haase: As I understood it none of these citing relationships to each other?

A: No.

Haase: Commissioner Whalen I know that you have constraints on your time today and we have a number of speaker slips on this Item 8. Do you think you can hang with us on this one?

Whalen: Yes.

1:44:35 Gutierrez presentation

1:49:24 Gina Austin, Esq. (Will Senn, Adam Knopf ceding) I represent SD Health and Wellness. This applicant is not only the first applicant on your District 6 list today, it is the best applicant based on the location, the operations and the overall design.

The Hearing Officer denied this application simply because of the location of the Sarang Church. That church is no longer in that location. As of June 8th, that church has ceased all of its religious services.

This is a unique project in that this is a unique applicant. Our applicants are Dr. Sonny Palidar and Rakesh Goyal with our Project Medical Team consisting of Dr. Vasanti Peiris, and Dr. Quinn Meisinger and Pharmacists Gary Metilski and Greg Gelman. *[Gina uses this opportunity to advance the identities of the applicants whereas in the past she has not. Of note both Willie Senn and Adam Knopf have attended this hearing and ceded their time to Gina. What was their interest in attending and supporting this project? If anything, Goyal is a competitor.]*

The model we have for this business is a lot different. It's a 2,366 sq-ft project inside of a 22,274 sq-ft building. There are 55 parking spaces with 12 allocated specifically for this project. There are 3 onsite accessible spots. It's adjacent to the Adult Emporium which provides a natural buffer.

While we will be complying with all SDMC requirements, this project will be taking a step above all of that. As most of the complaints against these projects go to their being described as 'pot shops' this facility will be staffed by Medical Professionals with Pharmacy-level protocols for patient tracking and an Eastern holistic approach. This is something different than what has been proposed in other applications.

1:57:10 Marcela Escobar-Eck I think you've noticed that our company *[Atlantis Group]* has been conspicuously absent from all the medical marijuana cooperatives and I did decide to get involved in this one for a couple of reasons. Because there's a Land Use issue but also for a personal reason.

My husband, *[Ted Shaw, Partner in Atlantis Group]* suffered from Stage 3 cancer. It was debilitating. It brought him to the brink of death. Through his chemotherapy and his radiation, we actually had to buy $50 pot pills and he had to take multiples of those so he could even stomach one Ensure. When you look at the model that San Diego Health and Wellness is doing, it is the most responsible model that I've seen.

Our company has been involved in helping ARMA on some of the Land Use issues but we had purposefully stayed away from advocating on behalf of anybody. *[What a crock! Ask William Perno if Marcela, former director of DSD, had a hands-off policy for other applicants. The remaining time is spent with Marcela explaining that she is conflicted by the Land Use Code that takes those churches with less than 300 people and allows them to exist in Industrial Zones under Assembly permits. This is a masterful recitation that weaves her husband's having had cancer with SD Health and Wellness taking the high road as a medical cannabis business model. I won't transcribe it here but it's well worth a listen.]*

2:02:36 Margaret Gibert On behalf of the Alliance for Responsible Medicinal Access. Now that Sarang Church is not an issue there is no reason for you to not grant this applicant a permit. San Diego Health and Wellness met or exceeded all the rigorous criteria required by the Ordinance and have offered us a thoughtful and purposeful glimpse into what a true medicinal clinic should look like. Working with health care professionals, putting patients' needs first.

Commissioners, I urge you to go with the Staff recommendation, uphold the appeal, reverse the Hearing Officer's decision and approve the CUP.

2:03:30 Ian Foster For 27 years our company has provided liquor control for the bar and restaurant industry. We're expanding our services to provide 3rd party inventory control for the marijuana industry. We've chosen San Diego Health and Wellness as our first applicant for that program mainly because we've been very impressed with their professionalism and commitment to business practices…I'd urge you to approve this.

2:05:54 William O Rilio I'm a licensed private investigator in 3 states. I'm also a tenant at the building in question. I'm in favor of this project for many reasons but most importantly because of the security that it adds and the type of operation that they're going to have. I'm also very familiar with Ian Foster and his level of security for the hotel, bar and restaurant industry. I urge that you pass this.

2:05:57 Rakesh Goyal I am the applicant for San Diego Health and Wellness. This is my partner Dr. Sonny Patidar. I'm a local commercial real estate developer here in San Diego. I went to high school and college here. This is kind of a passion project for us. Let me introduce Dr. Patidar.

Patidar: Good Morning Commissioners. I'm a physician. I'm a radiologist. We're very passionate about the way we'd like to manage this practice and business in a very professional medical way.

2:07:31 David Demian, Esq. I'm counsel for the applicant *[Engebretson]* at the 7625 Carroll Road MMCC. Just a few things I'd like to address. The first is that there is a minor use-oriented facility within 1000 feet of this project. It's called Powerline Athletics. It's a youth softball training facility. It's an under 18 girls club for softball training. I understand the City's position on that issue but in our opinion, we think that's what the Ordinance provides.

I may be beating a dead horse here but the process in first come, first served is problematic and in our opinion contrary to the Land Development Code. Our application was approved by the Hearing Officer,

and we had a permit and now it's been appealed, and it reprioritizes us behind a property that had not received a permit. We object to that.

The NORA date, which is still governing and is the basis for that reprioritization provides no basis for prioritizing applicants. In our view, the existence of these other applications today, just down the docket, eligible properties, is a relevant fact in assessing in making the finding on the public safety, health and welfare. We're not in a vacuum. This is a relevant fact that should be considered. Our property has had no problems other than its NORA date being 6 days later than these other applicants.

So last, the church. I know with all the Land Use experience on the dais that each of you will have your own understanding of a use separation restriction like this Ordinance. How they should be drafted. How it very well could include for the sensitive use to consent to the regulated use. How it could include a provision as to a buffer or barrier as the Alcoholic Beverage Outlet Act Ordinance does. This Ordinance does not and everything I just heard was that there is an intent to lease. There is an intent to move. But there has not been movement. There's a church at attachment 16, that letter, if you read it, it says 'I'm still a church. Our current location is 7595 Convoy within 1000 feet and our Sunday services, in the future, have changed.'

OK so a couple thoughts on that. If the church were to state in their letter 'Dear City, I consent to this MMCC.' No that doesn't meet the Ordinance clearly. I think everyone here would agree. If the church writes a letter that goes "Dear City, Please advise me, I will change my operation such that I'm no longer a church within the definition of the San Diego Municipal Code." Does that suffice? Because that's what this letter says. It doesn't say I have moved. It says I'm a church and this is my current location. Where will they be next Sunday? Leases get breached all the time. The church hasn't moved. So to accept this church which is admittedly within the 1000 feet, when does it have to be changed?

I admit those issues are difficult when drafting Land Use Plans and I don't envy the decision this Commission makes, and the burden Staff has carried through this whole process so thank you for your thoughtful consideration of this matter.

2:11:50 Scott Chipman We find it interesting that medical professionals are being used as added credibility. I have two medical marijuana recommendations that were provided to me, one by an MD and one by a DO. Both say that I have been examined by a doctor. Both had their signatures and neither doctors were present of ever at the building that I'm aware of and certainly weren't there when I was receiving my so-called examination for medi-pot.

You guys are evolving as you receive more information about the harms and dangers that are occurring. More than alcohol. More than methamphetamine. The reason is because marijuana is becoming more prevalent in our society and just because it came out of a so-called medical dispensary does not mean it doesn't get diverted. Does not mean it doesn't get misused. This should be denied.

2:14:03 Nancy Logan If these people were medical professionals, they would be dispensing cannabis products through a pharmacy not a dispensary. It pained me to see that on this application the marijuana outlet is paying off a church. Where are our morals? Think about it. This is really sad. What's happening? Marijuana is paying off churches.

2:15:17 Judi Strang It's interesting we're talking about marijuana as a business when we understood that by state law this was to be the close circuit exchange between a caregiver and a patient. And now we have retail establishments. This is a real concern.

2:16:42 Stephen Cline, Esq. I represent the Item No. 12 applicant for 9212 Mira Este Ct. Group (Glass Tek). I'm not necessarily opposed to the current project other than the fact that they got to the front of the line. *[Sadly, Mr. Stephen Cline collapsed in a SD Courtroom during a June 13, 2023, oral argument and subsequently died. He will be missed.]*

As Staff noted earlier, there are 4 applicants being recommended for approval with essentially 2 spots left. So rather than judging by who got to the front of the line and how they got to the front of the line, which has been an ongoing problem throughout this process, as it is changed regularly, I'd ask the group to consider all 4 projects and what they have to say today before deciding which 2 are going to be the lucky winners. And I'd ask you to do something that hasn't been done a lot lately as well is to give some consideration to what the local planning groups have said about all of these projects.

2:18:13 Cynara Velazquez I'm here on behalf of the Association of Cannabis Professionals in support of this applicant. Regarding the church which has indeed agreed to move, churches are not universally opposed to this use. It's compassion. It's medicine for people who need it. There are numerous churches that have no problem with medical marijuana and did not wish to be considered in the 1,000-foot radius. That the church is willing to move is just a further sign of their support for this project.

I've had the opportunity to get to know this applicant over the course of the past year he's been doing his application. He's been very supportive. Very professional. Just a well-behaved member of the community who will represent the City very well. He has not previously been involved in this industry. He's doing this from the fresh perspective that he wants this to be business-like and professional. We are very happy to support his application. *[Cynara you and your group are bought and paid for. You and other groups like yours no longer exist and were formed for the express purpose of being a voice in support of certain projects over others. You speak to this Commission about how well this applicant will represent the City but there are Commissioners on this panel that have already sold out to certain applicants and compromised lawyers. You and your message are another cog in the wheel of a corrupted cannabis licensing policy that exists in the City of San Diego]*

2:19:17 Commissioner Haase With that I will close public comment and ask that the City Attorney to comment on the legal issues regarding churches and their required separation with a marijuana business.

A: (Shannon Thomas, City Attorney) Attachment 16 is the letter from the church that caused the separation concern that the Hearing Officer decision making level and it states that upcoming worship services will be held at a different location.

The definition of a church is an institution that people regularly attend to participate in or hold religious services, meetings, or other activities. This term does not carry a secular connotation and includes the buildings or other locations in which the religious services of any denomination are held. So the holding of the worship services themselves is not the only activity that defines a church.

As to the statements that were made about the changes in the 9th Land Development Code Update to group religious uses with other types of assembly, that is a zoning change that pertains to the churches. It is not a zoning change that would alter any of your or previous guidance or analysis of the separation

requirements for medical marijuana consumer cooperatives for a church as defined in the Land Development Code. Nothing changed in that regard. Did that answer your questions?

Haase: I believe so. I guess the follow up question to Staff is, the change in Staff recommendation is based upon the church is relocating, then the distance issue goes away. Is that correct?

A: (Larson, DSD) Yes, that's how we've approached this project. The church has indicated to us they are moving on the 8th and we've accepted that and given the approval of this project.

Q: So, they are no longer at this location?

A: (Gutierrez) We did not do a site inspection. We just accepted the letter, and we verified it on their website where the posted notice that they would be relocating and would not be in their current location after the 8th.

Q: When you referenced the letter, and I apologize for being so persnickety, are you referring to the letter in attachment 16? *[Why are you apologizing to DSD for doing your job?]*

A: Correct.

Q: Attachment 16 just says "worship services will be at a different location." But based upon what I'm hearing from the City Attorney, they could still be functioning as a church in some other form at this location. So that's what I'm really trying to parse.

A: That is correct. We got additional information that they had relocated. Again, we did not verify by a site inspection.

Haase: I appreciate the clarification. The other clarification I'd like to get is with Powerline Athletics brought up as a minor-oriented facility within the 1,000-feet radius. I didn't see that referenced in the Staff report.

A: (Larson) So I have reviewed the website for Powerline Athletics. They provide services to both adults and to children functioning more as an onsite training and personal training facility. They have a lot of programs that seem to be taking place at ballfields and not located on their property. Also, there are other users within the same complex so it doesn't seem like this would be the primary use for minor-oriented on this site either.

Q: So, you did follow up on this? *[In other words, it was not responded to in the DSD Report to the Planning Commission? You had to ask?]*

A: Yes. We don't see it as a conflicting minor-oriented facility within 1,000-feet. *[I'm sure you didn't. Tell me Mr. Larson has the City ever denied an adult-use applicant as a result of a sensitive use issue?]*

Peerson: With that Commissioner Wagner.

2:23:15 Commissioner Wagner I'd like to make a motion to uphold the appeal and reverse the Hearing Officers decision and approve the Conditional Use Permit No. 1291580. Seconded by Commissioner Whalen

2:25:52 Commissioner Quiroz I'm a little concerned by the fact that there are medical professionals, I know they're proud of it, but we have a requirement within the CUP that says that consultations by

medical professionals shall not be a permitted accessory use at the MMCC. And since we will have medical professionals, I'm assuming on site, I worry about that there is an issue as respect to that because if they're available they could be offering up consultations. How are we dealing with this to make sure that doesn't happen.

A: (Larson) The way we've understood that the first step in receiving medical marijuana is to see a doctor to get a recommendation to receive marijuana as treatment. It's our understanding that that condition in the SDMC and as a condition of the permit is for that purpose. It's not to prohibit management or doctors working at a medical marijuana consumer cooperative.

Q: I think that you're reading things into the CUP that it doesn't say. I understand what you're saying but it just says consultations. And I think that is what's in the Municipal Code. On the other ones I don't recall having seen medical professionals being on site. We need somehow or another to ensure that this is taking place. That the medical professionals, and I'm wondering if there is someone who can speak to that?

A: (Marcela Escobar-Eck) We are definitely will put in any condition that it's not the intent that somebody could actually come to the facility and actually get a prescription *[she means a physicians recommendation, not a prescription. This is an important distinction, and one Escobar-Eck should have been aware of because doctors cannot prescribe cannabis as it is federally illegal.]* So, any safeguards that you would like to put into the CUP to ensure that that doesn't occur, that's not our intent. Here is Rocky.

Rocky: I want to perfectly clear, if you walk into this facility, you already have a card. You are not coming in there with the expectation to get a card there. That's not what the medical professionals are there for. Our medical professionals, our pharmacists are there to make sure it's run like a medical facility. Pharmacists are held to a higher standard than dispensary owners are. They're trained and governed by the DEA. They've got a level of scrutiny and pressure that most folks don't, so that is an asset in my opinion which is what I want to apply to this business model. We're running it at a stricter level. Consultations are not occurring really in any sort of sense of the word.

A: (Larson) I agree that maybe this is something that can be clarified at the next workshop as it's not clear now as to what the intent of the consultation might be.

A: (Escobar-Eck) Commissioner Quiroz we're happy to agree to condition to that effect if you would like.

Quiroz: I'm not quite sure on how to deal with this Shannon because I don't think that the Municipal Code actually says that it's the medical marijuana certificate that is the consultation.

A: (Thomas) The cards are voluntary to begin with. So, what the code specifically says is pretty much word for word what's in the permit, consultations by medical professionals shall not be a permitted accessory use at a medical marijuana consumer cooperative. I'm not sure what more specific prohibition you would like to see in there? To me what this means is that there shall not be any medical practice going on at the cooperative itself. That needs to occur elsewhere.

Quiroz: I am concerned with the church that there is nothing in the record that shows they are relocating.

2:31:15 Commissioner Haase What more does DSD have that substantiates the record that you have presented before us that they have relocated?

A: (Escobar-Eck) If I can clarify a couple of things. So, we do have, if Edith could pull up our presentation, we do have a signed lease which is slide number 18 in our presentation. But I think I'm going to clarify something that the City Attorney's Office said, because in the past we've had the City Attorney's Office opine, I'll give you an example, we represent churches such as Rock Church. Rock Church has facilities in a lot of different locations, that are business offices. Their business offices are not considered a church that requires a CUP. Nor are they considered a church by definition.

I understand Deputy City Attorney Thomas's concerns as she read you the definition as it is but I can also tell you that consistently throughout the City of San Diego that it's been the worship services that have defined a church. I understand what the definition says but Code Enforcement Cases have been closed because worship services were not occurring there. I can tell you that consistently because we represent a lot of churches and schools. Their business offices for Sarang Church…*[You can really hear the desperation in her arguments to see this church as a non-issue. She is desperate for this to pass.]*

2:32:37 Commissioner Wagner *[interrupts]* I'd like to call a question just so we can have our votes.

2:32:42 Commissioner Haase I understand, and I appreciate the clarification Marcela *[What this entire exchange shows is that when the question was directed at DSD, Escobar-Eck took the question, uninvited, directed DSD to put up certain slides and then rambled until Commissioner Wagner cut her off. I guess this is the courtesy shown the former director of DSD when she decides to push through a project on a client's behalf.]* obviously, the advice of the City Attorney is important to us. The easiest thing for us to know is that this operator is not, or this church is not there anymore. I think that gives us the greatest comfort, so we don't have to parse at what point is it a church? With that, let's vote to uphold the appeal and approve the project.

COMMISSION ACTION: COMMISSIONER WAGNER MADE THE MOTION TO UPHOLD THE APPEAL, REVERSE THE HEARING OFFICER'S DECISION AND APPROVE CONDITIONAL USE PERMIT NO. 1291580. Commissioner Whalen seconded the motion. The motion passed by a vote of 4-1-2 with Commissioners Haase, Austin, Wagner and Whalen voting yea and with Commissioner Quiroz voting nay and with Commissioners Golba and Peerson absent.

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2015/06/25: ITEM 9: 8863 BALBOA STE E MMCC – Appeal Hearing Officer's 2015/04/22 ITEM 5 decision

ITEM 5 STAFF: Edith Gutierrez

16 speaker slips submitted in favor – Faith Picking, Gia-Rose Strada, Gregg Baron, Alexander Garza, Kathryn Wasser, Hannah Steria, Evelyn Heidelberg, Grace Hawley, Javier Santana, Bianca Martinez, Abhay Schweitzer, Margaret Gibert, Jim Bartell, Michael Sherlock, Benny Bowden and Bradford Harcourt

8 speaker slips submitted in opposition – Peggy Walker, Kathy Lippitt, Barbara Gordon, Judi Strang, Scott Chipman, Carol Green, Daniel Burakowski and Steven Hwang

HEARING OFFICER ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-15-048. RESOLUTION NO. HO-6812

DSD CONTACT: Edith Gutierrez

PROJECT NUMBER: 368347

DSD TO HEARING OFFICER RECOMMENDATION: HO-15-048

HEARING OFFICER: Ken Teasley

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-15-074 "Deny the appeal and Uphold the Hearing Officer's decision to Approve Conditional Use Permit No. 1296130."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures on November 20, 2014. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on March 3, 201 5. The scope of the Hearing Officer's decision only includes the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24004643 @ Page 24

APPELLANT(S): Two appeals of the Hearing Officer's decision were filed on May 5, 2015. An appeal was filed by attorney Stephen G. Cline on the grounds of Findings not supported and New Information. The other appeal was filed by Daniel Burakowski on Factual Error and New Information.

Issues On Appeal

Page 30: Techne stamped drawings by architect Michael Morton of Marengo Morton Architects

Pages 33-34: Ownership Disclosure Statement showing Maria T. Sandoval as Owner and United Patients Consumer Cooperative, Michael Sherlock as Tenant. *[This looks like someone else printed this information on here and Michael signed it. Who would that have been? Maria Sandoval is typed in. Why was Michael's info hand printed and by who?]*

Page 44: Appeal Application by attorney Stephen G. Cline as an "interested person." *[Who is Cline representing? Also, Stephen Cline was the attorney David Demian (who at the time was representing me) had sub in to represent me in my dealing with the City over their trying to extort money from me for a misdemeanor guilty plea on my tenant running an unlicensed dispensary. I always thought that was a little too cozy when things needed to get done between a City Attorney, McElfresh, Austin, Demian and Cline.]*

Page 45: Appeal Application by Daniel Burakowski, President, Montgomery Field Business Condominiums.

OWNER: Maria Torres Sandoval @ Page 18

APPLICANT: United Patients Consumer Cooperative, Michael D. Sherlock @ Page 1

CUP NUMBER: 1296130

SITE DEVELOPMENT PERMIT NUMBER:

CUP HOLDER: Michael Sherlock

STATUS: Issued 09/04/2015

CITY COUNCIL DISTRICT: 6

PLAN AREA: Kearny Mesa

STAFF: Edith Gutierrez

CITY COUNCIL DISTRICT: 6

PLAN AREA: Kearny Mesa

STAFF: Edith Gutierrez

Speaker slips in favor of the project submitted by Abhay Schweitzer, Damielli Teza, Alexander Garza, Stephanie Hess, Michael Sherlock, Gia-rose Strada, David Chadwick, Nicholas Enciso, Christine Bordenave, Margaret Gibert, Jim Bartell and Kristine Byers.

Speaker slips in opposition to the project submitted by Brian Kean, Mary Howell, Ronald Lockman, Daniel Burakowski, Bronle Crosby, Eleanor Bell, Lucretia M. Scudder, Glenn Strand, John Peek, Edward Quinn, David Demian, Steven Hwang, Heidi Runge, Rick Engebretsen, Peter Midelel, Hilary Brady, Thomas Brady, Kathleen Lippitt, Scott Chipman and Barbara Gordon.

2:34:50: Commissioner Haase opens Item 9 stating that it be known to the applicants who have projects remaining on the agenda that we will be doing our best to finish today's hearing but we will only have 4 Commissioners here. So if there is something that might motivate you, if you'd like to request a continuance or anything of that nature, why don't you do that before we start the staff report. But I did want to let you know that Commissioner Whalen did have another commitment. He's no longer going to be with us and so we are now down to the 4 necessary to hold a quorum.

2:35:53 Commissioner Wagner I would just though Mr. Chair that if an applicant would want a continuance that that could change the order based on how we'd vote in the next 3 votes. We're sort of in that catch-22 with regards to continuing projects.

Haase: I think this will apply to all of the remaining. They know the order they're in. They're in an order for a specific reason based upon the processing so I don't want to predict anything of that nature. If they think it's prudent for them to stay in line, then that's their choice. Go ahead Jim *[refers to Jim Bartel who just walked up to the podium]*

2:36:44 Jim Bartell representing 8863 Balboa Ste. E. Obviously we'd prefer to have a full commission. I was just coming up here to determine how you would handle the order if we request a continuance? Would we retain our order?

Haase: This may be a better question for Staff but from my perspective and they can confirm this but we're going to maintain this order as best as possible. However, if you request a continuance and the other projects did not, they could get approved, they might not get approved, which in this particular case would mean they'd be trailed to the next meeting. If they are trailed, we'll maintain that order. So, we may be hearing all of you and see how it goes.

But clearly if you were to ask for a continuance and a project behind you was asked to be heard and approved, that could affect a future recommendation on your project. I fully acknowledge that. Everyone needs to go into this with their eyes wide open.

I just want the remaining applicants to understand that the way this works, is our operating procedures are if you cannot get an affirmative vote, you will be trailed. If you ask to be continued to a subsequent meeting, you do not get the same benefits of being trailed. We'll put you at the end of the agenda or wherever in order you belong, but a trailed project has priority on our next agenda. That is something you should all know.

If we're concerned about fairness, we might want to consider a motion to continue all of the items and of course each one of the applicants should comment to that. From our perspective that may be the fairest thing to do. That we have more Commissioners here to hear all the items.

Wagner: I'm supportive of that as well.

Gutierrez: I just want to mention that we have one Item that is in Council District 8. So if we did continue the Items we could hear the one in 8 since there would be no conflict.

Wagner: Can we hear 8 now then?

Haase: Let me get my thoughts on that.

Wagner: My goal all along was to preserve the place in line. To make it as fair as possible. We've found two navigable ways to do that. One would be to hear the District 8 Item out of order now.

Haase: Let's deal with these District 6 applications now. I would be ok with a motion to continue all of them to retain the order for the July 9th hearing so that we have more of our colleagues here.

2:45:08 Commissioner Austin Under the circumstances I'll make that motion.

2:45:03 Jim Bartell I think it's a fair way to go and we would support that motion.

2:45:51 Mary Howell, Esq. comments on behalf of the appellants re the continuance.

2:46:10 Stephen Cline, Esq I'm not opposed to the continuance but would reiterate that all three can be heard so it's not a first in line decision.

Hasse: I appreciate that but that is not how we have processed these. But I appreciate the input on that.

2:46:34 David Demian, Esq. On behalf of Carroll Road we don't oppose the continuance, but I'd like to see it done today. We don't oppose the continuance.

2:47:42 Mary Howel, Esq. reminds the Commission that the appellant has 14 speaker slips for today's hearing.

Hasse: I understand. If there is anyone who would like to comment on the continuance feel free to comment on it. With that I'd like to call for the Motion to Continue to July 9th. That passes 4-0

COMMISSION ACTION: COMMISSIONER AUSTIN MADE THE MOTION TO CONTINUE THIS ITEM TO JULY 9, 2015. Commissioner Wagner seconded the motion. The PLANNING COMMISSION MINUTES FOR JUNE 25, 2015 motion passed by a vote of 4-0-3 with Commissioners Haase, Austin, Quiroz, Wagner voting yea and with Commissioners Golba, Peerson and Whalen absent.

[Commissioner Haase continues 9,11 and 12 to the July 9th hearing. "Trying to figure out if we can hear Item 13 because they're not here. We're going to take a lunch break and come back at 12:30 to take the last item on the agenda." There was no video after the morning break.]

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2015/06/25: ITEM –10: 4417 RAINIER AVE (LIVING GREEN) MMCC Appeal Hearing Officer's 2015/04/22 ITEM 6 decision.

ITEM 6 STAFF: Edith Gutierrez

5 speaker slips submitted in favor – Khoa Nguyen, Jeffrey Lake, Cary Weaver, Robin Madaffer and Margaret Gibert

11 speaker slips submitted in opposition – Peggy Walker, Kathy Lippitt, Barbara Gordon, Scott Chipman, Nick Hosig, Ted Griswold, Hamid Beigi, John Pilch, Danny O'Neill, Moffitt Timlake and Chris Eddy

HEARING OFFICER ITEM 6 ACTION: PROJECT DENIED. Report NO. HO-15-049. RESOLUTION NO. HO-6813

DSD CONTACT: Firouzeh Tirandazi

PROJECT NUMBER: 379530

DSD TO HEARING OFFICER RECOMMENDATION: HO-15-049 "DENY Conditional Use Permit No. 1333320 and Site Development Permit No. 1390091."

HEARING OFFICER: Ken Teasley

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-15-075 "Deny the appeal and Uphold the Hearing Officer's decision to Deny Conditional Use Permit No. 1333320."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures on December 11,2014. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on March 3, 2015. The scope of the Hearing Officer's decision only includes the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24004883 @ Page 24

APPELLANT(S): Cary Weaver

Issues On Appeal

Page 36: Community Planning Group Vote to Deny 16-0

Page 37: Ownership Disclosure Statement [correctly filled out]

Page 41: Appeal Application by Cary Weaver

Page 42: Appeal Application by Ted Griswold

Page 43: In a May 6, 2015 letter from attorney Theodore Griswold, at Procopio, Cory, Hargreaves & Savitch, LLP to Development Services Department relates, among other things, the following issues;

1. In failing to address the myriad of parking, traffic, access and health and safety issues that were raised by the opponents for this project from the surrounding community, the hearing officer implied that the findings were made that 1) the project was compliant with the Land Development Code; 2) that the project was not detrimental to the health, safety and welfare of the public; and that the project was appropriate for the proposed location. Given the record on this project and the written and oral testimony provided by the Navajo Community members at this hearing, these implied findings were not supported by the evidence before the hearing officer. As a result, we respectfully request that the Planning Commission find that these findings cannot be made, and are the basis for denial of this proposed project.
2. **Hearing Officer cannot make the finding that the proposed development complies with the Land Development code because it relies on alternative access parking calculations.** The City's processing of the Living Project with alternative parking based on alley access violates the city's own code provisions
3. **The Hearing Officer cannot make the finding that the proposed development will not be detrimental to the public health, safety and welfare because it puts community members and customers in harm's way.** By definition, the Project will serve medical patients, many of which may be in a compromised state physically or medically. Customers parking in the alley must exit their cars into the alley (into traffic) and walk (or wheelchair) within the site's only driveway to the far end of the property to be served. Walking through these traffic areas is detrimental to health and safety. Given the tortured site constraints for parking, this location for this facility would be detrimental to the public health, safety and welfare.
4. **The Hearing Officer cannot make the finding that the proposed development will not be detrimental to the public health, safety and welfare because it will cause traffic hazards and block emergency access ways**. The Project estimates at least 100 customers per day, (their previous operation use was 2-3 times this). Given the applicant's estimate of 15 minutes for servicing the average client, plus the extended travel time to the front door from the parking location, it is likely that each of the parking places will be occupied for 20-25 minutes at a time. The heavy in-flow of customers will face insufficient parking offered by the Project. If the five parking places are full from customers and employee parking, new customers arriving to the site will cause congestion either onsite (idling in the driveway and blocking the emergency access road) or within the adjacent alley. Such congestion will cause the alley to become a bumper-to-bumper zone with traffic spilling over from the Project's vicinity and causing complications with local traffic and deliveries to neighboring industrial properties. With medical patients as customers, it is reasonably foreseeable that emergency medical services will likely be visiting this site (but blocked by cars). Those cars looking for parking

would burden adjacent parking by parking illegally on surrounding properties. This location invites traffic congestion and altercations and is detrimental to the public health, safety and welfare.

5. **In light of the above, and in light of the other testimony and concerns raised today, it is clear that the City cannot find that the proposed development is appropriate for the proposed location.** This is not an issue of whether an MMCC should be allowed-It is an issue if the use, as proposed by the applicant, is appropriate for this location. Given the extraordinary site constraints, inadequate parking, dangerous design of access in and out of the facility, and likely high number of customers, it is clear that the proposed use is NOT appropriate for this location. We urge the Planning Commission to rely on reasons provided herein as the full basis for the denial of the project. *[With the exception of the alley parking being described here, the same off street and busy traffic conditions are exactly in effect at the 6220 Federal Blvd project that was approved despite not having adequate parking or traffic ingress/egress.]*

Page 61: April 22, 2015, Letter from Riverdale Commerce Park to Development Services Department which states in part, "I support the staff recommendation to deny the Conditional Use Permit 133320 and the Site Development Pem1it No. 1390091 for this project. However, the basis for the denial extends well beyond Staff's recommendation.

The basis for denial is that the City cannot make the necessary findings required under San Diego Municipal Code 126.0305, which are required for conditional use permit approval. Specifically, the proposed development will:

(1) adversely affect the applicable land use plan by imposing excess parking burdens on surrounding properties

(2) the proposed development will be detrimental to the public health and safety due to the increased traffic, grossly inadequate parking, and potential criminal activity that would arise from the proposed facility at this location and in this configuration; and

(3) the proposed use is not appropriate for the proposed location given the constrained property requirements and access requirements that would be necessary to fit this round peg into a square hole. The design of this project and its access creates a storefront for patrons to the facility that is a functional failure and there is no way to fix it.

(4) Your proposed findings require that the project has '"demonstrated at the location of the proposed MMCC will not be detrimental to neighboring· properties or the community." Given the design and access of the facility at this property and the constricted and confusing location of the insufficient four (4) parking places, this finding is impossible for this facility at this location. I respectfully request that the Hearing Officer deny the permit for this project and consistent with Staff's recommendation on the basis that the proposed project will be detrimental to the neighboring properties and community in this location, would adversely affect the applicable land use plan and would adversely affect the public health, safety, and welfare of the community. *[Both of these letters make it abundantly clear that the reasons the Hearing Officer is to deny the CUP has everything to do with the proposed project not meeting the SDMC definitions for this business at this*

location. If there was ever an argument for why the 6220 Federal project should not have been approved, these arguments would apply.]

OWNER: Bradley Brown @ Page 17

APPLICANT: Cary Weaver, President, Living Green Cooperative, Inc @ Page 17

CUP NUMBER: 1333320

SITE DEVELOPMENT PERMIT NUMBER:

CUP HOLDER: NA

STATUS: Planning Commission Denied

CITY COUNCIL DISTRICT: 7

PLAN AREA: Navajo

STAFF:

Speaker slips in favor of the project submitted by Margaret Gibert.

Speaker slips in opposition to the project submitted by Ted Griswold, Moffitt Timlake and Scott Chipman.

COMMISSION ACTION: THIS ITEM WAS WITHDRAWN

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2015/06/25: ITEM 11-7625 CARROLL ROAD MMCC Appeal Hearing Officer's 2015/04/22 ITEM 7 decision.

ITEM 7 STAFF: Edith Gutierrez

5 speaker slips submitted in favor – Matt Compton, David Demian, Steven Hwang, Margaret Gibert and Rado Kalla

7 speaker slips submitted in opposition – Peggy Walker, Kathy Lippitt, Barbara Gordon, Scott Chipman, Carol Green, Judi Strang and Ann Panico

HEARING OFFICER ITEM 7 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-15-050. RESOLUTION NO. HO-6814

DSD CONTACT: Tim Daly

PROJECT NUMBER: 370687

DSD TO HEARING OFFICER RECOMMENDATION: HO-15-050 "APPROVE Conditional Use Permit No. 1338819."

HEARING OFFICER: Ken Teasley

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-15-076 "Deny the appeal and Uphold the Hearing Officer's decision to Approve Conditional Use Permit No. 1338819."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures on November 26,2014. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on March 3, 2015. The scope of the Hearing Officer's decision only includes the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24004715 @ Page 26.

APPELLANT(S): Scott Chipman

Issues On Appeal

Page 36: Ownership Disclosure Statement

Page 37: Appeal Application by Scott Chipman, citing among other things, limited parking and high traffic issues.

OWNER: Rick Engerbretsen @ Page 1 and 18

APPLICANT: Radoslav Kalla @ Page 1 and 5

CUP NUMBER: 1338819

SITE DEVELOPMENT PERMIT NUMBER:

CUP HOLDER: Rick Engerbretson as shown on DSD website. RADOSLA V KALLA as shown @ Page 18.

STATUS: Issued on 04/07/2019

CITY COUNCIL DISTRICT: 6

PLAN AREA: Mira Mesa

STAFF: Edith Gutierrez

Speaker slips in favor of the project submitted by Margaret Gibert, David Demian, Steven Hwang, Heidi Runge and Rick Engebretsen.

No speaker slips in opposition to the project submitted by Scott Chipman.

COMMISSION ACTION: COMMISSIONER AUSTIN MADE THE MOTION TO CONTINUE THIS ITEM TO JULY 9, 2015. Commissioner Wagner seconded the motion. The motion passed by a vote with Commissioners Haase, Austin, Quiroz, Wagner voting yea and with Commissioners Golba and Peerson.

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2015/06/25: ITEM 12: 9212 MIRA ESTE CT (GLASS TEK) MMCC Appeal Hearing Officer's 2015/04/22 ITEM 8 decision

ITEM 8 STAFF: Edith Gutierrez

11 speaker slips submitted in favor – Michael Rollins, Cynara Velasquez, Ann Panico, Steve Dizary, Gavin Band, Scott Bernet, Diego Louis Perez, Geoffrey Musini, Brett Matus, Garrett Henderson and Janine Band

5 speaker slips submitted in opposition – Kathy Lippitt, Barbara Gordon, Scott Chipman, Dimitry Gresham, and Steven Hwang

ITEM 8 ACTION: PROJECT DENIED. Report NO. HO-15-051. RESOLUTION NO. HO-6815

DSD CONTACT: Edith Gutierrez

PROJECT NUMBER: 368509 *[Not Shown in the DSD System. Why not?]*

DSD TO HEARING OFFICER RECOMMENDATION: HO-15-051 "DENY Conditional Use Permit No. 1296451."

HEARING OFFICER: Ken Teasley

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-15-077 "Uphold the appeal, Reverse the Hearing Officer's decision and Approve Conditional Use Permit No. 1296451."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures on December 8, 2014. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on March 3, 2015. The scope of the Hearing Officer's decision only includes the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24004632 @ Page 32

In the DSD Report to the Planning Commission, PC-15-077 @ Page 3 DSD only acknowledges one Appellant and that is attorney Stephen G. Cline. Yet as can be seen here there was a CEQA appeal made by a Mr. Luis Herrera, an "interested person," who checks off the Environmental Determination - Appeal to City Council. What is of interest here is how an "interested person" would be the one to target the CEQA Exemption, it would not hit the Planning Commission appeal and it would be fastidious enough to list the Public Review SAP number on the Appeal Application. The average person just doesn't do this.

When one considers that the CEQA Section 15303 exemption that DSD relies on, and Mr. Herrera (who curiously lives in 92115 some 20 miles away from the 92126 project) points out in his Appeal Application, is limited to projects under 2,500 sq-ft this and many of the other marijuana licenses the City of San Diego approved would NOT have been CEQA exempt.

On 2015/02/12, Kerry Santoro, Deputy Director, Land Development Review @ DSD issued this memo to the City Council stating that although the project does exceed the 2500 sq-ft area the area it is located in an "urbanized area" which under Section 15387 would, per his interpretation, exempt the project from the Section 15303 standard. *[Of note DSD has not made their CEQA determination based on Section 15387 and Section 15303 does not point to the Section 15387 as an exception to any language in that Section. If DSD had been relying on the Section 15387 exemption they should have made that clear in their findings and Report to the Hearing Officer and their subsequent Report to the Planning Commission.]*

APPELLANT(S): Attorney Stephen G. Cline

Issues On Appeal

Page 48: Ownership Disclosure Statement. [No Tenant or Glass TEK information provided]

Page 49: Appeal Application by Stephen G. Cline on behalf of Applicant Glass TEK Entities MMCC stating, among other things; "There is new information related to competing applicant that renders it unable to obtain necessary approval for MMCC operation." ***[This is curious. Attorney Cline does not submit, for this record, what that information is and DSD has eliminated all records of the Project Application from their site. What information was Cline referring to in his appeal about the competing applicant and does that information have anything to do with why the project records are no longer on file? Also a review of the Grant Deed transfers should be considered for this project as there have been an unusually high number of Grant Deed transfers and loans associated with this 9212 property which in some cases were done under a court appointed receivership.]***

OWNER(S): Sun Duk Kim and Yun Chui Kim @ Page 17

APPLICANT: Glass TEK Entities MMCC, Joel Volsky CEO @ Page 18

CUP NUMBER: 1296451 ***[Neither the CUP or the Project Number come up in the DSD Records Search.]***

SITE DEVELOPMENT PERMIT NUMBER:

CUP HOLDER: Joel Volsky @ Page 60

STATUS: Unknown

CITY COUNCIL DISTRICT: 6

PLAN AREA: Mira Mesa

STAFF: Edith Gutierrez

Speaker slips in favor of the project submitted by Margaret Gibert, Steven Cline, Will Senn, Scott Bernet, Genevieve Band, Nicolas Augsburger, Geoff Musni, Gavin Bond and Michael Rollins.

Speaker slips in opposition to the project submitted by Scott Chipman.

COMMISSION ACTION: COMMISSIONER AUSTIN MADE THE MOTION TO CONTINUE THIS ITEM TO JULY 9, 2015. Commissioner Wagner seconded the motion. The motion passed by a vote with Commissioners Haase, Austin, Quiroz, Wagner voting yea and with Commissioners Golba and Peerson.

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2015/06/25: ITEM 13: 2405 HARBOR DRIVE (SOUTH BAY DREAMS) MMCC Appeal Hearing Officer's 2015/04/22 ITEM 9 decision

ITEM 9 STAFF: Edith Gutierrez

3 speaker slips submitted in favor – Cynara Valesquez, Margaret Gibert and Jessica McElfresh

6 speaker slips submitted in opposition – Kathy Lippitt, Barbara Gordon, Scott Chipman, Judi Strang, Carol Green and Peggy Walker

ITEM 9 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-15-052. RESOLUTION NO. HO-6816

DSD CONTACT: Edith Gutierrez

PROJECT NUMBER: 381308

DSD TO HEARING OFFICER RECOMMENDATION: HO-15-052 ***[As can be seen by the HO Minutes link for Item 9. This is NOT the correct report number for this project. HO-15-052 is for a Sprint wireless installation @ Zion View Church. This is just sloppy.]***

Upon further research the actual Hearing Officer's Report Number and recommendation is: HO-15-053 "APPROVE Conditional Use Permit No. 1337996."

HEARING OFFICER: Ken Teasley

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-15-078 "Deny the appeal and Uphold the Hearing Officer's decision to Approve Conditional Use Permit No. 1337996."

CEQA DETERMINATION: Exempt @ Page 1

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24004934 @ Page 29

APPELLANT(S): Scott Chipman

Issues On Appeal

Page 33: Barrio Logan Community Planning Group Minutes

Page 35: Ownership Disclosure Statement showing proper Owner and Tenant information.

Page 44: Appeal Application by Scott Chipman

OWNER: Basil Shamoun @ Page 1 and 20

APPLICANT: South Bay Dreams Cooperative, Inc., Noel Shamoun @ Page 1 and 20

CUP NUMBER: 1337996

SITE DEVELOPMENT PERMIT NUMBER:

CUP HOLDER: Noel Shamoun @ Page 20

STATUS: Issued 09/04/2015 Steve M. Shamoun, shown as Permit Holder

CITY COUNCIL DISTRICT: 8

PLAN AREA: Barrio Logan

STAFF: Edith Gutierrez

Speaker slips in favor of the project submitted by Barbara Gordon, Nancy Logan and Scott Chipman.

Speaker slips in opposition to the project submitted by Margaret Gibert, Cynara Velazquez, Paul Nayer, Dallin Young, Jessica McElfresh, Jesus Cardenas, Wissam Shamoun, Yolanda Esparga, Noel Shamoun, Swana Shamoun, Chris Cronin, Melissa Cronin, Odette Medina, Jacquelin Veneyas and Juan Villegas.

2:50:12 Commissioner Haase opens ITEM 13. They continue several agenda items to clear the room. The keep Item 13 on the agenda. They take a break for lunch but the Commission never reconvenes or at least the afternoon video was never taken to determine what went on to deny the appeal. This is highly irregular.

COMMISSION ACTION: COMMISSIONER WAGNER MADE THE MOTION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO APPROVE CONDITIONAL USE PERMIT NO. 1337996 WITH CONDITIONS. Commissioner Quiroz seconded the motion. The motion passed by a vote of 4-0-3 with Commissioners Haase, Austin, Quiroz and Wagner voting yea and with Commissioners Golba, Peerson and Whalen absent.

[After the morning break this video was never archived]

2015/07/09 Minutes

2015/07/09: ITEM 7: 3385 SUNRISE STREET MMCC Trailed from June 25, 2015; Continued from May 28, 2015;

See Planning Commission Hearing of 2015/05/28 ITEM 15 earlier in the Steering Doc for all Project Files and Appeals information. (Control F the Project Number for easy access.)

PROJECT NO. 368337

No speaker slips in favor of the project were submitted.

Speaker slips in opposition to the project submitted by Scott Chipman.

COMMISSION ACTION: THIS ITEM WAS WITHDRAWN.

* * *

2015/07/09: ITEM 8: 8863 BALBOA AVE., STE E MMCC CONTINUED FROM 2015/06/25.

See Planning Commission Hearing of 2015/06/25 earlier in the Steering Doc for all Project Files and Appeals information. (Control F the Project Number for easy access.)

PROJECT NO. 368347

Speaker slips in favor of the project, opposed to appeal submitted by Jim Bartell, Abhay Schweitzer, Kristine Byers, Stephanie Hess, Bradford Harcourt, Michael Sherlock, Damielli Teza, Javier Santana, Alexander Garza, Nicholas Enciso, Christine Bordenave and Gia-rose Strada.

Speaker slips in opposition to the project, in favor of appeal submitted by Daniel Burakowski, Ed Quinn, Greg Izor, Connie Chambers, Judi Strang, Glenn Strand, Brian Kean, Tana Duong, Rod Chambers, P. Michelet, John Murray, William Budd, Scott Chipman, Spencer Harris, Edward Scudder, Kathy Lippitt, Cree Scudder, Peggy Walker, John Peek, Tom Brady, Hilary Brady, Luiza Savchuk, Candace Wo, Cory Berlin, Nathalie Matthews, Tuesday Nunes, Patrice Johnson, Kacie Miller, Michelle Johnson, David S. Demian, Tom Hanley, Heidi Runge, Rick Engebretsen, Steven Hwang and Jim O'Sullivan (not present).

7:57 Commissioner Golba Opens Item 8 with DSD Presentation by Edith Gutierrez

12:22 David Demian in support of the appeal citing "As you may recall I represent the applicant next on the docket so that's our interest here…We discussed with the Kearny Mesa Planning Group (KMPG) and looked at the local use plan in particular… KMPG are the boots on the ground, the fact finders…they understand the potential land use impacts and this permitted use on Kearny Mesa…I submitted a one page letter yesterday where you can grasp the concept of it very quickly which is that in their industrial uses in Kearny Mesa there is without question the industrial element of that local use plan is focused on controlling if not eliminating but certainly controlling the non-industrial uses on their industrial property. So, the issue is not one of zoning but one of the discretion of this body which you clearly have to make that first finding that and the 3rd finding that, does this location, is this use appropriate at this location? Does it adversely affect the local use plan? You can't meet every aspect of the local use plan. I recognize that the spirit of it should be respected, which again is to limit and control non-industrial uses in an industrial IL-31 zone. But in controlling those, what do we look at? The reason Kearny Mesa has that stated goal for their local use plan, ideally their local community planning group would consider these issues, is because it's a different use when it's commercial retail service like that at issue. It has a higher intensity of foot traffic. So here we have businesses that, from our estimates, from my clientele, will generate 20-30 customers an hour…the applicant has 5 spaces for parking. They had to buy a separate unit in the complex to get 3 of those spaces. So, 3 of their assigned spaces are 200 feet down a sidewalk passing a series of industrial units. So, when you're talking about 30 customers an hour and you're going to have a limitation on parking, no accessible off-site parking, and the unit is 300 feet from Balboa Avenue. So is this the right location for this use. The planning group never had the chance to vet these issues. Granted I have my interests, but these are my observations on this property, and I think it's similar to what this Commission did on the Pickwick property, where the parking situation was not readily available on-site. There was a 300-foot sidewalk where the potential parking agreement was supposed to work, that type of access issue and it's similar to that. That's the point of my letter, is it the right finding when the next two applicants, my client and Glass Tek, were the chosen applicants for the Mira Mesa Community Planning Group and they're not going to get permitted. We're going to have one permit in Mira Mesa and we're going to have 3 in Kearny Mesa."

18:13 Daniel Burakowski in support of the appeal introducing those who will present.

19:05 Ed Quinn representing the Kearny Mesa Planning Group (KMPG) in support of the appeal citing "I would like to read the first letter, dated May 27th, to Edith Gutierrez cc to Councilmember Chris Cate from Jeff Sallen, President of KMPG, and I quote; 'I was surprised and disappointed to discover that the City of San Diego granted Mr. Sherlock approval without first seeking approval from the Kearny Mesa Planning Group. I was under the impression that although not binding, our vote was significant and would carry some weight with the City. Isn't the purpose of a local planning group to impact its knowledge during the review process? We ask that you withhold final approval of Mr. Sherlock's application until our review and vote have occurred.' The second letter was sent to all of you, dated June 18th from Tamara Laura, Vice Chair of KMPG ' This particular applicant appeared at our meeting on June 18, 2014, along with 2 other applicants for MMCC use in Kearny Mesa. All applicants were requested to return after some citywide issues regarding CEQA were decided. This applicant never did return after the appeal of the CEQA issue was resolved on March 5, 2015. Please understand that this specific location had the largest number of community members attending to speak against this location (he cites 27 letters that have been submitted against this collective). It is the belief of the planning group that setting such uses in multiple

tenant facilities unfairly imposes a use that may create significant problems of traffic, parking and loitering for adjacent tenants. It is our opinion that such MMCC uses should be a single tenant facility where parking, driveways and common areas are not shared. We request that the Planning Commission act on this MMCC appeal by overturning the Hearing Officer's approval of this CUP and that the applicant be required to attend and present his project to the planning group at the next meeting for our recommendation as any other applicant…The site where this cooperative is proposed is in the prime industrial zone area of Kearny Mesa as is most of Balboa Avenue East of I-163. The spirit of the prime industrial zone should keep these MMCC uses out of areas that the General Plan is trying to protect for future employment growth. Part of our mission at the KMPG is to promote the true industrial use of our area.' Thank you"

23:16 Greg Izor, architect, certified by the State of CA as an access specialist, representing the interests of the Montgomery Field Business Association in support of the appeal citing "…we're coming here today not to object to the use…I believe there is some new information that was not considered in the approval. We base our appeal on 3 main issues. We feel, as the last speaker commented upon, that the planning group has an opportunity to provide their recommendation for staff consideration. That did not happen. Next there is information regarding the parking requirements that staff was not aware of when they made their recommendation to approve this application… With the requirement for having to add 4 more disabled spaces to the industrial park for a total of 5 disabled parking spaces, that has reduced the existing parking from 99 to 94 spaces. Currently the use is not meeting the parking requirements. Finally, we think there are some on-site traffic and pedestrian issues which we feel were not thoroughly considered. We request that you uphold the appeal and refer this back to staff so we can resolve this issue over inadequate parking and traffic on-site."

26:40 Michelle Johnson in support of the appeal.

27:56 Kacie Miller in support of the appeal citing "to approve this CUP you are putting retail into an industrial zone warehouse which violates the HOA bylaws, something you would never do anywhere else in the City."

28:27 Patrice Johnson in support of the appeal citing "we're not against the medical use of marijuana, it's just the location is not suitable."

29:07 Tuesday Nunes in support of the appeal.

29:56 Natalie Matthews in support of the appeal citing "In what parallel universe does your staff operate? The majority of owners of the Montgomery Field Business Condo Association do not want a pot shop operating. Staff would never force a use on any other HOA in the City. If you do nothing else today ask yourself why are they recommending that you force on this HOA? It's no brainers Commissioners. Uphold this appeal and move onto the next hearing."

30:44 Cory Berlin in support of the appeal.

31:35 Candace Wo in support of the appeal citing "This project is retail in an industrial zone. It is not an accessory use to industrial. It is just a stand-alone retail which violates the Kearny Mesa Community Plan as approved by the City Council."

32:02 Luiza Savchuk in support of the appeal citing "…your staff knows that the Montgomery Field Business Condo Association HOA bylaws do not allow for this use, yet they are recommending that you deny the appeal anyway. Please do the right thing and uphold the appeal for good planning and good business."

33:08 Jim Bartell representing the applicant United Patients Consumer Cooperative in opposition to the appeal citing "…before I start the official presentation, I wanted to just respond to some of the statements made earlier regarding the planning group. We attended 3 planning group meetings, May 21, June 18 and July 16 and was told that they wanted to wait until staff had cleared all the issues. That they had no opinion at that point. *[This seems to be at odds with what Izor and Quinn stated earlier].* And I've had several conversations with Jeff Sallen since July 16th updating him on the progress. Staff corresponds with him. They have been fully apprised that we had cleared all of the staff issues that they had requested… [he introduces the 'architect' Ahbay Schwietzer. *[Schwietzer is not a licensed architect]*

35:09 Ahbay Schwietzer in opposition to the appeal citing "we now have adequate assigned and unassigned parking spaces to qualify this project. Allow me to introduce Kristine Beyers to discuss the LEED aspects of our project."

36:05 Kristine Beyers licensed architect and the LEED coordinator for this project who is in opposition to the appeal citing "We have registered the project for LEED certification for the LEED interiors program. LEED certification closely aligns with the goals of this operator, that is to create a healthy environment for their staff and the members who will be coming to the facility. Also, to be good neighbors to both this complex, the neighborhood and San Diego at large and to be good stewards of the environment. The way that we are achieving those goals is we are saving energy by putting in energy saving lighting, heating ventilating and air conditioning, energy saving windows, energy star appliances, water saving plumbing fixtures and environmentally sensitive building materials that are locally sourced out of recycled materials…" *[How many other small TI projects bring on an architect with LEED certification? It's pure and simple, a way to try and score points where points are needed.]*

38:05 Jim Bartell "In summary we have received the Hearing Officers support as you know and staff support. We've cleared all issues."

39:11 Greg Izor in rebuttal "it is possible that traffic and parking might be mitigated but there are key issues relative to the reduction in parking spaces to accommodate additional wheelchair accessible spaces required by State and Federal law that staff did not have for their consideration. We ask that you uphold our appeal and refer this back to staff so that these key issues can be addressed and make sure that this project is approved and is mitigating any impact it might have to the site."

41:00 Commissioner Austin I'd like staff to respond to what may be a shortage of parking and if you were aware of that at the time you approved the project and the other question is Mr. Izor was showing handicap in certain areas and the applicant is showing handicap immediately adjacent, I just want to make sure I understand what the facts are as they now exist.

A: (DSD) Staff was aware there were 99 parking spaces available on-site and the applicant is required to provide 5 parking spaces. They have done that through a somewhat creative method. There are two spaces deeded to each suite. each owner. They are proposing to convert one of the warehouses into two

parking spaces and they will have to get a building permit to make that conversion which we acknowledged that there will be an additional building permit required for that.

Q: So, they're parking inside a building is giving them the parking correct?

A: Yes

Q: There seems to be a discrepancy in how many times the applicant went to the planning group.

A: (Gutierrez) I can't confirm if the applicant attended 3 hearings. I do not attend the hearings. That's the information they relayed to me. I usually only get the final vote from the community planning group.

Q: Ok let me ask if one of the members from the planning group could come up and verify that?

A: (Quinn) I saw them once. I'm not aware of the other two but I have to reiterate here. I don't know how much clearer this can be, Jeff Sallen Kearny Mesa Planning Group, dated 5/27; 'I was surprised and disappointed to discover that the City of San Diego granted Mr. Sherlock approval without first seeking a vote from the Kearny Mesa Planning Group.'

Austin: OK just two follow up questions then. I'm through with my questions to you then sir.

Q: There is not a requirement to go back and get a formal vote or is there?

A: (Gutierrez) There is not a requirement. They are encouraged…

Q: They are encouraged. So why did you not go back to get a formal vote, is there a reason you didn't?

A: (Bartell) Wen had been there 3 times. We had given 2 full presentations and after we had cleared the issues I had several conversations with Mr. Sallen and advised him we had cleared all the issues and we were never invited back. At that point we were processing through the approval process, we had staff recommendation at that point, we cleared our NORAs everything was moving forward, went to the Hearing Officer and got approval, it wasn't until the Hearing Officer approved us we got the letter.

Austin: It sounds like we have an agreement to disagree. No further questions.

49:49 Commissioner Whalen "Thanks to Comic Con's 3 longest trolleys and me being late, I'm going to sit this vote out."

50:07 Commissioner Peerson "I'm going to focus on is access and parking. First of all, I found the packet with the 100 and 1,000 foot radius maps to be unusable. You can't even read underneath, and it's got assessor parcel numbers so I'm just going to ask staff; there's no residential within 100 feet, correct?

A: (Gutierrez) That is correct.

Q: And there's a 1,000-foot radius map although I can't read the background and then I'm given a list of assessor parcel numbers. There are no conflicting uses within the 1,000 feet and there are no other MMCCs. Is that correct? *[Both of these 'questions' are not questions. They are statements requiring confirmation. Based on the quality of the package information she has in front of her I think she is being incredibly forgiving towards DSD that they accepted the information in this quality.]*

A: That is correct.

Q: I found the site plans incredibly difficult to read. They're very small which has caused some of my frustration. What plans should we be looking at before us that are going to become part of Exhibit A that will be part of the approval for the permit?

A: So, Attachment number 9 in the Hearing Officer Report is going to be the final site plans and they will be in a larger size.

Pearson: Ok and we've had this discussion and I will be careful in my comments because I know that there is the building permit phase a lot of problems that have to be solved. Our own staff pointed to that. For me the issue is we are asked, with the material before us, to make that finding. I believe that the length that you have to travel through this parking lot is the path of travel that I'm seeing, even though there's a handicap space next to it, but we still need to show how you can get from a public street, considering you take transit, the site is limited. I find there is very little flexibility in how the parking can be rearranged. I'm not comfortable with this project as it's been presented. I think the minimum has been presented to us. I don't think the applicant has gone out of his way to show us how this works and convince me that I can meet the accessibility and the parking requirements. So for that reason I would uphold the appeal and deny the project because I can't make finding number 4."

She makes a motion to uphold the appeal but there is no second so the motion dies.

56:16 Commissioner Haase "I actually have a couple of questions for Mr. Quinn regarding the issues in the letter and the process the planning group goes through"

Q: For the most part i appears you're relying on two strong arguments that from your perspective because this is located in private industrial lands and this is a multi-tenant industrial complex that it should not be approved. Is that fair?

A: (Quinn) Yes. That would be one of them.

Q: In the planning process you receive plans when the application is originally filed. These are land use issues. They were well known at the time the application was filed. Did the planning group ever notify the applicant of their concerns over its location in a multi-tenant office building or prime industrial lands? Those are not CEQA issues in my opinion.

A: My experience in sitting listening to the presentation Jeff Sallen said 'look we have a policy here…'

Q: I'm not asking about your policy, of how you want to conduct the process with applicants whatI'm asking is under the Council policy to provide input to the City on issues related to a project the initial application, you get the two part form, did you ever notify staff that you had a concern on this location because of those two issues which were known at the time the application was filed?

A: I'm not in a position to answer that question. Jeff Sallen or the Assistant Vice Chair could answer that. I don't have an answer for you on that sir.

Q: I appreciate that because it seems like that was known from day one. It's not late breaking and those were land use issues and I would encourage the planning group to provide that feedback in the initial application on the form you're asked to provide to the City with every application. My second question has to do with your letter and it has to do with the multi-tenant office. You've made an argument that a multi-tenant office is not where these should be located yet in the paragraph prior in that letter it sounds

like you approved a different project in a multi-tenant office environment. In a multi-tenant industrial park. Am I reading that correctly?

A: I think that that is correct. Isn't it Edith?

A: (Gutierrez) Yes.

Q: That seems to contradict your argument. Maybe you can explain that to me. In one case multi-tenant is ok and in another case it's not and I'm left with trying to figure out is this a valid reason to oppose the project?

A: I understand your dilemma. Let me just say this. I think the feeling of the planning group was this, they told each applicant before we would vote on your appeal [application] we want to be sure that you come back and tell us, to our face, that all of these things have been cleared by the City. And that was clearly stated to this group. The group did not come back. Now the question is, is it the responsibility of the planning group to call them back or is it the responsibility of the person seeking this collective marijuana application to go back? And I think the feeling of the Kearny Mesa Planning Group is, it's their responsibility to come back. We were more than willing to listen to the presentation and do a vote when they came back and told us that all of these things had been met.

Q: I appreciate that but unfortunately in the findings it does not say that I can deny a project because they didn't get a planning group recommendation.

A: And we understand that sir.

Q: So, I'm looking at your justifications to deny that project or why you oppose this project as grounds for not making these findings and I have to admit, I'm struggling just a tad with those.

A: Ok and I understand your point. If you also will look, the issues here regarding parking and traffic were also outlined in the letter of June 18th which you received. I appreciate where you're going, and I wish I could answer all of your questions a little more forcefully but the Kearny Mesa Planning Group felt that there were serious parking and safety issues in this complex and they say that in that letter according to what you were talking about. I can speak for Jeff because he wanted to be here…

Q: Understood. Let's stay to my question. I appreciate it.

A: I understand. The feeling was also that this area, at Montgomery Field, was going to cause traffic and parking issues that the KMPG had very strong questions about and never had a chance to discuss amongst themselves because they never came back to do the final presentation.

Q: I appreciate that. Thank you. [an unidentified person is yelling something from the audience to which Haase replies] I actually… I don't have a question for you. It was really trying to understand the planning groups process and their letter and that's on them to answer. I appreciate that thank you. If something does come up, I will come back.

I understand that these are challenging issues with respect to where we've allowed these to be located with a Conditional Use Permit and from my perspective our choices are sometimes very limited whether we add to traffic congestion with a project or with this particular case in an area that doesn't have a lot of traffic today we're adding a little bit of additional traffic and is that a de minimis impact or is it an impact we need to consider? That's the balance test. This is on private property. I really appreciate my colleagues

regarding the path of travel on the exhibit. It appears that there's a sidewalk along the entire frontage of those buildings and that there's a disabled parking space at the very front of the building where Balboa Avenue is *[puts up the DSD site plan]* I would assume there is a better path of travel from a disabled standpoint as listed on this particular exhibit, but I'll take the exhibit as it stands today.

I do appreciate we are considering all the evidence that is presented in our packet as well as what is presented in this hearing considered to make a decision and that includes the testimony of the public as well as any additional exhibits that are provided. We have to make a decision based on the total we have before us.

[from the audience, Greg Izor stands and asks if he can make one brief comment?] Haase responds "Ok. And I'll provide that to the other side."

1:03:35 Greg Izor There is no continuous sidewalk throughout this complex. And that is part of the reason it was broken up into 5 separate parking lots. There is a sidewalk on the West side 3 buildings and on the East side 3 buildings…

Haase: I appreciate that and I've said that I would accept this exhibit as the path of travel. That I won't presume there is one. I thought there might be but this is what's before us. This is what I will base my decision on.

Izor: Thank you sir.

Hasse: Since I gave them that opportunity, is there anyone else who has a question? The Chair is totally losing control of this meeting right now.

1:04:23 David Demian 20 seconds. 20 seconds. The question is what's the distinction between the Convoy property and the Balboa property? Convoy was approved by the planning group. This one was not. The difference is in the local use plan which sets aside that commercial corridor on Convoy for purposes like that. That's the difference.

Haase: Sounds like you're defending the planning group right now but…Thank you. *[What this entire exchange and what is about to come in Commissioner Quiroz's comments, illustrates just how flexible the Commission can be in weighing the planning groups recommendation. If it suits the Commission's agenda to deny an appeal they can rely (justify) on it or not. Bartell had this site in the bag. The appeal didn't have a chance.]*

1:04:46 Commissioner Quiroz As far as the planning group is concerned I'm kind of surprised by your decision not to look at these projects before the City has made its decision because that's exactly what you're there to do. To help the City make its decisions. So if you haven't given any input, by the time the City's decisions have been made, it's very difficult to then go back because the cycle issues are closed. And so I would suggest to you that it is very important you give your input before the cycles issues are closed. I think that we need to be clear that the planning document is an advisory document and in most cases it is absolutely essential that we listen to what the planning document says. But in this case I have a problem doing that because I'm here to put into place what the City Council has made into law and what they have made into law is that medical marijuana facilities should be placed in industrial areas. Whether we like it or not, that's what the law is and we can't then come along and say, 'you can't go in an industrial area' because the law says they can even though the planning document may say they can't…as a side note,

the Pickwick property didn't have a sidewalk. It's nowhere even close to this…we need an area that is very very safe to put the cash and the inventory. Can someone speak to that?"

A: (Schwietzer) That's a great question. What we're proposing is that the Manager Room be completely protected with a bullet resistant assembly. In that there will be a small safe. We found through working on more than one of these projects, they don't need, nor do they want, a large to store a large amount of medicine or money so the Manage Room will be safe as has been the standard with other safe rooms in other dispensaries.

Q: You'll have quite a bit of product there presumably. You're not going to have just a little tiny bit. So I'm not understanding how a small safe will work. If you said you were going to have a 'pretty large safe' in the Manager Office and you were going to make it 'well taken care of' I could understand it but if I'm looking at a safe *[gestures with her hands at about a 24" x 24" size]* you're not going to fit your product in there.

A: It's our assumption that the safe will be larger than that *[why is he assuming?]*

1:09:55 Michael Sherlock is whispering in Schweitzer's ear that the safe is a 6-foot-tall double door not a small safe. *[Schweitzer was clearly unprepared for such a critical aspect of the design element. Thankfully he had a friendly commissioner and LEED certified architect there that day!]*

Schweitzer: So, what the client just told me was that the safe has two doors. It's tall. It doesn't need to be deep…there's adequate room and is secure for this purpose.

1:11:50 Commissioner Quiroz As far as I can see you've met all the municipal code. I couldn't find that the appeal was valid, and I can make all the findings and I especially like the LEED issue. I don't think that anyone has signed up specifically for LEED *[it had to be raised from the dais didn't it?]* although they've done things *[yes 'they' all projects have to design to Title 24 standards]* I am happy to approve the project.

1:12:27 Commissioner Golba Mr. Bartell if I could get you to come up?

Q: In regard to the planning group commission presentations you're on record saying you have been there I think 3 times is that correct?

A: (Bartell) Correct.

Q: The last time that you were there, was that one of the two times you made a presentation?

A: It was a 12-minute presentation.

Q: At that point in time, it was your 3rd visit, what remained on the City's cycle comments that was not signed off?

A: I think we were still grappling with our 5 required parking spaces.

Q: I was just trying to figure out if the only remaining issue may have been your CEQA appeal *[March 3, 2015 City Council Appeal Hearing]* that wasn't signed off?

A: We were pretty much complete with staff except for the tweaking of the parking.

Q: And while you're up here explain to me how the parking works?

A: We get two assigned in front of Suite E. We have 2 assigned spaces in front of Suite B which we also lease and are creating 2 spaces inside Suite B, which is vacant, for employee parking. Before we had two ADA spaces across from us in Suite E. Now we have those two plus one immediately in front of our Suite.

Q: Is all the parking assigned?

A: The 4 of the 5 are assigned. Those are ours.

Q: And where is guest parking for this for not only your use but for everybody's use? Is it the overflow next to the airport?

A: On the South side of the complex. By Montgomery Field.

Q: Adjacent to the airport?

A: Correct.

Q: So that's where the guests or overflow would park?

A: Probably.

Q: (to Appellants) I'd like to confirm, do you guys agree that an accurate assessment of how the parking works feel free if you have any clarifications?

A: (Greg Izor) When I went to the site, I saw that the spaces were assigned so many spaces to each unit. Again, our premise today in our presentation to you is really based on the fact that the approval was granted based on 99 existing spaces and now it's down to 94 and we need to make up that difference in the parking for the approval and again the traffic. If the Commission feels it's important to have an accessible path of travel from the public right of way, from public transportation into the facility that should be looked at because that's not existing on the site,

Golba: I think Commissioner Quiroz addressed it. I don't think it's in our purview or in our rights to ask this current applicant to make up a parking discrepancy simply because the site became more compliant in the ever-evolving accessibility codes. Otherwise, we'd be red tagging all the other suites out there as well in fairness and I don't think we can actually go and shut the entire complex down either simply because two comply with today's current accessibility codes.

1:16:20 A: (Greg Izor returns to the stand) Maybe one thing that would help you understand the full issue behind the accessible parking. Let's say the Association didn't upgrade their accessibility parking, as their Task Report said they should, what would happen is they'd end up in the Building Department to pull their Building Permit and taking a look at their structural changes to the exterior of the perking suite and everything that they're doing, there's a really good chance that their Tenant Improvement costs are going to exceed the $147,863 construction threshold for the Building Department and when you exceed that then the Building Department requires that Tenant Improvement upgrade to upgrade the whole facility. So even if those parking spaces hadn't been done, your approval had gone through, they would have been forced to do that which would have shorted the spaces. It's just that what has happened now is that the Association has stepped up to meet their federal and state obligations under the ADA and put those spaces in. So we still have a bust either way. *[this last sentence and the preceding statement should have created more debate amongst the Commission. It did not.]*

1:17.33 Commissioner Golba Thank you for the clarification. With that I'll move on to Commissioner Wagner. *[Immediately Commissioner Golba drops the last testimony from any further discussion and moves on.]*

1:17:37 Commissioner Wagner Mr Larson (DSD) Child Welfare Services is probably 500 feet away. Can you explain Child Welfare Services and its definition in falling within a minor-oriented facility?

A: (Larson) I was aware of that facility being located within close proximity to this proposal as a part of the review. I didn't do a site visit to Child Welfare Services, but I have reviewed their website and the services that they offer and all the services they seem to offer to children occur at other locations…it's purely an administrative office and does not provide on-site services to children.

Wagner: Perfect. Thank you, sir. With that I cannot make the findings. I find that a lot of what is going on with the HOA is a civil matter and outside our jurisdictional purview. Wagner provides a Motion to deny the appeal with Commissioner Quiroz seconding.

1:22:20 Commissioner Haase has a lengthy Q & A with Larson over the use of Prime Industrial (which 8863 is not) and being able to permit an MMCC in that zone. Go to the video if you wish to consider it.

1:26:47 the vote is taken.

COMMISSION ACTION: COMMISSIONER WAGNER MADE THE MOTION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO APPROVE CONDITIONAL USE PERMIT NO. 1296130 WITH CONDITIONS. Commissioner Quiroz seconded the motion. The motion passed by a vote of 5-1-1 with Commissioners Golba, Haase, Austin, Quiroz and Wagner voting yea and with Commissioner Peerson voting nay and with Commissioner Whalen abstaining due to Comic-Con traffic.

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2015/07/09: ITEM 9: 7625 CARROLL ROAD MMCC Continued from 2015/06/25

See Planning Commission Hearing of 2015/06/25 ITEM 11 earlier in the Steering Doc for all Project Files and Appeals information. (Control F the Project Number for easy access.)

PROJECT NO. 370687

Speaker slips in favor of the project, opposed to appeal submitted by David Demian, Jim O'Sullivan, Tom Hanley, Rick Engebretsen, Steven Hwang and Heidi Runge.

Speaker slips in opposition to the project submitted by Barbara Gordon, Peggy Walker, Judi Strang, Scott Chipman and Kathleen Lippitt.

1:38:09 Commissioner Golba opens Item No. 9 with DSD presentation.

Gutierrez, DSD: This is a request for a Conditional Use Permit to operate an MMCC within an existing 4,581 sq-ft building. It is in the IL-3-1 zone in the Mira Mesa Community Plan. It is designated Light Industrial. The Community Planning Group voted this project as the second most preferred and it's in Council District 6.

I'm not going to go into the appeal issues because per the municipal code you can only approve 4 MMCCs per Council District. Four have been approved. Therefore, I'm just going to go to Staff Recommendations

which I am now going to be reversing to uphold the appeal and deny Conditional Use Permit No. 1338819. This concludes Staff's Report.

1:39:44 Commissioner Wagner now if we were to go back to this last one, their operational permit did not go through, can we conditionally approve this particular dispensary predicated on a dispensary not being approved, that's not gone through yet in the 6th Council District, like this could be an alternate? Can we find that?

A: (Gutierrez) The Ordinance did not adopt any place holding. If an MMCC did not get approved, they would just have to resubmit a new application.

Q: So, there is no discretion that this body has to have a place in line?

A: No.

Wagner: Thank you.

1:40:50 Scott Chipman We oppose the project and have to comment on the irony that Federal Law trumps City Law. Yes, it does, except when you choose it not to evidently. Cites marijuana use increases child deaths in AZ and how the increase in cannabis cultivation and the law and regulation is only about the money.

1:43:28 Judi Strang I know this is sort of a moot presentation since the other two projects would not apply. You already have your 4 in District 6 but I just wanted to show you a recent image taken of the Otay Pot Shop which shows 3 teenagers going into that shop and how it correlates with the recent Rand Study that Scott was referring to that shows how the advertising and signage associated with these pot shops lures young people towards them.

1:45:05 David Demian, Esq. on behalf of the applicant here and I think Edith said it right that there now have been 4 approved, by this body but the question, there's really 2 questions so let's have a conversation about it, thank you Commissioner Wagner for bringing it up, can we conditionally approve the permit? I think yes.

In a situation where the Ordinance doesn't provide for a lot of things. I think the Commission has recognized this Commission has the authority to exercise its discretion and implement rules that make sense for this process. And I encourage you to do it. I think this permit could and should be issued with a condition on it as to the actual operation of MMCC's. Two, actually I think this is even a more telling argument which is that the Ordinance at 141.0614 clearly states that the prohibition is on 'for medical marijuana consumer cooperatives, as defined.' And while we may have discretion to fill in gaps in the Ordinance, we can't just completely ignore the Ordinance in my mind.

If it says it provides a clear definition which is 'a facility where marijuana is transferred [is as if it's happening right now] to patients or primary care givers.' Well, that's not happening right now in District 6. So, our contention is that that plain language of the Ordinance compels issuance of this permit today. And I'll back that up with a little more common sense which is, this body met on March 12th and approved the permit for a property on Clairemont Mesa in District 6. That permit has not issued by the plain language of the Ordinance which provides that after approval from the Planning Commission, the next step is recordation under § 126.0106 and only after recordation under 126.0107 is a permit actually issued and I'll read the language because it's very clear, 'the development permit will be issued to the applicant

within 5 business days of the date of the originally recorded permit was recorder and returned to the City.' Well, 4 months later that hasn't happened, so we're a long way from actual medical marijuana from being available to the citizens of this City and in District 6.

We just saw Balboa get issued, or rather approved, so we're still going to wait on that one. Now the other two properties in our District were approved June 25th and June 18th and those permits were actually recorded, to their credit, on June 29th and July 1st. So, we still have to go through building permits, construction permits, other actions in order to actually arrive at a medical marijuana consumer cooperative that is transferring medical marijuana to its qualified patients or primary caregivers.

So, it's not a ministerial process, the actual issuance of the permit, I can tell you I represent an owner of real property and when they go to sign an encumbrance that will encumber their property for the next 5 years, well that's a pretty important step. So, if that hasn't happened for 4 months, I don't know why. I just know it's not there now. And I think the code is clear on it's face. So, I think this should be continued, I think it should be conditionally approved, I think it just be straight up approved.

Again, what's going to happen next is these properties will never operate an MMCC because of the legal challenges which are about to happen *[What Demian was referring to is the HOA not approving the MMCC within their industrial business park. This led to the MONTGOMERY FIELD BUSINESS CONDOMINIUMS ASSOCIATION v BALBOA AVE COOERATIVE ET AL lawsuit being filed May 26, 2017]* which I don't disagree the HOA challenge is civil matter but that's going to happen. So, what's going to happen next? Everyone has to go back and reapply and start over. Why can't we hold these permits at the Hearing Officer level in abeyance, again we invented a priority, which was a necessary thing to do, I don't agree with how the priority was set up between these applicants but that's not in the Ordinance. The discretion is with this body, and I ask you to at least deliberate on it. What can you do? What's within your power to do right now to solve those issues? Thank you.

1:49:32 Commissioner Golba Thank you. Why don't you stay up at the podium and I'm going to go ahead and close public testimony since that's the end of the speaker slips, I have for this Item. We're charting brave new territory. This is the first time we've had this hit that of what we all agree is a policy that we struggle with at times. I have a long-standing position up here being one that is a strong proponent of never making an applicant start over and trying to find solutions that work through, so you don't have to start over as someone who does process these and knows what that entails.

I don't know that I could find myself supporting a conditional approval because I don't know the enforcement mechanism with the City and how that would even be handled in that respect. But I'm just going to throw it out, and I would be supportive if you turned to us right now and said that I'd like a continuance to an indefinite date on this project which in essence would hold the project, as you stated in abeyance should somebody default or not approve it or something like that, which in essence you could request your hearing date or something like that. I probably want Staff and the City Attorney to chime in on this too but we are charting new territory and I think that might be a more practical solution to potentially holding your place in line which has become a rather key component of this whole process.

Before we got into too much deliberation I wanted to throw that out there as a possible avenue to see if maybe that is an equitable solution as it still keeps your application, you place in line and certainly if you did hear that somebody had defaulted or wasn't going to be able to do something you could request a hearing date and not have to start over with the entire application again.

Demian: Yes. Just so I'm clear. Certainly, our primary request would be to issue the permit and, in the alternative, yes, we would request a continuance.

Peerson: And this is just me as the Chair speaking, I may get out voted 6-1 to say we should conditionally approve it and that may be the case but Staff if you could potentially chime in as to the ability for us to continue something not to a date certain but it would need to be renoticed should that occasion occur where you do have that window of opportunity, but at least the application could hold it's position with work that you have completed to date.

1:52:03 Mike Westlake, DSD There really is no practical way to put this on a waiting list. All of these applicants have a 3-year period of time to implement their permit so in essence what you would be doing is continuing it for 3 years before we could make a determination that there was no follow through by the previous applicant. And in 3 years the regulations may have changed. I would not recommend you establish a new system of waiting lists for these types of facilities.

Shannon Thomas, Deputy City Attorney: You could certainly vote to continue it or the applicant could make that request and you could honor the concerns stated by Mr. Westlake would apply at some point, the applicant would need to decide whether to withdraw their application from the Department or try to reappear before this body.

1:52:56 Commissioner Wagner Mr. Chair I think we could probably do a time certain of a 1-year sunset. I think you'll know of the 4 dispensaries if one of them gets hooked up in some sort of operational challenges or suits I think a 1-year-time gives everyone enough foresight to make a more informed decision. 3-years seems a little bit too far.

Peerson: And your 1-year window is based on a conditional approval of the project or a continuance?

A: My idea was a 1-year continuance predicated on that of the 4 other dispensaries that are going online that you would know within a year if there are any operational challenges or suits that have been filed.

Peerson: And while I understand it, I'm not sure we can do a year because we don't have a calendar to continue it to a date certain. Plus, I think that might pose a problem if we did say it was a date certain and something happened next week where somebody completely bailed out they would already be scheduled for a year later and couldn't move it out.

Wagner: I'm supportive of a continuance as well. Unconditionally.

1:54:08 Commissioner Haase Oh the sweet irony. This Commission has complained about this process. Applicants have complained about this process. This person *[Demian]* has complained about this process until now he's next in line. You are next in line, so the process seems to work pretty well if you get a continuance.

I would not support a continuance because I believe this Ordinance needs to be revisited by the Council. That could include a number of things such as the time period for utilization. We have 36 months but maybe that wasn't wise in hindsight. So, to ask me to continue to support a process that I have complained about, I cannot do.

Thomas: The 36-month utilization is for all the development permits.

Haase: *[visibly upset]* I understand. This Ordinance was specific for medical marijuana clinics, and I don't know that the Council does not have the authority to modify that. Do they?

Thomas: They could. Yes.

Haase: And that's my point. I have a number of things if someone were to ask me for a list as to how this could be made better, including some way to rank locations, which we were unable to do in this process that we might provide that input to the City Council. Whether that occurs or not, this may be water under the bridge, but as I said, I've gone on record as not being comfortable or satisfied with the process we have today and wouldn't want to perpetuate that process.

1:56:04 Commissioner Quiroz I'm going to put two things here. First of all, we've already dealt with this issue, and I agree with you 100% that marijuana has not been transferred. But with dealt with this with the 1,000-feet before, not the 4th District but the 1,000 feet and at that time we were told that that was not relevant and that we couldn't deal with it that way and so although I voted that that's what should be done, I think that we need to be continuous in our decision making and so if the people before you have not been able to do that, I would feel uncomfortable letting you do it.

I apologize *[why apologize?]* but this document *[holding up what appears to be the Report to the Planning Commission]* was totally inadequate. There was nothing in here that could allow me to approve this project. And I don't know if whether that's you or Staff but one I couldn't read the stuff to the appeal wasn't addressed. I found it very unhelpful. And Mr. Chipman in his appeal stated that there isn't a right-hand turn and that perhaps one of the driveways should be closed. And there is no documentation in here to allow me to make any decision otherwise. I think from what I could see he's absolutely right. And I know you're going to fall off your chair Mr. Chipman, this is the one case where I would actually uphold Mr. Chipman's appeal simply because I couldn't make any other decision based on what I was given.

I would not approve a continuation because I don't think this should move forward.

1:58:00 Commissioner Whalen I heard, let's just say through the grapevine, one of the landlords in one of the projects we approved some months ago with the additional conditions we added at the approval. So, it seems likely that there are going to be some of these that don't make it. They don't get there in 3-years. If we're going to have a workshop at the beginning of the year next year that will really help because I think we all have ideas, we could offer to make it work better. But in light of that current situation, I would look for a continuance if I were you because I'm not going to support a wait list thing that we don't have and I don't think putting a date on it because what happens if somebody bails in less than a year and there you are stuck with a hearing a year out? I would be very attentive to what's going on at the ministerial level and closely track that.

I kind of agree with Commissioner Quiroz that the Staff Report was a little skinnier than what we usually get on this. I don't know if there's a particular reason or not. It's kind of where I'm at right now but I'm not prepared to make a motion.

1:59:32 Commissioner Wagner I have a really quick question to the Madam City Attorney. Can we be held liable for holding up due process or not having timely due process for this applicant with regards to length of time? Are we sort of shooting ourselves in the foot legally by not providing due process in a quicker time?

Thomas: That's kind of a large, open-ended question. I'll start with the Permit Streamlining Act. You wouldn't have liability but there could be a permit deemed approved if all of the requirements of the Permit Streamlining Act were met. That has no relationship to your liabilities as a body or as individuals. Do you have further questions?

Wagner: My main question is our we shooting ourselves in the foot with the Streamlining Act by sort of punting this down the road?

Thomas: I don't know what you mean by shooting yourself in the foot. Somebody could have a deemed approved permit if all of the requirements of the Permit Streamlining Act were met. One of those requirements is notice to the appropriate governing body that the applicant intends to seek deemed approved permit the applicant must then give notice to all of the appropriate parties that would otherwise receive notice by the body. So, it's not an automatic event that occurs.

2:01:12 Commissioner Peerson I think we need a workshop sooner than the February date you gave. Oh, that was a joke! I didn't catch the sarcasm! Humor is a good thing! But in all seriousness, we need that workshop sooner rather than later of things that need to be visited. Moving on to my comment.

I agree with Chairman Golba. If we have projects in process, there's a form in the back that talks about how long it takes to process projects and if someone has come through, I want to give them the opportunity to continue in the process. I know we're going out of the bounds of what's in the Ordinance and I would be supportive of the continuance to keep this viable in whatever form that means.

Lastly, I think the prior project and this project the submittals were very poor. I'll wait for Staff to stop talking. The site map is useless. The 100- and 1,000-foot radius aps are difficult to read and with no legend. The fact that we have site plans in 8.5" x 11" with keynotes that I can't read. I'll go back to my point. I'm sounding like a broken record but I want to be consistent and one of our jobs is to be consistent an to look at the Findings and I'm looking at Path of Travel, number of parking spaces, location of disabled spaces, the building entry and the improvements that are needed for us to make the finding cannot be approved for the proposed use in the appropriate location. And this is a discretionary review for a Conditional Use Permit. I hold these projects to higher standards. When we do have the workshop, one of the things I am going to be looking very closely at Staff, is that the plans are better prepared and that it's clear and that we can make a decision based on what's before us. . *[You didn't seem to have any issues with the 6220 Federal Project and the quality of that report. Oh right, you recused yourself from that appeal.]*

We're not allowed to go to a site. We're not allowed to use Google Maps. So, I didn't but I wish I had. Because it's one of the reasons that we're here is because we have to go with the material before us. And if you have the opportunity to submit something that's new, that's accurate or factual at the last minute, absolutely. You know we accept piles of material for better or for worse. I'll get off my soapbox, but I am very displeased with how these projects are coming forward. And based on those it's very hard for me to make decisions to approve a project where I need to make a Finding, I need to have graphics with clarity that everyone can tell me that this is the exhibit that becomes Exhibit A.

2:04:27 Commissioner Austin Just to get back to one basic question. The applicant has a right to request a continuance with or without our objection and then we vote on that to decide whether it's approved. Correct? *[no response]* Alright.

I'm going to sound like part of the chorus here. I'm looking forward to the workshop. I'm thinking of projects we've been involved with outside of the United States where it had to marijuana, but it was gambling *[he equates medical marijuana to a vice]* and some other things where they had a different process to deciding where those would be located and some of that may be informative. I think there's a better solution. It where interesting to see where that all leads. *[I would suggest, since these comments are being made in 2015, and we can track these changes, it led to certain members of this special interest having an undue influence on how the law and regulations were tailored to meet their specific interests and to benefit them and their clients. Attorney Gina Austin and Marcela Escbobar-Eck come instantly to mind.]* In the meantime, I actually don't have a problem with the idea of a continuance for a number of reasons. And if things change they change and if it does come back at some point it doesn't mean it's approved now. If these things are not addressed, that Mrs. Quiroz was bringing up, we can deny it at that time. I think some of that is not necessarily the fault of the applicant.

2:05:50 Commissioner Quiroz I would ask Mrs. Thomas to just comment on the fact that this is not about the applicant. This is about the appellant. So, what rights does the appellant have to have this answer their question.

Thomas: You can certainly consider a request for continuance and then the public, whether it's the appellant or other general interested members of the public speak to the continuance.

Quiroz: Do we have to get the appellant's approval?

Thomas: No, your certainly don't but the people that are here on public comment usually have the opportunity to speak when you are addressing a particular question. The question that was before you previously was whether to uphold or deny the Hearing Officer's decision. It sounds like now this is turning into a discussion whether to continue the item. So, the public would have the opportunity to comment on the continuance.

Quiroz: But I did think that there was a specific time limit that we had for the appeal to be brought forward?

Thomas: There is a time frame for filing the appeal.

Quiroz: But we could just sit on it for 3-years?

Thomas: At some point you would not be providing due process as Mr. Wagner mentioned. The applicant has a remedy that is to seek relief through the Permit Streamlining Act. Your question was originally about the appellant's rights, so they have, whoever is here to speak and be heard has that opportunity to be heard.

Quiroz: Maybe I said that wrong but the appellant, we have timing with respect to how long we can hold up the appeal? I mean can we actually not respond to an appeal for 3-years regardless of the appellant is sort of sitting back and saying 'no no that's ok you can take 3-years' I doubt very much that they will agree to that. If they don't agree can we take what the applicant wants over what the appellant wants since we're not actually here to override the Hearing Officer's decision, we're here to decide whether or not the appeal has merit.

Thomas: Right. So, as we've discussed in deciding whether or not the appeal has merit you still need to be able to make all of the Findings or you may not be able to make one of them and that's the end of the

particular permit. The appellant's don't have the ability to force the body to make a decision within some certain time frame If that's your concern. I'm assuming the appellant's are not the applicant's which can sometimes be confusing.

2:08:57 Commissioner Wagner Ok, I'm going to make a formal motion to provide a continuance so that we can have the…

Golba: I'm going to make a quick suggestion; I'm going to cut you off.

Wagner: Sure.

Golba: That rather than this body make the motion to continuance, based on the ramifications of the Permit Streamlining Act, I would personally feel much more comfortable having the applicant request the continuance versus us initiating it. I think we're on safer ground in the long term that direction. Thusly, I would turn it over to the applicant to see if there is anything you would like to request of this body *[smiling and chucking]*

Demian: Ah yes. First, I am listening and Commissioners Quiroz and Peerson we will always in the future present the clearest answers to all questions of the appellant, the City Staff as to our project and I would also like to request a continuance at this time.

Golba: And that would be a continuance not to a date certain with the understanding that if you come back for a hearing you would have to renotice. Correct?

Demian: Yes.

2:10:02 Commissioner Golba Alright, so now we've had an applicant who has made a request for a continuance, and I'll turn it back over to you Commissioner Wagner.

Wagner: I would make a motion that we would honor the request from the applicant and continue.

Whalen: Second.

Golba: So, we have a first and a second to continue the project indefinitely. Not date certain. Commissioner Austin.

Austin: I j7ust wanted to make a comment. We've listened to this testimony, folks wanting for us to uphold the appeal and I guess I just wanted to thank the folks that have come here, countless times, giving us information. I'm a parent of 3 teenagers and it doesn't go unnoticed, I actually appreciate it, there are certain things we have to do, that are within our purview, I don't know this may be the last one we vote on for a long time, I just didn't want those folks to go away thinking their efforts were in vain and that's why we're here. It's public testimony and it's informative. I'll be quiet after that.

Golba: Procedurally we have a motion to continue on the floor which I'm going to reopen public testimony on that to comment only on the continuance item. I'm assuming Mr. Demian has already commented enough on that concept so this will go those who were opposed to the project. Mr. Chipman, do you have any commentary regarding the continuance item only?

Chipman: *[speaks from the gallery and could not be heard clearly. It sounded like he said he would rather have the vote today, which would put him in opposition to the continuance.]*

Golba: Ok. Kathy Lippits the same comment or are you going to speak to the continuance at all? I would ask that Scott and Kathy come to the podium so their statements can be made on the record.

Chipman: San Diegans for Safe Neighborhoods are opposed to this being continued.

Strang: I've tried to take the agenda up with the PTA groups I represent *[what PTA groups would that be]* so that we all know what's going on, of course I don't have this opportunity to do that *[because the continuance was literally created out of thin air arguments made that day during this hearing]* so I wasn't expecting that. I have to admit that I'll have to make a personal decision, I don't think public health is well served by a continuance.

Peggy Walker: Opposed to the continuance.

2:13:08 Commissioner Golba with that I'm going to go ahead and reclose public comment. I will add that I would like to echo Commissioner Quiroz's comment that if we had turned down the project before us today, the first one, I'm not sure, just reading tea leaves and we're getting pretty good at these as far as these things go as how well you would have done today. So I would just basically tell you to sharpen your pencil in your downtime should an opportunity present itself *[smiles and widens eyes]* and Commissioner Quiroz was eloquent in stating a few of the concerns that I had also seen as well regarding the project itself beyond the presentation methods so. Mr. Westlake would like to address us. *[Here we have Golba providing couching advice to the applicant as to how their project should look if it reappears before the Commission. I can't say I've seen that ever happen before.]*

2:14:00 Mike Westlake, DSD I have one more practical item. It's not a legal or procedural item. But I just wanted to point out that we've had a total of 55 applications for medical marijuana consumer cooperatives, you've seen 12, it's unlikely that any future applications will drop out of the process, you will probably see 55 requests for continuances as we move forward. Thank you.

Golba: Thank you for that veiled threat. Commissioner Haase.

Haase: I have a question for Staff. As of today, this Commission has approved 4 sites within a Council District and that Ordinance says we can only do 4. If memory serves, we've also denied previous applications because they were within 1,000 feet of another site. I find it rather unfair to suddenly start changing the rules for applicants now and allowing them to continue when this body denied other applications based upon the rules and did not consider whether these other locations would operate or not. I find no way that we can go ahead and fix that problem. It seems we are now crafting rules to apply today that others could not take advantage of and I will not support the continuance.

Golba: I must say that is a compelling argument because it does raise a tad bit of inconsistency with how we dealt with the 1,000-feet radius denials as well. But again, we're the ones that are stuck with navigating what we all agree is a fairly poor policy document that we do have to steer through. We were dealt the fogbanks to drive through so I think we're trying to do the best we can with it. Commissioner Wagner.

2:16:02 Commissioner Wagner I think the one thing that sticks out to me is when we had that Whale Watch Way and we had the opportunity to kill Whale Watch Way the first time but we allowed a continuance that they could go through. The main reason we allowed Whale Watch Way to move forward is because the total cost that they had put into the project for all of the application fees was somewhere North of $40K. I think that this particular dispensary has at least $8-10K in fees with the City not to mention

every other fee with the cost of getting to this particular step, so that is a palpable reason why I'm supportive of a continuance just so they don't have to go through the whole fee process once again. *[why was this same consideration not given to all the other applicants then?]*

2:17:00 Commissioner Peerson One quick counter argument to the financial, we continue projects to get better projects. The community can listen. The applicant can listen. I'm supportive of this. We are asked to look at projects as they meet Findings and I'm looking for the best quality project. We learned early on that it could not be a beauty contest. We were stuck. Everyone was stuck with the process, how applications came in, how they were completed. That list that's been kept by Staff. So, my expectations, as you know from my prior comments and anyone else whose coming forward and I understand Mr. Westlake we may have opened Pandora's Box to more projects coming forward is that we're then looking for the best possible project. Knowing that the Ordinance is flawed for many reasons and that our job is to make a better choice for projects based on the Findings and finding that projects that come forward in the future are held to that higher standard because these are a discretionary permit. So, I do expect and believe me if the project comes back, and it looks the same as what we got I will deny it.

Golba: I find it terribly ironic that I rode up the elevator this morning with one of the Mayor's Chief of Staff's who asked what was on our agenda this morning. When I described that we were going be suffering through this limit of 4 per council district one of his aides asked me 'why can't you just do a beauty contest and pick the ones you like best?' To which I wanted to throw him down the elevator shaft. Which sort of shows the disconnect I guess and the hand of cards we were dealt. So, if there's no further discussion let's go ahead and vote.

COMMISSION ACTION: COMMISSIONER WAGNER MADE THE MOTION TO APPROVE THE APPLICANT'S REQUEST TO CONTINUE THIS ITEM TO INDEFINITE DATE. Commissioner Whalen seconded the motion. The motion passed by a vote of 5-2 with Commissioners Golba, Austin, Peerson, Wagner and Whalen voting yea and with Commissioners Haase and Quiroz voting nay.

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2015/07/09: ITEM 10 9212 MIRA ESTE CT (GLASS TEK) MMCC: Continued from 2015/06/25

See Planning Commission Hearing of 2015/06/25 ITEM 12 earlier in the Steering Doc for all Project Files and Appeals information. (Control F the Project Number for easy access.)

PROJECT NO. 368509

STAFF: Edith Gutierrez

Speaker slips in favor of the project submitted by Michael Rollins, Steve Cline, Will Senn and Gavin Band.

Speaker slips in opposition to the project submitted by Scott Chipman, Kathleen Lippitt, Judi Strang, Peggy Walker and Barbara Gordon.

2:19:10 Commissioner Golba opens Item 10 I will go to Staff for an abbreviated presentation.

Haase: *[interrupts]* Mr. Chair, given the vote of the Commission on this last Item and maybe to try and expedite this meeting I'd ask if the applicant wants to request a continuance? Not that I'll be supporting it by the way.

2:20:03 Stephen Cline, Esq. on behalf of the applicant. We would be seeking a continuance as well.

Wagner: I would like to make a motion to accept the applicants motion for a continuance to a time uncertain.

Whalen: Second

Golba: And I just want to clarify with the applicant that you're requesting a continuance not to a date certain. Correct? An indefinite continuance.

Cline: Yes, at this point.

Golba: Let's get to Commissioner comments then. Commissioner Quiroz you're first in.

2:20:43 Commissioner Quiroz I'll speak after the speakers. Thank you.

Golba: I will go to public comment. Mr. Chipman this would go to the continuance only.

2:22:03 Scott Chipman The idea that these applicants are spending thousands of dollars is a reason that they should continue is actually the elephant in the room here. They're spending thousands of dollars as basically on the come. They know they're going to be making millions. So, this is all about money. And you don't need a storefront. You don't need a permit. You don't need advertising. You don't need a building permit and experts to distribute marijuana as a caregiver or as another patient to another patient. The only reason to set up a storefront. The only reason to hire experts and Land Use Attorneys and create these plans and to fight for the position of first or 1 of the 4 is to make money. Please understand the elephant in the room. This is profiteering on drug use.

2:23:23 Commissioner Whalen The only comment I would make from someone who is on the other side of the microphone sometimes, rather it's the money issue or this or that, if you don't have the votes for the thing you want to do, you ask for a continuance. It's a very straightforward thing. You can't see yourself getting the votes you need, either you lose, or you ask for a continuance.

2:23:51 Commissioner Quiroz As I had said on the previous one, I don't actually believe that this is, I'm in full agreement, that we don't have 4 actual medical marijuana's at the moment but based on the fact that the Commission already approved one Conditional Use Permit we may as well go on from there. I'm not going to keep arguing that point. But I do want to say that I wish this had been a beauty contest because this would most definitely would have been the one, I would have chosen. This is by far the best medical marijuana facility in this district and I'm really very very sorry I'm not able to approve it. Thank you.

Golba: Alright any further discussion on the Continuance here before us? If not let's go ahead and vote on the Continuance.

COMMISSION ACTION: COMMISSIONER WAGNER MADE THE MOTION TO APPROVE THE APPLICANT'S REQUEST TO CONTINUE THIS ITEM TO INDEFINITE DATE. Commissioner Whalen seconded the motion. The motion passed by a vote of 6-1 with Commissioners Golba, Austin, Quiroz, Peerson, Wagner and Whalen voting yea and with Commissioner Haase voting nay.

2015/07/16 Minutes

2015/07/16: **ITEM – 7: PATIENTS ALTERNATIVE – MIDDLETOWN MMCC** Appeal Hearing Officer's 2015/03/25 ITEM 15 decision

ITEM 15 STAFF: Edith Gutierrez

5 speaker slips submitted in favor – Margaret Gibert, Kavaughn Baghbeh, Carol Carpenter, Jeff Barfield and Karen ZoBell

9 speaker slips submitted in opposition – Scott Chipman, Jay Davis, Kathleen Lippett, Franco Saspe, Lance Rogers, Oscar Rayle, George Diaz, George Phillip Diaz and Rigo Navarro

ITEM 15 ACTION: PROJECT DENIED. Report NO. HO-15-038. RESOLUTION NO. HO-6805

DSD CONTACT: Edith Gutierrez

PROJECT NUMBER: 368295

DSD TO HEARING OFFICER RECOMMENDATION: HO-15-038 "APPROVE Conditional Use Permit No. 1292502. (NOTE: There are four competing MMCCs within 1,000 feet of each other on today's docket. The Hearing Officer can approve only one of these MMCC's pursuant to the San Diego Municipal Code's 1,000 foot minimum distance separation requirement)."

HEARING OFFICER: Ken Teasley

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-15-061 "Deny the appeal and Uphold the Hearing Officer's decision to Deny Conditional Use Permit No. 1292502."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures on November 7, 2014. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on January 13, 2015. The scope of the Hearing Officer's decision only includes the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24004636 @ Page 30

APPELLANT(S): Carol Carpenter

Issues On Appeal

Page 38: Ownership Disclosure Statement showing Owner and Tenant information.

Page 45: Appeal Application of Carol Carpenter

Page 46: Attorney Karen Zobell, Solomon & Ward statement in support of Carol Carpenter's appeal stating in part: "THE MMCC ORDINANCE AND INFORMATION BULLETIN 170 LACK A FAIR AND EQUITABLE PROCESS FOR GETTING A PROJECT TO HEARING. THERE ARE PROBLEMS INHERENT IN THE CURRENT PROCESS THAT RESULT IN INCONSISTENT REVIEW, A DENIAL OF DUE PROCESS AND FAVORS THOSE PROJECTS THAT PROPOSE THE LEAST IMPROVEMENT AND THEREFORE, ARE SUBJECT TO MINIMAL QUALITATIVE REVIEW AND DELAY…THE CITY ALSO SHOULD EVALUATE THE QUALIFICATIONS OF THE PROPOSED OWNER AND OPERATOR OF ANY PROJECT APPROVED PURSUANT TO THE MMCC ORDINANCE…THE BEAN STREET APPLICATION IS AN EXAMPLE OF AN APPLICANT THAT WAS ALLOWED TO SUBMIT A DEFICIENT APPLICATION AS PART OF THE STEP ONE: INITIAL SCREENING; ALLOWED TO MOVE FORWARD TO STEP TWO: SUBMITTED COMPLETENESS REVIEW; AND ALLOWED TO CORRECT ANY SUBMITTAL DEFICIENCIES

AS PART OF STEP THREE: FULL SUBMITTAL. RATHER THAN BEING REJECTED AT THE OUTSET, AS WAS DESCRIBED IN THE MARCH 2014 IB 170 ”

As it relates to a CEQA exemption (@ Page 30) Zobell describes the project as:

“The PAHC CUP, in addition to proposing a new structure, includes new paved parking, landscaping, frontage improvements, and technical studies to comply with current stormwater requirements, to provide a fully compliant structure and use. This involves review by LOR-Planning, LOR-Landscape, LOR-Transportation Development, LOR-Engineering, Fire-Plan Review, SanDAG-Transportation, PUD-Water & Sewer Development, more in-depth review by LOR-Environmental, and, in the case of PAHC CUP, Planning-Airport.”

OWNER: GARY DIEFENDERFER & DANIEL W. DIEFENDERFER @ Page 1 and 20-21

APPLICANT: Carol Carpenter, Patients Alternative Health Care Cooperative, Inc. @ Page 1 and 20-21

CUP NUMBER: 1292502

SITE DEVELOPMENT PERMIT NUMBER:

CUP HOLDER:

STATUS: Deny ITEM 7

CITY COUNCIL DISTRICT: 2

PLAN AREA: Midway/Pacific Highway Corridor

STAFF: Edith Gutierrez

Speaker slips in favor of the project submitted by Ted Griswold, Jeff Barfield, Nikke Alex, Anna Honay, Carol Chase, Lance Bradley, Kavon Bagbeh, Carol Carpenter and Matt Bucciero

Speaker slips in opposition to the project submitted by Scott Chipman, Kathleen Lippitt, Judi Stang, Peggy Walker, Nancy Logan, Janet Asaro, George Diaz, Phillip Diaz and David Diaz.

12:03 Commissioner Golba opens Item No. 7 with DSD Presentation

Golba: Seeing no clarifying questions from the Commission we’ll open up public comment.

17:18 Scott Chipman We’re concerned about the public health and safety issue related to this establishment. A recent SANDAG report cites the number one most frequently tried substance is marijuana among San Diego youth now. This Ordinance does not prevent the international smuggling of cannabis at our border as well as cannabis grown in our forests from finding their way into these pot shops.

19:45 George Diaz I am a property owner in the Pacific Highway Corridor of the Midway Area. My presentation is in regard to the DSD determination that the Washington Street Skatepark is a playground. As some of the Commissioners had questions as to the status of this park, I brought a video to help better understand its use. I don’t think that your job is an easy one but it’s clear that all applicants must adhere to the code, to be processed fairly and equally. This fairness is not only for the citizens of San Diego but for all other applicants regardless of district.

21:16 Janet Asaro I estimate that 9 out of the 10 children we see in our program have issues that started from early marijuana use which result in poor grades to joblessness. Be clear the 19-year-old who goes to the pot shop will be selling the marijuana to the students at the local high schools and elementary schools as well. I oppose this location and I oppose any federally illegal drug being considered as a retail store.

22:10 Peggy Walker I'm opposed to the project. I work in youth prevention, and I'm opposed because of the location of the skate park. I attended last week's hearing, and I would like to say I admire your statement that you are charting 'brave new territory.' Indeed, you are, and I think it's a good idea to look at what other localities and agencies are doing in terms of dispensaries. What I see trending is that Cities and Agencies are setting stronger standards to protect the public's safety, health, and welfare. You may say that setting these standards is not your purview, but you can certainly work towards promoting these kinds of standards in the interest of public health, safety and welfare. We also have 31 illegal pot shops operating in our City which I've provided you a list of. It's time that we shut those down. Thank you.

24:18 Judi Strang As a point of clarification, while Mrs. Walker cited 31 illegal pot shops in her list to you, those are only the ones advertising in the Reader. I'm sure there's many more than that. We are opposed to the project.

25:49 Ted Griswold, Esq, @ (Procopio) Mr. Chairman I would appreciate a little leniency just because this is a new issue that was not addressed in the appeal documents.

Golba: Let's shoot for 10 minutes.

Barfield: Thank you for that. This was originally scheduled in late May. The Hearing Officer decision was back in March. We did remove it from the agenda and the reason being was when we found out about this playground issue we immediately, that same day, submitted a Public Records Act request to find out what the basis for the playground issue was. We did not get that response before May 28th when this was scheduled to be heard so we asked for that continuance so we could look at what the information is. We've since received all of that information and that's today's presentation, to talk to you about that information.

I'll forego the attributes of the project. It was recommended for approval previously by Staff as having met all Findings. It was appropriate for the location. If you want any more information Mr. Barfield is here for that.

[Griswold delivers a fairly lengthy, but compelling PowerPoint presentation re the separation between property lines (not zones) when there is no property line within the zone as is the case with this skatepark. He also has City of San Diego Parks and Recreation manual that does not identify the skatepark as a park.]

39:00 Commissioner Wagner I'll make this quick to try and move this forward because we're had an almost identical issue with Bean Street. So, I'll make a motion and see if I have any seconders to uphold the appeal and deny the Hearing Officer's decision to deny Conditional Use Permit No. 1292502 and if I have a second, I have some amendments. Any takers on the second?

Quiroz: I'll second it for the purpose of discussion, but I have some questions on it.

Wagner: Perfect. Upholding the project site. I don't believe it's a park. I believe it's an illegal use. I think we've had the most compelling arguments yet from counsel with the park being a grey area at best. What really troubles me about the park is that that it's there. That City Staff and Code Compliance have not

done their due diligence to ensure that it's a safe environment. I think there are questions in regard to its ownership. I think City Staff and Park and Rec have said that they are currently not maintaining the park. So, for all of those reasons, I can make the Findings that we uphold this particular project and just for purposes of moving this along, I would add an amendment that the owner or permittee shall install bullet resistant armored panels, solid grouted masonry block walls designed by a licensed professional… *[describes a laundry list of requirements.]*

I would lastly say there is a grey area with regard to distance and property line and who has what. I'm satisfied that the 1,070 foot is a distance that allows this dispensary to operate in that location. *[If it's not a park, as you've stated, then that sensitive use separation is not even a necessary deliberation.]*

43:25 Shannon Thomas, Deputy City Attorney The reason that Staff was recommending that the permit be denied was not because they believe the area to be a public park, but they believed it to be a playground as defined. Your comments spoke to the park.

Wagner: I was using those words interchangeably. But nonetheless, park or playground I don't believe either is deficient according to Land Use Development Code as well as ownership property line and a myriad of other different arguments that Counsel made that I subscribe to. *[Wagner seemed pretty committed to seeing this CUP approved to the point he excoriated Staff and Code Enforcement for the skatepark even being there. Hmmm, I wonder why?]*

44:05 Commissioner Quiroz I do disagree with Commissioner Wagner about the fact that this is a park or not. It's my belief that we've already made that decision. It's not up for discussion but it may be that other Commissioners don't agree with me so I would just like to ask the Deputy City Attorney, if we were to now decide that this is a park would we have to go back to the Bean Street *[project]* because that is the only reason, we turned down the Bean Street.

Thomas: You need to make your decision on each project based on the information you have available to you at the time. So, you did inquire about many issues that are before you again today at the time you heard Bean Street if you have what you believe to be new information, clearer information that allows you to make a different decision you can do that.

Quiroz: I would say to Mr. Griswold that a skatepark with no ramps is not a skatepark and this is a skatepark. What the Municipal Code says is a park in this instance is different than what Park and Rec calls a park. We need to go by what the Municipal Code says. But I do have one issue that Mr. Griswold brought up that I find very concerning and that is this issue that it has no property lines. It seems to me to be untenable to say that we need the property line of the whole 2 miles when the park is on this very small little section that is very specifically setup for the park and so, I wanted to ask Staff to comment on that.

A: (Gutierrez) What we did at Staff is we went out to the site, and we took our measurement from where the structure is to the park and we measured 930 feet. That is the distance we determined. Again, I understand your question regarding property lines but there are no property lines. If there were a property line it would be adjacent to the proposed MMCC.

Q: So, the difference between what you did and the attorney for the applicant did was you went to the edge of the concrete wall, and he went all the way around to the actual entrance.

A: Correct.

Quiroz: I believe that the way you did it is correct. We've never measured to the entrance of a property before, and I believe that the skatepark property lines would be where the wall is, so I have to agree with Staff on that one. I think that's not an issue and I do believe it's within the 1,000-feet. I just wanted to check that with you. I wanted to be sure.

There is nothing else in the appeal that I find compelling. Even though I seconded the motion I would be voting to deny the project based on the fact that it is less than 1,000-feet from the park.

48:07 Commissioner Golba Ok I just wanted to kind of frame a quick question to Staff. In terms of the context of the City Council Ordinance that we're supposed to make the Findings against, we're hearing a lot of testimony over what is a park and what is a playground but in terms of the specific language for our Findings how exactly does that read as far as the 1,000-feet separation? Does it say a park, or a playground and we have to make the findings that is one or the other? Does it reference something to the effect of minor-oriented uses which is a much different standard to bear? What exactly, as a group, are we framed here to do?

A: (Chris Larson, DSD) The SDMC prohibits MMCCs within 1,000-feet and then specifically lists several uses such as parks, playgrounds, churches and minor-oriented facilities.

Q: So, in the past on some of these we've had things like the gymnastics places that opponents were more likely to bring up and say it's a minor-oriented use therefore we should deny that particular project because of such and such use. We've had some that were gymnastics and camps and stuff like that. Does it have to meet one of those criteria specifically mentioned in the City Council policy or do we have the latitude to determine that in some case we have a square peg that will not fit in a round hole, but it certainly is in that context of it's sort of a park, it's sort of a playground? It's definitely a minor-oriented use or a potential for that. What latitude do we have on that basis?

A: *[Larson hesitating]* I think you can determine your latitude as well as I could.

Golba: OK it's basically there's nothing, and I'll have the City Attorney chime in next, there's nothing that says it must be one of these, those were examples then.

A: (Thomas) It cannot be within 1,000 feet of certain listed uses. Some of those uses are defined terms. Some of them are more described such as schools or residential care facilities so based on the facts that are presented to you, you would determine whether, in this case, the skate park is a playground or possibly a park. The discussion has only been around whether or not it is a playground.

51:00 Commissioner Peerson I'm looking at this from 2 points. The definition of playground and the measurement of distance. I do believe that it is a playground based on the Land Development Code. We discussed this with the Bean Street property and haven't heard anything compelling to change my mind on the definition of playground. I think it's important to know that sports are changing and evolving. I see a climbing wall at a skate park, the physical construction is the equipment. You can't use a climbing wall without the equipment on it. You can't use a skatepark without the topography of the ramps and railings and so I feel that there is justification that it is a playground.

I do appreciate Staff going back to the site and measuring it with such accuracy. I agree that we look at the property line *[not the zone boundary as is required by SDMC]* in its total. In the 3.5 years I've been here I've never heard anyone cherry pick what part of the property line we measure from and I understand

that it was the entrance, that makes logical sense, but we don't do that. Wherever the property line is, you take that 1,000-feet radius around its perimeter and based on your measurement of 930 feet I cannot make the Finding and I would be denying the project.

52:26 Commissioner Austin To get final clarification, there was the comment about the property line around the playground it's the property line of the facility that is being considered to whatever the object is. In this case the fence around the skatepark would define that correct?

A: (Guttierez) Correct. That's the measurement we used.

Q: Was there anything else that was new or compelling from your standpoint that would have changed your mind now about your interpretation of playground?

A: No. There is nothing new or different.

Austin: Thank you.

Golba: Any additional Commission comments? If not let's vote on Motion 1. That fails 5-1. Seeing that do we have an alternate Motion then?

Hasse: Mr. Chair, I would recommend that we move Staff's recommendation to deny the appeal and uphold the Hearing Officer's decision to deny the Conditional Use Permit No. 1292502. I think being consistent in our decision making is very important. There were some interesting legal arguments made today. I appreciate those. Don't agree with all of them obviously in particular when you hold up the Consultants Design Guide that the City of San Diego uses, as far I'm concerned is everything in there, everything would be subject to the 1,000-feet separation. If I understood your argument, you focused on the playground portion, and I disagree with that. If there was something else out there that we design for kids that's in that manual, I would deny this project. So while it may be an interesting argument to the words that are in the Ordinance, when I look at our findings for Public Health and Safety and for compliance with the Municipal Code it's not hard for me to say that everything in that manual would be subject and I'm embellishing a little bit, to the 1,000-feet because we're designing recreational areas for kids.

Golba: Let's go ahead and vote please. That passes 6-1.

COMMISSION ACTION: COMMISSIONER HAASE MADE THE MOTION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO DENY CONDITIONAL USE PERMIT NO. 1292502. Commissioner Peerson seconded the motion. The motion passed by a vote of 5-1-1 with Commissioners Golba, Haase, Austin, Quiroz and Peerson voting yea and with Commissioner Wagner voting nay and with Commissioner Whalen absent.

2015/08/13 Minutes

2015/08/13 ITEM –9: THE HEALING CENTER MMCC Appeal Hearing Officer's 2015/06/24 ITEM 4 decision

ITEM 4 STAFF: Edith Gutierrez

4 speaker slips submitted in favor – Justine Nielsen, Khoa Nguyen, Ray Taylor and Matt Sibert

5 speaker slips submitted in opposition – Scott Chipman, Kathy Lippett, Barbara Gordon, Judi Strang and Peggy Walker

ITEM 4 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-15-073. RESOLUTION NO. HO-6837

DSD CONTACT: Edith Gutierrez

PROJECT NUMBER: 378883

DSD TO HEARING OFFICER RECOMMENDATION: HO-15-073 APPROVE Conditional Use Permit No. 1330834 and Site Development Permit No. 1420871."

HEARING OFFICER: Ken Teasley

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-15-098 "Deny the appeal and Uphold the Hearing Officer's decision to Approve Conditional Use Permit No. 1330834 & Site Development Permit No. 1420871."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures. This project is not pending an appeal of the environmental determination. The environmental exemption determination for this project was made on March 17, 2015, circulated for public review and the opportunity to appeal that determination ended on April 1, 2015."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24004871 @ Page 31

APPELLANT(S): Scott Chipman

Issues On Appeal

Page 36: Ownership Disclosure Statement showing both Owner and Tenant Information

Page 38: Appeal Application by Scott Chipman

Page 48: **Urban Systems Associates, Inc. Traffic Analysis.** stated goals, to "ensure that development and redevelopment in Mission Valley will be accomplished in a manner that enhances and preserves sensitive resource areas; improves the vehicular, bicycle, pedestrian and public transit circulation network; provides reasonable use of property; and contributes to the aesthetic and functional well-being of the community". The primary means by which this purpose is accomplished involves trip generation (Average Daily Trip- ADT) allocations by property and zone.

OWNER: SURGICAL INSTITUTE OF PAIN MANAGEMENT, DAVID SMITH @ Page 1

APPLICANT: Raymond J. Taylor, The Healing Center Cooperative @ Page 1 and 17

CUP NUMBER: 1330834

SITE DEVELOPMENT PERMIT NUMBER:

SITE DEVELOPMENT PERMIT NUMBER: 1420871

CUP HOLDER: Raymond J. Taylor and James V. Dickinson @ Pages 17-18 [Dickinson is not listed anywhere on the DSD Project Customer Information portal.]

SITE DEVELOPMENT PERMIT NUMBER: 1420871 to Raymond Taylor

STATUS: Issued 09/04/2015

CITY COUNCIL DISTRICT: 3

PLAN AREA: Mission Valley

STAFF: Edith Gutierrez

Speaker slips in favor of the project submitted by Justine Nielsen, Ray Taylor, James Dickinson, Christina Curtis, Margaret Gibert, Matt Sibert and Khoa Nguyen.

Speaker slips in opposition to the project submitted by Scott Chipman, Jan Asaro and Judi Strang.

12:29 Commissioner Golba opens Item No. 9 with DSD presentation.

16:10 Commissioner Wagner I was just speaking with Commissioner Whalen and my question is that just a sliver of District 3?

A: (Gutierrez) Yes.

16:47 Scott Chipman I'm here to talk about the danger to public safety.

18:08 Jan Asaro I knew that lawsuits were going to start. In todays City Beat there's an article about the first permitted about the first permitted medical cannabis dispensary already has a lawsuit alleging fraud that the bank teller called one of the owners said that the money had been taken out of his account. He was later fired by his 3 business partners/ This is leading to a lawsuit which might lead to another owner taking over. And they admit in this article that they also operated illegally for many years as a delivery service. As I understand we weren't going to approve places that were previously illegal operators. So just to share with you that this is where these places are going to be going in the future. Thank you.

19:20 Judi Strang Working with PTA's in the area. I wanted to bring to your attention a traffic analyst study that was part of your report *[page 48]* in response to the planning groups concern of whether the trips to this pot shop would exceed the 16 of this hefty reports seems to want to say because this 400 foot building couldn't possibly generate more than 16 trips a day. I just wanted to say that the Otay Mesa facility is generating 4-5 trips an hour so it seems highly unlikely that this one will generate anything less. We just need to be aware of what's going to happen on that very tired, crowded, beat up street that takes a sharp right hand turn up a very steep difficult hill to a crowded parking lot where you can't even back out safely because it's so badly striped. Thank you. *[She could be describing the parking at 6220 Federal]*

20:44 Justine Nielsen, Esq. with San Diego Land Lawyers representing the applicant The Healing Center MMCC. As you can see the site is located just West of the 15 and South of the 8 on Camino Del Rio South. *[provides a PowerPoint presentation]*

24:27 Margaret Gibert I am with Alliance for Responsible Medicinal Access. I urge you to grant the application and deny the appeal. Thank you.

25:13 Commissioner Wagner One of my biggest pet peeves is comparing data from illegal non-conforming dispensaries with legal, conforming, zoned appropriately dispensaries. You can't mix the two and you can't assess a crime value with a legal zone appropriately dispensary. It makes a difference. It's the whole

reason why we're here. And as soon as Mr. Chipman can get me data on a legally zoned dispensary I will listen. With that I would like to make a motion with the following amendment. Deny the appeal and uphold the Hearing Officer's decision to approve Conditional Use Permit No. 1330834 and Site Development Permit No. 1420871 with the following Amendment *[cites conditions]*. Seconded by Commissioner Whalen

28:31 Commissioner Austin There was a comment made about parking and I'm looking at the parking and I have a question to Staff. Has Staff carefully scrutinized the revised parking layout? It looks to me like there is not enough space being allowed for handicap parking and the backup dimensions look like they won't work.

A: (Khalil, DSD Transportation) Based on the existing configuration at this location they had previously conforming rights the drive-outs are substandard and also the drive-ons were 2-way drive-ons. What we have asked the applicant to do is change the circulation pattern to 1-way circulation so at least there would only be 1-way in the proposed plans. So, we have accepted what they have offered here as functioning acceptable.

Q: Typically, when you go to 1-way which can help improve it, you angle parking so that the backup is not a problem. I'm trying to decide what's the best way to handle this but I just think you're going to have a problem trying to back out a handicap van when you only have 18 feet of backup and so I would suggest go either to angle parking you need to reduce some of the parking so you can get the dimensions correct. I'm thinking maybe a friendly Amendment that would address parking in a way that works properly at least for the handicap.

Look, we do know that there is going to be demand. More traffic congestion. But even if there wasn't, this is something that needs to be addressed. *[Why does it need to be addressed. Projects under 10K sq-ft are exempt from having parking per SDMC § 142.0540(a) and this is only a 400 sq-ft project. So, if this project is requiring the Planning Commission to come up with creative parking solutions why wasn't that same consideration provided at 6220 Federal and other projects where the <10K exemption was applied?]*

I think the simplest way to do it would just be to angle parking in the middle. Then your 1-way solution would probably work. You might lose a couple of spaces but at some point, having spaces that don't work isn't a good solution.

A: (Khalil) The applicants consultant provided a couple of different iterations with the idea being not to lose the parking from the previous permit requirement of 81. We didn't want to drop below that to allow the previously conforming right to remain and if they were to use diagonal, they would lose some parking spaces. However, the project will go through the permit process and if at that time they decide they can make adjustments that would be the time to see if that could be looked at.

Austin: I'm concerned that if we just let this go by it won't get addressed and it will become a problem in the future, and so would the maker of the Motion consider a friendly Amendment?

Wagner: Absolutely.

Austin: I think rather than say specifically give an idea of how to design it and design it for them right now I would ask that Staff and the applicant, revisit the parking to point where you know that the backup

distances will work. Again, that's not terribly articulate but it's getting the point across. And if I've got a problem with that from a legal standpoint let me know.

32:50 Shane Thomas Is your request to amend the motion is to request Staff to confirm or reconsider their decision on the parking requirements?

Austin: Yes.

Thomas: Does Staff have any questions about what they're being requested to do?

A: I think that Staff has already indicated that the parking situation is correct and will work so you're just reiterating what is already on the plans.

Austin: Well then let me just say that as an architect I don't think it works. So I would suggest you change to angle parking. Can I do that? Because angle parking would work and I'm willing to listen to the other Commissioners opine on that.

33:36 Commissioner Peerson From the beginning, when we've looked at these projects, we've looked at public safety, but I concur with Commissioner Austin on the layout, and I've said this before, I'm concerned that so much of this is put on the building permits. Other Conditional Use Permits we see in front of us the plans as they are to be built as a conditional use it is our duty to find that the project meets all the Findings with the conditions, and I am struggling with this.

I have a couple more questions. 400 sq-ft. Is that an adequate area? This is one of the smallest facilities we have ever seen, and we've usually seen one with a saferoom, and dedicated area for the dispensary and a safe. Can you walk me through why this facility is as small as it is and it still meets operational needs?

A: (Gutierrez) I'll have the applicant answer that, but I do want to mention that it is very difficult to find a location that meets all the requirements in this council district. We only have 2 applications. This is the only one that we're recommending approval. The other one is recommendation of denial. It is very very difficult based on all of the requirements.

35:24 Justine Nielsen, Esq. Can you put the floor plan back up? As you can see, we have a separate dispensary as well as an office/admin area designated safe room as well as a waiting room which can hold 7-8 people. The beauty of this site is that there is a lot of common area, so it doesn't need its own bathroom. The bathrooms and elevators are all part of the common facility.

Peerson: So in your opinion working with your applicant that's an adequate area for the volume of people who would be coming through, the products, the safety of the facility. A lot of this is dealing with the safety of the facility.

Neilsen: Yes, and our applicant can confirm that.

Peerson: Yes, I would like to hear more about it because it's a very small footprint in comparison and I just want to understand that operationally this facility meets the intent of the Ordinance.

36:36 Ray Taylor I'm the President of the Healing Center. When we first looked at the location, I had the same feeling you did that there's just enough room. But I didn't take into consideration that the common area has a bathroom, an area where people can meet for lunch and so on. It has those areas that other people have had to include in their operations plus I wanted to operate just a dispensary. I didn't want

massages, a glass shop selling all kinds of bongs and that kind of equipment. We're strictly there to give people their medicine. And like any pharmacy I think you'll check out in the regular world, they have a small waiting area, they process you and out you go. We don't want people hanging around the location. We don't have extra facilities there for that.

I think the building is perfect for our operations. It's out of the way. It's around the corner and up a driveway so people walking down the street have no idea what's in the building. I've looked at maybe 300 locations when I was looking for a spot and of all the locations, I thought this was the one that fit the restrictions best with the City and to operate efficiently. A lot of my friends call it the dispensary express because they'll just come in, get processed and leave. I want people to have a safe place where they can go get their medicine quickly, safely and leave.

Peerson: And then for your employees there's common area you said for them for a breakroom or a lunchroom?

Taylor: There's a conference area that that the landlord let's us use for lunch breaks and meetings. Whatever you want to use it for. The doctor who owns the building very much believes in medical marijuana and is doing everything he can to facilitate our operation.

We have a testing lab in the building. So, we can test all our products in the building. There's a doctor there who's a pain specialist. That's why he loves what we do because he doesn't want people on narcotics. He wants to try and get them off narcotics and he thinks medical marijuana is an avenue for those people to take.

Peerson: Thank you for answering my question. In looking at the slides, there's a couple more questions that I have and I agree it is to the back side so the one slide shows the address 3703, will there be any signage associated with this facility and if so where would it be located?

Gutierrez: They are allowed to have signage. They have not proposed their signage yet. Does the applicant want to address where their sign will be located? *[How come this is not on the application submittal documents like everyone else's?]*

Taylor: Our plan is for signs on the glass window on the back side of the building. We have no plans for the front side of the building.

Peerson: That was the answer I was looking for. Not on the exterior North facing Camino Del Rio South side.

It's one of the things where we're not going to compare facilities. One of the things I struggle with is this operation is very small and I understand it's to streamline it and I concur with that since all the support areas are within the common area of the building, but we've seen really quality design where exterior improvements have been made, where there has been LEED certification, so my first reaction is this is just the bare minimum being proposed by the applicant and that troubles me. But there are no deviations as I understand being requested, the question for me though is still this issue of parking.

Gutierrez: Our Staff has come up with a solution for the parking.

Peerson: Good because I would have difficulty in supporting this with the parking as is quite frankly.

Khalil: In respect to Commissioner Austin concern about backing area distance for an accessible space. One suggestion I have is to swap the width of the Northerly and Southerly drive aisle of 21 and 18, then you have additional area for the backing spaces.

40:58 Commissioner Austin That's an improvement. You have a fighting chance of coming out of it there. I think I can go along with it. Thank you.

Golba: Do we want to make that part of the amended motion then?

Austin: Yes, it's still tight but I can live with it.

Golba: Commissioner Whalen will you second?

Whalen: Yes.

Golba: Commissioner Whalen you're up.

41:30 Commissioner Whalen I've heard through the grapevine that some of the approvals we've done in the past have imposed conditions that the building landlord wouldn't go for. If we move ahead as we're talking, do we know if the building landlord will go along with this? And by the way, Mr. Taylor, I found your comments very authentic. We hear a lot of BS here.

Taylor: I've been around a long time, so I've had enough BS in my life. The landlord, like I've said, Dr. Smith has been very cooperative with us. We've had many meetings when it came to modifying the parking lot and he wasn't really happy with that because he wants to know why I've been here since 1985 and everything has worked fine and I have patients coming in and out of here all day long in gurneys and so on and never had any problems and then the City decides it wants to redesign the whole place. And I explained to him it's because it's a new use you have to upgrade. I've tried to emphasize it will improve the quality of his building as it will now be ADA compliant and up to the latest standards for the City. He says OK, you're paying for it. So, we're willing to incur the cost to make it fit the City and improve the neighborhood. I think it's going to improve the building for the ADA people, and I think our facility will help improve the quality of life for the people in San Diego.

Whalen: OK and the other thing was I don't mind the size of the facility because of all the common areas because when we see other dispensaries, they have to have that all within their facilities. So I'm going to support the motion and already made the second on it.

Taylor: Can I bring up one item?

Whalen: Sure.

Taylor: Commissioner Wagner mentioned 2 security guards. With 400 sq-ft…

Whalen: How do they fit? *[laughing]*

Taylor: I think 1 security guard 24 hours a day is fine and would be adequate for that facility. We have only 1 entrance th the facility and 400 sq-ft a guard can pretty much cover that I think. One guard. I think 2 would be a little bit overboard. That's all. Thank you very much.

Whalen: You're welcome.

43:43 Commissioner Haase Where are the other 2 disabled spaces? Are they in the garage or are they somewhere else so I understand?

Khalil: They're in the lower level in the garage.

Haase: I think the idea that Staff has brought up to swap the drive aisles to provide the 21 feet is a good idea. I do notice though and why I have less concern than my colleagues is that the location of these 2 disabled spaces with one-way drive aisles, the turning radius that they'll be allowed to execute to get in and out of the spaces is greater because they're not going to have to have cars parked right next to them. They're not constrained by columns or walls so from that standpoint I have a little less of a concern.

The comment regarding the trip generation, I do think we have to acknowledge that perhaps sometimes our ratios for developing trips for a project might not exactly mimic the actual use on the site. But in looking at the capacity of the roadways out there provided by the traffic engineer, there's more than adequate capacity even if 16 goes to 32 or whatever so I'm comfortable with we're not pushing up against any level of service issue or anything of the like in this particular area. I did take a look at that. I just wanted to put that on the record. I'll be supporting the motion.

Golba: As a courtesy I think we should respond to the applicants query as to 1 or 2 security guards. At least I'll take a stab at it from my perspective. The idea being, in our history of approving these as a standard condition with the 2 guards is that 1 guard is sort of inseparable to the facility itself with the other guard being there to escort people to and from a car if needed or wanted or if there is some disturbance outside the facility so there's not a distraction that draws that single guard away leaving the facility vulnerable. Something along those lines.

46:31 Commissioner Wagner I would also suggest that we're in uncharted territory with regards to public health and safety. We have one opportunity to do everything we can to insulate ourselves from risk. The best way that we can. If in 5 years from now, when all of these dispensaries go through the second round of their conditions and we find that these dispensaries are as safe as we designed them to be, we have the capability of relaxing the stringent conditions that we put on at the onset, we can review that then. But I'm very comfortable in that one of the safest entities in San Diego, at least over the next 5 years, because of the work we've done here on the Planning Commission, is probably one of the safest places to be in San Diego *[Am I to understand that all of those CUPs that were not appealed did not require 2-armed security guards? Does Wagner consider that in his comment?]*

Golba: Seeing no further comment let's vote.

COMMISSION ACTION: COMMISSIONER WAGNER MADE THE MOTION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO APPROVE CONDITIONAL USE PERMIT NO. 1330834 AND SITE DEVELOPMENT PERMIT NO. 1420871 WITH CONDITIONS. Commissioner Whalen seconded the motion. The motion passed by a vote of 6- 0-1 with Commissioners Golba, Haase, Austin, Peerson, Wagner and Whalen voting yea and with Commissioner Quiroz absent.

2015/09/17 Minutes

2015/09/17: ITEM 8: 3385 SUNRISE STREET MMCC Appeal Hearing Officer's 2015/03/25 ITEM 12 decision.

See Planning Commission Hearing of 2015/05/28 ITEM 15 earlier in the Steering Doc for all Project Files and Appeals information. (Control F the Project Number for easy access.)

PROJECT NUMBER: 368337

Speaker slips in favor of the project submitted by Donna Jones, Paul Bishop, Hayley Grunvald, Marcos Getchell, Hank Taylor, Kim Williams, Clinton Pyatt, Brad Sonnenburg, John Keating, Howard Warren, Oscar Urteaga and Cynara Velasquez.

Speaker slips in opposition to the project submitted by Gina Austin, Douglas McCrady, Tamara Leetham, Jim Bartell, Mario Ceretto, Matthew Grabowski, Peachy Ruane, Justin Navalle, Tom Fraoili, Leslie Parker, Judi Strang and Janet Asaro.

9:08 Commissioner Haase opens Item 8 with DSD presentation. I do want to disclose I did have a conversation with someone who is representing an interested party in this project, Jim Bartell, *[Bartell and Austin appear to be representing the same client here. Anything Haase told Bartell went straight to Gina Austin and would have been used in her presentation later in the speaker portion of this Item.]* about the process of this project regarding the initial appeal, our votes, continuance, and the withdrawal.

Peerson: Excuse me Chairman Haase. One more announcement for disclosure. Latitude 33 is a consultant on the 3385 Sunrise Street project. My husband and I no longer have an ownership interest in Latitude 33 although we have an economic interest in several of the owners of the firm. The company's involvement in this decision is not significant to meet the materiality threshold as established by the Ethics Commission. I have discussed this with the Ethics Commission, and I will not have to recuse from this Item, and I can make a fair and unbiased decision. Thank you.

14:40 Commissioner Whalen I have a question to Staff regarding a letter or two we've received citing the lack of Noticing. Can you comment on that?

A: (Gutierrez) Yes, we just received that letter yesterday. I checked the records. The applicant submitted a Noticing Package from a title company and we used that Noticing to mail out all the Notices and that was 18 months ago so I was not aware that person had relocated to a different address.

15:28 Commissioner Wagner What's the legality of changing the plan after our last vote? They added 5 more spaces since our last vote. Can someone speak to that?

A: (Shannon Thomas, Deputy City Attorney) Since this is about the legality, I'll take the question. Your authority on appeal is to affirm, reverse or modify the earlier decision. So, as you have participated in many different project decisions on appeal, you have, as a Commission, on occasion requested modifications. Sometimes the applicant has come forward with those modifications before the hearing in response to appeal issues or further discussions with those who are opposed to the project. So, you do have the ability to consider a modified project under the applicants initiative or through your own motions.

Whalen: I'm not clear, Mrs. Gutierrez if we're OK with the Noticing?

A: I believe that we are OK because we did use a title company. We did reference that APN. We did reference the property owner and at some point, that person changed addresses. So, I don't believe that is something we would be constantly checking to see if addresses change. Additionally, the Notices are

posted online and, in the newspaper, and the person who is claiming they didn't get noticed that was several days ago and I believe Mrs. Austin is representing her and she's present here today.

Haase: I think we'll be hearing more on that in the testimony.

Quiroz: Commissioner Haase I wonder if I could ask a question?

Haase: Yes.

Quiroz: Didn't we close public testimony?

Haase: No. Actually, I went back and looked at the motions and when the project came back there were only 4 Commissioners available so at that time, we continued the project. Given the nature of this project I think it's appropriate we do continue public testimony on this project.

I'll have to ask Staff. I believe we may have closed public testimony and then we were unable to achieve an affirmative vote, either for or against the project back in May and then it was continued due to only having 4 Commissioners and then it was withdrawn and now it's back before us. I think that's the chronology. This is a question for the attorney. Can we reopen public testimony, and do we need to vote on that or not?

Thomas: I don't recollect whether it was actually closed or not but assuming for the purposes of your question that it was closed you could allow public testimony today. It seems that was the anticipated action.

Haase: Do we need a motion to reopen the hearing?

Thomas: We are continuing the hearing. The hearing itself was not closed. I'm not sure what that motion would be about.

19:30 Commissioner Haase I would like to proceed with public testimony given that we have a lot more information today than we had. We actually, in a way, directed the motion on specific items and the applicant responded to those so there may be questions and/or comments based upon new information. If you disagree let me know.

Quiroz: I agree with you. I think we need to. I just wanted to make sure that we had fulfilled anything that we needed to do to move ahead.

Haase: Understood.

Whalen: I'll make a motion to resume public testimony. It just makes sense. Better to have more information than less.

Wagner: Seconded.

Haase: Please vote. That passes unanimously.

21:42 Donna Jones, Esq I want to briefly remind us why we're here. There was an appeal that we took of the Hearing Officer's denial. That denial is no longer relevant because it was based on an MMCC being within 1,000-feet which is no longer applicable. We are in the Southeast Community Planning Group and heard both the Pickwick site and our site. They recommended against the Pickwick site and recommended

support of the Sunrise site. They have continued to support our site. We appeared before them again on Monday and they repeated their support for the site and we supported a follow up letter from them this morning. Unfortunately, they were unable to be today for the 3rd time, but they do still support the project.

When we last met, we had a lengthy discussion and had a split vote. Those of you who were on the fence expressed that your situation for being on the fence was that you felt we had not fully finalized a parking agreement with a shared parking type arrangement and you were concerned that we hadn't explored parking in the basement. There was also some concern over inadequate street lighting. We took that into consideration and worked very hard to address those concerns and believe that we have done so.

We now have a shared parking agreement with Mohr Manufacturing, which you'll see our agreement letter in your packet for our use of 3 of their spaces. We also have hired a traffic expert, LLG, to give you their opinions after having done traffic and engineering studies of the site and concluded that Sunrise Street is more than adequate to park here and that there are 18 spaces available, and they have never seen it more than 50% occupied and that includes the people who are parking there. They concluded there were no operational issues, and that Sunrise Street has such low traffic as such low volumes there's hardly a street in San Diego that they could imagine would give a better on street parking situation. In addition, our slides show the proposed exterior lighting that will address any concerns that the security lighting would be inadequate for this project.

25:50 Paul Bishop, Architect I'm certified in state and federal ADA parking requirement and believe that in my professional experience the plans submitted for this project complies with all of the ADA requirements necessary for this project to be approved.

27:01 Haley Grunvald, Disability Access Attorney The opposition has made several allegations which are false, and which have served to mislead the Planning Commission, and which tend to suggest that there are ulterior motives for the opposition which includes resubmission of an application in the same zone. I wanted to address the points made in the opposition to clearly address all of them.

The opposition has represented that there's a discrepancy with the square footage. This argument is a red herring. This is simply not an issue for the Planning Commission. This is an issue for Staff who support the project. The truth is that different assessors assessing the property could reach different square footage calculations given the subjective elements of the measurements. Regardless of which calculation, old or new, the project is still under 10K sq-feet.

Secondly, with respect to the Notice. At the last minute an issue was raised with respect to notice. Again, the records from Staff reflect that the Notices went out 18 months ago and even if it was true, which we dispute, there has been no prejudice shown, this is the only one individual that claims she didn't receive appropriate notice and therefore it shouldn't be considered.

The opposition represented to the Planning Commission that Sunrise Street lacks appropriate lighting. This statement is false. Sunrise Street currently has 2 existing streetlights that we've shown and the MMCC has committed to providing a 3rd which is in addition to the ample lighting provided by the MMCC and already provided by SDG&E.

[Adjacent Pallet Company parking and street width issues are argued]

Finally, and most importantly, the opposition has submitted at least 5 correspondence in opposition to this project. At least 2 have been as recently as within the last 2 days. Certainly, these attempts to make last minute arguments are attempts to derail the project to give the MMCC too little time to appropriately respond. These issues certainly could have been raised earlier but the opposition strategically waited until the last minute to deny the MMCC of their ability to appropriately respond and therefore they shouldn't be considered or allowed. I would like to have my colleague speak on one more opposition.

30:36 Donna Jones, Esq. I just want to clarify 2 things that were raised when I walked in here today and I do think Edith addressed it. We do care about giving people proper notice. We did everything, according to the title company, we could have done and the fact that that person submitted a letter several days ago with her concerns in it and is represented by counsel here today I feel like addresses the prejudice issue.

On another note, there was an issue about Neighborhood Development Permits. We don't believe that's applicable because we are not using tandem parking to meet our parking requirements. However, if you do think it's applicable then we believe that a Neighborhood Development Permit has the exact same Findings that the Site Development Permit has. There's no point in you having to make exact duplicative findings. Especially when a Site Development Permit is superior to a Neighborhood Development Permit. Therefore, we believe it's within your discretion, as the decision makers, knowing that the Findings and the processing are exactly the same for a Neighborhood Development Permit or a Site Development Permit, to add the Neighborhood Development Permit component to our permit today, should you so desire for us to have the 4 tandem spaces so that we have 5 onsite spaces. Should you feel uncomfortable with that however, we are happy to remove the tandem parking and have 1 spot in the basement, 1 spot behind and the mobility impaired spot for 3 onsite spaces and that would not require a Neighborhood Development Permit and that could be approved today as well. Thank you.

32:19 Cynara Velasquez I'm here on behalf of the Association of Cannabis Professionals and we're asking for you to approve this permit. This process has moved very very slowly. There's a mandate from City Council to provide access. To date only 9 applicants have been approved, and of those only 2 have managed to get open. There has been a gap in access. There has been a gap in approvals. This site meets the criteria put forth by the Planning Commission, by Development Services and by the City Council.

The opposition is here today because a permit was denied by this Planning Commission for a competing application and if this was to be denied their hope is again, to make it through this process which will take what, another 3 or 4 months? Let's get this one approved.

35:10 Gina Austin, Esq. We're here in opposition to the Sunrise project and yes, we do have an ulterior motive because there was another project within 1,000-feet. But more importantly is the motive based on improper procedure that has occurred in this particular instance and the correction of that to ensure that we don't set a precedent for that moving forward.

There are 10 reasons why this Commission should deny this project here today, have them resubmit a better plan and they're identified up on the screen and I'm going to go through them. What I want to note is the first 3 bullets on there are legally improper reasons why this project should be denied and how it should not be in front of you today and why it would be an abuse of discretion for this Commission to move forward with this project approve it today.

The next 5 reasons on this slide are reasons why in ways this project violates the San Diego Municipal Code where you can't make the Findings and you should have hard copies of this in front of you. The last 2 reasons on this are as result of Findings that can't be made for the Site Development permit or the Conditional Use Permit not even getting into the Neighborhood Development Permit.

Staff did a good job of recapping where we've been, but I want to take a moment and talk about the key reason that this permit should not be approved today. And that is because it violates the Permanent Rules of the Planning Commission as adopted earlier or late last year.

This project was originally at the Hearing Officer where it was denied on March 25th. May 28th it was continued to June 25th due to lack of Commissioners. Not renoticed just continued to a date certain. On June 25th they failed to obtain 4 votes to either approve or deny the project and since 4 affirmative votes were not met, it was trailed, automatically, based on Rule 6.3 of the Permanent Rules of the Planning Commission to the June 9th date. On June 8th the applicant unilaterally pulled this Item from the agenda. They did not go back to the Planning Commission. They did not come in and say 'Planning Commission we have new information. We would like to be able to present this information to you at a later date once Staff has had a chance to approve it. Would you continue this Item?' Because at that date at that time this Commission would have been voting solely on what had been presented at the prior hearing unless some subsequent motion was made. That didn't occur. The applicant took the opportunity to backdoor in additional information, renotice a public hearing to have an opportunity to present a brand-new project. This is something that was not afforded to the Pickwick applicant. They were denied. They had to resubmit. And it is improper to allow the Sunrise project to now come in through the backdoor and in fact Item 7 on today's agenda did exactly what we're talking about. They wanted the Item continued. They came in, Staff recommended continuance, Planning Commission voted, and you continued it.

So based on these two rules, Rule 6.3 which says it's automatically trailed and it it's not automatically trailed, if that's not our option, if we can't make 6.3 apply it would default to Rule 6.2 which says it would revert to the decision of the Hearing Officer. So, either way this project is before you improperly here today and that would give you reason to deny it in and of itself.

The second legal reason why this project should be denied is it violates the CEQA Noticing Requirements as set out in the municipal code. The CEQA Noticing Requirements require what's on the screen, but the key element is *[SDMC § 112.0310(c)]* a brief description of the project and this project, as described in its briefest form, without whether there was onsite or offsite parking, without looking at any of that, was described as a 4,412 sq-ft building. We know. Staff knows. The applicant knows this is a 7,512 sq-ft building. It doesn't matter if they are both under 10K sq-ft. It wasn't described properly, and it was improperly noticed. The supporting documentation for the building square footage is in your package.

[Presents her reasons, among others, that parking is inadequate for the project]

In summary, what I want to say is this project does not belong before you today. This applicant should not be given additional opportunities that were not afforded to other applicants to come in and resubmit and resubmit and abuse the process and pull their application off just so they can get the right Commissioners at the right time in the right mood in order to approve this project. We request that you deny the project, have the applicant resubmit and put forward their best plan that will enable an MMCC in one location or another, somewhere in District 8 so that we have another collective out there. *[You'll notice she argues this on behalf of patient access in District 8. She puts the altruistic spin on this at the end. Truth be told,*

as it relates to her actual involvement in not-for-profit medical cannabis, Austin has displayed no regard whatsoever in medical cannabis patient rights. Indeed, the class action in BECK v PLPCCC ET AL, in which Austin represents the permittee and the shell companies that purposefully hid and did not pay, the collectives distributions, treating it as a for-profit entity were exactly the reasons that, despite her attempts here to paint it otherwise, would prove Austin's commitment was towards those who would subvert the medical cannabis patient's rights REGARDLESS of the district her clients had established an interest in.]

45:01 Commissioner Haase I'd like to clarify before we go on to the next speakers regarding this process. And perhaps my memory has faded. I've tried to review the record of the Hearing on June 25th and according to both Staff and the opponent that on June 25th we failed to obtain 4 affirmative votes. I do recall that on May 28th. If I go back and look at the motion on June 25th in our minutes, I believe what I found in the motion and correct me if I'm wrong was that the Commission voted 4-0 in that hearing to continue this Item. Am I looking at the wrong minutes? Can we confirm that?

A: (Gutierrez) I don't have the minutes in front of me. There were 2 motions. The 1st motion was to deny. That motion failed 2-3-2.

Haase: I recall that on May 28th and as a result of that, based upon our rules it was continued. I'll take the additional testimony but I'd like Staff to look at the minutes of June 25th for that motion and what ended up occurring while we take the additional testimony so we can clarify that.

A: OK.

Haase: I have 2 other speakers in opposition to the project.

46:43 Judi Strang It's kind of interesting to watch 2 feuding pot shops the profit motive that is driving this conversation stuns me and parents that live in the Southeastern community. I wanted to point out a couple of things. A comment has been made that we have to do these things because there wouldn't be access. The reality of course is that there isn't a patient in San Diego County that doesn't know how to get their marijuana. They only have to tap it in on their computer and every caregiver delivery service in town comes quickly to their door. They couldn't get there fast enough so let's put aside this myth that there has to be a pot shop or patients aren't served.

I do want to express my concern about noticing because I know that was a problem in Otay Mesa. I wonder about using a list that is 18 months old for noticing. But most particularly I wanted to address traffic. I know that there hasn't been a traffic ratio established for these businesses yet because they're too new and the comment was made there could or couldn't be 18 spaces and they would never be filled 50% of the time. The parents in the Otay Mesa kept us really well informed regarding that pot shop and, as has been mentioned before, we're seeing about 15 patients per hour going to that business. So, I think it's a fallacy not to realize that there are going to be huge traffic impacts in that area wherever these pot shops are located. It should be factored in as you look at parking spaces because if you have 15 people coming and going every hour then parking has got to be able to accommodate that. Thank you. *[This was not a consideration at 6220 Federal and has been inconsistently applied to those projects under 10K sq-ft.]*

48:50 Commissioner Whalen First of all I'm in the mood *[referring to the Gina Austin comment]* to vote but I'd like the City Attorney to comment on the legal issues we've just heard.

A: (Thomas) Which issues are you inquiring about?

Q: The noticing.

A: I can tell you what the Code says about noticing. I have to rely on Staff to represents the facts surrounding the noticing of this case.

Notice is required to be given of the public hearing to many people but including the owners of any real property as shown on the latest equalized property tax assessment role from the San Diego County Assessor located within 300 feet of the **boundary of the property** *[not the property line as DSD has been allowed to interpret that sensitive use setback. This is a matter that should have been codified in the Ordinance before DSD took it upon themselves to determine distance based on their own interpretation in order to recommend approval of projects that would not have otherwise complied.]* that is the subject of the application.

I believe you have a copy of the letter that Mrs. Austin submitted to me that refers both to the Municipal Code Section that talks about failure to actually have been received and the reference government code section that is in there. Those are accurate representation of both of those sections. Failure to receive notice, in and of itself, does not invalidate a hearing, however, should someone be able to show they were actually prejudiced as a result of that failure to receive notice and a different decision would have been probable then the decision can be invalidated the matter would be returned to the properly noticed and redecided. I certainly cannot predict what a court would decide about actual prejudice to the individual who claimed she didn't receive notice. Obviously, she received some notice because we have a letter from her but again, I'd have to refer you to Staff as to what the Property Tax Assessment roles were at the time the notice was given and the process for those having been sent out, when they were sent out. Etc.

Whalen: Before I make a motion to support Staffs position, I'd like to hear Staff respond. Also, the date of this letter from Austin Legal Group is September 14th. Once again, a late letter to us with 3 days to review it, but I did. Mrs. Gutierrez.

A: Give me one second. I believe we've sent out about 5 notices to date since we've received this application. We sent it out to the property owner listed for that address the title company had at that time which is an address in El Cajon. We were recently notified that she has relocated to the State of Georgia. So, we attempted to notify her of these hearings and again, we were just made aware that she had relocated.

Whalen: Thank you. I'll make a motion to approve Staff recommendation to uphold the appeal, reverse the Hearing Officer's decision and approve Conditional Use Permit No. 1298376 and Site Development Permit No. 1319996.

52:14 Commissioner Quiroz I would like to second it but I wonder Commissioner Whalen if we'll need to approve the modified project rather than the one that was presented and spoken to before. I was just asking Mr. Whalen to amend the motion to the modified project.

Whalen: Sure and also Commissioner Wagner just whispered in my ear that we also need to include the tandem parking spaces and whether or not it's a Site Plan or a Neighborhood Development Plan.

A: We were not going to include a Neighborhood Development Permit as the parking is not required therefore that permit would not be required.

Whalen: OK I agree with Commissioner Quiroz request to amend. How would we restate it?

Quiroz: Approve the Conditional Use Permit and Site Development Permit with modifications.

Whalen: Sounds fine.

Quiroz: Then I will second that motion.

53:49 Commissioner Austin I have a couple of questions for Staff just to clarify. While it was described as both a red herring and then also improper noticing on the square footage when I do a brief calculation of the upper story it looks like it's less than 4K sq-ft. I'm assuming the larger 7K sq-ft would have included the lower floor sq-footage and why was it not included of that's the case?

A: (Chris Larson, DSD) It maybe functions as 2 stories, but the lower floor is partially underground. When we speak of Gross Floor Area we don't normally include basements in that. Obviously, I haven't seen plans where that line transitions. From a review perspective we differ to the applicant and their AutoCad drawings that came up with that square footage.

Q: And it does look like that would be below grade so that answers my question. The other part is it looks like that road dead ends is that correct? It's not a Thorofare in other words?

A: (Gutierrez) That is correct.

55:24 Commissioner Wagner What do we need to do to memorialize the tandem spaces?

A: There was a condition added to the permit, Condition No. 31 which references the 5 parking spaces.

58:32 Commissioner Peerson I have a question for Madam City Attorney. The opposition brough up a slide about the Permanent Rules of the Planning Commission and made a statement that we would need to revert back to the decision of the Hearing Officer based on these rules. Can you walk us through the response to this so that we have it in the record because my understanding reading this it looks like we are doing this in the appropriate path within our purview but I also know with these particular facilities when they're submitted it's a very timely manner and there's a queue and I think this is what they're referring to. Can you respond to those assertions into the Hearing Officer decision?

A: (Thomas) Certainly. What I recollect being the main objective to the process was the fact that the applicant withdrew instead of having a decision made on what I believe was the July 9th date. We don't force applicants to have a hearing if they do not choose to process that project any further. If they want a date certain they can ask for a continuance. They don't have to renotice. There's no mechanism where we force applicants to go through a process. The applicants pay for the cost of their processing. I don't see anything in that slide that led me to believe you did not have the authority to continue to hear this Item. There were a series of events that led to the Commission not being able to make a decision, failed votes, people being absent, Etc. So, it's here before you today.

Q: Thank you. Also, continuances are used as a way when there's concern and issues raised to go back and redesign the project. Correct?

A: Certainly yes. I cannot speak to why they chose to withdraw as opposed to asking for a date certain. I don't even recollect if there were sufficient Commissioners to vote on a continuance or whether that suggestion even came up on that day.

Q: Thank you. In my opinion the Finds can be made, and this project has been approved by the Community Group. I believe the time it took to get here was necessary to go back and redesign based on the questions that were raised. I will be upholding the appeal, reversing the Hearing Officer's decision and approving the Conditional Use Permit. Thank you.

1:05:07 Commissioner Quiroz I would like to deal with the illegal encroachment of the pallet company across the street and the landscaping encroachment. Is that being dealt with?

A: (Gutierrez) There is an open code enforcement case on the pallet company encroachment and there is also a condition on the permit that the landscaping has to be reduced to 3-feet.

Quiroz: To Mrs. Jones I know I have not been very appreciative of the things you've provided us before but I just want to say that the one that you gave us on this issue was absolutely on point. It gave a really good description of what was going on and I want to thank you for that. And I want to thank you for taking into consideration everything that we had concerns about. And I really appreciate your client going to such great lengths to deal with them, especially the parking and the disabled access up onto the property. I find that since there is no parking required this is an additional thing that the applicant is doing for us, and I appreciate that and I don't think that should be something that we penalize them for. *[This confirms that at no time was this project subject to ANY of the parking Findings that were being mandated by Staff or the Planning Commission EVEN when certain Commissioners would have denied the project based on parking conditions not having been met.]*

I am with Commissioner Peerson. I can make all of the Findings that need to be made. I am really happy that the Community Planning Group has been sensible enough to give us a good description of what they need, how they need it and to make the vote about which one of the projects that they prefer and I take their request very seriously to determine which one should be put into place. I would just like to thank the applicant, especially for the streetlight. I will be voting for this today.

Sorry I need one other thing. Mrs. Jones, I wonder if you could come up to the microphone? If you look at the tree's you're going to be putting along the right-of-way, you have Queen Palms, and this is something as a pedestrian I feel very strongly about/ There are several things that street trees do. One is to shade the pedestrians. Two is to shade the street to stop the excess heat coming off the street and I don't believe that Palm Trees fulfill those requirements so I want to see if you would be willing to change them. City Staff has a much better idea of what could be put there to improve the shade. I just wanted to see if you'd be willing to change those palm tree's to something that gives more shade?

A: (Jones) I completely agree with you. I'm not a big fan of palm tree's either and we're more than happy to change to more appropriate street tree.

Q: Is Staff OK with that?

A: (Gutierrez) They did not have a landscaping requirement. However, if they do change the trees if I could just get a new exhibit for the proposal, I will add it to the exhibits.

Q: Is that OK with the maker of the motion?

Whalen: Yes

Quiroz: OK Thank you. That's everything.

1:10:03 Commissioner Haase I have a couple of clarifying questions. As per the March 25th package, sheet 3 of 6 shows the floor plan. To be clear the space in the basement will not be allowed for area expansion within this permit, is that correct?

A: (Gutierrez) The basement was only going to be used for parking and for the trash dumpsters. There will be no development of the basement for tenant improvement expansion, that is correct.

Q: Ok, I feel a little better about that over the potential intensification if that area had been included. I do have a question for Mr. Bishop if he's still here. *[Bishop walks to the podium]*

I understand it's your opinion, your professional judgement, my question is that this sidewalk is only on the frontage of this building. For someone to get to that ramp they'd have to cross from some other ramp. Where is the other accessible sidewalk?

Bishop: I'm not sure what you're referring to as a ramp? There's a lift proposed as part of the design to go from the lower level where the accessible ramp is proposed.

Haase: I understand. I'm talking about on Sunrise Street to the Western most portion of the project, I'm seeing an ADA ramp on the site exhibit. The proposed sidewalk only runs along the frontage of this property. It doesn't go anywhere else. So my question is if someone in a wheelchair did not come to the site in a van or something where would they cross from to get to that sidewalk?

Bishop: It would depend upon where they parked. If they parked in proximity to the proposed curb ramp they could access the sidewalk from that point.

Haase: Ok. I know this Commission has had conversations regarding proximity to transit and the ability of someone to navigate to the property I think is a legitimate question. This is a neighborhood and on the previous project we were very concerned about pedestrian access. I'm not comfortable right now with what I have to know if you had a mobility issue and could not drive, how would you access the site? I'm not convinced I understand that. I feel that this site is sort of an island.

Bishop: It is a bit of an island. I would say that your concerns are more of a City related issue to provide for improvements in the public right of way.

Haase: I don't disagree with that however when we look at the appropriateness of a location that has come into play and we in fact deny projects because of that. While you've done a very good job of the ADA parking issue and the ability to access the site, I am troubled by the fact that this is not easily accessed by those who are unable to drive.

Bishop: If you're looking for a curb ramp anywhere along that sidewalk, I know that DSD will require curb ramps when applying for the building permit.

Haase: Understood. I believe we've had other projects that have come before us where we've seen the accessible path of travel from say a bus stop, I believe we did that down at Harbor Drive somewhere. We had to know that if someone had to take transit could they get to it? It may not be extremely convenient but at least we knew that it was a possibility.

1:15:21 Commissioner Peerson If I'm reading sheet 2 of 9 there is a ramp and there is a new pavement connection. This is where I was raising a concern about different exhibits before us.

Haase: I'm aware of that but where would you come from to use the ramp is my question?

Peerson: My point was to carry on with yours. Where is the closest bus stop?

1:16:04 Haley Grunvald Esq. So, there is a bus stop on the corner of 33rd and Market. There is a several blocks sort of but a straight sidewalk path of travel. I do want to be heard because I'm a disability access attorney on this point. These facilities were zoned for industrial areas. Those are not the best areas for the disabled community but this where we're trying to work with what we have. *[This coming from an ADA attorney who no doubt had sued numerous businesses for not being ADA compliant]*

There are probably a small number of mobility impaired people that would sort of use their wheelchair to come to the site and not in a van. So, they would obviously have access to the spot. These are short-term people visiting. The pot is likely going to be in and out not something where the person stays for a long period of time. In addition to this meeting the CBC and ADA requirements I do believe this is going to provide real access for the disabled in addition to the clear path of travel to the front but again, we're stuck with industrial areas which are not the best areas. Our client has worked very diligently to provide additional sidewalk frontage to accommodate a disabled patron who did not use the onsite stall. Certainly Title 3 only scopes us as a private entity. We can't force the City to do things and we've done as much as we can on our site. We would ask that you approve us today knowing that we did everything to make equal and fair access to the community.

1:17:52 Commissioner Haase I don't disagree that we haven't given you a lot to work with as far as any of the clinics and the City Council has provided for siting but that doesn't mean I might not want to impose an offsite improvement for a pedestrian ramp if I thought that was a barrier from a bus stop to your front door. So I appreciate your answer but it might not be good enough and I don't have enough information right now to know that from that bus stop there might be, because this is an older neighborhood, 1 or 2 pedestrian lamps should be installed to make this work better.

I was down in this area and saw a number of disabled in wheelchairs who use the bus system and because of the topography down there it's extremely difficult for them and many times they end up going through an alley because pedestrian ramps don't exist. So, there's just a lack of information. I don't know have we're going to have any more of these, this may be the last one, but I'm certainly interested in knowing how you get from any available transit to your front door. We have asked that in the past. That's just not clear to me on this project.

1:19:05 Commissioner Quiroz If I can speak to that. There have been 3 projects that I have argued against because they had absolutely no access from the bus stops and in all 3 cases the Commission approved them regardless. So I think it would be inappropriate to force this applicant to do something that we have not required of any of the other projects.

1:19:58 Commissioner Wagner Edith, forgive my stumble earlier there was some confusion with the exhibits and the attachments. I just want to be sure attachment 14 supersedes attachment 4. Is that right?

Gutierrez: Correct. Attachment 4 was part of the original Hearing Officer Report.

Wagner: Thank you.

Haase: With no additional comments why don't we go ahead and vote on the project. That passes 5-1 with Commissioner Hasse voting no and Commissioner Golba being absent.

COMMISSION ACTION: COMMISSIONER WHALEN MADE THE MOTION TO RESUME THE PUBLIC HEARING AND OPEN PUBLIC TESTIMONY. Commissioner Wagner seconded the motion. The motion passed by a vote of 6-0-1 with Commissioners Haase, Austin, Quiroz, Peerson, Wagner and Whalen voting yea and with Commissioner Golba absent. COMMISSIONER WHALEN MADE THE MOTION TO UPHOLD THE APPEAL, REVERSE THE HEARING OFFICER'S DECISION AND APPROVE CONDITIONAL USE PERMIT NO. 1298376 AND SITE DEVELOPMENT PERMIT NO. 1319996 WITH CONDITIONS. Commissioner Quiroz seconded the motion. The motion passed by a vote of 5- 1-1 with Commissioners Austin, Quiroz, Peerson, Wagner and Whalen voting yea and with Commissioner Haase voting nay and with Commissioner Golba absent

2015/10/22 Minutes

2015/10/22: ITEM 8: 3895 Pacific Highway MMCC Appeal Hearing Officer's 2015/07/15 ITEM 5 decision.

ITEM 5 STAFF: Edith Gutierrez

3 speaker slips submitted in favor – Dillon Schifrin, Mah Buccieso and Michael Cindrich

6 speaker slips submitted in opposition – Scott Chipman, Carol Green, Janet Asaro, David Ratliff, Ronald Slayen and Judi Strang.

ITEM 5 ACTION: PROJECT WAS DENIED. Report NO. HO-15-086. RESOLUTION NO. HO-6844

DSD CONTACT: Edith Gutierrez

PROJECT NUMBER: 368341

DSD TO HEARING OFFICER RECOMMENDATION: HO-15-086 "DENY Conditional Use Permit No. 1287938."

HEARING OFFICER: Ken Teasley

DSD TO PLANNING COMMISSION RECOMMENDATION: *Call the Secretary for Planning Commission @ 619.321.3208 and ask where the Report to the Planning Commission is for this project?*

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures on February 17, 2015 (Attachment 8). An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on June 2, 2015. The scope of the Hearing Officer's decision only includes the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24004648 @ Page 15

APPELLANT(S):

OWNER(S):

APPLICANT(S):

CUP NUMBER: 1287938

CUP HOLDER:

SITE DEVELOPMENT PERMIT NUMBER:

STATUS:

CITY COUNCIL DISTRICT: 2

PLAN AREA: Midway/Pacific Highway Corridor

STAFF:

No speaker slips in favor of the project were submitted.

No speaker slips in opposition to the project were submitted.

COMMISSION ACTION: THIS ITEM WAS WITHDRAWN

2015/10/29 Minutes

2015/10/29: ITEM 1: ANNOUNCEMENTS/PUBLIC COMMENT - ISSUES WITHIN THE JURISDICTION OF THE COMMISSION NOT PREVIOUSLY HEARD:

5:00:25 Scott Chipman on Marijuana Cannabis Land Use Regulations. I need to make sure you're aware and have been watching yourselves what's happening in the Reader. Right now, we have 20 full pages of pot shop ads. My understanding is that we have 2 permitted pot shops but we have 20 pages of ads which I think is interesting because we were down to about 4 pages and that's bad enough but to get back up to 20 is actually more pages than we've ever had. Even when we had 250 pot shops in San Diego, we didn't have 20 pages.

We've got Halloween specials. We've got San Diego's first 24-hour collective baby. Free taco Fridays. We've got herbal love. 80% THC cartridges. Bringing back the drug culture of the 60's and 70's with Cheech and Chong images. That's certainly your medical spokes people. Five blocks from my neighborhood, Pacific Beaches largest collective and delivery service. This started out as a 1/8th page ad, no address, phone number, BTW I have 3 pot recommendations myself and I got them by answering one of these ads such as one that says, renewals $15, new patient recommendations $25. I went into an office where there was a person sitting at a desk with a printer. I said I have pain. They printed out the doctors recommendation with the doctors signature already on it. No doctor examination.

Back to PB's largest collective, we turned in a Code Compliance Complaint 5 months ago. After 5 months they have now spent the last 2 months with full page ads, with their address, 1737 Garnet, in the alley. Really? We can't close down an illegal business in 5 months. This is not working.

ITEM 2 Request for Items to be Continued and/or Withdrawn.

5:03:58 Gina Austin, Esq. I've just been retained for Item No. 8 Ranier and I'm just getting up to speed so we're asking for a continuance based upon new information that we've just received as well as the fact that I've just come on board for this project. I've requested in my letter that we have no objections to continuing this down the road to a date certain of December 10th.

Commissioner Wagner makes a motion to continue Item 8 to December 10th with Second by Commissioner Whalen. It passes unanimously.

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2015/10/29: ITEM 8: 4417 RAINIER AVENUE (LIVING GREEN) MMCC

See Planning Commission Hearing of 2015/06/25 ITEM 10 earlier in the Steering Doc for all Project Files and Appeals information. (Control F the Project Number for easy access.)

Project No.379530

Speaker slips in favor of the project submitted by Cary Weaver and Gina Austin.

Speaker slips in opposition to the project submitted by Peggy Walker and Scott Chipman.

COMMISSION ACTION: COMMISSIONER WAGNER MADE THE MOTION TO ACCEPT APPLICANT'S REQUEST TO CONTINUE THIS ITEM TO DECEMBER 10, 2015. Commissioner Whalen seconded the motion. The motion passed by a vote of 7-0 with Commissioners Golba, Haase, Austin, Quiroz, Peerson, Wagner and Whalen voting yea.

***

2015/10/29: ITEM 9: TORREY HOLISTICS CLINIC MMCC Appeal Hearing Officer's 2015/09/16 ITEM 7 decision *[The HO minutes incorrectly report this as HO-15-141. The correct recommendation is HO-15-114 as linked below.]*

ITEM 7 STAFF: Edith Gutierrez

7 speaker slips submitted in favor – Scott Bernet, Mike Rollins, Will Senn, Doug Gans, Oscar Orteaga, Tony Hall and Sarah Urich

4 speaker slips submitted in opposition – Deanna Rich, Peggy Walker, Patti Ashton and Ken Kaplan

ITEM 7 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-15-141. RESOLUTION NO. HO-6873

DSD CONTACT: Edith Gutierrez

PROJECT NUMBER: 390943

DSD TO HEARING OFFICER RECOMMENDATION: HO-15-114 "APPROVE Conditional Use Permit No. 1371299."

HEARING OFFICER: Ken Teasley

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-15-120 "Deny the appeal and uphold the Hearing Officer's decision to Approve Conditional Use Permit No. 1371299."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures on September 24, 2014. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on August 3, 2015. The scope of the Hearing Officer's decision only includes the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24005165 @ Page 29

APPELLANT(S): Torrey Pines Community Planning Group (TPCPG) and Mira Mesa Community Planning Group

Issues On Appeal

Page 33: TPCPG votes 4-2-1 to deny the proposed MMCC on among other things, environmental issues.

Page 34: Ownership Disclosure Statement with Tenant and Owner information supplies.

Page 36: Appeal Application by TPCPG citing:

1. **Environmentally Sensitive land** The industrial land adjacent to Carroll Canyon Creek wetland and wildlife corridor is listed as environmentally sensitive land in both the San Diego City master plan for Carroll Canyon Creek and the Torrey Pines Community Plan approved by the California Coastal Commission.

2. **Intensification of land Use** The proposed medical marijuana dispensary (MMD) will be open from 7:00 AM until 9:00 PM daily. Based upon a survey of Otay Mesa MMD, an additional iS to 18 vehicles per hour will be using this parking lot. This amounts to over 200 more cars per day parking in this lot next to the Carroll Canyon Creek. More cars per day can be reasonably expected to create more pollutants such as oil antifreeze, copper brake dust, etc. The City of San Diego has scheduled monthly street cleaning to collect these waste solvents and heavy metals. Caltrans has built retention ponds along 1-5 near the Los Penasquitos Lagoon to prevent highway runoff and treat and collect pollutants before they reach the lagoon. Development Services has a water retention policy in Torrey Pines to prevent urban runoff from reaching the local streets. Irrigation and storm water is treated on the private property via various accepted methods such as bio-filter, gravet etc.

3. **Current Parking lot configuration** The parking lot is located on a FEMA floodplain and floodway. Due to the current slope of the parking lot, storm water is directly drained into the Carroll Canyon Creek wetlands. This method of disposing of urban and storm water runs directly counter to CA Clean Water Act, Urban Runoff policy and Stormwater legislation.

4. **Retention Policy for Roselle Street parking lot** As stated in the City's Master Plan for Carroll Canyon Creek, there should be a buffer zone between the Creek and private property. It is our recommendation that the parking stalls directly adjacent to the Creek be reconstructed with semi-permeable materials and a bioswale be installed to filter out heavy metals.

5. **The Torrey Pines Community Planning Group continues to believe that the site which is adjacent to Carroll Creek is within 1,OOO-feet of the Carroll Creek Slipway, and is part of a continuous Open Space System from Carroll Canyon to Carroll Creek to Penasquitos Creek and finally to Penasquitos Lagoon.** The Creek's spillway is well within a 1,000 foot of the proposed medical marijuana shop. The ROW is considered "Open Space Parkland" and meets the City's definition of a park. Therefore, the medical

marijuana dispensary application must be denied due to its location within the 1,000' prohibited zone.

Page 40: Appeal Application Mira Mesa Community Planning Group citing, among other things;

1. **Factual Error** The facts relied upon in reaching the decision did not include a traffic study. The Hearing Officer visited the site, and determined upon visual inspection that traffic would not be an issue. However, left out of the decision was the need to fix the flow of vehicular traffic in this intersection, the third busiest in San Diego and currently performing at LOS F. This intersection is less than 1 000 feet from the proposed MMCC.

Page 50: Scott Bernet Architects statement regarding the request for a Traffic Study be denied. The appeal application states that a traffic study should be required for the proposed MMCC. City staff have reviewed the project and determined that there is no change in use for the proposed MMCC and no need for a traffic study. The previous use was commercial service which is the same as the proposed MMCC. The transportation department has previously determined that none of the MMCCs required a traffic study. *[This is not true. My 6176 Federal Blvd. MMMC application required a traffic study but 300' to the east of me 6220 Federal was not required to have one.] Other applicants were required to have traffic studies and the use issue of comparing commercial service to retail cannabis is not a fair assessment in traffic flow needs. This appears to just be another compromise by DSD to get these licensees in so the City can begin realizing cannabis tax revenues.]*

OWNER(S): GMG Enterprises, Greg King, Michael Schwartz and Gil Cort @ Page 1, 19. and 20

APPLICANT(S): Torrey Holistics Clinic Inc. ~ Tony Hall @ Page 1 and 20

CUP NUMBER: 1371299

CUP HOLDER: Tony Hall

SITE DEVELOPMENT PERMIT NUMBER:

STATUS: Issued on 01/12/2016

CITY COUNCIL DISTRICT: 1

PLAN AREA: Torrey Pines

STAFF: Edith Gutierrez

Speaker slips in favor of the project submitted by Michael Rollins, Scott Bernet, Stephen Cline, Julie Manakas, Anthony Hughes, Rosalia Garcia, Greg King, Donna Hall, Will Senn and Shane Smith.

Speaker slips in opposition to the project submitted by Barbara Gordon, Dennis Ridz, Patti Ashton, Kelly McKay, Janet Asara, Carol Green, Peggy Walker, Scott Chipman and Katie Poponyak

5:12:48 Commissioner Golba opens Item No. 9 with DSD Staff Presentation by Edith Gutierrez.

5:20:19 Commissioner Haase Edith you mentioned in the Staff Report that while not currently required ADA requirements could be triggered in the building permit review process. What would trigger modifications?

A: (Gutierrez) It's based on the proposed interior improvements and there's a threshold once they go over a certain amount, they're required to do ADA improvements which I believe is $146,700 but I'm not positive that's the exact amount.

Haase: That threshold amount applies to any project, correct?

A: Correct.

5:23:08 Dennis Ridz In opposition citing the concept of open space here we learned after the City Council meeting that there's a public right of way along the Carroll Canyon Creek that's called Wetlands. This is covered in both the Torrey Pines Plan and also the City of San Diego has a Master Plan for the Creek. There is a manmade spillway located about 220 feet from the project. *[This runs about 7 more minutes]*

5:31:15 Barbera Gordon Pot shops are a detriment to public health and safety. They're not the benign businesses that people would like you to believe.

5:32:35 Kate Poponyak I just feel that this is a very poor location for a medical marijuana dispensary. There's just too much traffic as the freeways come together here.

5:34:24 Michael Rollins with Rollins Construction Consulting representing the Torrey Pines Holistic Clinic. I would like to add to Edith's presentation by saying regarding the massage therapist in Suite 100 and we've done an extensive search at the City's Tax Office and the last tax certificate we can find for that business at that location is in 2012. We're up to ADA standards. I'm now going to turn this over to our architect Scott Bernet.

Bernet: *[Discusses driveway conditions, ADA and ingress/egress of bi-directional traffic, signage, bus stop less than ½ mile away.]*

Rollins: There was a City Council hearing on August 3, 2015 regarding a CEQA appeal and Councilmember Marti Emerald had talked about our project and said a few highlights. I'll hold my laptop up to the microphone so you can tell that it's her expressing what she envisioned these shops would look like and where they would be located.

5:43:51 Commissioner Wagner Edith 2 things came up *[this turns into a 3 minute dialogue with the Edith and the Architect regarding where their project is in relation to the project triggering additional ADA compliance issues]*

Now how is the creek here in Sorrento Valley different than something like the San Diego River that goes through Grantville? I know that Grantville and Sorrento Valley are having some of the same challenges with in Grantville some of these marijuana dispensaries are abutting open space close to the river. How is this different?

A: (Gutierrez) This is different because it's not identified as open space.

Q: One of the speakers was using public right of way access and open space interchangeably. I just want to make sure there's a distinction between the two.

A: We're not aware of it being public right of way.

Q: But public right of way would be like a sidewalk and open space would be much different than that.

A: Right.

Wagner: I'd like to make a motion that we accept Staff recommendation, deny the appeal and uphold the Hearing Officer's decision to approve Conditional Use Permit No. 1371299. Second by Commissioner Peerson

5:48:20 Commissioner Peerson I just wanted to get clarification on attachment 3 which is the Land Use Map from the Torrey Pines Community Plan shows a 1000-foot radius on attachment 6. Can you explain how these two maps are related to each other? The distinction here is that an open space is not a park so there is no sensitive use conflict.

5:52:44 Commissioner Quiroz My question is about the ADA spaces may be changed if the building department triggers that level of improvement. How hard is it to create two ADA parking spaces if asked to do so? As the speaker said this is supposed to be for sick people so I feel having two ADA spaces instead of one is important. To what extent do you think it's possible to have a second ADA space?

A: (Guiterrez) If it is determined that they are required to have a second ADA space and they have to reduce their existing parking spots from 32 to 31 then that would be acceptable because Federal and State requirements would supersede our requirements.

Q: But if it's not required would you be able to do that anyway?

A: So, what you're asking is can we add a condition that provides for one additional ADA parking spot?

Q: Yes

A: They have previously conforming rights but I suppose if the applicant were to agree to that we could condition it that way.

Q: What I'm trying to say is that, if you're required to do it you could cut the number of parking spaces. But if you're not required to do it can we as the City say even though you're required to put in 32 spaces we're going to let you only put in 31 because you're adding an ADA space?

A: (Rudy, Transportation Development) We would not require any modification beyond what had been previously conforming. We don't have the authority to reduce the number of parking spaces that is previously conforming. Once you modify the parking spaces it's no longer previously conforming and additional requirements are going to be involved.

Q: So, if we were to add a second ADA space, we would still need to have the 32 spaces. Is that correct?

A: Yes, at a minimum.

Quiroz: Ok, I would have liked to have had it but since it's an issue I'll just pass on it. Thank you.

Golba: Let's go ahead and vote.

COMMISSION ACTION: COMMISSIONER WAGNER MADE THE MOTION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO APPROVE CONDITIONAL USE PERMIT NO. 1371299.

Commissioner Peerson seconded the motion. The motion passed by a vote of 7-0 with Commissioners Golba, Haase, Austin, Quiroz, Peerson, Wagner and Whalen voting yea.

2015/12/10 Minutes

Public Comments: Item -1 *[Of note the minutes show none. As will be seen in the archived video there were a number of speakers who rose to speak on Item-1]*

1:29 Commissioner Golba We're going to sort of stretch the limits of creativity on this and go to a speaker slip for Gina Austin. We acknowledge that this sort of pushes the limit but given your request it doesn't make sense to hold you to the Item Number. Obviously.

1:50 Gina Austin, Esq. That is certainly stretching the limit. I was expecting to go through all of the other Items, so I hadn't prepared yet. My request is to have an Item heard out of order today. The Item that I'm speaking on is Item No. 10 and the request is to have that heard out of order pursuant to the Permanent Rules of the Planning Commission § 5.2. I have several reasons for that, and I'll go through those.

Section 5.2 provides the order of materials to be heard at the Planning Commission in order of expedite, then trailed, then appeals and then continued. Unfortunately, what it doesn't say is what happens if you're in an appeal that is continued? It just leaves that blank for you guys to figure out. So, as Item 10 is an appeal that was continued that was not expected to have an impact if it was continued because there's another Item which is within 1,000-feet of our application. So, if Item 8 is heard before Item 10 and approved then Item 10 necessarily could not be approved. It was not expected when it was continued that Item 8 would be here. We were informed by Staff that their best guess, not for sure but their best guess was that Item 8 wouldn't be on the agenda until December 17th in which case it became a non-issue. We requested a continuance, versus being trailed. There was nothing in the rules that we would come up in a different spot.

So, at this point I'm asking that first we be continued for that reason. There's authority within 5.2 that the Chair, with the approval of the Commission, can go ahead and change the order of the agenda. The second reason that I'm asking is more of a substantive reason for the information that's being presented. Three of the four Items that are before you today for the medical marijuana consumer cooperatives have the issue of an open space dedicated as a park. It affects all of these simultaneously and we have a lot of detail that I would like to be able to be heard before the Planning Commission looks at that issue on some of the other projects. My own personal reasons so my request is to be heard out of order. Thank you.

4:18 Commissioner Golba There's a request before us to modify the agenda is there any movement afoot from the Commission to do so?

4:33 Commissioner Whalen I would just ask the City Attorney if she would like to reply on the credibility of the argument?

A: (Shannon Thomas, Deputy City Attorney) No I would not. You have the authority actually under Item 4 on your agenda to put things in a different order. As Mrs. Austin read to you, there is a preferred order and that is the order you have in front of you. So, if you would like to hear her Item before the other 3 or in the middle of the other 3 or leave it where it is, it is within your discretion.

Whalen: That was a great opine.

5:08 Commissioner Austin How or why do we have the order we have? Is there a specific reason? Was it fairly random?

Golba: I don't set the order so I can't answer that question. Morris or Edith do you want to take a stab at it?

A: (Gutierrez) The order was determined by the NORA date of the applications and when they were scheduled to hearing.

Golba: And just for clarification for this Commission this Item on the 10th day was continued from a prior hearing, correct?

A: That is correct.

Golba: So, it did have it's chance to come before us previously?

A: Correct. She did try to request a date a week earlier, but the Commission could not accommodate her request which is why it ended up on todays agenda.

Golba: That prior continuance was requested by the applicant, and we did not open that hearing correct?

A: That is correct.

Golba: OK thank you for that clarification. Mr. Dye.

6:06 Commissioner Austin I guess I just have one follow up question and that is because these have been contentious and whoever gets in line first can have a major impact what kind of precedent are we setting for future meetings where everybody wants to hop in front of the other folks. So I'm a little concerned about that.

A: (Morris Dye, DSD) I just want to point out that when you continue, what will happen at subsequent meetings, what will happen with other Items, you're kind of taking some risk or chance that the order in which you think things should happen may not happen that way. There's no guarantee it'll happen that way.

Whalen: Is there a prior precedent? Has this ever happened?

Golba: We're blazing all kinds of trials on this Item this issues, you know that. *[laughing and shaking his head]* Each hearing opens up new avenues for precedent sets. Commissioner Peerson

6:53 Commissioner Peerson It seems like it's a question of timing so there's the date of application, which is what we see before us with Item 8 before Item 10 based on the date they submitted months ago, correct?

A: (Gutierrez) Correct.

Q: And then the second piece as Mrs. Austin brought up is the process of whether or not it's an appeal, continued. Do these have equal weighting higher than the other when it comes to where they land on the agenda? As Mrs. Austin pointed out, we've been very good about following consistent rules and I don't want to change from that.

Golba: Our Permanent Rules is Expedite first. Followed by Trailed Items. Followed by Appeals. Followed by Continued Items. I believe Mrs. Austin's point is that this is a Continued Appeal so where does it fit in that which is more important, the concept that it was continued or the concept that it was originally appealed? I guess I would ask of Staff, if this Item 10 on our agenda had never been continued and 8 and 10 were arriving at the Planning Commission for the very first time, what would the order be?

A: Item 10 would have been first.

Golba: Item 10 would have been first. Thank you.

Peerson: That's a very important follow up question. That's where I was going as well. And is that based on date and time stamp?

A: When the Environmental Determination was made.

Peerson: And has DSD been consistent in all times when putting them on the agenda based on when they applied to the City and then when their environmental was completed?

A: We have been very consistent.

Peerson: Ok because to me, that's compelling that 10 would go before 8 if that's how we have done all prior, I mean that's really important…

A: We have done that. However, the applicant did request for a continuance so she was on the agenda so that would take her out of order.

9:08 Commissioner Golba Ok Mrs. Estrada I assume you're an agent for one of these applicants.

Estrada: It would be Item No. 8.

Golba: I figured it was.

Estrada: And just to remind you, your Permanent Rules that you approved earlier this year do clearly lay out that order and as Edith said Mrs. Austin did request that continuance. We did submit first but they got environmental clearance first so there's a lot of questions there.

The second point that she made relative to whether that parcel is a park or not, she said she was going to research in detail, so are we. So, I would not believe that would be a rationale. Mind you, as far as I can tell, I don't see any rationale because it is in fact an appeal which a continuance follows the appeal. Pretty much that's the way you've done it.

I would oppose, obviously, vehemently any switch in order.

10:05 Commissioner Quiroz May I ask her a question? So, can I just repeat that again? You said they applied first but you passed the environmental first?

Estrada: No, we applied first but the way the process works they actually got the environmental go ahead first. So, it's which is more important.

10:30 Commissioner Peerson Is there only one slot left in this district? Is that what's happening here?

A: (Gutierrez) Actually these are the first two applications in Council District 7 so we have no applications that have been approved in that Council District. I just want to note that we are recommending denial of both applications as they do not meet the requirements.

Peerson: Ok and one of the rules is if you approve one and it's within 1,000-feet the other can't be approved. Do we have that situation here?

A: That is correct. But again, we are recommending denial. If the Commission does not agree with Staff recommendation the Commission can only approve one application.

A: (Morris Dye, DSD) Edith, I just want you to clarify. If I heard Commissioner Peerson correctly it sounds like you're trying to ask if one of these in this district is approved, it would knock out the other. Is that what you understood her to ask?

A: (Gutierrez) Yes.

Golba: And it's not a district being filled with the 4 licenses it's the 1,000-foot proximity to each other that would cause the problem. The conflict.

A: That is correct.

Golba: I just wanted to make sure the Commission was clear on that.

11:45 Commissioner Quiroz It would be my suggestion that we keep it as it is.

Golba: It would take a motion to modify the agenda and I'm not seeing a motion so we will move on.

2015/12/10: ITEM 7: 3455 CAMINO DEL RIO SOUTH MMCC Appeal Hearing Officer's 2015/10/7 ITEM 5 decision

ITEM 5 STAFF: Edith Gutierrez

2 speaker slips submitted in favor – Phil Roth and Khoa Nguyen

2 speaker slips submitted in opposition – Scott Chipman and Carol Green

ITEM 5 ACTION: PROJECT DENIED. Report NO. HO-15-104. RESOLUTION NO. HO-6878

DSD CONTACT: Edith Gutierrez

PROJECT NUMBER: 368346

DSD TO HEARING OFFICER RE

COMMENDATION: HO-15-104 "DENY Conditional Use Permit No. 1295099 and Site Development Permit No. 1508276."

HEARING OFFICER: Ken Teasley

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-15-129 "Deny the appeal and uphold the Hearing Officer's decision to Deny Conditional Use Permit No. 1295099 and Site Development Permit No. 1508276."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures. This project is not pending an appeal of the environmental determination. The environmental exemption determination for this project was made on June 26, 2015, and the opportunity to appeal that determination ended on July 13, 2015."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION: SAP No. 24004656 @ Page 36

APPELLANT(S): Sara Cadenas

Issues On Appeal

Page 43: Mission Valley Planning Group Minutes re the MMCC re its exceeding Average Daily Trips (ADT) and location to a park.

Page 45: Ownership Disclosure Statement showing Tenant and Owner information.

Page 47: Appeal Application by Sara Cadenas citing, among other things;

1. The Hearing Officer erroneously denied the CUP based on its proximity to the Indian Hills open space area. This area is inactive open space which was set aside as part approval of the nearby residential Indian Hills subdivision in the 19TMs. In fact, the area is zoned "Residential RSI-J ".

OWNER(S): Bain Family Trust on Page 1 with Leroy and Thelma Jean Bain on Page 20.

APPLICANT(S): Emerald Courtyard Cooperative, Sara Cadenas @ Pages 1 and 21.

CUP NUMBER: 1295099

CUP HOLDER: Unlisted

SITE DEVELOPMENT PERMIT NUMBER: 1508276

STATUS: Created

CITY COUNCIL DISTRICT: 3

PLAN AREA: Mission Valley

STAFF: Edith Gutierrez

Speaker slips in favor of the project submitted by Gina Austin, Carlos Angulo, Jon Bain, Roy Bain, Rafael Corral, Margaret Gibert, Terrie Best, Phil Rath, Khoa Nguyen, Jean Bain, Lisa Kissee Bain, Ron Bain, Sara Cadenas, Chris Boudreau, Roland Lanzi, Jonathan A. Martin, Andrew Slenkiewicz, Blake Grauerholz, Kori Manning, Katie Vasquez, Cassandra Pearson and Dan Lukerchine

No speaker slips in opposition to the project were submitted.

17:15 Commissioner Golba opens Item No 7 with DSD Presentation

20:32 Commissioner Haase this has to do with the siting criteria and the information that has been presented in our package today and for other projects regarding the 1,000-foot separation distance. Is that a part of the next Land Development Code 113.0225?

A: (Gutierrez) Yes, it is.

Q: Being proposed for amendment?

A: Yes, it is.

Q: If that were to succeed and the Council were to approve that would that change Staffs recommendation?

A: Yes, it would.

Q: I'm not trying to be obtuse about this, but do we need an explanation of what that section is saying for the rest of the Commission and the public? I'm not sure I'm the one to do it but to simplify it we currently use a 1,000-foot measurement which is property line to property line and in some cases that makes sense if you have hazard materials or things like that but clearly the Ordinance was written to protect various classes such as children and if a park cannot be accessed easily and that may be the case in some of our Proposals then this would allow a different way to measure. And then that 1,000-foot separation wouldn't be by property line to property line it would be under a different criteria. It's an interesting issue, we have discussed a little bit in the past. *[This seems to be a point where the Planning Commission is taking an interest in Path of Travel over Line of site measurement. These are still property line to property line measurements but its clear that for these separation distances to stand and not cut off a myriad of industrial properties from successfully applying the standard of measurement is going to have to change. What also needs to be addressed is that the sensitive uses are measured to the zone boundary (see Home Ave) not the property line. This never seems to get addressed so a large number of properties are approved under path of travel property lines that would not have been approved if the zone boundary was used in that measurement.]*

22:02 Shannon Thomas, Deputy City Attorney I believe what you're talking about is allowing a natural or manmade barrier to make a difference when we're measuring like we did for the alcohol uses.

Haase: I don't know the language that is proposed in the Municipal Code, but I believe it is something to that effect or that from a path of travel standpoint. Typically, it would be a barrier that would cause the distance…

Thomas: Like a freeway or something?

Haase: Yes.

Thomas: I just want to make sure as we move forward that even if that were to be incorporated into the Land Development Code there's a State Law that requires us not to allow dispensaries not to be closer than 600 feet to schools and that has it's own method of measurement which we obviously can't change. *[This is a problem because projects like National Ave are within sensitive boundaries for church, school and residence that relied on a path of travel type measurement and not comply with State Law. Based on her comment here it can be argued that local law regarding previously sanctioned applicant to qualify at the local licensing level.]*

Haase: I understand. This is specific to this particular project and certain projects where the only reason that we are denying the application is because it's within 1,000-feet of what we believe to be a public park dedicated or by some other definition, going back to our skateboard park, where we determined that was a park. We may have a different set of rules at some point in the future that would change our decisions. *[If these new rules are implemented does the City take any active measures to make sure that, for example, setbacks they approve would meet state requirements? How about for previously sanctioned applicants?]*

Golba: That's probably the understatement of the morning.

Haase: And I'd hate to use the word "trying to be fair here today.'

Golba: And I would just caution to that's something that the 10th update will be coming to the Planning Commission but has not come here. It is not approved. It will still have to go to City Council once it comes here. Will still have to go to the California Coastal Commission.

Haase: Maybe more for the benefit of the applicant and how they may want to…

Golba: Certainly, if anybody wants to run up here and say I'd request a continuance and wants to roll the dice in that fashion they're free to do so.

Haase: Exactly

Golba: I just want to caution that we have a current set of rules that we're reviewing a project here today.

Haase: Given how we act on continuances you should keep that in mind.

Golba: Yeah. Exactly.

24:17 Commissioner Wagner Madam City Attorney in regard to acting in a quasi-judicial capacity at this particular point. Can a quasi-judicial officer like ourselves take into consideration future land use legislation packages? It doesn't seem like that's copesetic.

Thomas: No. No decision maker can use law that isn't in effect at the time of their decision.

25:34 Phil Rath I'm with Rath Miller Public Affairs here representing the applicant who is also the appellant. *[This needs to be listened to because of the slide presentation]*

36:05 Terrie Best Are we hearing 2 MMCCs today?

Golba: 4 actually but who's counting right?

Best: Ok well I'm a general supporter of medical cannabis representing Americans for Safe Access. We're a nationwide cannabis patient advocacy group. We believe putting these MMCCs in San Diego County affords public safety.

37:23 Roy Bain I live at 5278 Cromwell Court. My driveway is 35 feet from this piece of land that call Indian Hills Park. I also own the building at 3455 Camino Del Rio South. My purpose for being here today is to speak about Indian Hills Park.

I bought my property back in 1990. I built a home on it in 1998. I've lived there for 17 years and all during that time I've never seen any activity that would ever let this area be said to be a playground. There's nothing that resembles a park. No one ever gathers there. It's too steep and too dangerous. The City

does not maintain it. The City has never improved it. The only time it's ever been cleaned is when I do it myself. It's a small piece of property zoned R-1 and anyone with common sense can look at this and see it's not a park.

38:31 Commissioner Haase We've lamented the rules that have been given us and have at times felt that we were constrained by them. At times that may have constrained us from exercising good judgment.

COMMISSION ACTION: COMMISSIONER WAGNER MADE THE MOTION TO ACCEPT THE APPLICANT'S REQUEST FOR A CONTINUANCE TO INDEFINITE DATE. Commissioner Whalen seconded the motion. The motion passed by a vote of 7-0 with Commissioners Golba, Haase, Austin, Quiroz, Peerson, Wagner and Whalen voting yea.

2015/12/10: ITEM 8: GRANTVILLE GREEN MMCC Appeal Hearing Officer's 2015/10/28 ITEM 4 decision

ITEM 4 STAFF: Edith Gutierrez

24 speaker slips submitted in favor – Joshua Kelley, Erik Douglas, Jenna Conrad, Anders Romanowski, Andrea Poat, Kolton Kollmar, Cody Cloud, Maxwell Farrell, Joe Esposito, John Robert, Ron Miller, Nick Hosig, Daniel McKenzie, Nathan Quintanilla, Debi Adcock, Donald Edelman, Patricia Melero, Jayne Hutchinson, Michael Baehr, Younan Hallak, Andy Robles, Chris Godfrey, Carole Conrad and Hassanen Alzayadi

4 speaker slips submitted in opposition – Khoa Nguyen, Barbara Gordon, Scott Chipman and Peggy Walker

ITEM 4 ACTION: PROJECT DENIED. Report NO. HO-15-120. RESOLUTION NO. HO-6881

DSD CONTACT: Edith Gutierrez

PROJECT NUMBER: 368381

DSD TO HEARING OFFICER RECOMMENDATION: HO-15-120 "DENY Conditional Use Permit No. 1288100."

HEARING OFFICER: Ken Teasley

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-15-131 "Deny the appeal and uphold the Hearing Officer's decision to Deny Conditional Use Permit No. 1288100."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures (Attachment 9). This project is not pending an appeal of the environmental

determination. The environmental exemption determination for this project was made on August 20, 2015, and the opportunity to appeal that determination ended on September 3, 2015."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24004660 @ Page 24

APPELLANT(S):

Issues On Appeal

Page 15: City of San Diego maps which designates a Riparian zone as being a park zone setback of 1,000 feet.

Page 43: Community Planning Group votes 9-7 to Approve

Page 45: Ownership Disclosure Statement Owner Information only. No Tenant information.

Page 51: Appeal Application by Joe Esposito of Estrada Land Planning citing: "Designated Park is not a Park."

OWNER(S): Joseph Frankel @ Pages 1 and 23

APPLICANT(S): Grantville Green, Inc., Nicholas Hosig @ Pages 1 and 23

CUP NUMBER: 1288100

CUP HOLDER:

SITE DEVELOPMENT PERMIT NUMBER:

STATUS: Canceled – Abandoned

CITY COUNCIL DISTRICT: 7

PLAN AREA: Navajo

STAFF: Edith Gutierrez

Speaker slips in favor of the project submitted by Vicki Estrada, Nick Hosig, Ron Miller, Saad Alzayad, Majed Aldhalimi, Hasangn Alzayad, Carole Conrad, Mark Simonds, Michael Baehr, Jesse Adcock, Patty Melero, Ryan Hurtado, Cara Spector, Daniel McKenzie, Kolton A Kollmar, Victor Aguilar, Jeff Cloud, Cody Cloud, Travis K Conrad, Anders Romanowski and Andrea Poat.

Speaker slips in opposition to the project submitted by Jim Bartell and Gina Austin.

COMMISSION ACTION: COMMISSIONER WAGNER MADE THE MOTION TO ACCEPT THE APPLICANT'S REQUEST FOR A CONTINUANCE TO INDEFINITE DATE. Commissioner Whalen seconded the motion. The motion passed by a vote of 6-1 with Commissioners Golba, Haase, Austin, Peerson, Wagner and Whalen voting yea and Commissioner Quiroz voting nay. *[This project and an indefinite continuance date warrants further investigation.]*

2015/12/10: ITEM 9: SUSTAINABLE THERAPEUTICS MMCC Appeal of Hearing Officer's 2015/09/16 ITEM 8 decision

ITEM 8 STAFF: Edith Gutierrez

6 speaker slips submitted in favor – Kelly Hayes, David Diaz, Maggie Diaz, Margaret Gibert, Phillip Diaz and George Diaz

1 speaker slip submitted in opposition – Brian Custer

ITEM 8 ACTION: PROJECT DENIED. Report NO. HO-15-087. RESOLUTION NO. HO-6874

DSD CONTACT: Edith Gutierrez

PROJECT NUMBER: 368302

DSD TO HEARING OFFICER RECOMMENDATION: HO-15-087 "DENY Conditional Use Permit No. 1292799."

HEARING OFFICER: Ken Teasley

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-15-132

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures on March 17,2015 (Attachment 8). An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on June 2, 2015. The scope of the Hearing Officer's decision only includes the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24004661 @ Page 23

APPELLANT(S): George Diaz

Issues On Appeal

Page 18: CUP Signature Page

Page 27: Revised NORA

Page 31: Community Distribution Form

Page 33: Ownership Disclosure Statement

Page 34: Appeal Application by George Diaz

OWNER(S): 3500 Company LLC. George Diaz

APPLICANT(S): George Diaz

CUP NUMBER: 1292799

CUP HOLDER:

SITE DEVELOPMENT PERMIT NUMBER:

STATUS: Continued

CITY COUNCIL DISTRICT: 2

PLAN AREA: Midway/Pacific Highway Corridor

STAFF: Edith Gutierrez

Speaker slips in favor of the project submitted by Margaret Gibert, Greg Magdoff, Lance Rogers, Maggie Diaz, Karen ZoBell, Kelly Hayes, George P. Diaz, George Diaz, Rakesh Goyal, Robert Furey and Janet Matula.

Speaker slips in opposition to the project submitted by Kathleen Lippitt, Jan Asaro and Barbara Gordon. **Public Testimony was closed. [Why was public testimony closed?]**

COMMISSION ACTION: COMMISSIONER QUIROZ MADE THE MOTION TO ACCEPT THE APPLICANT'S REQUEST TO CONTINUE THIS ITEM TO DECEMBER 17, 2015. Commissioner Peerson seconded the motion. The motion passed by a vote of 6-1 with Commissioners Golba, Haase, Austin, Quiroz, Peerson and Whalen voting yea and with Commissioner Wagner voting nay.

2015/12/10: **ITEM 10: LIVING GREEN MMCC (4417 RAINIER AVENUE)** Continued from October 29, 2015

See Planning Commission Hearing of 2015/06/25 ITEM 10 earlier in the Steering Doc for all Project Files and Appeals information. (Control F the Project Number for easy access.)

PROJECT NUMBER: 379530

STAFF: Edith Gutierrez

Speaker slips in favor of the project submitted were submitted by Gina Austin, David Jansen, Heidi Whitman, Cary Weaver, Anthony Scimeca, Gary Faahs, Daryl Bundy, Margaret Gibert, Tamar Leethman, Bianca Martinez, Jim Bartell, Michael Cullen, Vivian McCardle, Brad Brolun, Lauren Moore, Darren Moore, Erin McDonald, Andrew Casey and Marion Preciado.

Speaker slips in opposition to the project submitted were submitted Ron Miller, Majed Aldhalimi, Raad Najo, Saad Alzayad, Hasangn Alzayad, Jeff Cloud, Cody Cloud, Daniel McKenzie, Victor Aguilar, Kolton Kollmar, Jesse Adcock, Patty Melero, Andrea Poat, Michael Baehr, Mark Simonds, Anders Romanowski, Cara Spector, Travis Conrad and Carole Conrad.

COMMISSION ACTION: COMMISSIONER WAGNER MADE THE MOTION TO ACCEPT THE APPLICANT'S REQUEST FOR A CONTINUANCE TO INDEFINITE DATE. Commissioner Whalen seconded the motion. The motion passed by a vote of 7-0 with Commissioners Golba, Haase, Austin, Quiroz, Peerson, Wagner and Whalen voting yea. *[Indefinite date?]*

2015/12/17 Minutes

2015/12/17: ITEM 1- ANNOUNCEMENTS/PUBLIC COMMENT – ISSUES WITHIN THE JURISDICTION OF THE COMMISSION NOT PREVIOUSLY HEARD:

6:20 Scott Chipman commented on Marijuana Retailers Representing San Diegans for Safe Neighborhoods.

2015/12/17: ITEM – 6: COMMISSION COMMENT: Commissioner Haase commented that on Tuesday, January 12th The Urban Land Institute is hosting a breakfast to discuss the Medical Marijuana Ordinance in the City of San Diego as well as the imminent placing of a measure on the 2016 ballot to legalize Medical Marijuana in the State of California. He also mentioned that he will be a panel member on that mornings breakfast.

2015/12/17: ITEM 7: SUSTAINABLE THERAPEUTICS MMCC Continued from December 10, 2015; Appeal of Hearing Officer's decision on September 16, 2015.

See Planning Commission Hearing of 2015/12/10 of ITEM 9 earlier in the Steering Doc for all Project Files and Appeals information. (Control F the Project Number for easy access.)

PROJECT NUMBER: 368302

NOTE: *Public Testimony was closed on December 10, 2015.*

COMMISSION ACTION: COMMISSIONER HAASE MADE THE MOTION TO UPHOLD THE APPEAL, REVERSE THE HEARING OFFICER'S DECISION AND APPROVE THE CONDITIONAL USE PERMIT NO. 1292799. Commissioner Quiroz seconded the motion. The motion passed by a vote of 4-3 with Commissioners Golba, Haase, Austin and Quiroz voting yea and with Commissioners Peerson, Wagner and Whalen voting nay.

2016/04/07 Minutes

2016/04/07: ITEM 1: ANNOUNCEMENTS/PUBLIC COMMENT – ISSUES WITHIN THE JURISDICTION OF THE COMMISSION NOT PREVIOUSLY HEARD:

4:50 Janet Asaro commented on Marijuana. Bilysandiego.org

10:58 Judi Strang commented on process for agendas re Marijuana Outlet setbacks .

13:58 Scott Chipman commented on Pot Shop Marijuana related deaths.

17:19 Kate Poponyak commented on distance requirements for MMCC's.

2016/04/07: ITEM 7: 1028 BUENOS AVENUE MMCC Appeal of Hearing Officer's 2016/12/16 ITEM 7 decision

ITEM 7 STAFF: Edith Gutierrez

5 speaker slips submitted in favor – Scott Bernet, Michael Rollins, Willie Senn, John Kartos and Yanne Cunha

5 speaker slips submitted in opposition – Peggy Walker, Scott Chipman, Judi Strang, Liz Hyma and Barbara Gordon

ITEM 7 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-15-141. RESOLUTION NO. HO-6899

DSD CONTACT: Edith Gutierrez

PROJECT NUMBER: 369290

DSD TO HEARING OFFICER RECOMMENDATION: HO-15-141 "APPROVE Conditional Use Permit No. 1605038."

HEARING OFFICER: Ken Teasley

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-16-015 "Deny the appeal and uphold the Hearing Officer's decision to Approve Conditional Use Permit No. 1605038."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures, on August 10, 2015 (Attachment 8). An appeal of the CEQA determination was previously made and the City Council denied that CEQA appeal on October 27, 2015."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24004683 @ Page 23

APPELLANT(S): Stephen Coles, Julius Paeske and David Snyder

OWNER(S): Mission Grand, LLC., Ronald Taylor Manager

APPLICANT(S): Willie Senn

CUP NUMBER: 1605038

CUP HOLDER: Willie Senn

SITE DEVELOPMENT PERMIT NUMBER:

STATUS: Issued 09/13/2016

CITY COUNCIL DISTRICT: 2

PLAN AREA: Linda Vista

STAFF: Edith Gutierrez

Speaker slips in favor of the project submitted by Michael Rollins, Scott Bernet, Jennifer Ahn, Terry Metsch, Esteban Hernandez, Tony D'Amato, Ronald Taylor and Willie Senn.

Speaker slips in opposition to the project submitted by Ellen Ketter, Kris Campion, David Snyder, Scott Chipman, Juilius Paeske, Peggy Walker, Nancy Logan, Barbara Gordon and Kathleen Lippitt.

COMMISSION ACTION: COMMISSIONER WAGNER MADE THE MOTION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO APPROVE THE CONDITIONAL USE PERMIT NO. 1605038.

Commissioner Whalen seconded the motion. The motion passed by a vote of 5-1-1 with Commissioners Haase, Hofman, Quiroz, Wagner and Whalen voting yea and with Commissioner Peerson voting nay and with Commissioner Austin absent.

2016/04/14 Minutes

2016/04/14: **ITEM 1: ANNOUNCEMENTS/PUBLIC COMMENT** – ISSUES WITHIN THE JURISDICTION OF THE COMMISSION NOT PREVIOUSLY HEARD:

6:00 Judi Strang commented on 3500 Estudillo as a MO being within 1,000 of a minor oriented facility.

2016/05/12 Minutes

2016/05/12: **ITEM 1: ANNOUNCEMENTS/PUBLIC COMMENT** – ISSUES WITHIN THE JURISDICTION OF THE COMMISSION NOT PREVIOUSLY HEARD: Scott Chipman commented on land use policy re MO @ 3:35. "DSD is not our friend in these decisions"

2016/06/23 Minutes

2016/06/23: **ITEM 2:** REQUESTS FOR CONTINUANCE AND/OR ITEMS TO BE WITHDRAWN:

2016/06/03: **ITEM 8: - GRANTVILLE GREEN MMCC**–PROJECT NO. 363381 *[that's a typo it's actually 368381]*–CONTINUED TO JULY 21, 2016

2016/06/03: **ITEM 9: LIVING GREEN MMCC** – PROJECT NO. 379530 – WITHDRAWN

2016/07/21 Minutes

2016/07/21: **ITEM 1: ANNOUNCEMENTS/PUBLIC COMMENT** – ISSUES WITHIN THE JURISDICTION OF THE COMMISSION NOT PREVIOUSLY HEARD:

6:12 Scott Chipman commented on Marijuana availability to teens.

9:14 Judi Strang commented on the Pot of Gold shop on 3275 Adams Street.

11:55 Kathleen Lippitt commented on the disconnect between City efforts to close unpermitted barriers. Why fines on unlicensed dispensaries is not a deterrent.

14:25 Barbara Gordon commented on Marijuana Dispensary billboard advertising

2016/07/21: ITEM 7: GRANTVILLE GREEN MMCC Continued from June 23, 2016; Appeal of Hearing Officer's October 28, 2015 decision on ITEM 4.

See Planning Commission Hearing of 2015/12/10 on ITEM 8 earlier in the Steering Doc for all Project Files and Appeals information. (Control F the Project Number for easy access.)

PROJECT NUMBER: 368381

Speaker slips in favor of the project submitted by Vicki Estrada, Amy Marks, Michael Cindrich, Carlos Angulo, David Mosack, James McElwee, Nick Hosig, Ron Miller, Thomas Perkins, Anjanette Perkins, Hasanen Alzayad, Dany O'Neill, Kolton Komar and Daniel Smith.

Speaker slips in opposition to the project submitted by Gina Austin, Peter Karvalis, Anthony Scimeca, Darren Moore, Heidi Whitman, Judi Strang, Scott Chipman and Barbara Gordon.

COMMISSION ACTION: COMMISSIONER PEERSON MADE THE MOTION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO DENY CONDITIONAL USE PERMIT NO. 1288100. Commissioner Hofman seconded the motion. The motion passed by a vote of 5-1-1 with Commissioners Haase, Hofman, Austin, Peerson and Wagner voting yea and with Commissioner Quiroz voting nay and with Commissioner Whalen absent.

2016/08/11 Minutes

2016/08/11: ITEM 1: ANNOUNCEMENTS/PUBLIC COMMENT – ISSUES WITHIN THE JURISDICTION OF THE COMMISSION NOT PREVIOUSLY HEARD:

6:40: Judi Strang commented on illegal pot shops and Superior Court actions.

2016/08/11: ITEM 7: Living Green MMCC Appeal of Hearing Officer's April 22, 2015 decision of ITEM 6.

See Planning Commission Hearing of 2015/06/25 ITEM 10 earlier in the Steering Doc for all Project Files and Appeals information. (Control F the Project Number for easy access.)

CUP NUMBER: 379530

STAFF: Edith Gutierrez

Speaker slips in favor of the project submitted by Gina Austin, Marcela Escobar-Eck, Cary Weaver, Heidi Whitman, Mike Oneal, Peter Karvelis, Carlos Vasquez, Wallace Bernard, Darren Moore, Vivian McCardle, Veronica Stetter, Brad Brown, Edward Gil, Maya Rosas, Abhay Schweltzer, Daniela Reuther, Austin Reed Palmero, Adrian Kwatkowski, Bianca Martinez, Terri Best, Vey Linville, Kim Twolan and Marcu Boyd.

Speaker slips in opposition to the project submitted by Kathleen Lippitt, Judi Strang, Janet Asaro, Chris Eddy and Nick Hosig.

COMMISSION ACTION:

COMMISSIONER WAGNER MADE THE MOTION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO DENY CONDITIONAL USE PERMIT NO. 1333320. Commissioner Hofman seconded the motion. The motion passed by a vote of 5-1-1 with Commissioners Haase, Hofman, Austin, Wagner and Whalen voting yea and with Commissioner Quiroz voting nay and with Commissioner Peerson absent.

2016/08/11: **ITEM 8: 3455 CAMINO DEL RIO SOUTH MMCC** Appeal Hearing Officer's 2015/10/07 ITEM 5 decision

See Planning Commission Hearing of 2015/12/10 on ITEM 7 earlier in the Steering Doc for all Project Files and Appeals information. (Control F the Project Number for easy access.)

PROJECT NUMBER: 368346

Speaker slips in favor of the project submitted by Phil Roth, Dan Lukerchine, Khoa Nguyen, Blake Grauerholz, Sare Cadenes, Cristian Cadenas, Rakesh Gozal, Justin Schlaefli and Henryk Pedersen.

Speaker slips in opposition to the project submitted by Kathleen Lippitt, Janet Asaro and Judi Strang.

COMMISSION ACTION:

COMMISSIONER WAGNER MADE THE MOTION TO ACCEPT THE APPLICANT'S REQUEST TO CONTINUE THIS ITEM TO AUGUST 25, 2016. Commissioner Whalen seconded the motion. The motion passed by a vote of 6-0-1 with Commissioners Haase, Hofman, Austin, Quiroz, Wagner and Whalen voting yea and with Commissioner Peerson absent.

2016/08/25 Minutes

2016/08/25: **ITEM 1: ANNOUNCEMENTS/PUBLIC COMMENT** – ISSUES WITHIN THE JURISDICTION OF THE COMMISSION NOT PREVIOUSLY HEARD:

2:45 Judi Strang commented on the Appeal process . "What I notice is you're going to look at a public opportunity to appeal as there are new staff recommendations. The appeal should go back to the lower decision maker (the Hearing Officer)." Great recommendations!

6:19 Carol Green commented on Collective Process experience re criminal sentencing of an unpermitted pot shop.

8:56 Janet Asaro commented on signage for pot shops.

2016/08/25: **ITEM 9: 3455 CAMINO DEL RIO SOUTH MMCC** Continued from August 11, 2016; Appeal of Hearing Officer's decision on October 7, 2015.

See Planning Commission Hearing of 2015/12/10 ITEM 7 earlier in the Steering Doc for all Project Files and Appeals information. (Control F the Project Number for easy access.)

PROJECT NUMBER: 368346

Speaker slips in favor of the project submitted by Phil Rath, Blake Grauerholz, Khoa Nguyen, Dan Lukerchine, Sara Gadena, Cassandra Peerson, Justin Schlaefli, Chris Boudreau, Christian Cadenas, Solomon Ontiveros and Matthew Nash-Cruz.

Speaker slips in opposition to the project submitted by Joel Boxdan, Diane Rapp, Janet Asaro, Judi Strang, Barbara Gordon, Kathleen Lippitt and Carol Green.

COMMISSION ACTION:

COMMISSIONER HOFMAN MADE THE MOTION TO UPHOLD THE APPEAL, REVERSE THE HEARING OFFICER'S DECISION, AND APPROVE CONDITIONAL USE PERMIT (CUP) NO. 1295099 AND SITE DEVELOPMENT PERMIT (SDP) NO.1508276 WITH THE CONDITION THAT EMPLOYEES PARK OFF-SITE AND THE UPDATED SITE PLAN BE USED FOR THE APPROVED EXHIBITS. Commissioner Wagner seconded the motion. The motion passed by a vote of 5-0-2 with Commissioners Haase, Hofman, Austin, Quiroz and Wagner voting yea and with Commissioners Peerson and Whalen absent.

2016/09/22 Minutes

2016/09/22: **ITEM 1: ANNOUNCEMENTS/PUBLIC COMMENT** – ISSUES WITHIN THE JURISDICTION OF THE COMMISSION NOT PREVIOUSLY HEARD:

3:50 Phil Roth commented on the MMCC signage issues Follows with Commissioner Wagner requesting a workshop on cannabis signage requirements.

2016/10/27 Minutes

2016/10/27: **ITEM 1: ANNOUNCEMENTS/PUBLIC COMMENT** – ISSUES WITHIN THE JURISDICTION OF THE COMMISSION NOT PREVIOUSLY HEARD:

8:25: Ron Slayen commented on Sustainable Therapeutics Marijuana Dispensary at 3500 Estudillo & Kurtz Street being within 1000' of a child-oriented facility. "No adults visit these classes. There are 15-20 children in each of these classes. Virtually all children, no adults."

12:15: David Siegler, Veterans Village of San Diego commented on an approved Marijuana dispensary near their drug treatment center.

2016/12/15 Minutes

2016/12/15: **REPORT TO THE PLANNING COMMISSION:** An Amendment to the City's Municipal Code and Local Coastal Program to Address the Adult Use of Marijuana Act and the Medical Marijuana Consumer Cooperative Regulations. Process 5

2016/12/15: **ITEM 1: ANNOUNCEMENTS/PUBLIC COMMENT** - ISSUES WITHIN THE JURISDICTION OF THE COMMISSION NOT PREVIOUSLY HEARD:

12:41: Ron Slayen commented on 3500 Estudillo St. Marijuana Dispensary

14:35: Scott Chipman commented on possible Conflict of Interest by two members of the Planning Commission. Commissioners Anthony Wagner (Wagner Consulting and Land Use Public Health and Safety Firm) and Jim Whalen and Whalen's representation of Good Earth Plant Company (commercial cannabis cultivators) as expressed on Friday November 4, 2016 at a SD County hearing. Scott requests that he be contacted @ 629.990.7480 for any followup questions staff or the City Attorney might have. Was there ever a follow up?

17:29: Bob Ottilie commented on Recusal of Mr. Wagner. Bob Ottilie is a licensed CA attorney who argues bias and conflict of interest issues with the Planning Commission. The Commission and the City Attorney follow his comments and discuss the matter as a procedural issue.

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2016/12/15: **ITEM – 13: ADULT USE OF MARIJUANA ACT AMENDMENTS** – PROJECT NO. 12003223

City Council District: All

Plan Area: City-Wide Staff: Dan Normandin

Speaker slips in favor of the project submitted by Khoa Nguyen, Phil Roth, Will Senn and Carol Green.

Speaker slips in opposition to the project submitted by Ann Hollenbaugh, Greg Magdoff, Frances Eleanor Fellers, Kathleen Lippitt, David Jansen, Mara Felsen, Martha Sullivan, Terrie Best, Barbara Gordon, Christopher Siegel, Jessica McElfresh, Ninus Malan, Dario Farisato, Scott Chipman, Peggy Walker, Judi Strang, Nasser Azimi, Aaron Magagna, William Greene, Salam Razuki, Christina Urban, Gina Austin, Dina Goldberg, Eric Goldberg, Richard Andrews, Jim Bartell, Adam Knoff, Scott Pack, Bianca Martinez, Cynara Velazquez and Jehoan Espinosa.

COMMISSIONER HOFMAN MADE THE MOTION TO RECOMMEND APPROVAL TO THE CITY COUNCIL OF AMENDMENTS ADDRESSING THE ADULT USE OF MARIJUANA ACT AND THE MEDICAL MARIJUANA CONSUMER COOPERATIVE REGULATIONS AND TO INCLUDE THE FOLLOWING RECOMMENDATIONS:

• REMOVE THE PROHIBITIONS THAT ARE IN THE DRAFT FOR CULTIVATION, TESTING, PROCESSING, STORAGE & DISTRIBUTION REQUIRE A CUP FOR THESE WITH TIME LIMITATIONS

• REQUIRE THAT ALL CULTIVATION BE SECURED

• FURTHER REDEFINE PARKS… CONSIDERED CLARIFYING LANGUAGE THAT ADDRESSES THE USERS OF THE PARK

• REVIEW PARKING REQUIREMENTS

• REMOVE THE SEPARATION REQUIREMENT OF OUTLETS FROM ONE ANOTHER

• PROVIDE STANDARDS FOR RETAIL OUTLETS (MINIMUM SIZES/REQUIRED AREAS)

• REMOVE FROM CONSIDERATION OF AN EXTENSION OF TIME FOR A REZONE AFTER APPROVAL OF A CUP THAT WOULD CAUSE THE OUTLET TO NO LONGER BE AN ALLOWABLE USE WITH A CUP.

• CONSIDER A SEPARATE ORDINANCE FOR DELIVERIES.

Commissioner Austin seconded the motion. The motion passed by a vote of 5-0-2 with Commissioners Haase, Hofman, Austin, Quiroz and Peerson voting yea and with Commissioner Wagner recusing and with Commissioner Whalen absent.

2016/10/31 The 6176 Federal Boulevard Application. The CUP That Never Was

Project Number 520606 that never went to an appeal. It never went to a Hearing Officer. It never went before a Planning Group. It was purposefully slow walked to allow the competing (300 feet East of 6176) 6220 Federal Blvd. CUP, Project No. 598124.

I am the owner of the commercial property at 6176 Federal Blvd that, once rezoned, was eligible for an MMCC CUP. I was sought out by an investor, Larry Geraci, who worked with Gina Austin, Jim Bartell, Michael Morton and Abhay Schweitzer would see the CUP granted. The sale of the property was entirely conditional on the CUP being granted and Geraci assured me that he had the money, the team and connections within the City of San Diego that would assure the CUP would be issued.

Geraci, a Licensed CA Realtor, an Enrolled Agent with the IRS, a Financial and Tax Advisor agreed to pay for everything associated with the CUP and I signed an Ownership Disclosure Statement once the terms of the sale and the joint venture had been agreed to so he could begin that process with the City of San Diego. Prior to that day I had never seen one of these forms.

2016/10/31 Ownership Disclosure Statement As can be seen by the Ownership Disclosure Statement, prepared by Geraci, he did not put his name on the document. Instead he used his secretary, Rebecca Berry to act as the Tenant/Lessee. I didn't know then what I know now about what the importance was and the legal obligation that existed in disclosing those parties with a 20% or greater interest in the CUP. Gerraci's failure to disclose his interests were a result of him having been sanctioned for operating an unlicensed cannabis business within 3 years prior to submitting that Ownership Disclosure Statement.

2016/10/31 Geraci uses Rebecca Berry as a strawman to act on his behalf in executing 3 other City of San Diego documents that were submitted on the CUP application. Other than the Ownership Disclosure Statement I was not aware that these other 3 documents had been submitted.

2016/11/02 Receipt for $10K in earnest money. Having signed the Ownership Disclosure Statement and having made an oral agreement to the terms of the sale, the Joint Venture once the dispensary was operational and a $50K earnest money payment was to have been made, I was invited to Geraci's office to sign for what was a two paragraph document that did not accurately reflect everything we had discussed. When I brought this up, and the fact that this was not the agreed upon $50K earnest money

nor was it any kind of real estate contract I would expect from a licensed realtor, Geraci told me he was short on money and would pay the rest in short order and that his attorney, Gina Austin would memorialize everything we had agreed to orally in a contract that would be forthcoming. I left his office without a copy of the signed and notarized receipt as he told me he would email over to me later that day. At that time I had no reason not to believe in Geraci. He appeared to be a legitimate businessman, with experience having done the tax and financials for other dispensaries that he had an ownership interest in. I accepted that.

2016/11/02 As promised, the Geraci Email with the receipt attachment which he titles a contract. Not knowing if this was just a mischaracterization of the document I sent him a response email that same day.

2016/11/02 Cotton and Geraci - No Problem at All Email

2017/03/17 Cotton to Geraci Email demanding that after 4 months he reduce our oral agreements to writing. This was around the time when I first became aware of who Firouzeh Tirandazi was at DSD and the role she would play in the complete subterfuge that exists at DSD in CUP application processing, especially as it relates to CUPs involving Gina Austin and her clients.

2017/03/19 Cotton Email following up a Geraci phone call regarding my previous email.

2017/03/19 Geraci's response email

2017/03/22 Geraci's attorney Michael Weinstein's letter demanding the November 2, 2016 document be considered a binding contract for the sale of my property. Of particular note here is in the second paragraph where Weinstein states that Geraci has already spent in excess of $300,000 towards the CUP. How is that when after 3 years of protracted litigation Geraci wins a jury trial award who had been asked to consider a matter of law by a biased Judge Wohlfeil, and that award after a full victory of all claimed expenses was only for $260,109.28, and did not include attorneys fees and has never been sought after in collections? Of note, in a related case, the issue of judicial bias is brought up in a Federal Court action in SHERLOCK ET AL v AUSTIN ET AL in an EX PARTE APPLICATION FOR ORDER SHORTENING TIME ON A MOTION TO VACATE ORDER. This case is currently before the 9th Circuit and it too involves the use of the strawman practice as can be seen in the 8863 Balboa Avenue CUP file, Project Number 368347, which can be found in the Steering Document.

2017/03/21 Geraci files a lawsuit against me for, among other things, Breach of Contract.

2017/05/12 I filed a Cross-Complaint against Larry Geraci and Rebecca Berry for, among other things, Fraud and Breach of the Oral Contract. I specifically named Geraci and Berry, where appropriate, in the counts as they had acted together to defraud me of my property in this licensing scheme. While not all Causes of Action in this complaint included Berry the big one, the one that described the strawman practice being used to illegally acquire a cannabis CUP was shown in Count Ten-Conspiracy and named both Geraci and Berry in having participated in that .

I filed this lawsuit pro se because I hadn't found an attorney to represent me. After having had discussions with attorney Jessica McElfresh about her representing me she declined stating the case was too big for her and referred me to attorney David Demian from Finch, Thornton Baird. Demian agreed to represent me and took over the case. As I was going to find out, this was not an innocent referral.

2017/06/30 Substitution of Attorney from Cotton to Demian

2017/06/30 Demian files Cotton's First Amended Complaint What can be seen by the FAC is that Demian drops the Conspiracy charge out. He convinced me that this is a difficult thing to prove and would be better to bring out after other facts about their relationship were established. At the time I trusted his counsel. It never occurred to me that what he was doing was getting the focus of the strawman practice off the table. This is further reinforced in that in the FAC, Demian only names Berry in Count 7-Declaratory Relief. She is not named in any of the other Counts.

2017/03/27 Notice of Application With Geraci and his team having complete control over the CUP processing I had no say, or experience in, I had to watch things develop from the sidelines. Trusting that he not only knew what he was doing in the CUP process but would memorialize things beyond a two paragraph document.

2017/12/06 Demian files my EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION This was a well written application that showed he communications with Tirandazi, the confirmation email between Geraci and me and Rebecca Berry had acted as a proxy (strawman) for Geraci because he would have been ineligible to acquire one of these licenses after having been previously sanctioned within 3 years of the application and on three separate occasions.

2017/12/08 Substitution of Attorney from Demian to Cotton

2018/05/27 Attorney Jake Austin on behalf of Cotton email to attorney Matt Shapiro re the conspiracy.

2018/05/31 DSD Customer Information Sheet Despite what the Ownership Disclosure Statement said, DSD listed me as an Agent not the property Owner and Rebecca Berry as the Applicant.

2018/06/13 Joseph Hurtado Declaration with Supporting Exhibit Text Messages between Hurtado and Corina Young. *[Of note the Corina Young texts describe how attorneys are making a per pound profit on unlicensed cannabis being sold.]*

2018/08/08 DSD lists me as a Concerned Citizen. There is no rhyme nor reason to their website.

2019/02/15 CUP NO 1832458 is WITHDRAWN Having successfully tied up the 6176 CUP for over 2.5 years while the 6220 CUP raced from start to application finish in under 7 months, complete with Hearing Officer and Planning Commission Hearings, it was clear then but it is crystal clear now that this is, as many on the Commission have stated, "a flawed process." But flawed is one thing. With the evidence I have on the 6220 project it's clear that none of what Geraci and his team wanted to accomplish by seeing the 6220 CUP approved over the 6176 CUP could have happened without the support of certain bad actors inside DSD where there are crimes that have been committed up to and including, fraud upon the court(s).

2019/06/26 Motion in Limine As this Motion in Limine describes, I was trying to get the court and jury to take notice of these foundational issues. Every attempt, approximately 2 dozen, were denied as frivolous or not having merit. The courts would simply not address the strawman practice and the conspiracy that exists between certain bad actors within the City, cannabis applicants and those who represent them.

I'm not going to spend anymore time on 6176 other than to point out,I would never have been inclined to look at the entire DSD CUP processing had it not been for what I experienced at 6176 Federal with Geraci and DSD as well as having seen close up the special handling processing of 6220 CUP and those other Gina Austin associated projects that all were stained by the clients she represented and how DSD

managed to ignore foundational issues that should have prevented those CUP applications from even being accepted. If you want to learn more about the 6176 CUP processing (Section 13.2) and/or the associated litigation (Section 11.1) it can all be seen @

https://151farmers.org/2018/04/01/canna-greed-stay-awake-stay-aware-my-story

As you unwrap the 6176 CUP keep in mind that this CUP is the only CUP in this Steering Doc that did not make it through the DSD Application process. It was not in Geraci's best interest to see that happen as the CUP goes with the land. He and I were done and I would have had the CUP. As far as those CUPS that were applied for and never made it to a Hearing Officer, the question then becomes since all the applications the City took in were all non-refundable, how many more applications* were simply slow-walked while the preferred application was fast tracked through? I can't believe I was the only one and if nothing else that goes to a flat out criminal conspiracy in the DSD and those attorneys who take on clients when they know there is no chance that applicant gets a CUP.

*At the 12/06/2018 Planning Commission Hearing, ITEM 3 during the Q&A on the SORRENTO VALLEY MARIJUANA OUTLET - MPF @ 1;51;27 into the archived video Commissioner Hofman posited a question along the lines of how many approved applications [40 if he's talking about MPF's and 36 if he's talking about MOs] to how many are in the queue. Tim Daly, DSD Development Project Manager answered "We have a little over 70 some odd applications that were applied for. We've approved 21 at this time with no appeals, all of the appeal periods have ended so we're still processing another 40 some odd applications. The priority order is based upon the CEQA determination determines the succession order of a particular project."

This is a January 15, 2020 DSD comparison between their preferential processing of the 6220 CUP over the 6176 CUP applications.

2017/02/02 Minutes

2017/02/02: **ITEM 7:** APPROVAL OF MINUTES FROM DECEMBER 15, 2016 AND JANUARY 19, 2017 MINUTES FROM DECEMBER 15, 2016 WAS RETURNED TO STAFF TO INCLUDE SPECIFIC COMMENTS AND/OR RECOMMENDATIONS FOR ACCURACY ON ITEM # 13 - ADULT USE OF MARIJUANA ACT AMENDMENTS – PROJECT NO. 12003223. COMMISSIONER PEERSON MADE THE MOTION TO APPROVE THE MINUTES FROM JANUARY 19, 2017. Commissioner Whalen seconded the motion. The motion passed by a vote of 7-0 with Commissioners Haase, Hofman, Austin, Quiroz, Peerson, Wagner and Whalen voting yea.

2017/07/20 Minutes

2017/07/20: **ITEM 2: CDRS COOPERATIVE** Appeal Hearing Officer's 2017/05/24 ITEM 4 decision

ITEM 4 STAFF: Firouzeh Tirandazi

7 speaker slips submitted in favor – Jim Bartell, Andy Lambert, Gina Austin, Brad Talbert, Eric Goldbert, Justus Henkes and Abhay Schweitzer

7 speaker slips submitted in opposition – Scott Chipman, Judy Strang, Carol Green, James Lawson, Daneen Wilburn, Yvonne Pryor-Anderson and Jon Hamby

HEARING OFFICER ITEM 4 ACTION: PROJECT DENIED. Report NO. HO-17-029. RESOLUTION NO. HO-7015

DSD CONTACT: Travis Cleveland

PROJECT NUMBER: 514308

DSD TO HEARING OFFICER RECOMMENDATION: HO-17-029 "APPROVE Conditional Use Permit No. 1810030."

HEARING OFFICER: Duke Fernandez

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-17-060 Uphold the appeal, Reverse the Hearing Officer's decision, and Approve Conditional Use Permit No. 1810030.

CEQA DETERMINATION: Page 1, "The project was determined to be exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15303, New Construction or Conversion of Small Structures. This project is not pending an appeal of the environmental determination. The environmental exemption determination for this project was made on March 6, 2017 and the opportunity to appeal that determination ended March 20, 2017."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NO: No NORA Public Circulation Record was found. A Notice of Exemption was filed with the County Recorder @ Page 35.

APPELLANT(S): Gina Austin obo Abhay Schweitzer

Issues On Appeal

Page 42: Mission Valley Planning Group Minutes

Page 45: Ownership Disclosure Statement

Page 64: Appeal Application of Gina Austin

Page 65: Austin Legal Group Letter to Planning Commission

Page 81: Techne Stamped Drawings by Michael Morton Architect

OWNER(S): LaDawn M. Tanner

APPLICANT(S): Kristina De Laittre

CUP NUMBER: 1810030

CUP HOLDER: Kristina De Laittre

SITE DEVELOPMENT PERMIT NUMBER:

STATUS: Issued 2019/10/29

CITY COUNCIL DISTRICT: 7

PLAN AREA: Mission Valley

STAFF: Firouzeh Tirandazi

Speaker slips in favor of the project submitted by Jim Bartell, Gina Austin, Andy Schlaefli, Flavia Gomes, Michael Morton, Saul Valladaves, Judd Henkes, Carlos Gonzalez, Ben Peterson, Tiffany Knopf, Adam Knopf, Dina Goldberg, Eric Goldberg, Brittany Cohen, Richard Andrews, Tami Leetham, Andy Lambert, Tami Ratliff and Marina Welb.

Speaker slips in opposition to the project submitted by Pastor Louis Wilburn, Keenan Holmes, Yvonne Pryor-Anderson, Jordan Wilburn, Samuel Whitley, Dareen Wilburn, Cynthia Morgan, James Lawson, Jon Hamby, Jacqueline A. Osborne, Howard Fung, Dessa Rather, Jorge Hernandez, Louis Wilburn Jr., Jessica McElfresh, Steve LaMarca, Diane Rapp, Susan Wilcox, Kathleen Lippitt and Stan Smith.

14:40 Commissioner Haase opens up ITEM 2 with DSD presentation

15:50 Firouzeh Tirandazi, with Tonya Lecharian DSD presents

20:56 Tirandazi describes a straight line "property line to property line" measurement was used. This contradicts SDMC where a zone to sensitive use measurement should have been used. She does raise topographical barriers allowing for the required separation.

28:48 Commissioner Austin recuses himself as a result of a financial conflict of interest with ITEMS 2 and 3. Commissioner Austin is allowed to leave the chambers.

29:50 Commissioner Hofman "Going back to the church, as I read the staff report have you determined that church is not a legal use?

A: (Tirandazi) Yes, that determination was made this week.

Q: and a church is allowed in this zone so they could be permitted legally if they were to go through the appropriate ministerial process?

A: That is correct.

30:30 Commissioner Haase "I think we can focus our comments today on the distance separation issue. It seems like that's what's in play for the most part. Although the use of illegal use is also in play. There's a section in the code as to how we measure distance from medical marijuana outlets."

32:50 Jim Bartell representing the appellant in support of the appeal citing "presenting as part of our organized presentation is Gina Austin our land use attorney, and Andy Schaffley our traffic engineer.

34:40 Gina Austin In support of the appeal citing "I want to take the focus away from all the sensitive use issues and talk about what a great project this is…The key here is that staff has determined that we are compliant with all of the municipal code despite all of this that you're hearing all over the place with, 'there is a church, there's potential of these sensitive uses on the other side. We're going to talk about each one of these individually but I want to talk a little bit more about this plan…The operator of this facility is going to be operated by an operator that has an existing facility over on Hancock. That facility has been noted to be one of the best performing and most compliant facilities here in San Diego *[who noted that Gina? Cite your source.]* They have no code enforcement complaints. They have no loitering. They have no issues with the facility at all. This operator will operate this facility in an equally code

compliant manner. With the competition, this Commission had no baseline to compare operations to. Now we do…You're going to get an amazing, code compliant, member of the community.

Most of the appellant objections you're going to hear are from competing applicants who want to get a permit in District 7 and are trying to delay this process. It's important to remember that this distance is measured around constructed barriers. Mr. Schaffley is going to tell you how the CALTRANS easement is absolutely a constructed barrier. Something the Hearing Officer did not take into account.

41:55 Andy Schaffley CEO Urban Systems Associates civil and traffic engineering in support of the appeal citing "the CALTRANS easement is a 100% constructed barrier in this sensitive use interpretation."

46:40 Gina Austin "A couple of closing comments you're likely to hear that the constructed barrier does not exist. You're also likely to hear from somebody who wants all of these delayed to a future date because they also have an application in District 7. Since they will be speaking next I want you to know on Tuesday they were denied by the court to have this hearing stayed and that there's no harm to them even if this body were to grant these two applications today, both this one and the next one. We ask that you overturn the Hearing Officer's decision to deny based on a mistake of fact and inappropriate application of law."

49:18 Louis Wilburn Pastor Gateway Fellowship Church in opposition to appeal citing "…we've been in the community for 25 years. We started at Gompers High School. Went from there to 47th and Market from there to 47th and Federal where we used the fellowship of the Chinese Community Church with Tom Hams and his team for 15 years, then we moved over to Holiday Inn in Mission Valley and now we've been in the current location for almost 4 years. In that time there has not been one complaint or one issue. I personally went to City Hall to pull a business permit, which we were told we did not have to have because we were a State of California corporation. I went to Planning and Zoning. They indicated there was no requirement of permits because of the use because we are in an office space building that has a multiple use code attached to it. We have been formally notified by the City of no violations. A complaint was filed in May, began their investigation. I have reached back to that same individual by email and phone calls. They came back just this past week and had to do another measurement with an additional person, the City did. So the City has never once said that we needed a permit for anything in this structure.

Now I've been in this community for 25 years. We've been ministering here, We've been teaching young kids how to read. We've been reaching out to recovering addicts. CDRS knew we were there and we were a church. One of their agents would sit in our church. Sit on our services. Join us in fellowship. Communicate with us at our men's meeting and like Festus in the bible he was almost saved.

We're at a point right now, we're not going anywhere. We are there. We oppose this movement. We oppose CDRS in this application. We disagree completely with the City and Planning that considers us in violation. We are not in violation. We have never been told we're in violation and when the City issued this Business License I was told by the person issuing this license it had to go to Zoning and be signed off by them. So everything was signed off and was dated back on February 1st of this year but they actually just concluded sending it to us this past month on June 28th. This bothers me in the underhanded approach these folks have taken. To come down here and to tell us that they need to be here is a travesty. They recognized it. They offered us $50K to move. $50K! I took it back to the board and the board said no. We're not in a position to move. We can't afford to move. We're paying our rent. Our landlord is happy. We;ve been good tenants. This young man is my son. *[points to his son standing next to him]* He's 13 years old. This is what it's all about. To change the City for the good.

Now I have nothing against medical marijuana but now you want to change the game at the last minute that seems pretty odd. I'm going to wrap it up so I can turn this over to Pastor Sam Whitley who is also a retired City employee. But we do stand against this. We're not going anywhere folks. We have not been in violation of any City Ordinance. The City issued the building permit. Zoning told me there was nothing required here. We don't have the big money that these guys have to lobby all this and do all these things. We're just a little church trying to do a great work."

54:19 Commissioner Haase "Pastor, I would just, for the record, share with you that, what you're doing at your location will not be impacted negatively by any other thing around you. If you're concerned that our decision today could somehow impact you negatively as far as your land use, this would not be the case."

Pastor Wilburn replies: "I'm concerned because there is a current medical marijuana clinic down at the 15 freeway and El Camino Del Rio South. They have lines out there. You can drive by there anytime of the day and there will be weed smell wafting through the air. This is my concern. We have recovering people who take the bus. They walk right past this place. We have youth in that area. These folks are going to be open from 7:00 am to 9:00 pm seven days a week. There's going to be crowds. There's going to be problems."

55:12 Samuel Whitley, Assistant Pastor, Gateway Christian Fellowship in opposition to the appeal citing "We see a lot on the news about what kind of planet we're going to leave for our children and our grandchildren ask these people to tell you how many people they have gotten off of drugs. We teach these kids how to stay off drugs and alcohol. We didn't steal. They can talk all the pretty talk they want, the problem is they're nothing but a bunch of drug pushers."

58:39 Cynthia Morgan-Reed Land Use Attorney on behalf of Christian Fellowship Church in opposition to the appeal citing "Our appeal is based upon whether or not the City of San Diego is going to be consistent and equitable in its determination of sensitive uses, especially when it applies to churches. There are actually two examples of unpermitted churches that were obstacles to outlets obtaining unconditional use permits. One in favor of our church position and the other that is allegedly in favor of the applicant's position. So this gives you the opportunity to use your discretion and decide which policy directive you're going to go in favor of. The first example, as cited in my letter, is that the Sarang Church, in an April 22, 2015 staff report for the San Diego Health and Wellness MMCC at 5125 Convoy Street, the City determined that the Sarang Church was a valid church. This determination was made despite the fact since October 29, 2014 the City's Code Enforcement Department had been investigating the Sarang Church for ministerial building permits and change of use occupancy requirements. My July 10th letter provided you with the October 29, 2014 Code Enforcement notes substantiating this. Ultimately the Sarang Church relocated because the San Diego Health and Wellness MMCC bought out the Sarang Church and relocated them which allowed that MMCC to be approved by you, the Planning Commission, on June 25, 2015. The applicant had to buy out the church because city staff made the determination that despite lacking the proper permits, the Sarang Church was a valid sensitive use church.

The City's determination was proper. The plain meaning of the City's Municipal Code is clear. San Diego Municipal Code Section 113.0103 finds a church to be 'an institution that people regularly attend to participate in or hold religious services, meetings or other activities. This term does not carry a secular connotation and includes the buildings or other locations in which the religious of any denomination are held.' The Gateway Christian Fellowship Church, as evidenced by the Pastors testimony, clearly fits this definition. Furthermore, the language of the Marijuana Outlet Ordinance is also clear. Section

141.0504(a)(1) states 'Marijuana Outlets shall maintain the following minimum separation between uses as measured between property lines. *[This would be a conflict in the SDMC which requires the sensitive use be measured to the zone boundary not the property line. This is much more relaxed for just the marijana industry.]*

The Ordinance states separation distances must be maintained uses, not properly permitted, and legally validated uses as staff is arguing to you in this CDRS Cooperative staff report. I question to you is a residential home no longer a residential home if the garage addition is unpermitted? Furthermore is a restaurant a valid commercial use if the deck was not properly permitted for that restaurant? They exceeded their occupancy requirements? Or they lack a change in use permit from an industrial to commercial use? No. They are simply non-compliant with the Building Code. They are still a valid use. So long as they comply with the underlying zoning, which our church use does, and are existing and operating, which we are.

1:02:20 In an effort to encourage approval of Marijuana Outlets, staff has recently started urging the Commission to dismiss sensitive use issues like churches that do not have proper building permits. As an example, an MMCC located at 3455 Camino Del Rio South was approved by the Planning Commission on August 25, 2016 *[Project No. 368346]* despite testimony from the World of Life Church *[actually it's the Word of Life Ministries @ 3505 Camino Del Rio South]* located less than 300 feet away. However the facts of that case are very distinguishable from our own. First of all, World of Life moved into their space on June 5, 2016, after the MMCC had already been deemed complete and scheduled for previously scheduled Planning Commission hearings. They offered little to no advance warning to the applicant of their use and it's well known that they had not provided any lease or other evidence of their use. Furthermore testimony provided by that church was that the space had been used by a church for the previous 10-15 years. However no lease or other documentation was offered and City staff did independently verify that prior, there had been no church located in that space that could have put the applicant on notice. *[Morgan-Reed is acting on behalf of DSD here. I'm curious as to why?]*

Juxtapose to our situation, we have been in that space for 4 years *[she can make compelling arguments here but she knows that CDRS is going to be approved. My guess is Gina told her. She has to make these arguments knowing that the topographical barrier situation is going to go against her.]* Gateway Christian Fellowship has provided a copy of their lease and registration with the Secretary of State. *[All meaningless if they beat you on path of travel, which they did]*

The Planning Commission has taken the policy objective seemingly that they want to approve uses despite sensitive church uses. They want to approve applicants. However, Mrs. Austin's letter also cites other examples of church uses that allegedly were not licensed and permitted and one of the examples she cites is simply not correct. Project number 368337 *[another anomaly as this June 25, 2015 ITEM 14 Hearing approval for that project was not part of the recorded afternoon agenda.]* was a project I actually represented and she alleges that was precluded by a church use and 3 non-permitted school uses which is simply not the case.

We ask you to be consistent. We ask you to be equitable. We do allege that we have no written notice from Code Enforcement of any violation despite the fact that that case has been open since May and despite the fact that Ms. Austin allegedly has a lot of knowledge of that Code Enforcement violation based on her June letter, although we have nothing in writing from Code Enforcement that we have been in violation of any Building Permits. Please be equitable and consistent with the church uses. Thank you"

[And while my previous statements have considered the possibility that Morgan-Reed may have been involved in a sham representation with Austin and McElfresh for this client, her statement here would suggest otherwise. Here she is making a not so opaque charge that Gina Austin had inside knowledge from DSD and Code Enforcement that neither she nor her client had received. This could have just been a slow walk by Code Enforcement to not displace the church but have it be ammunition the applicant would have had available in the CUP process should it be necessary. If she wasn't part of the cabal here she got her hands dirty when she represented Magaga in 6220 while Gina Austin represented him at the National Avenue MPF project.]

1:05:24 Jorge Hernandez attorney representing Living Green Cooperative in opposition to the appeal citing "we were the first marijana application to have been submitted to the City in 2014. They were denied because of the distance between their proposed space and something that was called a park. After several appeals, they had to go to court, and received a Writ of Mandate from Judge Taylor on June 23rd that the Planning Commission needs to designate that area as a park which is not designated as a park. They don't have all these issues with a distance from churches that we have here. Furthermore, Living Green would like to object to Mrs. Austin's characterization. Mrs. Austin was their attorney to begin with, this is a clear conflict of interest *[as was her representation of Magagna (6220 Federal) after having represented Geraci (6176 Federal)]* That now she's trying to essentially put other applicants that came in in two years that apparently have problems and put them ahead of line. *[apparently have problems is something Gina knew existed as she represented Geraci and knew the situation that existed at 6176. She 'dropped' Geraci only to represent Magagna with a competing interest for a CUP and somehow that CUP got approved and passed in less than 7 months from start to finish where there were two licensed child care facilities within 1,000 feet of that dispensary.]* This should be issued to Living Green Cooperative first. We don't necessarily want to stop any of the current applications dead, we just want to make sure that the proper order is maintained. Furthermore Judge Taylor did not state there was no harm, Judge Taylor stated that there is no remedy until the Commission actually issues a ruling giving a permit. In essence we will be forced to file another Writ with the court if the Commission continues and actually issues these permits today.

1:06:55 Commissioner Haase: "Sounds like you know what the next step is for you then." *[This is astonishing. Apart from the fact Haase is upset that the Commission's process and decision making has been put into question, he gives an indication that the matter before him has already been decided by telling Hernandez he will be having to file that writ.]*

1:07:14 Jessica McElfresh in opposition to the appeal citing "I'm here on behalf of TIE Incorporated which is a competing applicant and I want to say something else. As someone who has been working on these applications for several years and as you point out should know better, I applaud anyone who tries this. I think it's less difficult than opening an airport but more difficult than getting a shopping center or maybe even a subdivision approved however I do have to agree with what Mrs. Morgan said 'decisions with this should be consistent particularly when we're talking about sensitive uses and the issue here is that in addition to the church *[McElfresh represented Geraci at the 6220 appeal. Why did she not speak against it like she did here? Could it have anything to do with the fact that McElfresh works and shares cases with Austin and Morgan was representing Magagna at the 6220 appeal hearing?]* on the other side of Texas Street you have a parcel containing two schools, a church and a church school. All on one parcel. The corner of one of them is 650 feet, other people are telling me 599 feet. And the idea that a storm drain or landscaped area is sufficient is simply not accurate. There's a 4 way cross stop. People walk in indirect

paths. They walk on the side of the sidewalk near the dispensary. That's not what the change was designed to address, which was freeways, flood controls, and massive barriers. Not a normal pedestrian path that goes along the curb." *[McElfresh, Austin and Morgan all knew how this hearing was going to turn out. With Morgan and McElfresh they had to take their clients' position and make an attempt at representation but the Commission decision had already been made. By providing the tepid argument that the topographical barrier had to be massive McElfresh knew that this would not fly since the Commission's duty that day was to see the CDRS appeal upheld , which is of course what happened. There is too much money being generated by a dispensary of this size and at this location to consider the needs of a church or school to get in the way of that decision.]*

1:09:20 Steve LaMarca Campus Supervisor at The Academy of Our Lady of Peace High School, in opposition to the appeal citing "…using Google distance calculator that location is about 800 feet from our school and you can look down on it and it's right there and while there are topographical barrier arguments being made what many don't realize is that there is a hiking trail down from the school that takes you right to Texas Street. We have general concerns about that type of operation so close to our high school."

1:10:35 Diane Rapp Teacher at Marjorie Cook Elementary in opposition to the appeal citing "…we are located at 2255 Camino Del Rio South and within the 1,000 foot boundary that must separate us from an MMCC."

1:12:11 Susan Wilcox in opposition to the appeal citing "I'd like to support the Hearing Officer's over the pathways to these schools. I've walked the distance and it is definitely less than a 1,000 feet from the dispensary location to the schools and I just wanted to state that fact. Thank you."

Hasse: Well then how did you measure it if you walked it? *[This is important. Hasse is trying to determine if she could have walked it.]*

Wilcox: I used an APP that measured exactly…

Hasse: and what, I mean if this is testimony what did you come up with?

Wilcox: 850 feet.

Hasse: Thank you. *[This is an important exchange. Although short Hasse does not rely on a topographical barrier consideration he actually wants to know if the distance is in dispute. Wilcox's statement proves that she walked it and it's within 1,000 feet so to uphold the appeal and grant the CUP means Haase and the Commision must simply ignore this testimony.]*

1:12:56 Kathleen Lippitt San Diegans for Safe Neighborhoods in opposition to the appeal citing "the applicant is within 1,000 feet of the Marjorie Cook Education Center, a San Diego Unified School. The applicant's assertion that the path of travel between CDRS and the school would be over 1,000 feet requires a pedestrian to unnecessarily cross at the South West and South East intersection corner instead of utilizing the North West and North East intersection which would then create the 850-900 foot path of travel where there is a crosswalk and a light at that corner. Pedestrians regularly use it and it would be the preferred intersection crossing. The topographical and constructed barriers that the applicant claims to impede direct physical access are not impediments at all. The 6 foot fence and the drainage ditch

mentioned are over 30 feet from the corner. This is important because crossing at that North West - North East intersection reduces the path of travel to 850-900 feet instead of the 1,000 feet."

1:14:53 Stan Smith in opposition to the appeal citing "I own 2423 Camino Del Rio South, immediately South of the property. I testified before the Mission Valley Planning Group that while I was not unsupportive of the retail marijuana operation, I proposed to the group that there should be an opportunity to revisit the actual operation with respect to their ability to control the added parking problems and the likely influx of crime as to its negative impact on the roughly 26 office spaces in our little enclave of professional offices in Mission Valley. The Chairman thought that was a good suggestion but the planning department immediately chimed in 'that approach was not possible. Five years is the soonest for any review.' So the issue passed by one vote and even that voter symbolically represented that he was voting against his conscience by putting a hand over his eyes when he voted. I think the Hearing Office in this case did a thorough review in that this applicant did not meet the requirements for the conditional use permit and we ask that you uphold that decision."

1:16:39 Commissioner Haase closes public testimony "There seem to be some questions, there was a very specific provision put into the code regarding distance measuring for marijuana clinics because we're finding some issues with the separation measurements as it was in the municipal code. There may be a perception that we've been inconsistent. I don't believe that to be the case because we've evolved as these projects have come forward to try and become clearer with the application of our zoning ordinance and the regulations that apply. I will say I'm troubled by any testimony that encourages illegal behavior, like jaywalking, jumping fences, things like that. For us to go down that path I think is a great challenge. In fact it's inappropriate. So when we measure distance, and it may not be in there but it ought to be, the Safe Path of Travel if we didn't include that in the Ordinance. *[Now we're changing the language in the Ordinance to suit your decision?]* We're not advocating for people to jay walk or busy frontage roads that don't have a sidewalk or cross private property illegally so to ask us to take that into consideration is entirely inappropriate. I'm done with my soap box."

1:18:05 Commissioner Whalen I have questions for staff;

Q: Why didn't the Hearing Officer see the Path of Travel the way staff did?

A: (Tirandazi) If you look at the rules for measurement, it provides examples, like a freeway or drainage channel and the Hearing Officer didn't find that a fence, drainage ditch or landscaping to be that significant of an impediment.

Q: That was the reason?

A: That was the basis. Correct. That it wasn't massive enough to prevent direct physical access and this is really the first time I believe that a situation like this has come up. I think in the past it was more clear the obstacle was either a freeway…

Whalen: A river.

Tirandazi: So we haven't had this situation in the past.

Whalen: Ok. Because I don't find the applicant's argument unpersuasive. I think it's reasonable to say you're going to be on a sidewalk and that you're not going to go down in the drainage ditch and that you're not going to jump in the freeway right of way. The second question is, it appears to be a difference

of opinion, is there a code enforcement case underway and is it in writing has the opponent been notified? I don't understand, somebody is saying one thing and staff is saying another.

Tirandazi: "My understanding is that they have been advised that there's a code enforcement case that they are in violation. That they would have to apply for a ministerial permit to change occupancy from office to assembly based on the size of the space that they have."

PJ Fitzgerald, DSD: I'd like to add to that also. The code enforcement division of Development Services has conducted an inspection at the church site and determined that building permits are required under the California Building Code to maintain that use legally in that location. Although the use itself is not a use in that zone. And once permits are submitted by the church if they decide to proceed in that matter the review will occur under the building code requirements in place and it will be reviewed as appropriate. a formal notice is currently being drafted however code enforcement staff has been in frequent contact with the church's representative, Mrs. Cynthia Morgan-Reed and she is fully aware of this information to date.

Whalen: So a written notification hasn't been given yet?

Fitzgerald: That is correct. It should be completed very shortly.

1:23:31 Corrine Neuffer , City Attorney, "…just to add to that, staff in interpreting the code has recognized that you need to look at what's legally there versus any use that may be there when determining the separation and the separation requirements."

Whalen: So really the threshold is, is the use legally there whether or not it is what it is…it's there but that doesn't mean it's legally there and it has to be legally there before it can be considered as a factor in the discussion that we're having.

Neuffer: That is correct.

1:24:18 Commissioner Haase I would just observe that we've had issues in the past, unfortunately, between the issuance of a business license or tax certificate, when someone just looks at the zone and it says a church is allowed in the zone. It doesn't mean that the church has been permitted legally. As Tony [Khalil, DSD] mentioned there are many life/safety issues with occupancy that the City has a vested interest in ensuring it's enforced. Especially for assembly uses. I think there are solutions and I would expect there are some really smart architects out there to solve that but unfortunately this is probably not the first or last time that we get sideways between a business tax license and someone thinking that gives them a legal right to operate on a piece of property and that their uses is legal. It's just a complicated system and I don't know if that's ever going to get solved? I hope it does someday but this isn't the first time I've seen this happen. Unfortunately.

1:25:17 Commissioner Peerson Q: How many applications are pending in District 7?

A: (Tirandazi) 7

Q: Have any of them been approved?

A: Not yet.

Q: It's been a flawed process. It's by date the application is complete is that correct?

A: I'm sorry, could you repeat your question?

Q: We've had a process given to us that we can't look at all 7 applications at the same time. It's based on when the application is complete. Kind of a first come first served?

A: That's correct. But they're reviewed. A project that was deemed complete earlier may go to a hearing after another one, it depends on the review issues and applicants response to staff issues and resolution of those issues before a project is ready for a hearing. *[how is that if two projects are deemed complete the one that was deemed complete after the first one might get to a Hearing Officer first? Having been personally burned by this little scheme of yours, I'm not buying what you're selling Firouzeh.]*

Q: And only 4 are permitted?

A: So, 4 are permitted and out of the 7, 3 have been before a Hearing Officer for a decision however a final decision has yet to have been rendered on those 3 at this time. *[What do you mean by that? It is my understanding that the Hearing Officer makes his decision at the hearing. If that's the case maybe you meant to say that 3 have been scheduled for a Hearing Officer or if decisions were made there are still open (there is a 10 day window to file an appeal).*

Q: Ok and are any of those within the distance limitations, can you talk and this is also for the audience that may be here for their first time on this item, there's also another separation requirement based on how close these facilities can be between one another. *[Peerson is not asking this question with her normal, concise, laser focus. She appears off center. Could it have anything to do with the fact that she has a financial interest (Peerson recusal due to a financial conflict @ 2:00:20) in the 6220 Federal CUP which when granted denies me a CUP at 6176?]* Can your staff tell the audience a little bit more about that?

A: Yes, so there are separation requirements of 1000 feet between other marijuana facilities…

Q: And are there other pending applications within 1000 feet of this facility?

A: I know that the 3 that have gone forward are not within 1000 feet of each other.

Q: We've been working on this for nearly 2 years and it's a difficult process…Let's face it, these facilities are tough to site. Most people don't want them in their community…they'll probably never use these facilities…there's a certain stigma with these facilities. We've been hearing that. There have been good players and bad players. I'm not here to decide that or judge that. *[yet you somehow acquired a financial interest in one where it is Gina Austin's and Cynthia Morgan-Reed's client? Where is that financial disclosure? What did you pay for that investment?]* What we are here to do is make a land use decision based on what's appropriate with the least impact to the community. And I really appreciate Gateway Church coming forward and speaking today. I'm not familiar with your church but given what your speakers have discussed you do community work that's good, that serves our public and that's necessary. I think that argument could be made with marijuana facilities and outlets that they do the same. That's what makes this job so difficult and we have to sit here and make findings based on these types of facilities of where is the best location? I would have preferred to see all 7 applications *[so they would have ALL had to have been on appeal? You would have seen all 7 if you were a Hearing Officer!]* Quite frankly I'd like to pick the 4 that are the best. It doesn't work that way. And for those of you that are here for the next item it's important for you to understand that in some ways we work in a vacuum and it goes by what the best

project that's been submitted on time, that's had is application deemed complete and then it becomes a race to the finish line. Is it good planning? No it's not. But I'll get off my soap box because I'm not here to judge a process that we've been given and we've been trying to work with and do our best over two years, but it is flawed. There's been improvements made to it. On a positive note I think the way we do measurements has been greatly improved but you're seeing there's differences of opinion on how we are to measure and what is the way people are truly going to travel to these facilities? I have some follow up questions.

Q: Can the church continue to proceed with its application and stay at its current location.

A: Yes it can. *[I'm not sure what PJ was saying earlier in that it was not a zoned use for churches. It was hard to understand her but that's what it sounded like.]*

1:31:25 Commissioner Peerson refers to a letter they received from McElfresh law. That letter is not in the Planning Commission Report.

1:33:46 Gina Austin discusses the two level parking that allows for those who park in the back get direct access to the second floor and introduces the architect Michael Morton.

1:34:47 Michael Morton in support of the appeal *[Michael Morton did not appear at the Geraci appeal at 6220 as Magagna was a Gina Austin client who had to get approval over the 6176 Federal CUP for which Michael Morton was the architect for the 6176 project but was employed by Geraci.]*

1:39:25 Commissioner Hofman First of all I agree with Commissioner Peerson about this [flawed] process. The second we put limits of 4 per district it was a race to the finish line *[and that caused huge financial losses, a questionable death and a pay to play environment between certain bad actors that work for the City and lawyers that seduced them.]* and I don't know if there is anything we can do about that. So it is what it is and we're kind of stuck with it. *[you're only stuck with it because you may not be aware of what has been going on at DSD before they ever even make it to you. You folks are the face that must carry this boondoggle.]*

I don't think this was probably the best site there could be in this district but I do believe that the applicant did make sufficient arguments to me as far as measuring distance and staff as well. So I can support that it meets that distance requirement.

We talk about consistency. That's been raised a lot. I think this is my 5th one of these but each one is different. We try and be consistent but the circumstances are different between this and number 3 [item] there's just differences. There's similarities but there's differences…I will support it but I have reservations with the whole system and the fact that we can't see them all at once but I think the findings can be made here so I'm in a position where I can support it *[the CUP approval]*

1:41:12 Commissioner Otsuji This is my first one so bear with me. I'd like to get a walk through on path of travel as you enter into the facility and is there a difference between medical and recreational and how is that processed?

A: (Gina Austin) Currently we don't have regulations on recreational yet…one of the things we're considering in the Ordinance is the recreational and medical sales are done out of the same facility that may or may not be in conflict with State law…right now we're only looking at medicinal.

Otsuji: So can it be permitted for recreational when we don't have an Ordinance yet?

A: (Tirandazi) So City Council recently passed an Ordinance to replace Medical Marijuana Consumer Cooperatives with Marijuana Outlets. A Marijuana Outlet is allowed to sell medicinal as well as recreational marijuana. However retail marijuana cannot be sold until the State is ready to issue licenses for that purpose and that is not expected to happen until sometime in 2018. So this Conditional Use Permit will not restrict this applicant from selling retail marijuana however they do need to obtain the necessary State license before they are able to do that. And my understanding is that there is new regulation that perhaps City Attorney Neuffer can chime in regarding recent state law insofar as state licenses?

1:44:15 Corinne Neuffer The state licenses will begin at the beginning of next year. At that time the licensees will have to decide which license they want to get either recreational or medical. It's not in front of us now but it is in the process.

1:44:56 Michael Morton gives a very detailed description of the floor plan, the safety features, product storage, security, ADA compliance, public and private areas, etc.

1:48:55 Commissioner Peerson will there be any signage on this building?

A (Austin) The signage will be code compliant.

Q: It will be discreet and not be a freeway billboard.

A: It will be discreet.

1:51:55 Commissioner Whalen I'll be brief. Could the architect come up real quick?

Q: The Hancock place was expanded from the original. What were the lessons learned there that you are applying here?

A: (Morton) Getting back to the sign…*[Gina takes the microphone away from Morton]*

A: (Austin) I think that question is better answered by myself. What we learned about the Hancock location originally was that the 800 sq-ft was just too small. That there was insufficient space inside of the location to service the needs of our patients and that we needed additional space to do that. *[Expanding the store was your plan from the very start. You did exactly what the opposition said you were going to do.]* This location because of its 4K sq-ft helps us meet that. We learned to, as patients come in, we've learned a lot about how to make sure that they walk off the site, give them information to make sure that they're leaving the site, discreetly, safely, not disturbing the neighbors, we have lots of neighbors in the Hancock area and so those were some of the things that we've learned and taken with us to this next location?

[Nice finish Gina but let's expand on your answer. Let's highlight some of the other things you learned from your other licenses;

You've learned how to treat these dispensaries as for-profits until such time that you are caught and exposed in a class action lawsuit. But that wasn't so bad because you had Judge Wohlfiel in your back pocket and he issued a judgment to settle the matter without addressing the core issue of you, your client and your shell operating companies acting as a for-profit enterprise.

You've learned how if a strawman licensee, Michael "Biker" Sherlock refuses to part with his ownership interests he will become so distraught he will commit suicide and his interests will bypass his widow and children and go to those who had the most to gain from his death, his shady business partners. Sorry, not buying it.

You've learned that through the use of the strawman practice you could keep ownership interests of above 20% undisclosed to the licensing authorities because those owners would not have qualified as they had been previously sanctioned for having run unlicensed dispensaries.

You've learned how to "game the system" (2:21:35) by controlling DSD through certain bad actors (Fitzgerald, Tirandazi and Gutierrez) so that the process i.e. the control of completed applications, would be closely managed by the bad actors so that the Hearing Officer would get the preferred application, make a decision and then, if necessary go through the appeal process with, when required, strawman appellants to control that narrative.

You've learned how to take those strawman and turn them against each other, either through conspiracy to commit murder activities or through long protracted litigation that pit the conspirators against one another, in which they acknowledge in their complaint, that they engage in oral contracts as a way to prevent disclosure @ 5:24-7:9 and subvert the licensing requirements.

You've learned how to avoid subpoenas of material witnesses who would expose these acts by simply ignoring them and squireling your client, in this case through a corrupt attorney accomplice, and acknowledging in an email to that witness that, with the trial over, she is now free to come out of hiding and to not worry about her attorney fees. They've been covered.

You've learned how to artfully manage the Courts, Receiverships, City Council and the Planning Commission as a body and by some Commissioners individually (see Commissioner Peerson's recusal on 6220 Federal for a financial conflict of interest @ 2:00:21) and another recusal on Stone Age at 3456 Camino Del Rio North @ 2:08:42) by, among other things, helping to create Path of Travel measurements and sensitive use language that only benefits the licensed cannabis cabal in San Diego. You've learned to lie under oath.

You've learned how to destroy lives. You've learned how to capitalize on a BAR card that has gained you the surface legitimacy to create these conditions all while knowingly breaking laws that the courts, in some cases, have turned a blind eye to and has only increased in numbers as more evidence of this fraud comes to light.

What you've taught us is that we must be constantly vigilant of the action that those who have been given certain authorities to represent our interests will not engage in self-enrichment practices that, unless we're paying attention, become the map that directs our lives. If there has been a gift in all of this adult-use cannabis licensing, it's been that.]

1:53:38 Commissioner Haase and with that we will go ahead and vote.

COMMISSION ACTION:

COMMISSIONER PEERSON MADE THE MOTION TO UPHOLD THE APPEAL, REVERSE THE HEARING OFFICER'S DECISION, AND APPROVE CONDITIONAL USE PERMIT NO. 1810030. [currently showing revoked-imposed] Seconded by Commissioner Hofman. The motion passed by a vote of 6-0-1 with

Commissioners Haase, Hofman, Granowitz, Peerson, Otsuji and Whalen voting yea and with Commissioner Austin recusing.

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2017/07/20: ITEM 3: STONE AGE FARMACY Appeal Hearing Officer's 2017/05/24 ITEM 5 decision

ITEM 5 STAFF: Firouzeh Tirandazi

5 speaker slips submitted in favor – Gina Austin, Allen Austin, Michael Blazevich, Richard Andrews and Brittany Cohen

9 speaker slips submitted in opposition – Scott Chipman, Judy Strang, Carol Green, Clifton Williams, Lynne Alipio, Tim Tuter, Jay Garrity, Stephanie Stein and Cathryn Rambo

HEARING OFFICER ITEM 5 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-17-030. RESOLUTION NO. HO-7016

DSD CONTACT: Firouzeh Tirandazi

PROJECT NUMBER: 510523

DSD TO HEARING OFFICER RECOMMENDATION: HO-17-030 "APPROVE Conditional Use Permit No. 1797393"

HEARING OFFICER: Duke Fernandez

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-15-059 "Deny the appeals and Approve Conditional Use Permit No. 1797393."

CEQA DETERMINATION: Page 1, "The project was determined to be exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15303, New Construction or Conversion of Small Structures. This project is not pending an appeal of the environmental determination. The environmental exemption determination for this project was made on March 8, 2017 and the opportunity to appeal that determination ended March 22, 2017."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: No NORA Public Circulation Record was found. A Notice of Exemption was filed with the County Recorder @ Page 36.

APPELLANT(S): San Diego Unified School District, Latham and Watkins, Mission Valley Planning Group

Issues On Appeal

Page 1: Staff recommends approval

Page 43: Mission Valley Planning Group Minutes

Page 45: Ownership Disclosure Statement

Page 50: Appeal Application by San Diego Unified School District

Page 51: Appeal Application by Audeo Charter Schools

Page 52: Christopher Garrett, Esq. of Latham and Watkins representing Audeo Charter Schools letter to the City of San Diego citing, among other things, the CEQA exempt determination was in error.

Page 83: Mission Valley Planning Group Minutes

Page 134: Clifton Williams, Esq. and James Arnon, Land Use Specialist of Latham and Watkins letter to the Hearing Officer

Page 147: San Diego Unified Letter to the Hearing Officer with cc to Firouzeh Tirandazi

Page 148: Appeal Application by Dottie Surdi of Mission Valley Planning Group

OWNER(S): KBC Capital LLC, William Gaskins, Managing Member

APPLICANT(S): Michael Blazevich

CUP NUMBER: 1797393

CUP HOLDER:

SITE DEVELOPMENT PERMIT NUMBER:

STATUS: Created - Denied on 2017/07/20

CITY COUNCIL DISTRICT: 7

PLAN AREA: Mission Valley

STAFF: Firouzeh Tirandazi

Speaker slips in favor of the project submitted by Gina Austin, Marcela Escobar-Eck, Alan Austin, Jeffry Leitch, Marguerite Leitch, Shauna Paniagua, Courtney Stein, Helina Beck, Hayla Beck, Michael Blazerich, Tami Ratliffe, Tami Leetham, Richard Andrews, Jeannette Temple and Brittany Cohen.

Speaker slips in opposition to the project submitted by Wade Aschbrenner, Spencer Andrews, Lynne Alipio, Jim Arnone, Wes Jones, Clif Williams, Jennifer Rey, Gabriel Lopez, Michael Hanna, Stephanie Stall, Geoff Stample, Amanda Orozco, Arayna Sheard, Jay Garrity, Michelle Anderson, Arline McGowan, Rachel Thomas, Aaron Smith, Alissa Tuter, Veronica Ballman, Alina Nuno, Tom Davis, Mary Bixby, Jackie Robertson, Cathryn Rambo, Tim Tuter, Lee Dulgeroff, Cahn Tran, Douglas Peterson, Delawie, Jorge Hernandez, Miles Durfee, Kathleen Lippitt, Mahnudal

2:08:30 Commissioner Haase opens Item No 3.

2:08:42 Commissioner Peerson recuses due to financial conflict of interests.

COMMISSION ACTION:

COMMISSIONER HOFMAN MADE THE MOTION TO APPROVE THE APPEALS AND DENY CONDITIONAL USE PERMIT NO. 1797393. Seconded by Commissioner Whalen. The motion passed by a vote of 4-0-3 with Commissioners Haase, Hofman, Granowitz, and Whalen voting yea and with Commissioners Austin, Peerson and Otsuji recusing.

2017/08/31 Minutes

ANNOUNCEMENTS/PUBLIC COMMENT

7:40: Scott Chipman commented on Pot Shops/Planning Commissioners connections. "Commissioner Anthony Wagner is making a S...load of money with the pot businesses he represents." We're going to file a complaint with the Grand Jury to investigate the connections between DSD and the "pot industry."

9:47: Kathleen Lippitt of San Diegans for Safe Neighborhoods commented on MJ v. Tobacco.

11.50: Charles Alexander commented on soliciting our youth. Very powerful comments about how someone who owns 4 licensed dispensaries but has an injunction against him can be licensed. Offering free pot to those who pass by.

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2017/08/31: **ITEM–4: SDMM CUP** Appeal Hearing Officer's 2017/06/28 ITEM 6 decision

ITEM 6 STAFF: Firouzeh Tirandazi

1 speaker slip submitted in favor – Sean St. Peter

6 speaker slips submitted in opposition – Carol Green, Michael Morton, Judy Strang, Barbara Gordon, Kathy Lippit and Susan Wilcox

HEARING OFFICER ITEM 6 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-17-045. RESOLUTION NO. HO-7028

DSD CONTACT: Firouzeh Tirandazi

PROJECT NUMBER: 523179

DSD TO HEARING OFFICER RECOMMENDATION: HO-17-045 "APPROVE Conditional Use Permit No. 1846240 and Site Development Permit No. 1952275."

HEARING OFFICER: Duke Fernandez

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-17-070 "Deny the appeals and uphold the decision of the Hearing Officer to Approve Conditional Use Permit No. 1846240 and Site Development Permit No. 1952272."

CEQA DETERMINATION: Page 1, The project was determined to be exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15303, New Construction or Conversion of Small Structures. This project is not pending an appeal of the environmental determination. The environmental exemption determination for this project was made on April 21, 2017 and the opportunity to appeal that determination ended May 5, 2017."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: No NORA Public Circulation Record was found. A Notice of Exemption was filed with the County Recorder @ Page 32.

APPELLANT(S): Susan Wilcox, and Michael Morton

Issues On Appeal

Page 40: Mission Valley Planning Group Minutes

Page 43: Ownership Disclosure Statement

Page 53: Appeal Application by Susan Wilcox citing, among other things, this had been the previous location of an illegal pot shop.

Page 54: Appeal Application by Michael Morton. Michael Morton, is an architect with Marengo Morton. He is a strawman appellant in this action. I spoke with him on 07/23/20. He did not ask who I was. Had he known it was me he would have hung up because he is the architect of record for my 6176 Federal Blvd., project that Geraci slow walked so the 6220 project could get approved first. The number on the appeal application, 619.857.8144 is Morton's. When I asked him what his interests were in the property, the project or why he appealed it (I told him it went to parking), he could not answer.

OWNER(S): Mission Valley South LTD.

APPLICANT(S): Sean St. Peter

CUP NUMBER: 1846240

CUP HOLDER: Sen St. Peter

SITE DEVELOPMENT PERMIT NUMBER: 1952272

STATUS: Issued 2017/10/02

CITY COUNCIL DISTRICT: 7

PLAN AREA: Mission Valley

STAFF: Firouzeh Tirandazi

Speaker slips in favor of the project submitted Anthony Bettencourt, Gina Austin, Tara St. Peter, Kellsi Booth, Michael Morton and Sean St. Peter. Speaker slips in opposition to the project submitted by Susan Wilcox, Kathleen Lippitt, Peggy Walker, Barbara Gordon, Judi Strang, Jorge Hernandez, Scott Chipman, Anthony Scimeca and Carol Green.

25:36 Commissioner Haase opens up Item 4

25:50 Firouzeh Tirandazi, DSD and Tanya Mecharian, LDR Planning presentation

30:55 Site was previously an illegal pot shop and a severe problem to adjoining businesses. Past behavior is an indicator of future problems. "…this was referred to the City Attorney; they were forced to cease operations and a Code Enforcement case was closed."

41:44 Anthony Bettencourt representing SDMM in opposition to the appeals citing "the Wilcox appeal is based on new evidence that an unlicensed dispensary operated at the facility at issue back in 2010 and used that new evidence in furtherance of finding that the Hearing Officer should be unsupported. The municipal code holds a separate standard for a new evidence appeal. New evidence is only able to be submitted if that was not evidence available to the appellant at the time of the hearing. The Wilcox appeal has not shown why the 2010 unlicensed activity was not available for the Hearing Officer as a preliminary

issue it should not be heard.n It should be denied. But as a substantive issue, the staff is correct. A 2010 unlicensed dispensary, 4 years before the MMCC application process is in effect, should not slow down or stop the current applicant.

As to the second appeal, the Morton appeal, this is an appeal of gamesmanship. Essentially, this appeal clasps on to a typographical error that appears in the Officers Report and then attacks the reasoning thereon.

53:27 Susan Wilcox Appellant in support of the appeal citing "the DSD staff report has neglected some very important information that demonstrates disregard for the health, safety and welfare of the Mission Valley Planning Group and Planning Community. The report states the first complaint was filed in 2010. It took a stipulated and 4 years, until 2014, to close this illegal pot shop…We know the same landlord that rented to an illegal pot shop is the same landlord for this applicant. The applicant Sean St. Peter was related to that illegal pot shop, dodging closure for over 4 years."

58:40 Judi Strang in support of the appeal citing"that the landlord and applicant had been operating an unlicensed pot shop."

59:55 Jorge Hernandez in support of the appeal citing "this body has ignored a court issued Writ and the City Attorney's office in our negotiations. If the Commission were to award this CUP today we would have no choice but to take this back before the courts."

1:01:20 Michael Morton

COMMISSION ACTION:

MOTION BY COMMISSIONER HOFMAN TO DENY THE APPEALS AND UPHOLD THE DECISION OF THE HEARING OFFICER TO APPROVE CONDITIONAL USE PERMIT NO. 1846240 AND SITE DEVELOPMENT PERMIT NO. 1952272. Seconded by Commissioner Granowitz. The motion passed by a vote of 7-0 with Commissioners Haase, Hofman, Austin, Granowitz, Peerson, Otsuji and Whalen voting yea.

2017/12/14 Minutes

2017/12/14: ITEM 7: RECONSIDERATION OF THE PLANNING COMMISSION'S ORIGINAL DECISION OF AUGUST 11, 2016, ITEM 7, REGARDING THE APPEAL OF **LIVING GREEN COOP MMCC** -

Original Project Files and Appeal information can be seen earlier in the Steering Doc for the 2015/06/25 Planning Commission hearing on ITEM 10. (Control F the Project Number for easy access.)

PROJECT NUMBER: 379530

Speaker slips in favor of the item were submitted by Robert Selna.

Speaker slips in opposition to the item submitted by Scott Chipman and Judith Strang.

1:29:10 Commissioner Haase opens Item 7 "We actually have some housekeeping on this. Item 7 is to address Judge Taylor's remand on the decision of the Planning Commission back to us. We have speaker slips before but the process will be to suspend our permanent rules and then to vote for a reconsideration. When we get past those two issues, assuming we do, we'll then go to Item 8 which is the project itself and respond to the comments from the court."

1:30:27 Robert Selna, Land Use Attorney for Living Green, in support of the reconsideration.

1:31:34 Scott Chipman in opposition to the reconsideration citing "distance separations were included for a reason. We shouldn't be writing regulations here and if you do vote to reconsider we would want the item to be renoticed not heard on the same day."

1:32:17 Judi Strang in opposition to the reconsideration citing " our support of the City's original denial decision and a court decision that supports the court's ruling to uphold the original decision to deny."

COMMISSION ACTION: MOTION #1: MOTION BY COMMISSIONER HOFMAN TO SUSPEND THE PERMANENT RULES OF THE PLANNING COMMISSION. Seconded by Commissioner Granowitz. Seconded by Commissioner Granowitz. The motion passed by a vote of 6-0-1 with Commissioners Haase, Hofman, Granowitz, Peerson, Otsuji and Whalen voting yea and with Commissioner Austin absent.

MOTION #2: MOTION BY COMMISSIONER HOFMAN TO RECONSIDER THIS ITEM PURSUANT TO A COURT JUDGMENT. Seconded by Commissioner Whalen. The motion passed by a vote of 6-0-1 with Commissioners Haase, Hofman, Granowitz, Peerson, Otsuji and Whalen voting yea and with Commissioner Austin absent.

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2017/12/14: ITEM 8: LIVING GREEN COOP MMCC

Original Project Files and Appeal information can be seen earlier in the Steering Doc for the 2015/06/25 Planning Commission hearing on ITEM 10. (Control F the Project Number for easy access.)

PROJECT NUMBER: 379530

Speaker slips in favor of the project were submitted by Robert Selna, Darren Moore, Heidi Whitman, Sheldan Chitwood, Kevin Carlin, Bobby Bruno, Cary Weaver, Gary Faahs, Brad Brown, Joseph Ebner, Joseph Ebner Sr., Jonathan Babayer, Anthony Scimeca and Omar Isaias.

Speaker slips in opposition to the project submitted by Kathleen Lippitt, Scott Chipman, Judith Strang, Barbara Gordon and Chris Eddy.

1:34:55 Commissioner Haase opens up Item 8. I'm going to ask the City Attorney to comment on the noticing for the Brown Act on that?

A: (Shannon Thomas, City Attorney) I believe that staff had all of the noticing that would normally been done for the Planning Commission to hear a Process 3 appeal but I will differ to the Project Manager on that.

A: (Tirandazi, DSD-PM) That is correct. We received an updated noticing package from the applicant and the project was unnoticed per the municipal code. *[Where are the SAR numbers to support that?]*

COMMISSION ACTION:

MOTION BY COMMISSIONER HOFMAN APPROVING THE STAFF'S RECOMMENDATIONS TO DENY THE APPEALS AND UPHOLD THE DECISION OF THE HEARING OFFICER TO DENY CONDITIONAL USE PERMIT NO. 1333320, WITH MODIFICATIONS TO THE RESOLUTION AND FINDING B. Seconded by Commissioner

Whalen. The motion passed by a vote of 6-0-1 with Commissioners Haase, Hofman, Granowitz, Peerson, Otsuji and Whalen voting yea and with Commissioner Austin absent.

2018/04/19 Minutes

2018/04/19 ITEM–6: MISSION CENTER COURT MARIJUANA OUTLET Appeal Hearing Officer's 2018/03/07 ITEM 9 decision

ITEM 9 STAFF: Cherlyn Cac

6 speaker slips submitted in favor – Marcela Escobar Eck, Phil Rath, Khoa Nguyen, Robin Madaffer, Rakesh Goyal and Abhay Schweitzer

5 speaker slips submitted in opposition – Kathleen Lippitt, Barbara Gordon, Judi Strang, Mehredad Banki and Anthony Scimeca

HEARING OFFICER ITEM 9 ACTION: PROJECT DENIED. Report NO. HO-18-020. RESOLUTION NO. HO-7085

DSD CONTACT: Cherlyn Cac

PROJECT NUMBER: 542366

DSD TO HEARING OFFICER RECOMMENDATION: HO-18-020 HEARING OFFICER: Raynard Abalos was the HO for all the ITEMS except ITEM 6. Duke Fernandez heard ITEM 6.

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-18-028 "Grant the appeal, reverse the Hearing Officer's decision, and approve Conditional Use Permit No. 1911475." PC-18-028 MEMO

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) on November 17, 2017 under CEQA Guidelines Section 15303 (New Construction or Conversion of Small Structures). An appeal of the CEQA determination was previously made and withdrawn on January 26, 2018. The scope of the subject hearing only includes the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24007219 @ Pg 70

A Notice of Exemption was filed with the County Recorder @ Page 42. *[this shows that an NOE and SAP can and should be filed on the same project but as can be seen by a full review of all the projects, there are a number of projects where an NOE was filed and we have no evidence of an SAP having been filed.]*

APPELLANT(S): Mission Properties, LLC., and

Issues On Appeal

Page 68: Appeal Application by Mission Properties

Page 84: Ownership Disclosure Statement

OWNER(S): Mission Properties LLC

APPLICANT(S): Rakesh Goyal

CUP NUMBER: 1911475

CUP HOLDER: Rakesh Goyal

SITE DEVELOPMENT PERMIT NUMBER:

STATUS: Issued 2019/02/08

CITY COUNCIL DISTRICT: 7

PLAN AREA: Mission Valley

STAFF: Cherlyn Cac

Speaker slips in favor of the project submitted by Marcela Escobar-Eck, Heather Riley, Phil Rath, Suzanne Varco, Rakesh Goyal, Khoa Nguyen, Abhay Schweitzer, Vasanti Peiris, John Hamby, Andrey Shmykov, Jolia Trifomov, Max Tsybrivsky, Carlos Gonzalez and Gina Austin.

Speaker slips in opposition to the project submitted by Mehrdad Banki Ermen Hameed, Sherwin Sepehri, Aaron Kruse, Kahtleen Lippitt, Kelly McCormick, Niloofar Sepehri, Evelyn Heidelberg, Joshua Hamlin, Mark Woodard, Jason Griffith, Cody Campbell, Brenda Osmena, John Osmena, Rodney Allen, Danielle Levin, Travis Knapp, Joe Esposito and Gracie Morgan.

1:15:14 Commissioner Haase opens ITEM 6 (AUDIO LINK ONLY)

1:16:02 Cherlyn Cac, DSD Project Mgr. Presentation

1:21:30 Commissioner Granowitz "I would ask the City Attorney to clarify the separation criteria. I was just incredibly confused by what was allowed in and outside these barriers."

1:22:06 Corinne Neuffer, City Attorney "I think before I comment on that it would be better to hear public testimony, maybe they can articulate their arguments and then we can go from there."

1:23:46 Marcela Escobar-Eck the Atlantis Group representing Rakesh Goyale in support of the appeal citing "The Hearing Officer did not properly consider the constructed barriers…we have 6 constructed barriers that should have been considered…"

1:26:42 Heather Riley Esq. @ Allen Matkins in support of the appeal citing "…as explained in my letter in response to the letter submitted by TIE, a competing marijuana outlet applicant, they would like you to change how the City looks at premises…we ask that you maintain that consistency."'

1:29:03 Phil Rath Rath Miller Public Affairs representing the applicant and in support of the appeal citing "We have multiple sensitive use topics around this permit today, Marcelo dealt with two, a church and a school, they need to be 1,000 feet away and we've proven that by the alternative path of travel. There are also minor-oriented facilities…Mrs Heidelberg's [opposition] letter expressly asks you to change the method which you use to evaluate minor-oriented facilities in a multi-tenant building…"

1:35:00 Gina Austin in support of the appeal citing "I'm not representing this particular applicant but I do represent cannabis applicants up and down the State as well as I was the Land Use Attorney representing a previous approval on July 20th by this Commission of 2425 Camino Del Rio South. In that

application that project was approved and included a path of travel measurement analysis around the constructed barrier that is very similar to one, or several of the constructed barriers in this instance.

My clients who are business developers, cannabis company owners, applicants in a variety of different instances are looking to this Commission to provide consistency in what they're applying for so that they can have their business expectations met and would like the Commision and would support the idea of the constructed barrier analysis remaining consistent, as it has in the past, where a constructed barrier can be and is a fence, a drainage channel and other similar uses."

1:36:57 Evelyn Heidelberg, Esq. at CGS3 Law on behalf of TIE Incorporated in opposition to the appeal citing " two minor-oriented facilities…I sent a letter to the commission yesterday…7840 Mission Center Court…we also believe that the Hearing Officer correctly found that the Audeo Charter School is within 1,000 feet of the project and that there are no constructed barriers, as that term is used,…between the project site and the school…Mrs. Riley's letter states that Mr. Goyal could have reasonably relied on a 3rd party's identification of those uses within 1,000 feet, even though he was under contract to buy the building, which means he had access to all the tenant names. Title Pro *[Title Pro was used for the 6332 Federal Blvd project in Lemon Grove and they didn't identify the 2 licensed child-care facilities that operated within 1,000 feet of that application either]* identified that the use in Suite 100 was Danielle Burns and that use was a store's retail outlet. However the lease that was provided for that space talked about the agreed use being therapy services and exercises for special needs/autism. So that does not equate in any way shape or form with stores retail outlet. The applicant/appellant certainly knew that from looking at the lease that it wasn't a store retail outlet.

Now I would like to address squarely the principal issue before you today with respect to the minor-oriented facility. That is the definition of Premises under the municipal code…what we have here is appellant's failure to disclose [Milestone] pediatric therapy use in the adjacent suite and we have a City staff error in construing the definition of Premises as it's used in the definition of a minor-oriented facility.

It's clear from the written record before you and the oral testimony you've heard today that the applicant and City staff are equating Premises with an entire structure. While continuing to do that might be consistent and predictable it's wrong as a matter of law and I'm going to explain why. Premises, as used in this string of definitions, that leads to what a minor-oriented facility is, Premises is an area of land with its structures that because of the unity of use is regarded as the smallest conveyable unit. So Staff's assumption that a multi-unit structure is a single premise is incorrect for two reasons. First there is no unity of use between the area of land with its structures at 7850 Mission Center Court and secondly, the smallest conveyable unit at that address is not the entire structure but rather an individual leased office suite…there is a multiplicity of different uses within this structure..within the appellants 1,000 foot radius spreadsheet shows an insurance agency in Suite 103, diamond and jewelry wholesale in Suite 104, law firms in 200 and 209, and Suite 100 occupied by Milestone Pediatric Therapy…as a matter of fundamental real estate law principals, a landlord conveys a leasehold interest to a tenant. Miller and Star, the foremost authority on real estate law in the State of California, says a lease is 'a conveyance of a state in real property.' The proper interpretation of Premises is a leasehold because the smallest conveyable unit at 7850 Mission Center Court is not the entire structure but rather each of the leasehold interests within the structure. I'd like to point out that even though Mr. Rath said that the Commission has issued permits, contrary to the definition that I'm offering, but in fact the issue has never been presented to the Commission *[It is for this very reason we saw a full court press with Gina Austin and friends to convince*

the Planning Commission that this definition of Premises, for the purposes of measuring cannabis related sensitive issues had to be approved today. The appeal had to be approved and the Hearing Officer's decision to deny the CUP be overturned, which is exactly what happened.] the issue was presented to staff and staff dealt with it by using the incorrect interpretation of Premises and then it was never brought up to the Commission in an appeal in any fashion. So this is an issue of first impression for you, the Planning Commission. Consistency and predictability are important in interpreting the Land Development Code but so is accuracy and fidelity to the law.

Milestone Pediatric Therapy is 28 feet from the proposed project's door and will be moving out of that space at the end of the year but, as can be seen in my April 18th letter to the Commission, there is a second minor-oriented facility within 1,000 feet and that is the Music Therapy Center of California which is in 7840 Mission Center Court which is 140 linear feet from 7850 Mission Center Court…The principal clientele of the Music Center are youth under the age of 18 making it a minor-oriented facility.

The Commission's consideration in December 2015 of the Sustainable Therapeutics MMCC which was within 1,000 feet of Cali-Coast Elite and there, the staff report said 'Cali-Coast Elite specializes in coaching of competitive cheer and exhibition teams but also offers tutoring packages, tumbling classes and birthday parties to mostly persons under the age of 18.' Staff recommended denial. The Hearing Officer supported that. What changed this for the Commission was the Commission put the burden on the applicant to prove that what was apparently a minor-oriented facility was not. Based on that precedent it's our position that the City ought to be putting that burden on the applicant here to show that the Music Center of California's clientele, that less than 50% of it, consists of youth or other minors."

1:52:27 Mehrdad Banki in opposition to the appeal citing "SDMC Chapter 4 Article 2 Division 13 Marijuana Regulations; It is the intent of the Council to adopt regulations consistent with California Health and Safety Code Section to protect public health, safety and welfare. Chapter 4 Article 2 Division 15 Marijuana Outlets; It is the intent of this division to promote and protect the public health, safety and welfare of the citizens of San Diego by allowing, but strictly regulating the retail sale of marijuana at marijuana outlets." Milestone Pediatric Therapy is an active child-care treatment facility located in the same building…The City of San Diego initially failed to assert the existence of this pediatric center during the permitting process, even defending the Marijuana Outlet on March 7, 2018. Granting a permit to the Marijuana Outlet today knowing the current status of the children care and therapy facility will undermine legislative intent…On my behalf a lawyer has been retained by a group of business owners and concerned citizens to bring action against the City and the staff if this permit is granted."

1:55:07 Sherwin Sepehri in opposition to the appeal citing "one of the barriers that is being cited was just up to my stomach and easily crossed and is not a true barrier to the 1,000 foot exclusion for a pot shop."

1:56:15 Aaron Kruse in opposition to the appeal citing sensitive use.

1:57:10 Kathleen Lippitt in opposition to the appeal citing "..regarding constructive barriers, the Hearing Officer actually took the trouble to visit this site himself to determine whether or not the asserted barriers were in fact true barriers. It was his expertise, he is hired by the City and paid by the City to be an expert and I would contend that the marijuana projects assertions have to be somewhat biased, to say the least, and I doubt that the Hearing Officer had a bias when he visited so I would respectfully request that his finds be validated,"

1:58:24 Kelly McCormick in opposition to the appeal citing "I visited there yesterday and it's just a constant stream of mothers and children going in and out. There are a lot of children served by these pediatric facilities, there's limited parking, it's a dense area with several buildings on the cul de sac and there is a lot of traffic as well. It's an inappropriate location for this facility."

1:59:17 Niloofar Sepehri in opposition to the appeal

1:59:45 Commissioner Whalen I find myself confused and I have a couple of questions for staff and especially the City Attorney.

Q: First of all would you comment on whether a leasehold the same as Premises is not? And then I'll just lay the second question out there for whoever wants to answer it. Addressing the minor-oriented businesses, are they as they say they are, adjacent?

A: (Neuffer) With respect to your first question regarding Premises. Premises is defined as an area of land with its structures that because of its unity of use is regarded as the smallest conveyable unit. You have to take that whole definition. You can't take parts of the definition. With respect to whether a leasehold is considered a Premise under this definition, it is not. That's how staff has been interpreting when looking at these items.

Q: Since this appears to be heading towards litigation lets get on the record a little bit more of why you say what you say?

A: Why I say this is because within the definition its an area of land with its structures and then when you get to the conveyable portion you're talking about because of its unity of use. It's not just whatever is conveyable, it's based upon the unity of use and then the first part with respect to an area of land with its structures.

Q: The unity of use here is a building that can be leased out for multiple tenants?

A: That is correct.

Q: Ok in contrast to let's say my home, which has 3 buildings on the property but it's all a residential single family lot, even though I have 3 buildings on it, the unity of use is that it's a residential lot. I think I understand what you're saying,

A: Yes.

Q: And to put it another way, just to pound the nail in this coffin, it doesn't matter how many tenants you have in a single rentable building, it's the building that represents the unity of use.

A: That is correct. That is how staff has been interpreting it and using that definition. *[she has stated twice now, that this is a staff interpretation not necessarily the proper legal interpretation.]*

Q: Thank you. And then as to the minor-oriented businesses?

A: John Fischer with the Development Services Department and we would like the LDR-Planner Tonya Morshereran to address your question. She's the technical expert.

A: I'm not Tonya I'm Raynard Ablos DSD just to answer that question regarding the 3 uses identified by Mrs. Heidelberg and those addressed by Mr. Rath and the applicant's, those 3 uses are not considered

minor-oriented facilities strictly because of the Primary Use determination on the Premises. The question relates back to Primary Use and Premises. Does that make sense?

Q: It does. Thank you. Once the definition of Premises is established the rest follows is really the way to put it.

A: (2:03:23 Neuffer) That is correct. Minor-oriented facility has a list of facilities that we would consider minor-oriented and then it has kind of a general, or other establishment, where the Primary Use is devoted to people under the age of 18. So there are a list of facilities including children's museums, children's theater, after school programs and then where it says 'or other establishment where the primary use is devoted to people under the age of 18.

Q: Thank you. That was very exhaustive. I appreciate it.

2:04:14 Commissioner Haase In reviewing some of this, the eminent domain cases talk a lot about unity of use, unity of ownership for determining value. Some of the items that come up are basically authority with control. An individual lessee if we agree to that, does not have control of the building. They have to rely upon a roof structure, services, everything else in the building, it's not an independent unit. So to go down the path to say a leasehold be used for minor-oriented facilities for this determination, how small could you go on a leasehold? You could go to 100 feet or something. I think there are some problems with that enforcement without having some structure to what does the unity issue mean? Looking at some of the other areas of our Land Use world..the building is really what defines where the control comes from not the individual leasehold.

2:05:40 Commissioner Hofman Thank you for the definition of Premise. That was one of my questions and you put that to bed pretty well. I did want to talk about the barriers. That's the other issue. Before I get there though there's an argument made about disclosure. I think they did it the proper way. I think that's a weak argument. But the barriers has always been troubling for me because of a definition. There really is no real clear definition. For example, let's say we have a park, a children's park, within 500 feet of a proposed dispensary but there are residents in the way to get to that park. You have to walk down the street around the block to get to that park and you're walking over 1,000 feet. But I believe how we have always measured that park is how the crow flies. You can't walk through people's backyard, climb the fence to get to the park, you have to walk that distance but still it would be within that limit. So there's a gray area there. What really defines a natural or constructed barrier. Now in my mind what we used to talk about, early on when this first came up was freeway barriers or big drainage ditches. Here we are talking about walls and truly they're barriers but they're no different than a residential subdivision would be a barrier to get over to that park. So it's not clear to me and I think as it goes on maybe it needs to be better defined and maybe we just need more projects to kind of form our interpretation. I'd leave it up to the other Commissioners to what they think about that, but in spite of that it's not enough for me to not support the project. I've read all these materials. It's...there's too much and I totally agree with Commissioner Whalen that, please don't give it to us at the last minute. I know you're gearing up for legal battle but it's really a headache for us. But I'll leave it there... I'm ok with it but I think going down the road I really would like to hone in on what a barrier is. *[That honing in is integral to the decision you have to make today.]*

2:08:28 Commissioner Granowitz I agree with my colleagues that this is really hard to understand. We need the code that is being used in these decisions. I really need the definition for barriers. We need

more discussion as to what is considered a safe path of access…as we see these things, honestly, every single one of these is going to get appealed, they're going to all end up in court, this isn't going away, and I find it incredibly frustrating because what is is really not what is before us…I just think with better preparation from staff, which I know you guys did a lot of work, I'm asking for more though. Thank you.

2:10:50 Commissioner Otsuji Going back to Commissioner Granowitz's statement, we, as designers, have a lot of experience in the path of travel and most of it is based on the safety of that path of travel. The criteria that we would apply to the path of travel for that 1,000 or 100 feet could be really clarified if it's considered by the safe path of travel distance. That would be my short comment for now which may help answer questions that many people have.

2:11:58 Commissioner Austin Two issues, the barriers and definition. The barriers I'm ok with in this instance…I was troubled by the definition but since we are looking for consistency in this case, and I'm not an attorney, I'm looking to our attorney to make that interpretation and I will be supporting the motion for that reason.

2:13:22 Commissioner Haase This has been an interesting discussion today because the municipal code doesn't give us a lot of guidance with respect to definitions and things…but that's why we're here as we can exercise our judgment and discretion in areas of what constitutes a barrier. I think we have a pretty good idea of that even if it's not written that way, it could be clearer…what constitutes unity of use,,,I will be supporting the motion.

COMMISSION ACTION:

MOTION BY COMMISSIONER AUSTIN APPROVING THE STAFF'S RECOMMENDATION TO GRANT THE APPEAL, REVERSE THE HEARING OFFICER'S DECISION, AND APPROVE CONDITIONAL USE PERMIT NO. 1911475. Seconded by Commissioner Whalen. The motion passed by a vote of 6-0-1 with Commissioners Haase, Hofman, Austin, Granowitz, Otsuji and Whalen voting yea and with Commissioner Peerson recusing. *[Why did Commissioner Peerson recuse herself on this vote? Did she have a financial interest in this project like she did on the 6220 Federal project?]*

2018/12/06 Minutes

2018/12/06: ITEM 3: MPF 10170 SORRENTO VALLEY RD #B Appeal Hearing Officer's 2018/09/19 ITEM 7 decision

ITEM 7 STAFF: Cherlyn Cac

4 speaker slips submitted in favor – Gina Austin, Tara St. Peter, Sean St. Peter and Brittany Biesterfield

2 speaker slips submitted in opposition – Judi Strang and Heather Riley

HEARING OFFICER ITEM 7 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-18-071. RESOLUTION NO. HO-7143

DSD CONTACT: Angela Reis

PROJECT NUMBER: 585472

DSD TO HEARING OFFICER RECOMMENDATION: HO-18-071 "1. Adopt Negative Declaration No. 545299; and 2. Approve Conditional Use Permit No. 1927100 and Coastal Development Permit No. 2173348."

HEARING OFFICER: Chris Larson

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-18-078 " Deny the appeal and uphold the Hearing Officer's decision to Approve Conditional Use Permit No. 2071481."

CEQA DETERMINATION: Page 1, "A Negative Declaration No. 545299 has been prepared for the project in accordance with the State of California Environmental Quality Act (CEQA) Guidelines. No significant impacts were identified, and no mitigation is required."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24007576 @ Pg 39.

A Draft Environmental Resolution was included in the Planning Commission Report @ Page 26.

APPELLANT(S): Sean St. Peter

Issues On Appeal

Page 18: Appeal Application by Sean St. Peter *[Of note, Sean St. Peter is not disclosed on any of the application or CUP documents.]*

Page 41-43: 3 each Ownership Disclosure Statements none of which show Sean St. Peters

Page 44: Techne Drawings *[Techne, working closely with Gina Austin on numerous other projects, fails to identify the tenant/applicant in their drawings. Everything on their drawings is titled to the Owner: CIRE Equity.]*

Page 45: Stormwater Applicability Checklist

Page 62: Hugo Castaneda, DSD Project Mgr email regarding potential runoff into the Carroll Canyon Creek

Page 70: Austin Legal Group letter to the Planning Commission

OWNER(S): CIRE Equity

APPLICANT(S): SVRM LLC

CUP NUMBER: 2071481.

CUP HOLDER: SVRMC, LLC @ Page 17

SITE DEVELOPMENT PERMIT NUMBER:

STATUS: Issued 2019/02/21

CITY COUNCIL DISTRICT: 1

PLAN AREA: Torrey Pines

STAFF: Hugo Casteneda

Speaker slips in favor of the project submitted by Gina Austin, Brittany Biestfeld, Tiffany Hooper, Russell Betts and Travis Coulter.

Speaker slips in opposition to the project submitted by Kelly McCormick, Kathleen Lippitt, Judi Strang, Jim Bartell, Heather Riley, Cameron Barker, Bradford Harcourt, Michael Hayford, Remy Bowden, Abhay Schweitzer, Jeff Chine and Sean St. Peter.

1:19:34 Commissioner Haase opens ITEM 3

1:19:53 Hugo Castenada, DSD Presentation

1:23:41 Commissioner Whalen In the staff report attachment 8 one of the exhibits says the building is 28,712 sq-ft and the other one says it's 41,124 sq-ft. What's the discrepancy?

Haase: Staff I think we're seeing 3 numbers. I believe the 41,124 is the existing building, then of that building how much is being used for the proposed facility, I'm seeing 2 numbers , a 24K and a 36K sq-ft. number.

A: So the square footage inside of the existing 2 story building would be the ground floor development of 28.680 sq-ft where an additional 12K would be for something else. So the combination of the ground floor and the second floor would be a combined square footage of 36,361 sq-ft.

Q: Ok it's confusing because it says the existing building is one of two stories 28,712 sq-ft. The other question is what was the response to the planning group from the increased stormwater treatment request?

A: The stormwater would be reviewed under the ministerial actions once the project comes in for permits. That would be reviewed under the building permit.

Louis Schultz, City Engineer, If I could answer that to, this project comes under the threshold for a priority project. It's an existing building. If the applicant chose to do additional stormwater treatment on the site, that would be at their discretion. From a City of San Diego stormwater perspective the project meets all of its requirements.

Q: It is right next to a creek that flows into Penasquitos Lagoon.

Shultz: It is located within the special hazard area.

Whalen: Maybe the applicant will speak to that when they come up. Thank you.

1:26:58 Commissioner Hofman questions DSD staff re the aisle between buildings not being wide enough.

1:30:09 Jim Bartell, representing the applicant in opposition to the appeal citing 'we've agreed to periodically clean the parking lot to minimize and potential runoff problems and agreed with the planning group to provide the necessary fire/safety requirements. Beyond that we've been cleared by staff on all the issues, including the appellants' issues and we support their recommendation for denying the appeal. *[There is a special camaraderie that exists between Commissioner Haase and Bartell which is unsettling. He calls Bartell by his first name. How much does this affect decision making?]*

1:31:34 Heather Reily on behalf of Allen Matkins here on behalf of the applicant in opposition to the appeal citing "the only thing I want to address today is the late hit letter that was dropped this week by the appellant on this project regarding CEQA. As staff explained during their staff report this project was the subject of a Notice of Exemption. I know this is your first MPF, but I know it's not your first Notice of Exemption and NORA when it comes to the marijuana projects in the City of San Diego. The NOE was

posted on June 19th. The period ran through July 9th. No one appealed that exemption. *[what was the SAP number of that NORA to prove that post was ever created?]* That means CEQA is foreclosed. CEQA is not before you today. The project appeal is the only item before you and the technical issues that staff addressed so adequately are the only items before you.

Having said all that, the letter you did receive from the appellants council was multiple pages regarding a negative declaration. That negative declaration does not apply to this project. As I just said we had an exemption for this MPF. My client happens to have an MO application pending for this exact same site. That Marijuana Outlet has not yet even gone to the Hearing Officer. We're currently waiting for the 2019 calendar. When that item comes forward to the Hearing Officer, at that time the Hearing Officer will consider if the prior negative declaration is appropriate. None of that matters to you today. I'm simply clarifying things for the record. At this time, as I've said, there was a Notice of Exemption, no one appealed it. We urge you to reject the project appeal.

Q: (Hofman) City Attorney do you concur?

A: Shannon Thomas, City Attorney) Yes. The administrative process *[show us the NORA SAP number assigned to this notice]* for making the CEQA determination has been completed within the City.

1:36:08 Gina Austin in favor of the appeal citing she is an attorney representing another applicant, actually many, many other applicants. As most of you know I am a cannabis advocate and an advocate of development of projects. So it is difficult for me to come up here and have conversations that are against projects because we are looking to put as many of these facilities as possible within the San Diego region to allow for the supply chain. But as an underlying basis to that it has to be fair and it has to be consistent and I think in this instance there are a few issues, and they're minor issues that can probably be corrected, but they're not corrected to what's before you today.

So the appeal was based on two reasons. The first reason had to do with the parking and the ingress and egress. The ingress and egress has a grant of an easement from the neighboring property owner. It is not an easement for parking and as designed it is very difficult to determine from the site plans if the parking is wholly within the property or is within the ingress/egress easement. We know they have to back up into the ingress/egress easement, our position is that backing up to an access easement, where every other project we are working on requires that the backup occur on our own property is an inconsistency that the Commission should consider that's being applied to this project and not being applied to others. In other words, this applicant doesn't have to back up onto their own property. They get to use our property and there's no parking easement. Obviously this will end up as a civil issue and not a Planning Commission issue but we think that the code requires them to back up onto their own property.

The second issue has to do with the ADA path of travel. The path of travel that was approved was not the project you have in front of you…This is important because the reason CEQA was exempted has to do with the building was first approved with original landscaping requirements to plant 29 Eucalyptus trees, 62 Sycamore trees and a specific amount and type of ground cover to meet CEQA determinations is now being shown to be removed and part of the path of travel. In doing so that is how this became a non-significant project. Whether you rely on an exemption, or mitigated negative declaration, previously certified environmental determination is completely irrelevant when the project scope shifts and that is why CEQA does not allow that to happen. What we have now is a removal of a tree and so the exemption that has been applied was valid and completely accurate at the time it was applied but it's not so today.

Because today we've changed the project scope and today the path of travel removes at least one tree that is required to be there to avoid significant impact.

How does this relate to the findings you need to make today? The findings you need to make today have to do with findings for a conditional use permit and the finding specifically requires that it be consistent with the Land Development Code and the Land Development Code requires that we are consistent with CEQA and so you can't get there, it maybe a multi-step process, but you can't get to the end if you stat with the fact that the project scope has changed.

What are we asking? Of course we'd like you to deny the project but I have internal conflict with that position in and of itself because if this can be fixed then it should be fixed because the applicants should be allowed to continue and move through the process because that is what we're trying to get done here. We're trying to get 40 MPFs operating throughout the City to ensure the supply chain. And so it should be at a minimum, kicked back to staff. Set another Hearing date. Allow them to review this project as it currently sits before you today and make a determination that this new project is exempt from CEQA. This new project is consistent with the Land Development Code. Thank you. *[Of note, Gina Austin actually is listed on the speaker slips as being in favor of the project. This belies her testimony here that the appeal should be upheld. I find it interesting that she relied on Brad Harcourt's ceded time to make this]*

1:42:30 Kelly McCormick in support of the appeal citing "I'm passionate about protecting our environment and advocating for public policies that help our young people grow into healthy productive members of society. This proposed MPF presents a number of issues that make it unsuitable for this location. Among them parking and access are issues and the Traffic Study they used is inadequate to accurately reflect the current traffic situation. The MPF is in close proximity to a wooded area increasing the fire danger…At the Torrey Pines Planning Group Meeting the applicant said their Type 6 license allowed them to store up to 960 gallons of Methanol on site. As presented at the Planning Group meeting the applicant fire prevention plan met only the minimum standards…there are also concerns about water contamination being located this close to the creek and currently there are no laws mandating the handling of wastewater and runoff… they're located in a seismic danger zone…all important reasons why this appeal should be upheld and the MPF should be denied.

1:44:33 Kathleen Lippit, in favor of the appeal citing "how the process is not a fair and even playing field. One where the rules are known in advance and remain unchanged regardless of special interest lobbying [i.e. Bartell). The City's processes have been decidedly one sided in favor of licensing the MPF and MO businesses There is little tolerance to objections and dismissed out of hand. The outcomes are pretty predictable."

1:47:15 Judi Strang in favor of the appeal citing "anyone that is involved in the operation of the business needs to be identified. The CUP cannot go to a business or an LLC. As is required by law both the state BCC and we must know who the individuals are who hold these interests." Commissioner Haase replies that the Ownership Disclosure Statements identify them.

1:50:01 Commissioner Haase regarding the comment on ownership. We always have an Ownership Disclosure Statement with all of our projects. So that is covered. I understand the concern but it's been pretty standard operating procedure that we have that Ownership Disclosure Statement so it's not something we're overlooking.

1:51:00 Commissioner Hofman Let me start out by saying that I cannot support the appeal. I think staff has done everything necessary. I think the findings can be made. I think we've got our answer on the environmental process which really isn't in our consideration but I do have a question.

Q: We allow 40, city wide and it seems to be its first come first served which generates a whole lot of competition which I'm guessing is one of the reasons there is an appeal but I don't know that. So how do we determine who those 40 are? Is it just the first one to us and we approve it and that knocks it off the list or is there any other criteria? Is it just this mad dash to the finish line where the other applications are just too bad?

A: (Tim Daly,PM, DSD) We have a little over 70 some odd applications that were applied for. We've approved 21 at this time with no appeals, all of the appeal periods have ended so we're still processing another 40 some odd applications.

The priority order is based upon, the first one is, when the final environmental document or the Notice of Right to Appeal (NORA) he CEQA determination will determine the succession order of a particular project. And you are correct that yes as it gets more competitive at this point of time you see a lot more appeals from the Notice of Right to Appeal the CEQA determination if it's an exemption project. We follow that succession of order in processing it to City Council. If the City Council denies the appeal, then it would get scheduled for a Hearing Officer within about a 31 day period. We typically do follow succession of order throughout the whole process.

Hofman: So warning to applicants. Don't mess up the process.

Daly: They're creative.

1:53:47 Commissioner Peerson deals with identifying which site plan the Commission should be utilizing in a question to DSD.

1:56:45 Commissioner Austin Regarding the comments from Gina Austin about having tree removals and pavement locations…at what point do you cross a line where you have to go back and start over? Is that too general a question with the environmental review? *[I think this is a great question as it goes to the heart of what I've not seen where there has been a single project required to undergo a CEQA review.]* Gina's point was they based the approval on something that was not accurate. The situation changed.

A: (Castenada) The corrected site plan, the one thats being presented today, was reviewed by staff prior to the environmental determination. It was an error within the HO report at the time but that is being corrected today.

1:58:01 Commissioner Haase Let me try that question a little bit differently. Without having any knowledge of any previous environmental analysis on this project, if there was a mitigation requirement of a project how would we ensure that the mitigation is not undone by a subsequent action?

A: (Anna McPherson, Program Manager DSD) the document that included the mitigation measures pertains to another project. The determination of exemption for this project is an exemption not relying on a previously certified document. That the appeal period passed and no one challenged the environmental determination within the time the City provides. With respect to the specific information, it's my understanding that a tree is not being removed.

Q: I was just looking at the more general question where mitigation was implemented as a result of a prior project where we do have a responsibility to ensure that mitigation is maintained.

A: Its mitigation measure can not be undone however it could be modified if it could be demonstrated that it would still be mitigating that impact that was identified to the same level and to below a level of significance.

Hofman: If I could follow up. This exemption had no reliance on that prior environmental determination?

A: That's correct.

COMMISSION ACTION:

MOTION BY COMMISSIONER HOFMAN APPROVING STAFF'S RECOMMENDATION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO APPROVE CONDITIONAL USE PERMIT NO. 2071481. Seconded by Commissioner Peerson. The motion passed by a vote of 7-0 with Commissioners Haase, Hofman, Austin, Granowitz, Peerson, Whalen and Otsuji voting yea.

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ITEM 4: 6220 FEDERAL BLVD. MARIJUANA OUTLET Appeal Hearing Officer's 2018/10/17 ITEM 9 decision.

As I am most familiar with both the 6220 Federal Blvd. project and the "competing" 6176 Federal Blvd. project I have expanded this project section to consider those specific issues that point to irregular processing of the 6220 application. Considering this hearing starts with Commissioner Peerson recusing herself with her having a financial conflict with this project and ending with a speaker's rant that misidentifies me as the one behind the appeal, there is nothing about the processing of the 6220 CUP that passes muster as a normal application process. If it happened here the question becomes where else have the preferential treatments been made, who in government has profited from it and who else has suffered at the hands of those behind these actions?

ITEM 9 STAFF: Cherlyn Cac

6 speaker slips submitted in favor – Robert Robinson, Christopher Mendiara, Bruno Vasques, Laura Magagna, Aaron Magagna and Cynthia Morgan Reed

3 speaker slips submitted in opposition – Abhay Schweitzer, Judi Strang and Carlos Gonzalez

HEARING OFFICER ITEM 9 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-18-097. RESOLUTION NO. HO-7159

DSD CONTACT: Firouzeh Tirandazi [Cherlyn Cac @ Page 4 was reassigned from the competing 6176 Federal Blvd. CUP application to this one, the 6220 Federal Blvd. CUP.]

PROJECT NUMBER: 598124 [There is no Site Development Permit Number shown on the DSD portal.]

DSD TO HEARING OFFICER RECOMMENDATION: HO-18-097 "Approve Conditional Use Permit No. 2114346."

HEARING OFFICER: Duke Fernandez

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-18-080 “Deny the appeal, uphold the Hearing Officer’s decision, and approve Conditional Use Permit No. 2114346.”

CEQA DETERMINATION: Page 1 “This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 (c) (New Construction or Conversion of Small Structures). This project is not pending an appeal of the environmental determination. The environmental exemption determination for this project was made on August 30, 2018, and the opportunity to appeal that determination ended September 14, 2018.”

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION: No NORA Public Circulation Record was found. A Notice of Exemption was filed with the County Recorder @ Page 22.

APPELLANT(S): Abhay Schweitzer, TECHNE

Issues On Appeal

Page 28: Community Planning Group Distribution form shows Approved but there is no number ma

Page 33: Ownership Disclosure Statement

Page 57: Appeal Application by Abhay Schweitzer. This is filed not on behalf of anyone. It’s not filed on behalf of Geraci or Berry. It’s filed by Abhay. The designer at 6167.

OWNER(S): The Ek Family Trust, Owner / 2018FMO, LLC, Applicant on Page 1 and 6220 Property Profile and Grant Deed History

APPLICANT(S): Listed as Owner/Applicant

CUP NUMBER: 2114346

CUP HOLDER: Aaron Magagna

SITE DEVELOPMENT PERMIT NUMBER:

STATUS: Issued 07/24/2019

CITY COUNCIL DISTRICT: 4

PLAN AREA: Encanto Neighborhoods

STAFF: Cherlyn Cac

Speaker slips in favor of the project submitted by Abhay Schweitzer, Jim Bartell, Cameron Barker, Marcela Escobar-Eck, Aaron Magagna, Cynthia Morgan-Reed, Bruno Vasquez, Laura Magagna, Elidia Dostal, Chris Mendiara, Nicholas Rossi.

Speaker slips in opposition to the project submitted by Marsha Lyon, Ken Malborough, Becky Johnson, Becky Johnson, Robert Robinson and Jessica McElfresh.

2:00:21 Commissioner Haase opens ITEM 4 with Commissioner Peerson having to recuse herself from this ITEM due to a financial conflict with this project. [what pray tell might this be? Now might be a good time to read more about the 6220 project @ Licensed Marijuana Outlets and My Story of Setbacks]

2:01:50 Cherlyn Cac, DSD Project Manager provides her presentation as to why the Appeal should be denied. This is the same Cherlyn Cac who was Project Manager for the CUP application that was done by Larry Geraci, who used a strawman, his secretary Rebecca Barry (Geraci had been sanctioned and could not divulge it was him behind the "competing" 6176 project. What will become obvious here is that the speakers in favor of denying the Appeal and Approving the 6220 CUP were led to believe that I was the one behind the Appeal. You'll hear them call out the Appellant/Cotton is a "criminal and is not wanted in our community." I was not behind this Appeal. I didn't show up at the hearing because I had 5 TROs filed against me which prevented me from being within 200 yards of Geraci and Berry. Neither of them showed up at this hearing. An appearance anyone who had lodged a serious Appeal on would have attended. Geraci wanted the Appeal to fail, but had to make a token presentation that it occurred, because he did not want me to have the CUP at 6176. Magagna being approved was his solution to that.]

2:10:10 Marcella Escobar-Eck, from the Atlantis Group, speaks in favor of granting the CUP.

2:11:50 Aaron Magagna, Applicant speaks in favor of granting the CUP.

2:12:50 Attorney Cynthia Morgan-Reed speaks in favor of granting the CUP and about how this project will revitalize the Federal Blvd. corridor by setting improved land use values and set new standards in health and safety protection for the community *[In terms of making it worse, I would have to agree. Traffic accidents and injuries are up 3,880% since they opened. Read "Could This Happen in La Jolla? A District 4 Comparison." Does anyone want to point out where the 6220 traffic analysis is? The 6176 project had to have one.]*

2:17:07 Robert Robinson, Community Group, speaks in support of granting the CUP.

2:17:45 Robinson DOXXED me by using my name 3X in his public testimony stating I have a "criminal mentality and not who we want in our community." *[I have never met this person in my life. Until this testimony I didn't even know he existed. While Mr. Robinson would call me a criminal and the Appellant, he may not have even known that I was NOT the Appellant. He may have actually believed that I had been just a malcontent who wanted to deny Magagna the CUP because I was in litigation with Geraci trying to keep my property. When he is talking about "escrow issues" he's referring to the litigation between Geraci and I over the 6176 CUP. By these comments he has no doubt heard that I am the one responsible for the issues at 6176 and the whole "criminal" thing is a result of how the Team Geraci people framed it.*

James Bartell, who was at the Appeal but never spoke, told Corina Young, a Bartell client who was an interested investor in the 6176 property, until Bartell told her "NO", she should not invest in 6176 (see text message at page 8 of 9). It was going to be denied because "everyone hates Darryl" would make sense why he wouldn't speak. In every other prior appeal Bartell leads the appeal

Despite having been subpoenaed, Corina Young and despite numerous phone calls and emails between my attorney and Corina's attorney Shapiro and in her subsequent attorney Nguyen who was even threatened with sanctions for refusing to abide by a lawful subpoena, was never allowed to testify at my trial or provide a deposition because Team Geraci, which included attorneys Jessica McElfresh, Gina Austin, Natalie Nguyen, James Bartell and Ahbay Schwietzer, squirreled Corina away in Palm Desert and kept her out of reach for those purposes.

Corina Young's October 28, 2020 email to me ,which provides her confidential email communications between attorney Nguyen and her, is evidence that they celebrated her not being involved in my case and

as a result of her not providing that "everyone hates Darryl" testimony, there was a conspiracy in the processing of these two CUPS that was never exposed. To have had her testimony would have exposed this all for what it really was. An attempt, at all costs, to have denied the CUP at 6176.]

2:18:51 Ken Malbrough, Chollas Valley Community Planning Group, speaks in support of granting the CUP. *[What Malbrough did when I brought these issues up in a phone call and in a follow up email exchange is tell me he would "cease all further communications with me on the matter."]*

2:20:20 Ahbay Schwietzer speaks in favor of the Appeal and the denial of the CUP. *[Of note: Ahbay stated he was representing his client but would not say his name. Ahbay's testimony focuses on the "3 parking spaces for a MO that is expected to see several hundred people a day does not make sense…that building that is over 600 sq-ft larger than what they claim it is accurate information…DSD staff has not done a careful review of this project…Abhay fails to raise the most obvious issue with the drawings though and that is they have not been stamped by a licensed CA architect unlike the drawings that were submitted for the 6176 project. Abhay mentions Gina Austin's "just like Gina @ 2:23:03 and 2:23:13" name twice in his presentation. Gina no longer works for Geraci and supposedly does not work for Magagna on this project. That is contradicted by Ahbays references to her twice in the certified transcript of Ahbay Schwietzer appeal testimony.]*

2:23:36 Commissioner Hofman asks Ahbay to be more specific with what is not in compliance. *[Abhay actually does a good job describing how the project misses the mark in the design that was submitted as a standard in the MO projects DSD has reviewed.]*

2:25:50 Becky Johnson, a community member and foster care mother, is in favor of the Appeal and denial of the CUP because of the heavy traffic and that Cuddles Academy Child Care is within 1,000 ft of the proposed MO. *[Between Judi Strang at the October 17, 2018, Hearing and Becky Johnson before the Planning Commission, this issue was brought before the authorities on two separate occasions before the 6220 project was approved.]*

2:27:17 Attorney Jessica McElfresh is in favor of the Appeal and denial of the CUP based on "her client" not always "finding the nicest landlord." *[Meaning me I guess. This is another disparaging comment from Team Geraci considering her client, Geraci had been sanctioned for running 3 unlicensed dispensaries and had to use his secretary as his strawman applicant. Of note Geraci was not in attendance at either the Hearing or the Appeal and he is never identified as "her client." I know one thing for certain and the evidence supports it. I was NOT her client! Geraci was and his proof of payment to Jessica McElfresh proves it! And yes this is the same Jessica McElfresh that I paid to review my case against Geraci who represented Geraci during the appeal hearing had no interest whatsoever in succeeding with.]*

2:28:30 Chairman Haase asks DSD staff to explain what the discretionary processes they have when accepting submittals from an applicant when it comes to plan submissions. He states that staff can exercise judgment as to what they will accept from the applicant to process that application. This question and the following staff answer illustrates, to the greatest extent possible, just how much power that DSD Project Manager has when it comes to "exercising judgment" in processing any application but even more so when the application has been submitted, as this one had been, on an EXPEDITED basis.

2:29:17 PJ Fitzgerald DSD responds with how this project meets the minimum DSD requirements for "conceptual in nature" project plan submittals. *[In addition to the lie Kyle Gosten, DSD Staff delivers*

regarding Child Care following her statement the following conditions are extreme anomalies in processing that cannot be explained away under minimum discretionary standards]

2:30:36 Commissioner Whalen asks DSD Staff to comment on the child-care separation issue.

2:31:01 Kyle Gosten, DSD Staff, acknowledges that Cuddles does fall within 1,000 ft of the MO but "since Cuddles doesn't have a CUP for their business, it is therefore not recognized as a child-oriented facility." *[Gosten seems visibly uncomfortable while trying to explain this away since the city and the state have licensed them as a child care facility. No one else drills down on this explanation after he makes it. For example, if Commissioner Whalen had simply asked for a copy of the SDMC regarding separation requirements for a proposed MO in § 141.0504 or regulation of Residential Child Care Facilities, he would have been directed to SDMC § 141.0606(a)(1) where there is NOTHING STATED in that Section or in SDMC § 141.0308 - Home Occupations, whereby that type of facility would, as Gosten asserts, {possibly under an incorrect interpretation of SDMC § 126.0306] require a CUP to be recognized in a proposed MO separation issue. It's just NOT THERE!*

Cuddles Academy Child Care has been continually licensed by the City of San Diego as a Child Care facility since 2010. The SDMC does NOT give DSD the right to ignore this separation requirement for the purposes of approving this, or any other project they want to push through, under ANY circumstances. Gosten lied to Commissioner Whalen and all DSD staff present (PJ Fitzgerald and Cherlyn Cac) sat there and did nothing to correct this testimony. It's astonishing because what was presented to both the Planning Commission at this hearing and to the Hearing Officer Duke Fernandez during the October 17, 2018 Hearing were complete contradictions of each other.]

2:31:46 Commissioner Whalen I think the design is great and I'll talk about that, my question is the parking. I have experience with these facilities because we've approved so many of them already over the years, it seems very skimpy. Why is that the planning group was ok with 3 spaces and that on street parking?

A: (Ken Malbrough, Chairperson Chollas Valley Community Planning Group) The Planning Group, as I recall, they did question the parking issues, but we know the area and it would be skimpy regardless to any other location and we felt that streetside parking would suffice.

Q: I don't know if you personally have experience with these facilities, but they draw a lot of traffic. Coming and going. They come and go. One of the first ones we approved behind the Sports Arena is a mess because of parking and you guys are comfortable with this solution?

A: Yes. Based on our vote, we are. *[I call BULLSHIT on this testimony. Since the Planning Commission is relying so heavily on the Planning Group's contribution it's of extreme importance that Ken Malbrough never having provided the Hearing Officer or the Planning Commission a complete Community Planning Committee Distribution form for this project would be relevant. The Planning Commission is relying on just his word as THAT FORM IS COMPLETELY BLANK EXCEPT WITH HIS SIGNATURE! See Page 32*

If there is any part in the flawed process that the Commission could have and should have worked to dig and see the what and why these things, child-care and community planning votes, were being presented in this fashion to this Commission, this would have been the time and the place to have done so. Instead, Commissioner Whalen pretty much endorses the project with his opening question to Malbrough and lets these issues pass by with zero follow up.]

Q: Well we try to take into account the positions and thoughts of the Planning Groups because you live there.

A: Exactly.

Q: And work there. So I just wanted to make sure, I'm sure other people on the Commission, caught their attention too. *[With the exception of Commissioner Peerson who had recused herself due to a financial conflict of interest with this site, the parking situation was no doubt something that should have stood out to EVERYONE on the Commission. With that I would have looked at the Community Planning Committee Distribution Form and seen that it had been submitted completely blank! This is NOT a normal project!]*

A: And if I can add, he [Magagna] did some extensive talking with of course the Planning Group, with that direct community Broadway Heights, where it's actually located at *[where are those minutes and the vote?]* and those members also supported him and they actually showed up to the meeting to support his project as well and they're very much aware of the parking situation.

2:33:21 Commissioner Whalen Well thank you very much sir. I think the design is very nice. We don't normally see built from scratch nice buildings but I thought we had a requirement where you couldn't have windows for security reasons *[Whalen should have been aware of this as it is set forth in SDMC Article 1 § 131.0552.]* am I missing something? Are these bullet proof? I mean not to put it that way but… well I mean there's somebody shopping, bang. (laughs) Because I don't recall other Commissioners if we've approved one

A: (Laura Black) There's no code requirement on windows. *[meaning there having to be bulletproof]*

Q: What is the security? Remember we've asked applicants to have kevlar drywall and reinforcements like that.

A: (Escobar-Eck) We are going to have bullet proof glass. We are actually required to have transparency to the front. *[she's referring to SDMC Article 1 §131.0552]*

Whalen: Thank you. That's all I have. I'll make a motion after I hear from people.

2:34:32 Commissioner Hofman Can you talk about the 600 sq-ft discrepancy?

A: (Gosten) From what I remember the appellant was talking about the phantom floor not being counted against the gross floor area. It was not meeting the requirements that include phantom floor area. *[Gosten is having a hard time finding the drawing he wants to refer to.]*

Commissioner Austin: It shows there is 1,682 sq-ft and there is mezzanine spaces. Iis that what you're looking for? It's on the cover. It looks like they're right on. Just do the math.

Commissioner Haase: Commissioner Austin, my recollection is this really comes into FAR *[Floor Area Ratio]* when you have that phantom floor. It's a bulk and scale calculation and if I'm looking at the actual, one of the exhibits attachment 11 CS, the site allows a .75 maximum FAR and it has a .34 proposed, I'm hypothesizing based on the comments by the opposition that 600 should be added in, but even if it is added it I think it still falls within the FAR requirement. Perhaps somebody can do the math for me.

A: (Escobar-Eck) While Mr. Gosten is looking for the code section, it actually doesn't qualify as a mezzanine Commissioner Austin because it doesn't have the 15-foot clearance so it's actually considered a ghost

floor but Chairman Haase is correct that 1 it does not have to be added in and 2 even if it were added in we're still well below

Commissioner Austin: What I'm saying is that you're stating that you have 1,682 sq-ft and as I measure it looks like you're correct. I don't see where the 600 sq-ft is coming from. *[This makes the Schweitzer argument even less pertinent. He's arguing about 600 sq-ft that is actually a ghost floor and even if it weren't a ghost floor and had to be added in, his argument that the project FAR was being exceeded is a weak attempt to prove Geraci was arguing against the 6220 project when it can be seen here that is not the case.]*

Escobar-Eck: And we concur. Thank you.

2:37:07 Commissioner Hofman So that answered that question for me. Just generally, I couldn't find the specifics. That's why I asked the appellant to be a little bit more clear. I get the discretionary side, we have to deal with that, I just don't see *[Hofman seems to be wrestling with this statement. Also he is not looking forward, he's looking down as he makes the majority of this statement.]* all the factual errors. I don't see the, that 600 feet, that was the question. I'm glad that was answered. So I don't see a basis from the appellant's point of view of these factual errors and because of that I *[stutters]* can't support the appeal.

2:38:16 Commissioner Haase I do know that we've had a lot of hankering over parking requirements over time because we get a total mish mash based upon whatever the zone is the facility is proposed in. And as Commissioner Whalen mentioned, in some cases that can be an issue if there's no on-street parking. It appears that Federal has on-street parking that would be available to customers of this facility. It makes me feel a little bit better, but I have been to the facility at Point Loma and I know exactly what you're saying about the parking there. It's very jammed and it does create some potential issues. I think this is an issue that we have to deal with, I'm sensing from the Commission that with the spaces on-site and with the availability of street parking that that's going to be adequate for this particular facility. *[Neither did they take into account the liquor store next door and the fight for parking on these curbsites.]* Am I looking at this correctly? Because we don't really have specific parking requirements for these facilities like we do for a restaurant or something, because they're in the industrial zones we live with what the industrial zone provides us.

Commissioner Whalen: My point is it's a discretionary permit and we have the ability to weigh in on that which is why I asked for the input from the Planning Group *[Astonishing!!! Whalen states he is relying on the Planning Group and, as previously stated, there is NO evidence that the Ken Malbrough and the Planning Group voted on this project and if they had Whalen should have inquired why the Distribution Form Malbrough submitted to the Planning Commission showed absolutely NOTHING in the way of a vote!.*

2:40:21 After the vote *[You can see Schweitzer, Bartell McElfresh and an unidentified woman behind McElfresh leaving the hearing and each stopping to shake hands with the applicant Aaron Magagna. It can be seen that Magagna stands up and immediately reaches out to his opposition. Neither Geraci or Berry were at the hearing. After 2.5 years of this team fighting on behalf of Geraci for the 6176 CUP they were so upset that they just got their collected asses handed to them that they took the time to accept Magagna's outstretched hand. And why would Magagna have even wanted to shake these people's hands? It makes no sense!*

Of further note is that Commissioner Peerson had to recuse herself from this matter due to a "financial conflict of interest" stated @ 2:00:17. When reviewing Commissioner Peerson's 2018 Form 700 Statement of Economic Interest we show:

***2018-PEERSON-ORIGINAL** 3/29/2019 Statement-of-Economic-Interest-Form-700 Received less than $10K from Atlantis Group (page 33). But reported additional sources of **income FOR Atlantis Group of $10K or MORE to Atlantis Group** (page 34), by Austin Legal Group and San Diego Health and Wellness.*

***2018-PEERSON-AMENDED** 10/21/2019 Statement-of-Economic-Interest-Form-700 Received less than $10K from Atlantis Group. Reported additional sources of **income FOR Atlantis Group of $10K or MORE to Atlantis Group** ADDING Aaron Magagna.*

COMMISSION ACTION: MOTION BY COMMISSIONER WHALEN APPROVING STAFF'S RECOMMENDATIONS TO DENY THE APPEAL, UPHOLD THE HEARING OFFICER'S DECISION, AND APPROVE CONDITIONAL USE PERMIT NO. 2114346. Seconded by Commissioner Hofman. The motion passed by a vote of 6-0-1 with Commissioners Haase, Hofman, Austin, Granowitz, Whalen and Otsuji voting yea and with Commissioner Peerson recusing.

The Rest of the 6220 Story

The 6220 Federal Blvd MO project passed despite the fact that there were two licensed day-care (Child-Oriented Facilities) within 1,000 ft of the proposed MO. Judi Strang brings it up and Cherlyn Cac said she saw no evidence of any child-care facilities. Why? Because she didn't look. The two facilities are licensed by the state and the city. Check out page 6 of "My Story of Setbacks" for a topographical distance map. The City of Lemon Grove parcel that abuts this property immediately to the North had a MO application and was denied because they found the child-care facilities within 1,000 ft of the proposed MO. Where this project was approved is even nearer to the child-care facilities then where it would have been on the Lemon Grove parcel.

Commissioner Peerson recused herself because she had a "financial conflict of interest" in the matter. To that end we need look no further than the Form 700 Statements (Original and Amended) Peerson filed in 2018:

2018-PEERSON-ORIGINAL 3/29/2019 Statement-of-Economic-Interest-Form-700 Received less than $10K from Atlantis Group (page 33). But reported additional sources of **income FOR Atlantis Group of $10K or MORE to Atlantis Group** (page 34), by Austin Legal Group and San Diego Health and Wellness. Of note; the 6220 Federal Blvd. Planning Commission Appeal Hearing, ITEM 4, for Project No. 598124 was held on December 6, 2018. This Form 700 does not include Aaron Magagna only Austin Legal Group. During her trial testimony Gina Austin states she had no representative relationship with Magagna for the 6220 Federal Blvd. CUP. With Peerson recusing herself for this matter it would bely that statement made under oath by attorney Gina Austin @ Page 60:11-26 in the 07/08/2018 trial transcript.

In addition to how the Peerson Form 700 report seems to contradict the Gina Austin testimony at trial, the question that begs an answer is what did Commissioner Peerson, and/or Atlantis Group, in which Peerson holds an ownership interest, do for these contributions? Were there violations that would have disqualified her on ANY of the Gina Austin projects as defined in ETHICS TRAINING FOR PLANNING COMMISSION. *[Additionally, the Ethics Commission is governed by San Diego Municipal Code Chapter II, Article 6, Division 4, Sections 26.0401 to 26.0456 . These sections were added by Ordinance O-18945*

(6/5/2001) and amended by Ordinances O-19034 (2/11/2002); O-19555 (12/6/2007); and O-20855 (9/20/2017) and Policy No. 000-04 on 10/01/2013.]

If Peerson/Austin/Magagna choose to argue that the Peerson conflict would have been due to Magagna's application for the 3279 National Avenue Marijuana Production Facility (MPF) Project No. 595635 that was due to be heard on a Planning Commission Hearing on June 6, 2019 the logic does not work. Item 2 on the June 6, 2019, Agenda was WITHDRAWN from the Planning Commission's agenda. That Magagna National Ave. appeal was based on a Hearing Officers decision of February 20, 2019. Austin/Magagna had no reason to engage Peerson/Atlantis Group during 2018 because the 6220 project was decided and final approved on December 6, 2018, for the 6220 Federal Project and the Hearing Officer had not even heard the 3279 National Avenue project until February 20, 2019. Peerson's recusal on December 6, 2018, had to do with a combination of bribes she and Atlantis Group took from Gina Austin and Aaron Magagna for the 6220 Federal Blvd. CUP.

2018-PEERSON-AMENDED 10/21/2019 Statement-of-Economic-Interest-Form-700 Received less than $10K from Atlantis Group (Page 2). But reported additional sources of **income FOR Atlantis Group of $10K or MORE to Atlantis Group** ADDING Aaron Magagna. The **AMENDED Form 700** only adds Magagna which means he was NOT the reason Peerson recused herself from the December 6, 2018, Planning Commission Hearing. The reason she recused herself because this was a Gina Austin project and she, through Atlantis Group, had an over than $10K reported source of income. (Page 3)

There also have been major traffic issues associated with this project in terms of the way the building was constructed. There are no records of DSD requiring a traffic flow analysis for this project. One that, (like in other MMCC projects @ pages 48-69), would provide a licensed engineering analysis of the impact the proposed MMCC would have on the surrounding community traffic flow. These additional issues and other serious processing anomalies have been detailed in "Could this Happen in La Jolla? A District 4 CUP Comparison."]

Following are significant what I call 'hide the pea' issues that DSD engaged in to fast track the 6220 project knowing I was keeping very close tabs on their activities.

04/05/2018: 6220-DSD-Online-Approval-Details-Version One- 4-05-18 I call this **Version One** because on page two of this document you can see the property image as 6220 Federal Blvd and that is in fact that property. The assessor's parcel number is listed as 543-020-04-00. Pay attention because in Version Two that is not the case.

06/08/2018: 6220-DSD-Online-Approval-Details-Version Two Here in **Version Two** DSD has changed the property address, the image of the property and the parcel number to 533-433-28-00 from what was posted online just 2 months ago. Something is very, very wrong here.

12/04/2018: Techne Appeal based on the 10/10/2018 DSD recommended HO-18-097 APPROVAL to the Hearing Officer Duke Fernandez's subsequent APPROVAL of the CUP in ITEM 9 under RESOLUTION NO. HO-7159 of the Hearing Officer Approval of the CUP for 6220 Federal. In his arguments, Schweitzer never mentions the fact that the drawings are not stamped by a licensed CA architect, that there is a 1,000 ft child-care setback issue or that the City of San Diego used their own engineer to include approved grading plans to the submitted drawings. That is unheard of for the City to put their own title on a private party application.

12/11/2018: 6220 DSD Online Review Cycles - No Cycle Reviews are Due After a 90 day period where DSD shows no updates to the site for this project, after the hearing of 10/17/2018 grants this project a CUP with virtually no opposition by Team Geraci from the 6176 CUP application. We see that DSD has somehow completed all the Cycle 9 and 14 tasks and 'there are now no longer any review cycles associated with this project."

DSD Report to the Hearing Officer No HO-18-097 Pages 30-44 the applicants submitted, and DSD accepted drawings are lacking a licensed CA architect stamp.

DSD Report to the Hearing Officer No HO-18-097 Pages 45-48 these drawings did require an engineering stamp on the Preliminary Grading Plan that the Licensed Engineer, Mr. Paul Fisher of Projection Engineering Inc., 760.443.6504 stamped on City of San Diego titled drawings that were done on behalf of the applicant, Aaron Magagna. Could anyone point to a project in the City of San Diego where DSD paid for grading plans that were done on a private property project?

06/30/20 DSD Project No 644432 Cycle Issues This is a **106-page DSD Cycle Issues** report **dated 08/06/19** literally days after **Tirandazi ISSUED the CUP on 07/24/19** that details all of the various disciplines requirements to have a new CUP issued at 6220 on a whole new application. Why would all these cycle issues be due on a project that just had an approved CUP issued?

HEARING OFFICER AUDIO of OCTOBER 17, 2018

11:17 Ms. Judi Strang, on the October 17, 2018 Hearing (Audio), raises the issue of there being a child-care facility, Cuddles Academy Child Care, within 1,000 feet of the proposed 6220 project (there were, at the time, actually two; Cuddles and Village Kids).

12:07 Duke Fernandez, Hearing Officer, October 17, 2018 Hearing questions Cherlyn Cac about the potential land use issue with 6220 being within 1000 ft of a child-care facility? He struggles with the question asking Ms. Cac if there is any "substance" to Ms. Strang's claim?

12:21 Ms. Cac, DSD October 17, 2018 Hearing, replies that "staff had reviewed the separation spreadsheet as well as the map and there **was no child-care identified in the submittal they received."** *[The issue here is that staff determination on this matter relied on documents provided by the applicant. When Cac is making this statement she is NOT commenting about how Cuddles Academy Child Care has been identified but as Gosten is now stating that Cuddles doesn't have a CUP so they are not recognized as a child-care facility. This was NOT Cherlyn Cac responding to this at the Planning Commision Appeal even though she was sitting right next to Gosten. Cac knows this is a lie to the Planning Commission and that not only is Cuddles Academy licensed under CA Child Care License No. 376621730 they also had a City of San Diego Business License No. 2013028638 listed as Cuddles Academy Child Care since 2010, current through 2024 and at the time of the 6220 MO application for operating a child-care business. This was information NOT responded to or acknowledged at the hearing and when it was brought up at the Appeal it was explained away with a lie about this facility not being minor-oriented.*

Of note, the adjacent parcel immediately to the North of 6220 is located in the City of Lemon Grove at 6302 Federal. When an application was made to develop the 6302 property for a Marijuana Outlet, the City of Lemon Grove DENIED that 6302 application because of the child-care facilities being within 1,000 ft. of the proposed marijuana business. It would seem that the City of Lemon Grove didn't have any problem identifying them early on in their application process!]

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2019/02/14: ITEM–2: 7625 CARROLL ROAD MMCC Continued from 2015/07/09 *[This is now a 4 year old appeal]*

See Planning Commission Hearing of 2015/06/25 earlier in the Steering Doc for all Project Files and Appeals information. (Control F the Project Number for easy access.)

PROJECT NUMBER: 370687

Speaker slips in favor of the project submitted by David Demian, Steven Hwang, Rick Engebreten, Keith Cardinale, Caryn Bailey, Jason Law and Jarrod Barakett.

Speaker slips in opposition to the project submitted by Teri Ann Skelly, Becky Johnson, Scott Chipman and Kathleen Lippitt.

06:06 Commissioner Haase opens Item 2

06:33 Tim Daly, PM, DSD Presentation

11:51 Commissioner Whalen I didn't see anything regarding the installation of kevlar, bullet resistant sheetrock. Is that not in here?

A: (Daly) That is a condition the Commissioners could go ahead and add. It's something we don't typically do.

Q: We've done it in ….

A: In previous applications

Q: Yes. So, it's not in there?

A: It's not in there.

Q: Ok thanks.

12:32 Commissioner Hasse That might just be because of the age of this one. We've evolved over time… We don't have a lot of speakers this morning. I'm going to go ahead and grant 3 minutes just to kind of build memory refresh for us all and that way we can kind of get back up to speed. I have to admit I sort of remember this one but not very well.

14:09 David Demian, Esq. representing the owner Greenwood LLC in opposition to the appeal.

20:11 Caryn Bailey, Architect on behalf of the applicant citing in opposition to the appeal.

24:07 PJ Fitzgerald reads into the record the bullet resistant materials language that was not on the drawings before the Commission.

25:22 Commissioner Haase Ok lets continue with the public testimony. I do have a question for two speakers and this is always a little confusing, I understand and apologize that when we say are you in favor

of the ITEM we usually look at are you in favor of the project. The ITEM is actually the appeal. So let me start with Teri Ann Skelly and Becky Johnson. Did you want to speak in favor of denying the appeal and approving the project? You want to speak in favor of upholding the appeal and denying the project. So why don't we start with both of you then. Because the other speaker slips, I'm pretty clear are opposed to this project. *[Commissioner Haase is the one who is confused here. Just the way he's having a difficult time recognizing that the next two speakers ARE opposed to the project.]*

26:22 Teri Ann Skelly in support of the appeal citing "the exploding number of marijuana outlets and in your face billboards are a great shock to our communities…I support the 4.5 year old appeal of the Hearing Officer approval on a very congested road just around the corner from another pot shop on Mira Mar Road. This application is over 5 years old and needs to return to the Mira Mesa Planning Group with its new applicant so that we know who it is that is moving into the neighborhood and replacing the very busy, desired and respected U-Haul company we know.

28:39 Becky Johnson in support of the appeal.

31:48 Scott Chipman in support of the appeal citing "the concern for public safety is regularly dismissed as an appeal issue but bulletproof glass and walls and guards are always emphasized. I was the original appellant when it was an MMCC application 4 years ago. My business is several blocks away and the proposed location had many questions regarding the safety of this location…the original 2014 application was for a medical marijuana consumer cooperative which had a different applicant than this new application which is before us. The new project will operate as a marijuana outlet, recreational pot, a far busier entity than one limited to medical consumers…However, the most important thing is that this is a whole new application, with different forms, operating under different regulations with a new applicant name. This marijuana outlet, with its new application and more importantly, new applicant should be returned to the planning group so that all ramifications of a busy pot shop can be considered. The planning group deserves the opportunity to evaluate this project in its current configuration. The planning group may also have additional concerns that may apply today that did not apply 4 years ago.

This neighborhood's business district has changed from 4 years ago. It has always been the understanding of planning group and community members that the reason for application of any business granted a conditional use permit has to activate its proposal within 3 years is that significant changes may occur, which will affect the original conditional use permit approval. Well now it's been 4 years. Give the neighborhood and its planning group a chance to meet this applicant and review the application plans. Thank you."

34:44 David Demian "Just two points I wanted to address. One, the ownership has not changed. The applicant is the same. The project is the same. The owner is right here. He's been here for decades. Two, the local planning group issues, we went to the planning group, we got the approval. The project has not changed.

Q: (Commissioner Hofman) Knowing that there have been changes in the last 4 years, why did you not return to the planning group?

A: (Demian) There's no requirement under the code that we return to the group. We did not perceive that there had been a dramatic change. We still do not believe there has been a dramatic change.

A: (Tim Daly, DSD) Commissioner Hofman as part of the process, when they resubmitted this application, we did include the community planning group, submitting plans and documents to the community chair and we did not hear back from the community planning group chair.

36:12 Commissioner Haase I have a question for the attorney [Demian]. Does the change in the applicant have any effect on the permit itself? *[First of all Demian just stated that there has been no change in the applicant and secondly this shows that the Planning Commission is not even aware of the background check requirements.]*

A: (Shannon Thomas, City Attorney) As the speaker just commented, the actual owner has not changed. In the past, the owner had an agent that was processing the application on his behalf but he was and still is the owner of the application.

36:40 Commissioner Whalen We have a lot more experience today in approving these than we did in 2015. I'm much more comfortable. I just want to make sure PJ that if I make a motion the language that you read into the record will be included in the motion?

A: (PJ Fitzgerald, DSD) If you wish.

Q: I wish. A couple of other comments. Over the years we've noticed the size of these facilities. I like that this one is a little more ample in square footage. The original ones we approved were like big walk-in closets. I also like the parking. Normally we're not big on parking here *[6220 Federal would attest to that]* but for this purpose I think it's a good thing.

38:21 Commissioner Granowitz I was just wondering if the planning committee made a request for the applicant to return?

A: (Demian) They did not.

Q: We have a planning committee that did not request the applicant to return…I am unconvinced by the people saying that this should have come back to the planning committee because I think they had ample opportunity to have brought it back on their own.

39:20 Commissioner Hofman That was my biggest concern. Thank you Tim for having explained that. I agree with Commissioner Granowitz, my concern is that it should have gone back, but the fact that they were notified and they had the option to bring it back and request it be brought back and I'm assuming if they did you would have brought it back I'm a lot more comfortable with it.

COMMISSION ACTION: MOTION BY COMMISSIONER WHALEN APPROVING STAFF'S RECOMMENDATION TO APPROVE CONDITIONAL USE PERMIT 1338819 on 04/17/2019. Seconded by Commissioner Hofman. The motion passed by a vote of 5-0-2 with Commissioners Haase, Hofman, Granowitz, Otsuji and Whalen voting yea and with Commissioners Austin and Peerson absent.

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ANNOUNCEMENTS/PUBLIC COMMENT

3:16: Judi Strang commented on recent cannabis legislation

6:26: Kathleen Lippitt commented on Public (teen) Health crisis re cannabis potency. There are no testing labs in San Diego. The DCC is overwhelmed, understaffed and does not have the protocols in place to

protect the citizens of San Diego. The Commission asks that she follow these comments up with a written notification.

[I find it odd that these people weren't in attendance when it can be seen that Judi Strang and Kathleen Lippitt BOTH were at the hearing and made opening comments before the Agenda Items were heard. For whatever reason neither one of them would oppose any of the MPFs on today's agenda. Were they controlled opposition the entire time? I don't know. I do know they spent an enormous amount of time and money going to these hearings and always arguing against projects based on their dislike of cannabis and it's being adopted into law. These were never arguments that the Planning Commission could accept as appealable issues. They were only there to determine if Land Use Codes were being followed. Could the entire opposition to these licenses be an orchestration to control the opposition narrative? At this point in my reconstruction of the events I would not put that past those who wanted to control the flawed first come, first served process from beginning to end.

In fact I began questioning the opposition's motives when there was a canned opposition by Judi Strang to the 6220 CUP whereby she brought up the issue of a childcare facility located within the 1,000 foot radius which excludes these businesses. You can hear Ms. Strang posing this issue at an October 18, 2018 Hearing Officer Hearing at 11:17 into the audio recording stating "a parent contacted me and I thought they were going to be here they haven't so maybe I'll speak on their behalf, they were concerned that there may be a child care facility within 500-600 feet of this location. They said it is called Cuddles Academy Daycare and it's located at 2195 Oriole Street which I did have a chance to Google looks like it is within a straight walking distance of maybe 550 feet. Thank you."

The Hearing Officer, Duke Ferandez then asks Cherlyn Cac about that daycare being within 1,000 feet to which Ms. Cac immediately replies "Staff had reviewed the separation spreadsheet as well as the map and there was no childcare identified within the submittal we received." And that response was enough to put the issue to bed for Mr. Fernandez. The fact is when Judi Strang was asking this question there was not one but two licensed child care facilities within 1,000 feet of the 6220 project and the canned testimony of Judi Strang with the Cherlyn Cac response was nothing short of incredible that this issue wasn't explored beyond the superficial exchange we hear in this recording. I provide greater detail on how DSD processed these two CUPs in this July 31, 2019 comparison analysis. My point here being that DSD needed strawman opposition and I believed then as I do now that Judi Strang was and may still be, part of that canned opposition.

Other issues that become readily apparent within this day's hearing is that the appellants are all strawman appellants which include but are not limited to Eales, Nguyen and Shobine. They don't even show up to the hearing and in the case of Nguyen withdraw the appeal just before the Planning Commission hearing. Instead opposition to the CUPs is being brought up by a new insider, Marcos Getchell who opposes each project on issues that the Commission can not or will not act on and is listed on DSD Project Customer Information links as Marcos Getchell being an agent to these projects. The point here is that the appellant strawman practice is all well and good in this process. During this hearing you can see how someone like Marcos Getchell was a willing "Agent" in this DSD led conspiracy. Read the individual project details below to see where this has all been set forth in greater detail.

Also, this is the first time I've seen a Chairperson, in this case Peerson, waive the DSD presentations at the beginning of each Item. She went straight to public testimony. This was done to 'expedite' the process. The DSD presentations average less than 5 minutes. Had they been allowed to give those presentations

we would have heard how the original MPF application morphed into adding cultivation and distribution to those licenses. That is not an insignificant change in project scope and would require new posting for public comments, planning group approval and most certainly an environmental and energy analysis relative to what indoor cultivation represents to those considerations. None of that occurred as it was not in the Planning Commissions or DSDs best interests to publicly vet those expanded licensing approvals. These, and other issues are expanded upon within the individual Items which were heard on May 9, 2019.

Lastly since this hearing represents approval of 4 MPFs it's important to remember that while there were some "unique" Planning Commission processes that took place that day, the Hearing Officer in each of these cases was Chris Larson and the DSD Project Manager was Tim Daly. When you add up all the prehearing work that went into making this all happen it's interesting to see how attorney Gina Austin meets with PJ Fitzgerald, Deputy Director Cannabis @ DSD and Tim Daly in this extended personal exchange that occurred at the midday break: 1:15:35-1:19:14 At the break Gina Austin holds court with PJ Fitzgerald and Tim Daly to be seen laughing, with Gina reaching out and touching her arm. Why did PJ come down to make this special visit with Gina and why was Tim Daly so quick to join in?]

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2019/05/09: ITEM–3: MPF 10671 ROSELLE STREET Appeal Hearing Officer's 2019/02/06 ITEM 7 decision

ITEM 7 STAFF: Firouzeh Tirandazi

4 speaker slips submitted in favor – Phil Rath, Kristi Byers, Khoa Nguyen, and Robin Madaffer

4 speaker slips submitted in opposition – Peggy Walker, Shahin Mobine, Irene Lowe and Becky Johnson

HEARING OFFICER ITEM 7 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-19-001. RESOLUTION NO. HO-7195

DSD CONTACT: Chris Larson

PROJECT NUMBER: 585605

DSD TO HEARING OFFICER RECOMMENDATION: HO-19-001 "Approve Conditional Use Permit No. 2072708."

HEARING OFFICER: Chris Larson

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-19-038 "DENY the appeal and uphold the Hearing Officer's decision to APPROVE Conditional Use Permit No. 2072708."

CEQA DETERMINATION: Page 1 " This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Section 15303(c), New Construction or Conversion of Small Structures. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on November 13, 2018. The scope of the subject hearing only includes the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: No NORA Public Circulation Record was found. A Notice of Exemption was filed with the County Recorder @ Page 20.

APPELLANT(S): Shahine Mobine and Khoa Nguyen

Issues On Appeal

Page 28: Torrey Pines Community Planning Group (TPCPG} Minutes. The 597781 Project No. on Pg 28 is not in the DSD system. In the Action Items Para 1, TPCPG is looking at an existing MO wishing to add an MPF to that MO. If that MO was permitted it was not an appeal that the Planning Commission ever saw.

Page 30: TPCPG considers a MPF at 1070 Sorrento Valley Road with Abhay Schweitzer, Renny Bowden, Jim Bartell and Heather Riley, Esq. presenting. This is not an appeal issue. This is flagged hear because it was a project I was unaware of and will be following up on..

Page 32: Ownership Disclosure Statement

Page 42: Application for Appeal by Shahine Mobine

Page 44: Application for Appeal by Khoa Nguyen. This appeal was based on a strong odor argument. Mr. Nguyen works for lobbyist Phil Rath who is stacking the appeals with strawman appellants like Nguyen who lobs softball arguments just to control the appeal process.

OWNER(S): GMG SD, LLC., Greg King

APPLICANT(S): Doug Gans and Tony Hall Torrey Holistics, Inc. and Hall and Gans Holdings, LLC

CUP NUMBER: 2072708

CUP HOLDER: Doug Gans

SITE DEVELOPMENT PERMIT NUMBER:

STATUS: Issued 2019/09/23

CITY COUNCIL DISTRICT: 1

PLAN AREA: Torrey Pines

STAFF: Firouzeh Tirandazi

Speaker slips in favor of the project, opposed to the appeal submitted by Phil Rath, Khoa Nguyen, Kristi Byers and Robin Madaffer.

Speaker slips in opposition to the project, in favor of the appeal submitted by Marcos Getchell.

46:38 Commissioner Peerson opens Item No 2 Appeal of Hearing Officer's decision on February 6, 2019 MPF 9731 SIEMPRE VIVA ROAD – PROJECT NO. 585480

Somebody asks Commissioner Peerson "do we have to hear the staff reports on these items?' To which she responds "I was going to ask…we do not. If we would like to expedit for these items we will suspend staff report and move into public testimony."

47:47 Commissioner Peerson apologizes for taking an Item out of order and begins Item 3, suspends staff reports and moves into public testimony.

48:45 Phil Rath opposed to the appeal citing "We're very proud of this application and my team is here to answer any questions you might have."

50:07 Marcos Getchell in support of the appeal citing "I think we can have a disagreement in regards to the environmental review that is applied to these different projects. We know they can slow them down or speed them up and on this one, it's clear to me this is an application that deserved more environmental review. It goes back to 2006 *[I believe he meant to say 2016]* when the same applicant applied for a CUP to operate an MMCC at the same address. Later that same year they applied for a marijuana outlet at that same address. Both of those projects were approved with environmental exemptions. In 2017 they applied for the current project and received an exemption earlier this year. So this applicant now seeks for development of an MPF, within additional suites in the same building. I should also note that nearby there was another MPF approved within 300 feet of the project.

Initially the community planning board was opposed to this project because of the saturation of approvals within close proximity and they also requested that the City Attorney put forward some type of environmental review for the entire area so that they would be able to review something like this project which to me looks like a clear case of piecemealing. So the applicant received this underlying approvals with limited environmental review without having to obtain a Coastal Development Permit which is normally required when you increase the intensity of use. This project is in a Coastal Zone.

In 2015, when they sought to get the approval of the MMCC, the TPCPG voted 4-2-1 to deny the project. In 2017, when they sought to convert the MMCC to a retail operation without environmental review, the planning board pointed out that there was already a marijuana outlet within 300 feet, which I have mentioned. Furthermore, this was one of 5 marijuana outlets seeking final approval within Sorrento Valley. In a 2018 memorandum TPCPG asked the City Attorney to immediately intervene and investigate the increased intensity of these retail operations and the need for an environmental impact report considering the entire region. In their memorandum, they pointed out that it became obvious that by proceeding in this path the DSDs goal was actually counter to the public health and safety and environmental issues in Sorrento Valley and that no serious consideration had been given to the merits of the issues raised by TPCPG.

As you know, piecemealing is illegal. Under CEQA it contains a prohibition against piecemealing in order to qualify for exemptions. In other words, a project may not be divided into smaller projects, to qualify for one or more exemptions.

In summary, through a piecemealing approach, this applicant now seeks to obtain 3 discretionary approvals with no significant environmental consideration of the increase in intensity from his 3 recent conversions. The applicant's piecemealing approach has thus far allowed this project to evade City and State requirements avoiding significant environmental review and avoiding the Coastal Development Permit. Lastly the piecemealing approach allowed this projects approval trajectory to run afoul of the TPCPG policies, including but not limited to the restriction against free standing buildings being used for a retail-commercial purpose unless the use only serves the immediate Sorrento Valley industrial area. As you've heard from the first speaker today, not on either side of these arguments, they've made a clear point that these projects are accessed by people from throughout the region. So it has nothing to do with the Sorrento Valley industrial area. I request that you support the appeal."

54:29 Commissioner Peerson I would like to remind you that the CEQA determination is not before the Planning Commission today. If you're speaking in future project matters, if you're here to speak and have speaker slips on other items, we don't need to hear something that we're not here to make a determination.

A: (Getchell) But I didn't send anything in writing and I wanted to put on the record that I think is important and I think the Planning Commission…

Pearson: It's important but it's not before us today. It's not something we can speak on and I would ask you to not bring that up. If you have other items in support of an appeal we'd like to hear those. Thank you.

55:12 Commissioner Whalen I had a question for the applicant. Where does the cannabis come from that's produced into products? What's the origin of that?

A: (Rath) From state licensed, wholesale providers. Growers.

Q: Here in San Diego County?

A: More than likely but not necessarily exclusively.

Whalen: Thank you. I'll make a motion to deny the appeal and uphold the Hearing Officer's decision to approve the CUP.

COMMISSION ACTION: MOTION BY COMMISSIONER WHALEN APPROVING THE STAFF'S RECOMMENDATION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO APPROVE CONDITIONAL USE PERMIT NO. 2072708 WITH THE ELIMINATION OF CONDITION NO. 26, AND TO ADD IT AS AN INFORMATIONAL ITEM IN THE INFORMATIONAL SECTION OF THE PERMIT. Seconded by Commissioner Hofman. The motion passed by a vote of 7-0 with Commissioners Peerson, Hofman, Austin, Granowitz, Boomhower, Otsuji and Whalen voting yea.

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2019/05/09: ITEM–4: MPF 2220 NEILS BOHR COURT Appeal Hearing Officer's 2019/02/06 ITEM 8 decision

ITEM 8 STAFF: Tim Daly

5 speaker slips submitted in favor – Phil Rath, Michael Vogt, Khoa Nguyen, Jessica McElfresh and Scott Bernett

2 speaker slips submitted in opposition – Rodney Eales and Kathleen Lippitt

HEARING OFFICER ITEM 8 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-19-010. RESOLUTION NO. HO-7196

DSD CONTACT: Tim Daly

PROJECT NUMBER: 585368

DSD TO HEARING OFFICER RECOMMENDATION: HO-19-010 "Approve Conditional Use Permit No. 2062816'

HEARING OFFICER: Chris Larson

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-19-045 "Deny the appeal and uphold the Hearing Officer decision to APPROVE Conditional Use Permit No. 2062816."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Section 15301, Existing Facilities. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on October 23, 2018. The scope of the subject hearing only includes the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24007553 @ Page 23

APPELLANT(S): Rodney Eales.

Issues On Appeal

Page 23: NORA Appeal Post

Page 25: Community Planning Group Distribution Form

Page 26: Ownership Disclosure Statement

Page 38: Appeal Application by Rodney Eales

OWNER(S): Michael Vogt

APPLICANT(S): Willie Senn

CUP NUMBER: 2062816

CUP HOLDER: Willie Senn

SITE DEVELOPMENT PERMIT NUMBER:

STATUS: Issued 2019/07/23

CITY COUNCIL DISTRICT: 8

PLAN AREA: Otay Mesa

STAFF: Tim Daly

Speaker slips in favor of the project, opposed to the appeal submitted by Phil Rath, Khoa Nguyen, Nathan Shaman, Scott Bernett and Will Senn.

Speaker slips in opposition to the project, in favor of the appeal submitted by Marcos Getchell.

58:07 Commissioner Peerson opens ITEM No.4

59:06 Tim Daly, DSD I do have a correction I need to go ahead and make in the permit. The permit identifies typical uses for a marijuana production facility. This particular use is going to be for cultivation only and so the permit will be revised to identify that it will be for cultivation only on the site. *[Here would be the place that the questions regarding energy use from indoor plant lighting and HVAC should come in.*

Watts per sq-ft should be explored. Where is this power coming from? How much of it is from green energy sources?

How about the environmental concerns for nutrient, pesticide, fungicide or airocide treatments. How is that being disposed of? How about the plant substrates? For example if they plan on using rockwool for their substrates what do they do with that substrate at harvest. More and more landfills are refusing to take them because they don't break down.

How is that this project was applied for under an MPF and it converted as a "modification" to indoor cultivation? These are entirely different dynamics as far as what any of the review processes would require and DSD treats this as a modest revision to the existing application.]

1:00:05 Phil Rath in opposition to the appeal citing "we are in support of the "modification' that Mr. Daly presented to you." *[I would imagine you are]*

1:44:48: Marcos Getchell in support of the appeal citing "I had an issue with the categorical exemption *[CEQA]* which I won't mention *[this comment is a result of the dressing down he got from Commissioner Peerson on the previous project heard that day, ITEM 3 where the Commission will not hear arguments regarding CEQA]* but I want to discuss the same issue of security and the State regulations.

The loading and unloading of cannabis products should be within an enclosed secure garage. The site plan does demonstrate that the project includes an enclosed garage for distribution purposes contrary to State regulations. They require that every MPF applicant and licensee shall develop and implement a security plan which, at a minimum, should prevent access to the manufacturing premises by unauthorized personnel and protect the physical safety of employees. This includes but is not limited to establishing physical barriers to secure the perimeter access and all points of entry to the manufacturing premises. The regulations also require that an applicant prevent theft or loss of cannabis and cannabis products, including but not limited to, establishing processes for the inclusion of loading and unloading of cannabis in transportation vehicles in a protected facility.

The staff report states that the municipal code does not require this and that an applicant may be required to take this up at some later date with the State. But the City has to comply with State regulations and the project conditions can require that state law be complied with; however there is no guarantee that the State will enforce these regulations as has occurred with other similar projects having already been approved. The City should require this and you can do something about it today. *[The fact is if there are state and city law and regulations that are being subjectively enforced then the conditions exist that allow certain people to avoid those laws and regulations while others must comply with them. It fosters the pay-to-play corruption we're seeing in cannabis licensing in the City of San Diego.]*

1:02:32 Commissioner Hofman I'd like to give staff the opportunity to respond. Are we meeting, in this project, all state requirements?

A: (Tim Daly) This project is meeting the San Diego Municipal Code requirements. There are certain state requirements that the licensing agencies do apply to the operator. If they do have to go ahead with some type of enclosed structure, obviously they're going to have to comply with that and they'll have to come in to the City of San Diego and get a Tenant Improvement or some type of permit just to go ahead and do that enclosure for the building itself but it's not a requirement by the City of San Diego. *[Right here is where Commissioner Hofman, or any of the Commissioners, should have sought counsel from the City*

Attorney on this. No one did. They simply accepted Tim Daly's excuse for why SDMC does not have to consider state regulations when it suits them.]

A: (Tyler Schur, DSD) I would like to add that we do condition the permit with safety conditions per Land Development Code. Those include; lighting around the facility, exterior and interior, parking areas, licensed security guard on premises during business hours, security cameras and alarms and visible signage limited to an address only. We do condition the projects for security.

Hofman: Thank you very much. I just wanted to make sure that was on the record.

COMMISSION ACTION: MOTION BY COMMISSIONER HOFMAN APPROVING THE STAFF'S RECOMMENDATION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO APPROVE CONDITIONAL USE PERMIT NO. 2062816. Seconded by Commissioner Whalen. The motion passed by a vote of 7-0 with Commissioners Peerson, Hofman, Austin, Granowitz, Boomhower, Otsuji and Whalen voting yea.

* * *

2019/05/09: ITEM–5: MPF 9350 TRADE PLACE Appeal Hearing Officer's 2019/02/06 ITEM 9 decision

ITEM 9 STAFF: Tim Daly

5 speaker slips submitted in favor – Gina Austin, Alan Austin, Preston Roll, Juma Elajou and Abdulla Elajou

2 speaker slips submitted in opposition – Kelly McCormick and Shahin Mobine

HEARING OFFICER ITEM 9 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-19-009. RESOLUTION NO. HO-7197

DSD CONTACT: Tim Daly

PROJECT NUMBER: 585463

DSD TO HEARING OFFICER RECOMMENDATION: HO-19-009 "Approve Conditional Use Permit No. 2078720"

HEARING OFFICER: Chris Larson

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-19-044 "DENY the appeal and uphold the Hearing Officer decision to APPROVE Conditional Use Permit No. 2068720."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Section 15301, Existing Facilities. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on December 3, 2018. The scope of the subject hearing only includes the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 25007574 @ Page 21.

APPELLANT(S): Shahine Mobine and Khoa Nguyen *[of note, neither one of the Appellants appeared at the Planning Commission hearing and per Tim Daly, Nguyen withdrew his appeal. I've seen no evidence of that withdrawal though.]*

Issues On Appeal

Page 23: CUP signature page

Page 31: Ownership Disclosure Statement showing owner as San Diego Trade Partners LP., Abdulla El Ajou and applicant as Tradeworx Partners, Inc with a scribbled signature, no printed name at the same address. The applicant is never identified and the signature is not the same as the owner. Who is the applicant? A search of the Secretary of State business names does not show this Tradework Partners Inc. entity. How did this ever get past a Hearing Officer and an entire Planning Commission and where were the speakers, such as the regular notables i.e., Scott Chipman, Judi Strang and Kathleen Lippitt in opposition to this approval? I find it odd that these people weren't in attendance when it can be seen that Judi Strang and Kathleen Lippitt BOTH were at the hearing and made opening comments before the Agenda Items were heard. For whatever reason neither one of them would oppose any of the MPFs on today's agenda.

Page 38: Appeal Application by Shahin Mobine - mobine@urbngreens.com

Page 40: Appeal Application by Khoa Nguyen -khoa@rathmiller.com

OWNER(S): Trade Partners San Diego Page 1 shows the original formation of El Ajou Investment On June 30, 2011, Said El Ajou, President. Page 2 shows that on May 4, 2016 Abdulla El Ajou amends El Ajou Investments to San Diego Trade Partners, LP. There are no General Partner changes identified in Section 6. Why this should be examined in the whole of things is because this was around the time that Gina Austin was trolling the waters with Razuki, Malan, Hakim, Knopf and others to set up licenses under shell companies where true ownership was not disclosed. As one considers the entire context of what is being shown in this project, the appeal, the lack of normal opposition being present at the Planning Commission hearing and the obvious close relationship Gina Austin displays at the break with DSD staff the question becomes who is really behind this CUP and how much influence does Gina Austin have over DSD and the Commission?

APPLICANT(S): Tradeworx Partners Inc. Not found in the CA Secretary of State database search.

CUP NUMBER: 2068720

CUP HOLDER: Trade Partners San Diego

SITE DEVELOPMENT PERMIT NUMBER:

STATUS: Issued on 2019/08/28

CITY COUNCIL DISTRICT: 6

PLAN AREA: Mira Mesa

STAFF: Tim Daly

Speaker slips in favor of the project, opposed to the appeal submitted by Gina Austin, Brittany Biesterfeld, Abdulla Elajor, Laura Elajor, Eman Elajor and Alan Austin.

Speaker slips in opposition to the project, in favor of the appeal submitted by Marcos Getchell.

1:04:30 Commissioner Peerson opens ITEM 5

1:05:01 Tim Daly, DSD I do have a correction on the permit for this item. This permit will be for the cultivation, bakery and distribution on this location. I want to make that correction, And also you had an appeal that was withdrawn of which you have a copy of from Khoa Nguyen so the only item you have is Mr. Eales appeal. *[He's mixing up his strawman appellants. Eales was the appellant on the previous item. Also when you read the Nguyen appeal it lists a very specific odor control issue @ pages 40-41. Why would someone go to the time and expense of creating an appeal, especially an industry guy, and then withdraw it?]*

1:06:50 Gina Austin, Esq. in opposition to the appeal citing The appellant is arguing there are sensitive uses that are within distance in violation of the municipal code. I think staff did a good job in their report. I also supplemented that with a letter to the Planning Commission indicating that these uses are not, specifically the Momentum Dance Facility which is primarily an adult-use facility. They teach pole dancing and burlesque dancing and they have 2 or 3 classes for children…there are two reasons that exist which defeat that argument. The first is that Momentum is located outside the 1,000 feet path of travel and the second is that they don't meet the definition of premises since the entire building measures 17K feet and their suite is only 2K feet within the building.

The second issue that was raised on the appeal was that the site plan does not include short- and long-term parking, bicycle parking or an EV station and that is because this project is an interior tenant remodel that is less than $200K as evidence was provided to staff as such it qualifies for the exemption.

The third argument the appellant argued was that there is no delineation between uses. I think there is a misunderstanding by the appellant on whether or not there needs to be a delineation between uses. The municipal code certainly does not require it and as an expert in the state regulatory scheme I can tell you that the state doesn't require it either. There is also a misunderstanding about the loading. There is no requirement in the state guidelines that the loading be enclosed within a structure. The loading must be simply secure and if it's secure that is sufficient for the state guidelines.

1:11:09 Marcos Getchell in favor of the appeal citing I want to reiterate the security concerns that are in the state regulations. Some of the security requirements the City has do not measure up to what the State requires…there has to be a way for the City to require it of these projects. We have to bring the City decision into compliance with what the State requires for these projects.

1:12:58 Commissioner Whalen Can we have staff comment on those remarks?

A: (Tim Daly) Here again in regard to the loading dock area to make it enclosed, the City doesn't have a requirement in the municipal code. The State may have some requirements like that. The applicant is responsible for complying with those State requirements if they apply for licensing with that State agency. If the State agency requires them to enclose it, then the applicant needs to come back to the City and get a building permit for it.

1:13:34 Commissioner Hofman Can you quickly comment on the Momentum Dance Company and how you evaluated that?

A: (Tyler Schur, DSD) Sure. As Mrs. Austin pointed out, we've determined that it is within a 1,000 feet *[Austin argued it was outside the 1,000 feet]* however it's not the primary use of the premises. The

premises. The building is actually 17,316 sq-ft and at the time, staff estimated conservatively that the dance studio was no larger than 5,000 sq-ft. So it's clearly not over 50% of the use of the premises.

COMMISSION ACTION: MOTION BY COMMISSIONER HOFMAN APPROVING THE STAFF'S RECOMMENDATION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO APPROVE CONDITIONAL USE PERMIT NO. 2068720. Seconded by Commissioner Whalen. The motion passed by a vote of 7-0 with Commissioners Peerson, Hofman, Austin, Granowitz, Boomhower, Otsuji and Whalen voting yea.

2019/06/06 Minutes

ANNOUNCEMENTS/PUBLIC COMMENT

4:20: Kelly McCormick commented on Marijuana Testing "The City has moved faster on the legislature allowing marijuana retail outlets and production facilities than it has on related quality of life regulations… The majority of pot businesses are on the honor system to provide an accurate paper trail for a cash only industry…the testing of marijuana products is another broken promise."

3:59: Becky Johnson commented on Marijuana MPF's. It's worth noting that 4 MPFs that were scheduled for Appeal that day withdrew their Appeals.

6:34: Kathleen Lippitt commented on product testing requirements. "Why does the City prioritize marijuana businesses…this is an unfunded mandate since municipalities are on their own to protect their residents. BCC is overburdened and understaffed."

REQUESTS FOR ITEMS TO BE CONTINUED AND/OR WITHDRAWN

8:56 PJ Fitzgerald DSD Prior to today's hearing DSD received written requests from each of the appellants to withdraw their respective appeals of the Hearing Officer's decisions to approve projects for the following items on the Planning Commission's docket today following:

ITEM–2: Expedite Appeal of Hearing Officer's decision on February 20, 2019, MPF 3279 NATIONAL AVENUE – PROJECT NO. 585635 - WITHDRAWN

ITEM–4: Appeal of Hearing Officer's decision on February 20, 2019, MPF 9220 MIRA ESTE CT – PROJECT NO. 585378 - WITHDRAWN

ITEM–5: Appeal of Hearing Officer's decision on March 6, 2019, MPF 3940 HOME AVENUE – PROJECT NO. 611536 - WITHDRAWN

ITEM–6: Appeal of Hearing Officer's decision on March 6, 2019, MPF 8390 MIRAMAR PLACE – PROJECT NO. 585648 - WITHDRAWN

As such and pursuant to San Diego Municipal Code Section 112.0506(d) which states that the appellants may withdraw at any time prior to the commencement of the appeal hearing before the Planning Commission. The withdrawal must be filed with the City Manager and if all appellants withdraw their appeals no appeal hearing shall be conducted. Therefore, these items are now withdrawn off the agenda and no appeal hearing shall be conducted today on those 4 items. Thank you.

10:08 Tim Daly DSD Chairman Peerson I just want to go ahead and make a correction on ITEM No. 6. It indicates that the DSD recommendation was going to be to approve that appeal, actually it was going to

deny the appeal. The project was approved by the Hearing Officer so it is to approve the appeal. *[Daly gets it wrong again. It was to deny the appeal. Nervous?]*

Peerson: Thank you that's for Item no 6?

Daly: Yes. That's a correction.

Pearson: Thank you for the correction.

[We will see all of the MPF Appeals withdrawn today. There was no legitimate Appeal taking place. These were filed by applicant agents to tie up the Appeal window of opportunity to file. Once withdrawn the original Hearing Officer decision stood and the CUP's were awarded.]

COMMISSION COMMENT Commissioner Whalen commented that it would be good for the Commission to have a sort of a status report on how the Cannabis regulations are working. As he has mentioned in the past, the Commission does listen when we have a comment on this issue. He also wants to complain again about the system being gamed, for people in the audience, he said that the Commission does read the materials for the hearings and to have those appeals pulled at the last minute after they went through all this trouble, it's clear that somebody is gaming the system and they are all angry about it and he just want to get that on the record. But the other question he wants to ask, do people think it's a good idea to perhaps review how things are going?

Commissioner Austin commented that the comments made during the testimony are thoughtful and looks like they are well-researched and would like to get on the Agenda about the billboards and what can be done about it. He mentioned that his wife was complaining about it and he's seeing that there may be a danger that he didn't understand before with the Marijuana Facilities which has to do with safety. He would like to hear from staff what can be done and come back with a report. Lastly, he asked if there is a public safety problem on this and what can be done to help make the situation better?

Commissioner Hofman commented that he agrees with his fellow Commissioners and it would be good to do more research and report back to the Commission. He also mentioned that he disagrees with the comments he heard this morning that the staff has been too busy approving CUP's instead of analyzing them. And that just is not the case, the amount of work that goes into the review of these projects is phenomenal. He disagreed with that and he respects the way the staff has handled it. He also wants to say how happy he was with our new disclosure procedure and getting disclosure out early is helpful; he's glad we're doing that.

12:22 PJ Fitzgerald states that 4 ITEMS were withdrawn properly and cites the procedure and code that was followed in their withdrawal. While on the agenda, these ITEMS will not be heard by the Planning Commission.

17:40 Commissioner Whalen "I have a feeling Commissioner Austin is going to be saying the same thing as I am too *[Interesting comment. How would Whalen know what Austin is going to say when they are not to be communicating about these issues as it would be a violation of the Brown Act]* I think it would be good for us to have sort of a status report on how the cannabis regulations are working. As we've mentioned in the past, we do listen when we have public comment on this issue and I also want to complain again about the system being gamed. For people in the audience we read all this material for the hearings and to have these appeals pulled at the last minute after we went through all this trouble,

it's clear that somebody is gaming the system and we're all angry about it. I just want to get that on the record." Certified Transcript of Commissioner Whalen's Statement

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2019/06/06: ITEM 2: MPF 3279 NATIONAL AVENUE Expedite Appeal Hearing Officer's 2019/02/20 ITEM 4 decision *[Here's another Magagna project that is being done on an expedited basis. Magagna's 6220 Federal was also done on an expedited basis and Commissioner Peerson had to recuse herself due to a financial conflict of interest on that project. Why do the Magagna projects get done on an expedited basis?]*

ITEM 4 STAFF: Firouzeh Tirandazi

5 speaker slips submitted in favor – Marcela Escobar-Eck, Gina Austin, Laura Magagna and Aaron Magagna

3 speaker slips submitted in opposition – Marsha Lyon, Kelly Hayes and Rebecca Johnson

HEARING OFFICER ITEM 4 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-19-016. RESOLUTION NO. HO-7199

DSD CONTACT: Firouzeh Tirandazi

PROJECT NUMBER: 585635

DSD TO HEARING OFFICER RECOMMENDATION: HO-19-016 "1. Approve Conditional Use Permit No. 2068128; and 2. Approve Neighborhood Development Permit No. 2246456."

HEARING OFFICER: Duke Fernandez

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-19-048 "DENY the appeals and affirm the Hearing Officer's decision to APPROVE Conditional Use Permit No. 2068128 and Neighborhood Development Permit No. 2246456."

CEQA DETERMINATION: Page1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA section 15301, Existing Facilities (Attachment 7). The environmental exemption determination for this project was made on October 11, 2018, and the opportunity to appeal that determination ended October 25, 2018. Two appeals of the environmental determination were previously filed. The appeals were withdrawn on January 7, 2019 and January 8, 2019. The scope of the subject hearing only includes the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION: No NORA Public Circulation Record was found. A Notice of Exemption was filed with the County Recorder @ Page 28. I did find a NORA Post for the Hearing Officer@ 24007605 but none for the Planning Commission.

APPELLANT(S): Rath Miller,Khoa Nguyen, Greenspoon Marder LLP c/o Kelley Hayes and RS Industries, Rodney Eales

Issues On Appeal

DSD Recommends Denial due to MAJOR Issues *[Tirandazi ignores this and proceeds anyway, knowing that she had the Hearing Officer in the bag and the Planning Commission, although appealed, would never hear the matter and the CUP would be granted based on a Hearing Officer's decision.]*

Page 35: Notice of Exemption

Page 37: Community Planning Distribution Form

Page 41: Ownership Disclosure Statement

Page 44: Appeal Application by Khoa Nguyen

Page 46: Appeal Application by Greespoon Marder LLP % Kelly Hayes

Page 47: Appeal Application by RS Industries Rodney Eales - Rodney@urbngreens.com

Page 67: Owner/Permittee CUP signature page

OWNER(S): Aaron Magagna

APPLICANT(S): Aaron Magagna

CUP NUMBER: 2068128

CUP HOLDER: Aaron Magagna

SITE DEVELOPMENT PERMIT NUMBER: 2246456

STATUS: Issued 2019/07/01

CITY COUNCIL DISTRICT: 8

PLAN AREA: Southeastern San Diego

STAFF: Firouzeh Tirandazi

No speaker slips in favor of the project submitted. Speaker slips in opposition to the project submitted by Marsha Lyon.

COMMISSION ACTION: THIS ITEM WAS WITHDRAWN.

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2019/06/06: ITEM 3: MPF 4655 RUFFNER STREET Appeal Hearing Officer's 2019/02/20 ITEM 9 decision

ITEM 9 STAFF: Tim Daly

2 speaker slips submitted in favor – Gina Austin and Doug McGrady

2 speaker slips submitted in opposition – Charles Wang and Terri-Ann Skelly

HEARING OFFICER ITEM 9 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-19-014. RESOLUTION NO. HO-7203

DSD CONTACT: Tim Daly

PROJECT NUMBER: 604122

DSD TO HEARING OFFICER RECOMMENDATION: HO-19-014 "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) on September 26, 2018. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on December 3, 2018, Resolution No. R-312070. The scope of the subject hearing only includes the project and not the environmental determination."

HEARING OFFICER: Duke Fernandez

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-19-049 "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) on September 26, 2018. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on December 3, 2018, Resolution No. R-312070. The scope of the subject hearing only includes the project, and not the environmental determination.

CEQA DETERMINATION: Exempt @ Page 1

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24007809 @ Page 18

APPELLANT(S): Charles Wang and Rath-Miller,Khoa Nguyen and RS Industries, Rodney Eales

Issues On Appeal

Page 22: CUP Signature Page

Page 23: Notice of Right to Appeal Environmental Decision

Page 25: Kearny Mesa Planning Group Minutes and Gina Austin Presentation

Page 27: Ownership Disclosure Statement

Page 36: Appeal Application by Charles Wang

Page 38: Appeal Application by Khoa Nguyen - Strong Odor *[This is the same boilerplate complaint Nguyen makes on every one of his appeals]*

Page 40: Appeal Application by RS Industries, Rodney Eales

OWNER(S): Tri T. Nguyen and Chi T. Luong, Trustees of the Nguyen Family Trust @ Page 22

APPLICANT(S): Doug McRady

CUP NUMBER: 2135497

CUP HOLDER: Doug McRady @ Page 22

SITE DEVELOPMENT PERMIT NUMBER: NA

STATUS: Issued on 2019/09/07

CITY COUNCIL DISTRICT: 6

PLAN AREA: Kearny Mesa

STAFF: Tim Daly

Speaker slips in favor of the project, opposed to appeal submitted by, Gina Austin, Peachy McCrady, Aaron Magagna, Jared Angell, Ian Lellis, Dillon Sanchez, Brittany Biesterfeld, Doug McCrady and Alan Austin.

Speaker slip in opposition to the project, in favor of the appeal submitted by Kathleen Lippitt, Tim Nguyen, Ping Wang, Wesley Quach, Lauren Garces, Charles Wang, Timm Ryan Johnson, Kelly McKay, Elizabeth Davis Hynd, Kathy Wang, Daniel Wang, Andrew Ly, John Turpit, Jceheon Chu, Tracy Nguyen, Issac Wang, Phivan Nguyen, John J. Kang, Lijun Zhou, Alan Beck, Paul Young, Thanh K. Nguyen, Dr. Allen Chan, William Perno and Becky Johnson.

23:44 Tim Daly DSD Presentation

27:07 Commissioner Austin raises a clarifying question;

Q: Will they be doing extractions at this location?

Tim Daly looks into the audience and asks someone if they are doing extraction and they say confirm they are.

A: Yes, they are doing extraction. *[I'm sorry but this little exchange was set up to get that out in the open by the Commission, for what you'll see is in Gina Austin's forthcoming presentation.]*

31:09 Gina Austin opposed to the appeal citing "I represent the applicant…we concur with staff…but with a lot of opposition I just want to make sure that I provide you with some additional details that are going to answer some of your questions Commissioner Austin with regards to manufacturing, we'll also answer all of the issues with alleged sensitive uses…it's 21,210 sq-ft…it's currently operational. It is one of the facilities that was approved under the business tax certificate program. It has been operational for over a year. There is no manufacturing being done on site. Only distribution. It is in complete compliance with all the City regulations. This is not something that is going to be coming to the site. This is something that is here…there is not a safety risk because this is a manufacturing facility…it is a very complex detailed process…so the issue is sensitive uses, what are the sensitive uses? That was the appeal filed by Mr. Wang…there are things that were brought up as areas within the 1,000 feet but they're still not deemed to be sensitive uses and these include the Center for Autism, the San Diego Academy of Ballet and GameSyncs and SoccerShots…we discussed these at the Community Planning Group but they are still not sensitive uses and I'll explain to you why and staff concurs with this position…we have letters that were submitted to staff from the owners of both the San Diego Academy of Ballet as well as the California Professional Ballet indicating that the majority of their students are adults. They never have a majority that are minors on their premise. Thus it is not a sensitive use…we've had discussions with the opposition to see what can we do to come together in a good neighborhood and my understanding is they want a development in that neighborhood in a certain way that this would not be conducive for in the future and unfortunately the way Production Facilities work because it's a race and we have to get in with that top 40 that are allowed and that's where we are and we would request that you deny the appeal and uphold the Hearing Officer's decision."

43:16 Tim Nguyen Convoy District Partnership in favor of the appeal citing "there are many who support this appeal but could not be here with us. They include Cameron Brothers Construction, Crab Hut, Zephyr

Motors, the Gibbs Family, McGrath who combined have owned businesses in Kearny Mesa for over 100 years and are the largest property owners in the Kearny Mesa area. In addition we have 100 signatures gathered over 2.5 days in support of the appeal."

44:28 Ping Wang in favor of the appeal citing "Having grown up in San Diego and having gotten my Ph.D in Neuroscience from UCSD which was the basis for starting San Diego's first startup coworking center located just next to parcel in question…that was one of the many underpinnings, the vibrancy of that location…it also progressed onwards from office space uses but also to culture and restaurants and other people centric activities bringing out the culture creating a cultural gem in the center of San Diego…at the previous hearing it was said, by the applicants attorney, [Gina Austin] that I was on the Planning Commission and that I voted to approve this process. That's actually not true. I was away in Asia, spending most of my time there. I was not on the Planning Commission so hopefully this is not an indicator of a pattern of verifiable untruths…more scrutiny, CEQA Evaluation, Opens the door for legal challenges, there's a serious concern for being next to a factory, especially a factory using psychoactive compounds…the Academy of Ballet is only 125 feet away. Their website and schedule show they predominantly serve minors. There are a lot of minors here. How did this information get missed? The thing is the information provided by the applicant was incomplete. This is the system as it were…with the additional information we've provided them, the Community Planning Group supports the appeal…The proposed use is not appropriate at the proposed location…of the 40 MPFs coming to the City of San Diego. Our District 6 already has 20+ MPFs!…is 4655 the best place to put a factory? It's an office building. It was designed to be an office building! Will our neighbors at 7670, another building designed and built as an office building be comfortable with a factory next door to them… think about the Convoy District. Where it is. Where it has been. Where it's growing. Saying YES to the appeal is saying YES to offices, to retail, restaurants, business incubators and now housing."

59:02 Paul Young member of the Kearny Mesa Planning Group, licensed Architect and RE Agent, in support of the appeal citing "Convoy District has become a major important hub for the Asian-American community…please preserve our community and support the appeal."

1:00:38 Lijun Zhou running for SD District Council 1 in support of the appeal citing "culture is very important to society…we need more housing as opposed to a manufacturing facility there…"

1:01:31 John J. Kang attorney in support of the appeal citing"I moved my family to Kearny Mesa from Rancho Bernardo because it's a great community..my daughter went to the Ballet Academy and did many performances there…I don't know where the opposing party gets their numbers which sets forth that the majority of the users of the school are adults, from what I observed I believe most of them are children ranging from 3 all the way up to 18…I just want to corroborate what Ping said earlier that my law offices is a tenant in the building next door and I've been there for almost 20 years…as the landlord Ping's family is great. They open the parking lot up on the weekend for families to come and go to the restaurants…I support the appeal and oppose the project."

1:03:57 Kathleen Lippitt in support of the appeal citing "At the core of the many of these problematic issues that the Planning Commission and the City is now having to respond to, from residents, businesses, schools and churches that are in the path of these applications is because the information that was provided at the very beginning came from the industry itself. It is naive, at best, to listen to the industry, who has a direct conflict of economic interest and their assurances need to be taken with a grain of salt, a huge grain of salt…they promised regulations would ensure they would become good neighbors but it

was naive to assume those assurances because immediately afterwards, now that we've seen them in operation we now see what they are capable of doing…the CUP process is a discretionary process on the part of the City…it would seem reasonable that any of the licensees who engage in tactics such as improper signage and advertising those permits not be renewed…"

1:07:25 Issac Wang Urban Planner and District 5 Candidate in support of the appeal citing "it's rare that we get to see Asian-Americans mobilize on behalf of their communities…this is really rare…Kearny Mesa is going through that community plan update and is expected to be a major residential area…it's the Asian cultural hub in San Diego…we hope to build a neighborhood that's akin to Little Italy which is currently the best neighborhood in San Diego because it is mixed-use with ground floor retail around mid-rise residential. Convoy is a car-centric mess built around industrial uses and is a victim of poor Euclidean zoning…in short Asian-Americans took one of the sorriest neighborhoods in San Diego and turned into one of the most productive pieces of land in San Diego…a marijuana production facility is not something that I feel aligns with a vision of what we have for a vibrant, mixed-use, transit oriented development. I have no problem with marijuana myself, I think it's pretty dope, but this definitely conflicts with the urbanist in me and I feel like it's taking away from our ability to actually shape what we can for the neighborhoods of our future."

1:09:53 John Turpit Architect, 18 years in the Planning Group in favor of the appeal citing"you need to listen to these people. They have been a great partner in the totality of Kearny Mesa. The points that Ping made, a PhD in artificial intelligence, these are incredibly talented individuals..I say 'we' on the subcommittee for the update, I was the Chair along with Buzz Gibbs, they have been a key element in the success of that draft update. So their interest in housing, the retail, all of that is very very important to the future of the totality of Kearny Mesa…"

1:12:30 Andrew Ly in support of the appeal citing "I've known Ping for a while as we are both Asian entrepreneurs, really bootstrapped, built a great company over the years…they had not a marijuana production facility but one where the doctors prescribe something [a dispensary] and it caused us to move away…It doesn't feel right to bring in these amazing engineers and put them in a building next to a marijuana facility. It just feels off…We are one of the most successful tech companies in San Diego. We moved back here to Kearny Mesa because of the food and the culture, just everything around there. We want to stay but it's really hard for us to stay and keep such a large staff over there if stuff like this keeps happening."

1:15:30 Daniel Wang in support of the appeal citing "we got started a few years ago when Ping was running an incubator down the street so I know the area well. Being in Tech like a lot of us here are, it's not uncommon for us to leave the office very late at night but the area is nice. It doesn't feel right to have that kind of business there. I've been to Urbn Leaf and there is so much cash going around that place I personally don't feel safe going in there. I know there are two guards at the door but it's crazy. I understand production is different from retail but to have that kind of business in that environment I don't think it adds to the safety aspects of the area which has done fairly well."

1:17:26 Dr. Allen Chan Owner Jasmine Seafood Restaurant in support of the appeal citing "we're located one block from the facility…in the past 26 years since we opened, we've seen a tremendous growth in the area. I'm also on the Kearny Mesa Planning Committee especially to keep younger folks in the area where they can live near where they work. Having a marijuana facility near where they would live or work is not going to be an attraction to the area."

1:19:28 William Perno in support of the appeal citing "there is a church that DSD did not disclose during their review process that is within 1,000 feet of the proposed MPF…If there is a church within 1,000 feet of this MPF, as has been disclosed today, that is a redline. That is clearly within the municipal code Ordinance that is a protected zone, that there cannot be an MPF within 1,000 feet…that is a critically important protected zone. The other places that were outside the 1,000 feet, I understand the applicant's position, but this one, according to your speakers is within the 1,000 foot zone and it deserves to be looked at, identified and if it was missed then DSD and City staff should note that to you today or take a brief recess and look themselves and come back to you, say yes there's a church or no there's not. And if you need to make your decision with all the facts, if that church is there, it's a violation of a City Ordinance and municipal code to put it there.

What we've seen is speakers have talked about other projects that DSD is approving where there are protected uses within 1,000 feet. Elementary schools, churches, residences, [3279 National Ave.] that go against the City's own municipal code Ordinances that say they are not supposed to be there. Things like 'this is a promise zone' so we're going to create jobs by bringing this MPF in there so it's ok to violate our own City Ordinance to bring jobs. And you hear the community talking about the types of jobs, the types of uses they want. If there's a church, please look.

1:33:18 Commissioner Hofman "we have rules we have to follow. I don't like the first come first serve criteria that we've implemented for these 40 and we can't choose a more optimal location if the one in front of us does meet all of the rules and regulations of the City. I don't think this is the optimal location but I don't see a way for us to be able to choose another site at the expense of this one. There is a lot of money involved in these, that's not our criteria thank goodness *[sure]* but if they meet all the rules and regulations I think it ties our hands a little bit. We can't use a draft community plan as a criteria. The code is very clear about that. However, we can use the criteria that is there…

Q: (to staff) Did you consider the San Diego Korean Church in the analysis and how did that comply or not comply?

A: (Tyler Shur, DSD) Commissioner Hofman that's a very good question. Not only do we, in the case of the San Diego Ballet, we look at whether or not it is within the minor-oriented use. We also look for what the permitted uses are of the site and currently it's not a permitted use at the site. Also in regards to the church

Q: Are you talking about the Ballet?

A: San Diego Ballet at this site is not permitted to operate there as a ballet. The building occupancy is for office, bakery and warehouse.

Q: So, is it an illegal use at this point?

A: That's a code enforcement issue but when we as planners look to apply the land development code to a use like a Marijuana Production Facility, we have to also pull the Certificates of Occupancy for uses that we might question whether or not they would preclude a use like this. So, we review the building records and determined that it's not a permitted use.

Q: ok let's go on to the church.

A: The church was not reviewed as part of my review. It was not included on the applicants spreadsheet of uses; however, during the recess, planning staff were able to review the Certificate of Occupancy and determine that it's not permitted at that site.

Q: The church is not permitted at that site?

A: Correct. There is no change of use permit to operate a church, which is an assembly use which would require a change of use from office to assembly.

Q: Is it permitted under, I guess they didn't apply for that use change sounds like, but is it a permitted use if they had applied or would that have been denied because of underlying zoning?

A: I haven't been able to review that type of information. In order to approve a change of use, we'd have to go through the code and determine but as it stands staff has determined it's not a permitted use therefore if the applicant or anyone were to call code enforcement, they would start investigating that.

Q: Do you have any idea how long the church has been in operation?

A: I do not. I can tell you this application has been processed for over a year and a half. *[of note, another DSD processing 'anomaly' exists in the 6220 Federal CUP application which went from start to approval in less than 7 months.]*

Q: Ok. Well, that makes it more interesting. Because there's rules which I spoke to but there's also intent and I'm weighing carefully the intent and what the future holds. I'm just wondering if there are enforcement proceedings going on and they're going to be removed or not. It's a tough one. So I'm going to defer to listening to the rest of the comments from the Commission.

1:39:06 Commissioner Hofman "But I will tell you one thing I want to mention with one of the withdrawn items was the National Avenue one, and I don't want the same thing to happen here, I had real problems with that [staff] recommendation *[and that was not the original recommendation he had in front of him when he is making this statement. Had the 3279 National Avenue Report to the Planning Commission been vetted during a hearing, it would have exposed the fact that while Project Manager Firouzeh Tirandazi used creative sensitive use boundary measurements that put the MPF outside of the 1,000 and 100 foot barriers in her Report to the Planning Commission recommendation, it was in February 26, 2018 that the previous Project Manager, Tyler Sherer, [speaking of 'gaming the system' yes this is the same Tyler Sherer at this Ruffner Rd. Hearing] could not support the findings that the proposed project was outside the sensitive use boundaries and stated so in his Cycles Review as one of the Major Issue contributing to his recommended denial.]* I was going to support the appeal based on a high school being within 1000 feet because it was considered in the staff report that a barrier was just buildings and private fences which is a long stretch from a barrier like a freeway or flood control or a hillside. I just don't want that type of interpretation to get out of hand because I don't think that was ever our intent, but I'll stop there and listen to other comments." Certified Transcript of Commissioner Hofman's Statement

1:40:00 PJ Fitzgerald "…I just want to jump in on that comment on testimony we just had because it had to do with a user that is in a space we don't have any record of receiving legal building permits to occupy that space with that use so staff, when we're reviewing these materials need to look at, carefully what has been permitted…if there is no Change of Occupancy on file or permitting that would show a legal use of what may or may not be there, we would assume that it's not there legally."

1:40:46 Commissioner Hoffman "Yeah which seems to me to be a real technicality which I totally get as staff. In our position I hope we have a little more discretion, I'm hoping but…appreciate that." *[clearly Commissioner Hofman is having difficulty processing this. If the projects being cited as sensitive uses are not there legally how can the Commission have any discretion in protecting them? Unfortunately, they can not.]*

1:41:06 Commissioner Whalen "I was hoping that Commissioner Hofman would take care of this (laughs) but that's not what we have. Here we have another example of how the law of unintended consequences can affect what we're doing. I don't think anyone wants anything to happen to the Ballet School or the Church. and this action may lead us to something negative there. Also I have to observe that these are not the usual opponents that we have to these facilities. These people are for real and their concerns are genuine. Also we have the veneer of what from time to time as been unsavory industry tactics going after each other so it just makes me struggle here and I'll just put this out here, if it would be of any value to give staff more time to research this more carefully, I would propose a continuance. If it's not of any value, I won't. Our hands are tied in many ways as Commissioner Hofman has said. If the proposal meets with the regulations we generally adopt it. So I just put this out there for staff, especially Mr. Scherer [Tyler] if you think it would be of value to you, we would love to duck this issue if we could, but we can't."

1:42:47 Tim Daly, DSD "We have all the information before us and have presented it to you. So if you have any additional questions, we have done the research already so our position is the same."

1:42:53 Commissioner Whalen "great (laughs-long pause) I'm going to listen to what other people have to say first."

1:43:08 Commissioner Otsuji "Even makes it hard for me…I feel that this area is very very important in regards to the short and long term success or failure of that district more than anything else. Now we have again the opportunity to have success in that area, in regards to the Kearny Mesa Plan Update, understanding that we cannot put that into consideration with what we have before us today, but to me that's an overriding factor insofar as the success to the entire neighborhood…I'm kind of surprised that the church and the ballet school are not permitted. It's kind of interesting that both of them are illegal. I'm very surprised at that *[yes isn't it ironic that it's taking a cannabis facility to highlight that a church and a school are illegal and they are not?]* At this time, just by principal alone, I will be approving the appeal on this even though I would be going against what our duties are more than anything else based on the fact that there is greater opportunity in this particular area because there are other choices that could be made and not have a negative in this area."

1:46:47 Commissioner Austin "Well you're hearing us all struggle with this and as an urban planner and designer and somebody who has been watching this community for a long time, I've always thought this is one of the areas that needs to change most…it has so much potential as the Asian community has become a stronger and stronger component, my kids, who have lots of Asian friends go there all the time..it has so much potential but it's an eyesore still and this is a use, that is not a great contributor but we have what we have in terms of rules and regulations and if we don't use those it's a big problem for any kind of project…what I keep wondering about with this whole marijuana industry is there wouldn't be this much competition if there wasn't a lot of money to be made in this thing. Yet I've been very very disappointed with the lack of concern for the exterior appeal, what could be done with a facility like this… I'd love to see that you put some of that money back into the building as it's a tired looking facility…and hopefully there's some good employees that will go to those restaurants and give back. Yeah my hands

are tied. I'm going to continue to listen as well. But I think I know where this is going to go." *[Interesting comments. Are you related to Gina Austin Commissioner?]*

1:50:23 Commissioner Granowitz "Ok I'm probably not supposed to ask this;

Q; Is the zoning in the area going to change with the Community Plan Update? Is it proposed to be something different?

A (Laura Black) "Right now we have a draft plan that updates the land use, there is no zoning yet, we're not at that stage, would allow for a mixture of uses including residential. And I would also like to point out to the Commission that there is a section of the code related to extensions of times for these types of Conditional Use Permits that it's 141.1004(h)(4) and it speaks to 'a change in zoning after the approval date of the initial conditional use permit shall not be considered in making the findings required in the section for an extension.' I wanted to put that on the record.

1:51.29 Commissioner Granowitz "Yeah I knew that. (laughs) *[two things here. What's so funny and why so prepared. When Granowitz asks this question there was no delay by Black in having an answer and finished by making it sure her statement was 'on the record.' I'm getting a good cop bad cop sense of how this ALL was handled.]* I understand that according to all the rules that I should be voting for it, I get that but it feels like I'm punishing good behavior and we don't see a lot of that up here and I'm sort of known for going off the skids so I'm, I can't support the appeal. Just can't. I know I should from the City perspective I can't do that to people [another Commissioner has to tell her that to deny the appeal is to support the CUP approval. She had been confused.] (laughs) Oh, I want to approve the appeal. Ahhh I need help from my friends (laughs) anyways, honestly, they know what I mean and you (pointing to the audience) guys know what I mean and I'll just watch how Dennis votes to make sure I press the right button. I know according to the rules what I should do but I have to sleep at night and I can't do it." *[This is a telling comment. Not only is Granowitz confused as to the process, she is relying on another Commissioner to make sure she follows his vote. While the intentions she states are good, one cannot help but think she has wrestled with this and as long as the Motion was not approved by a majority vote, the Motion to Appeal could be denied or it could be trailed as is what eventually happened at the vote.]*

z1:53:38 PJ Fitzgerald provides the COA's for both the Ballet School and the Korean Church showing unauthorized use. "..we would not consider that a legal use."

1:54:13 Commissioner Peerson questions Tim Daly DSD staff:

Q: This is an existing MPF there today. As a current use does it create conflict now?

A: No, it does not.

Q: And why is that?

A: It's been issued the zoning use certificate and a business tax certificate. It's grandfathered so it would have to come in at least by October of this year to come in for a CUP but it's allowed to operate at this time. It does have a state license as well.

Q: So, it's fully licensed and the CUP we're seeing before us needs to happen before October 2019?

A: Correct

Q: Then it would be part of the 40.

A: That would be correct.

Q: And there's still a queue of other projects, I'm alluding to Commissioner Hofmans question, because we have been capped at 40.

A: We have actually 38 that have been approved. Obviously, the ones that had gotten withdrawn today, they are now approved *[and this folks is where the chicanery is exposed. Strawman appellants designed to show an appeal that at the last moment is withdrawn so the evidence of what is being appealed can not be heard. Is DSD involved in this? Not all but some most certainly are. Of Note Commissioner Peerson has a financial interest in the 6220 Federal project which the CUP was issued to another Gina Austin client, Aaron Magagna.]* And we only have two left.

2:00:32 Commissioner Peerson "If we put this facility in and it precludes all those things we want to do, I can't approve this facility. I don't know if that's within our purview, but I think that's what we're all trying to say. I want to be really straight forward and send a message and understand what this decision is because I don't want one 20K sq-ft facility disrupting the larger, greater good of the Kearny Mesa neighborhood.

A: (Laura Black DSD) It does not. If this were to get approved, it does not preclude all of the planning work that we have done in the Community Plan Update Process and it would allow those types of uses to be ceded near where this facility would be located.

2:02:14 Commissioner Peerson I hear what you're saying but my gut has a problem with that. At this point I would have to be in favor of the appeal.

2:02:18 Commissioner Whalen Quick question for the Madam Deputy City Attorney. Are we compelled, if they meet all the rules, are we compelled or do we have discretion?

A: (Corrine Neuffer) You have discretion to deny or grant the appeal but in using that discretion you are using the municipal code and the standards in the municipal code to determine whether or not to grant or deny that appeal and possibly approve the project.

Q: And we have heard from staff loudly and clearly that there are no such issues with the package. As much as we don't like it. Commissioner Hofman what do you think?

2:03:05 Commissioner Hofman Well I have a question if somebody and Madam Chair you choose if someone can tell me how long the church has been in operation? Does anybody know that?

A: John Kang Attorney, "I've had my office there since 2000 so I know the area very well. The School of Ballet has been there since probably 2002 or 2003 and the church has been there for at least 5-8 years. (the website for the Ballet School shows since 2001)

Q: My follow up question would be could they go in for that change of use permit? It's not a prohibited use, is it?

A: (Mr. Justin Stanko, Senior Planner DSD) The church would be considered assembly and entertainment use which could proceed under a ministerial, not discretionary permit which, if it meets certain criteria,

would limit them to 300 people max, hours of operation and parking on site. If it doesn't meet that criteria it could proceed as a conditional use permit.

Q: So, it's not prohibited at this site?

A: That's correct.

2:07:28 Commissioner Hofman "To me, that's where I'm struggling, there's the technical requirements you have to meet and then there is the intent *[where is intent codified in the code?]* in the Ordinance as far as distance between these sensitive receptors and we've had a church that has been here 5-8 years or maybe since 2001 and I strongly suspect that they could bring themselves into compliance. I don't know, we don't know that but there is an intent here and I don't feel like we're meeting the intent of the Ordinance and the reason for that separation requirement. Where I am right now is that I can support the appeal."

2:09:35 Commissioner Austin I have a couple of questions. Of the applicant first.

Q: How many employees do you expect to have at this facility?

A: (Gina Austin) 39 employees

Q: What do you intend to do with the exterior surface of the first floor?

A: Whatever you would recommend…We're happy to work with the community and make it fit.

A: (Alan Austin Architect) There's so many things you cando with a facade I hadn't even thought about it until it was mentioned today.

Q: If you can do that, I would support the denial of the appeal.

2:19:21 Doug McRady, Applicant "I've operating there for about 1-½ years. I've attempted to meet with the community to see how we might merge with their group."

2:22:51 Commissioner Otsuji To staff, would we gain anything by having a continuance to look into a lot of the questions we had today?

A: (Tim Daly, DSD) That's a good question Commissioner Otsuji. We were just discussing that. If you're looking to go ahead and change some of the uses on their development plan, obviously now the entire facility square footage is being used for the marijuana production facility. If the applicant decides to go ahead and make changes or list of what the Commissioners are saying, we would recommend a continuance on the item.

Otsuji: I'm kind of leaning towards that direction. Plus…

Daly: That's unless specifically the applicant tells us exactly how many square feet that they're going to remove from their production facility.

Otsuji: I feel like there's been a lot of questions asked today and I feel that it's worth the time to have that continuance. For example, the two uses *[church and ballet school]* how were they able to last the time that they've been in those facilities?

Daly: It becomes a code enforcement issue obviously *[ouch]*. They're not bad businesses like that. A lot of times they just don't come in for a change of use for their particular one, they come in for a building permit but they just don't do a change of use. They're not bad businesses, they just don't do it. *[Why wouldn't the building permit catch the change of use? Catching these projects on a change of use when it serves your greater interests to have them non-conforming is what we're seeing here.]*

Otsuji: I have a question about the Community Plan Update. What you're saying is that when that plan is approved and there's residential or mixed-use adjacent to that facility that would not be a problem with them being next door to it?

Daly: If it was approved for a marijuana production facility and there is a change in the rezoning it's a previously conforming right it would be allowed to operate there at the same location.

Otsuji: Residential would be allowed there?

Daly: Oh it could be.

Otsuji: It could be? Could we make that part of the condition?

Daly: Well, no obviously if you're approving a marijuana production facility and there's subsequent changes later down the life of the Community Plan and they do put residential there this project site still has previously conforming rights to allow the use of that marijuana production facility.

2:25:34 Corinne Neuffer, City Atty If it's rezoned to include residential then that site could become residential at some point in time.

Otsuji: You said, 'could be?'

Neuffer: Yes, because if it is zoned then that opportunity becomes available for the property owner.

Otsuji: One wouldn't be able to put a condition on it?

Neuffer: No because you would need to rezone the property. It's not zoned for residential.

Otsuji: I'm just checking.

Pearson: I also wanted to jump in for two key points. One we have a CEQA document that exempts the project as presented *[Give me a break. Every single cannabis application has been CEQA exempt and that includes construction of new ground up buildings.]* So I think we want to be careful on how much we change and maybe that's another reason to have a continuance to allow staff to go back and work with the applicant. Also if we were to do that it would have to be a pretty brief continuance of one week because there's already a queue with other projects. I'm not saying I'm supporting it; I'm just putting all the facts on the table.

2:27:45 Commissioner Otsuji Can we ask the applicant if he would be agreeable to a continuance?

A: (Gina Austin) We absolutely would not be agreeable to a continuance. There is a hearing next week and the following week. That would push my client out of the running and would effectively be a denial of his application.

Q: Can I have someone from the community please come up? You've heard all the testimony presented today would be willing to work with the community in regard to addressing not all the issues but working with the communities what is your comment to that?

A: (Isaac Wang) One of the first things we have to get out of the way is this idea that a facade makes up the difference. One of the things we understand about urban design guidelines is pedestrian walkability is that your pedestrian experience and your building uses they have to create a nice blending of public and private.

2:28:40 Commissioner Whalen That's not what I'm asking for sir. I'm asking for it to be an active use office and not just a facade. *[Where is Austin going with this? In the interest of trying to fit a square peg in a round hole is exploring avenues that have nothing to do with this use. Why? Is it to appease the community? If that's the goal he is flailing miserably]* That's my problem with it. I understand urban design and I understand you can't just put a facade and make it work but we have rules and regulations and as you come in in future and you want to approve projects you have to have some predictability there. This is a very very important decision. We can't just have arbitrary rules, otherwise me as a planner, you as a planner won't know where to go. But we do have the ability and their willing to agree to an active uses along that exterior and make them more transparent and an office is an office.

2:29:29 Commissioner Peerson states that Commissioner Otsuji still has time

Q: I didn't want to cut you off and if you had any other questions, you can bring them up now.

A: Commissioner Otsuji: I'll pass at this time. I'll conclude at this time.

Q: No, I don't want to cut you off. I felt like you were cut off.

A: No, that's ok.

Q: Did you get your questions answered?

A: Well, I guess I understand the legal ramification more than anything else, I've been in this position long enough to understand that but it's just to me, certain parts of the City have been shortchanged for a long time and that's what I'm addressing, and I do not like to pass on opportunities like this in regard to the pure planning aspect of it. And to me, they've been passed over a couple times more than anything else and I feel that, you know, somebody has to say that you know even though it may be a legal hurdle, that there needs to be a statement made in regard to that. [I'm not sure what he's arguing for here? Ths MPF or the appeal?

2:30:42 Commissioner Whalen I'll see what we can do here. The thing that is most compelling is that the applicant has been there for a year and a half and there have been no complaints. That's extenuating. I am also hearing wise counsel from Commissioner Austin and ways to improve the facade…If our hands are tied,and I believe they are, to a great extent, what can we do to make it a positive contributor to the community? I motion to deny the appeal and support the issuance of the CUP.

2:33:08 Commissioner Austin Sets forth the conditions that would improve the facades and landscaping to integrate with the community at Ruffner and Opportunity then provides the second.

2:34:36 Commissioner Hofman I'm sorry to say I cannot support the motion. I see 2 findings that I'm just not able to make under the Conditional Use Permit, Finding No. 1B 'that the proposed development will not be detrimental to the public health, safety and welfare. I still can't make that finding.

2:35:20 Commissioner Granowitz So if we deny this basically the project goes away because they'll go back in the queue, even if they sue, I mean how would that work? Commissioner Whalen said that they would have grounds to sue the City for the denial. *[Is it just occurring to her that 99% of these projects could very well be the subject of litigation?]*

Commissioner Whalen: Through the Chair I wasn't speculating I'm just saying that if we made the decision incorrectly we would be subject to that.

2:36:48 Commissioner Peerson I've been sitting here weighing our deliberations and I do appreciate both sides coming before us today and making compelling arguments. My thoughts are this. I do not want to preclude any possibility down the road for what can happen and what's planned to happen in Kearny Mesa particularly along Convoy Street and creating this vibrant neighborhood. This mixed-use with housing. I'm being told that by making this motion to approve this facility does not preclude that. That is what I need to hang my hat on. I can make the findings, but it is with reservation quite frankly because I feel we're hamstrung. I feel that these facilities should be in industrial zones, surrounded by industrial and that's not what's in Kearny Mesa. So the applicant is playing fair and working in the zone that has the zoning but also those who are opposed to the project are playing fair because you've been in a community that's industrial zoned that's allowed for these other uses that have made it vibrant. So I'm really struggling. It's not an emotional struggle. It's we have a job here to be fair and consistent and if we can make the findings and if we cannot. I can make the findings. Do I like it? Not really. I'll be honest with you. But in my opinion, I want to be fair and consistent. We sit here across community by community, listening to staff's comments and the fact that we have two uses that are not permitted. I would have loved for them to have been permitted then we would have conflict. It would have been easy. It's not an easy decision. You can see we've been talking about this for over an hour, and I appreciate everyone here today. I appreciate your comments. Your thoughtfulness. But I will be supporting the motion. I feel that the design aesthetic is a band-aid. Quite frankly it's a nice gesture and I appreciate it by the applicant but I really hope that this community plan can come together quickly. Like tomorrow. So that we can get what you all need and support plan out Kearny Mesa into what is its highest and best use and with that we should vote. Thank you.

2:39:04 PJ Fitzgerald Commissioner Peerson, just quickly before we take a vote, I want to clarify the motion. That it supports staff recommendation to deny the appeal including that the interior spaces fronting the street frontage be swapped from the current storage proposal to some sort of office reception activated use, internal to the building. And then increase landscaping and buffering along that corner to have a better street frontage at that corner.

Commissioner Austin: We did say that we wanted to see an improved aesthetic. They're going to have to work with staff. They're not coming back here *[why not? It's your job to see the final project for approval prior to issuing a CUP!]* So we're going to have to trust their intention that they'd work with staff and the community, *[what part of this hearing makes you think that you can trust intention and these opposing sides work together?]* I want to see something that's really good. *[You're not going to SEE anything.]*

Peerson: And I think the other key word was transparency on the ground front.

Austin: Transparency on the ground plan.

Peerson: Transparency is really key.

PJ Fitzgerald: Thank you. I just wanted to get that all down on the record. I appreciate it.

Peerson: I'm glad you clarified. So with that please vote.

Voting takes place

2:40:45 Commissioner Peerson: So let me explain. The motion failed. 3 in favor, 3 opposed. 1 commissioner absent. The inability to obtain 4 votes. If 4 affirmative votes cannot be obtained where an absent commissioner is capable of participating at a future hearing the matter is automatically trailed as unfinished business where the absent commissioner can vote. The absent commissioner should review the audio and visual record of the hearing and review all evidence of the hearing before voting. We would be trailed until June 13th. And with that the Item is closed.

COMMISSION ACTION: MOTION BY COMMISSIONER WHALEN APPROVING THE STAFF'S RECOMMENDATION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER DECISION TO APPROVE CONDITIONAL USE PERMIT NO. 2135497 WITH ADDITIONAL CONDITIONS. Seconded by Commissioner Austin. The motion failed by a vote of 3-3-1 with Commissioners Peerson, Austin and Whalen voting yea and with Commissioners Hofman, Granowitz and Otsuji voting nay and with Commissioner Boomhower absent.

NOTE: THIS ITEM WILL BE TRAILED TO JUNE 13, 2019. Per Permanent Rules of the Planning Commission 6.3 Inability to Obtain Four Votes: If four affirmative votes cannot be obtained and the hearing presents a situation where an absent commissioner(s) is capable of participating at a future hearing, the matter is automatically trailed as unfinished business to the next meeting where the absent commissioner(s) can vote. The absent commissioner(s) should review the audio and/or visual record of the hearing and review all evidence before voting.

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2019/06/06: ITEM 4: MPF 9220 MIRA ESTE CT Appeal Hearing Officer's 2019/02/20 ITEM 7 decision

ITEM 7 STAFF: Hugo Castaneda

1 speaker slip submitted in favor – Jessica McElfresh

1 speaker slip submitted in opposition – Kathleen Lippitt

HEARING OFFICER ITEM 7 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-19-011. RESOLUTION NO. HO-7205

DSD CONTACT: Angela Reis

PROJECT NUMBER: 585378

DSD TO HEARING OFFICER RECOMMENDATION: HO-19-011 "Approve Conditional Use Permit No. 2063424."

HEARING OFFICER: Duke Ferandez

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-19-041 "DENY the appeals and affirm the Hearing Officer's decision to APPROVE Conditional Use Permit No. 2063424."

CEQA DETERMINATION: "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301(Attachment 6). This project is not pending an appeal of the environmental determination. The environmental exemption determination for this project was made on October 9, 2018, and the opportunity to appeal that determination ended October 23, 2018."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: No NORA Public Circulation Record was found. A Notice of Exemption was filed with the County Recorder @ Page 18.

APPELLANT(S): , Khoa Nguyen and Rodney Eales with RS Industries.

Issues On Appeal

Page 21: CUP signature page

Page 24: NORA Appeal Posting No. SAP 24007555 had not been in the HO Report

Page 26: Ownership Disclosure Statement

Page 27: Mira Mesa Community Planning Group Minutes Jessica McElfresh presents. MMCPG wanted to wait until the project was CEQA approved.

Page 36: Appeal Application of Khoa Nguyen, Rath Miller

Page 38: Appeal Application of Rodney Eales, RS Industries

OWNER(S): RM-USE, LLC, Owner @ Page 21

APPLICANT(S): James Schmachtenberger, Humanity Holdings, Inc @ Page 21.

CUP NUMBER: 2063424

CUP HOLDER: James Schmachtenberger

SITE DEVELOPMENT PERMIT NUMBER:

STATUS: Issued on 06/12/2019

CITY COUNCIL DISTRICT: 6

PLAN AREA: Mira Mesa

STAFF: Hugo Castaneda

No speaker slips in favor of the project were submitted.

No speaker slips in opposition to the project were submitted.

COMMISSION ACTION: THIS ITEM WAS WITHDRAWN.

[The HO report sets forth either an APPROVAL based if certain conditions are met or DENIED if they are not met. Why was this appeal filed and withdrawn?]

* * *

2019/06/06: ITEM 5: MPF 3940 HOME AVENUE Appeal Hearing Officer's 2019/03/06 ITEM 8 decision

ITEM 8 STAFF: Hugo Castaneda

5 speaker slips submitted in favor – Gina Austin, Marcela Escobar-Eck, Aaron Magagna, Alma Magagna and Brittany Biesterfield

1 speaker slip submitted in opposition – Khoa Nguyen

HEARING OFFICER ITEM 8 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-19-020. RESOLUTION NO. HO-7213

DSD CONTACT:

PROJECT NUMBER: 611536

DSD TO HEARING OFFICER RECOMMENDATION: HO-19-020 " Approve Conditional Use Permit No. 2167710."

HEARING OFFICER: Duke Fernandez

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-19-042 "DENY the appeals and affirm the Hearing Officer's decision to APPROVE Conditional Use Permit No. 2167710."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303(c). This project is not pending an appeal of the environmental determination. The environmental exemption determination for this project was made on October 18, 2018, and the opportunity to appeal that determination ended November 1, 2018."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: 24007926 @ Page 20

APPELLANT(S): Khoa Nguyen, Rath-Miller and Rodney Eales, RS Industries

Issues On Appeal

Page 26: Ownership Disclosure Statement

Page 27: CPC Distribution Form showing a 7-8-1 vote

Page 28: City Heights Area Planning Committee Memorandum to Tim Daly, DSD Project Manager.

Pages 29-44: Pacific Design Concepts *[The same design team out of Las Vegas for 6220 Federal, serving Aaron Magagna and Gina Austin.]*

Page 44: Appeal Application of Khoa Nguyen of Rath Miller (Lobbyist)

Page 46: Appeal Application of Rodney Eales.

OWNER(S): Robert Kahn @ Page 26

APPLICANT(S): Aaron Magagna as Tenant on Page 26

CUP NUMBER: 2167710

CUP HOLDER: Aaron Magagna

SITE DEVELOPMENT PERMIT NUMBER:

STATUS: Issued on 06/13/2019

CITY COUNCIL DISTRICT: 9

PLAN AREA: Mid City Heights

STAFF: Hugo Castaneda

No speaker slips in favor of the project were submitted.

Speaker slips in opposition to the project submitted by William Perno, Dawn Kamali, Elizabeth Davis Hynd and Kelly McKay.

COMMISSION ACTION: THIS ITEM WAS WITHDRAWN.

[This is a classic example of how Gina Austin and Marcela Escobar-Eck worked the system by submitting a strawman appeal for the (3940-MPF) 611536 Project and not filing one for the (3940-MO} 599099 CUP and then simply withdrawing it before the Planning Commission could hear the arguments against the approval. This led to huge problems on a competing CUP at 4337 Home Ave as can be seen later in this document where sensitive use boundaries were a major contention on that project but were not addressed at the 3940 project.]

* * *

2019/06/06: ITEM 6: MPF 8390 MIRAMAR PLACE Appeal Hearing Officer's 2019/03/06 ITEM 9 decision

DSD CONTACT: Travis Cleveland

PROJECT NUMBER: 585648

DSD TO HEARING OFFICER RECOMMENDATION: HO-19-023 " Approve Conditional Use Permit No. 2068281."

HEARING OFFICER: Duke Fernandez

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-19-040 "DENY the appeals and affirm the Hearing Officer's decision to APPROVE Conditional Use Permit No. 2068281."

CEQA DETERMINATION: "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Section 15301, Existing Facilities (Attachment 6). An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on January 8, 2019. The scope of the subject hearing only includes the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: No NORA Public Circulation Record was found. A Notice of Exemption was filed with the County Recorder @ Page 19.

APPELLANT(S): Matthew Shapiro and Khoa Nguyen

Issues On Appeal

Page 26: Ownership Disclosure Statement

Page 37: Appeal Application Matthew Shapiro at Shapiro Law *[illegitimate]*

Page 39: Appeal Application by Khoa Nguyen of Rath Miller *[illegitimate]*

OWNER(S): Michael Pack @ Page 26

APPLICANT(S): Wayne Yamamoto @ Page 26

CUP NUMBER: 2068281

CUP HOLDER: Michael Pack

SITE DEVELOPMENT PERMIT NUMBER:

STATUS: Issued on 06/21/2019

CITY COUNCIL DISTRICT: 1

PLAN AREA: University

STAFF: Sammi Ma

No speaker slips in favor of the project were submitted. No speaker slips in opposition to the project were submitted.

COMMISSION ACTION: THIS ITEM WAS WITHDRAWN. *[One of four appeals withdrawn today, all filed by strawman appellants.]*

2019/06/13 Minutes

ANNOUNCEMENTS/PUBLIC COMMENT

10:25 Becky Johnson Comments on extraction lab explosions…parents were "hoodwinked" in September 2017 by the City Council when they enacted licensees when business licenses were issued without the rules necessary to regulate them.

12:48 Kathleen Lippitt "I don't know what more evidence the City of San Diego needs to recognize the threats to public health and safety and stop prioritizing marijuana businesses…past decisions re sensitive uses have not been protected, particularly churches when cannabis lawyers look for churches who were 'out of compliance' for not having obscure current change of occupancy change of use statement…the cannabis industry was able to convince city council/planning that it was the churches that were out of compliance and get their clients licensed even though the setbacks between the proposed marijuana business and the sensitive use were not being respected."

14:59 William Perno "We are prevention not prohibition…raises cannabis signage issues…illegal unpermitted cannabis advertisement in the Reader in the City Admin Lobby."

18:24 Tim Nguyen "We have dozens of people here today and thousands watching. We're here about spirit of the law and the technicality we face with the 1,000-foot setback rule"

22:20 Ping Wang "If we took a random sampling and looked at disadvantaged areas, lower income areas there is a preponderance of churches that are not registered with the City. There is something there in the fairness of the process. We beg for a broader definition of what a church is. We need to streamline that process so they can register with the proper land use…hopefully we've demonstrated that technically there is a lot behind the church issue and also, we beg you to think about the spirit of the law as well."

* * *

REQUESTS FOR ITEMS TO BE CONTINUED AND/OR WITHDRAWN

26:05 Abhay Schweitzer requested continuance of Item 2 -SORRENTO VALLEY MARIJUANA OUTLET CUP – PROJECT NO. 545299.

"I'm here representing the applicant of Project Number 575936 which is also on the agenda. On behalf of that applicant an appeal was submitted, and a significant issue was brought to your attention regarding the illegal grading performed of the subject property of ITEM NO 2 located at 10150 Sorrento Valley Road. As a result of the illegal grading done on the subject property a code enforcement case was opened up September 19, 2018. This has yet to be resolved and the illegal grading has yet to be restored. In the staff report for ITEM 2 staff states that the code enforcement case is being resolved independently and not associated with the subject application. Page 3 of the Staff Report. We believe, respectfully, that Staff is incorrect and we will explain why. There exists an open code enforcement case which has not yet been resolved on the premises. This case is in regard to illegal grading that was performed on the subject property during the time in which the CUP was being processed. The Staff Report to the Planning Commission states clearly that the code compliance matter has not been resolved. SDMC Section 121. 0312(b) Restoration and Mitigation as a remedy part of Article 1 Chapter 12 General Information Required Reviews on Enforcement states 'the City Manager shall order the restoration of grading undertaken without a permit unless technically infeasible. No further permits for the premises shall be processed until the restoration has been completed and specified performance criteria have been met as required by the City.

Sandra Gonzalez *[is she any relation to Sylvia Gonzalez? This needs to be explored.]* submitted slip for the continuance of Item 2 (ceded time to Abhay Schweitzer).

29:48 Commissioner Hofman "If they're looking for a motion for continuance, I'm not ready to give one. I totally agree with the staff interpretation. There's a true difference between a construction permit and a use permit which is what we're considering, and I don't see the relationship so I'm not willing to make that motion."

30:14 Commissioner Peerson "I don't feel there is a compelling argument as well and I'm not seeing that anyone else agrees so we will not be continuing that item.

30:29 Commissioner Hofman "I'd like to suggest that we move ITEM 8 to the consent calendar.

Peerson: And I will need to recuse for financial conflict. Chair Hoffman if you can take over from here, please.

2019/06/13: **ITEM 1: MPF 4655 RUFFNER STREET** Trailed from 2019/06/06.

See Planning Commission Hearing of 2019/06/06 ITEM 3 earlier in the Steering Doc for all Project Files and Appeals information. (Control F the Project Number for easy access.)

PROJECT NUMBER: 604122

Staff: Tim Daly

Speaker slips in favor of the project submitted by Gina Austin, Doug McCrady, Aaron Jacob Hill, Chris Berry, Alan Austin, Peachy McCrady, Brittany Biesterfeld, Tamara Leetham, Issac Ramos, Devon McClleland, Jared Angell, Gwen Walter, Ian Lelis, Lisa Moore, Colleen Moore, Armen Buchaklian, Giovanni Barroso, Lizbeth Sanchez, Georgia Godfre, Dan Archula, Suzi Merline, James Lampe, Douglas Fremdling, Shuby Champ, Ping Wang, Tia Nguyen, Kathy Wang, Alex Isvanca, Chao C Wang, Kathleen Lippitt and Becky Johnson.

Speaker slip in opposition to the project were submitted by Lijun Zhou and Kaye Villafiores

44:45 Commissioner Peerson opens Item 1; This Item was trailed from June 6, 2019. Because this Item was trailed, I just want to go over a couple of things; The first will be there will not be any public testimony. Public Testimony was closed at the last hearing. Secondly, we had a Commissioner who was absent. I just want to make sure that Commissioner Boomhower had an opportunity to read all the material and the video of the hearing?

45:15 Commissioner Boomhower Yes, I have reviewed the record and the video. I have notes.

Peerson: Right. Thank you. I also want to have our City Attorney weigh in on this Item.

Boomhower: What is the status on the Kearny Mesa Community Plan Update?

A: (Laura Black, Planning Department) We released, in January of this year, a draft of the plan itself with proposed land uses and we are currently working towards releasing the draft Environmental Impact Report associated with that. I don't have a timeline for that. Our goal is to be before the Council by the end of this calendar year.

46:20 Shannon Thomas, Deputy City Attorney So I just wanted to focus on the discussion on this Item. Your ability on hearing an appeal is to affirm, reverse or modify the earlier decision and you make that decision based on the facts about the project that you've received in the Hearing and whether or not you can make the Findings for the CUP. There are only 3 of them. Whether it adversely affects the Land Use Plan. Whether it's detrimental the public health, safety and welfare. And whether the development will comply with the Land Development Code including any deviations that have been requested.

Some of the comments that were made last week such as the future of the Community Plan Update that's coming forward is not a basis for which to consider whether this project can meet the Land Development Code Requirements, whether you can make the findings for whether you can make the Findings for an adverse impact this current Community Plan.

Another Item that was quite a bit of discussion was the relationship of the church to this project. I believe Mrs. Fitzgerald told you that in the past the Commission has not considered sensitive uses that were within 1,000 feet if they were not properly there. If all of their permits had not been properly obtained

such as changes in occupancy things of that nature. And that is correct. That is the Commissions past practice on that issue.

Peerson: And with that do we have further comments?

47:53 Commissioner Boomhower I want to go on the record with this since everyone else had a chance to. Before we vote I want to say that I sympathize with the communities concerns. But the Council has established rules MPFs have to follow whether we agree with them or not. Those are the rules. We require the applicants to follow the rules that exist, not the rules that we wish were in place and the applicant has done that. And so, I'm not in a position where I think we can go against Staffs recommendations. I think we can make the Findings. Again, I wish this wasn't the case. I'm as conflicted as many of the other Commissioners have expressed but I don't think we can just move the goal posts because we don't like it. Unfortunately, that's where I have to come down on this.

54:11 Commissioner Peerson I would just echo, we've had a lot of discussion last week and you may be sitting in the audience having completed speaker slips and not being able to speak but we had closed public testimony, I feel confident that we had the information we need to make a decision.

I won't completely reiterate all my comments and suffice to say that we've been told by Staff that the plans and the vision for Convoy Street and the Kearny Mesa Community Plan Update will not be hindered by having this facility in this location. I'm hanging my hat on that, and I sincerely want to see the success of this neighborhood. I do not want this facility to become a hindrance. We've heard from the applicant that they will be a good neighbor even though we couldn't come to a specific comment on the 3rd Item about how this project looks and feels on the street that you will take these comments to heart. We cannot make that part of our recommendation to you or a condition, but I would love to drive by and have it be the community contribution that I've heard you say you would like it to be. With that to the applicant my comment to the community would be, thank you for coming. Your voices have been heard. We are in a situation where we have to make specific Findings and in my mind the applicant did make those Findings. We are looking forward to seeing the Community Plan Update come forward. With that please vote.

COMMISSION ACTION: MOTION BY COMMISSIONER AUSTIN APPROVING STAFF'S RECOMMENDATION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER DECISION TO APPROVE CONDITIONAL USE PERMIT NO. 2135497 WITH CONDITIONS. Seconded by Commissioner Whalen. The motion passed by a vote of 4-2-1 with Commissioners Peerson, Whalen, Boomhower, and Austin voting yea, Commissioners Otsuji and Hofman voting nay, and Commissioner Granowitz absent.

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2019/06/13: ITEM 2: SORRENTO VALLEY MARIJUANA OUTLET CUP Appeal Hearing Officer's 2018/09/19 ITEM 7 decision

ITEM 7 STAFF: Cherlyn Cac

4 speaker slips submitted in favor – Gina Austin, Tara St. Peter, Sean St. Peter and Brittany Biesterfield

2 speaker slips submitted in opposition – Judi Strang and Heather Riley

ITEM 7 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-18-071. RESOLUTION NO. HO-7143

DSD CONTACT: Firouzeh Tirandazi

PROJECT NUMBER: 545299

DSD TO HEARING OFFICER RECOMMENDATION: HO-18-071 "1. Adopt Negative Declaration No. 545299; and 2. Approve Conditional Use Permit No. 1927100 and Coastal Development Permit No. 2173348."

HEARING OFFICER: Chris Larson

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-19-054 "DENY the appeal and affirm the Hearing Officer's decision to APPROVE Conditional Use Permit No. 1927100 and Coastal Development Permit No. 2173348."

CEQA DETERMINATION: Page 1, "A Negative Declaration No. 545299 has been prepared for the project in accordance with the State of California Environmental Quality Act (CEQA) Guidelines. No significant impacts were identified, and no mitigation is required."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: No NORA Public Circulation Record was found. No Notice of Exemption was found to have been filed with the County Recorder.

APPELLANT(S): Heather Riley

Issues On Appeal

Page 34: Torrey Pines Community Organization Minutes

Page 37: Ownership Disclosure Statement

Page 49: Appeal Application of Heather Riley

OWNER(S): Michael Pack @ Page 22

APPLICANT(S): Wayne Yamamoto @ Page 22

CUP NUMBER: 1927100

CUP HOLDER: Sean St. Parker *[why is this different from the Permittee Applicant Wayne Yamamoto?]*

COASTAL DEVELOPMENT PERMIT NUMBER: 2173348

STATUS: Issued 07/17/2019

CITY COUNCIL DISTRICT: 1

PLAN AREA: Torrey Pines

STAFF: Firouzeh Tirandazi

Speaker slips in favor of the project submitted by Phil Roth, Gina Austin, Brittany Biesterfeld, Tara St. Peter, Sean St. Peter, Tamara Leetham, Alan Austin and Doug McCrady.

Speaker slip in opposition to the project were submitted by Abhay Schweitzer, Jim Bartell, Heather Riley, Lauren Palmer, Kathleen Lippitt, Becky Johnson and William Perno.

58:24 Commissioner Peerson opens Item 2 with Firouzeh Tirandazi making Staff presentation.

1:04:27 Phil Rath representing the applicant. If I was in your shoes my question would be ' why is this happening?' So, I'm going to try and explain that. There's a connectivity between this Item and Item No. 2 and Item No. 6. It's unfortunate but it's the way these have tended to go lately. These shops, these MO's have to be more than 1,000 feet away from each other. Item No. 6 is immediately next door to Item No. 2. Therefore, only one can succeed.

The order that these have been placed on your agenda is significant and important and has been done properly by every metric of who applied first, who hade their CEQA done earlier and all of that. We support the order in which you have to view these.

This Item has been more thoroughly analyzed under CEQA than any other project that I am aware of. We've multiple rounds of discussion, appeal and kicking it back. You will also notice we have a Negative Declaration which is a little bit rare. Most of these go through on an exemption. It has an enhanced CEQA review. On all the substantive matters the Item is approvable as it stands.

Now today we have another last-ditch effort for a continuance because of a code enforcement issue which Mr. Hofman I agree with you, that is really for building permits. This has been a very difficult and frustrating experience for the applicant to say the least. The industry bears a lot of responsibility for this, but the rules have been designed to create these demolition derbies, but I think we're almost through it. One or two more meetings and we'll be done with all of this mayhem. I would encourage you to support the project and deny the appeal.

1:06:14 Gina Austin, Esq. on behalf of the applicant and the applicant, Mr. Sean St. Peter if you have any questions for him. I want to thank Staff for their help. This has been a very painful process through the environmental appeal determination as that went on for multiple hearings at Council. *[Once it cleared CEQA, why didn't Council just approve the project like they did for Willie Senn's MO?]* At the end of the day, that appeal was denied. The environmental determination was upheld and the only thing before you, as was stated, is the project. And the only objection to the project is a code enforcement action against the property owner for failure to plant 5 trees and for electrical to go to the pump that goes to the pond. The electrical has already been completed and signed off and there are now 5 trees that need to be planted. And the basis for the appeal is that those 5 trees have not yet been planted by the property owner, which my client has no control over, and that this project should be denied. That simply does not make any sense. I cannot find a single Finding that we can relate that too to make that make sense in this particular instance.

This is not a situation where we have a church. Permitted or not. There's no dance studio's. There's no schools. There's nobody around here except for the neighboring applicant who wants to go first. I don't blame them. I've been in that position. You've heard me say look don't let them go let us go. I understand. It's the nature of the beast tha has been created and has been thrown upon you by the municipal code and this is where we stand.

Importantly, and I believe that you may or may not have heard of another District 1 application where that jurisdiction was retained by Council, this applicant has the support of the Torrey Pines Community Planning Board. That is virtually unheard of for a marijuana outlet in District 1. That support came with one person abstaining and one person voting no. Everybody else voting to approve. That is huge and it

shows the applicant desire to reach out into the community and to work with them and to make sure that this is a facility that is going to work in this location. There is simply no reason to deny this project.

The opposition will probably come up and speak next with existing or perhaps even new arguments. We respectfully request that you deny the appeal and uphold the Hearing Officer's approval and allow this operator to begin the construction on a project that has been in process with the City for almost 2 years.

1:10:32 Abhay Schweitzer I'd like to pick up where I left off when I had the opportunity earlier in our request for a continuance. Staff, if you would please go to page 2 of the document I gave you. I want to reiterate that the municipal code in Section 121.0312(b) states; The City Manager shall order restoration of grading undertaken without a permit unless technically unfeasible. No further permits, without categorizing those types of permits, shall be processed until the restoration has been completed and specified performance criteria has been met by the City.

Now Mrs. Austin would want you to believe that we're talking about 5 trees but as I submitted an analysis by a landscape architect, we're talking about 25 trees. Over 700 cu-yards of grading. This is not minor work. It's not a tree that was knocked over by mistake. It is a gross violation of the municipal code and that is specifically the section that this is meant to address. So, there is absolutely no doubt that grading has occurred. That it was done without a permit. Nobody is disputing that. Not myself. Not Staff. Not Code Enforcement. Not even the applicant of the project. It is also clear that restoration mitigation has not been completed. The applicant admitted that. They said they did a little bit of electrical work. No trees have been replanted. The land mass has not been restored. The grading has not been mitigated and we're talking about street trees that are mature, most of them with a 72" box. We're talking about trees that were mature and on the site. And the municipal code clearly states, there is no ambiguity with this, 'no further permits for the premises shall be processed until the restoration has been completed.'

Mrs. Austin said that we are asking for you to deny the project but we're clear that we are asking you to continue it because the municipal code clearly states that no further permits shall be processed. It does not say that it is a building or a discretionary permit. It just says permits. Based on the clear and unmistakable language in the SDMC no further permits can be processed.

In conclusion we ask that the Planning Commission continue this project indefinitely until the applicant has satisfied the requirements of SDMC Section 121.0312(b), which prevents any further processing of permits until the illegal grading has been restored.

1:16:45 William Perno I want to note that I'm not in favor or against this project. I'd like to be a neutral speaker on this. I'm here to speak about the applicant, Mr. Sean St. Peter. I want to note that he is the Permittee on San Diego Recreational Cannabis (SDRC), the slides that I showed you during public comment and the violations there that appear to be CUP violations and billboard violations for state law.

I want to show you some photos. If this is the same SDRC permittee that is your applicant today, this is a billboard that is within 500 feet of an elementary school. There's a child safe logo on the sign which you'll see at the asterisk would not allow alcohol advertising on that billboard because it's within 500 feet of a sensitive area per the San Diego Municipal Code. The state law requires that these marijuana billboards need to be 1,000 feet away from sensitive areas such as schools. This billboard was recently removed but that billboard had been there since at least early March *[4 months]* and this is part of the challenge we have as a community as complaints to the Bureau of Cannabis Control are often times not acted upon.

I want to note that in the Conditional Use Permits that you're looking at, it requires the applicants to follow all local, state and federal regulations and laws including your own Conditional Use Permit things going back to the signage. We want to make sure that the permittees are compliant with your rules. Your CUP's. The City of San Diego rules.

I would just ask that you clarify whether Mr. St. Peter, who is the Permittee on this project, is the same Mr. St. Peter is the same permittee for SDRC because we need to make sure that the rules are followed. The rules are there. The Planning Commission, you place these conditions on people, you say that they're going to support the public health, welfare, and morals and stuff. They need to be followed. So, I would ask, if the applicant is the same person, is he following the Conditional Use Permit? Is he following state law? And if he's not, does that have a bearing on your decision for projects going forward? Again, we want the applicants recreational legal. We understand that. We want to make sure they're compliant with the rules and the laws. If they're not on one project, does that give you any inference to how they're going to be on another project?

1:19:40 Commissioner Hofman I didn't understand and maybe the last speaker can clarify this. Did the applicant put that billboard up or was that just there to make a point?

A: (Perno) The SDRC billboard is the permittee Sean St. Peter is the permittee for the CUP which I spoke about earlier under Public Comments. I'm asking if he's the same Sean St. Peter that's here again for a marijuana production facility for the application. The billboard is clearly a violation of state law.

Hofman; I was just wondering if that is the same applicant, thanks.

Perno: You'll have to ask the applicant himself.

Hofman: Thank you.

1:20:30 Commissioner Hofman I just want to ask another question to make sure my interpretation of the code that I stated earlier, maybe I jumped the gun and I apologize for that, is correct is that the code violations are dealing with their construction. Their permits are construction permits. This is a use permit. In fact they are separate. And I'd like to ask a question if that interpretation is correct? *[So much for the inquiry into Sean St. Peter.]*

A:(Tirandazi) With regard to the code enforcement question. Code enforcement investigated the grading being done and determined a grading permit was not required. The application before you is a use permit to allow the operation of a marijuana outlet within a 50K sq-ft building and there are 3 buildings on this site.

Q: I appreciate that and the last question I have and I'm ready to make a motion. If we were to continue this Item and approve the next one, does this knock them out of line?

A: Yes, it would because they are within 1,000-feet of one another.

Hoffman: Very interesting. Well, I appreciate that, and my comments are I really have no issues with this project. I think there's a clear distinction between code violations and this as a use permit. Perhaps we might want to consider adding a condition that they clear up those violations prior to them opening up their shop but I don't even know if that's appropriate. We can talk about that if there's any movement

there but I'm ready to make a motion. I recommend that we support the Staff recommendation to deny the appeal.

1:23:05 Commissioner Austin The opposition was quite adamant that the language is very clear that if there is a violation that you can't process any kind of permit. I'd like to ask this question not just of Staff but the City Attorney. What is your opinion?

A: (Thomas) My opinion is that the code is clear if there was a grading violation, but it was Staff's conclusion that there was no grading violation.

Q: So, there's no violation.

A: There were other code violations but there were no grading violations.

Q: But if there are other code violations wouldn't that be the same?

A: No, the code section being cited was specific to grading violations. *[Why didn't Abhay bring up the other code violations? Is it because he knew that the grading code violation argument would be knocked down? Abhay and Bartell work hand in hand with Gina. This was an orchestrated appeal much like Abhay did on the 6220 Federal appeal. There was no real intent to see this Item denied. In fact, when Hofman reacted to speaker Perno's comments about the SDRC billboards it took a nanosecond for Hofman to decide that was not an area of inquiry he was prepared to go down in front of the public and this Commission.]*

Q: Thank you that clarifies it. The other question I'd like to ask is to the applicant. Is Mr. St. Peter here?

A: (St. Peter) Yes.

Q: Are you the individual that the other gentleman was referring to that had the code violations?

A: Yes sir.

Q: This is something that came up last week and I think we're going to have a meeting to find out what's being done because when we've had the various marijuana permits come before us one of the things, we've been interested in is the impact to the community and we've been assured that the kind of signage and advertising was going to be a certain way. I know that I've been driving around, my wife mentioned it to me that it seems like we're seeing an awful lot of it. I guess the next question I have…you can go ahead and sit down now.

A: I just wanted to verify also that in reference to the code violations, we did work with the City immediately. The electrical permit has already been signed off and taken care of. The permit for landscaping has already been submitted. And with the signage for the current location in Mission Valley immediately after having received notice of the signage we contacted the City and have been told numerous times that since this is an interior that we're good at this point with that signage. *[huh? What does this have to do with the billboard sign being within 1,000 feet of a school?]*

Q: Go ahead and sit down. I want to ask…I'm assuming that we can't connect dots that we shouldn't connect but *[this is a telling statement. Your job is to connect the dots! St. Peter admitted he violated the local and state billboard ordinance with his ad!]* it's very concerning to me that when we're permitting these that we're doing so with the understanding that people are going to be following the rules. We all

made a decision on the last project that none of us felt good about, but we did the best we could, and we have to trust that some of those things we're asking are going to get done.

I guess I'm just making a statement that we've got an industry out there and I want to look at what we can do. What we're allowed to do because I hate to see these kind of violations happening with proliferation of advertising, basically 'gaming the system' with windows and what have you. I'll support the motion *[of course you will]* because I think it's appropriate, but I have some serious concerns about what's happening out there with the visual blight and what's happening in terms of advertising. *[Well you could have sent a message to the industry regarding you 'serious concerns' by denying the applicant but of course you didn't.]*

1:26.45 Commissioner Boomhower Mr. Austin took care of one of my questions so thanks for that. I want to take care of this because it seems pretty muddy to me, and I think Staff can answer this. The code enforcement case is against the property owner and the applicant before us is a tenant in the property and not the property owner. Is that correct?

A: (Tirandazi) Yes, that is correct.

Q: Thank you. *[This information is easily identified in the Planning Commission Report and the City Attorney already addressed the grading issue in that the code enforcement decision was there was no violation. Kabuki Theatre brought to us by Gina Austin.]*

1:27:23 Commissioner Whalen I have a different question. Just to be crystal clear. Are billboards not allowed in San Diego?

A: (Thomas) Billboards are allowed in San Diego. There are currently state restrictions on billboard advertising. The City is considering its own restrictions. But that language and the extent of those regulations has not been fully developed. *[So, the permittee/applicant is in violation of state law with his billboard signage. The CUP requires that the permittee abide by state law. You just finished saying that!]*

Q: Does that mean billboards advertising cannabis facilities are allowed?

A: They are currently regulated by the state through the licenses that the state issues to the industry.

Q: And the state says no?

A: No, the state allows them in some circumstances. If there is a violation of the law the action that is taken is through the license not through a criminal matter. So they would take action against the license they had issued.

Q: Is that billboard that we saw coming down?

A: I don't know anything about that billboard other than what was presented today.

Q: Does Staff know?

A: (Tirandazi) I don't have any information related to that billboard. But code enforcement could possibly look into it *[So now we're suggesting that code enforcement do the states job of enforcing signage?]*

Q: It affects my willingness to support this because if there's a perception that the project proponent is unwilling to follow the permit they were issued, to me it would reflect on subsequent applications by the same applicant because we don't have them following their permit. So, it's important**.** ***[Bravo!!]***

A: If I may state, our Conditional Use Permit has conditions that are from the San Diego Municipal Code and the Marijuana Outlet Regulations in the Municipal Code includes signage pertaining to these facilities. It specifically states Regulations related to primary signs shall be posted on the outside of the Marijuana Outlet and contain only the name of the business and shall only contain alphabetical characters and shall be limited to 2 colors. The other requirement is that the name and emergency contact be posted to be seen from the outside of the facility.

There's nothing in this section of the municipal code that restricts billboards, but I believe they would have to comply with the state requirements related to these facilities.

Q: Does the state, again, disallow these types of billboards?

A: I don't have that information but…

A: (Thomas) So we don't have in front of us specific information about this billboard because this billboard is not in front of us. We have information from the public speaker. The state allows some billboards to be posted. They regulate through the license that they issue at the state level. *[Thomas knows she's in trouble here. She knows the sensitive use separation exists with this billboard. She also knows that SDMC and state law and regulation are not independent of each other. The state relies on local licensing compliance and the local government relies on state compliance.]*

Whalen: OK this is difficult.

Tirandazi: I would like to also add that the Conditional Use Permit does include a condition that they would have to comply with all regulations including state regulations. So, if there are state regulations specific to the billboard, the applicant would have to comply with those as well.

Whalen: So, I'm kind of where Commissioner Austin is. I find those signs unsavory and if we're being asked to deny an appeal an affirm a Hearing Officer's decision on another project from the same applicant who appears not to be onboard with the signage requirements at least, it affects my thinking.

I want to ask Madam City Attorney if that perception that this applicant isn't trustworthy allows us to vote accordingly?

Thomas: I would say that it does not. You need to look at the facts of this application and this location, the findings for this project. The CUP runs with the land although it is issued to the applicant who is the permittee and is issued to the property owner. This applicant can, tomorrow, turn around and walk away from the property and whoever takes that site can then use the CUP for the 5 years that it's issued.

Whalen: OK thank you.

PJ Fitzgerald: Mr. Whalen if I could also comment. I would just like to say as Mrs. Tirandazi noted in the Permit Condition, if there are any violations to the CUP , on any CUP, we have Code Enforcement Staff in the Development Services Department that dose follow up on these. It may not seem like it's done quickly sometimes on the outside, but internally we are looking at things robustly and following up on items. The

cannabis and marijuana items are projects we do follow up on actively and keep track of that so if there was any code enforcement issue, we would take care of that.

Whalen: I know City Staff does get after these, but you have an enormous load of them, so they have to go when they go. I'm entirely understanding about that. Thank you. *[So, with that comment Whalen washes his hands of the illegal billboard and relies on DSD getting after them when they can.]*

1:32:44 Commissioner Otsuji I'd like to go back to the code enforcement. There was not a grading violation because they did not exceed a certain amount of grading. Is that correct? If they went beyond that it would be a violation?

A: (Tirandazi) That is correct. *[This is proof positive that Abhay and Bartell knew this and were making a strawman appeal. There was no way they would have been granted a continuance when there was no grading code violation, and they knew this.]*

Q: Secondly on the landscape there's a question on how much of the landscaping was removed and what is going to be replaced. Are we in sync with that both from the standpoint of code enforcement and as to the statement the applicant made to the number of trees.

A: With respect to that, the count with the number of trees that have been displaced or removed, I know that Code Enforcement and Landscape Staff have been in touch with the property owners consultant, and they have submitted landscape construction plans demonstrating compliance with our landscape regulations.*[and how did this get a negative environmental declaration again!?]*

Q: I just want to make sure that Staff is reviewing this and identifying what was existing and what is proposed and making clear what is going to be replaced in regard to some of the comments that have been made.

1:34:16 Tony Khalil, DSD I was in Code Enforcement for 25 years, so we know. I was one of the original drafters of that section and that section is specifically designed to withhold current permits for any construction activity that is associated with the violation itself. We drafted it because it was difficult to restore sites specially creating landscaping robbing removal of soil, altering natural drainage and so forth. We drafted that Ordinance section within the code section so that we have some legal mechanism to withhold permits however there are other many cases up and down the state that said we cannot withhold permit applications hostage for a violation that is not related to the application itself. *[This is huge! This is the drafter of that grading code section that states there are cases up and down the state that would hold that the City cannot do what Abhay and no doubt Gina behind this is attempting to do in having this project be continued by the Planning Commission holding the applicant hostage. The Planning Commission could deny the CUP based on the billboard issue but as far as grading goes, Code Enforcement ruled it a non-issue and Khalil gives us the background on how the Abhay appeal would have held the applicant hostage. I don't know why Khalil was on the Dias that day, perhaps he was there to inform the Commission that they could not continue the project because of a grading issue not associated with the CUP. He didn't have to bring up what he just states. I believe he was there to provide context to the code enforcement grading issue but as was heard earlier it was a non-issue as far as code enforcement was concerned. Khalil was not asked to provide this information. He did so without a prompt in a manner that would suggest he was there, preplanned, to address this one specific issue that Abhay had raised so it could be quashed.]*

Otsuji: I understand that. I just want to make sure that the code violation is followed through.

A: (Thomas) I do have the Notice of Violation here and it requires that it states restore altered landscape area to its previously permitted configuration to be in compliance with SDMC Landscape Regulations and Standards per the Land Development Manual (which includes planting all trees that were removed.}

Q: I just want to make sure, and I know you have good Staff, but I wanted to confirm that. The second thing is back to the billboard. My comment and observation to that is if I go up 163, I think there's about 2 to 3 I think I've seen. You go to Mira Mar Road, there's 3, and the question I have is who monitors where all these billboards are going up and are they in conformance to all the rules and regs? Is there somebody watching over all of this? I know you said the state…

A (Khalil) As it relates to billboards, a few years ago we assigned Staff to survey the entire City and document all the billboards in the City. We do have a record of where they are. Some of them date back 60-70 years for their locations. Code Enforcement does respond to complaints regarding placement and permits of billboards. *[Khalil just states that they know where the billboards are but in the case of the SDRC billboard the City knew, or should have known that, for example, an alcohol billboard would not be allowed and the a cannabis billboard would be in violation of state billboard law so why aren't the billboard companies put on notice that they cannot rent signage to cannabis ads when they are within range of a sensitive use? The billboard companies have to stay current on City licensing. The fact that the billboards are licensed through the City, and they are acting like cannabis signage is not in their current regulatory purview. At the end of the day, it IS the licensee's responsibility to see that their ad does not violate state separation issues and it IS the City and States job to act on that information if the Licensee has violated any of the law associated with adult-use cannabis.]*

Q: The reason I bring this up is these are fairly new in prime locations where there is a tremendous amount of traffic. They position themselves in ideal locations. How do they get that? I know, I'm sure there has been a waiting line in regard to who is able to rent or lease these billboards. They seem to be more and more profuse. Perhaps Staff can address this?

A: (Thomas) I don't believe any new billboards are going up although there is always the advertisements turning over and they may be more attractive than the previous ones which is catching your attention but I don't believe we're allowing any new billboards to be erected.

Otsuji: Hopefully there is someone watching over this, and I don't want to get into the billboard issue. I'll leave it at that. *[Another Commissioner gets close and drops the ball when it comes to an applicant ignoring state cannabis law.]*

1:38:10 Commissioner Peerson I'll weigh in. I think the questions you've all been asking are excellent. I don't have any other questions, but it does raise a few just clarifying thoughts. Following up on Commissioner Otsuji, so there will be trees that are replaced, and based upon the applicants conditions he would have to comply with the Landscape Regulations as well?

A: (Tirandazi) With respect to this project it did not trigger landscaping other than landscaping for the trees along the public improvements so as part of that the project has conditions related to that when they submit for their public improvements. The upgrade of the right of ways or driveways they will be required to provide landscape construction documents.

Q: Is that where the 5 trees came up?

A: I think it's two separate issues. There's landscaping that will be required for the CUP and the Notice of Violation to the property owner landscaping is being worked out independently and separately.

Q: It does raise the question about we talk about good players, and we talk about people who follow rules the billboards concern me but I'm hearing that we're not here, there's not a nexus between the billboards and what the permit sets forth. If there are violations at the state level that will happen through Code Enforcement *[struggles mightily to get the words out]* I'm hearing the concern about the billboard, I am concerned as well because we take it on good faith that people are putting forward projects and following rules and we do have this very difficult but kind of thrust upon us process of whoever is in the queue first and it doesn't always mean it's the best project it just means who is in the queue.

Looking through the Findings and reading the Community Planning Group recommendations I do believe this is an appropriate site, so I was just left with the question about the billboard. Now that we've had the clarification, I'm still understanding that that is not on the table as far as our discussion. I'm satisfied that the code violation will be taken care of by the property owner and the applicant has to meet all the conditions at the time the building permit is issued. At this point I would be in favor of denying the appeal and approving the project.

I do want to get clarification from staff, we're going to have an update, some kind of information item about the signage and that's next week, correct? And does this give you time to answer some of these questions that I think are really important?

A: (PJ Fitzgerald) Next week's update is actually regarding the former Civic San Diego status and Downtown Planning. Staff did also hear from you last week you'd like a workshop of some sort to address and provide you an update on the status of marijuana things in the City of San Diego and we will include an information item on the billboard at that time. So, we're looking maybe July or August of this year.

Q: Sorry for my confusion. I knew there was an Item next week but that was for Civic SD. So, I think what I would suggest, if there are other Items that the Commission would like Staff to comeback and report on, clearly, it's signage and billboards and that's what I'll be looking for hopefully in July or August.

1:42:10 Commissioner Hofman You said something that confused me. The code violations have to be satisfied prior to building permit. Is that what I heard you say?

A: (Tirandazi) No. There's no condition in the permit that states that. What I stated was that there are certain landscape requirements that the Conditional Use Permit requires.

Q: I'd like to then amend my motion to state prior to building permit for this specific use, that all code violations shall be corrected to the satisfaction of the Development Services Director.

Boomhower: I'm fine with that amended motion.

1:43:25 Commissioner Whalen just really quick for Staff, add parking to the reporting. Besides signage.

Peerson: For the information Item. Good idea. Because that has come up in the past.

Hofman: And again and again and again. *[We're dealing with it 4 years later after awarding these CUPS with parking issues.]*

Peerson: We have a motion and a second. Please vote. That passes unanimously.

COMMISSION ACTION: MOTION BY COMMISSIONER HOFMAN APPROVING THE STAFF'S RECOMMENDATIONS TO DENY THE APPEAL AND AFFIRM THE HEARING OFFICER'S DECISION TO APPROVE CONDITIONAL USE PERMIT NO. 1927100 AND COASTAL DEVELOPMENT PERMIT NO. 2173348. Seconded by Commissioner Boomhower. The motion passed by a vote of 6-0-1 with Commissioners Peerson, Whalen, Boomhower, Otsuji, Hofman and Austin voting yea, and Commissioner Granowitz absent.

[1:44:07 – 1:45:43 Commissioner Austin comes down off the Dias and makes a beeline for Team Gins and spends a couple minutes glad handing them.]

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ITEM 6: SAN DIEGO RELEAF MARIJUANA OUTLET CUP/CDP Appeal Development Services Department's March 20, 2019 decision on ITEM 8.

ITEM 8 STAFF: Tim Daly

5 speaker slips submitted in favor – Heather Riley, Abhay Schweitzer, Geanine Rollins, Renny Bowden *[Also works with Stephen Lake on the Ramona Project]* and Bradford Harcourt

9 speaker slips submitted in opposition – Gina Austin, Kelly McCormick, Becky Johnson, Zaire Smith, Travis Coulter, Russell Betts, Sean St. Peter, Christopher Pearce and Brittany Biesterfeld

ITEM 8 ACTION: PROJECT DENIED. Report NO. HO-19-035. RESOLUTION NO. HO-7219

DSD CONTACT: Firouzeh Tirandazi

PROJECT NUMBER: 575936

DSD TO HEARING OFFICER RECOMMENDATION: HO-19-035 "Approve Conditional Use Permit No. 2033810 and Coastal Development Permit No. 2163214."

HEARING OFFICER: Chris Larson

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-19-052 "DENY or APPROVE the appeal and affirm or reverse the Hearing Officer decision to DENY Conditional Use Permit No. 2033810 and Coastal Development Permit No. 2163214."

CEQA DETERMINATION: Page 1, "This project activity is adequately addressed in the previously adopted environmental document, Mitigated Negative Declaration No. 82.0279, and there is no change in circumstance, additional information or project changes to warrant additional environmental review. The prior environmental document adequately covered this activity as part of the previously approved project and the activity in not a separate project for the purpose of the California Environmental Quality Act (CEQA) review pursuant to CEQA Guidelines Section 15162."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION: No NORA Public Circulation Record was found. No Notice of Exemption was found to have been filed with the County Recorder.

APPELLANT(S):

Issues On Appeal

Page 30: Torrey Pines Community Planning Group Minutes with opposition based on CEQA compliance.

Page 34: Ownership Disclosure Statement shows Owners as CIRE STNL, LLC., Trevor Smith and Joshua Volen as co-founders. Tenants (sub-landlord); Lighthouse Strategies, LLC., Michael Hayford, Ross C. Goodman, Esq. and Tim Walters as Managing Members and Tenant;SVRMC, LLC., Renny Bowden, Managing Member. *[This entire structure needs to be investigated especially since there are no DSD project records based on Project/CUP/Coastal Development Permit Numbers accessible on the website.]*

Pages 35-51: TECHNE unstamped drawings. *[Why did TECHNE not have these drawings stamped by Michael Morton, AIA as they did on the 6176 Federal Blvd. project? There is certainly going to be more time and expense associated with a licensed architect having to review TECHNE's work. How does TECHNE explain that delay when compared with the 6220 Federal project?]*

Page 53: Appeal Application by Heather Riley citing "The Hearing Officer denied the application based on a misunderstanding of the law and a misapplication of the facts. There Is no "other marijuana outlet" within 1,000 feet of the San Diego_ Releaf facility. Since the neighboring marijuana outlet has been appealed on environmental and project grounds, there has been no "approval" and no "date of final action." As a result, the Hearing Officer should have made the necessary findings for the CUP/CDP."

OWNER(S): CIRE STNL, LLC, Owner, and SVRMC, LLC, Applicant @ Page 1 and 29 [There are no names associated with the Owner/Applicants]

APPLICANT(S): See above.

CUP NUMBER: 2033810 [DSD Portal does not show this CUP number]

The actual CUP Number is: 1927100 as found in the Planning Commission Report on Page 2.

CUP HOLDER: Sean St. Peter *[Sean was an opposition speaker at the Hearing and he is not listed anywhere as the applicant in any of the previous documents. What gives with this project Ms,. Tirandazi?]*

COASTAL DEVELOPMENT PERMIT NUMBER: 2163214 *[DSD Portal does not show this Permit number. Again Tirandazi will simply change the systems numbers after the project has cleared to cover up processing anomalies that benefit certain clients.]*

The actual CUP Number is: 2173348

STATUS: Issued 07/17/2019

CITY COUNCIL DISTRICT: 1

PLAN AREA: Torrey Pines

STAFF: Tim Daly

Speaker slips in favor of the project submitted by Heather Riley, Jim Bartell. Michael Morton, Sandra Gonzalez, Abhay Schweitzer, Becky Johnson, Kathleen Lippitt.

Speaker slips in opposition to the project were submitted by Gina Austin.

1:55:45 Commissioner Peerson opens Item 6 with DSD Staff Presentation by Tim Daly.

Peerson: As you heard there are 2 projects in proximity which our prior approval nullifies. This particular project we do have speaker slips.

1:58:49 Abhay Schweitzer I want it to be clear that we are in opposition to the appeal and in favor of the project.

Peerson: I'm sorry. These speaker slips confuse me some of the time.

Schweitzer: What we would like to do is respectfully request an indefinite continuance to our project. The owner would like to consider their options to get approval and there are some that they have identified and until the point we can determine if we would like the project heard again, we would like the Commission to please consider an indefinite continuance.

2:00:00 Heather Riley I have no reason to speak. I had ceded my time to Mr. Schweitzer.

Peerson: One more speaker slip from Gina Austin in opposition of the project. And you don't need to speak. *[This is astonishing. She is supposedly running against Bartell and Schweitzer here, has a speaker slip in and doesn't want to speak. She is OK with an indefinite continuance. I wonder why?]*

Peerson: With that we will close public testimony and open this up to Commission comment. *[12 seconds of complete silence]*

2:00:46 Commissioner Whalen motion to accept Staff recommendation.

Peerson: We have a motion and a second. Please vote. And that motion passes unanimously.

COMMISSION ACTION: MOTION BY COMMISSIONER WHALEN APPROVING THE STAFF'S RECOMMENDATIONS TO DENY THE APPEAL AND AFFIRM THE HEARING OFFICER DECISION TO DENY CONDITIONAL USE PERMIT NO. 2033810 AND COASTAL DEVELOPMENT PERMIT NO. 2163214. Seconded by Commissioner Hofman. The motion passed by a vote of 6-0-1 with Commissioners Peerson, Whalen, Boomhower, Otsuji, Hofman and Austin voting yea, and Commissioner Granowitz absent.

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ITEM 5

[The following project is not cannabis related but has been added to the Steering Document to show the community outrage, by licensed professionals, to DSD processing of CUPs. There are, no doubt, more of these to be found that are not cannabis CUP related however 6220 Federal suffered from these same preferential DSD CUP application treatments.

I happened across the Mardoum project, and the claims being made to DSD project processing improprieties are astonishing. As you will see by the Commission Action, none of these protestations worked to influence the Planning Commission. Despite their reasoned arguments, which pointed out specific and purposeful mishandling of the CUP application documents and noticing materials, the Planning Commission actually took offense to the charges against their sister DSD agency by defending them and ruling, unanimously against the community opposition.

Of note, the video inexplicably stops @ 3:52:15 into Commission comments re this Item. There appears to be a reporter, listed in the minutes as Carmina Trajano, transcribing the hearing from the gallery. The record of that hearing will be posted here if it becomes available.]

Item 5: Mardoum CUP Appeal of Hearing Officer's, Item 6 decision on March 6, 2019

PROJECT NO. 612206

City Council District: 1

Plan Area: La Jolla

Staff: Francisco Mendoza

Speaker slips in favor of the project submitted by Cindy Eldred, Todd Jackson, Diane Murbach, John Kavan, Monte Murbach, Scott Harry, Riad Marsoum, Valerie Sussman, Warren Mardoum and Adam Mardoum.

Speaker slips in opposition to the project were submitted by Michael Pallamary, Brian Bomisler, Andrew Smith, Susan Patterson, Drex Patterson, Terri Zimdars, Davis Gammage, Betsy McClendon, Ann Farrell, Scott McClendon, John Farrell, Dr. Betty Edwards, Kerri Smith and Shelley Smith.

2:34:48 Commissioner Peerson opens Item No. 5 with a DSD presentation by Francisco Mendoza.

2:47:28 Cindy Aldred for the property owners, Dr. Mardoum and Dr. Sussman. These are the owners of the property seeking the CUP. The project is the same as received in a unanimous recommendation of approval from the La Jolla Shores advisory group last May without conditions from the La Jolla shores Planning Association last October.

We appreciate the report on the Code Enforcement investigation. We received it yesterday and apologize if we stepped out of bounds. As we had not intended to do anything that would be in conflict with SDMC since the previous Code Enforcement case was opened and closed in April. We are not going forward with any development until we hopefully have a denial of this appeal and can the CUP has been approved.

I think I also want to mention that last week we received notification from Mr. Pallamary that he would be coming on-site this week in order to survey. At my recommendation, my client responded and said that he did not have our authorization to enter the site. Mr. Pallamary then provided us with statute that provides him with access for the limited scope of surveying and we notified Mr. Pallamary last Thursday night he was welcome to come on-site this week if he provided us with 24 hours-notice so that the owners or their representative could be present so they could let him through the security gate. We have not been noticed by Mr. Pallamary as to whether or not he has gone on-site without noticing us so we may hear something about that here today and if so, we're not going to be able to respond because Mr. Pallamary hasn't communicated with us.

I'd like to turn this over to Todd Jackson who is the designer for the project and then Diane Murbach is going to speak to you about the geotechnical issues.

2:50:39 Todd Jackson Our firm employs about 35 designers and 3 architects.

2:55:11 Diane Murbach we were contracted to provide the geotechnical investigation for an existing single-family residence as shown on the graphic. We found that the property lied in the Rose Canyon Fault Zone which is a City Zoned 11 hazard which required a preferred fault trench in the City regulations. So,

we excavated a fault trench as you can see in the red bar on the far right of the whole length of the property. It was logged and backfilled between September 12th -15th, 2017. Almost 2 years ago.

Because the property was also in a potential landslide zone, we were also required to do boring, and that boring was excavated logged down holed backfilled between November 30th and December 4th, 2017. Murbach Geotech then also performed their laboratory testing and age dating of the soils samples. We prepared the final fault and geologic investigation dated February 7, 2018. It's 48 pages and it's in the record at DSD.

My husband and I both hold master's degrees in Faulting and impacts to structures. The Rose Canyon Fault is a wide zone. Not just one fault. This project is actually exempt from the State Earthquake Fault Zones. Mr. Pallamary appeal indicates that the State's Earthquake Fault Zones apply when they do not. The state does regulate active faults which have surface displacement in the last 11,700 years which is why we did age dating of the soils samples.

The City Fault Requirements are what apply to this project. The project is in a City Hazard Zone 11 which requires a Fault Rupture Hazard Report. The City prefers a Fault Trench. We performed the Fault Trench perpendicular to the fault zone so we could intercept and find the faults if they're there. The report was completed by Murbach Geotech and approved by the City Geologist. Mr. Pallamary noted in his appeal that the fault trench was not dug on the site. He's well aware and has sent us in an email that modern cameras have GPS. These photos are GPS tagged to this property and we can verify that, and Mr. Pallamary knows that.

The Murbach Geotech Report concluded no active faults, and no landslides were found on the property. City guidelines state, if hazardous faults have been identified on or adjacent to the site, recommend an appropriate structural setback zone. So, our report recommended a 20-foot setback, for new habitable building construction from the Southern property line. This is based on official State of California maps showing an active strand of the Rose Canyon Fault being 30 feet south of the property line. This then would create a potential 20–50-foot setback from official state map traces of the Rose Canyon Fault. We cannot go onto the private property and trench next to that property. All that we can do is address what the state has mapped as the active fault. The new construction has met the 20-foot setback.

Supporting Geology; distinguished geologist, certified engineering geologist Mike Hart who signed the reference 1980 "Gammage" Report which is in the record located the Rose Canyon Fault in the same location as the state and the Murbach Geotechnical Report.

In Conclusion: The appellant, Mr. Pallamary, has extended a mapped but not verified fault line from (1) an expired GEOCON 1980 report, (2) has shown his location of the Rose Canyon Fault on the architects site plan and (3) his location of the Rose Canyon Fault on our Murbach Geotechnical Report thereby misguiding the public regarding the location of the Rose Canyon Fault on the Mardoum property. Mr. Pallamary is not licensed to practice and interpret geology.

3:06:29 Michael Pallamary of Pallamary and Associates Before I go on the record, as a point of order, this project is currently being investigated for a code compliance case which is unresolved which is a concern to everyone as it violates the La Shores Planned District Ordinance (PDO). So, the question we have is can this matter go forward if there is a pending code compliance case because the decision of the code compliance could overturn this decision and what we think might be a more sensible route is for this

matter to be heard but no decisions to come forward if the code compliance case is still pending. I want to lay that out at the outset here. I respectfully ask that we have an understanding as to how that would proceed. We want to make sure the record is clear also. Madam Chairman.

Peerson: I would just proceed.

Pallamary: Thank you. The first issue, Appeal Issue No. 1 has to do with the noticing. I can't speak to that. The other folks, the neighbors will. But they're adamant that they never received a notification. Those speakers will speak to that. It is part of the appeal.

Appeal Issue No. 2 is that the application needs to be posted along the street frontage. They weren't. In fact, they were posted inside the property. Staff claims it was 6-feet, they were posted 10-feet inside the property, on a glass deck that was enclosed in fence. You couldn't get there. You couldn't see it. If you can read this from that distance *[showing a faraway image of the notice]* then you can read that notice. This is a primary defect in this noticing. We measured it. These notices, when you normally do them, you have to have them spread out, 2 of them within 5-feet of each other. **We submit that's an act of deception.** *[emphasis added]*

The site plan depicts various survey monuments. Now one thing that is very important, surveyors and engineers as Mrs. Murbach well pointed out, are governed by state law. When we met with Staff a week ago to talk about problems with the Site Plan, Staff told us, in witness of perhaps 30 people, 'you don't really believe in those plans do you? What we've presented really doesn't mean anything. These aren't real plans.' That's what they told us. State law requires that these plans be prepared properly. People need to assess them. I assess them. I've been doing this for 49 years. We don't treat these plans casually. These are very serious documents.

The original Site Plan included all this data. Information about surveys. It's unstamped, uncertified. Those are violations of state laws. Staff recommends that the plans be 'sanitized.' This is the copy we received. So all of the information that gives merit to this appeal has been sanitized. It has been removed. It has been omitted**. I feel like I'm dealing with CSI Crime Scenes here.** *[emphasis added]*

As opposed to what Staff has argued, I helped write this law. What this law says is when a plan like this is submitted to the City it has to be reviewed by a licensed person. That's what state law says. This is 8726 of the Business and Professions Code. You don't pass these things off to casual people. Licensed people review them.

Removing monuments is destroying evidence. Modifying a Site Plan is a violation of state law. I don't care how you measure it. In doing so, I guess that is meant to take the sting out of our complaint, which incidentally, a couple of complaints are now on record with the state licensing board because these are violations of state law. When we spoke with Staff they said, 'it's not our job to enforce our state laws.' I don't think it's Staff's job to encourage people to break state laws and that's what they've done here.

This is a crime scene *[shows image of a crime scene with a body under a coroners blanket]* These are crimes. These are misdemeanors. You cannot destroy these things *[monuments]* and that a representation that all is good. It's akin to a police officer removing bullets from a dead body and saying the man was never shot. **This is as outrageous as it gets.** *[emphasis added]* They're also misdemeanors under B&P Code Section 8792 as well as it being an Act of Negligence as defined in B&P Code Sections 6775 and 8780.

The questions we had about the Geologist were really pretty simple. I don't question Mr. Mills qualifications, but I enforce a law, here at the City of San Diego which talks about Responsible Charge. *[Citing B&P Code Section 6730.2 in his PowerPoint presentation]* Now what does that mean? You can have 1,000 people working for you, but 1 person is in responsible charge. So, here's a letter that was routed last year to the state boards queries to the City of San Diego, *[displays letter in his PowerPoint]* the City has to identify who is in charge if the project. You can't dismiss this to any Staff Geologist. The Staff Geologist, who is in Responsible Charge is by law responsible. That's what we asked. Who is in Responsible Charge? Here's the answer. The answer is Mr. Hock and Mr. Quinn. That's all we asked. No one gave us the answer. And you know what's been frustrating? I've sent probably 20 Public Records Acts (PRA) to the City asking that simple question. Who is making these decisions? We've got no response. We have several PRA's still outstanding, still unanswered. *[They have 10 days to respond to a PRA. Failure to do so are Brown Act violations]*

The issue with regards to our Appeal No. 5 is the plotting of the Rose Canyon Fault. I take earthquake faults seriously. I think they're really important things. This is in the La Jolla Shores PDO. You can't defy General Regulations. This is what geological hazards tell us. It's an active fault. With all due respect to Mrs. Murbach, the City is telling us it's active. People get hurt in earthquakes. All we're looking for is life-safety.

The 1980 Report indicates, this is important, it's not conclusive. The exhibit I prepared is an approximation. I am authorized to do that. I can MAP. Murbach Geotechnical never looked at this Report. Staff confirmed it. In an abundance of safety, we're just asking that these things be considered. This shows you *[points to an area on the Murbach drawing which indicates a fault region]*, in the Murbach exhibit and that's what the Report is telling us. Now whether it's there or not we don't know. But in an abundance of caution would you not think you would look into this when you have evidence by certified geologists. You can't dismiss a 1980 Report. You can't just say 'eh no big deal. It's 80 years old.' I don't remember the earth changing since 1980. Not this radically. We're asking, in an abundance of caution, to look at this life-safety issue. Dr. Edwards, who lives next door, is going to be sitting under this thing. Does anyone care that her life and safety may be in jeopardy?

Directly across the street, the Rose Canyon Fault is talking to us. Look at this crack directly across the street at the McLendon property. *[shows a large crack in the brick pavers]* Mother Earth has something to say. Is anyone listening to her? Look where that crack is headed. *[Mardoum property shown in the background]* That's the sign of an active movement straight into the Mardoum project.

Here's the exhibit I prepared. I've stamped it. I've certified it. I'm authorized to do this. I'm merely plotting things. I haven't arrived at a conclusion. I'm not a geologist. But we're raising this issue We're hoping someone will address it.

This is the new Item we're adding because we simply don't know what the disposition *[shows a screenshot of an email from Morris Dye of Code Enforcement to Mr. Pallamary]* is of this. We've had communications as recently as yesterday on this. We've asked lots of questions to Staff and we don't know what's going on. Staff won't communicate with us. They won't tell us anything. But here's the point. We filed an initial complaint, and it was closed as quickly as it was opened.

So, we went back and met with Staff and asked 'how can you not say that this is grading? How can you not say it was grubbing? How can you not say that these are all things the Code talks about?" The applicant

mentioned maybe they got a little bit overzealous. Newsflash! Overzealous means violation of La Jolla Shores PDO. This is in the PDO *{Citing SDMC Article 10: La Jolla Shores Planned District Ordinance § 1510/0201(a) @ Page 46 'before the commencement of any work in the erection of any new building or structure, or remodeling, alteration, addition, or demolition of any existing building or structure within the La Jolla Shores Planned District…']* This isn't someplace else around San Diego. It's a violation. This is a violation of La Jolla Shores PDO. As you can see by their letter, they're concerned. The reason they're not here is because of the Code Enforcement complaint. We really should not be moving forward until that Code Enforcement issue has been resolved.

Code Enforcement doesn't communicate with us. How can they not call this grading without a permit? Where did the roof go? It's gone. It must have just been a Wizard of Oz thing, it just kind of disappeared. It's called demolition. It's called a violation of the PDO.

Less than 24 hours ago I received this notification to Francisco Mendoza, DSD Project Manager that the La Jolla Planning Group there have been significant changes to the project, they agree to support it, the La Jolla Shores PDO wants this back so they can look at it. And I'd be remiss if I failed to make reference to a Grand Jury Report of 2005 which says that the City of San Diego fails to take into consideration these Planning Groups. *[Pallamary was also a vocal critic of former mayor Bob Filner and contributed to his having to step down from office]* I'm asking you. I'm pleading with you. Please, take into consideration the Planning Group and please protect the community. Please, this is a life-safety issue. This isn't a bunch of people objecting to a project because they don't like it. It's because they're fearful of their lives. With that I conclude.

3:21:02 Carrie Smith My husband and I own the home at 7863 Roseland Drive. It sits cattycorner to the property behind and quite a ways to the West. We have nothing to lose with this project going up, however we have serious concerns about the safety of it. Primarily for our friend Betty Edwards who is directly in front of the property.

We're hoping that you will approve the appeal today as we're concerned about the Rose Canyon Fault and from our vantage point it's clear that there has been a significant amount of work that has been done on the property. We've watched that. We fear that a trench of the size that was represented had not actually been constructed. There was a smaller trench not nearly as big as what was represented.

Years ago, before we bought our home, there was a previous owner, Mike and Alice Cavanaugh had the property in escrow with a buyer and they had sought to build a second story on a portion of our home. Part of our property was trenched and that was denied based on the potential activity of the Rose Canyon Fault.

3:23:52 Dr. Betty Edwards I live next door to the project before you, the Mardoum property. These houses are going to be very close together. About 50 feet actually. The second story will be looming over my house. I'm 93 years old. This is causing me, in the last years of my life, a great deal of anxiety.

Not if but when the earthquake comes, this second story, which will loom 30 feet, because of the hillside, over my patio, will fall on my house and perhaps on me. This unpermitted construction and excavation has already damaged a wall on my property.

We were told about the 90-foot trench. I am always home. I would have known if this kind of excavation was going on. It never occurred. The property was open to the street and just out of curiosity had there

been any construction of that kind, I would have known. That trench was never dug. The City is not looking out for us.

I want to say this project at this moment is only on paper. It can be corrected. It can be revised. It can be made safe for me and really for the Mardoum's themselves. I'm telling you that trench was never dug. We do not know what the situation is. There was a tiny trench 5-feet long, 2.5-feet deep. There's yellow police tape around it. As though if you fell into it, you might be injured but you'll walk out. This was not a 12-foot *[deep]* trench. Now the geologist says the trench was dug. I'm telling you *[forcefully]* it wasn't dug.

Peerson: Can I ask you to wrap up or have someone cede time to you.

Edwards: The wall that was damaged was carelessly done with excavation behind my wall. My house is historic, designed by John Lloyd Wright. The wall is historic. It's now leaning. It's cracking and this is because excavation was done, without permit behind this wall.

I also want to say that I never received any notice about this coming project. Not one. Not one. I hope you will help us. Thank you.

3:29:45 John Farrell Dr. Edwards is my mother-in-law. I'd like to speak to the issue of 'expert opinion.' I could be considered an expert and in fact I am. I have a masters and a doctorate in Latin American history from UCLA. I think it's safe to say that not only am I certified, I don't think anyone here would disagree that I know more about Latin America than anybody else in the room. Now on that basis, as an expert, if I were to say to you that the sky is green. The grass is purple and everybody speaks French I think you might take pause at my assertion if you were a member of the Development Services Department and certainly as a member of the Planning Commission. You might even be moved to ask on what evidence do I rely on to make this assertion. What is my evidence? Ideally you might even be moved to drive down to TJ and look around to see for yourself and conclude the expert is peddling a load of BS. Obviously.

I assert and I suggest that the deceptions we have specified could be easily corroborated by anyone who would do so. All one has to do is visit the property and it can be seen that damage has been done to the adjacent property, my mother-in-law's property. That demolition and substantial grading has been done without a permit. No 90-foot by 12-foot-deep trench has been dug as required by law. I submit this for your consideration.

I also note that behind you, on the wall is a seal of the great City of San Diego inscribed with the motto Sempre Vigilance which means always vigilant. Your responsibility, ion my view as Planning Commissioners is to be always vigilant about the rights and safety of the citizens of San Diego. I urge you. I plead with you to honor your motto. Thank you.

3:32:42 Ann Farrell I'm the daughter of Betty Edwards who lives at 7840 East Roseland Drive next door to the subject property. I have to say that I am pretty shocked and disgusted as to how the City of San Diego has handled this case. I'm amazed at the level of inattention, mismanagement, even incompetence that seems to be rife in the Development Services Department. DSD is under your purview. The Planning Commission needs to investigate what is going on over there. If this project is any indication, the City has a big problem.

We are appealing the approval of the Mardoum project, and we are asking you to reverse the decision and send the project back to the drawing board. It should never have gotten this far without serious scrutiny of code violations and other issues having to do with life-safety.

Let me say first that no one in this neighborhood received the notice. There may be proof of its mailing, but it was not received. If one person didn't get it, ok but the ENTIRE neighborhood didn't get it. *[This is not difficult for the City to do if they are able to control a postage stamp which is my guess they did. There is no way if those were sent, not a single one was received. I'm not buying it. These are not people that would ignore that type of letter.]* That's why no one from the neighborhood attended the La Jolla Planning Association meeting where I believe they just put it on consent *[this too need to be confirmed]* and moved it right through because no neighbor was there to complain. Later there was an article in the La Jolla Light quoting Valerie Mardoum, Valerie Sussman excuse me, stating that my mother, Betty Edwards had approved the project. She was in support of it. Well, my mother had never met Valerie Sussman to that point. She certainly never spoke to her and there was absolutely no connection from our neighborhood to that meeting in which it was approved.

We were only shown the plans and the renderings, 7 months later and it was the night before the March 6th hearing when this project was approved. I stood right here on March 6th as did the Mc Lendon's; we were passionate in our opposition. The DSD staff could not have been less interested, and they simply rubberstamped the project with no recognition of the life-safety issues involved. They clearly wanted to make us go away but we did not go away.

Our neighborhood sits on the Rose Canyon Fault as you have heard. It needs to be investigated. Further investigation is warranted. There are enough questions raised that for the safety of my mother and the Mardoum's to build a second story on an active earthquake fault like this without any addressing the issues raised of safety that would be so irresponsible.

Please. I'm asking you to revisit this project, send it back to the drawing board and please, put my mothers life ahead of whatever procedural issues you seem to be taking account of with DSD. Thank you very much.

3:36:10 Betsy McLendon I live directly across from the property. Out of my kitchen windows I've been looking at the property for 41 years. I can guarantee you that the rock retaining wall, the rose garden, the brick steps that I saw up until November were intact. All of it is gone. It's all been mowed under. Piled up dirt. Steps ripped out.

I would have had to climb over weeds and mud to look at the Notice posted on the deck, however because the property had already been investigated by the Fire Department in order to clean it up to prevent fires I just assumed with the mess, it was one more Notice. I stared at 2 toilets on the front deck of that house from November to the end of March.

I'm here specifically to address the Rose Canyon Fault. The property that Carrie Smith and her husband now live in, when that property was being developed by Henry Hester to build his retirement home, three trenches were dug. The result of that trenching showed that the Rose Canyon Fault ran under a portion of my home. I went to add 107 sq-ft single story to my home. I wanted to put a bathtub and a toilet compartment. The City required incredible reinforcements of the slab and the reason was given because of the Rose Canyon Fault. The contractor said, 'if you ever have a problem in this house that's where

you're going to have a problem.' I said we haven't. We've lived here 30 years, no problems. 5 years later, the toilet cracked right where the City said. It's my porch that you're looking at the crack on. My 107 sq-ft are in direct line with that crack and that leads right across the street to the Mardoum property.

There's a huge Torrey Pines tree, it is 85 feet tall and far older than 40 years. The man who planted that tree has specified that it's a 50-foot root ball in each direction. If that trench was dug *[forcefully]* it went through the root ball and the tree will fall. I called the City Engineer to inquire whether that trench was dug. I went to OSHA. I sent you a copy of that email. There is no record of them having received notice that a trench was dug on that property *[These are very good points. A trench that deep would have required a county permit and underground utility location. No records. No trench. Furthermore, if that trench would have been dug 12 feet deep without the proper permits or UG utility checks the tree would not have likely survived.]* I look out my window and I never was the piles of dirt.

3:39:25 Davis Gammage I grew up at 7865 East Roseland Drive two houses over from the Mardoum property. My mother still lives in the house we moved into 57 years ago. Amongst the living, I'm probably the most familiar with the neighborhood with the possible exception of my mother and Terry Peterson and the McLendon's who have lived there nearly as long or longer. We're also very familiar with the measures required of and taken by neighbors over the past 57 years to comply with the fact the Rose Canyon Fault runs along East Roseland Drive, up through the McLendon property, under the Mardoum residence and then Eastward along Hidden Valley Road. This was proved by the trenching that was referenced by Betsy McLendon that my parents had performed when they sold their lot to Henry Hester. It proved the trenching was exactly where the Murbach map shows the yellow line and the setback. That is exactly where they trenched and there was no fault found. The trenching was done by GeoCon which is one of the leading geo-technical companies in California. Very very reputable. They dug 3 trenches. **The fault is not where they show the setback.** They show the Rose Canyon Fault, as Betsy said, running right under the McLendon property and right through the Mardoum property. That MAP has been and that trenching and that report that my parents had commissioned over 30 years ago has been completely disregarded. The fault does not lie where it is shown in the Murbach Report. *[Did Murbach ever work for DSD? I'm told she did and was compromised in that report.]*

The Mardoum addition poses an acid test for the willingness of the City Planning Commission to approve the risk of a massive second story addition which would loom over a closely adjacent property directly on top of the Rose Canyon Fault.

You just need to stand at Dr. Betty Edwards patio directly outside her residence door to appreciate the danger that is inevitably going to occur when the fault slips and deposits the proposed Mardoum residence onto her house. This is not hyperbole. If you doubt me, I'm sure that Dr. Edwards would invite anyone and all of you who care and be interested enough to stand there and look up at what is at stake in this appeal.

The process of the appeal of this project by the City Development Services Department, it's lack of code enforcement of the projects obvious violations and the handling of our appeal has been nothing short of disgraceful. And let me be specific; the department has dismissed obvious and substantial unpermitted demolition and grading at the property. As well as municipal code posting requirements as you have already heard. It has not followed up on the dubious non-OSHA supervised, alleged geotechnical trenching on the property which none of saw any record of at all other than the photographs which are dubious.

They've dismissed the danger posed by the residence sitting directly on a major fault which is also misplaced geographically.

You may not know this, but the DSD website has the property located 4 houses to the Northeast from its real location. The DSD property profile has it in the Los Penasquitos watershed, 7 miles away and significantly located in a benign geological zone 5 zones away from the proper geological zone which is not only bisected by the Rose Canyon Fault as you've heard but is also a landslide zone. *[DSD did the same thing on their website at the 6220 Federal project by changing parcel numbers and putting an image of the City Parking Garage downtown after posting it properly at first. It was intentional deception so people would confuse the project with something else. This has all been fully documented with screen shots of their fraud and deception.]*

These are appalling errors, but they may explain why this project was ever approved in the first place.

Peerson: Can you please wrap up?

Gammage: The Department thinks that it simultaneously 4 house over from its La Jolla location and in Del Mar/Scripps Ranch. It really makes you wonder. How this approach of deny the appeal, deny the appeal serves the public good is beyond me as I don't buy into the infallibility of myself or anyone else much less City Officials who refuse to consider there may have been an error at some point or who hide behind processing to cover themselves like that have in this case from the beginning.

If the reality made in the situation that I just mentioned doesn't elicit a recommendation to grant the appeal I don't know what will. A single mistake can be swept under the rug and dodged but not in this case. It might take a Grand Jury to unwind this one.

I'm going to close my remarks by restating that any decision that approves a second story addition of this size on top of a very dangerous fault closely adjacent to another residence below is beyond reckless. It has to be the result of the mistakes I just stated that you're not aware of. *[You'll notice they never even discuss any of your points then the video is lost before the unanimously vote to deny the appeal.]* Of DSD thinking that the property is located miles away and not in La Jolla

Peerson: Thank you.

Gammage: and not at the foot of Mount Soledad and not on top the most threatening fault within the jurisdiction of this Commission. Thank you.

Peerson: and wit6h that it closes public testimony.

3:44:01 Commissioner Whalen We don't do inflammatory here. That's not the way we work. *[you people work for us! You have robbed the community in what is either gross ineptitude or more likely, from what I can prove, is a pay-to-play system of favoritism that streams freely throughout our local government. The nerve to castigate these people. You should be immediately terminated.]* I didn't appreciate the arm waving, the raising of voices and so on.

The second thing is that Mr. Mendoza has worked with us many times and I find him to be a very, very, able City Staff person and when he says something I believe it. There are a lot of serious allegations made here in writing and again we read the reports and one that says 'the actions of some DSD Staff inept or at worse corrupt I found offensive. *[You sir are a shitbag of the highest order. What you have put these*

people through SHOULD be what you find offensive!] And I'm going to ask Staff to respond to some of the claims that were made but first I want to compliment the geotechnical report. That was very well done. Your license is on the table when you make these assertions. I don't hear that on the other end. So, if you're making lies to us, you're out of business.

I'm half joking but if it's this unsafe why don't we close the whole street? Seems like that's a reasonable path. Somehow people have managed this nearby fault for a long time. *[Yes Mr. Moron. They have managed it by the City holding development projects to the active fault conditions, not playing favorites with DSD and City of San Diego preferred projects.]*

The next thing and we know the La Jolla Planning Groups, they never like anything. *[Hey La Jolla! Secede much? You can't do any worse than this.]* They tend to have 14 to nothing and 5 to nothing for whatever the reason. It's persuasive.

One thing I did want to talk about was the code compliance. There are claims being made, and I want to know if they're true or not but I'm going to differ to Commissioner Austin because he's the real architect here, then maybe we can get a motion on the floor.

3:45:57 Commissioner Austin I am an architect. I'm not a geotechnical engineer and I'm not a structural engineer but we do a lot of work in San Diego, and we work around faults. So, we've worked with the City's geologists on several projects, so I have some familiarity with the subject. So, I have a few questions.

One, was a 90-foot trench required and I'm going to ask the geologist who did the work to come up.

A: (Monty Murbach) I'm the guy who signed the report. I'm the Engineer/Geologist licensed by the State of California. Yes, I was very fortunate to excavate that long of a trench behind the property in order to clear the fault. I trenched it perpendicular to the Rose Canyon Fault and for me to get City approval you have to go property line to property line and that's what I did. *[Where are your dig-alert tickets and **County** permit required to dig this deep?]*

Q: And you're here testifying that you created the trench to make sure your findings were understood.

A: A Bobcat Excavator for that trench *[A Bobcat's max trench depth is 5 feet not 12 This lines up with what Betsy said for a 1-5 ft deep trench having been dug.]*

Q: My next question is how close is the second story addition to Mrs. Betty Edwards home?

A: (Mendoza) That's a very good question Commissioner *[kiss ass. He looks like a dear in the headlights]*

Q: It looks like the house is set back from the property line and I'm assuming Mrs. Edwards house is set back from the property line.

A: (Joseph Stonco (?) DSD Planning) Approximately 18-20 feet.

Austin: One of the things that we had to do and I went to a school that had a lot of structural engineering we looked at lots of slides and presentations on areas that had horrible earthquakes. The worst one was up in Alaska and that was over an 8. I think the largest tsunami on record was recorded up there in that bay. And we saw pictures of homes where the earth opened up and these home were made out of plywood were still intact even though they fell into those…and I was impressive with what happens if you build the project right.

It seems inconceivable the second story, 18 feet away, could fall on the home of Mrs. Betty Edwards but the other thing is there are strict requirements that if the City Geologist has looked at this as architects, we have to take their word for this. We design accordingly with seismic walls the foundations and I have to buy the fact that we're getting good information. *[Therein lies the problem]*

I can't imagine that for a single-family residence these people would put their entire careers on the line for that. So, I have to accept that at face value. But also, you're talking about a wood structure, and this is not like we're in some 3rd world country where we're building with unreinforced masonry. If there's an earthquake these things are going to crush and kill people. I mean I sit in an unreinforced masonry building on top of this fault alright. And I met with GeoCon and about every engineer before I decided that I was going to be there. I asked them would you be willing to put your own daughter in this space and they said yes because as long as you do the seismic upgrades, because in that particular fault, the amount of movement that would happen was low enough that you probably wouldn't be killed *[laughs]*, the chances of it happening were incredibly remote but what you did have to do is design the building because there will be a fault.

Somebody said it's not if it's when and so we design that building to withstand an earthquake and we've had some earthquakes since then and they got my attention but other than a little dust kicking up we're fine. So, I'm perfectly comfortable that this is not a life-safety issue and if it were, everybody in that neighborhood, including the people already living there would be in grave danger and should move out.

I'm trying to figure out what the real issue is, and it sounds like maybe it has to do with these violations so can you repeat what the violations were?

A: (Mendoza) As of the site visit yesterday, I received an email late in the afternoon, construction work had begun at the rear of the building and that work requires a building permit. Additionally, the grading that had been done on the site did not require a grading permit. *[Was this project deemed CEQA Exempt? If so, why?]*

At 3:52:21 the video goes black, and the rest of the agenda is not streamed or available.

COMMISSION ACTION: MOTION BY COMMISSIONER WHALEN APPROVING THE STAFF'S RECOMMENDATIONS TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO APPROVE SITE PLANNING COMMISSION MINUTES FOR JUNE 13, 2019, WITH MODIFICATIONS TO THE EXHIBIT "A" DRAWING AND A REVISED CONDITION TO THE PERMIT. Seconded by Commissioner Hofman. The motion passed by a 7-0- vote with Commissioners Peerson, Whalen, Boomhower, Otsuji, Hofman, Granowitz, and Austin voting yea.

2019/06/20 Minutes

ANNOUNCEMENTS/PUBLIC COMMENT

2:04 William Perno commented on Marijuana Regulations re advertising in cannabis products.

2019/06/27 Minutes

2019/06/27 ANNOUNCEMENTS/PUBLIC COMMENT

2:22 Judi Strang commented on neighborhood threats re. number of MPF.

5:35 Kathleen Lippitt commented on Business Mix. "What other private industry have we ever seen such support for long term sustainability, for economic success, to make sure they are successful and the difference between how they've been treated compared to existing community friendly businesses have been treated is extraordinary…and how unlicensed manufacturers were given business licenses and told they could the were eligible to apply for an adult-use license."

8:04 William Perno commented on marijuana regulations enforcement. Code Enforcement, and the City Attorney's Office does not enforce cannabis signage violations in violation of the CUP agreements. The City Attorney is leaving these things up to the DCC for state enforcement. "Unclearly regulated is their excuse."

11:22 Lisa Bridges commented on the license CAP of MPFs capacity.

13:07 Kelly McCormick commented on marijuana MPF non-compliance and the lack of (zero) testing facilities. 93 of 1000 mfg's are participating in track and trace. "To say that all regulated pot is tested is wishful thinking."

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2019/06/27: ITEM 1: MPF 10110 SORRENTO VALLEY Appeal Hearing Officer's 2019/04/03 ITEM 8 decision

ITEM 8 STAFF: Firouzeh Tirandazi

2 speaker slips submitted in favor – Gina Austin and Sean St. Peter

13 speaker slips submitted in opposition – Nick Goldberg, Kathleen Lippitt, Kelly McCormick, Becky Johnson, Sapphire Blackwood, Judi Strang, Khoa Nguyen, Jennifer Matthews, Mark Fisher, Will Senn, Rick Wright, Bradley Fisher and Cathy Brown

ITEM 8 ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-19-035. [This is the wrong report number. The actual report number is HO-19-037. another example of Tirandazi playing loose with the file numbers.] RESOLUTION NO. HO-7223

DSD CONTACT: Firouzeh Tirandazi

PROJECT NUMBER: 585348

DSD TO HEARING OFFICER RECOMMENDATION: HO-19-037 "Approve or Deny Conditional Use Permit No. 2196094"

HEARING OFFICER: Duke Fernandez

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-19-057 "DENY the appeals and affirm the Hearing Officer's decision to APPROVE Conditional Use Permit No. 2196094."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Section 15301, Existing Facilities. An appeal of the CEQA determination was previously made and scheduled for City Council on January 14, 2019. Prior to the City Council hearing, the appellant submitted a written request to withdraw the appeal and

pursuant to San Diego Municipal Code Section 112.0520(d), no appeal hearing was conducted. However, the project site is located partially within the Coastal Overlay Zone. Ordinance O-20863, amending the appeal process and appeal withdrawal regulations, is not in effect within the Coastal Overlay Zone. Therefore, the City Council considered the CEQA appeal and denied the appeal on March 12, 2019. The scope of the subject hearing only includes the project, and not the environmental determination.

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: No NORA Public Circulation Record was found. A Notice of Exemption was filed with the County Recorder @ Page 19.

APPELLANT(S): Catharine Brown and Khoa Nguyen

Issues On Appeal

Page 23: CUP signature page

Page 26: Torrey Pines Community Planning Board Minutes

Page 29: Ownership Disclosure Statement

Page 42: Appeal Application by Catharine Brown

Page 43: Appeal Application by Khoa Nguyen

OWNER(S): Helf Sorrento, LLC., at Page 1

APPLICANT(S): Sean St. Peter, Applicant @ Page 1

CUP NUMBER: 2196094

CUP HOLDER:

SITE DEVELOPMENT PERMIT NUMBER:

STATUS: Denied by Planning Commission

CITY COUNCIL DISTRICT: 1

PLAN AREA: Torrey Pines

STAFF: Firouzeh Tirandazi

Speaker slips in favor of the project submitted by Gina Austin, Brittany Biesterfeld, Tamara Rozmus, Christopher Pierce, Sean St. Peter, Alana Austin and Cathy Brown.

Speaker slips in opposition to the project submitted by Judi Strang and William Perno.

45:30 Commissioner Peerson opens Item 1 with DSD presentation by Firouzeh Tirandazi

48:45 Commissioner Hofman I do have several questions. I'm just trying to wrap my head around this because it's a little bit complicated. I'm going to refer to it as the Buenos Project which is the one that went to City Council on June 18th, ITEM 333 and I'll call this one the Sorrento so I don't get them confused but can you tell me when the CEQA approval occurred for both?

A: (Tirandazi) I can give you exact dates, but I can also at a high level indicate that the CEQA approval for Sorrento occurred before the CEQA approval for the Buenos Project. What had happened is that the environmental determination was before City Council for the Buenos Project. City Council upheld the appeal therefore they maintained jurisdiction over the project and the environmental determination. The project was then presented, along with the environmental determination to City Council on the 18th of June and they approved the environmental determination as well as the project on June 18th.

Q: Ok, so the Hearing Officer approved…have they approved Buenos yet or not?

A: No because it uhm, the processing of that application was unique in that City Council upheld the environmental appeal and therefore they retain jurisdiction as the final decision maker on the environmental as well as the project. Whereas uhm, most of these other projects that have been processed the environmental determination has been denied and therefore it goes back to the standard processing of the applications with the Hearing Officer as the initial decision maker and then appealable to the Planning Commission.

Q: Ok so if today we go with Staff's Recommendation and either not continue or not approve as it would be considered the 41st, what happens to this application as far as its place in line, is it out of the line?

A: We have 40 approved Marijuana Production Facilities.

Q: I understand that but my question is if the other one goes back to the Hearing Officer for approval and that gets appealed, not the environmental,

A: (Corrine Neuffer, City Attorney) Commissioner Hofman there is no other one. The Buenos MPF was approved by the City Council. That is final.

Hofman: Oh ok then that's what I'm trying to understand. I thought that was just the environmental appeal.

Neuffer: It was both.

Hofman: It was both?

Neuffer: Yes.

Hofman: It was both. Well then that clears up a lot for me. Thank you.

53:18 Gina Austin, Esq. In favor of the project against the appeal citing "Gina Austin on behalf of the applicant and this is a complicated one. And unfortunately, this complication was not a result of my client's 'gaming of the system' was not a result of my client's actions but rather actions that were taken by the City Council which created a lot of Commissioner Hofman's confusion as to when the approvals occurred. I also provided a detailed letter and because of the significance and gravity of the situation I'm going to repeat some of that information which I normally would not do. But I think it's critically important.

This appeal should be denied, and the project approved because this is the 40th project. What Council did was approve the 41st. And I'm going to walk you through that process because it's not all that clear. But this project was approved by the Hearing Officer on April 3rd. There is nothing in the code that allows for an abeyance of that decision. It's not placed on hold. It's not canceled. It's not determined to be invalid. Nothing happens to that decision when an appeal is filed. On the contrary when a CEQA appeal is filed

that decision is put into abeyance and it's put on hold, and everything is determined once it goes to City Council to make that determination. So, in this instance, this project was approved on April 3rd. Buenos did not go to Council until June 18th. This project was approved first. It is the 40th. Council made an error when it approved the 41st project in contravention of the code. And now what Staff is asking you to do, in a revised recommendation, is justify Council's bad decision and compound a bad decision with more bad decisions. So right now, what we have an attempt to have what I would call post hoc rationalization of 'oops Council approved 41 because this one was not held in abeyance.' This one was approved. And now 'well Planning Commission you didn't get to put the cap in there in the first place. City Council did. But we're going to come back to you and we're going to say, 'help us fix this problem' and that is improper. That is an abuse of discretion and is extremely prejudicial to my client for that to occur. *[Speaking of prejudicial, how prejudicial have your acts with DSD and other corrupt attorneys been when it comes to applicants who have been harmed who are not a part of your criminal cabal Gina?]*

There are 3 independent reasons I want to go through as to why this approval is the 40th and not the 41st and that it would be improper for the Commission to take away this permit. On April 30th the Hearing Officer heard 4 MPFs. He heard this one, Sorrento, it heard Mrs. Brown's MPF on Verus Street and it heard 2 others that are represented here today by Mr. Lance Rogers. And in that order, Sorrento went first, and the Hearing Officer said 'Yup. Sorrento you're approved. There are no sensitive uses. There's absolutely no reason why this project should not be approved. Every one of the findings can be made. And then, based on Staff's recommendation, the Hearing Officer subsequently denied Verus Street and the two others represented by Mr. Rogers, which street names I cannot recall *[Pickwick and Rehco]* based on the reasoning that 40 had been approved. That is the Hearing Officer's decision. That was Staff's recommendation and that was Staff's determination and interpretation all the way through the hearing that occurred on July 18th. *[You had it completely mapped out with DSD Gina. The other 3 MPFs were going to take the 41 and up slots and you would have had another notch in your belt except for the fact you did not anticipate the City Council wanting to appease Willie Senn more than Gina Austin. They knew exactly what they were doing at Council that day. So here you are stepping over the other 3 MPFs and wanting sympathy because you finagled Sorrento up on the agenda as Item 1. You and your cronies are what's wrong in adult-use licensing.]* On June 18th Council said 'well there's still an appeal pending on Sorrento so therefore I don't believe there's been a final action and Council conflated the word final action with permitted. Because when you look back to the code, Section 141.1004, which creates the cap of 40 that cap says 'provided that no more than 40 MPFs are permitted within the City.' That is the language that was used, and **words have meaning** *[emphasis added]*. No more than 40 are permitted in the City.

Council looked to final action. There is nothing that talks about final action in the municipal code related to the 40 MPFs. Nor is the word 'permitted' defined by the municipal code which is where the problem lies. Permitted has been interpreted by Staff and by this hearing body since the beginning of the cannabis permits being issued as a CUP being approved by a decision-making body, regardless of whether there were appeals. That has been how 'permitted' has been interpreted. To change that today would be improper. Let me give you examples; the Hearing Officer's decision on April 3rd. Denial of the subsequent applications. This hearing body's decisions back in 2015, when Council District 6 was capped out and 4 MMCC's, which are now Outlets (MOs), were approved at that hearing. There were two more on the docket for that day and the people who were here, the 3 or 4 Commissioners *[points to the Commissioners on the dais]* that are left from the hearing that day said 'we've approved this but that's a problem. It's a problem because something may happen to these, even though we're the last decision making body in

line; there's some litigation, we don't know if these are going to happen, these other poor guys are sitting here, these two, have gone through this entire process so therefore this Commission decided to put them on an 'indefinite hold' or hiatus such that if one falls out, which one has so far, that applicant didn't have to go through that process all over again.

So, this is not unprecedented, and it is absolutely consistent with the way that this Commission and this City has interpreted 'permitted' since day one. It means the approval of a decision-making body to approve the permit. And when you do that, there are options for appeal. There are options for litigation. We have 90 days by which that Buenos activity and anybody else who has been approved in the last 90 days, a Writ can be filed for the approval of that City. We still have that and from there we can go onto the Court of Appeal and then we can go onto the California Supreme Court. This goes on ad nauseam if we're going to say that issuance permitted is that there cannot be any further actions. This is a new, creative interpretation by the Buenos applicants, which by the way is the one appeal that has not been withdrawn yet and the reason it hasn't been withdrawn is because they don't know what will happen to their entitlement should they withdraw it because of this confusion. They think 'maybe we're 41. Maybe we're 40. We don't know.' They're not willing to commit. We've had lots of discussions about that.

I want to go back to somebody's comment about how we need to look at this 40 which was put in place for the purpose of testing the waters to make sure how it happened. No. That is absolutely incorrect. The 40 was sausage making at the Dias and that is exactly what happened when the Council went through this. We were pushing for 60. Somebody was pushing for a certain number per council district. Somebody else was saying there should be 20 and everybody was pushing and lobbying and at the end of the day they flipped a coin and they came up with the number 40. *[what this means is there was NEVER a serious look at the number of MPFs to number of MOs to satisfy the demand. There was zero historical database they relied on. The entire supply chain was decided by the flip of a coin. Ludacris!]* That is how it happened. *[Gina should know. She and her partner in crime, lobbyist James Bartell are DSD insiders]* There's not a rhyme of a reason to it and you can ask any Councilmember, 'what was the basis for 40?' and they'll say 'no idea. We don't know how that happened.'

1:01:34 So now we're at 41 approved projects. That's where we stand today. *[Gina takes her arguments against DSD recommendation for denial. She makes good points that this is number 40 and they approved the 41st one and as this is now a legal issue, as an alternative, the Commission put the project on an indefinite hiatus.]*

1:05:50 So 17 of the 40 that went through were clients of mine. So, I have a lot of knowledge as to what is going on in this space. And I know that many of those cannot be built out because the cost is prohibitive. I know that some of those people have run out of money and they're looking to sell them. So there a lot of issues that could keep this as an issue that's relevant. But if you decide to say 'well nope, we're just going to deny this because 40 have already been issued a denial' then what you're telling the community is that we can not rely on decisions that have been made by Staff. Decisions that have been made by how the interpretations have worked since 2015 with regard to cannabis, that none of that can be relied on, that it is simply a crap shoot every time we come in here. We can have new rules. We can have changed rules. Things can change daily. That gives a developer no sense of confidence of moving forward in their project.

I'm asking you today to deny the appeal. To confirm the Hearing Officer's determination or, in the alternative, continue this to a date uncertain and indefinitely until it's renoticed. Thank you" .

1:07:30 Judi Strang "I was there when Buenos was considered by the City Council last week but more importantly, I want to go back to September 2017 when the City Council looked at what became the 40 MPF cap. There were 2 agenda items and 2 recommendations from Staff regarding how to handle MPF. The first recommendation came from the Mayor and Police Chief and that was to have zero. The next recommendation, the second of the 2 Staff recommendations, was to have 1 per district. Kind of mirroring what was going on with the MOs. But as a protection to neighborhoods and to give us all a chance. Out of nowhere, and maybe sausage making isn't a bad description, came a City Councilmembers suggestion that we move to 40. That's how we got to 40.

We came as community members that day to discuss option 1 and option 2. We did not have that chance because we were preempted by the sausage making. So, let's make it clear that there was non favorable interest in that 40 in that audience.

Regarding Buenos, that was a CEQA appeal that returned for a second time and it's questionable when that CEQA date is because they had 2 CEQA's. I think it's important to get some clarification about which CEQA date takes preference. I would assume the second one does. But this is a curiosity to have a CUP come up as part of a CEQA appeal process. That is something I agree with all of you. You probably should get a better handle on it. It was a 5-4 vote. Both sets of attorneys argued. You heard the argument Gina just gave you this morning. It was the same one she gave last Tuesday. The arguments of the attorneys for Buenos were successful and suggested that until you, the Planning Commission, made a decision the decision wasn't final and that's how Buenos became number 40. So probably some clarification there since you're looking at this one which would make it 41 and over the limit.

The other curiosity is the Hearing Officer meeting of April the 3rd had Verus becoming number 40. That was before it got preempted last week by Buenos at City Council. I hope you're tracking this *[laughing]* and we left on April the 3rd thinking that Verus was number 40 and that Sorrento Valley was denied. So probably some fact checking regarding that situation."

1:10:53 William Perno, Central Region Prevention Coalition "I was at that September 2017 Council meeting as well and my recollection was that there was some discussion about 18 MPFs. Two per council district. And as you've heard from the other speaker, the Council raised that number to 40 and they could be located anywhere in the City without a limit per council district.

Now in this process with the MPFs we have seen over and over, the intent of local ordinances and the rules including comments from City Councilmembers be overruled by the letter of the law and cold interpretations including right here at this body where the Autism School wasn't in 51% of the building, the church didn't have a permit. So, they were considered not to be there by City Staff. In essence.

The Business Tax Certificates and operating without a CUP for these existing MPFs in those locations. We saw that one, with a school and a church within 1,000 feet of this MPF with a tax certificate. The City has a local Ordinance that clearly says that you cannot have a facility within 1,000 feet yet we saw City Staff disregard the City's own local Ordinance to allow that MPF to remain under the purview that it was going to bring jobs to the area. *[That would be National Ave. An Arron Magagna/Gina Austin/Firouzeh Tirandazi collaboration]* In an area that needed jobs.

This is a 2-way street. The rules need to be followed. In the Convoy district you were looking for options, but you had to follow what the rules were and I'm asking you to look at those same rules, that same

process that's been applied so effectively to discount sensitive uses in the community and to follow the law. All the rules as they exist today. The applicant has other options. You heard his attorney mention there were other MPFs that don't have the money to build out or proceed due to cost. Just like a liquor license, if the census tract is over concentrated, they can buy an existing liquor license. There are other options. Please don't go above the current cap of 40 MPFs. That should be a hard number. There should be no ambiguity where 2 people are competing for 40 and you end up with 41. Thank you."

1:13:24 Commissioner Whalen Most of what I heard seemed to be more distractions. I think what we could use to cut through this is, is it the City's position that there are 40 approved and if so, I don't see what else we have to do?

A: (Tirandazi) Yes, it is the City's position that 40 have been approved with final decisions and no appeals pending.

Whalen: Is it appropriate for me to then make a motion? I will make a motion to support the Staff recommendation.

1:14:21 Commissioner Austin I must say that I'm rather confused by the whole hearing and what's going on and I'm trying to figure out what to do about that because there's several things and I started to mention it before. If we were back at number 30, I'd have a tough time approving anymore ***[BRAVO!]*** because there's been a preponderance of evidence that keeps coming forward that makes it very difficult for me to make a finding for any of these. Finding, I think it's number 2 or 3 in the public health welfare safety etc. until we have more information. The fact that we're already at 40 may be a moot point but it's distressing to me, as I've mentioned before, that you can see all the advertising out there and then to hear from the public that there's not a way to correct it even if it appears to be illegal because there's so much confusion.

In this case, boy I'll tell you what, all the gamesmanship and posturing that's happened with all these marijuana facilities because there have been caps on this has been actually amazing and this is one, after hearing all this, I wouldn't be opposed to a continuance. At the same time, I don't want to see 41 facilities. I agree I think 40 is some kind of arbitrary number. I understand 40 in ancient Hebrew meant alot. I'm going to be quiet now, but I just wanted to make those comments."

1:16:12 Commissioner Boomhower: I really hate the precedent that appears to be set if we move the goalposts. I feel like we're once again back in that position where Lucy's holding the football. And at the very least I hate the message that it sends that's hey we have rules, we've asked you to follow the rules, you think you've done that but for what appears to be a mistake somewhere else in the process, you're SOL.

I think that the applicant might actually benefit from us making a final decision because then you have a cause of action, I'm not persuaded that we can actually make a decision on this. I think the City Council has created this situation. They set the cap. They approved a project that may or may not have been in excess of that cap and I really think that this somehow needs to be resolved by counsel. I'm just convinced we can take action on this today.

I hate the idea of doing a continuance because it leaves people in limbo. I just don't feel like we have a legal basis on making a decision one way or the other. I hear what you're saying Mrs. Neuffer we have taken this on the situation as it exists right now but part of the situation as it exists right now is I think

somebody messed up and now we're being asked to pile on. I'm personally not comfortable with that. I'm not convinced I know what I'm doing yet. Those are my comments.

1:18:15 Commissioner Hofman Yeah, I'm not quite there either. I did want to ask; it appears in Mrs. Austin's memo we received that during the Council hearing on June 18th that the Staff and City Attorney had taken the position that agreed with Mrs. Austin's position. Is this true and why has it changed?

A: (Corrine Neuffer, City Attorney) What our office spoke to is Staff's interpretation and how they had set up the process and what a court would look at in analyzing that process and any decision by City Council. What City Council determined at that time was that 40 MPFs had not been permitted and that there was one spot still available. Therefore, they did approve that project and 40 MPFs have been approved at this time.

A: (PJ Fitzgerald) Excuse me Commissioner Hofman. I'd like to draw yours and the Commission's attention to the slide up on the screen. This is the basis for our determination. Following up on City Attorney Neuffer, 39 items were approved by the Hearing Officer or the Planning Commission on appeal as Mrs. Tirandazi mentioned in her testimony today and then 1 by the City Council on June 18th. So under the terms of the Code, that is a defined term in the City Code and that is the date of final action. That means the date of all rights of appeal are exhausted for permit map or other matter. It is on that legal basis in the Code that we're providing information that the cap of 40 has been reached and there's no capacity for additional facilities.

Q: Just out of curiosity. This is what confused me earlier and I apologize. How did the one get to Council without…I mean there's only been one…what was the loophole that changed it?

A: (Tirandazi) Just to clarify, the environmental determination on the Buenos Project was appealed to City Council. In that instance, when the item went before City Council, City Council granted the appeal and in that case returned it back to Staff for further evaluation. When City Council grants the appeal on environmental determination then they retain jurisdiction on the environmental as well as the Project when it's before them. City Staff reanalyzed and returned it back to City Council along with the Project and that's why it did not go through the Hearing Officer first.

A: (Neuffer) That is the process under the Municipal Code.

1:21:32 Commissioner Granowitz Ok so we've got 40 approved. What happens if 1 of the 40 falls out? There is nothing that appears to set a waiting list. That's where I'm struggling because I think there's an inherent problem in that there is no provision if something falls out. If we go ahead and uphold the appeal then do they go to the back of the line, Sorrento or do they stay in order, what happens then? *[This is an extremely relevant inquiry. What needs to be known is that the 'line' that formed to even apply for a license had people waiting in that line for 6 days in front of the City Administration Building. The line eventually led up to approximately 80 people being in that line. The advantage to those being in the front of the line were they would have had a priority to receiving an application. On the day that the City began issuing the applications they changed the access area to the basement area across the street and a new line had to form which caused massive chaos as people rushed to get into that new line, some being knocked down in the process while a new queue was formed. Their having waited, for in some cases up to 6 days, no longer had any bearing on what position they would be in. This represents the beginning and*

the very real purposeful mishandling of the adult-use CUP application processing that the City engaged in. ***insert link to affidavits here.*** *]*

A: (Tim Daly, DSD Project Manager) Any item that has been denied by whether it's a Hearing Officer, Planning Commission or City Council that project is over with and the application is closed out. The industry closely monitors and follows all the other development permits like that. Obviously if they come to a point where they see that there could be an opening for another one then they obviously would have to come in and submit a brand-new application. The CUPs that are approved obviously have a 3 year time frame for them to execute that type of permit. We do have some cases where applicants, the permittee and the owners have not signed their permits yet, but they still have that period of 3 years but when that 3 years expires the permit expires essentially. Then we would take any other application and process it through the CUP process. So, there is no going to the back of the line. Your done and you have to submit a new application.

Granowitz: I have a problem with that. I think it's inherently unfair perhaps. I'm saying perhaps. So, I would be in favor of continuing to a date uncertain because I think this is really confusing and that at least allows this applicant a first bite of the apple, perhaps, if one of them falls out and I just think that we're going to end up in litigation because this is…

Daly: *[interrupting]* Commissioner Granowitz I would also like to ask or propound upon the continuance like that. *[huh?]* City Staff doesn't uhm move to have a continuance or indefinite continuances. You know consistent with the California Government Code Sections 65920 through 65964, which is also known as the Permit Streamlining Act and the Act's timelines are mirrored by the City Code would not support any requests by an applicant for a prolonged or indefinite continuance for a decision on ANY of these applications. *[Perhaps then you can explain how Mira Este-Glass TEK was given one?]* Pursuant to SDMC Section 126.0414 'the applicant's failure to progress on an application within a 90 day period would require the City to close the application.' This code provision is consistent with the Permit Streamlining Act and would also avoid contradictions with the Acts Government Code Sections 65950 through 65957.5 [the responsible agencies failure to act or disapprove the development permit within the time required of the government code sections.'

Granowitz: Did anybody think of a situation like this when they came up with that or were they just sort of streamlining?

A: (PJ Fitzgerald) Commissioner Granowitz I'd just like to just touch generally on a couple of these aspects of the process. So, it was the City Council in adopting the regulations in October 2017 that implemented a cap and codified that number. that is a finite number that we are required to…

Granowitz: *[interrupting]* I understand the 40. We don't need to go over the 40.

A: I just wanted to get that on the record. So as a result of that uhm a competitive process naturally develops. And so, throughout this whole process Staff uhm has worked with the City Attorney's office to develop a very methodical and transparent process uhm as these items moved forward so applicant ah teams uhm were aware of this, they knew where they stood, we had a City uhm webpage developed that kept track of all these items and uhm we're required to go by uhm what the code framework is.

Q: So basically, you actually never conceived of a situation like this in your discussions?

A: We anticipated this might occur, but we're bound by the parameters of the Municipal Code.

Granowitz: You know me. I have a problem with the Municipal Code. Some of it.

A: (Neuffer) If I could also just expand upon Staff's on the request for the indefinite continuance. As Mr. Daly was saying, there is the Permit Streamlining Act which requires that a decision be made within 60 days of the environmental exemption being made. That allows for a project to be deemed complete in addition there is that municipal code language that talks about the 90 days.

Granowitz: Yea I remember, and I remember supporting it, I also didn't conceive of a situation like this that.

Neuffer: So, the Permit Streamlining Act is a state law.

Granowitz: *[shakes her head and shoves the microphone away]*

1:27:37 Commissioner Peerson Alright I'm going to jump in before we take our second round here. I appreciate Staff's answers to some of these questions because this is a competitive process and applicants have full knowledge uhm that they may be in the queue and someone else may be approved and even if they have put in time and money and effort. Uhm, we have not liked this process *[smiles]* it's been imposed upon us. I think we need to say that again, for the record. Uhm everything about this has been incredibly complicated and confusing. Staff you have done a Herculean job of navigating this as well as the applicants. Who would have conceived that number 41 would jump over 40 based on municipal code that we can't change and that we must also follow. So, we're in this difficult position, in my mind, that that number takes precedent over the findings, as I'm understanding it. So, if we could make the findings at this project, which I could, I would approve, but we can't because we have a limit. So given that, we have 3 more items on our agenda today. This conversation really applies to these 3 future items. Is that correct Staff?

A: (Tirandazi) That is correct.

Q: Because we're capped at 40. I was on the Commission when we did that indefinite continuance because we were trying to be fair. Projects have been in the queue, maybe someone would fall out of the queue and that would allow them to continue. What I'm hearing is a little different. Maybe that decision in the past was a different circumstance. We are not in the place where we could allow for an indefinite continuance with knowledge that some of these projects may fall out based on multiple reasons. Is it correct that we can't ask for an indefinite continuance?

A: (Neuffer) As we stated earlier, the Permit Streamlining Act and also the language in the Municipal Code would not allow for an indefinite continuance. I would like to add that I was not here at that previous project but I believe our office did opine that that should not have occurred.

Q: So, in hindsight that was a decision we probably shouldn't have made. It was good intended I will say for myself I thought it was well intended. Let me move ahead. So we have a motion and a second to grant the appeal, reverse the Hearing Officer's decision and deny Conditional Use Permit No. 2196094 and given what has been presented today, I will be supporting that motion. I want to go through the second round of comments.

1:31:06 Commissioner Boomhower Commissioner Granowitz asked the question I was going to originally ask but can we ask a question of the applicant? So, Mrs. Austin, you were asking for a continuance. Based on everything you're hearing is that what you still are looking for or would you rather have a certain decision?

A: (Gina Austin) I would still request a continuance and I would like to add that California law allows an applicant to voluntarily and knowingly and willingly waive the requirements of the Permit Streamlining Act and we would be willing to do that.

Q: (Commissioner Hofman) And just as plainly as you can, what's the desire for getting to the Coastal Hearing? Tell me what you're trying to achieve by assuming that the Council has set its 40 and that's not negotiable?

A: To be completely candid, it puts the City in a conundrum because both appeals will be withdrawn, because they can be and then it defaults to the Hearing Officer's decision. But that might change now because we've actually had the hearing so I'm not sure that's even the case any longer. I'm sure Mrs Neuffer has an opinion on whether or not that would or would not occur. But we wanted them to be able to withdraw it. The hearings have started. I don't know if the Code will particularly allow that at this point but it certainly allows time for the applicants to figure out what's going on with Councilmembers, to figure out this 40, 41. They don't want to institute litigation which is why they would prefer not to have a final action today.

Neuffer: If I could just opine. The Permit Streamlining Act allows for a 90-day extension not an indefinite extension of the Permit Streamlining Act.

PJ Fitzgeral: While we're talking about the continuance if I may add, Mrs. Tirandazi if you could put up the slide regarding the status of the MPF applications. Those that have been approved and withdrawn. There have been a number of items withdrawn by applicants who got into this competition and realized they weren't going to make it to the end and that there was no opportunity for an indefinite continuance because that is part of our administrative process. We indicated, as Mrs. Neuffer opined that we didn't have the opportunity to do that and that we would not be supporting indefinite continuances as the Commission previously did a few years back on 2 items. There have been other applicants who withdrew knowing that.

Boomhower: Is there any chance that City Council is going to circle back on this and fix it? I get that we're waiting on Coastal but I mean is this being left to us to sort out or do you know of any action or discussion by City Council about trying to bring some clarity to this?

Neuffer: It's my understanding at the last hearing at City Council last week that one of the Councilmembers did ask City Staff to look at the Municipal Code Ordinance and review it; however until that number changes we are set with 40. So they would have to do a Municipal Code Amendment to change that number.

1:35:30 Commissioner Whalen I think it's still where we were when I made the motion. City Staff said there are 40 approved. The process may not be attractive but its real *[it's real alright, real corrupt i.e. 6220 Federal]*

1:35:50 Commissioner Hofman I've come full circle. This was debated at the Council Hearing obviously. I have mixed feelings about it but I think we shouldn't be trying to keep a line of continuances so I'm going to go ahead and support the motion.

COMMISSION ACTION: MOTION BY COMMISSIONER WHALEN APPROVING THE STAFF'S REVISED RECOMMENDATIONS TO UPHOLD THE APPEALS, REVERSE THE HEARING OFFICER'S DECISION, AND DENY CONDITIONAL USE PERMIT NO. 2196094. Seconded by Commissioner Boomhower. The motion passed by a vote of 5-2 with Commissioners Peerson, Hofman, Boomhower, Otsuji, and Whalen voting yea and with Commissioners Austin and Granowitz voting nay.

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2019/06/27: ITEM 2: MPF 3443 PICKWICK STREET Appeal Hearing Officer's 2019/04/03 ITEM 9 decision

ITEM 9 STAFF: Sammi Ma

3 speaker slips submitted in favor – Kelly Hayes, Joe Esposito and Lance Rogers

12 speaker slips submitted in opposition – Kathleen Lippitt, Khoa Nguyen, Judi Strang, Kelly McCormick, Becky Johnson, Gina Austin, Bradley Fisher, Rick Wright, Cathy Brown, Jennifer Matthews, Mark Fisher and Nick Goldberg

HEARING OFFICER ITEM 9 ACTION: PROJECT DENIED. Report NO. HO-19-040. RESOLUTION NO. HO-7224

DSD CONTACT: Sammi Ma

PROJECT NUMBER: 603679

DSD TO HEARING OFFICER RECOMMENDATION: HO-19-040 " Approve or Deny Conditional Use Permit No. 2136164."

HEARING OFFICER: Duke Fernandez

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-19-055 "DENY the appeals and affirm the Hearing Officer's decision to DENY Conditional Use Permit No. 2136164.:

CEQA DETERMINATION: Page 1 "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) on October 28, 2018 (Attachment 6). An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on January 14, 2019, Resolution No. R-312182. The scope of the subject hearing only includes the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION: No NORA Public Circulation Record was found. A Notice of Exemption was filed with the County Recorder @ Page 20.

APPELLANT(S): Kelly Hayes and Khoa Nguyen .

Issues On Appeal

Page 23: CUP signature page

Page 24: Notice of Exemption

Page 26: Community Planning Distribution Form

Page 27: Ownership Disclosure Statement

Page 32: Appeal Application by Kelly Hayes, Esq.

Page 34: Appeal Application by Khoa Nguyen

OWNER(S): Michael Norby

APPLICANT(S): Michael Norby

CUP NUMBER: 2136164 [Not Found]

CUP HOLDER:

SITE DEVELOPMENT PERMIT NUMBER:

STATUS: Denied

CITY COUNCIL DISTRICT: 8

PLAN AREA: Southeastern San Diego

STAFF: Sammi Ma

Speaker slips in favor of the project submitted by Lance Rogers.

Speaker slips in opposition to the project submitted by Kathleen Lippitt.

1:53:32 Commissioner Peerson opens Item No. 2 with DSD Presentation.

1:55:50 Lance Rogers, Esq. It's disappointing to see how cutthroat *[corrupt]* this has become. But it is what it is and here we are. It sounds like whatever I say is a foregone conclusion. So, I won't waste anyone's time. Just to clarify some things. If I could clarify that staff before the Hearing Officer of this project. Correct? If I may. *[no response, silence]* I'll let the Commission ask the questions, I guess. And then I did want to clarify with the City Attorney that the basis for a denial of an indefinite hiatus is based on the Permit Streamlining Act, and again that would be a question I request be clarified on the record, it would be my request to set this for an indefinite hiatus. It would be my backup request to set this for 90 days to allow the City Council to review the Municipal Code and determine the action on the other 2 projects.

Again, you've heard a lot of testimony and there's been discussion about what happens when an applicant goes through the entire process? This has been a 1-½ year process. A lot of time, energy and resources have been put into this project for me to show up and be given 3 minutes to receive a denial. I guess on behalf of the applicant, I'd just like to say that he wished he could have presented a full project to the Commission. We think it's a fantastic project. We think it would be approved just like the proceeding 40 or 41 depending upon how you look at it were. The only reason for the denial is this cap of 40. It would seem to make a lot of sense to allow this body an opportunity to hear the next in line that is as equally set up for approval as all 40 or 41 that came before you today rather than allowing folks to continue to go to DSD and apply for these applications and waste all the time, money and energy that went into getting us here today for 3 minutes. I recognize that the Commission has already indicated what it's going to do

here, but perhaps there's a way to reconsider that and allow this project to go before you. WHo knows, maybe something could happen where this could be 40. I would ask you to consider that, Thank you.

1:59:10 Commissioner Hofman I think I'll reiterate what we did before. That there's rules in place and we have to follow them. There are 40. That may be litigated or not. Council may consider or may not but today that's where we are. Setting up an indefinite line I think is not in our purview *[The Commission set indefinite times on continuances]* and if we continue this for any amount of time that is essentially what we're doing. I don't like the system. Quite frankly I wish it was a little bit more based on reasonableness instead of just being first in line, but I think we're at a point where our hands are tied so I'm going to go ahead and make the motion to deny the appeal and affirm the Hearing Officer's to deny conditional use permit 2136164.

2:00:55 Commissioner Peerson And to the applicants discussion points, there will be more items that had been previously approved that will now be denied based on process. And I will just continue to say that it's not fair. We have been in this place for more than 2 years, 4 years and you're not alone. I know that doesn't make this any easier. We give everyone the 3 minutes to speak. That probably is a brevity for a year and a half in the process, but this is the process in which we've been handed. Hopefully there would be another process put forward and until then we're following those mandates through our municipal code and the rules and regulations.

COMMISSION ACTION: MOTION BY COMMISSIONER HOFMAN APPROVING THE STAFF'S RECOMMENDATIONS TO DENY THE APPEALS AND AFFIRM THE HEARING OFFICER'S DECISION TO DENY CONDITIONAL USE PERMIT NO. 2136164. Seconded by Commissioner Whalen. The motion passed by a vote of 7-0 with Commissioners Peerson, Hofman, Austin, Granowitz, Boomhower, Otsuji and Whalen voting yea.

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2019/06/27: ITEM 3: MPF 9151 REHCO ROAD Appeal Hearing Officer's 2019/04/03 ITEM 10 decision

ITEM 10 STAFF: Tim Daly

3 speaker slips submitted in favor – Kelly Hayes, Joe Esposito and Lance Rogers

12 speaker slips submitted in opposition – Kathleen Lippitt, Khoa Nguyen, Judi Strang, Kelly McCormick, Becky Johnson, Gina Austin, Bradley Fisher, Rick Wright, Cathy Brown, Jennifer Matthews, Mark Fisher and Nick Goldberg

HEARING OFFICER ITEM 10 ACTION: PROJECT DENIED. Report NO. HO-19-039. RESOLUTION NO. HO-7225

DSD CONTACT: Tim Daly

PROJECT NUMBER: 585470

DSD TO HEARING OFFICER RECOMMENDATION: HO-19-039 "Approve or Deny Conditional Use Permit No. 2070318."

HEARING OFFICER: Duke Fernandez

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-19-059 "DENY the appeal and affirm the Hearing Officer decision to DENY Conditional Use Permit No. 2070318."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Section 15301, Existing Facilities. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on January 14, 2019, Resolution No. R-312184. The scope of the subject hearing only included the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: No NORA Public Circulation Record was found. No Notice of Exemption was filed with the County Recorder.

APPELLANT(S): Kelly Hayes

Issues On Appeal

Page 23: CUP signature page

Page 27: Ownership Disclosure Statement

Page 33: Appeal Application by Kelly Hayes, Esq.

OWNER(S): Rehco Holdings, LLC, a California Limited Liability Company @ Pages 1 and 20

APPLICANT(S): Matthew Longo, Applicant @ Pages 1 and 20

CUP NUMBER: 2070318 *[Not shown in the DSD system]*

CUP HOLDER:

SITE DEVELOPMENT PERMIT NUMBER:

STATUS: Denied

CITY COUNCIL DISTRICT: 6

PLAN AREA: Mira Mesa

STAFF: Tim Daly

Speaker slips in favor of the project submitted by Matt Longo and Lance Rogers.

Speaker slips in opposition to the project submitted by Kathleen Lippitt.

2:02:11 Commissioner Peerson opens Item No. 3 with DSD presentation.

2:04:20 Lance Rogers, Esq. I was thinking that when I took the CA BAR exam there was an earthquake and it hit us right there in the middle and you couldn't skip a beat. You have to be prepared for anything when you're in this line of work. Same request. To be clear for the record. The applicant would waive any requirements under the Permit Streamlining Act if that's the basis for refusing an indefinite hiatus. Similarly we would request a 90 day extension so that we could have more than just 3 minutes to present before this body. This project has also been a year and a half in the making. We have the applicant here himself if the Planning Commission wishes to ask him any questions or at least just to see that he exists.

He's a real person. He lives here in San Diego, and he believed that the system, you know that if he went through all the steps a year and a half ago, would give him a fair process. I don't know if he shares those same sentiments anymore.

It's interesting to talk about the Permit Streamlining Act because this project was delayed for approximately 2 months to determine whether there was a riparian habitat study required. After that 2-month period it was determined that that study was not required. And then as we were all aware that we were approaching the 40th permit there was a number of communication with staff, including the Project Manager on this matter, and we said 'how are we looking? Is there anything that you guys need further? What can we do to make sure you're equipped with all the information to provide the NORA to give us a good place in line? And they said 'No we have everything we need. Thank you so much for your patience. Please pay the additional fees' and then about 5 days after the deadline that was provided to us for the NORA to issue, we received the NORA and during that period of time apparently, we became no. 43. Being in the process, I have explained to the applicant that this is part of internal delays and is part of the process. I would really be disheartened if there was any other reason for that delay that put us at 43. I still believe in the process. I respect the body but there seems to be even more than 'gamesmanship' here and I think we should all be honest about that. *[turning to the applicant Matthew Longley]* Matt, is there anything you would like to say on the record?

2:07:30 Matthew Longo I'm the applicant for Rehco Road. I did go through the process. I started at no. 36. Through no fault of my own I sit in front of you today with no permit in my hand. I've done nothing wrong. I've gone through the entire process. Checked all the boxes.

When you put together a system like this or a process with an arbitrary number then you leave this competitive process to get really ugly. We *[pointing to Rogers]* didn't engage in the ugliness of that process. We thought it was a true, honest, transparent process. It was not.

I'm still sitting here with a $14M building. Hundreds of thousands of dollars out of pocket that's just numbers to you but that's my life savings. It all went in. Now it's gone and I have to go back to the end of the line? That's just not right. That's not right.

I don't know what you folks can do for me today, but a continuance would be something to give us some form of justice here. To figure it out. To let the City Council put it back to them. Put the burden back on their shoulders.

I'm at my wits end today. I'm standing in front of you with a very light bank account. An empty bank account through this process, through no fault of my own. *[Keep in mind that these are ALL non-refundable applications. DSD continues to accept applications and fees knowing, in advance, who is going to get the CUP. This is nothing short of robbery under color of authority.]* Several people jumped ahead of me at the end of the line when I was supposed to be approved when I was supposed to be approved on my NORA on a Thursday. I didn't receive my NORA until the following Tuesday which put me over 40. How that happens? Maybe we can ask my Project Manager, Mr. Daly *[points to Tim Daly]* how that happens? I don't know. Maybe you can help me? Anyway, that's my time. I'm very frustrated, very disheartened and quite frankly I'm ashamed of the entire process.

2:09:56 Kathleen Lippitt This is a 68,937 sq-ft building. At least this applicant is providing an honest premise citation as opposed to applicants that cite, they will occupy a fraction of the building but have

every intention of expanding into the remaining portion of the building. City staff has no resources or staff to oversee and prevent such mechanizations. City Officials and Planning Commissioners should consider the consequence of the capacity of these 40 MPFs will have to produce the amount of marijuana that they can in this City.

2:11:35 Commissioner Granowitz I just want to say to the applicant I really hear your pain. However, every applicant that comes before us for almost every project that comes before us ends up in your situation. Maybe there isn't the waiting list issue but they all have issues that come up during the processing and so you were not unlike every other applicant. I don't know if that helps you. I know it doesn't, but you weren't unique. I wish the City had a more effective clean way of running every project, but this is the way the system works so people actually have to be the early bird. It is what it is. *{What a dunderhead. I would have had more respect for her if she had quit her job as a Commissioner or not made any of the preceding comments.]* With that I motion that we deny the appeal and affirm the Hearing Officer's decision to deny the project.

2:13:03 Commissioner Peerson I do want to address the applicant. I completely concur with Commissioner Granowitz. We've been at this for a number of years *[and you still don't have it right. Why" because you can still process all those non-refundable applications and participate in pay-to-play bribery to assure some are passed while others are not! Indeed, Commissioner Peerson has ownership interests in the 6220 Federal Blvd. MO!]* I'm not going to go into the details *[Of course not]* except to say the process has been flawed, very flawed. Ideally, we would have been able to see all of the applications within a jurisdiction area. We haven't. We've made recommendations *{what are they? Show us those recommendations.]* Our hands are tied. And for better or worse our hands are tied. Staff has done a Herculean job *[If that means completely manipulating the process then yes I would agree.]* the applicants have too. I know that doesn't make you feel any better. But we've been just as frustrated with this process. *[So frustrated you have a **financial conflict of interest** {a personal investment] in the 6220 MO where you had to recuse yourself @ 2:00:20 I know the criminals who are involved in that project and how DSD fraudulently processed it from application to approval of a new ground up building, in under 7 months by someone who had never been through the process before. How many other adult-use projects affected your vote when it came to these same people or their shell companies?]*

At this point, seeing no other comments, please vote.

COMMISSION ACTION: MOTION BY COMMISSIONER GRANOWITZ APPROVING THE STAFF'S RECOMMENDATIONS TO DENY THE APPEAL AND AFFIRM THE HEARING OFFICER DECISION TO DENY CONDITIONAL USE PERMIT NO. 2070318. Seconded by Commissioner Boomhower. The motion passed by a vote of 7-0 with Commissioners Peerson, Hofman, Austin, Granowitz, Boomhower, Otsuji and Whalen voting yea.

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2019/06/27: ITEM 4: MPF 2243 VERUS STREET Appeal Hearing Officer's 2019/04/03 ITEM 7 decision

ITEM 7 STAFF: Tim Daly

9 speaker slips submitted in favor – Cathy Brown, Jerrold Siegel, Nick Goldberg, Jennifer Matthews, Mark Fisher, Bradley Allen Fisher, Jerald Mitchell, Rick Wright, and Will Senn

7 speaker slips submitted in opposition – Kathleen Lippitt, Sapphire Blackwood, Khoa Nguyen, Judi Strang, Kelly McCormick, Becky Johnson and Sean St. Peter

HEARING OFFICER ITEM 7 ACTION: PROJECT DENIED. Report NO. HO-19-022. RESOLUTION NO. HO-7226

DSD CONTACT: Sammi Ma

PROJECT NUMBER: 585642

DSD TO HEARING OFFICER RECOMMENDATION: HO-19-022 " Approve or Deny Conditional Use Permit No. 2069323."

HEARING OFFICER: Duke Fernandez

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-19-056 "DENY the appeals and affirm the Hearing Officer's decision to DENY Conditional Use Permit No. 2069323."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Section 15301, Existing Facilities. This project is not pending an appeal of the environmental determination. The environmental exemption determination for this project was made on November 5, 2018, and the opportunity to appeal that determination ended November 20, 2018."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION: No NORA Public Circulation Record was found. A Notice of Exemption was filed with the County Recorder @ Page 19

APPELLANT(S): Catharine Brown and Khoa Nguyen

Issues On Appeal

Page 22: CUP Signature page

Page 23: Notice of Exemption

Page 25: Otay Mesa Planning Group Minutes

Page 28: DS-3242

Page 41: Appeal Application by Catharine Brown

Page 42: Appeal Application by Khoa Nguyen

OWNER(S): Jerrold B. Siegel @ Page 1

APPLICANT(S): Cannversions, Inc @ Page 1 with Cathy Brown VP @ Page 22

CUP NUMBER: 2069323

CUP HOLDER:

SITE DEVELOPMENT PERMIT NUMBER:

STATUS: Denied

CITY COUNCIL DISTRICT: 8

PLAN AREA: Otay Mesa

STAFF: Sammi Ma

Speaker slips in favor of the project submitted by Jennifer Luther and Rodney Eales

Speaker slips in opposition to the project submitted by Kathleen Lippitt and Cathy Brown.

2:14:00 Commissioner Peerson opens Item 4 with DSD presentation.

2:15:40 Commissioner Hofman I should have asked this at the last one but since we've reached 40, I may never get a chance so I'll ask it here. The order that the last gentleman said that because he received his NORA, it was delayed, that it affected his place in line, but I always thought that the place in line was based on when the environmental determination was made. Can you clarify that for me? The order of these and do they change at the last minute like he kind of implied?

A: (Tim Daly, DSD) That's correct. The Notice of Right to Appeal goes out once environmental staff makes that determination of the exemption like that. There are actually 7 or 9 different steps that we go through to determine because sometimes you have ties and stuff like that and you go to the next one, the Deemed Complete Date, whenever they submitted an invoice to pay for their application, it goes to all that stuff like that. The first one is when the NORA has been produced is actually the date the determination is made. And the target does move based upon another project getting ahead of the other one. Whenever it finishes and all the issues are resolved by City staff.

Q: And I'm assuming that City staff, their procedures for doing this is set and is standard and that one staff person if he's a little more diligent than another doesn't move him up in line, right? *[making wild hand gestures.]*

A: No. As Project Managers were managing multiple projects like that. Actually, the cannabis program team we have set procedures as we're following it, diligently and we just follow based on the facts. *[well what happened at 6220 and National Ave?]*

Q: And that's what I wanted to make sure everyone is clear of is that these aren't arbitrary and all of a sudden loses his place in line because of somebody called in sick that day. Like you said this is very diligently pursued so that there's fairness in the system *[Hofman is using constant wild hand motions while he's making these statements. It's almost like he wants to deliver extra emphasis on the points he's raising. Hofman does not have a habit of speaking like this.]*

A: (PJ Fitzgerald) Commissioner Hofman if I could add, as I mentioned in some earlier items today, staff did work with the City Attorney's office to create an administrative process that would be fair and equitable to all participants. Those sort of ground rules were laid out and shared with everyone so everyone knew what the situation was so staff and Development Services understood the complexity of the competitive process so as a result we created this administrative process, also dedicated a team of technical reviewers, project managers, just to focus on the marijuana conditional use process applications that we could keep it all straight and, uhm, equitable, offer parity to the applicants in the process. So uhm it did get to a point where sometimes we you we have this series, as Mr. Daly described, that it was either the date of the NORA or the date that they dropped environmental document was signed. That sort of started, cleared all the technical issues and started the sort of public hearing process along the way. So, it did depend whether you were appealed or not or uhm ya know on what your individual situation was

on your site. The specific geographic location with unique circumstances applying to your application. So, we did uhm handle that and I feel staff did an excellent job under a lot of pressure to keep those things in order and sometimes the order came down to and the order was translated onto the docket. So that same order became the docket order for the day of approvals, so it was very specific uhm and everybody knew who was 1-40 because we published it on the web page. Uhm what the order was and then also the uhm…one other thing I wanted to mention was that it did sometimes come down to the Deemed Complete date. So all these applications came in in one day, when the application process opened we had a lottery that allowed folks to put in their application so there was an order established even from the day the applications came in. And sometimes it came down to uhm when the project was, if there was a tie, the NORA had the same date, it would go back to the day it was deemed complete. If they were deemed complete on the same date, we would go back further to what was the hour and second, they actually paid their bill to fulfill their application process. We had a couple that actually split hairs to that level *[interesting statement. Did everyone know that when you paid your application fee would have such a profound effect on your status in the queue?]* The scrutiny was enormous and uhm I just wanted to lay that out there for the record. *[I think PJ was well into her triple shot espresso when she fired all this out there 'for the record.' I understand the process and I was confused by much of this rambling and self-congratulations for a job well done. I'm not buying it and I suspect 99% of the unapproved applicants aren't either.]*

2:20:29 Commissioner Hofman I really appreciate that because I think people get a sense…we may not like the system that was set up, but it was a fair process and that's really important, so it makes me feel a little better. *[What if it is proven it WASN'T a fair process? Will you feel a little bit worse?]*

2:21:29 Rodney Eales, RS Industries In favor of the project opposed to the appeal citing "I was an applicant that was denied because of the 40 and I just want it to be clarified on the record, the process and basically when it regards to Buenos and how Buenos was approved. Buenos left off a dance studio within a 1,000 foot radius so City staff was not aware of the dance studio when it was going through the process. They became aware of the dance studio only through an appeal of the CEQA. Once they were aware of the CEQA violation or the dance studio they said it's a minor-oriented facility, therefore they granted, they were in favor of denying the project. So, City Council upheld the City Staff's recommendation, and it went on its other trajectory. But at that meeting, January 8th, I believe it was, both the applicant and City Staff said that 'we haven't finalized CEQA under 15332' I believe it was. Because of this dance studio they left off their application. So, we have an applicant who left off a dance studio, didn't have CEQA clearance as of January 8th and still somehow managed to get into the number 40 spot.

The process under City Staff that they laid out it was my understanding that you needed to clear everything, clear all CEQA clearances before you get in that line. So basically I heard that they were number 41 or 42. It was my understanding that they got CEQA clearance just June 18th I believe which would have made them 47 or 48 and they were somehow able to jump from 40th through 46 and I have emails from City Staff saying that I was 46 but now I'm 47 because that applicant jumped in front of all of us because of City Council's recommendation to approve the project and CEQA. So I just wanted to make that clear and on the record of what happened and how it transpired. Thank you for your time." *[If I'm following this correctly, City Council approved the CEQA determination and the CUP which threw off the queue? In other words, they took over the function of the Planning Commission at that City Council hearing.]*

2:24:31 Cathy Brown I'm just going to give you a brief, I read it earlier, but I do want to just share the inconsistencies. We were cleared to be able to get in front of the Hearing Officer on January 10th and we waited 133 days, which was April 3rd. In the meantime, and I do have this which I can share with all of you, I made enough copies just so you can see the number of days. The individual and I also shared we received that we were going to be number 40. We were going to be the first one up on April 3rd then the day before we found out we weren't. The person at Sorrento Valley got cleared on March 12th, 22 days later they're sitting in front of a Hearing Officer. And then Pickwick and Rehco they waited 79 days. They were cleared on January 14th. We were cleared on January 10th and waited 133 days. Mind you there were hearings in February, March and April. We were then told we would be on the March 20th and then due to circumstances, for example people going on vacation or whatever else comes up which is life, we get moved to April 3rd we end up not being 40, we end up being 43. So that's just 'it is what it is' but I really want clarification on that but going back to the very first one I'd have to ask staff and this is my one question that the whole process was, on June 18th it was staff's recommendation to deny that permit, the CUP to Buenos. If the basis for that denial was the fact that they agreed that there were already 40 permits then what were they doing today saying that their appeal, that their denial, their acceptance of a 40th last Tuesday just went out the window. So if you read, the statement was 'staff's recommendation to City Council was to deny the applicant.' And I'm pretty sure it was based on the fact that there were 40 CUPs permits given. And then today you're saying you're going against your own recommendation so that is just something that, you're right, the procedure is really out there. And when we talk about these continuances it really is something I think the Commission here, you need to send this back to the City Council because this isn't your role to be kind of clearing up their mess. That's really what they've asked you to do.

Like I've said, we were going to be approved. If we in fact had been gone through the process, we would have been that 40th one. We would have been the one sitting in Sorrento Valley's position today. The only reason we were denied because there were already 40 picked. The continuance and sending it back to City Council and have them clean up this mess because it really is a mess. If anyone wants to see the NORAs and all the dates, I have that. Thank you.

2:28:12 Jennifer Luther Opposes Item 4 citing "I'm here to give you a little bit of facts behind the situation. Cathay Brown is stating that she has 133 days in all this service stuff, well we have a building that is in an industrial park within 1,00 feet, actually within 400 feet, of the building she's trying to get a marijuana production facility into. In our building is a church. The church has been there since 2010. There has been a sign on the building. They had to run into our building to get out of the industrial park and they stupidly didn't see the sign and they filled a marijuana production facility application out and it's their fault and they don't deserve any consideration for anything because they should have gone elsewhere. They instead, finally saw that there was a church there and it's like 'oh oh we're in trouble' and so what do they do? They realize that they already invested money because it's a partnership between the building owner which the building was vacant and the marijuana people are trying to make money together which I understand, it's reasonable but instead of going elsewhere they chose to try and kick the church out. What resulted is, our church, we were told the church has to be immediately out. The church that's been there for 9 years. It's 90% of our retirement plan. We were told immediately the church has to go out. We had a code enforcement meeting. First they did an inspection then 2 months later we got this letter. The letter is pretty scary if you've never seen one. *[holding up the letter]* Civil Penalty and Notice. It says the church has to be out immediately. And then we think there are some permit issues. OK. This whole thing

about the church, our building is located in a 100-year flood zone. You get a half an inch every 100 years and that is actually gone because they've put in a whole bunch of drainage ditches and corrected any issues if it ever happened but all the buildings in our industrial park are 3-4 feet above the flood zone. We had a letter from FEMA. We gave it to the Code Enforcement and said look this letter from FEMA says we're not in the flood zone. They graded all the buildings to be above it. Furthermore, there's a dialysis center directly across the street from our building. People are arriving in ambulances on gurneys. They can be there but the City of San Diego said, 'we don't care what FEMA says, we say you can't be there because it's a 100 year flood zone.'

To make a long story short the church sued the City of San Diego and they won. Just recently. There's a settlement. The City says OK we agree you're not in a flood zone. We'll take the FEMA letter. So that's out. The City is allowing, because of the settlement, the church can be there. So now we have some minor little issues about some permits and the permits are being corrected and if the City wants to use little loopholes to kick churches and schools out and allow the marijuana people, who are paying the City more money to ruin the background of our City. The fabric of our City is its citizens. It's your duty for the health and welfare of the citizens to do the right thing here and not have the marijuana people steamroll all the churches and schools in favor of extra money. Do the right thing. Make them go somewhere else. Don't kick the churches and schools out where they belong.

2:32:25 Kathleen Lippitt Opposed to the project.

2:32:57 Commissioner Whalen I move to the recommendation of staff. I think this is an example of the Law of Unintended Consequences. If it matters, later the City Council should again be made aware of these situations. It's sad but it's what we got.

COMMISSION ACTION: MOTION BY COMMISSIONER WHALEN APPROVING THE STAFF'S RECOMMENDATIONS TO DENY THE APPEALS AND AFFIRM THE HEARING OFFICER'S DECISION TO DENY CONDITIONAL USE PERMIT NO. 2069323. Seconded by Commissioner Austin. The motion passed by a vote of 7-0 with Commissioners Peerson, Hofman, Austin, Granowitz, Boomhower, Otsuji and Whalen voting yea.

2019/07/25 Minutes

2019/07/25: **ITEM 4 MPF 9850 VIA DE LA AMISTAD** Appeal Hearing Officer's 2019/05/15 ITEM 10 decision.

2 speaker slips submitted in favor – Joe Esposito and Barry Simons

5 speaker slips submitted in opposition –Becky Johnson, Judy Strang, Terri-Ann Skelly, Kathleen Lippitt and Gina Austin

HEARING OFFICER ACTION: PROJECT DENIED. Report NO. HO-19-045. RESOLUTION NO. HO-7235

DSD CONTACT: Sammi Ma

PROJECT NUMBER: 611944

DSD TO HEARING OFFICER RECOMMENDATION: HO-19-045 "Deny Conditional Use Permit No. 2172905."

HEARING OFFICER: Chris Larson

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-19-067 "DENY the appeal and affirm the Hearing Officer's decision to DENY Conditional Use Permit No. 2172905."

CEQA DETERMINATION: Page 1, "This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Section 15303(c), New Construction or Conversion of Small Structures. The environmental exemption determination for this project was made on February 19, 2019, and the opportunity to appeal that determination ended March 5, 2019. An appeal of the environmental determination was previously filed and was withdrawn on March 25, 2019. The scope of the subject hearing only includes the project, and not the environmental determination."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: No NORA Public Circulation Record was found. A Notice of Exemption was filed with the County Recorder @ Page 10.

APPELLANT(S): Joe Esposito, Estrada Land Planning

Issues On Appeal

Page 15: Community Distribution Voting 12–0 Yes (Joe Esposito Contact-Rob Hickson III, Chair)

Page 16: Ownership Disclosure Statement

Page 17: Appeal Application by Joe Esposito citing separation requirements and land use designation.

OWNER(S): D. Barry Simons, Baron Group, LTD.

APPLICANT(S): D. Barry Simons, Bear Realty, LLC.

CUP NUMBER: 2172905

CUP HOLDER:

SITE DEVELOPMENT PERMIT NUMBER:

STATUS: Denied

CITY COUNCIL DISTRICT: 8

PLAN AREA: Otay Mesa

STAFF: Sammi Ma

Speaker slips in favor of the project submitted by Joe Esposito.

Speaker slips in opposition to the project submitted by Peggy Walker and Deanna Rich.

48:10 Commissioner Hofman opens Item No. 4 with a DSD presentation.

51:26 Joe Esposito Estrada Land Planning Land Consultant to the applicant in favor of the project

52:22 Peggy Walker opposed the project citing "there are already 40 MPFs and we don't need anymore."

53:20 Kathleen Lippitt opposed the project citing "illegal dumping of ethanol by an MPF licensee."

COMMISSION ACTION: MOTION BY COMMISSIONER BOOMHOWER APPROVING THE STAFF'S RECOMMENDATION TO DENY THE APPEAL AND AFFIRM THE HEARING OFFICER'S DECISION TO DENY CONDITIONAL USE PERMIT NO. 2172905. Seconded by Commissioner Whalen. The motion passed by a vote of 6-0-1 with Commissioners Hofman, Austin, Granowitz, Boomhower, Otsuji and Whalen voting yea and with Commissioner Peerson absent.

2019/08/15 Minutes

2019/08/15: ITEM 4: GLASS TEK MMCC Continued from July 9, 2015

See Planning Commission Hearing of 2015/06/25 ITEM 12 earlier in the Steering Doc for all Project Files and Appeals information. (Control F the Project Number for easy access.)

PROJECT NO. 368509

STAFF: Tim Daly

Speaker slips in favor of the project submitted by Joel Volsky, Charles Goria and Rick Engebretsen.

Speaker slips in opposition to the project submitted by Neil Sheaffer, Kathleen Lippitt, Gina Austin, Peggy Walker and William Perno.

This is strange. The Planning Commission website has the August 8, 2019 video up but there is no video of the meeting.

COMMISSION ACTION: MOTION BY COMMISSIONER WHALEN TO APPROVE STAFF'S RECOMMENDATION TO AFFIRM THE HEARING OFFICER'S DECISION TO DENY THE CONDITIONAL USE PERMIT. Seconded by Commissioner Hofman. The motion passed by a vote of 7-0 with Commissioners Peerson, Hofman, Whalen, Austin, Granowitz, Otsuji and Boomhower voting yea.

2019/09/26 Minutes

2019/09/26: ITEM 3: UPDATE ON CANNABIS PERMITTING

Staff: PJ FitzGerald & Sammi Ma

Speaker slips in favor of the item submitted by Phil Rath, Khoa Nguyen, Dawn Kamali, Lisa Bridges, William Perno, Carlo G. Patenia, Cynthia Sanchez, Natalie Usack, Fabiola Alvarez, Enrique De Lacm, and Mary Baun.

Speaker slips in opposition to the project submitted by Kathleen Lippitt and Scott Chipman.

41:30 Commissioner Peerson opens Item 3 with the DSD presentation by PJ Fitzgerald, Firouzeh Tirandazi, Sammi Ma, Gary Gyler, Tyler Schur, Kyle Gostens, Morris Stye and Denny Bryan.

43:25 DSD Staff PJ Fitzgerald, Firouzeh Tirandazi, Sammi Ma, Gary Gyler, Tyler Shur, Kyle Gossens, Morris Stye and Denny Bryan presenting the update

44:23 PJ Fitzgerald: "We are not cannabis industry specialists; I'll point that out at the beginning though that is an emerging legal career now so who knew…"

45:05 "Let's start at the very beginning" This is a great breakdown of both State and City licensing milestones.

47:04 “There are 3 state agencies charged with licensing within the State of California that are heavily involved in cannabis licensing and control…DSD coordinates with these three agencies, in particular the Bureau of Cannabis Control, on almost a daily basis.”

48:08 Turning to San Diego, marijuana is regulated in San Diego through our municipal code as adopted in our 2017 Council Resolution…”The City’s legislation is intended to promote and protect the public health safety and welfare of the citizens of San Diego by allowing that strictly regulating the retail sale of marijuana at marijuana outlets and the raising, harvesting, processing, wholesaling, distributing, storing and producing of marijuana and marijuana products at marijuana productions facilities in accordance with state law…there have had over 186 public hearings in the last 5 years specifically related to marijuana CUP processing.

52:40 Sammi Ma Moving on to Part Two the ministerial flowchart is up for barely 5 seconds. This, and the whole PowerPoint needs to be seen in a FOIA request because it is NOT how the City or its agencies are treating the process.

1:00:39 PJ Fitzgerald states that the administrative process we developed for this competitive CUP process worked. The time order structure-maintained fairness and parity amongst the applications and that was very important to us.

1:03:23 Public Comment, William Perno, Social Advocates for Youth, delivers an excellent PowerPoint presentation that details BCC complaint processing *(lack thereof)* understaffed and overwhelmed receiving on average 36 complaints per day. The City of San Diego Administration lobby has Reader magazines in their lobby where unlicensed cannabis businesses advertise in violation of Sections 26151 and 17200 of the California Business and Professions Code which the City Attorney used when prosecuting the sale of the synthetic cannabis product, Spice.

1:11:45 Perno speaks about 3379 National Ave and how this is one of the projects the Planning Commission felt were being ‘gamed.’

1:17:28 Perno states that when Council is asking the City Attorney about City compliance with state law the response has often been “we’re not sure.’

1:19:03 Public Comment, Lisa Bridges, North City Prevention Coalition how advertising and the violation of that advertising is negatively impacting our youth.

1:20:28 Public Comment, Scott Chipman, Americans Against Legalizing Marijuana states “he was embarrassed for DSD staff in their presentation. That these code updates are used to write code rather than clarify or correct. DSD has made every effort to favor the pot industry over existing uses and businesses including churches. 38 MPF licenses were awarded even before the City even had an ordinance permitting these businesses. Cart before the horse. Unlike any other business land use, distance separation is measured in straight property lines. It’s only pot businesses that are measured in a distance of travel. We have had the definition of parks and youth-oriented facilities changed to assist pot businesses. It does not appear DSD is unbiased related to marijuana businesses. I think we have to ask why?

1:23:59 “In terms of background checks, Willie Senn who is Urbn Leaf and several other pot businesses had a stipulated Superior Court judgment in which he agreed he was not allowed to run a marijuana

business. That Judgment was only set aside in April 2019, yet he's been in the business for 5-6 years. So, if the City is doing background checks they are not acting on what those background checks show them.

1:25:20 Public Comment, Kathleen Lippett re inadequate public notice to changes in the cannabis codes… when the city increased the fee to file an appeal it clearly was meant to squash any public opposition to the marijuana projects. The safe path of travel measurement which is vulnerable to bias in order to increase the distance which otherwise would have been in violation of a straight-line sensitive use. It's the applicant's word that is taken as gospel and there seems to little acknowledgement that the applicant's word is very biased.

1:27:40 Public Comment, Phil Rath representing the United Medical Marijuana Coalition. "I've personally helped about 2 dozen applicants go through this process. We believe we have about 30% of the cannabis sales in San Diego. That means 70% of the cannabis consumed comes from the illegal marketplace. When you arbitrarily impose scarcity on licenses like a cap, 'weird things happen.' I can't think of a single thing where we impose scarcity. It does require high levels of scrutiny. With only 20 licensed cannabis dispensaries having been approved there aren't really any spots left. I don't think 36 spots is achievable under the current rulebook. There is just not enough land zoned for this use."

1:33:30 Commissioner Hofman inquires about the code update in late October and generates a statement about the problems they are going to encounter that can't be resolved as the staff will react as new things are discovered. We are going to evolve over time. I'm very confident with our staff. I do have 3 things I want to discuss (1) we need to get rid of the unlicensed dispensaries. (2) signage regulation loopholes need to be closed and (3) the process that includes a CAP based on place in line implementation. Where he instead has an application that is all complete without an environmental determination based on when you met the criteria as retroactive. Corine Neuffer, City Attorney responds to that stating that conditions change so making the application retroactive would be difficult to have those applications retroactively apply. There are obstacles to making that happen if the spot opens.

1:41:41 Commissioner Austin states that as a Planning Commissioner he is restricted to what he can do. He's there to try and be fair based on the boundaries they have so they are not in violation of spirit and intent.

1:45:25 Elyse Lowe, Director of Development Services We do have multi departmental efforts to assert full compliance in annual business license renewals and ongoing permittee compliance.

1:46:50 Commissioner Whalen states "it's well known that I hated the approval process, the first ones we approved were under parked relative to the size of the facility and the number of parking spaces, Where landlords are becoming extortionists because the conditional use permits run with the land and not with the facility. It might be worth looking into looking at that as it's an economic dislocation and an unfairness that would seem to affect the ability of these businesses to survive. Should we be putting these building owners in jail? We need to understand how these pieces fit together." *[How did this person ever make it on the city council?]*

1:52:40 Commissioner Matthew Boomhower wants clarification on whether or not cannabis related businesses use a different set of measurements for cannabis businesses.

1:53:20 Tyler Schur DSD answers that yes DSD has a different separation requirement that differs from other sensitive use setbacks. "It is, to my knowledge, the only separately regulated use that has its own measurement section in the land development code."

1:54:40 Corine Neuffer, City Attorney corrects Tyler Schur by stating that the Alcohol/Beverage outlets have a 'similar provision' for measuring distance requirements. *[we need to check that because clearly Tyler Schur is unaware of that 'similar provision.']*

1:54:50 Matthew Boomhower makes a lengthy statement on how they should not be moving the goal posts and not punishing people that actually go through the regulation…to treat the people fairly and predictably…that there be a reasonable expectation that if you play by the rules and follow the process people who don't are going to be cracked down on. *[this should include the license application process where those who choose to not identify themselves, to use proxies, are allowed to go through the application process and DSD is fully aware of the practice!*

What Boomhower is describing is the game of wacky mole where new, unlicensed dispensaries just keep popping up. What is so hard about police shutting down an unlicensed dispensary? The question that should REALLY be asked is who, within the City, benefits from the lack of enforcement activities at certain unlicensed dispensaries when there is little to prevent those raids from occurring? According to Geraci, and others, there are certain places that cash money goes within the City that buys their safety. Add to that the fact that some of these unlicensed and sanctioned unlicensed operators have gone on to secure these highly coveted licenses there is nothing about being unlicensed that represents any real threat to their ongoing operation. That is if they are politically connected. What is being described here is really a big part of the story that has never been looked into.]

1:59:30 Commissioner Dennis Otsuji comments on how DSD is making progress with the report they gave today and adjustments are made to assure that there is a very strong program that seems to be missing when there is a tremendous amount of income being derived from this type of business. For example, with the state lottery, it's good to hear where the money was going to go but if you ask somebody today 'did it really go there' nobody will give you a definitive answer. "It's basically against the law what we're doing."

2:02:14 Commissioner Vicki Granowitz "What makes the illegal dispensaries so frightening is that these are all cash businesses. That part of the problem is we have not caught up with where we need to be at all *[this is being said 3 years into their licensing program and they are unaware of how DSD is unlawfully processing certain licenses in a pay-to-play conspiracy]*

2:09:05 Commission Chair Susan Peerson What happens to those applications that are in the queue? PJ Fitzgerald responds there is no queue. DSD has to process each and every application through an administrative process where the applicant needs to complete their application requirements to be considered. We felt we were being transparent…projects need to keep moving. If the project sits dormant for 90 days they may be determined to be abandoned and taken out of the application process.

2:19:03 PJ Fitzgerald describes the ministerial process that must be completed by the Applicant/City before the applicant can acquire their state license. This ends up being a long exchange between Fitzgerald and various Councilmembers with Q&A. "As a Process Two those items are discretionary in nature and there is full public noticing." *[Public Noticing has not been evenly applied across all the applications as can*

be seen in the Environmental Appeals where numerous notices have not been part of the record via an SAP or I.O number.]

COMMISSION ACTION: NO ACTION TAKEN, INFORMATION ITEM ONLY.

2019/10/10 Minutes

ANNOUNCEMENTS/PUBLIC COMMENT

04:10 Kathleen Lippitt commented on the 12th Municipal Code update "I attended the last Planning Commission meeting as well as the DSD workshop on 09/26 and came away with numerous concerns. The draft language for the 12th Municipal Code update was created with little or no public awareness or opportunity to provide feedback…the language should have been thoroughly vetted via City Council meetings…community voices were severely limited…there was only 1 person allowed to speak at the DSD workshop and the 3 subsequent DSD workshops were canceled without any reason…the close relationships between city staff and marijuana promoters, attorneys and lobbyists does not serve the public well…City staff that are neither elected nor accountable are given authority to create policy…"

06:05 Becky Rapp commented on Marijuana. "I'm concerned about the fast-tracked marijuana draft language. I don't feel it's been properly evaluated. There was little community member input in the workshops and the 3 subsequent workshops were canceled without explanation."

2019/10/24 Minutes

ITEM–2: 12TH CODE UPDATE-PHASE 2

City Council District: All Plan Area: All

Staff: Renee Mezo

Speaker slips in favor of the item were submitted by Phil Rath, Khoa Nguyen, Gina Austin, Jimmy Morrison, Jessica McElfresh, Marcela Escobar-Eck, Matt Adams, Spencer Andrews and Brittany Biesterfeld.

Speaker slips in opposition to the item submitted by Natalie Wack, Enrique De La Cruz, Cynthia Sanchez, Allison Wall, Kathleen Lippitt, James Frost, Becky Rapp, Peggy Walker, Terri-Ann Skelly, John Misoni, Lorrie Frost, Marian Novak, William Perno, Marsha Lyon, Macy Baum, Lisa Bridges, Mary Badiner, Dawn Kamali, Fabian Alvarez, Ralph Staples, Danna Staples, Nancy Turk and John Wade.

27:21 ITEM 2 Staff Report by Renee Mezo re cannabis is a change from marijuana to cannabis, change distance requirements to public direct and clarify residential zoned property for cannabis outlets, add regulations for billboard advertising in both licensed and unlicensed business and prohibit secondary window signs advertising cannabis.

34:02 Phil Rath Executive Director of the United Medical Marijuana Coalition is in support of all 4 subitems and the enhanced restrictions on billboard advertising. Eliminating loopholes is really helpful. There are process concerns that should be dealt with. Suggested for the MPF would be a Technical Amendment to change the expiration of their Business Tax Certificate and when they get into the building with their CUP occupancy. Next what do we do about renewals where they need to reapply and be considered brand new. Would a sensitive outlet having moved in during the past 5 years create a situation where the licensee would not qualify?

37:33 Gina Austin represents a variety of outlets in support of the amendments. Regarding the distance path of travel it was not offered to favor my clients it was proposed to simplify the measurement for staff and the Planning Commission. In regard to renewals, I submitted a letter that echoes Ms. McElfresh's letter.

42:53 Spencer Andrews Public Affairs Director for Marsh and Ash in support of the amendments citing the benefit of path of travel to avoid unintended consequences.

45:04 Matt Adams representing the San Diego Building Industry Association in support of the amendments citing the update as an invaluable tool to adjust and course correct.

47:51 Marcela Escobar-Eck Chair of the Code Monitoring Team in support of the code update.

50:45 Jessica McElfresh representing a number of the MMCC's in support of the amendments citing the need to be able to renew the CUPs are going to have to file an amendment to convert their current use type MMCC to an MO. We should not have to survive another sensitive use application and I have proposed language to help remedy that conundrum.

56:50 Nancy Turk Business Manager Hope United Methodist Church in opposition to the amendment when all adult oriented businesses use a line of sight not a path of travel measurement to establish sensitive use separation. Pacifica Properties bought the adjacent property in November 2015 to register the deed to a separate LLC where they are seeking to have a cannabis outlet. They installed a small wall to create a barrier in which by path of travel they complied with the church/MO setback. This is how the municipal code is being manipulated in our case. What other types of artificial barriers will pop up that are inconsistent with any other type of business? *[There is an excellent video that HUMC created for the presentation which describes their preschool where 300 children are in attendance and their 40 years of serving the community. The Path of Travel measurement was established to benefit those operators who would not qualify with a line-of-sight type of measurement.]*

1:06:20 Jennifer Nino HUMC Board and a practicing attorney in opposition to Path of Travel setback. It's an inconsistent measurement with other sensitive use setbacks.

1:08:55 William Perno Prevention Specialist in opposition to the amendment citing there has only been one workshop on the code updates. Laura Black at DSD fast tracked the accelerated process for this amendment and Ms. Black canceled the remaining 3 workshops to facilitate that amendment. We are talking about unequal access. Lobbyists such as Marcela Escobar-Eck, a registered cannabis lobbyist and President of the Atlantis Group, were seated at the table and holding a pen in drafting these amendments. Kathi Riser is a Senior Land Use Consultant at the Atlantis Group and Chair of the Technical Advisory Committee. The cannabis industry had access to staff which we were denied. We were told we had to lodge our issues with our Councilmember. [Brown Act violation and he missed Lobbyist James Bartell]

1:13:19 William Perno presents the 3279 National Avenue, Gina Austin-Aaron Magagna project which shows the project had conflict resolutions where Gary Geiler and Elyse Lowe from Development Services were lobbied for that project by the Atlantis Group. Which shows the cycle review showed they lacked setback for school, church and setback. LDR recommended that the project be denied. Mr. Perno calls out Gina Austin for her ability to get the sensitive use measurement changed. There has been a hijacking of the process.

1:21:41 William Perno shows that Alcohol Beverage Outlets cannot be within 100 ft of a residentially zoned property. What needs to be understood is that code established this as not a property line to property line measurement but a zone measurement in which the zones change in the center of the street. Not at the property line.

1:25:40 Lorrie Frost Director of Youth and College Ministries HUMC in opposition to the amendment citing the Path of Travel measurement. "…everybody is vaping at school…we need a safe place at our church with the appropriate 1,000-foot separation…I don't feel it's right to expose 11- and 12-year-old children to cannabis dispensaries…"

1:27:45 Terri-Ann Skelly in opposition to the amendment "I attended the Torrey Pines Planning Group which has not had an opportunity to discuss the 12th Municipal Code Update. Several of the code updates affect them greatly…I join others here today to respectfully ask for a postponement so that those who live in the communities affected by the proposed municipal code changes can participate in questions and answers that seem to have disappeared.

1:30:05 Peggy Walker Public Health Education in opposition to the amendment citing the changing separation measurement to Path of Travel which is the "…antithesis of the Article 8 code intention which is to restrict cannabis products to youth…this new measurement allows more MPF's and MO's to locate closer to youth sensitive businesses and residences and has been explained it can be manipulated…this is just one more chipping away of restrictions meant to protect youth…the definition of youth oriented was changed in the 10th update also for the benefit of the marijuana industry defining it as having to occupy more than 51% of the building. Many of those businesses located in office buildings where they did not occupy more than the 51% of the building had to relocate…I'm really troubled by what I'm seeing in the past few weeks…I'm hearing that the code monitoring team meeting agenda went missing and were not posted until after the fact, that workshops were canceled, that marijuana industry lobbyists literally wrote some of these updates, that the CMT Chair are invested in the marijuana industry, this gives the impression that the marijuana industry is running this code update process, not elected officials and that the public has been circumvented. I would hope that this process could be more open and that public comment more considered." *[Bravo!]*

1:33:26 Becky Rapp is opposed to the fast-track marijuana draft language particularly as it relates to the new Path of Travel separation measurement. "I don't believe this has been thoroughly evaluated and have been concerned with how little time has been spent discussing and hearing from the community members. Future workshops which were to be held on October 23rd, November 6th and November 21st were all canceled. This is very concerning as these are important decisions that will directly impact the community, especially minor oriented facilities, schools, churches and businesses. I was also concerned when I personally heard Gina Austin admit that she wrote the language for the draft code as she is an attorney representing multiple strong handed applicants. It seems that the City is biased. There are loopholes in the code that allow applicants to manipulate barriers *[another major issue is that DSD relies on the applicant to identify any sensitive use issues within their 1,000-foot radius. This is literally the fox guarding the hen house!]* I would like to urge you to postpone your decision on Item number 12 until it has been thoroughly evaluated and presented to the public."

1:35:56 James Frost Civil Engineer stating that property line to property line is a very clear, defined, easy to measure and justify the distance between properties. "If we change that, which is what this amendment is considering, I think that really opens the door to very very different interpretations that can be

manipulated and there is really no way as planning members to find how you would make that decision which will open up the door to consequences we're not really even aware of until we go forward and approve some of these projects. This change has not been fully vetted with the community. Not being aware of these proposed changes has been disconcerting to many. My recommendation would be to strike that portion of the amendment, not update the language and keep what is currently in the code as a 1000-foot barrier as measured between property lines."

1:38:11 Kathleen Lippett in opposition to the amendment citing, "Over the years, my colleagues and I, from public health, have followed the process for marijuana approval unfold and have been alarmed that it has been increasingly skewed to benefit marijuana applicants…we've watched as the interests of existing businesses and sensitive uses were ignored as City Staff's goal was to assure a path toward project approval…the lack of transparency public noticing changes to standard processes and land use processes **no longer seem to be oversights but intentional…"** *[well said!]*

1:41:40 Allison Wall President of the HUMC Preschool in opposition to the amendment citing Path of Travel measurement "shall I wait until they're all ready to listen…it's irresponsible for the City to not keep up its end of the bargain especially when its due to manipulation by a specific industry. The cannabis industry for a special consideration only for that particular industry on how the property line is measured… When zoning is harmful it needs to be changed. There is nothing harmful in our current zoning…the manipulation of this is astounding…further it's interesting to me that speakers on the pro side of this issue use the example that their industry would be limited because during the renewal they would have to go through a new screening to make sure they're not in violation of the sensitive use areas. So if a cannabis business opens up and later on a church decides to move in within the sensitive zone the cannabis business doesn't want to go through re-permitting again and their license would be removed. That's exactly what is happening here. The church and preschool have been long established, and the cannabis industry has decided to not play by the rules, write their own rules, come into our area and ask for the zoning regulations to be changed to accommodate them versus accommodating the industries that have been there before them." *[Excellent points!]*

1:45:07 Cynthia Sanchez Youth Prevention Coordinator in opposition to the amendment citing the lack of transparency and notice in not bringing the community into helping develop these marijuana industry code amendments.

1:46:32 Enrique de la Cruz in opposition to the amendment citing the need to postpone the vote and allow for more community input.

1:47:23 Natalie Usack in opposition to the amendment citing her frustration with the lack of transparency in the code update and to delay the vote to allow for more community input.

COMMISSION ACTION: MOTION BY COMMISSIONER BOOMHOWER APPROVING THE STAFF'S RECOMMENDATION TO RECOMMEND CITY COUNCIL APPROVAL OF THE PROPOSED 12TH CODE UPDATE (PHASE TWO) WITH THE FOLLOWING EXCEPTIONS: 1. ITEM 12, MARIJUANA: CONTINUE TO A DATE CERTAIN OF DECEMBER 12, 2019, PROPOSED AMENDMENTS TO THREE SPECIFIC SECTIONS UNDER 113.0225, 141.0504, AND 141.1004 WHICH RELATE TO THE MEASURING OF THE DISTANCE BETWEEN MARIJUANA USES AND SENSITIVE RECEPTORS FOR FURTHER DISCUSSION/COMMUNITY INPUT. 2. REQUEST STAFF TO FURTHER LOOK INTO ITEM 7, DEVELOPMENT ON A PREMISES WITH A UTILIZED DEVELOPMENT PERMIT REGARDING THE ASSEMBLY PARKING REVISIONS PRIOR TO THE ITEM GOING TO

CITY COUNCIL. Seconded by Commissioner Hofman. The motion passed by a vote of 5-0-2 with Commissioners Peerson, Hofman, Granowitz, Boomhower and Otsuji voting yea and with Commissioners Austin and Whalen absent.

2019/11/14 Minutes

ANNOUNCEMENTS/PUBLIC COMMENT

03:52 Becky Rapp commented on the 12th Code Update. "I attended the Code Monitoring Team meeting yesterday and when the topic came up about postponing your vote on the Path of Travel for marijuana dispensaries the Chair was very clear to the CMT you were all on board with the language. When I was here, I felt like you had questions about the language and that's why you postponed the vote. I'm just wondering if there should be communication between the Planning Commission and CMT in regard to what issues you need to clarify on the proposed Path of Travel separation requirements that marijuana outlets will have to submit to."

05:14 Kathleen Lippitt commented on the Brown Act violation. "I was also at that Code Monitoring Team meeting. The level of disrespect for people who were trying to provide facts were automatically accused and dismissed out of hand as personal accusation attacks. There was no such thing occurred and it allowed them to dismiss and discredit what these persons were suggesting. The Brown Act violations that were lodged against the municipal code update and the meetings that took place were dismissed out of hand and subsequently they reconfirmed their votes without addressing the Brown Act violations should be fully vetted. There should be no decision subsequently made when there are violations that have not been disclosed or discussed or vetted completely otherwise it's like 'fruit of the poisonous tree.' People that come before you I really would appreciate it if you do not dismiss our comments out of hand. We take our time to come down here, it's not a fun thing to do but we do it because, unlike many of the people who were at that meeting [CMT], have no economic conflicts of interest. We're simply looking out for science, research-based evidence and what it's telling us which all seems to be, being completely ignored."

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2019/11/14 ITEM 2 BROWN ACT TRAINING FOR PLANNING COMMISSION

Staff: PJ FitzGerald

Speaker slips in favor of the item submitted by Kathleen Lippitt and Peggy Walker.

No speaker slips in opposition to the project were submitted..

1:15:55 Informational presentation for those who serve on a board, commission or committee Public agencies exist to serve the public, no backroom deals, meetings are open to the public, encourage public participation in all phases of government decision making process and curb the misuse of the democratic process such as secret legislation.

1:18:45 Basic rules for public access: Meeting agendas must be made available in advance. Only the items on the agenda can be discussed. Very rarely can a meeting be closed. Secret ballots are not allowed. Interpretations must favor public access.

1:19:01 Who is subject to the Brown Act: A Legislative body which includes the City's Charter provided Committees, Commissions, Boards, City Council, Council Standing Committees, Housing and Financing Authorities and a Formal Action such as an Ordinance or a Resolution

1:19:42 Limited Exceptions Advisory Boards and Task Forces created by the Mayor, An ad hoc temporary sub-committee with a defined purpose and a definitive end made up of less than a quorum of the body.

1:20:25 What is a Meeting? Any congregation of a majority of the Legislative body to hear, discuss or deliberate on any matter that is under the jurisdiction of the body. Meeting behind closed doors is a violation of the Brown Act.

1:21:22 Meetings may not occur outside the Brown Act parameters. A member may not have a discussion directly or indirectly with other members of the body outside of that noticed meeting.

1:22:35 Hear, Discuss or Deliberate. Includes having a majority of the members meet to gather information for a meeting is not permissible.

1:23:02 Serial Meetings are Not Allowed Serial communications may not communicate with members so that the issue is discussed in a hub and spoke with the majority of the members having discussed an item that did not include the public.

1:25:31 Social Media Example League of California Cities "Open & Public V" revised 2016 Online chat rooms and websites create a potential for violations of the Brown Act

1:26:26 The Media What can and can not be said when discussing matters that may come before the body. Do not discuss any Quasi-judicial decisions. Due process requires that you withhold judgment until you consider all evidence.

1:27:46 Permissible Contacts

1:28:00 Permissible Gatherings

1:28:48 Holding Meetings There are specific requirements for effective notice and the agendas must be posted 72 hours before the meeting in a location that is freely accessible, including the website, to the public. Agendas for special meetings can be posted 24 hours in advance.

1:29:41 Public Participation The Meeting Agenda must include the Date, Time, Location, Description of items and Public right to attend statement. The meeting location must be ADA accessible and can not discriminate attendance based on Race, Religion, National origin, Ethnicity, Age, Sexual identity, Sexual orientation or disability.

1:30:33 Public Participation (Regular Meetings)

1:31:07 Public Participation (Non-Agenda Public Comment)

1:31:46 Public Participation (Other Issues)

1:33:05 Public Comment at Special Meetings

1:33:32 Public Right to Documents All documents that the body has, with the exception of attorney-client privilege documents, must be available to the public at least 72 hours before the meeting along with the posting of the agenda.

1:34:20 Closed Session Most of the City's boards, commissions and committees don't have any jurisdictional authority that would require closed session meetings.

1:34:35 Closed Session Exceptions Narrowly Construed

1:34:58 Closed Session Summary Must be publicly noticed. The public has the right to comment on any of the items prior to the closed session occurring.

1:35:32 Violations of the Brown Act Violations are handled both civilly and criminally. For civil violations, any interested party can sue to invalidate an action taken by a body in violation of the Brown Act. If there is participation in a meeting in violation of the Brown Act with the intent to deprive the public of information, the violating members could be subject to misdemeanor prosecution.

1:36:10 In Summary

1:37:17 PJ Fitzgerald, DSD comments "that on having sat through the mandatory training as far as its being implemented in the Development Services Department, DSD has a number of boards and commissions that we provide support to those includes the Hearing Officer, Historic Resources Board, the Technical Advisory Committee, we also assist the Planning Department with the Code Monitoring Team amongst others and of course the Planning Commission and those meetings are all open to the public to accommodate public participation and allow meaningful discussion and to ensure that occurs we post all the agendas online as a policy a week before the meeting but definitely within the 72 hour requirement of the Brown Act…"

1:39:55 Peggy Walker "I know that a Brown Act complaint was filed against the Code Monitoring Team. In official language the purpose of the Brown Act is to ensure that the People of this State do not yield their sovereignty to the agencies which serve them. In essence the Brown Act is meant to prevent the exclusion of the public…at yesterday's meeting some public speakers were allowed to speak, but some, one in particular, was interrupted repeatedly and dismissed rudely and what seemed like censorship when he attempted to point out Brown Act violations or spoke in opposition to some of the code changes that were under discussion. I was shocked by this contentious atmosphere and find it a travesty that shortchanges the public interest. Most were there to discuss municipal code update items regarding Path of Travel to measure distances between marijuana businesses and sensitive uses…every municipal code change regarding this industry impacts the character of our neighborhoods, our quality of life and the environment in which we raise our children. We in the general public don't have the funds to pay high powered attorneys and advocates to draft municipal code changes or to lobby with City Staff on our behalf. It is therefore critical that we can depend on adherence to the Brown Act in order to have clear understanding when CMT and other meetings are held and that we can participate in the decision-making process, "

1:43:11 Kathleen Lippitt "Brown Act training is essential to a democratic process that insures the public a seat at the table…The CMT chair kept asserting that there was limited time at these meetings as this was described by Rene Meza as this was an accelerated process, which begs the question why was this an accelerated process…it made no sense but for the fact it could exclude more public comment…I hope that

the the public will not be excluded from this process…the public was not aware in many cases of those workshops nor did they even know that the Code Monitoring Team even existed."

1:45:29 Commissioner Boomhower goes on the record stating that the public assertions of Brown Act violations by members of the public are significantly unsubstantiated and that CMT is in full compliance with the requirements of the Brown Act.

COMMISSION ACTION: NO ACTION TAKEN, INFORMATION ITEM ONLY

2019/12/05 Minutes

2019/12/05: ITEM 2 - 4337 HOME AVENUE MARIJUANA OUTLET NUP/CUP Appeal Hearing Officer's July 24, 2019 ITEM 5 decision (Rev. 12/6/19)

STAFF: Firouzeh Tirandazi

8 speaker slips submitted in favor – Felix Tinker, Sean Scaramella, Melissa Krause, Arkan Somo, Randall Zaitona, Bayda Somo, Valentina Zaitano and Denise Vo

5 speaker slips submitted in opposition – Peggy Walker, Kathleen Lippitt, Theresa Quiroz, Pedro Quiroz and Mary Baum

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This project needs a much closer look.

In addition to the July 24, 2019 HO Minutes as shown above there was also a second HO Hearing on May 26, 2021 where these HO Minutes were memorialized at May 26, 2021 HO Minutes for 4337 Home Ave Item No. 1

Of note, when comparing the **July 17, 2019**, Report to the Hearing Officer @ Page 67 it can be seen that the City Heights Area Planning Committee ("CHAPC") recommended denial of the marijuana outlet and the production facilities.

CHAPC: "Motion 1: Recommend denial of the CUP for the marijuana outlet and production facilities. Motion was seconded and the vote tally was 11-4-0 to deny the CUP with the Chair not voting."

In the staff recommended approval for the project @ Page 1 (Firouzeh Tirandazi, DSD Project Manager) staff states that the production facility was removed prior to the CPG taking their vote. [*As if this removal would have somehow changed the CPG decision of the marijuana outlet.]*

Staff: "Motion 1: voted 11-4-0 to recommend denial of the Conditional Use Permit for the marijuana outlet and marijuana production facility. (Subsequent to the vote, the applicant redesigned the project to remove the marijuana production facility.)"

In the subsequent **May 19, 2021** Report to the Hearing Officer (Sammi Ma, DSD Project Manager) staff represents that CHAPC could not decide on recommending an approval or denial of the project.

Staff: "Community Planning Group Recommendation: After several planning committee meetings, the City Heights Area Planning Committee decided neither to provide an approval or denial recommendation on the subject project (Attachment 9)."

Attachment 9 at Page 57 the following conditions were noted by CHAPC as an obstacle to their approval.

Brian Green-Carson motioned to **deny** the CUP for a proposed Marijuana Outlet at 4337 Home Ave. based on the following issues:

- The proposed site is 895' from an existing outlet on the corner of Fairmount and Home Ave.
- The proposed site is less than 1000' from Hollywood Palms where there are children present in a tot lot and after school program.
- The proposed site is near a Head Start facility.
- The project is not in compliance with the Chollas Creek Enhancement Project.
- The Project is located within a designated high crime area.

Staff then took that neutral CHAPC position at Page 1, to recommend approval: Community Planning Group Recommendation: After several planning committee meetings, the City Heights Area Planning Committee decided neither to provide an approval or denial recommendation on the subject project (Attachment 9).

In addition to the issues Mr. Russ Connelly, Chair of CHAPC and Mr. Green-Carson set forth in the January 29, 2021, email to Sammi Ma, DSD Project Manager the other issue this project would have is the combining of both cannabis and alcohol on the same premise.

Per California Business and Professions Code § 15000.3 (a) "A licensee shall not sell alcoholic beverages or tobacco products on or at any premises licensed under this division." Clearly the premises has gas pumps, an ARCO where beer and wine is sold and approximately 50 feet from the ARCO store and literally right on top of the gas pumps is the dispensary. What message does this send to the community and those who would get behind the wheel and indulge in a cannabis purchase. What message does this send to every child that comes in with their parents to get fuel? If this is the fate of things to come than everything about adult-use regulation was a lie.



May 26, 2021 HO Minutes for 4337 Home Ave Item No. 1Lastly, when considering the project opposition May 26, 2021 HO Minutes for 4337 Home Ave Item No. 1 it can be seen the same cast of characters appears to voice opposition by with no record of what was said we only have the minutes to prove they were in opposition. *[EDITORIAL REMOVAL — 5 October 2026. A tabulation of five named individuals and mention counts has been removed. The counts were the compiler's own, derived from this document rather than from City records, and are unverified.]*

[EDITORIAL REMOVAL — 5 October 2026. A passage of the compiler's commentary has been removed from this version. It named private individuals and asserted, by rhetorical question, that they attended public hearings for payment. The assertion was unsupported by any document in the record and is withdrawn. The underlying hearing records are unaffected and appear in full elsewhere in this document.]

[EDITORIAL REMOVAL — 5 October 2026. A passage of the compiler's commentary has been removed from this version. It asserted as fact that two named City employees would secure approvals for clients regardless of law or regulation. That characterisation is the compiler's and was unsupported by any document in the record. It is withdrawn. The underlying hearing

records, including the project-manager assignments, are unaffected and appear in full elsewhere in this document.]

HEARING OFFICER ACTION: PROJECT APPROVED SUBJECT TO PERMIT CONDITIONS. Report NO. HO-19-068. RESOLUTION NO. HO-7256

DSD CONTACT: Edith Gutierrez

PROJECT NUMBER: 593686 *[Everything is addressed as 4333 Home Avenue]*

DSD TO HEARING OFFICER RECOMMENDATION: HO-19-068 "1. Adopt Mitigated Negative Declaration No. 593686; 2. Approve Neighborhood Use Permit No. 2140441 (Automobile Service Station & Minimarket); 3. Approve Conditional Use Permit No. 2225844 (ABC Type 20 License); and 4. Approve Conditional Use Permit No. 2117121 (Marijuana Outlet)"

HEARING OFFICER: Duke Fernandez

DSD TO PLANNING COMMISSION RECOMMENDATION: PC-19-100 "1. Approve Neighborhood Use Permit No. 2140441 (Automobile Service Station & Minimarket); 2. Approve Conditional Use Permit No. 2225844 (ABC Type 20 License); and 3. Approve Conditional Use Permit No. 2117121 (Marijuana Outlet)"

CEQA DETERMINATION: "Mitigated Negative Declaration No. 593686 @ Page 46 has been prepared for the project in accordance with State of California Environmental Quality Act (CEQA) Guidelines for potential impacts to Tribal Cultural Resources. A Mitigation, Monitoring and Reporting Program (MMRP) has been prepared which will reduce, to below a level of significance, potential impacts identified in the environmental review process."

NOTICE Of RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION SAP NUMBER: NA

APPELLANT(S): Therese Quiroz

Issues On Appeal

Page 75: Ownership Disclosure Statement

Page 86: Appeal Application

OWNER(S): Avad Investments, Inc and Arkan Somo @ Page 75

APPLICANT(S): Arkan Somo @ Page 75 and ARM Investment as Lessee

CUP NUMBER: 2117121 for marijuana outlet @ 4345-⅓ Home Avenue on 03/09/2018

CUP NUMBER: 5225844 Type 20 Alcoholic Beverage Outlet @ 4345-⅓ Home Avenue on 03/09/2018

NUP NUMBER: 2140441 Neighborhood Use Permit @ 4345-⅓ Home Avenue on 03/09/2018

CUP HOLDER:

STATUS: Denied

CITY COUNCIL DISTRICT: 9

PLAN AREA: Mid-City-City Heights

STAFF: Edith Gutierrez

Speaker slips in favor of the project submitted by Denise Vo, Sean Scaramella, Arkan Somo, and Randall Zaitona.

Speaker slips in opposition to the project submitted by Theresa Quiroz, Kathleen Lippitt, Pedro Quiroz, Jennifer Hoffman, Peaches Turner, Laura Ann Fernea, Dawn Kamali, Marsha Lyon, Leticia Leal, William Perno, Fabiola Alvarez, Enrique De La Cruz, Cynthia Sanchez. Rickie Brown, and Peggy Walker,

16:02 Edith Guiterrez DSD Presentation

27:31 Arkan Somo in support of the project

29:10 Therea Quiroz in opposition to the project citing "the Hearing Officer's decision was flawed and that the findings cannot be made…does not meet the criteria for a MO based on SDMC Section 141.0504(a)(2) as measured between property lines…"

40:16 Laura Ann Fernea Executive Director City Heights CDC in opposition to the project citing "…we urge the City to deny the CUP for the proposed MPF and Marijuana Retail Outlet…Hollywood Palms Learning Center, a minor-oriented facility located within the apartment complex and does not meet separation requirements with the proposed MPF/MO as set forth in SDMC Section 113.0225…we have great concern about bringing this in right across the street from our facility…"

44:20 William Perno Central Region Prevention Coalition in opposition to the project citing "the proposed projects do not meet residential separation requirements…the current project manager is Cherlyn Cac which means there has been at least 3 different Project Managers on this project…A critical document is the Cycles Report where staff recommended denials of both the MPF and the MO and that information never made it to the Hearing Officer *[Duke Fernandez]*…letter from Cherlyn Cac to the applicant recommending denial based on the residential zone abutting the proposed MO/MPF…the applicant sent an email to Cherlyn Cac on May 24, 2018 requesting a meeting, we don't know what happened at that meeting, we don't know what happened to change or remove any reference to the Cycles Report from the July 17, 2017 Hearing Officer Report but after that meeting a new Project Manager, Firouzeh Tirandazi, is assigned to the project and recommends approval of the MO/MPF…SDMC 131.0103(b)(2) states 'Where a zone boundary follows a public *street*, the centerline of the *street* shall be the boundary.'…this project is located in a High Crime Area…"

59:48 Rickie Brown, Property Manager for Hollywood Palms in opposition to the project citing "Hollywood Palms has been a thriving community in the City Heights neighborhood, fostering graduates from elementary schools to top universities, strengthening low income families that would later help them become self-sufficient through an accessible space for learning…in my opinion with the armed security that this project will employ our children having to walk to school by this business will put their safety at risk…"

1:01:12 Peggy Walker in opposition to the project citing "separation issues on Land Use from surrounding neighborhoods citing a Rand Study found conclusively that those who live around a dispensary will use more cannabis, strongest among young people…this does not bode well for the youth and minors who would live across the street from the proposed project."

1:03:40 Kathleen Lippett in opposition to the project citing 67% of the people living across the street from the project have children under the age of 18…the separation requirement has not been met…a MO is not allowed to sell alcohol at the same location. Few would consider this project not to be in the same location. A reactive versus proactive code enforcement complaint process does not serve the community…the absence of code violation complaints is not evidence of an absence of code violations or complaints…the City does not permit the sale of alcohol products within 100 feet of a residentially zoned property, which begs the question why this operator was granted a CUP to sell alcohol at this location to begin with…gifting this operator with a new CUP is irresponsible. ”

1:06:55 Commissioner Peerson asked staff to come back in 10 minutes with a thoughtful explanation on how the new separation by use measurements earned this project their support for approval.

1:23:56 Kyle Gossens, DSD Associate Planner states that the minimum separation between uses is established between property lines, not zones, in accordance with Section 113.0225. Per the parcel map the distance between the parcels puts the parcel separation at over 100 feet.

1:26:00 Commissioner Boomhower questions both Edith Gutierrez and Kyle Gossens as to what is a conflict between how parcel separation language differs from zone measurement separation language is interpreted in the code, with zone language apparently superseding the parcel language as Mr. Perno had pointed out in his presentation.

1:27:50 Commissioner Whalen states “It seems like we have a location question here. I don’t normally agree with the opponents to the dispensaries but I do here…as a decision making body we have to look at the whole of the action which is that, in reality, it’s across the street and we don’t have the typical geographic barriers to make a Path of Travel comment…I’m not okay with renewing a liquor license and I’m not okay with the dispensary…the motion I’m making is negative to the staff recommendation ”

1:31:05 Arkan Somo reappears to clarify that “the meeting that supposedly took place with Cherlyn Cac never happened because the City already had another CUP application down the street on Home Avenue which the City had already approved. The separation between licensees interpretation was that the hwy 94 represented a geographic barrier that would allow the 4337 CUP to proceed. The City has already approved a dispensary on Home Avenue with exactly the same issue.”

COMMISSION ACTION:

MOTION 1: MOTION BY COMMISSIONER WHALEN TO GRANT THE APPEAL, REVERSE THE HEARING OFFICER’S DECISION, AND DENY THE CONDITIONAL USE PERMIT NO. 2117121 (MARIJUNANA OUTLET). Seconded by Commissioner Granowitz. The motion passed by a vote of 7-0 with Commissioners Hofman, Austin, Granowitz, Boomhower, Peerson, Whalen, and Otsuji voting yea.

MOTION 2: MOTION BY COMMISSIONER WHALEN APPROVING STAFF’S RECOMMENDATION TO DENY THE APPEAL, AFFIRM THE HEARING OFFICER’S DECISION, AND APPROVE NEIGHBORHOOD USE PERMIT NO. 2140441 (AUTOMOBILE SERVICE STATION & MINI-MARKET); Seconded by Commissioner Granowitz. The motion passed by a vote of 6-1-0 with Commissioners Hofman, Austin, Granowitz, Boomhower, Peerson, and Whalen voting yea. Commissioner Otsuji voting nay.

MOTION 3: MOTION BY COMMISSIONER WHALEN TO GRANT THE APPEAL, REVERSE THE HEARING OFFICER’S DECISION, AND DENY THE CONDITIONAL USE PERMIT NO. 2225844 (ABC TYPE 20 ALCOHOL

LICENSE). Seconded by Commissioner Granowitz. Seconded by Commissioner Granowitz. The motion passed with a vote of 4-3 with Commissioners Austin, Granowitz, Whalen, and Otsuji voting yea and with Commissioners Hofman, Boomhower, and Peerson voting nay.

2019/12/12 Minutes

ANNOUNCEMENTS/PUBLIC COMMENT

00:35 Arkan Somo commented on 4337 Home Avenue. "…please reconsider your decision and action last week to deny my CUP's…the project opponent made these photos of litter available to Edith Gutierrez but my photos that were given which show the project site cleanup were not included…the City has no record of the property condition on file…"

06:12 Terri-Ann Skelly commented on Marijuana business. "In regard to the 12th Municipal Code Update, overall, I'm troubled by the overall lack of presentation to the Planning Commission and Staff regarding data collection, regarding marijuana use and permitting. And oversight control in California…49 deaths as of last Thursday from vaping cartridges…please avail yourselves to the Marijuana Prevention Initiative, I've brought cards from them to share…we recently learned that 400 CA licenses were suspended because the licensee did not participate in the mandatory Track and Trace program. Were any of those licensees in San Diego…"

09:51 Randall Zaitona the original applicant of and son-in-law of Arkan Somo at 4337 Home Avenue is just asking for reconsideration of last week's denial.

* * *

2019/12/12) ITEM 4-12TH CODE UPDATE-PHASE 3

City Council District: All

Plan Area: All

Staff: Renee Mezo

Speaker slips in favor of the project submitted by Phil Rath, Khoa Nguyen, Jessica McElfresh, Brett Peace and Heather Riley

Speaker slips in opposition to the project Theresa Quiroz, Craig Beisted, David Andrews, Marcelo Esqueros, Carrie Jaquess, Tony Cook, John Masoni, Leticia Leo, Ricky Brown, William Perno, Mary Bandenor Enrique Dela Cruz, Fabiola Alvarez, Rocio Hernandez, Cynthia Sanchez, Dawn Kamali, Mary Baum, Peggy Walker, Pedro Quiroz, Becky Rapp, Kathleen Lippitt, Daniel Gabrielosi and Judi Strang.

35:13 Commissioner Peerson opens with Commissioners Whalen and Austin recusing themselves.

36:10 Renee Mezo DSD introduces the code update presentation by Edith Guiterrez.

41:10 Commissioner Boomhower drills down on how Path of Travel measurement begins and ends which gets him to the inescapable conclusion that this form of measurement will increase the sensitive use distance separation in each situation where it is applied. Asking Gutierrez how, under Path of Travel, does the City comply with a 600-foot State setback in sensitive uses when using line of sight? City Attorney Corrine Neuffer replies that this Path of Travel method will apply "except as specified by State law."

46:50 Phil Rath in support of the update cites "I've processed numerous applications in cannabis. Myself plus Jessica McElfresh, Gina Austin, Robin Madafer, Heather Riley, those of us who work in this little cul-de-sac of the code have collaborated together to make sure we're giving you a coherent perspective from industry and applicant perspective…Edith outlined it well…when renewing a license, the licensee should not have to move if a sensitive use moved in on top of a licensee, in all fairness and in consistency with other land use regulation that licensee should not have to move. Something outside their control should not be held against them. They should be held accountable for their own behavior…As to Path of Travel all the easy spots have been taken. We needed to come up with something that gave clarity to the separation of use standards…"

53:12 Jessica McElfresh in support of the update citing "I have a client affected by this who employs 100 people, it was a really sobering thing for me to have to think about that if we didn't get this resolved in a timely matter that 100 people were going to be out of work…I would encourage you to support the language and pass it forward to the City Council."

55:02 Brett Peace, one of the owners and general counsel of Marsh and Ash in support of the update citing "we have 3 operating MO's in San Diego and Imperial Counties…the situation where we're only permitting the real estate in the CUP process is unusual. The City of San Diego has put the Planning Commission and our communities in a very difficult position, as being permitted in multiple jurisdictions CUP process includes our business is vetted, our operating plans are vetted, the community has many more tools to insure that we are going to operate in an appropriate manner. That we can address the concerns that we've heard about safety, public facing interface with the youth, the City of San Diego process simply does not have that. And I understand as the Planning Commission that puts you in a situation where you're taking this code update forward addressing only the land use issues but that's a mistake. I think the code update should go forward but I think what's happening is you're expanding the ability of the marijuana industry and in doing so you are taking away the only tool that the communities in San Diego have currently to protect their neighborhoods. So, I would suggest that expanding the ability of us to expand without additional tools, to ensure that we operate in an appropriate manner is potentially a very dangerous path forward…we think that is where the underlying tension is. I can tell you that there were San Diego retail outlets that had their state license suspended because they weren't METRC qualified and as far as I'm concerned they continued to operate in San Diego during that period…I don't think our industry has earned the trust to have that kind of expanded ability to move forward without giving the neighborhoods the tools so that they understand their operational plans, that they understand who owns us and who is operating our outlets and that they have the tools to insure that we operate in compliance as a good community member moving forward."

58:05 Heather Riley attorney representing Marsh and Ash in support of the code updates.

59:20 Theresa Quiroz in opposition to the update citing "the change in the distance requirements between the uses…over the years we tend to forget why ordinances were approved and why the specifics of those ordinances were so important. I think the marijuana retailers are hoping that none of you will remember the long and tortured history of this marijuana ordinance. Let me give you an abbreviated summary. In March 2011 the City Council passed an ordinance that included a 600-foot distance requirement and nothing regarding the residential zones. An organization was easily able to gather enough signatures to put the reversal of the ordinance on the ballot so in December 2011 the Council rescinded that Ordinance so the whole thing began again. In April 2013 another Ordinance moved forward. This time the Council

insisted on a 1,000-foot distance and a 100-foot distance from a residential zone. That Ordinance was finalized in February 2014. So why did the distance requirements change? Because the Council wanted, and I quote, 'to protect the neighborhoods and our children, to protect the safety and character of our neighborhoods, to get the right balance between uses and the quality of life in our neighborhoods' and as Mr. Kersey said we do not want these facilities right across the street from our schools.' This amendment undermines the purpose and intent of the approval of the Ordinance. The Path of Travel wording, as it were, makes it possible to put a MO across the street from a school and spitting distance of homes and takes away all promise of protecting our quality of life, the character of our neighborhoods and most specifically, protecting our children…the Path of Travel measurement creates enormous loopholes and leaves about everything open to interpretation…I would suggest to you that it would be so much simpler to just clarify the Ordinance already in place. Instead of just saying 100 feet from a residential zone, change it to say something like 100 feet from a residential zone measured in a straight line from the marijuana applicant's property line to the residential zone boundary. That keeps the original intent and keeps the faith with the public who believed that a balance had been struck that worked for everyone."

1:03:49 Carrie Jaquess, Director of Children's Ministries @ HUMC in Rancho Bernardo is in opposition to the proposed code changes and provides a presentation by Laurie Frost, Director of their nationally accredited Youth Ministries at HUMC. *[at 1:06:19 the camera pans to show the driveway/sidewalk where the applicant constructed an unpermitted wall so that Path of Travel separation between the uses would be outside the 1,000 foot requirement.]*

1:06:52 Jennifer Nino, HUMC Board of Trustees member and attorney in opposition to changing the code to allow for a Path of Travel citing "compromising public safety and is more vague than property to property line measurement."

1:08:55 Jim Frost, Licensed Civil Engineer in opposition to the Path of Travel code change citing the advantages of having a clearly defined method of assessing distance between two facilities. "Path of Travel measurements leads to uncertainty and potential manipulation…the proposed code does not provide City Planners with a defendable position when evaluating applicants for making an effective decision."

1:11:01 Carrie Jacquess concludes the presentation with "in response to an argument that was made earlier I'm just astounded and confused by why an existing CUP for an existing cannabis outlet is being given consideration when a child-oriented facility might move into the same place but our existing CUP, at a church, that has been in existence for 35 years is not being given the same consideration when a cannabis outlet wants to come in. It seems like a double standard; it doesn't feel like a fair and even playing field and it just doesn't seem right. We already have illegal activity happening in our parking lot just last week the SDPD removed about $500 worth of crystal meth from our property found in the bushes of our parking lot. We believe that allowing the cannabis outlet to in which is in violation of the existing 1,000 foot property line to property line setback will increase incidents like that which makes it an attractive place to exchange marijuana with underage children or consuming it there if they can't wait to get home to use it…all we have is faith in the process and hope that the Commissioners see the wisdom in preserving the existing 1,000 foot property line to property line boundary. That's what we're asking. That's what we hope you will decide."

1:13:12 Tony Cook, Business Manager RB Community Presbyterian Church speaking personally in opposition to the code update citing the Path of Travel measurement will be confusing in trying to determine if a particular facility is within 1,000 feet or not from a sensitive location. " This is a very large

concern for me personally…you currently have a standard that is very clear…while in college I worked on a survey crew. I know how to measure property line to property line. I do not know how to measure Path of Travel and I think it would be difficult and subject to constant interpretation. Thank you for considering rejecting this amendment."

1:15:09 John Masoni, Chairman HUMC in opposition to the code update citing "…you have a fiduciary responsibility to the citizens of San Diego to see to it that there is fairness in the decisions that are being made. I feel that the Path of Travel is not a fair decision. I feel that property line to property line is the way to measure it."

1:16:44 Leticia Leo representing Community Heights Development Corporation and also the residents of Hollywood Palms in opposition to the proposed amendment citing the Path of Travel measurement as a loophole in the existing sensitive use boundaries.

1:19:40 William Perno Central Region Prevention Coalition in opposition to the proposed amendment with our presentation titled: When Clarifying the Code Actually Changes City Ordinances. Citing objections to SDMC 113.0225 Path of Travel measurements. "in those measurements where topographical or constructed barriers such as freeways or flood control channels impede direct physical access between the uses it is in those uses, in those situations is perhaps when a Path of Travel measurement conversation could be made but what staff is proposing is to completely remove the topographical barriers and use this Path of Travel for all measurements. There should be a distinction but this proposal by staff will make it for every measurement *[insofar as marijuana businesses]*…These proposed changes, to remove all topographical barriers, makes no sense and will make these future boundary determinations under the new language of the legal pedestrian Path of Travel Using Crosswalks Where a=Available and Only at Street Corners very muddy.

In SDMC 141.0502 Alcohol Beverage Outlets distances SHALL be measured from property line to property line. You don't have that for your proposal for marijuana. "Changing the way measurements are made effectively changes the Ordinance."

Cal Health and Safety Code § 11362.768(c) establishes the distance measured between uses for marijuana outlets in a straight line from the property line to the property line. This is a much more restrictive standard when compared to the less restrictive Path of Travel measurement proposed under City code amendment by weakening the distance requirements. Should this amendment pass the Path of Travel measurement will be used for every measurement, even when there are no barriers. This is a unique way of measuring that will only be used for marijuana businesses and will benefit them greatly.

1:28:30 "…today. you're being asked by staff to give a recommendation to make the incorrect property line to property line measurement the official way of measuring for all future applications that are near a residential zone. And I want to note that DSD hasn't yet refuted what was said last Thursday about the measurement and as you [Commissioner Boomhower] correctly noted, was from a residentially zoned boundary and it's the boundary, the zone it's not the use inside the zone. They haven't disputed that. Yet here is an update that will change the way the measurements are done and they're even changing the language now to no longer say residential zone but to say residential zoned property. And this Ordinance 131.0103, the Ordinance that was referenced, has been in existence for 20 years…if this is changed it will allow those outlets that were last week not allowed to be allowed. We need to clarify SDMC 113.0225 to conform with SDMC 13.0103. Additionally, SDMC 141.100r (Marijuana Production Facilities) and

141.0504 (Marijuana Outlets) need to have clarification of Section (2) “100 feet away from a residential zone” clarify to state the measurements SHALL be made in accordance with SDMC 131.0103 and to clarify to state measurement form a Residential Zone shall not be made from any property line or use within the Residential Zone Boundary .”

1:36:50 Peggy Walker in opposition to the proposed amendment citing “the distance measurements must be fair and consistent…and support Mr. Perno’s suggestion about the 100 feet from the residential zone boundary.”

1:39:42 Becky Rapp in opposition to the proposed amendment citing, “the distance traveled between marijana outlets and sensitive receptors. This language creates loopholes for the marijuana industry…in my neighborhood a perfectly functional walkway was blocked by a wall, constructed by a marijuana applicant specifically blocking the ‘safe path of travel’ used for many years. I also attended a meeting where a marijuana outlet was permitted even though it was well within feet of a school, but the applicant argued that a small drainage ditch was blocking the direct path of travel. This is just two examples of how this language can be interpreted and diluted, I would urge you to deny the update… I strongly believe that the distances between sensitive use facilities and marijuana outlets should be consistent across the board. Again 1,000 feet from property line to property line isn’t asking too much. It’s a transparent, not easily manipulated or misconstrued way to measure.”

1:42:18 Kathleen Lippitt in opposition to the proposed amendment citing “I believe it is imperative that elected along with those they appoint have an obligation to ensure the public is adequately represented in a fair and predictable process. Community Planning Group volunteers, though many of them are dedicated and extremely intelligent, are rarely land use experts and even less often practicing attorneys. That is also true of existing business owners, churches, youth-oriented facilities and other members of the public. But public officials have an obligation to ensure their interests are represented so imagine how taken aback I was to be told by a marijuana attorney that perhaps ‘we should have hired a land use expert.’ That should not be necessary for the public. Naively, we were not aware that the Code Monitoring Team, where so many of these municipal code changes and sensitive use definitions were incorporated, the text of which was offered by industry experts. Who weighed in on behalf of those who would be disenfranchised by these changes? Existing businesses, churches, youth serving organizations. They didn’t have their own attorneys. They were told by the City that they needed to hire their own attorney and then to pursue the process civilly. In nearly every case those interests were forced out, forced to relocate, closed or suffered financial devastation. Further the CMT process where most of these [industry] beneficial changes took place; was a process the public was neither aware and deficient in the expertise required to weigh in. Moreover, the minutes of those meetings were never taken and were not available to the public.”

1:44:42 Daniel Gabrielosi in opposition to the proposed amendment citing children are exposed to billboards. Why should we allow that type of advertising since it significantly normalizes the use of cannabis?

1:47:46 Judi Strang in opposition to the proposed amendment citing “having attended both of the marijuana task forces the City set up. One in mid-2005 and again in 2011 listening to the conversations from the community the where and when and how marijuana businesses would be part of San Diego’s life. And so, as parents we’d like to address two issues. One is the process, and one is the amendment you’re looking at. Regarding the process, it’s been very difficult to figure out where the recommendations

came to DSD that we have, through the years done, as updates to the municipal code. When the 10th annual municipal code happened that's when we added the constructed barriers to this point to point 1,000 feet that existed before with marijuana outlets. Remember we didn't have MPF's on the scene yet…It wasn't until a CPC meeting in the summer of 2018 when we saw the recommendations, we are looking at today, we saw who made them and they weren't staff recommendations, they weren't parent recommendations, they weren't youth group recommendations, they were people who had a financial investment in the marijuana industry. We wondered when we could have made suggestions. When would there have been that opportunity if we would have liked that equal time? When we were here for Planning Commission in September, you told us about the DSD workshop, and we went. We thought this must be how it is. There'll be workshops and we'll have this chance but when we got there you only allowed a couple of us to speak and only for a short period of time. And we found out there was a CMT team that was open to the public that we could have been addressing our concerns and we attended that with the same 'lack of enthusiastic reception.'"

1:50:24 "In San Diego, we take great pride in being the voice of the voiceless. I have to tell you as a parent, I have felt voiceless and as a person who has done her due diligence trying to figure out where these meetings are and where we could share our voice so we don't end up here today looking at things that are not updates, these are huge changes to the way marijuana is going to be available in our community… zoning has been in the spirit of this [land use regulation] since 2014. We're extremely unhappy to see that sense eroded by having it be property line to property line. Then regarding the Path of Travel. Path of Travel was an invented terminology. That was part of trying to get to the terminology of measurement. It wasn't a goal that we were going to have access and so we had to have Path of Travel. That only enabled more marijuana businesses to locate near youth sensitive places…We had understood that renewals would be open to the public, but we have lost that ability to consider a full vetting of the business prior to being granted a renewal. "

2019/12/12 ITEM 4 PLANNING COMMISSION HEARING VIDEO (PART 2)

09:42 Commissioner Boomhower describes a hypothetical measurement situation which compares the current zone boundary that the separation distance is not unclear. "…we keep saying that the whole purpose of doing this is to create certainty and clarity. I'm unclear as to what the problem is we're trying to solve. It seems like we're making a change for the sake of making a change…staffs position is that this language does make your team's job easier and creating certainty in making a decision and giving certainty to applicants..*[Aballas and Gutierrez (DSD) responds that this language does create that certainty]*

18:02 Commissioner Otsuji asks about the 5 year renewal process to which Gutierrez replies that the licensee has previously conforming renewal rights. "I would have an easier time making a boundary decision with what's on the books today."

22:21 Commissioner Granowitz "I just feel like I'm in quicksand…I have something to say that's probably going to piss everybody off but I'm known for doing that so I should be consistent…those in the community who are opposed to marijuana law and regulation and feel that they are just white noise in these hearings have already lost that argument because the voters in the State have approved marijuana and whether I agree or not that is not before us and so hearing it, rather than staying on the technical issues it only makes something more confusing than what we already have to deal with on the other hand, I'm not sure that changing the way we look at Path of Travel isn't gimmee for the industry as well…I don't really know but in my simplistic way of thinking that there needs to be something that speaks to when the direct line

of travel is inconceivable, that that needs something different than this blanket way of saying it's either going to be this way or that way, which I think makes it more complicated….I'm not happy with this change and I'm not sure I can approve what's before me today, but I'm not sure what you need to do either."

27:45 Edith Gutierrez clarifying comments that there is a 40-cap limit on MPF's, and they already have 40 MPF's approved. There is a 36 CAP limit on MO's, and they have 23 approved. Unless the CAPs change, you're not going to be seeing these distance requirements before you very often.

28:40 Commissioner Granowitz replies "I mean let's face it, the CAP is going to change, probably…I expect the CAP will change but we're going through this painful thing for 5…ok" (she shoves the microphone away)

29:10 Commissioner Peerson asks staff if there is a definition for Path of Travel? Renee Mezo, DSD responds that they currently don't have a definition for Path of Travel.

Pearson: "words matter, definitions matter, all these details as you can see. Can you [DSD] go back to [DSD presentation] slide 6? I just want to put another finer point where your example doesn't use the same start and end points and that's very confusing plus misinforming. Mezo responds "we apologize for that. We were just trying to show a more overview of straight line versus a Path of Travel measurement. We apologize for that."

Pearson: "Is there another drawing or diagram that talks about measurement? I remember seeing a drawing at some point, maybe it was from public testimony.

Mezo: "I think it was from Mr. Perno"

Peerson: "and that's not in our municipal code or it is?"

Mezo: "I think he had the diagram for measuring…"

Peerson: "May we bring that up please?"

Mezo: unintelligible

Peerson: "I really only want to focus on what is on our municipal code. So can we confirm it's a municipal code reference? Because otherwise we have no measuring stick that's clearly written…this needs to be clear that multiple people can read it with an expectation that it's understandable and it can be explained."

32:50 Commissioner Khalil comments "Path of Travel is mentioned in a few places in the California Building Code and in our municipal code, typically it refers to continuous, unobstructed means of egress from private property to the public right of way…"

34:08 Commissioner Peerson "Here is where I'm landing on this. I think it's important that I believe that this is a significant change and not a clarification. I feel as if Path of Travel will be burdensome, confusing and not clear so I'm not in favor of that change."

41:35 Commissioner Boomhower comments that the problem they seem to be getting into here is that "what is being proposed in this section; Legal Pedestrian Path of Travel, while not a defined term in the code [SDMC] and I'm thinking of at least 3 other places where it is a defined term, in the California Building Code and in the Green Book what I think this [adopting the proposed code amendment] just opens us up

to is 'creative lawyering' not that I'm opposed to that [you should be] I do it all the time…what's happening is that matters that come before Planning Commission the issue is that this needs to be fleshed out more before it gets to us…I don't really think we can fix this today. So my druthers would be but that the code while imperfect could we just stick with the code language as is and put that in front of Council and if Council wants to change it fantastic. They actually get paid to be up here… It's a tortured motion right now. I'd vote to withdraw it."

COMMISSION ACTION:

Motion 1: MOTION BY COMMISSIONER HOFMAN TO RECOMMEND CITY COUNCIL TO APPROVE STAFF'S RECOMMENDATION ON "MEASURING DISTANCE FOR PATH OF TRAVEL BETWEEN USES" TO KEEP THE CURRENT LANGUAGE IN THE CODE AND NOT ACCEPT STAFF'S PROPOSED LANGUAGE. Seconded by Commissioner Boomhower. That motion passed by a vote of 5-0-2 with Commissioners Hofman, Austin, Granowitz, Boomhower and Otsuji voting yea and with Commissioner Whalen and Commissioner Austin recusing.

Motion 2: MOTION BY COMMISSIONER HOFMAN TO REQUEST STAFF TO LOOK AT THE CURRENT CODE SECTION FOR PHYSICAL BARRIERS WHEN MEASURING DISTANCES BETWEEN USES AND BE ABLE TO PROVIDE A CONSISTENT INTERPRETATION. Seconded by Commissioner Granowitz. That motion passed by a vote of 5-0-2 with Commissioners Hofman, Austin, Granowitz, Boomhower and Otsuji voting yea and with Commissioner Whalen and Commissioner Austin recusing.

Motion 3: MOTION BY COMMISSIONER BOOMHOWER TO RECOMMEND CITY COUNCIL TO APPROVE STAFF'S RECOMMENDATIONS ON THE "MEASUREMENT FROM A RESIDENTIAL ZONE" OF STAFF'S PROPOSED LANGUAGE IN MEMO PROVIDED ON 12/12/19. Seconded by Commissioner Hofman. The motion passed by a vote of 5-0-2 with Commissioners Hofman, Austin, Granowitz, Boomhower and Otsuji voting yea and with Commissioner Whalen and Commissioner Austin recusing.

Motion 4: MOTION BY COMMISSIONER GRANOWITZ TO RECOMMEND CITY COUNCIL TO APPROVE STAFF'S RECOMMENDATIONS ON THE ON THE "EXPIRING OF MEDICAL MARIJUANA CONSUMER COOPERATIVES, CANNABIS OUTLETS AND CANNABIS PRODUCTION FACILITIES" WITH NO CHANGES. The motion passed by a vote of 5-0-2 with Commissioners Hofman, Austin, Granowitz, Boomhower and Otsuji voting yea and with Commissioner Whalen and Commissioner Austin recusing.

[I cannot help but marvel at the amount of time, money and energy that went into this update. An update that Commissioner Granowitz recognized in her comments as a total waste of time. And why? Because Gina Austin wanted to make it easier to qualify more cannabis businesses in the City. Both Gina and Phil Roth admit this. Yet even when given the opportunity to draft the Path of Travel language they could not get past the fact that it was a complicated endeavor as Path of Travel had already been legally defined. All they had to do was call that measurement something different. Something that neither State or Municipal Code had established. Perhaps calling it a Property Line Variant to established code and it would have not entangled what they were trying to do with a previously established legal definition. In any event the Planning Commission got it right thanks to Commissioners Boomhower and Peerson digging into the definition of Path of Travel.]

2020/01/30 Minutes

ITEM–1: 4337 HOME AVE. ALCOHOL CUP Request for Reconsideration - Planning Commission Hearing on 12/15/19 *[There was no 12/15/19 Planning Commission Hearing. I linked the 12/05/19 hearing.]*

PROJECT NO. 593686

City Council District: 9

Plan Area: Mid-City-City Heights

Staff: Edith Gutierrez

Speaker slips in favor of the project submitted by Evelyn Gomez, Lorena Lara, Randall Zaitona, Arkan Somo, and Baydaa Somo.

No speaker slips in opposition to the project were submitted.

01:28 Edith Gutierrez, DSD requests a continuance on ITEM 1.

4:00 Arkan Somo President of AVAN Investment Inc. discusses the continuance. The continuance is denied and the motion will be heard.

09:06 Commissioner Hofman introduces ITEM 1 to explain how a ⅔ vote of the commission is necessary to suspend the permanent rules of the Planning Commission. If that motion is approved another motion may be brought forward to reconsider the past denial.

11:44 Edith Gutierrez provides the staff report.

14:30 Arkan Somo presents evidence in support of his motion for reconsideration to deny the CUP allowing the sale of alcohol (beer and wine).

24:15 Lorena Lara in support of the reconsideration.

26:08 Evelyn Gomez in support of the reconsideration.

The motion to suspend the permanent rules is passed.

The motion to reconsider is passed.

COMMISSION ACTION:

MOTION 1: MOTION BY COMMISSIONER BOOMHOWER TO SUSPEND THE PERMANENT RULES OF THE PLANNING COMMISSION. Seconded by Commissioner Whalen. The motion passed by a vote of 6-0-1 with Commissioners Hofman, Austin, Granowitz, Boomhower, Otsuji and Whalen voting yea and with Commissioner Peerson absent.

MOTION 2: MOTION BY COMMISSIONER WHALEN TO RECONSIDER ANY MATTER TO PERMIT CORRECTION OF HASTY, ILL-ADVISED, OR ERRONEOUS ACTION, OR TO TAKE INTO ACCOUNT ADDED INFORMATION OR A CHANGED SITUATION THAT HAS DEVELOPED SINCE THE TAKING OF THE ORIGINAL VOTE. Seconded by Commissioner Austin. The motion passed by a vote of 6-0-1 with Commissioners Hofman, Austin, Granowitz, Boomhower, Otsuji and Whalen voting yea and with Commissioner Peerson absent.

2020/02/13 Minutes

ANNOUNCEMENTS/PUBLIC COMMENT

01:10 Kathleen Lippitt commented on Appeal withdrawal 72 hours rule citing "when an appeal is withdrawn the public deserves a 72-hour notice. "We take the time to come down to these hearings only to find out that an item has been removed the night before. They should be required to follow the 72-hour rule…it seems like everything is done to accommodate the project and it doesn't matter if you have an existing CUP, as a church in Rancho Bernardo had, or whether you had Covenants or filed reports with the City, none of that matters. People are not going to be able to trust the City because private property owners or businesses that are in the path of these places [marijuana businesses] don't have a chance against them and the City telling all these people 'well fight it out in court.' Well good luck with that when you have such deep pockets on the other side and you have the support of the City behind you and it just really makes me angry…California prided itself on its attention and priority to protecting the environment until marijuana businesses came along and then because the State said 'we're going to exempt them from these *[CEQA]* inexplicably, because there is solid evidence as to what these places do [to the environment]."

REQUESTS FOR ITEMS TO BE CONTINUED AND/OR WITHDRAWN

ITEM–2: Appeal of the Hearing Officer's decision on November 20, 2019, MO 11189 SORRENTO VALLEY ROAD # 103 - PROJECT NO. 559038 - WITHDRAWN

2020/02/20 Minutes

ITEM–3: 4337 Home Avenue Alcohol CUP Reconsideration of Planning Commission's decision on December 5, 2019

PROJECT NO. 593686

City Council District: 9

Plan Area: Mid-City-City Heights Community Plan Area

Staff: Edith Gutierrez

Speaker slips in favor of the project submitted by Maria Cortez, Randall Zaitona, Lorena Lara, Evelyn Gomez, Rickie Brown, Peaches Turner, Leticia Leal, William Perno, Peggy, Walker, Dawn Kamali, Kathleen Lippitt, Arkan Somo, and Baydaa Somo.

Speaker slips in opposition to the project submitted by Theresa Quiroz.

46:08 Commissioner Peerson introduces ITEM 3 with Edith Gutierrez and Kyle Gossen from DSD presenting.

49:25 Arkan Somo in support of reconsideration.

55:50 William Perno in opposition of reconsideration is actually neutral in this but requests that if the CUP is granted more restrictive language is added to the CUP.

1:09:10 Leticia Leal and others in favor of reconsideration.

1:17:15 Randall Zaitona tenant for the MO and in favor of reconsideration explaining why there were two separate CUP applications submitted for the project.

1:20:35 Theresa Quiroz in opposition to the reconsideration citing "reconsideration is a double-edged sword…this is a 24 hour gas station…On January 30th, when referring to the homeless loitering around his property Mr. Somo states 'there was a time that we asked them to leave and now we don't. We need to strike a balance between kindness and being the law.'..this loitering is no longer a hypothetical danger, I had no idea this problem existed and no such information had been presented to you but it has now and it is deeply, deeply concerning. There is nothing harsh or hasty about evidence that has been presented to you and I hope that you will fully consider this new evidence, provided by the applicant and take actions to protect the health and safety of those patronizing the alcohol sales establishment."

COMMISSION ACTION: MOTION BY COMMISSIONER WHALEN APPROVING THE STAFF'S RECOMMENDATIONS TO DENY THE APPEAL, AFFIRM THE HEARING OFFICER'S DECISION AND APPROVE CUP PERMIT NO. 2225844 FOR A TYPE 20 ALCOHOL LICENSE AT AN EXISTING AUTOMOBILE SERVICE STATION (ARCO) AND MINI-MARKET (AM/PM). Seconded by Commissioner Granowitz. The motion passed by a vote of 6-0-1 with Commissioners Peerson, Hofman, Austin, Granowitz, Boomhower and Whalen voting yea and with Commissioner Otsuji absent.

2020/04/16 Minutes

Non-Agenda Public Comments were read into the record by Assistant Deputy Director PJ FitzGerald.

14:18 Peggy Walker commented on cannabis and vaping use during the COVID pandemic.

15:36 Kathleen Lippitt commented on cannabis and vaping use during the COVID pandemic citing increased health risks associated with smoking and vaping cannabis during COVID 19."

2020/05/14 Minutes

ITEM-2: 4337 HOME AVE MARIJUANA CUP Request for Reconsideration of Planning Commission's decision on December 5, 2019

PROJECT NO. 593686

City Council District: 9

Plan Area: Mid-City-City Heights Community Plan Area

Staff: Edith Gutierrez

Testimony in favor by Arkan Somo, Nick Psyhogios, James, Alicia, Baydaa Somo, Evelyn Gomez, Lorena Lara, Randall Zaitona, Valentina Zaitona, Irving Frias and Victor Manuel.

Testimony in opposition by Gina Austin, Barbara Gordon, Teresa Quiroz, Kelly McCormick, Becky Rapp, Judi Strang, Kathleen Lippitt, William Perno, Dawn Kamali, Maria Cortez and Marcela Escobar-Eck.

1:02:28 Commissioner Hofman introduces ITEM 2 and the DSD Staff Presentation. Staff supports the reconsideration.

1:20:28 Arkan Somo in support of reconsideration introduces Nick Psyhogios with Latitude Planning and Engineering *[Peerson's company]* citing "The project was heard and denied on December 5, 2019, during this hearing municipal code 131.0103 Section 2 was cited regarding boundaries of zoning related to measurements of distances. We believe that this code was misinterpreted and does not apply to this Conditional Use Permit. Municipal Code 113.0225(c) is the relevant code for measuring distances of cannabis facilities. The project complies with that 100-foot minimum setback as it maintains a 124' separation as measured under SDMC 113.0225(c). Furthermore, on December 12, 2019, the Planning Commission unanimously voted to adopt a clarification of distance requirements pertaining to municipal code 113.0225 that proposed new language between cannabis facilities and residential uses stating that measurements horizontally in a straight line between the two closest points of the property lines without taking into account any barriers…we believe the information provided is valid and the project complies with all municipal code.

1:29:12 Randall Zaitona future MO tenant in support of reconsideration citing "mainly that in the December 5, 2019 hearing we were denied due to the confusion about the municipal code related to the distance between the marijuana outlet and a residential zoning, after we were initially approved by the Hearing Officer. I believe this property is in compliance with the zoning code, which is why it has the support of City staff. There was also a project that was approved at 3940 Home Ave a few months ago that has the same circumstances. They have residential right across the street which the staff and Hearing Officer deemed to be in compliance with the City requirement of a 100-foot separation from a residential zone and I would hope you treat our project the same way you treated theirs because I know the Planning Commission strives to treat every applicant equally."

1:31:57 two employees of the ARCO in support of the reconsideration.

1:33:11 Baydaa Somo, CFO, AVAD Investment Inc., in support of the reconsideration citing "…we started this application 2.5 years ago…all we're asking for you today is to give us the opportunity to prove the separation you require exists."

1:35:40 Gina Austin, Austin Legal Group in opposition to the reconsideration citing "…and as most of you are aware, I represent dozens of legal cannabis companies within the City. I don't have any opinion on the project one way or another *[sure]* but I do want to express my concerns related to unintended consequences of suspending the rules to reconsider CUPs that are a Process 3 and are capped by either a number or other distancing regulation. In a Process 3 there is a sense of finality after Planning Commission hears the matter and makes a determination both for those who are denied and those who are approved. This is especially important in the very competitive cannabis industry. Once the CUP is approved, the applicant will begin the process of the building plans and construction and as you know this is expensive and time-consuming. If any other applicant can come back to Planning Commission and say 'I'd like you to reconsider my matter because A,B and C and there is not a time frame by which this is to occur, there's not a number of times this comes back, that takes that sense of finality and security away from the people who have been approved. It makes it impossible for them to move forward with their construction without the risk that something is going to come an end that for them. Even with denied applicants I can tell you that I've had denied applicants *[who are they Gina?]* by Planning Commission and every one of them felt that it was an issue that Planning Commission just didn't truly understand *[and what specifically were those issues Gina?]* and wanted to come back and have Planning Commission hear that again and it may be they may have wanted to come back more than once*[sure]* and months down the road, these

considerations open this up in this environment where there's a limitation on how many permits can be issued it creates a situation where just chaos is going to occur because every one of these is super competitive. As I understand it, Planning Commission has reconsidered projects maybe 10 times in their history but never one of a cannabis company and that brings me to my final point that if you are going to suspend the rules and set this for reconsideration it is important to know that the public know what that process is going to be. How does one get docketed to make this request? How long do they have to do this? How many times can you ask for reconsideration? While it may be appropriate in other instances, I believe it is important that Process 3 is limited, in a competitive environment that reconsideration not be allowed."

1:39:00 Barbara Gordon in opposition to the reconsideration.

1:40:49 Theresa Quiroz in opposition to the reconsideration citing "to deny this project until it complies with the Chollas Creek Enhancement Plan 'that the applicant and the building construction follow the guidelines of the Chollas Creek Enhancement Plan.' Page 61 of the Mid-City Community Plan states that projects must implement the Chollas Creek Enhancement Plan…at the appeal hearing I provided you with facts regarding the Chollas Creek Enhancement Plan and the actions that must be taken to comply with it. I am sure that you have reviewed that prior hearing, so I'll not go over them again. Finding Number 1 is that 'the proposed development will not adversely affect the applicable land use plan.' It does affect it. It ignores it. So when this Commission denies the project it did so with facts in the record to uphold that decision. Finding Number 2 'it will not be detrimental to the public health and safety.' I also provided the Commission with evidence that the project without the Chollas Creek Enhancement Plan being implemented poses a risk to public safety. So, when this Commission denied this project, they did so with facts in the record to uphold that decision. So, I'm requesting that the Commission determine there was sufficient evidence in the record to deny the project when that decision was made and therefore reconsideration is not necessary. Instead, I ask the Commission to send the project back to staff with the requirement that it be redesigned to implement the Chollas Creek Enhancement Plan as required by the Mid-City Community Plan and as recommended by the City Heights Area Planning Committee."

1:43:02 Kelly McCormick in opposition to the reconsideration citing separation issues.

1:43:59 Rebecca Rapp in opposition to the reconsideration citing separation issues.

1:45:53 Judi Strang in opposition to the reconsideration citing separation issues and "the bus stop right across the street from the proposed marijuana outlet is really problematic. Parents really felt the decision you made in December was fair, thoughtful and well considered and we'd like to see it stay in place."

1:47:55 Kathleen Lippit in opposition to the reconsideration citing the "collocation of alcohol and cannabis and failure to identify the owner/operators."

1:50:27 William Perno in opposition to the reconsideration citing the the Planning Commission decision on December 5 2019 was correct. "In the November 27, 2013 Report to the Planning Commission, Report No. PC-13-134, the City Council directed the City Attorney to develop a new Ordinance regarding marijuana and 'add a 100 foot buffer from a residential zone.' City Ordinances 141.0504(a)(2) and 141.1004(a)(2) were created, requiring marijuana businesses to be 100 feet from a residential zone. Zones are not uses and zones, per City Ordinances have a separate way of measuring from zone boundaries. Municipal Code 131.0103(b)(2) zones states, in (a)(2) section 'where a zone boundary follows a public

street the centerline of the street shall be the boundary. That is the applicable section for this zone because Home Avenue is the centerline of the residential zone boundary separating the applicant from a 94 unit residential low income housing and it's only 60 feet from the project applicant's property line to the centerline of Home Avenue and we know this because it is in the Cycles Issues Report made on April 26, 2018 by DSD employee Cherlyn Cac as a major issue. *[This contradicts what Edith Gutierrez said to Commissioner Boomhower on December 12, 2019 when @ 11:06 Gutierrez states that they [DSD} had been using a property line to property line measurement for the last 5 years as that had been their interpretation of the code].* This report was not shared with the Hearing Officer or with the Planning Commission. It does not exist in those documents. Instead, a different report was submitted by DSD using incorrect measurements that crossed the zone boundary. This measurement used by DSD is incompatible with the existing San Diego municipal codes referenced above. DSD incorrectly measures distances from zone boundaries by crossing the boundary and measuring from residential property lines within the zone. This is why there is a marijuana outlet and production facility from military housing nearby this location on Home Avenue. That measurement was wrong and not consistent with City codes."

1:54:21 Dawn Kamali on behalf of Maria Cortez who is in opposition of the reconsideration citing "…on June 4th the City Heights Community Planning Committee voted 11-4-0 to recommend denial of the CUP for the cannabis outlet…the detrimental effects of the proposed development to public health, safety and welfare is my greatest concern. Walk in our shoes. Do you want to live across the street from a retail cannabis business in a high crime area? We feel that this proposed retail cannabis business could be a potential magnet for crime due to the close proximity of the 805 off ramp…they deal with cash and a highly prized product…why is this happening in City Heights and not Carmel Valley or Point Loma?"

1:57:25 Marcela Escobar-Eck in opposition to the reconsideration citing "I'm not speaking on the merits of this project that is a whole different issue, but I am going to speak to the reconsideration. In about my 30 years' experience I can think of maybe 5 reconsiderations that happened at Planning Commission and I think that this is a dangerous precedent, particularly for a use that is highly competitive. There are people who are making significant investments of their retirement funds and savings into these facilities and they do that based on the reliance of decisions made by the Hearing Officer and the Planning Commission…to me the fact that the CUP has both alcohol and cannabis, to me that ties the premises together as a unified use and I think that, again reconsidering this item is a dangerous precedent because I don't know this is something often done by the Planning Commission and especially in this competitive environment it really could affect people's investment."

1:58:56 Commissioner Hofman comments to the commissioners that the first action, similar to what they did with the alcohol CUP reconsideration for this project, will be to suspend the permanent rules of the Planning Commission with a ⅔ vote, meaning 5 Commissioners will need to vote yes to suspending the permanent rules and if they are suspended then we will need another motion to be approved by a majority of the Commission to reconsider if that's what we decide to do. But I would like to open this up to comments because the reason he brought this up for reconsideration is I believed I made an erroneous decision.

Hoffman: The first thing I'd like to do is ask a question of staff, does this project comply with the distance rules as the staff has applied them throughout all the marijuana businesses?

Gutierrez: Yes, it is consistent, and it does comply.

Hofman: Ok, that's my reason for bringing it back.

2:01:01 Commissioner Austin" Isn't what we're actually discussing is whether we're actually going to reconsider it, or has that already been decided?"

Hofman:"...no it hasn't been reconsidered. Our discussion today is simply to decide if we want to reconsider this item. It is not to be discussing the merits of the project...I would like the Deputy City Attorney Corrine Neuffer to comment on our procedures."

2:01:52 Corrine Neuffer Deputy City Attorney wanted to clarify "you do have the procedure for reconsideration in your permanent rules, the purpose behind such a procedure is set forth whenever you believe a matter was done in haste and you want to correct that hasty, ill-advised, erroneous action or take into account added information or a change of situation. When doing so, as Commissioner Hofman mentioned, you would first have to suspend the permanent rules by a ⅔ vote before you may vote on a request for reconsideration. If that vote does pass and you do a motion to reconsider it needs to be done by member of the prevailing side on the initial vote when you denied the permit and then you should also include in there why you feel it meets one of those categories of hasty, ill-advised, or erroneous action or added information or change of situation. At such time if that motion does pass by a majority vote, the item will be renoticed or noticed to actually consider the CUP on the outlet."

2:03:32 Commissioner Austin explains that he is willing to listen to the other Commissioners, but he is uncomfortable reconsidering this even though they reconsidered the alcohol CUP because "they were confused and didn't realize we were taking away something he already had."

2:04:33 Commissioner Boomhower "I don't want to get into a debate with staff on this, but **I believe before and I believe now that they are incorrectly applying the distance measurements.** The property lines haven't moved, and I think we made the right decision on this the first time. I agree we made an error on the alcohol CUP and rectified that but I'm with Commissioner Austin, I think we considered this marijuana outlet, we listened to the testimony, we made a decision that was supported by the findings, and I see absolutely no reason for us to reconsider this matter."

2:05:33 Commissioner Granowitz "I'm in complete agreement with the other Commissioners. I completely supported the reconsideration of the alcohol permit. I think we erred on that, but I never was in support of the CUP for the marijuana facility and **I absolutely agree that the City is misinterpreting the rule about the distance** and I do believe there are health and safety issues with putting a marijuana facility at this location and I do not support the reconsideration."

2:06:29 Commissioner Moden "I'm not as educated on this as the other Commissioners so at this juncture I would side with the majority of the remaining Commissioners on their perspective... I would feel comfortable abstaining"

2:08:02 Commissioner Otsuji "I'm still unclear as to the distance. I've heard both sides is it from a legal standard what's the standard for the distance being correct or incorrect but if we want to reconsider that's the issue which is making me decide would support or not support it, because I've heard both sides of it so...Corrine can you repeat the answer for this from a legal standpoint?

Neuffer: "With respect to the legal interpretation, I think that's what you're asking about, the legal interpretation of the distance separation"

Otsuji: "yes"

Neuffer: "If a court were to look at this and look at the interpretation, the actual regulations regarding the distance separation requirement, it would first look to see whether the language in the municipal code is clear and unambiguous. If it is clear and unambiguous meaning there is no ambiguity with respect to the language in the municipal code, the court would use the words, the plain meaning of the words in the municipal code. It would only get to the legislative intent or how the decision makers have been interpreting this language in the past if the language was ambiguous meaning that you really couldn't decipher from the language what the meaning is. Does that help?"

Otsuji: "So in this case is it clear?"

Neuffer: "That would be something…I mean ahh, obviouslythat's within your discretion to look at that and see if you think that it is clear. A court may have a different opinion on that but looking at the language whether ti distance separation requirement to the residential zone whether it's based upon a residential zone or on the property line."

Otsuji: "So in other words, to get to the end game we would have to approve a reconsideration of this and have a hearing to really get to the end game. Am I interpreting that correct or incorrectly? "

Neuffer: "Ahh yes. I mean It does come into play with respect to this reconsideration vote because uhm it would be whether ya know whether you're using that it was an erroneous action and based upon a different interpretation of that language."

Otsuji: "Ok thank you. I'll leave it at that and we'll complete Commission comments and I'll get back." *[it seems pretty clear from the tenor of that exchange that both Counsel and Otsuji were uncomfortable with this exchange as the separation requirements are clear and the distance, as was the code at the time, is to be measured from the zone not the property line. The problem comes from staff recommending the approval after having Project Manager Cherlyn Cac recommend denial based on the proper separation code interpretation of the municipal code. And presumably the Commission was not even aware of that because the Cycles Review Issues, prepared by Cac, were not in either the Hearing Officers or the Planning Commissioners Reports. DSD and Edith Gutierrez willfully ignored it.]*

2:11:29 Commissioner Whalen "I found both Gina Austin's and Marcela Escobar-Ecks comments **persuasive** because they align with my own belief that our regulatory system for the permitting of these facilities isn't as good as it could be so I'm coming at this from a different perspective I'm reluctant to introduce yet another variable into the approval process so I'm going to not support the reconsideration on that basis."

2:12:08 Commissioner Hofman "Again I'll repeat what I said earlier, to me after our approval I did look at the Ordinance, I spoke with staff, my understanding was and is today that the way staff has interpreted that distance has been consistently applied to all other outlets in the past *[See my Cac comments above. That is just not true Commissioner!]* and that's why I felt, at least my vote was with the understanding that it was an error. After I followed up. So that's the reason I thought and would support the reconsideration. It doesn't mean that's how I'll end up voting on the project, we're not talking about the project merits. I don't see the votes here for reconsideration quite frankly so I'm not going to make a motion. I'm going to wait and see if there is a motion that can be made, and I'll ask for a motion. And hearing none, we will conclude this project and there is no reconsideration. We did not get a motion.

COMMISSION ACTION: Reconsideration not supported.

[Clearly Ausin and Escobar-Eck were persuasive in their opposition to the reconsideration. The reality is they were ALL in on this. PJ and Edith were offering their approval to a project they knew did not meet the land use separation. The fact that just blocks away 3940 Home had a Gina Austin client, Aaron Magagna facing the same separation issues means that the municipal code had to be interpreted differently than the 'plain language' that mandated both of their denials. Austin and Escobar-Eck had a "friendly" in Commissioner Whalen. They silenced everyone else on the Commission with the opposition voices, but they silenced them for the wrong reasons. The Motion to Reconsider this project based on the vetting of the separation codes would have been fleshed out in that hearing. Unfortunately, that was not to be the case. Of course, the final chapter in this odyssey has yet to be written. This project eventually does get an approval CUP for an MO at this location. More on that later.

At this point in the story we need to look at the first 3940 Home Ave MPF CUP application, Project No. 611536 DSD Contact Angela Reis, that was approved by the Hearing Officer as ITEM 8 on 2019/03/06. As can be seen by the Minutes Gina Austin and Marcela Escobar-Eck spoke in favor of this project.

The decision to approve that CUP was based in large part on the Report to the Hearing Officer (HO-19-020), authored by DSD Project Manager, Hugo Castaneda, which recommended; "Approve Conditional Use Permit No. 2167710." Hugo Castaneda issued CUP No. 2167710 to Aaron Magagna on 2019/06/13. This approval decision was appealed and a Report to the Planning Commission (PC-19-042) was submitted by PJ Fitzgerald and Hugo Castaneda.

The second CUP at 3940 Home Ave was for a MO. CUP No. 599099 was approved by Hearing Officer Chris Larson on 2019/03/20 as ITEM No. 7. As can be seen by the minutes, Gina Austin spoke in favor of this project.

The decision to approve that CUP was based in large part on the Report to the Hearing Officer (HO-19-034), authored by DSD Project Manager, Tim Daly, which recommended; "Approve Conditional Use Permit No. 2115900." Tim Daly issued CUP No. 2115900 to Aaron Magagna on 2019/06/07. There was no appeal filed on this project decision.

We know that both 3940 CUP's faced the same sensitive use boundary issues that 4337 had yet when the two 3940 Appeals were filed, both on the MPF and none on the MO it's with noting who filed those appeals and on what grounds. On the 611536 MPF Project, under Customer Information, we see the appellants as Rodney Eales of RS Industries and Khoa Nguyen of lobbyists Rath Miller who are both listed as Agents and Concerned Citizens on the Customer Information portal.

The problem that this 3940 project exposes is what amounts to a critical flaw in the processing system that unscrupulous attorneys. lobbyists and certain bad actors in DSD have exploited it for their own gains. While the Commission has decided to not reconsider the 4337 project the Hearing Officer approves both the 3940 CUPS and the only one on appeal, the MPF (no appeal was filed on the MO), is withdrawn for the 2019/06/06 ITEM 5 Planning Commission Hearing.

There were capable opposition speakers ready to challenge this 3940 approval, but the Commission never got to hear those arguments. Instead, the strawman appeal opposition withdrew their appeals, and the CUPs were issued. This could not be more unfair to the people of these communities and the applicants who want to believe that the system isn't rigged to pre-pick the winners and losers all while trying

desperately to make it look, to some degree, that community interests and fairness is in play. I wonder if the Planning Commission is aware of what DSD has done here. How they have been played or if they are even a party to these actions? That, and to the extent it can be proven, has yet to be determined.]

2020/07/16 Minutes

ANNOUNCEMENTS/PUBLIC COMMENT Michelle Sokolowski, Deputy Director in the Project Submittal and Management Division of the Development Services Department, congratulated Chair Hofman and Vice-Chair Whalen on their recent appointments. On behalf of Elyse Lowe, Director of the Development Services Department, she announced PJ FitzGerald as the City's new Cannabis Division's Deputy Director. She will be formalizing and coordinating the City's Cannabis local, and state mandated regulatory requirements. She will be working with the City Treasurer, the Fire Department, the Police Department, City Attorney, Code Enforcement, Planning Department, Sustainability, and handling Council Policies and land issues. She will also continue to lead the Project Management Section and work with the Planning Commission until a replacement is found. Currently, Paul Godwin has been assisting with special projects and working with virtual hearings.

PUBLIC COMMENT-1: Kathleen Lippitt commented on Marijuana business.

8:54 Kathleen Lippitt ...Land use decisions frequently are misunderstood by the public and sometimes by Council as well. Every municipal code change, in definition or intent, made by DSD has the fingerprints of marijuana lobbyists. DSD Staff admitted that their requirements for marijuana businesses were different from any other business. Over strenuous objections of concerned residents, Council supported DSD proposed MO changes in distance measurement from a zone boundary to property line to property line and marijuana business permitting processes from a 3 to a 2. These changes undermine the sanctity, quality of life and community character of our neighborhoods.

Every single municipal code update has been a win for marijuana lobbyists. City Staff is tasked with clarifying or simplifying codes. Not making policy changes. The unholy alliance between City Staff and marijuana lobbyists demoralizes the public. Thank you.

PUBLIC COMMENT-2: Martha Welch commented on bonds.

PUBLIC COMMENT-3: Kelly McCormick commented on 12th Update Land Development.

11:34 Kelly McCormick I'm calling to share my concerns with the 12th Update of the Land Development Code approved Tuesday by the City Council. As you know the procedure for the review of the Marijuana Business Applications has been changed from Process 3 to a Process 2, eliminating the public's right to contribute information to the review process at Hearing Officer level and to hear vital information about possible health, safety and code violations in an open public forum.

In addition, changes were made to the way distance is measured between marijuana businesses and residential zones. The new rules were suggested by the pot industry and give them the benefit of a looser standard.

Since you *[Commissioners]* were not elected but appointed to be the watchdogs of land use decision making, I would hope that you would insist that transparency be maintained and in the public eye. Not behind closed doors. Thank you.

PUBLIC COMMENT-4: Rebecca Rath commented on Marijuana Outlets and businesses.

12:51 Rebecca Rath After my experience at City Council on Tuesday I really appreciated that the Commissioners previously recognized that marijuana outlets and businesses should be measured in a straight line of 1,000 feet from a youth sensitive location. Fortunately, the original proposed contrary language was removed. Unfortunately, the language remained about measurement of marijuana outlets and businesses to residences utilizing a property line inside a residential zone instead of the residential zone border which would have protected so many vulnerable populations and you all recommended against it. Frankly it's not fair that a home is not considered a sensitive use like a park or a school. With San Diego Unified School District going 100% virtual next month, my child's school and playground is his backyard. Perhaps the Planning Commission will consider making the recommendation that would demonstrate their concern for communities suffering disproportionately from COVID and have our homes be designated sensitive uses. Thank you for your consideration.

PUBLIC COMMENT-5: Peggy Walker commented on Municipal Code regarding Marijuana businesses. Note: Deputy Director PJ Fitzgerald acknowledged the Public Comment form received by Kathleen Lippitt, Jan LaGrone and Kenny Nguyen.

14:15 Peggy Walker

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Neither the minutes nor the archived videos can be found for this date. Please refer to the "Anomalies" paper to better understand what we can and cannot find on this date.

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