

# Licensed Marijuana Outlets and My Story of Setbacks

How 'Pay to Play' Land Use Regulations May Affect Your Rights as a Property Owner and The Rights of Licensed Child Care Facilities in the City of San Diego

By Darryl Cotton  
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On 7-15-19, after 5 days of trial on a sham Breach of Contract lawsuit that stemmed from the sale of my, commercial real estate property located at 6176 Federal Blvd., to **Larry Geraci (Geraci)** the matter has now been decided and settled by a jury of my peers. I lost, Geraci won and the jury awarded him \$261K in damages. As I write this I'm just awaiting the trial Judge Wohlfiel to enter the final Judgement on a lawsuit Geraci had filed in an attempt to steal my property from me. Geraci won in court but let's look at what he really won.

Under our agreement, Geraci was going to purchase and develop my property into a licensed **Marijuana Outlet (MO)** but that would only happen if the license to operate that MO was granted by the City of San Diego. During the course of that trial the **Conditional Use Permit (CUP)** Geraci was seeking to develop the 6176 property into a MO was denied by the **City of San Diego Development Services Department (DSD)** and 6220 was approved and issued a CUP as seen @ [6220 CUP Status as of 7-24-19](#).

One might ask how this could have happened? To understand that you have to know that under our agreement Geraci had been attempting to acquire a MO CUP for the 6176 property with DSD for over two years when in March of 2018 a competing CUP was applied for by a **Mr. Aaron Magagna (Magagna)** at 6220 Federal Blvd. The 6220 property is located roughly 300' away from my 6176 property. San Diego Municipal Code prohibits there being more than one MO within 1000' of one another. This meant that the first one that successfully completed the DSD MO CUP application process would be awarded the CUP and the other would be denied that opportunity. While Geraci and I litigated the Breach of Contract matter the 'Magagna Team' completed all of the DSD required issues at 6220 and was effectively granted the CUP during a October 18, 2018 at a public hearing where DSD and the **Community Planning Group (CPG)** who the speaker was not even authorized to speak on behalf of officially designated CPG for that neighborhood, all recommended awarding the CUP to Magagna and denying it for the 6176 project.

At this point in the story it's important to keep in mind that I, as the owner of the 6176 property, had NO CONTROL over the CUP process based on the way Geraci had applied for it. Geraci had used a proxy on his behalf, **Ms. Rebecca Berry (Berry)**, [Geraci Trial Exhibit no 30 - Form DS-318](#) so that even he was not known, purportedly, to DSD during the application process. This meant that any information I would get on the progress at 6176 had to come from Geraci or what could be seen online at the DSD website. This is ultimately what I had to use to track the comparison progress between the 6176 and the 6220 projects.

Under the agreement Geraci and I had and then found ourselves litigating over at trial, Geraci was required to pay for all the CUP Architectural (TECHNE), Engineering and DSD processing fee's that would eventually and hopefully lead to the acquisition of a MO CUP at the 6176 property. But what happens when the once amiable agreement is being contested in court and Geraci stands to lose and the CUP,

once awarded, goes with the property and not to Geraci? Well if that were to happen Geraci stood to lose a lot of money and would do whatever it takes to avoid that.

Once this litigation had begun, it became clear to me that the best course of action for Geraci to take, and I testified as such to it during trial, would be for him to somehow have the 6176 CUP denied by any means necessary. If that meant sabotaging the 6176 CUP process through a court ordered, forced geotechnical soils analysis that Geraci would have control of the outcome of that analysis, with having requested and being denied 3<sup>rd</sup> party court appointed oversight over the geotechnical soils work being required by DSD ([See Ahbay Schweitzer Sworn Declaration in support of a Court Order mandating access to the 6176 Property for Geotechnical Testing](#)) or of that didn't work to have a competing CUP located within 1000' of the 6176 CUP be approved than it was only logical to expect him to do so.

If Geraci were to be successful in denying the 6176 CUP that would have effectively ended any economic damages that would have come from a Geraci loss and a Cotton win on the sham Breach of Contract matter. I believe that based on the weakness of his case he fully expected to lose so I wasn't at all surprised his tactics however **I was very surprised to learn that the City of San Diego would cooperate with Geraci and his 'Team' of lawyers, architects and paid lobbyists to facilitate this scheme.**

I realize I have just made a very serious allegation with that last statement and may even sound crazy by having done so but I believe that once the facts are presented here any clear headed unbiased person will arrive at the same conclusion. Here's why;

With the limited control I had over the 6176 CUP application and the zero control I had over the competing 6220 CUP application why was I not the least bit concerned when the 6220 CUP application was submitted to DSD or when in trial Geraci and his 'Team' as well as DSD witnesses attempted to paint a picture of how I damaged Geraci by what they described as my having 'delayed' the CUP process at 6176 thus allowing 6220 to finish first? That was their primary narrative at trial and they prevailed in the case by using it. They convinced the jury that I was guilty of a Breach of Contract and that my actions which were an attempt to protect my property from being stolen out from underneath me, had indeed delayed the processing of the 6176 CUP application. But there is a major flaw in that argument and the jury was not able to fully consider it as evidence. Some of that evidence is being presented here for the first time as it was not allowed to be presented to the jury by the presiding trial Judge Wohlfel. I now bring it to the court of public opinion.

For the evidence to support my claim of conspiracy and corruption between Team Geraci and the City of San Diego all one has to do we have to do is look at where the 6220 property was located and how zoning would have immediately disqualified it since it is located within the 1000' radius of not just one but TWO Licensed Child Care facilities. **A review of the City of San Diego DSD form IB-170, Section Two will make it absolutely clear to anyone reading it that there is no situation whereby a proposed MO project could even be accepted by DSD for a CUP application much less approved if that project fell within a 1000' radius of any Licensed Child Care Facility;** [Geraci Trial Exhibit 027 - DSD Form IB-170](#)

For Geraci to have been successful in this scheme, a long list of very qualified people before, during and after the trial had to ignore this condition to see the 6220 CUP application accepted by DSD for review much less see it eventually get approved. Those people would have been those working on behalf of not only Geraci but the **6220 CUP applicant; Aaron Magagna** to see that the 6176 CUP application be denied by any means necessary. I will attempt to explain here in greater detail who those people were and what roles they played in orchestrating this scheme.

What is absolutely certain is that the 6220 project did get approved despite the fact that under oath every one of the Geraci witnesses claimed they were unaware of the Licensed Child Care facilities being within the 1000' radius of 6220. Those statements can all be found in the Trial Transcripts at the end of this document. This response is implausible! Once of the FIRST thing these CUP developers and Land Use Attorneys check for are the projects setback qualifications before they would even consider it for an MO. And when considering the implausible we need to take note that when 6220 WAS approved over the 6176 CUP application, Team Geraci even went so far as to file an APPEAL of the City decision to approve the 6220 CUP to make it look like they tried to deny its being issued. The problem with all of their so called efforts to defend the 6176 CUP application is that even in the extensive APPEAL Team Geraci provided the council they did not raise the Licensed Child Care condition at 6220 that would have led to an immediate denial of the 6220 CUP.

So why is this all so important to me now that the state court trial is over? Well because Geraci won the lawsuit, the CUP has been denied on my property because 6220 got there first and Geraci, even though he doesn't have a CUP on the 6176 property has avoided paying for any damages I would have suffered from the Breach of Contract IF the 6220 CUP had not been approved. And the jury, faced with a cacophony of legal issues they should have never had to decide (as an illegal contract this was a clear non-suit decision that was denied by Judge Wohlfel over two years ago when it was first filed), but were raised by Geraci's lawyers and allowed as a stream of evidence by Judge Wohlfel that went towards convincing the jury that my actions did delay the 6176 project and allowed Magagna @ 6220 to cross the DSD finish line before the Geraci/Berry CUP application at 6176.

Geraci's lawyers used this argument quite skillfully to claim I caused the Breach of Contract and caused the \$261K in Geraci damages but the jury was NOT exposed to the number one thing that would have decimated that entire argument. **I could not have caused any delays to the 6176 CUP application if 6220 had not been approved and when considering that 6220 never did qualify based on zoning that had it been allowed into evidence the entire argument could not have even applied. Here's why;**

As I've stated earlier, there are two, long established, Licensed Child Care Facilities located within the 1000' radius of the proposed Marijuana Outlet (MO) at 6220 Federal Blvd. Had that information been considered by DSD it would have immediately disqualified 6220 from an MO CUP. Both of these Licensed Child Care facilities have obtained proper licensing through the CA Dept. of Social Services and should have been easily identifiable by anyone submitting or attempting to process the 6220 CUP application. One of those Licensed Child facilities is **Cuddles Academy Child Care** who even has a City of San Diego Business License that had Development Services Department (DSD) even investigated their own database it would have been obvious that 6220 was not eligible to apply for a MO CUP. Based on the information I'll provide here and that was publicly available to anyone searching for it at the time the 6220 CUP was applied for, the 6220 MO CUP never should have never even been accepted by DSD much less approved.

We need to first look into what happened that led to DSD ignoring a fundamental aspect of the approval process. For that we need to hear what evidence was provided during a Public Hearing that was held on October 18, 2018 in which community comments were heard and DSD publicly supported the approval of the MO CUP for this project. I would have gone and pointed out the obvious situation with the Licensed Child Care facilities but I was told by my counsel I could be arrested for attending since Team Geraci had managed to convince a judge prior to the public hearing that I represented a physical threat to them and that judge issued 5 restraining orders against me which as you can see by the links below required me to stay 200 yards away from many of whom I expected to be at that hearing.

[Geraci TRO against Cotton](#)  
[Berry TRO against Cotton](#)

[Weinstein TRO against Cotton](#)

[Toothacre TRO against Cotton](#)

[Ferris Britton Law Offices TRO against Cotton](#)

While I really wanted to attend that public hearing to speak out against the 6220 CUP being approved I also didn't want to be arrested so I sent someone to record the hearing. I fully expected Team Geraci to mount a virulent argument as to why 6220 should not even be considered based on a number of issues not the least of which was the zoning setbacks for Licensed Child Care facilities within the 1000' radius. Unfortunately for me it was when I heard the recording of that hearing, I knew with certainty that the 6176 CUP application was doomed.

#### **[6220 Hearing Officer Hearing Audio File 10/17/18](#)**

*Unlike the Planning Commission Appeal Hearing, as linked below, the only record that we have is an audio recording of the Hearing Officer event. Duke Fernandez makes the sole decision on pass or deny this application.*

**At 2:24 into the audio** a Mr. Robert Robinson, Representing the [Broadway Heights Community Council](#) (BHCC) states how he and BHCC is the Community Planning Group (CPG) Council President for the 6220 project and was attending to recommend that the 6220 CUP project be approved over the 6167 CUP project. Mr. Robinson and BHCC is not the CPG for either property. Ken Malbrough with the Encanto Neighborhood Community Planning Group is and Mr. Malbrough was not even in attendance at this hearing. This is fraud and DSD knew it!

**At 5:20 into the audio**, [Attorney Cynthia Morgan Reed](#) a Land Use Regulations and Management Law specialist representing her client Aaron Magagna spends a few minutes telling those assembled that, among other things, that the 6220 project is in complete compliance with all DSD regulations, the community planning group approval, is ahead in the CUP processing of their nearest competitor at 6176 and unlike the competitor is not seeking any deviations from City of SD Land Development Code.

Ms. Reed, as an 'expert' in Land Use law you were required to tell this group that your client's project did not meet the minimum setback distance of 1000' from a Licensed Day Care facility. You chose to ignore that fundamental issue that would have denied the CUP application acceptance and participate in the fraud and conspiracy meant to deprive me of my property and the opportunity to develop it.

**At 9:52 into the audio** Associate Architect Ahbay Schweitzer of Techne from Team Geraci goes on the record as 'the applicant for another MO' to oppose the issuance of the 6220 CUP. Schweitzer spoke for a total of 45 seconds with the only objection to the proposed CUP being the lack of parking spaces that the project would have. This would have been the ideal time for Schweitzer to have raised the zoning issue that put the 6220 project within the 1000' radius of two Licensed Child Care Facilities. Schweitzer being intimately familiar with this DSD zoning issue since he has had to provide DSD radius maps for 6176 neglected to do so in this hearing or later in his appeal of the 6220 Public Hearing approval recommendation.

Under the 6176 CUP submittals Schweitzer/Techne submitted [Geraci Trial Exhibit no 135 - Form DS-190](#) which proves as an Associate AIA Architect he is familiar with the DSD process regarding map radius setbacks and in the case of the 6220 CUP application did nothing to bring this issue up at any time to contest that projects setback compliance.

**At 11:16 into the audio** a Ms. Judi Strang brings up an objection to the proposed project that a 'concerned parent that had contacted her' in regards to the proposed MO being within 1000' of a child care facility at 2195 Oriole Street, SD CA 92114. Well Ms. Strang is citing the wrong address. The actual addresses to these licensed child care facilities are 2145 and 2156 Oriole Street. But let's see how Ms. Cherlyn Cac the Development Services Department (DSD) Project Manager responds to that concern?

**At 12:15 into the audio**, Ms. Cac, who seems well prepared for this question, is uncomfortable answering this question. You hear her state that 'staff' has reviewed the separation spreadsheet/maps and found no evidence of there being any Licensed Child Care facilities within the 1000' radius that would have prevented the City from issuing a CUP at this property.

Well that was an outright lie, Ms. Cac. Your own City of SD business licenses database shows one of these facilities. Furthermore, when your DSD Supervisor Ms. Firouzeh Tirandazi (see trial transcripts at the end of this document) was testifying in the Geraci v Cotton matter she stated that she had not been made aware of any Licensed Child Care facilities within the 1000' radius and if there had been evidence of that, the project site would not have been compliant with SD Municipal Code for that setback requirement. In other words based on the City of San Diego's own municipal code setback requirements it would have been denied! But it gets worse!

On 12/04/18, [Geraci Trial Exhibit 149 - Techne Appeal of CUP Approval at 6220 Federal Blvd.](#) Schweitzer/Techne did a pretty decent job of bringing up numerous objections as to why DSD's recommending approval of the competing 6220 CUP application should be overturned. One would think that based on the work that went into that appeal Schweitzer had done everything in his power to reverse that approval decision. His appeal described the 6220 project drawings which were submitted to DSD as being 'grossly lacking basic information, gross errors and omissions'. On page two of the exhibit Schweitzer takes this opportunity to lobby the commission on behalf of the quality of his work on the 6176 Berry CUP over the work done on the 6220 CUP. I won't go into all the detailed objections that Schweitzer raised in his appeal as there are many. Instead I will cut to the chase. The Schweitzer/Techne appeal was denied which torpedoed the 6176 CUP application while permanently approving the 6220 CUP application.

The only thing I will point out here is that under sworn testimony at trial (see trial transcripts at the end of this document), neither Schweitzer or that of the political lobbyist who was hired by [Geraci](#) to acquire the CUP at 6176, [Mr. Jim Bartell](#), or the various Land Use Attorneys of Team Geraci, which would include [Attorney Gina Austin](#) who in her sworn testimony (see trial transcripts at the end of this document) admits to working for both Magagna and Geraci and while not testifying at trial it was discovered that [Attorney Jessica McElfresh](#) another specialist in cannabis law and land Use Regulations had worked for Geraci on behalf of [TECHNE](#) on the 6220 appeal, **had not, between any of them, ever raised the fact that there were not one but TWO licensed child care facilities within the 1000' setback radius for a MO business to remain outside of in order for that CUP application to even be accepted.** In fact when Schweitzer was asked at trial if he or anyone from Team Geraci had reviewed 6220 for setback compliance Schweitzer stated he couldn't recall seeing it or asking for it but he believed 6220 didn't have any setback issues that could have been argued to DSD as a means of having the 6220 CUP denied. Additionally it can be seen by Schweitzer's sworn testimony in these trial transcripts that he lies about how much time he and Techne used to argue the issuance of the 6220 CUP at the public hearing. Schweitzer was the only one from Techne at the 10/18/18 hearing who spoke in opposition to the 6220 CUP approval and he only spoke for 45 seconds about the lack of parking being proposed at 6220. No other objections were raised. Team Geraci put up an impotent and lackluster performance in defense of the 6176 CUP application because that is precisely what was needed by their puppet masters, Larry Geraci, Jim Bartell and all the attorneys who participated in this Kabuki theatre. They needed 6220 to

finish before the 6176 CUP to avoid the financial damage that Geraci would incur if he got the CUP at 6176 but was left unable to purchase the property.

**That 12/06/18 Appeal** can be seen @ [6220 Planning Commission Hearing video 12/06/18 @ 2:00:20](#)  
*Of note, Commissioner Peerson starts the Item 4 portion of the 6220 hearing by recusing herself because she has a financial interest in the project.*

Here are the two Licensed Child Care facilities that fall well within the 1000' walking distances setback that is a requirement within the SD Municipal Code to accept the application or issue a MO CUP:

[Cuddles Academy Child Care](#)

**2145 Oriole Street**

**San Diego, CA 92114**

619.474.0813

Licensee: Ms. Megan Hanshew

[CA Dept. of Social Services License No: 37621730](#)

[City of San Diego Business License No: 2013028638](#)

Total Path of Travel Distance Between 6220 Federal Blvd. & 2145 Oriole Street: 724.5 ft.

Total Path of Travel Distance Between 6176 Federal Blvd. & 2145 Oriole Street: 1,019.5 ft.

AND

[Village Kids Child Care](#)

**2156 Oriole Street**

**San Diego, CA 92114**

619.955.8568

Licensee: Ms. Michelle DeJohnette

[CA Dept. of Social Services License No: 376616871](#)

Total Path of Travel Distance Between 6220 Federal Blvd. & 2145 Oriole Street: 719.5 ft.

Total Path of Travel Distance Between 6176 Federal Blvd. & 2145 Oriole Street: 1,014.5 ft.





I'm not sure where this will ultimately end up as I am currently deciding on whether or not I should, or could even afford, to file an appeal of this verdict. If I don't decide to appeal, this document will represent the end of my journey to seek a licensed marijuana outlet at my property. If I do decide to appeal hopefully the information I've provided here will find its way into the hands of those who might see it for what it is and can provide me some relief and recovery in terms of how this ruling has affected not only me but my family, friends and employees when it comes to my rights as a property and business owner to develop a licensed Marijuana Outlet on my property here in the City of San Diego.

Additional Links @ Canna-Greed:

- [8.13.1\) Cotton Partial Trial Transcript of 07-10-19](#)
- [8.13.2\) Schweitzer-Techne Partial Trial Transcript of 07-09-19](#)
- [8.13.3\) Bartell Partial Trial Transcript of 07-19-19](#)
- [8.13.4\) Tirandazi Partial Trial Transcript of 07-09-19](#)
- [8.13.5\) Austin Trial Transcript of 07-08-19](#)