



City of San Diego
Development Services
1222 First Ave. 3rd Floor
San Diego, CA 92101

THE CITY OF SAN DIEGO

Development Permit/ Environmental Determination Appeal Application

FORM
DS-3031
OCTOBER 2012

See Information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.

1. Type of Appeal:

- ☐ Process Two Decision - Appeal to Planning Commission
☒ Process Three Decision - Appeal to Planning Commission
☐ Process Four Decision - Appeal to City Council
- ☐ Environmental Determination - Appeal to City Council
☐ Appeal of a Hearing Officer Decision to revoke a permit

2. Appellant Please check one ☒ Applicant ☐ Officially recognized Planning Committee ☐ "Interested Person" (Per M.C. Sec. 113.0103)

Name:
Kurtz Street Cooperative

E-mail Address:
tim@tdmlawfirm.com

Address:
3486 Kurtz Street Suite 102

City:
San Diego

State: Zip Code:
CA 92110

Telephone:
(310) 849-2904

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.

Dana Gagnon

4. Project Information

Permit/Environmental Determination & Permit/Document No.:

Date of Decision/Determination:

City Project Manager:

Project 368321

3/25/15

Edith Gutierrez

Decision (describe the permit/approval decision):
Appealing hearing officer's decision to deny the CUP

5. Grounds for Appeal (Please check all that apply)

- ☒ Factual Error
☒ Conflict with other matters
☒ Findings Not Supported
- ☐ New Information
☐ City-wide Significance (Process Four decisions only)

Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

See attached

RECEIVED

APR 08 2015

DEVELOPMENT SERVICES

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature:

Dana Gagnon

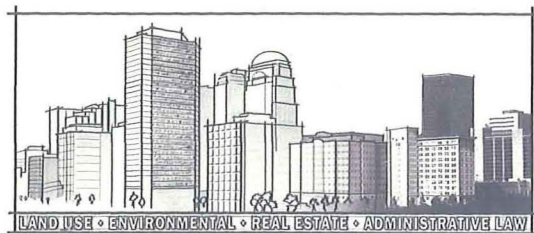
Date: 4/7/15

Note: Faxed appeals are not accepted. Appeal fees are non-refundable.

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Upon request, this information is available in alternative formats for persons with disabilities.

DS-3031 (10-12)



TIMOTHY D. MARTIN, ESQ.
LAW OFFICES OF TIMOTHY D. MARTIN
 177 South Beverly Drive
 Beverly Hills, CA 90212
 (310) 849-2904
 tim@tdmlawfirm.com

April 8, 2015

VIA HAND DELIVERY

City of San Diego
 City Planning Commission
 122 First Ave., 5th Floor
 San Diego, CA 92101

Re: Submission to City Planning Commission in Support of Appeal of Hearing Officer Decision to Deny a Condition Use Permit for 3486 Kurtz Street MMCC; Project No. 368321 (the "Project")

Dear Chairperson Golba and Honorable Members of the Planning Commission:

Pursuant to San Diego Municipal Code (the "Code") §112.0506, the Applicant – i.e., the Kurtz Street Cooperative, Inc. ("KSC") - is appealing the March 25, 2015 Hearing Officer's denial of the conditional use permit ("CUP") sought by KSC for the above-referenced Project. The entirety of this letter, including all of its attachments, is expressly intended to become part of the Project's administrative record, as the City proceedings in this matter do not end until final Planning Commission action. See California Code Civ. Proc. §1094.6(c).

The Hearing Officer's denial of the Project was based entirely on one factor – namely that the City Planning Commission had approved on March 19, 2015 the issuance of a CUP for a medical marijuana dispensary to be located at 3452 Hancock St. Given that the property line of 3452 Hancock St. project is slightly less than 1,000 feet from the Project's property line, the Hearing Officer reasoned that Code §141.0614 (a)(1) required the City to reject the CUP requested by KSC for the Project. The City does not dispute that, in all other respects, Project meets all pertinent Code requirements.

As is discussed immediately below, good grounds exist for this appeal, namely that the Hearing Officer's decision was based on both errors of fact and law. 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). Accordingly, and on an "as-applied" basis, the City's fundamentally flawed MMCC permitting process in the Midway area constitutes an ongoing violation of KSC's constitutionally protected procedural due process rights.

Accordingly, the Planning Commission should grant KSC's appeal and REVERSE the Hearing Officer's decision to deny a CUP for the Project. Failure to do so will leave the City vulnerable to judicial reversal as the Hearing Officer's decision constitutes prejudicial abuse of discretion under California Code of Civil Procedure §1094.5.

KSC's instant appeal is based, among other things, on the following:

- **The 3452 Hancock St. project does not qualify as a MMCC under the operative Code definition of same at the time of the Hearing Officer Decision.** Thus, 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 §141.0614 (a)(1), until and unless 3452 Hancock St. commences to validly transfer medical marijuana to its patients at that location. Consequently, the Hearing Officer's denial of the KSC CUP was based on a material factual error. (KSC's March 25, 2015 letter to the Hearing Officer explains the basis for this argument further, and is attached hereto as Exhibit 1.)
- **City's MMCC Approval Process in the Midway Area Has Been Implemented in a Fundamentally Unfair Manner.**
 - KSC previously informed the City that one of its competitors was attempting to unfairly game the permitting system in the Midway area by arranging to have a straw man file a patently frivolous appeal of the Project's September 2, 2015 Environmental Determination. Upon learning that an appeal had been filed on September 16, 2015, KSC promptly advised the City in writing that the appeal had been filed in an obviously fraudulent and purely competitive manner. KSC also advised the City that this patently flawed and fraudulent appeal had the potential to detrimentally delay the processing of KSC's Cup application, and provide the 3452 Hancock St. project an unfair advantage. (See KSC's September 29, 2014 letter to the Planning Director, which is attached hereto as Exhibit 2.)
 - KSC's dire predictions that a substantively and procedurally unfair result would ensue if the City allowed a fraudulent and competitively motivated gaming of its permitting system to go unchecked were repeated by KSC during the City proceedings for the 3452 Hancock St. project. (See KSC's December 17, 2014 Letter of Appeal to the Planning Commission - including its Exhibit "A" which contains KSC's December 3, 2014 comment letter – which is incorporated hereto as Exhibit 3.)
 - KSC's valid concerns regarding the profound unfairness of the City's permitting regime in the Midway area were persuasively echoed and elaborated on by other Midway applicants, who also beseeched the City to correct the obvious flaws in its Midway MMCC permitting process. (See December 2, 2014 Letter to Hearing Officer by Donna D. Jones, Esq., including exhibits, attached hereto as Exhibit 4; See December 3, 2014 Letter to Hearing Officer from Jessica C. McElfresh, Esq., which is incorporated hereto as Exhibit 5.)

- Further, KSC and others expressly advised the City that the 3452 Hancock St. application was fundamentally defective, and could not be approved by the City without violating clear Code-based standards for the valid issuance of a CUP. KSC and others explained that the 3452 Hancock St. project site was simply inappropriate, as it fundamentally substandard. Additionally, KSC explained that the 3452 applicant Adam Knopf was actively involved in the operation of an ongoing illegal medical marijuana facility in the City. (See KSC's March 18, 2015 Supplemental Letter to the Planning Commission, which is attached hereto as Exhibit 6.)

KSC reserves the right to further submit additional relevant information to support its appeal, and intends to appear in front of the Planning Commission to argue the merits of its appeal at the earliest opportunity.

We thank you for your careful consideration of these important points, and urge you to grant KSC's appeal and to REVERSE the Hearing Officer's denial of the CUP for the Project.

Please let us know if you have any questions or comments.

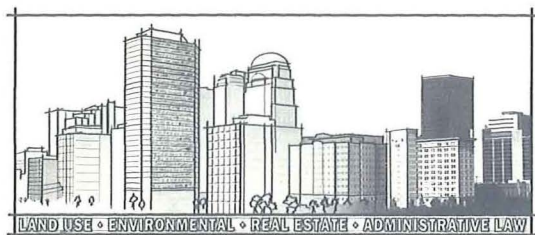
Sincerely,

A handwritten signature in blue ink, appearing to read "Tim D. Martin", with a stylized flourish at the end.

TIMOTHY D. MARTIN, ESQ. for
LAW OFFICES OF TIMOTHY D. MARTIN

TDM:pf
Enclosures

Exhibit 1



TIMOTHY D. MARTIN, ESQ.
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177 South Beverly Drive
Beverly Hills, CA 90212
(310) 849-2904
tim@tdmlawfirm.com

March 25, 2015

VIA HAND DELIVERY

Hearing Officer
City of San Diego

Re: 3486 Kurtz St., Project No. 368321 (the "Project")

Dear Hearing Officer:

The following comments are being submitted on behalf of the Kurtz Street Cooperative, Inc. in support of the above-referenced Project, and are expressly intended to become part of the administrative record for the above-referenced Project.

A. No Medical Marijuana Consumer Cooperative Currently Exists Within 1,000 Feet of the Project, and, Accordingly, the Project Cannot be Denied on That Basis

Per the San Diego Municipal Code ("Code") §141.0614 (a)(1), a medical marijuana consumer cooperative (MMCC) must maintain a minimum separation of at least 1,000 ft. (as measured from property lines) from a number of enumerated uses, including "other medical marijuana consumer cooperatives."

Code §42.1502 sets forth the definition of a MMCC, which is defined as "a facility where marijuana is transferred to qualified patients or primary caregivers in accordance with the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, set forth in California Health and Safety Code sections 11362.5 through 11362.83." (emphasis added). Given that the express Code definition for a MMCC is written in the present tense, it is clear that there must be a current transfer of marijuana to qualified patients and caregivers in order for a MMCC to exist under the Code. As a result, a mere theoretical right provided by the issuance of a CUP to transfer marijuana to patients or caregivers in the future, which is further conditioned on the operator obtaining additional governmental permits and approvals (e.g., building permits, etc.), does not constitute a MMCC under the Code.

Consequently, none of the applicants in the Midway area, including the 3452 Hancock St. project, currently qualifies as a MMCC under the operative Code definition of same, and it follows that

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. at this time.

Further, Kurtz Street Cooperative's hard-earned place in the CUP approval process must be maintained, and should not be allowed to be further prejudiced by procedural irregularities. This is critical in the event that the 3452 Hancock St. applicant (or any other relevant applicant) is not able to execute on the opening of its medical marijuana dispensary for any reason. Such reasons could include, but are not limited to, an inability to secure additionally required governmental approvals, a lack of financing or personnel and/or a loss of its leasehold interest.

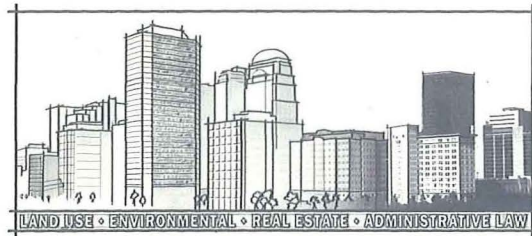
We thank you for your careful consideration of these important points, and urge you to APPROVE the CUP for the Kurtz St. Project. Please let me know if you have any questions or comments.

Sincerely,

A handwritten signature in dark ink, appearing to read "Tim D. Martin", written in a cursive style.

TIMOTHY D. MARTIN, ESQ. for
LAW OFFICES OF TIMOTHY D. MARTIN

Exhibit 2



TIMOTHY D. MARTIN, ESQ.
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 tim@tdmlawfirm.com

September 29, 2014

VIA E-MAIL (bfulton@sandiego.gov)

Bill Fulton
 Planning Department Director
 City of San Diego
 1222 First Avenue, MS 413
 San Diego, CA 92101

Re: 3486 Kurtz Street MMCC/368321
3486 Kurtz Street, San Diego, CA 92110 (the "Premises")

Dear Mr. Fulton:

This office represents Kurtz Street Cooperative, Inc. ("KSC"), which currently has a Conditional Use Permit ("CUP") application pending with the City of San Diego (the "City") for a Medical Marijuana Consumer Cooperative ("MMCC") at the above-referenced Premises. KSC is proposing to operate a MMCC within the Midway/Pacific Highway Community Plan Area at an existing 4,367 square foot building on a 0.65 acre site.

The purpose of this letter is to put the City on notice that a September 16, 2014 appeal of the City's September 2, 2014 Environmental Determination for the KSC project, by an "interested person" identifying himself as "Patrick O. Cespedes Borner" of "2255 Seaside Ave., San Diego, CA" (the "Appeal"), is clearly fraudulent and obviously intended solely to competitively delay the City's processing of KSC's CUP application. (We attach the Appeal hereto as Exhibit "A.")

We urge the City to take all necessary steps to ensure that its medical marijuana permitting system cannot be competitively gamed so as to impose patently unfair and prejudicial delays on KSC. The integrity of the City's permitting system depends on the City's implementation of a fair and efficient process that ultimately permits the best, most compliant MMCC facilities in each Council District. In this case, and as discussed below, the Appellant provided the City with erroneous information regarding his contact information, despite doing so under penalty of perjury. As a result, the Appeal should be deemed invalid and voided by the City as a fraudulent document, and KSC's application should be scheduled for a Hearing date at the earliest opportunity.

Additionally, to the extent that the City allows the fraudulent, competitively motivated Appeal to go to the City Council, KSC seeks an assurance from the City that the processing of KSC's CUP application will not be prejudiced by any resulting delay. It was entirely the City's choice to apply

§15303 of the California Environmental Quality Act (“CEQA”) Guidelines, rather than §15301 (Existing facilities), to the KSC project as the legal basis for its September 2, 2014 Environmental Determination. Accordingly, KSC cannot be allowed to suffer a prejudicial delay due to an appeal of the City’s CEQA determination, particularly since §15301 may, at least arguably, represent a better basis to support the Environmental Determination. If the City allows the Appeal to proceed to City Council, the City must vigorously oppose and deny the Appeal at the earliest possible opportunity, and must subsequently reinstate KSC into the appropriate permitting pathway with no resulting delay or prejudice to its chances to obtain a CUP for the Premises. Any result to the contrary that materially harms KSC’s chances for obtaining a well-deserved CUP at the Premises, would constitute prejudicial abuse of discretion, and leave the City vulnerable to unfavorable judicial scrutiny and reversal. See, e.g., Cal. Code Civ. Proc. §1094.5.

I. KSC’s CUP Application Reflects the Best MMCC Proposed for Council District 2/Midway

KSC has worked diligently, and at great expense, to ensure that its proposed MMCC at the Premises will operate in a high quality and professional manner, and in full compliance with applicable provisions of the City’s Municipal Code. KSC’s promptly filed its CUP application with the City at 7am on April 24, 2014. Subsequently, KSC has, in a timely manner, submitted significant additional information to support its CUP application, and has promptly and thoroughly responded to any and all requests from the City for additional information. KSC’s CUP application has been “deemed complete” by City staff, and has been awaiting assignment of hearing date with a Hearing Officer pursuant to the CUP-Process Three procedures set forth in City Municipal Code §112.0505. Given that Council District 2/Midway is heavily oversubscribed (i.e., that the City has received many more CUP applications than the permitting slots legally available), KSC’s diligent and timely submissions of its CUP application and supplemental filings earned it an enviable priority status within this area of the City.

KSC’s hard work to develop the best MMCC project within District 2/Midway paid off on July 9, 2014, when the Midway Community Planning Group (“MCPG”) met to review multiple MMCC proposals for that area. KSC was the only MMCC proposal to receive unanimous support by the MCPG (8-0), with a recommended fewest CUP conditions to be imposed. Additionally, KSC received unambiguous feedback from members of the MCPG that its application was the best one they had reviewed. Subsequently, the MCPG has reviewed several other MMCC project proposals for their area, with none of them receiving the level of both formal and informal support as did KSC. In summary, it is clear based on the objective review of the MCPC that KSC has the best MMCC proposal in its area.¹

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

¹ In fact, the only substantive, potential hindrance remaining to approval of KSC’s CUP application for a MMCC at the Premises is its proximity to a business known as Rock and Roll San Diego, located at 3360 Sports Arena Blvd., San Diego, CA. Notwithstanding Development Service staff’s tortured and unreasonable concern that Rock and Roll San Diego may constitute a “minor-oriented facility,” as that term is defined in City Municipal Code §113.0103, KSC can readily establish that Rock and Roll San Diego does not reasonably constitute a business where the “primary use” is devoted to people under the age of 18.

identified himself as "Patrick O. Cespedes Borner" 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 O. Cespedes Borner," 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. We visited 2255 Seaside St. this past weekend, and found that there is no one living at that address due to the fact that the single-family home situated thereon is undergoing a major construction project, and has been under construction since approximately late May 2014. In fact, on or about May 29, 2014, the City's Development Services issued a Development Approval to Permit Holder Stephen R. Burr of Burr Construction Concepts to completely renovate the home at that address. Even a cursory visual examination of that property confirms that no one has lived there for months, no one is living there at present and no one be living there for some time. 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 voice mail 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 O. Cespedes Borner (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 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. To do otherwise, would lead to significant wasteful expenditures of time and money, and will likely lead to unwarranted prejudice to KSC.

B. Appeal Is Competitively Motivated With No Underlying Concern for the Environment

As stated above, we seriously question whether the person who answered our call on September 25, 2014 was, in fact, the Appellant. Additionally, when we asked that person to articulate his underlying concern(s) about the KSC proposal (i.e., environmental concerns, etc.), he was not able to do so. Additionally, we asked him whether he had any concerns about environmental impacts from the KSC project and he responded "not really." Thus, we again request that the City attempt to reach out to the Appellant directly, and seek to ascertain whether the Appeal has been filed by a real person with a real address. We suspect that with even a modicum of effort, the City can readily confirm that the Appeal is purely a dirty-pool tactic by a competitor seeking to delay the KSC project, and harm KSC's chances to obtain a CUP at the Premises.

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.

III. Basis of City's Environmental Determination Was Made Entirely by the City and Appeal of Same Cannot Be Allowed to Prejudice KSC's Chances

The City's September 2, 2014 Environmental Determination for the KSC proposal at the Premises states that the City "conducted an environmental review that determined that the project would not have the potential for causing a significant effect on the environment." The City further determined that the project "meets the criteria set forth in CEQA [Guidelines] 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."

KSC was not consulted by the City regarding its Environmental Determination, nor did the City

request KSC to provide any input as to the CEQA exemption(s) that potentially might apply to the Premises. That being said, KSC completely agrees that its MMCC project at the Premises is exempt from CEQA, and that the Appeal is frivolous in that it fails to argue otherwise. KSC also agrees that §15303 of the CEQA Guidelines can properly be applied to exempt its project from any further environmental assessment pursuant to CEQA.

However, KSC notes that §15301 of the CEQA Guidelines (Existing Facilities) articulates a more robust and expansive scope of exempted projects than does §15303, which is limited to conversions of small structures. If KSC had been consulted prior to the City's issuance of its September 2, 2014 Environmental Determination, KSC would have advised the City that it should seriously consider relying on §15301 (existing facilities) rather than §15303 (conversion of small structures). Accordingly, if the City had properly relied upon §15301, an administrative appeal of its proposed project at the Premises would likely not have been filed. In other words, the basis for the Appeal solely flows from the City's internal determination as to the appropriate CEQA exemption to apply to this project. Accordingly, it would be patently inequitable for KSC to incur a prejudicial delay in the processing of its CUP application as a result of the Appeal, given that it was the City that was wholly responsible for applying the proper CEQA exemption. In order to preserve the integrity of its MMCC permitting scheme, and to ensure that competitive gamesmanship does not undermine the entire permitting process, the City must ensure that KSC does not suffer delay and prejudice due to the City's own internal environmental decision making.²

To the extent that a delay does occur as a result of the Appeal, KSC believes that the City has multiple options to ensure that no prejudice results. KSC is happy to discuss these options with the City, as appropriate. Given that only one (of the current ten) separate MMCC CUP applications in District 2/Midway can be permitted due to the Code's prohibition on siting a second MMCC within a 1,000 foot radius of an existing MMCC (per Municipal Code §141.0614), it is absolutely incumbent on the City to ensure that the highest quality, most professional and fully compliant MMCC proposal be the one to go forward in this area of the City. KSC has already established that its proposal constitutes the best of the currently pending CUP applications. It would be patently unfair and prejudicial if KSC was denied issuance of a CUP because someone filed a fraudulent and frivolous administrative appeal.

Accordingly, we urge the City to take all necessary steps to make sure that the Appeal does not have prejudicial impact on KSC's chances, and in particular make sure that it does not divest KSC of its hard earned priority status. As explained above, the City should promptly move to void the Appeal as fraudulent and frivolous. In the alternative, and to the extent that the Appeal proceeds to City Council, the City needs to ensure that KSC's priority is not undermined by a patently frivolous and competitively-motivated appeal. The City has ample means at its disposal to make sure that competitive gamesmanship and dirty pool tactics are not rewarded, and that the best MMCC proposal in District 2/Midway ultimately prevails.

² On a similar note, we question whether the City is, in fact, evenly applying the same CUP review standards to all of the MMCC proposals it is processing throughout the City. For example, our review of City records reveals that it appears that the City did not publically issue an Environmental Determination for the MMCC project proposed for 2496 Roll Drive. No Notice of Right to Appeal Environmental Determination appears on the City's own website for the 2496 Roll Drive project, which is currently set to be heard by the Hearing Officer on October 15, 2014. KSC seriously questions whether the City has adequately performed its duties in regards to CEQA for this and other MMCC projects throughout the City, and, as a consequence, must proceed carefully to ensure that all MMCC applications are fairly treated under the required CEQA review process.

We thank you for your careful consideration of these important points, and appreciate your cooperation to ensure that KSC is not materially prejudiced by the Appeal. Please let us know if you have any questions or comments.

KSC expressly reserves all of its rights under law and equity and waives none.

Sincerely,

TIMOTHY D. MARTIN, ESQ. for
LAW OFFICES OF TIMOTHY D. MARTIN

cc: Edith Gutierrez (EGutierrez@sandiego.gov)
Anna McPherson (AMcPherson@sandiego.gov)
Jeanette Temple (JTemple@sandiego.gov)

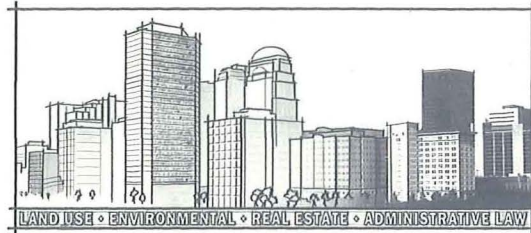


Exhibit 3

TIMOTHY D. MARTIN, ESQ.
LAW OFFICES OF TIMOTHY D. MARTIN
 177 South Beverly Drive
 Beverly Hills, CA 90212
 (310) 849-2904
 tim@tdmlawfirm.com

December 3, 2014

VIA HAND DELIVERY

Hearing Officer
 City of San Diego

Re: 3452 Hancock MMCC; Project No. 368344 (the "Project")
[Proposed] Conditional Use Permit No. 1377388

Dear Hearing Officer:

The following comments are being submitted on behalf of the Kurtz Street Cooperative, Inc., and are expressly intended to become part of the administrative record for the above-referenced Project. The Kurtz Street Cooperative, Inc. constitutes an "interested person" as that term is defined in the City of San Diego's Municipal Code ("Code") §113.0103. Accordingly, the Kurtz Street Cooperative, Inc. intends to preserve its rights as an "interested person" to appeal to the City Planning Commission any decision made by the Hearing Office regarding the Project, to the extent that such a decision relies upon evidence that is erroneous or otherwise inaccurate. Code §112.0506(c)(1)

As is discussed immediately below, good grounds exist to DENY the Applicant's request for issuance of a Conditional Use Permit ("CUP") for the Project. Specifically, information submitted to the City by the Applicant regarding the real property upon which the Project will operate, as well as submitted information regarding property use and occupancy, is clearly erroneous and inaccurate. Unfortunately, City staff has relied upon this erroneous, inaccurate and/or incomplete property information in their preparation of the Staff Report for the Project (REPORT NO. H0-14-072) (the "Report"), and also in the proposed CUP Resolution and other pertinent review and approval documentation. By relying upon and repeating various factual errors and inaccuracies regarding the Project and the Project site, the Report and other Project documents are flawed, as they have the strong potential to mislead City decision makers and the public generally.

I. Inaccurate Property Description

A. Accurate Property Information Required

The process for obtaining a CUP, including the information that must be submitted by a project applicant, is prescribed in detail in the Code, as well as in City guidance (e.g., the Land Development Manual). Among other things, an applicant is required to provide the City during the application review

process with accurate information regarding the real property upon which the proposed project is to operate, including, but not limited to, accurate information regarding property lines, property description(s), chain of title and occupancy and use history. See, e.g., Land Development Manual, Section 4-Page 8 (January 2014). Receipt by the City of accurate property information from the applicant, preferably at the beginning of the process, is critical to allow City staff and decision makers to properly evaluate and characterize a proposed project. For example, without an accurate property description, the City's ability to ensure that a proposed project meets locational and sensitive use restrictions will be severely compromised. See e.g., Code §141.0614 (mandating a 1,000 foot separation between a MMCC and enumerated sensitive uses).

Additionally, without accurate property information, any public notice given by the City (or by an applicant) regarding a proposed project would be defective. A notice that sets forth erroneous property information has the strong potential to mislead the public, as it would make it difficult, if not impossible, for members of the public to determine the appropriate level of their participation in the CUP approval process.

B. Applicant Submitted Inaccurate Property Information

Here, the Project Applicant provided the City with an inaccurate description of the real property upon which it proposes to operate. Unfortunately, the City has incorporated this inaccurate description in its Report, as well as in other project documents. Specifically, the Report states that the Project will operate out of an "832 square foot tenant space within an existing, 1,503 square foot, one-story building on a 0.15-acre site within the Midway/Pacific Highway Corridor Community Plan area." The Report also sets forth the purported legal description of the real property upon which the Project will be situated as follows (Report, Attachment 9 – Site Plan):

Lots 37 and 38, Block 1 of the Resubdivision of Pueblo Lot 277, commonly known as Ascoff and Kelly's Subdivision, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 578, filed in the Office of the County Recorder of San Diego County, January 12, 1889.

In contrast, property ownership records in the City's possession (i.e., contained in the Project's file) reveal that the real property upon which the Project intends to operate is, in fact, twice the size (i.e., area) as the real property described above, as it consists of four (4) equally sized lots, not just the two (2) lots erroneously claimed by the Applicant.

The Grant Deed conveying this larger real property to its current owner establishes that in June 1993, "Craig Neil Butler and Dixie Ann Butler, Husband and Wife and James Seman and Patricia Lynn Butler Husband and Wife and Peter S. Butler an Unmarried Man" granted to the "Sinner Brothers, Inc., a California Corporation" the following real property (Doc. No. 1993-0486328, Recorded on: 29-Jul-1993) (Grant Deed attached hereto as Exhibit 1):

Lots 37, 38, 39 and 40 of Block 1 of the Resubdivision of Pueblo Lot 277, commonly known as Ascoff and Kelly's Subdivision, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 578, filed in the Office of the County Recorder of San Diego County, January 12, 1889.

This information, in light of other publically available information sources, makes it clear that the Sinner Brothers have owned this entire property consisting of four (4) lots (37-40) continually since June 1993, and have not sold or otherwise conveyed title to any portion of that property. Additionally,

title information contained in the City's file for the Project establishes that these four (4) lots have been owned in common since at least 1959.

C. Property Consists of Four Lots and Have Been (And Still Are) Under Common Ownership and Operation

Additionally, these four (4) lots have been operated in common under prior ownership since at least 1993, and probably for much longer. Overwhelming evidence establishes that the Sinner Brothers have operated their corporate headquarters and main manufacturing facility at these four (4) lots for many years. For example, the Sinner Brothers' website provides the public with the company's location as "3452 Hancock Street, San Diego, CA 92110." This is the same address as the Project site. Additionally, the Sinner Brothers' website confirms that it has operated its headquarters and metal production facility at this same location for many years. (www.sinnerbrothers.com – 11/20/14 Printout of the Home Page of the Sinner Brothers' website is attached hereto as Exhibit 2). Thus, while Lots 37 and 38 are commonly identified as "3452 Hancock St." and Lots 39 and 40 are commonly identified as "3460 Hancock St.," it is absolutely clear that these four lots comprise one unified property, which has been commonly owned and commonly operated for many years.

Photographs taken on November 24, 2014 corroborate that these four lots continue to house common structures and improvements, and establish that the entirety of this property is commonly operated. The photograph taken from the front of the property confirms that a single existing, one-story building was constructed along the entire Hancock St. frontage across all four lots, and is clearly attached at the common boundary of Lots 38 and 39 (Photo attached hereto as Exhibit 3). City records indicate that this building was constructed across all four Lots in or about 1958. Thus, it is erroneous for the Applicant and the City to characterize the building as only running across Lots 37 and 38, and only comprising 1,503 square feet. The reality is that this building runs across all four lots and is approximately 3,000 square feet in area.

The rear photograph also strongly supports our contention that the four lots are still being commonly operated as one property. In particular, the photograph shows that all the offsite parking for the four lots are situated exclusively on Lots 37 and 38. As the photograph establishes, the rear portions of Lots 39 and 40 are being used to house a shipping container that has been used as permanent structure for years. Also, the photograph shows that additional structures have been constructed in the rear areas of Lots 39 and 40 that were not shown on the original building permit Site Plan, and are in lieu of the required parking area for the Sinner Brothers business operation. (Photo attached hereto as Exhibit 4). Thus, it is clear that, unless the shipping container and other unpermitted structures are removed, and the offsite parking area for Lots 39 and 40 restored, the Sinner Brothers will by necessity have to continue to use the offsite parking area of Lots 37 and 38 in order to operate its ongoing business.

None of this information was disclosed to the Hearing Officer or the public generally by the Applicant or by City staff. To the contrary, it appears that a concerted attempt has been made by the Applicant to avoid providing a full and accurate property description. Rather than accurately disclose that the Hancock MMCC would be operating as a leased premises within a four lot property owned and operated by an ongoing light industrial business operated and owned by the Sinner Brothers (with a shared parking lot, common building along Hancock St., etc.), the Applicant has, for reasons unknown attempted to mischaracterize the property upon which it proposed to operate its MMCC. For example, the Site Plan (Attachment 9 to the Report) depicts the western property line as the boundary between Lots 38 and 39, and gives no indication whatsoever that the four lots are, in fact, a commonly owned and

operated facility, and have been so for many years. One possible explanation for these inaccuracies is that the Applicant is attempting to shield the Sinner Brothers from scrutiny. While our investigation into these matters is ongoing, we believe it likely that the Sinner Brothers' property contains one or more unpermitted structures and may not comply with the Code in other respects.

Regardless of the motivation, whether purposeful or inadvertent, it is clear that the Applicant has provided the City with inaccurate property information. Given that the City has inappropriately relied upon this inaccurate factual information, and as a result has provided the public with an erroneous basis by which to evaluate the Project, the Hearing Officer must DENY the Project on that basis pursuant to the approval standards prescribed by the Code.

II. Erroneous and Incomplete Property Use and Occupancy Information

In addition to an inaccurate property description, as discussed above, the Applicant's failure to provide accurate information regarding the historical uses and prior occupancy of the property compounds the deficiencies of the Project's CUP review process.

First, as established above, it is clear that the Sinner Brothers' continuing operations will require use of the parking areas in the rear of Lots 37 and 38. This was not disclosed by the Applicant or discussed whatsoever in the Report or other City review documents. To the contrary, the Report incorporates inaccurate information obtained from the Applicant that erroneously depicts Lots 39 and 40 as a completely separate property with no legal or operational connection to Lots 37 and 38.

Second, during the Project's development review by City staff, the Applicant was directed to provide a "list of occupants" that must "account for all years and all addresses from the time of construction (1958) to present." Specifically, the Applicant was instructed by City staff to "Present the occupants in list form, accounting for all years. The subject building is a multi-unit building- the list of occupants must also account for each unit. For years in which the property or the units within are not listed or vacant, note this on the list." (Cycle Issues prepared by Reviewer Camille Pekarek attached hereto as Exhibit 5).

In response, the Applicant submitted to the City a table entitled "Directory Listing of Occupants" claiming that it was providing "all occupants for this address." Even a cursory review of this list reveals it to be substantially incomplete and inaccurate. The Applicant claims that the 3452 premises was "vacant" from 1972-4, and that for the period 1975-80/84 "no information [is] available." No subsequent entry is provided, and the Applicant makes no attempt to provide the City with any occupancy information after the early 1980s. (Directory Listing Occupants attached hereto as Exhibit 6).

This lack of occupancy information is inaccurate and incomplete, particularly in light of the information discussed above regarding the Sinner Brothers operating at the entire four lot property since 1993. As we noted, the Sinner Brother website lists 3452 Hancock St. as the location of their headquarters and manufacturing facility, as well as their mailing address. Similarly, the Office of the City Treasurer lists the Sinner Brothers as being located at 3452 Hancock Street (Copy of Printout of Office of the City Treasurer attached hereto as Exhibit 7). Thus, it is virtually certain that 3452 Hancock St. has been occupied by the Sinner Brothers for most of, if not all, the time since 1993. However, this information was omitted from the Applicant's list of former occupants.

As with the property information discussed above, we question whether this represents a

purposeful attempt by the Applicant to shield the Sinner Brothers from scrutiny. According to its website, the Sinner Brothers operates a “foundry” at the four lots, and performs other light industrial operations thereon. While these activities by the Sinner Brothers may be legal, they should have been disclosed by the Applicant, and evaluated and discussed by the City as part of the CUP application review process. Additionally, the City erroneously characterizes the nature of the Sinner Brothers operations as “office” use (Report, pg. 2), with no mention that it conducts light industrial operations on all four lots, including the operation of a “foundry.”

Given that it is clear that the true operational and occupancy history of these four lots (37-40) were not disclosed by either the Applicant or the City, and that the Report bases its recommendation on erroneous and inaccurate information, the Project’s CUP review process is patently deficient. Accordingly, the Hearing Officer must DENY the Project on that basis.

III. To the Extent that the Hearing Officer Provides the Applicant With an Opportunity Cure These Information Deficiencies, New Notices Must Be Issued That Provide the Public With Accurate Property and Project Information

As described in Sections I and II above, information provided by both the Applicant and the City regarding the property and property uses is erroneous, inaccurate and misleading. As a result, we believe that the most appropriate course of action is for the Hearing Officer to DENY the CUP request. However, to the extent that the Hearing Officer provides the Applicant with an Opportunity to cure these significant factual deficiencies, the City must require that new notices be issued that provide the public with factually accurate information regarding the nature of the Project and the property upon which it is to operate. To do otherwise would prevent the interested public from having an opportunity to be heard in regards to expressing comments, concerns, etc. regarding the merits of the Project in light of an accurately described Project and Project site.

The renoticing of the Project must include, among other things, a new Notice of Right to Appeal Environmental Determination, which was originally issued on or about August 27, 2014. This original Notice erroneously described the Project site as consisting of a 1,503 square foot building on a 0.15 acre site. As explained above, this information is inaccurate. In reality, the building within which the Project is to operate is an approximately 3,000 square foot building, and the real property upon which it will be situated is approximately 0.3 acres in area. The inaccurate information provided to the public renders the August 27, 2014 Notice defective and must be reissued to reflect the accurate site information. Additionally, as a substantive matter, an accurate depiction of the Project site may later the City’s determination regarding the appropriate CEQA exemption to apply to the Project, if any.

Similarly, assuming the Applicant is allowed to resubmit all of its site plans, maps, property descriptions, etc., and the City subsequently revises all of the Project’s CUP documentation (including, but not limited to a new Report and a new proposed CUP resolution (Attachment 5)) to reflect this accurate information, the City must renotice all of these documents to provide the public with a full opportunity to provide comments regarding the merits of the Project. Failure to revise these documents, with full notice provided to the public pursuant to Code requirements, will render the Project’s CUP process invalid and will leave it vulnerable to reversal by the Planning Commission.

We thank you for your careful consideration of these important points, and urge you to DENY

EXHIBIT A



VOTE

Point Loma Patient Assn

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About

To see what she shares with friends, [send her a friend request.](#)

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Overview

Work and Education

Places She's Lived

Contact and Basic Info

Family and Relationships

Details About Point Loma

Life Events

CONTACT INFORMATION

Phones

(619) 226-2308 Work

Website

<http://Pointlomapatient.com>

BASIC INFORMATION

Birthday

April 20, 1973

Political Views

Adam Knopf

Photos

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EXHIBIT B



Venue Name or Category

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Region: All

Category: All



All # A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

Mari-Medic

4780-A Mission Bay Dr.
San Diego

Map It

Point Loma Patients Association

2830 Lytton
(619) 226-2308

Map It

Raw Smoke Shop

1551 N. Magnolia Ave
Suite 101
El Cajon
(619) 258-0605

Map It

Closed

167.93 mi
0.00 out of 5
0 votes



Closed

168.9 mi
0.00 out of 5
0 votes



Closed

181.44 mi
0.00 out of 5
0 votes



EXHIBIT C

[print](#)

City's plan to uproot illegal pot shops is a slow, arduous process

by [DAVE SCHWAB](#)

08.28.14 - 02:28 pm

Even with a new city medical marijuana ordinance in place and applications pending for licensed cooperatives in the Peninsula, a number of pre-existing, unlicensed dispensaries continue to fly under the radar.

Weedmap online lists about a half-dozen cooperatives currently operating in the Point Loma-Ocean Beach area, including Cloud 9 Co Op on West Point Loma Boulevard, Point Loma Patients Association on Rosecrans and Lytton streets, Starbuds Inc. on Midway Drive, Happy High Herbs on Newport Avenue and Super Max on Newport Avenue.

A matter of continuing frustration for local residents and legislators alike, District 2 City Councilman Ed Harris said recently that of 63 illegal medical dispensaries operating citywide, 17 are in the beach areas he represents.

Harris said shutting down unpermitted medical-marijuana dispensaries is not an easy task, however.

"Closing down illegally operating medical marijuana dispensaries is time consuming and often involves months of litigation," he said. "There is a great deal of money to be made in this business, and often dispensary owners do whatever they can to remain open. That said, I am confident the City Attorney's Office will get all of these shut down."

Meanwhile, Harris said, "I have asked city staff to report on their efforts to close down these dispensaries during the Public Safety and Livable Neighborhoods Council Committee meeting on [Thursday] Sept. 18 in order to make the process more open and transparent to the public."

Neighborhood Code Enforcement and the City Attorney's Office are actively working to close illegal dispensary storefronts.

"The San Diego Police Department's (SDPD's) Drug Abatement Response Team (DART) and narcotic teams work with the city attorney's Code Enforcement Unit and city code inspectors to address illegal medical marijuana dispensaries in the city of San Diego operating in violation of zoning laws," said SDPD media services spokesman Lt. Kevin Mayer. "Once an illegal dispensary has been identified, code inspectors contact the dispensary operator and property owner, notifying them they are illegally operating. If the dispensary refuses to close down, a civil injunction can be obtained. If the dispensary continues to operate after the injunction is obtained, the SDPD will assist in enforcing the court order. Members of the community are encouraged to contact the police department if they believe a business is operating illegally."

It's been 17 years since California's Compassionate Use Act was approved by state voters and legitimized medical-marijuana use.

The city's new dispensary ordinance, passed earlier this year, amends the land-development code and the local coastal program to add medical marijuana consumer cooperatives as a new, separately regulated land use.

Problems with enforcing regulations governing medical marijuana dispensaries include overlapping state and federal jurisdictions. The process has also taken so long that many residents are unsure of what the rules are exactly and where — and to whom — they apply.

"I thought the cooperatives were zoned out of OB," said Denny Knox, executive director of the Ocean Beach MainStreet Association, the community's business improvement district. "Didn't the City Council designate just a few places to have pot shops and OB wasn't on the list?"

"The last time we had pot stores in OB, we ended up with seven of them — pretty overwhelming," said Knox. "It wasn't the best of situations. We only have one legitimate pharmacy, and then we needed seven pot stores? It seemed odd at best.

"People don't like to believe that lots of pot stores lead to other drug availability in the neighborhood," she said. "That was definitely our experience. The stores also brought a lot of travelers into town looking to get high at the beach. There seemed to be a lot of drug activity in the alleys when all the pot stores were open. There were lots of cars driving in the alleys getting packages from individuals standing behind buildings. Sort of like a drive-thru, but not."

Pro-marijuana dispensary spokesman Eugene Davidovich of the Alliance for Responsible Medicinal Access (ARMA) characterized the notion that medical marijuana patients are drug addicts as "ignorant, insulting and flies in the face of much evidence to the contrary."

Saying the claim that cannabis has medicinal benefits for relief of symptoms like tremors, seizures and nausea "is simply no longer in dispute," Davidovich said. "What we need now is to ensure San Diego patients are able to go to well-regulated cooperatives for their medicine.

"Because there are currently no licensed cooperatives in the city, patients have no choice but to go to an unlicensed shop," he said. "This issue underscores exactly why ARMA advocates for good, sensible regulations. Once there are licensed cooperatives in the city, there will be no more need for patients to go to the unlicensed facilities."

Davidovich said cooperatives that are compliant with the new, strict laws will be great neighbors "both because of the rules and the level of difficulty and investment needed to secure a permit. These will not be fly-by-night operations, rather they will more resemble pharmacies and will not be unwelcome in their

communities.

"ARMA urges the public to embrace the process and regulations that will result in well-operated, licensed dispensaries as the best hope for seeing the less-scrupulous operators close up shop, either by city code enforcement action or by virtue of the fact that permitted cooperatives have a market advantage," said Davidovich. "Research has shown that regulations help to protect safe, responsible access for patients to their medicine and reduce crime and complaints in neighborhoods."

APPLICANTS FOR LEGAL DISPENSARIES CONTINUE TO LINE UP FOR APPROVAL IN MIDWAY DISTRICT

There are presently 38 applications citywide for new proposed legally permitted medical-marijuana dispensaries under a new ordinance adopted earlier this year.

That ordinance allows conditional approval for a maximum of four dispensaries in any of the nine City Council districts, said Edith Gutierrez of the city's Development Services Department.

Of those legal dispensary applications, 18 — or nearly half — are in City Council District 2, which includes the beach areas from Point Loma and Ocean Beach north to Mission Beach and Pacific Beach.

There are no applications in districts 1, 4, 5 and 9. Council District 3 (Gloria) has two applicants, District 6 has nine, District 7 has four and District 8 has five.

"Applications are processed on a first-come, first-served basis," said Gutierrez.

The new city ordinance allows medical marijuana dispensaries in industrially zoned areas. They are not allowed within 1,000 feet of churches, public parks, schools, child-care centers, city libraries, minor-oriented facilities, residential-care facilities or other medical-marijuana consumer cooperatives.

An initial deposit of \$8,000 is required by the city of all marijuana medical-dispensary applicants.

In 1996, California voters passed Proposition 215, making it the first state in the union to allow for the medical use of marijuana. Since then, 19 more states and the District of Columbia have enacted similar laws.

In two states, Colorado and Washington, the sale and possession of marijuana is legal for both medical and recreational use. However, the U.S. Supreme Court has ruled that the federal government has a right to regulate and criminalize cannabis. Also, if the cannabis is called "medical cannabis," the federal law still has priority.

At the federal level, marijuana remains classified as a Schedule I substance under the Controlled Substances Act. Schedule I substances are considered to have a

City's plan to uproot illegal pot shops is a slow, arduous process

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high potential for dependency and no accepted medical use, making distribution of marijuana a federal offense.

In October 2009, the Obama administration sent a memo to federal prosecutors encouraging them not to prosecute people who distribute marijuana for medical purposes in accordance with state law.

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EXHIBIT D

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Medical Dispensaries / Central San Diego (185,094 hits)

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THURSDAY	10:00am - 9:00pm
FRIDAY	10:00am - 9:00pm
SATURDAY	10:00am - 9:00pm
WEBSITE	www.pointlomapatientls.com
EMAIL	POINTLOMAFA@GMAIL.COM
PHONE	(619) 226-2308
SOCIAL	
MEMBER SINCE	February 14th, 2012

WeedMenu Description

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Verification Process: There are two easy ways to sign up and get verified as a patient here. One, you can snap a photo of your Original Recommendation and CA ID with your phone and email both, along with your phone number and current delivery address, to Pointlomapa@gmail.com and we will verify you, get you signed up, and call you to take your order. Or two, you can call us with your recommendation and ID handy and we can take the info over the phone along with your order and verify you once we hang up and before we send your order out. If you are a new patient, we encourage you to give us a call or email us at least 2 hours before closing to guarantee same day delivery. When the driver gets there, they will take a picture of your ORIGINAL recommendation and CALIFORNIA ID (or proof of residency along with a photo ID) so we can put it on file.

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the CUP for the Project. Please let us know if you have any questions or comments.

Sincerely,

A handwritten signature in dark ink, appearing to read "Tim D. Martin". The signature is fluid and cursive, with the first name "Tim" and last name "Martin" clearly distinguishable.

TIMOTHY D. MARTIN, ESQ. for
LAW OFFICES OF TIMOTHY D. MARTIN

TDM:pf
Enclosures

Exhibit 4

SheppardMullin

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December 2, 2014

File Number: 39WE-197581

VIA HAND DELIVERY

Hearing Officer
City of San Diego
1222 First Avenue, MS 301
San Diego, CA 92101-4101

Re: 3452 Hancock Street, Project No. 368344

Dear Hearing Officer:

Sheppard, Mullin, Richter & Hampton LLP, in conjunction with Jessica McElfresh, Esq., represents D&D Cooperative ("D&D") in seeking a conditional use permit ("CUP") to operate a Medical Marijuana Consumer Cooperative ("MMCC" or "Cooperative") to be located at 3430 Hancock Street, San Diego, California 92110.

As you know, Ordinance No. 20356 ("MMCC Ordinance" or "Ordinance") provides that no more than four Cooperatives are permitted in each City of San Diego ("City") Council District, and none can be within 1000 feet of another. (SDMC § 141.0614.) Currently, some Council Districts, including District 2, have a dozen or more MMCC CUP applicants and many of them are within 1000 feet of another MMCC CUP applicant. Most MMCC CUP applicants submitted on the same day, April 24, 2014. The MMCC Ordinance, its accompanying staff report (Staff Report No. PC-13-134), and Development Services Department Information Bulletin 170 on "How to Apply for a CUP – Medical Marijuana Consumer Cooperative" ("IB-170") are all silent on the order in which the City should process MMCC CUP applications received simultaneously or in close time proximity to one another.

Similarly, the City's June 3, 2014 news release announcing the order of the applications (with D&D first in District 2) stated that the order of applications at that time did not guarantee the order in which the applications would be approved, but did not provide guidance on any other order that would be used to approve the CUP's.

In the absence of any clear procedures for the order of approval, public policy and good land use planning practices would suggest that when there are four or more applications of which only one can be chosen, and all of which have been submitted and processed in a timely manner pursuant to City regulations, the neighborhood, the community and indeed the City as a whole would be best served by ensuring that all of the competing applications receive a full and fair hearing and that the City be in a position to select the application that best meets the City's and the neighborhood's needs. If instead the first through the process is the one chosen by

SheppardMullin

Hearing Officer
December 2, 2014
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default, without the decision-maker having the opportunity to hear the merits of the other competing applications, it not only denies due process to those applicants but, just as importantly, deprives the City of its ability to have the totality of available information before it in making an important land use decision.

Hearing each of the applications submitted on the same day that lie within 1,000 feet of one another seems the best way to address the inequities caused by the arbitrary nature of the Ordinance's requirements and the necessarily somewhat arbitrary nature of the permit review process. At a minimum, should you decide to proceed on 3452 Hancock's application today, and given that any decision on this application or the competing applications now on appeal to the City Council will certainly be appealed to the Planning Commission, all such appeals should be heard by Planning Commission on the same day.

A. The Process Being Followed Is Inequitable.

The City initially made representations that MMCC CUP applications would be considered in the order of the First Submittal to the City, leading applicants to camp out to be first in line. For reasons unknown, the City changed its position and it was then understood that the order would be Full Submittal. Information Bulletin 170 described the process the City would follow for MMCC applications and, for Step Three: Full Submittal, it states that "Full Submittals will be placed on a list based on the completed date and time," then, once the application has been determined to meet all rules, policies and procedures, scheduled for hearing. That ordering makes sense because up through Full Submittal there were few variables and the process was essentially ministerial – assuring that the site map, public notice package and similar types of documents were provided. After that time the permit processing becomes much more arbitrary, depending on the various conditions at the site and many other factors.

Then, on June 3, 2014, the City's news release stated that that the order of filing did not guarantee the order in which the applications would be approved, without specifying what would be used to order the applications. The re-calculation of the in-line order of the applicants has been less than predictable and transparent. Moreover, D&D was forced to take time to adequately respond to the City's issues regarding parking (when a copy of the parking agreement between the property and the City was already in the City files), minor oriented facilities (where the City's interpretation has changed), width of sidewalk as impacted by a power pole (where the City for 3452 Hancock appears to address the situation via permit conditions versus requiring the problem be solved during the permit review process), etc.

The order in which applicants come up for hearing is "life or death" based on the Ordinance's prohibitions of dispensaries within 1,000 feet of one another and the limited zones in which applications for dispensaries can be filed, and yet rather than basing the order on the more straightforward First to Full Submittal the City is now using first through the process, when that process depends on a number of variables, many of which are outside of the applicant's control. This randomness has created confusion and unpredictable and inequitable outcomes for the applicants, and should not be the basis of sound decision-making by the City.

SheppardMullin

Hearing Officer
December 2, 2014
Page 3

For example, despite being the first MMCC CUP application filing with the City, D&D's application has been moved to a later position in the queue in large part because in the first assessment letter from the Development Services Department ("DSD") dated June 9, 2014, DSD indicated there were possibly three minor-oriented facilities located within 1,000 feet of 3430 Hancock Street (Chuck E. Cheese, UltraZone Laser Tag, and Rock and Roll San Diego) as well as Mission Bay Park. The City ultimately determined that those surrounding uses were in fact not minor oriented facilities and that Mission Bay Park was not located within the 1,000 foot radius. Had the City made that determination at the outset, D&D could have re-submitted its application more quickly and maintained its position as the first filing in the queue.

Given that any application in District 2 is certain to be appealed to the Planning Commission, at a minimum, all of the appealed applicants that are within 1,000 feet of one another and that were initially submitted on the same day should be heard at the same Planning Commission hearing.

B. Failure to Consider Each Council District's MMCC CUP Application on the Merits, at the Same Time Will Have Inequitable Results.

Because the MMCC Ordinance is a newly enacted ordinance, the process must ensure that that all applicants are treated equally and on even footing. Applications should not be considered in a vacuum. To do so would result in a number of issues.

First and foremost, processing completed applications on an individual basis does not ensure that the most appropriate applications are approved. Considering a lone applicant without reviewing the remainder of the application pool risks denying the City a better situated and more appropriate Cooperative. 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, 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. By not considering all the applicants simultaneously, especially when all of the applicants submitted applications approximately on the same day, and promptly responded to the City's requests for more information while the City's interpretations of important issues relating to the permits changed during the process, would lead to an inequitable result that denies the City and the community surrounding the facility the opportunity to have the most compatible and compliant Cooperative in operation.

Second, merely approving the first four applicants that make it through the application process (and now the hearing process) is arbitrary and capricious, especially given the additional requirement that no Cooperative can be within 1,000 feet of another. The decision is even more inequitable given that approving one Cooperative automatically means denying the others that are within 1,000 feet. It is unfair to disadvantage a more desirable application based on an arbitrary review process subject to many factors that were largely not within the

SheppardMullin

Hearing Officer
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applicant's control when the applications were all filed on the same day and re-submittals were done promptly.

In this case, D&D's proposed Cooperative located at 3430 Hancock Street is a desirable application because the facility provides a safe, secure, accessible, and convenient space for patients. The facility is spacious enough and provides ample parking to manage the influx of patients, is well-lit and has strategic indoor and outdoor locations for mounting security cameras capable of tracking inflow and outflow of people from a wide-angle. In addition, the facility's entire front sidewalk is akin to a curb-cut ramp, which provides ADA-compliant access and egress that nearby competing applicants cannot offer. Notably, the facility's sidewalk is wide enough to accommodate wheelchairs, whereas nearby competing applicants (e.g., 3452 Hancock Street and 3460 Hancock Street) have sidewalks that are encumbered by telephone poles with pathways as narrow as 35 inches. The convenience and configuration of the facility's parking allows patients to easily and safely access the Cooperative. Some parking, including handicap spaces, are located at the front of the building, and additional parking spaces are located immediately behind the building.

C. The Fact Applicants Currently Operate or Are Affiliated with Dispensaries which Are Operating Illegally, in Violation of the City's Municipal Code, Should Be Taken into Consideration in Deciding whether to Grant a CUP.

It would be in the City's best interest not to allow the owners or affiliates of the approximately 70 known illegal medical marijuana dispensaries currently operating in the City to usurp the system by competing with other MMCC CUP applicants seeking to establish legitimate operations.

The applicant for an MMCC at 3452 Hancock St. is Mr. Adam Knopf. Mr. Knopf is listed as the contact person for "Point Loma Patient Assn," website <http://Pointlomapatients.com>, telephone number (619) 226-2308. (See FaceBook add for "Point Loma Patient Assn," attached as **Exhibit A**.) According to an advertisement and map in *Culture Finder*, telephone number (619) 226-2308 is in fact the telephone number for the Point Loma Patients Association, at 2830 Lytton Street. (Culture Finder advertisement, attached as **Exhibit B**.) The attached article from *SDNews.com* also mentions Point Loma Patients Association, aka 3452 Hancock, which is proposed to be operated by Mr. Knopf. Citing "Weedmaps" online, the article references several cooperatives operating illegally in the Point Loma-Ocean Beach area, including the Point Loma Patients Association on Rosecrans and Lytton streets. (See Aug. 28, 2014 *SDNews.com* article headlined "City's plan to uproot illegal pot shops is a slow, arduous process," attached as **Exhibit C**.) Point Loma Patients Association is still outwardly open and operating – in direct violation of the City's rules and regulations. According to their advertisement on weedmaps.com, the Point Loma Patients Association continues to operate in San Diego with the same telephone number. (See excerpt from the Point Loma Patients Association advertisement on <https://weedmaps.com>, accessed Dec. 2, 2014 at 4:00 p.m., attached as **Exhibit D**.)

The applicant for 3452 Hancock has clearly shown that it is not interested in playing by the rules by illegally operating a dispensary in open defiance of the City's rules. The fact that

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this application was the only one whose CEQA determination was not appealed of the competing applications that were filed after the Notice of Right to Appeal was posted for 3452 Hancock strongly suggests that this applicant also had a hand in appealing its competitors to obtain a competitive advantage. An operator that defies the City's rules and regulations and also misuses them for their own advantage does not seem like the ideal choice among the competing applicants to be granted the one and only available CUP.

To consider the 3452 Hancock application, and potentially approve it, before a determination as to the applicant's illegal activity would benefit the offending applicant and disadvantage the remaining law-abiding applicants. Approving an applicant with a history of breaking the medical marijuana laws established by the City sets bad precedence and may convince other Cooperative owners that the laws do not apply. Additionally, if it is proven that the lone applicant is operating an illegal dispensary, the City has no reason to believe that the illegal dispensary will be subsequently closed in response to the approval of the legal MMCC or that the applicant will adhere to the strict requirements set forth in the MMCC Ordinance in the future.

The intent of the City Council is to "identify those City departments that will be responsible for issuing a permit to medical marijuana cooperatives under the 'public safety' ordinance and enforcing its provisions," and to "direct the Mayor to have the Neighborhood Code Compliance Department investigate illegal dispensaries and take action to enforce the law." (Resolution Number R-308124, A Resolution of the Council of the City of San Diego Regarding Medical Marijuana Regulation and Enforcement, dated May 10, 2013. Attachment A, p. 3.) The enforcement of the MMCC Ordinance can best be carried out if done in cooperation with local law enforcement, the Office of the City Attorney, and the City Attorney's Code Enforcement Unit, which have been strenuously working for years – and at great expense – to shut down illegal dispensaries. ("Closing down illegally operating medical marijuana dispensaries is time consuming and often involves months of litigation." District 2 Councilman Ed Harris, quoted in SDNews.com, August 28, 2014.) The City can best promote the rights of medical cannabis patients by ensuring a model of legally compliant Cooperatives, and not by rewarding the habitual violators who have been wasting the City's resources.

In 2009, the City Council established a Medical Marijuana Task Force to advise it on guidelines for the structure and operation of Cooperatives and police department enforcement regarding medical marijuana. The Task Force, in turn, recommended that the City closely regulate Cooperatives in order to ensure that patients have safe access to their lawfully recommended medicine and prevent against the dangers attendant to unregulated or otherwise illegitimate operators. (Task Force Report to the City Council, Report No. 09-165, p. 1.) In this case, the "otherwise illegitimate operators" that have historically profited from the trade should not be permitted to belatedly game the system and now be considered for a legitimate CUP. Consistent with the letter and spirit of the MMCC Ordinance to remove the profit motive from medical cannabis dispensaries, the City should not reward offending applicants and penalize law-abiding applicants, but rather the City should consider the MMCC CUP applications on the merits for the benefit of the community and the patients who rely on safe access to lawful Cooperatives. (Ordinance No. 20356 Preamble, p. 2 of 20.)

Exhibit 4

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In this case, D&D is a desirable application because the applicant does not have a history of illegitimate operations as many other applicants in District 2. D&D is committed to providing medical cannabis patients safe access to medical marijuana. This commitment is grounded in the applicant's personal experiences with family members who were the beneficiaries of medical cannabis during their battle with cancer. The applicant has witnessed firsthand the benefits medical cannabis can provide to patients suffering from chronic pain and other debilitating conditions.

For the reasons stated above, and due to the initial glut of MMCC applications received following the adoption of the MMCC Ordinance, the City should take the unprecedented, and non-reoccurring, opportunity to consider the applicants together and strictly on their merits. It should do so for the benefit of each respective neighborhood and for the benefit of its citizens who now rely, or may in the future rely, on medical cannabis.

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.

Very truly yours,


Donna D. Jones

Donna D. Jones
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Enclosures

cc: Mayor Faulconer
Council President Gloria
City Councilmembers
Robert Vacchi

SMRH:435094460.5



google.com





google.com



← 3462 Pickett St, San Diego, California

Pickett St

Pickett St



← 3462 Pickett St, San Diego, California



Exhibit 5

LAW OFFICE OF JESSICA C. MCELFRISH

December 3, 2014

Hearing Officer Kenneth Teasley
City of San Diego
202 C Street
San Diego, CA 92101

**RE: Conditional Use Permit for MMCC at 3452 Hancock Street,
Project Number 368344**

Dear Mr. Teasley,

On behalf of my client, D & D Cooperative, Inc., which seeks a conditional use permit to operate a medical marijuana consumer cooperative (MMCC) at 3430 Hancock Street, I request that you deny the application for 3452 Hancock Street. Alternatively, I ask that you delay a final decision on this project until you can review all competing projects. I make this request as an interested person, as defined by section 113.0103 of the San Diego Municipal Code.

The City of San Diego should delay a decision for this project until all MMCC applicants in the Midway/Pacific Highway community can present their projects at the same hearing. As you know, San Diego's ordinance does not allow MMCCs to operate within 1,000 feet of each other. Thus, once one is selected and receives final approval, no other facility can operate within 1,000 feet – no matter the merits of competing applications.

In this case, several applicants also seek a conditional use permit to operate a MMCC at properties within 1,000 feet of 3452 Hancock Street. 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.

Thus, competing applicants such as D & D Cooperative are ready to present their projects for approval – and would be recommended for approval – if they had not been appealed for reasons beyond their control. To ensure fairness to all applicants and to make sure that the City of San Diego selects and licenses the proposed MMCC best suited and best qualified for the Midway/Pacific Highway community, I again request

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PHONE: 858-756-7107 • EMAIL: JESSICA@MCELFRISHLAW.COM

- 2 -

that you delay the hearing for 3452 Hancock Street until all competing applicants can present at the same hearing.

If all applicants for the Midway/Pacific Highway area could present at the same hearing, you would learn that some projects, such as my client, D & D Cooperative, which seeks a permit to operate at 3430 Hancock, has more dedicated parking available for members and staff. You would also learn that staff and members arriving by foot or public transportation can reach the main entrance to the proposed MMCC at 3430 Hancock by sidewalk. By contrast, the actual entrance for 3452 Hancock is on Pickett Street, and does not have a public sidewalk allowing access (please see the attached photo from Google Maps).

Indeed, this last flaw – the lack of a sidewalk to the actual entrance to the proposed MMCC and the corresponding lack of requiring the applicant to install one – merits denial of 3452 Hancock Street's project as presented. The current community plan for Midway/Pacific Highway emphasizes making the area more accessible for pedestrians and the need for more sidewalks. The draft update of the community plan for the area discusses the same at length. Thus, a project in Midway/Pacific Highway that requires no sidewalk to the actual entrance of a medical marijuana consumer cooperative conflicts with the community plan, and must be denied, or at least, re-evaluated.

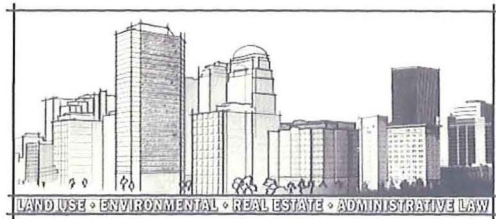
Thank you.

Sincerely,



Jessica C. McElfresh
Attorney-at-Law

Cc: Edith Gutierrez, Development Project Manager



TIMOTHY D. MARTIN, ESQ.
LAW OFFICES OF TIMOTHY D. MARTIN
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 Beverly Hills, CA 90212
 (310) 849-2904
 tim@tdmlawfirm.com

March 18, 2015

VIA E-MAIL AND HAND DELIVERY

City of San Diego
 City Planning Commission
 122 First Ave., 5th Floor
 San Diego, CA 92101

Re: Supplement Letter Supporting Kurtz Street Cooperative, Inc.'s Appeal of Hearing Officer Decision Approving Condition Use Permit for 3452 Hancock MMCC; Project No. 368344 (the "Project"); [Proposed] CUP No. 1377388

Dear Chairperson Golba and Honorable Members of the Planning Commission:

This letter is intended to supplement KSC's pending appeal in the above-referenced matter. In particular, this letter is intended to supplement prior information and testimony submitted by KSC, including its December 3, 2014 and December 17, 2014 letters, and the oral and documentary testimony presented at the March 12, 2015 hearing, each of which are expressly incorporated herein in their entirety by reference. Additionally, this supplemental letter is expressly intended to become part of the administrative record for the Project, as the City proceedings do not end until the Planning Commission (the "Commission") makes its final decision. See California Code Civ. Proc. §1094.6(c).

Notwithstanding any last-ditch efforts by the applicant to attempt to cure critical deficiencies in its Project, including, but not limited to those specifically identified by several members of the Commission at its March 12, 2015 hearing, good grounds continue to exist to grant KSC's appeal. At this point, it is well documented that the Hearing Officer's decision was based on factual errors and critical omissions in the City's evaluation of the Project. Fortunately, now that the Commission is in possession of a fuller and more accurate set of information, it can and should readily conclude that the requisite findings that must underpin all CUPs issued by the City cannot be supported by the relevant factual record of this case. San Diego Municipal Code ("Code") §116.0305 (a) – (d). Accordingly, the Commission should grant KSC's appeal and REVERSE the Hearing Officer's decision to grant a CUP for the Project. Failure to do so will constitute prejudicial abuse of discretion and will leave the City vulnerable to judicial reversal under Code of Civil Procedure §1094.5.

I. Executive Summary

In this supplemental letter, KSC sets forth the following additional evidence and legal arguments in favor of its appeal seeking the denial of the Project:

March 18, 2015 Supplemental Appeal Letter to the San Diego Planning Commission

1. Allowing the Applicant to present a revised project design without a noticed hearing and additional public comment violates appellants right to fair adjudication of its administrative appeal;
2. Main Project entrance/exit will remain via the Pickett alley, which represents a dangerous route, particularly for pedestrians at night;
3. Extremely small size of the Project results in multiple compliance problems, including: (i) Insufficient parking; (ii) Fire/Building Code problems and (iii) ADA problems with bathroom.
4. City's Code mandates merger of substandard Lots 37 and 38;
5. Applicant's ongoing and active involvement in illegal medical marijuana facility within the City renders his involvement in the Project as improper.

II. Allowing Applicant to Present Revised Project Design Without a Noticed Hearing/Public Comment Violates KSC's Right to Fair Adjudication of its Appeal

At the March 12, 2015 Commission hearing for the Project, convincing testimony was presented establishing that the Project's main entrance is situated on the northerly side of the building via a named alley (Pickett) that does not, and cannot, contain a sidewalk. Thus, the applicant's own design – i.e., the Project specifically approved by City Staff and the Hearing Officer and the one expressly in front of the Commission – is incompatible with the requisite, Code-based findings that a City decision maker must make prior to issuance of a CUP.

After the close of public comment at the March 12 hearing, and in the face of persistent questioning by members of the Commission, the applicant first attempted to obfuscate, particularly in regards to what it had clearly marked as an "exit" only on the Hancock St. side of the building. (See March 5, 2015 Staff Report, Attachment 9.) Once that approach failed, the applicant quickly promised the Commission that it would change the Project in a last ditch attempt to correct the Project's clear deficiencies.

To KSC's great surprise and disappointment, rather than voting on a pending Motion by Commissioner Quiroz to approve the KSC appeal and deny the Project, the Commission voted instead (4-3) to allow the applicant to submit revised designs at the upcoming March 19, 2015 hearing, without providing KSC or the public generally with an opportunity to review these revised plans in advance of the hearing, and without allowing a reasonable opportunity to be heard. The actions taken by the Commission in this regard were improper, because, among other things, they denied KSC its right under constitutional and statutory law for a "fair trial" (i.e., a fair adjudication) of its administrative appeal.

Through this irregular procedural move, the Commission appears to a reasonable observer to be bending over backwards to provide the applicant with another chance to cure the Project's defects rather than voting on what was in front of it at the time. KSC strongly questions the propriety of this maneuver. At a minimum, the City needs to pull this item from its March 19, 2015 agenda, in order to allow KSC and the public a full and reasonable opportunity to carefully evaluate the applicant's revised plans reflecting materially significant changes to the Project. Additionally, KSC and other interested

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persons must be afforded with an opportunity to provide public comments regarding the revised designs and plans, at a noticed hearing. These constitute minimal due process safeguards and should be promptly effectuated by the City.

III. Main Project Entrance for Pedestrians Will Remain Via Dangerous Alley

KSC continues to have serious concerns about the sufficiency and safety of the Project's pedestrian access, even assuming that the applicant presents a revised Project to the Commission that provides for regularized pedestrian ingress and egress via a sidewalk on Hancock St.

As pointed out by Commissioner Quiroz, pedestrians will almost always take the shortest route to their destination. Accordingly, significant number of pedestrians will utilize Pickett for access to applicant's MMCC, regardless of the existence of another entrance. Some may be coming from the north via Hancock or Sherman St. Others may be unaware of the Hancock St. entrance (for example, because they may have come by car previously), or may not care (at least until something bad occurs) or because Hancock is unavailable for any number of reasons.

Consequently, the Project can never be found to be "appropriate at the proposed location," nor can it be found to "not be detrimental with public health, safety and welfare. As a consequence, KSC calls on the Commission to promptly reach this same conclusion and deny the Project. Code §116.0305 (b) and (d). To assist Commission members in this evaluation, KSC has gathered additional information regarding the condition of Pickett for pedestrian travel to and from the Project, particularly at night. KSC's additional information gathering has only accentuated legitimate concerns regarding the safety and propriety of providing pedestrian access via Pickett. To the contrary, the nighttime condition of Pickett is extremely sketchy, so much so that even a young, strong individual would be exposed to an unreasonable safety risk by traversing the hundreds of feet of Pickett in either direction necessary to gain access to the City's sidewalk system. Of course, as the Commission understands, many of the patients who will be coming to the Project will not be young, strong people, but, instead, may be physically challenged for any number of reasons. If the Commission approves the Project at this location, patients will literally have to walk through a frightening gauntlet along a dark, sidewalk-less alley to obtain the medicine that they medically require.

Attached to this letter as Exhibit 1 are multiple photographs of Pickett taken during the week of March 14 – 17, including after dark on the evening of March 16, 2015, along with an accompanying video recording taken on Pickett at night. Even a casual observer will notice the following concerns:

- No Sidewalks – do not exist and cannot be built in an alley;
- Multiple Parked Cars in Alley – while illegal, it is apparent that this practice is a common occurrence which the City allows.¹ This condition effectively reduces the width of the alley and requires pedestrians to walk in the middle of the alley;
- Virtually No City Street Lighting – minimally lit by only intermittent lights from adjacent businesses;
- Numerous dark places where a robber could lay in wait for an ambush of a patient carrying cash and/or medicine;

¹ At the March 12, 2015 hearing, in response to direct questioning from Chairman Golba, City staff admitted that parking along an alley was illegal in the City. However, given that this is an apparently common practice on Pickett, the City's Code enforcement efforts may have to increase to benefit the Project, commensurately burdening scarce City resources.

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- Graffiti on exterior walls of businesses;
- Homeless people sleeping in/next to alley (including immediately next to Project site);
- Industrial businesses with barbed wire fences (indicating high crime potential);
- Truck traffic that essentially renders the alley impassable.

IV. Inadequately Size of Project and Project Site Results in Multiple Compliance Problems

While the actual number is likely now much higher, in 2011 there were more than 70,000 medical marijuana patients who regularly sought medicine from dispensaries within the City. See Exhibit 2. Based on a conservative assumption that each patient obtains marijuana on average 26 times per year (i.e., one every 2 weeks), one can estimate the annual patient visit total within the City at approximately 1,827,000 visits. See Exhibit 3. Using a conservative assumption that the full 20 MMCCs allowed under the City's Ordinance will, in fact, obtain full City approvals, one can derive the following estimate as to how many daily patient visits can be expected at each MMCC:

- 1,827,000 visits per year/365 Days/20 licensed facilities = **250 Visits Per Day Per Location**
- Since the Project is open 14 hours per day (7am-9pm) = **18 patient visits per hour is expected.**

KSC is confident that these estimates are conservative, and that the actual numbers will be higher. Even using these lower figures, it is clear that the tiny size of the Project suite, together with the small, substandard lot on which it is situated, is simply not adequate. Accordingly, the Commission cannot make the required findings for the proper issuance of a CUP. Code §116.0305 (b) and (d).

1. Insufficient Parking for Lots 37-40

In light of these conservative estimates, it is clear that, at busy times, the Project will regularly see well in excess of 18 patients per hour. Many of these patients will arrive via vehicular transport and use the Pickett lot, which has 8 dedicated parking spaces. Additionally, the Project will operationally require a minimum of 2-3 employees working at all times, plus 1-2 security guards at all times.

Also, as discussed at the March 12, 2015 hearing, this parking lot also provides the sole off-site parking for business operations located at Lots 38, 39 and 40. These lots currently contain buildings totaling approximately 3250 sq. feet.² Thus, at a bare minimum, these businesses will require an additional 4 parking spaces (with more required as a practical matter). Accordingly, if evaluated in the aggregate, it is abundantly clear that the parking lot will be woefully inadequate – and legally noncompliant – to handle the vehicular traffic that can reasonably be expected at the Pickett lot, especially at peak hours. Additionally, the applicant has not developed a plan for overflow traffic parking, nor has the City evaluated this issue in any fashion.

2. Fire Code Noncompliance

The estimate of daily patient visit per day also likely poses severe Fire Code compliance issues for the Project. The bottom line is that the space provided by the Project is just not large enough to

² Lots 39 and 40 contain 2 buildings totaling 2580 sq. ft. (1503 plus 1077), and Lot 38 contains Suite B totaling approximately 671 sq. ft.

March 18, 2015 Supplemental Appeal Letter to the San Diego Planning Commission

adequately house the expected traffic from patients, in light of the required onsite employees and guards. Of the Project's listed 832 sq. ft, not all of it is open to or accessible to visitors, including patients.

KSC has evaluated pertinent authority and believes that Section 1004 (Occupancy Loads) of the International Building Code provides the best measure of occupancy loading for the Project. See Exhibit 4. The most suitable definition is set forth in Table 1004.1.1 under *Institutional areas, Outpatient Areas*, which is specified at 100 sq. ft. gross floor area per occupant. Thus, based on the proposed gross area of the Project at 832 sq. ft., this means that a total of 8 people can be present inside at any one time, including employees and guards, etc.

This means that, as a practical effect, there will be times when far more people are seeking entrance to the facility than the Fire Code allows. The applicant has not developed a plan to address overflow of patients into the parking lot, nor does it appear that the City evaluated this issue at all. Are these patients to wait outside in the parking lot, in their cars or keep idling on Pickett? The answers are unknown as they have not been addressed by either the applicant or the City.

Additionally, merely imposing an additional CUP condition on the Project to address this situation does not address the critical questions for the Commission: Is the Project detrimental to public health, safety and welfare? Is this an appropriate use at this location? The answers are clearly "no."

3. Project Bathroom ADA Compliance Problem

Due to the extremely small total area of the Project, it is clear that the applicant has designed the Project bathroom in a manner that is not compliant with the Americans with Disability Act ("ADA"). In particular, an ADA compliant restroom facility requires at least 2 grab bars and 28" of separation from the sink to the edge of water closet. See Exhibit 5. The Project's current plan (per the March 5, 2015 Staff Report, Attachment 9) shows a separation of only approximately 12" between fixtures. Exhibit 6.

V. The Merger of Substandard Lots is Mandated Pursuant to the Code

As KSC explained to the Commission during its testimony presented at the March 12, 2015 hearing, Lots 37 and 38 are commonly owned and meet all other elements of the mandatory lot merger provisions set forth in Code §§125.0701 – 125.0761 ("Code's Merger Provisions").

In addition to common ownership of the lots, §125.0710 requires, in relevant part, that:

- (a) At least one of the affected parcels or units of land is either:
 - (1) Not developed with any structure for which a Building Permit was issued or required at the time of construction; or
 - (2) Developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit.
- (b) At least one of the affected parcels or units of land has one or more of the following conditions:
 - (1) Comprises less than 5,000 square feet in area at the time of the determination of merger;

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§125.0710(a)(2) is met in this case as both Lots 37 is developed “with a single structure.” Additionally, the single structure situated on Lot 37 is also partially sited on the contiguous lot 38. In fact, as explained at the hearing, the Project is to be located in Suite A which extends over the lot boundary line.

At least one of the conditions enumerated in §125.0710(b) is also met, as Lot 37 (as well as the other applicable lots) is only 3,300 sq. ft. Consequently, all of the elements required to trigger the City’s mandatory obligation to effectuate a merger of substandard lots is present in this case, and the City has erred in not requiring the applicant landowner (and common owner of all relevant lots) to undergo the merger of these lots as a CUP condition of approval.³

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 Patient’s 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.

We thank you for your careful consideration of these important points, and urge you to grant KSC’s appeal and to REVERSE the Hearing Officer’s approval of the CUP for the Project.

Please let us know if you have any questions or comments.

Sincerely,



TIMOTHY D. MARTIN, ESQ. for
LAW OFFICES OF TIMOTHY D. MARTIN

³ Also, as explained by Mr. Gerald Gilbert in his testimony at the March 12, 2015 hearing, all of the requisite elements are present to require a mandatory merger of Lots 37, 38, 39 and 40. Notwithstanding the City’s position that the structures on Lots 37/38 and Lots 39/40 are separate because they were constructed at different time, these structures have zero lot line between them – i.e., they are connected physically. Accordingly, they must be viewed as one structure under pertinent authority.

March 18, 2015 Supplemental Appeal Letter to the San Diego Planning Commission

List of Exhibits

Exhibit 1: Photographs and video of Pickett taken during the week of March 14 – 17.

Exhibit 2: In 2011 there were more than 70,000 medical marijuana patients who regularly sought medicine from dispensaries within the City.

Exhibit 3: Estimate of the annual patient visit total within the City at approximately 1,827,000 visits.

Exhibit 4: Section 1004 (Occupancy Loads) of the International Building Code provides the best measure of occupancy loading for the Project.

Exhibit 5: ADA compliant restroom facility requires at least 2 grab bars and 28" of separation from the sink to the edge of water closet.

Exhibit 6: The Project's current plan (per the March 5, 2015 Staff Report, Attachment 9) shows a separation of only approximately 12" between these fixtures.

PLANNING COMMISSION
RESOLUTION NO. PC-
CONDITIONAL USE PERMIT NO. 1292271
3486 KURTZ STREET MMCC - PROJECT NO. 368321

WHEREAS, KURTZ STREET PARTNERS, Owner and DANA GAGNON, Permittee, filed an application with the City of San Diego for a permit to operate a Medical Marijuana Consumer Cooperative (MMCC) in a 4,367 square foot tenant space within an existing 13,950 square foot building (as described in and by reference to the denied Exhibits "A" and corresponding conditions of denial for the associated Permit No. 1292271), on portions of a 0.45-acre site;

WHEREAS, the project site is located at 3486 Kurtz Street, Suite 102 in the IS-1-1 Zone, Airport Influence Area (San Diego International Airport) and Coastal Height Limitation Overlay Zone within the Midway/Pacific Highway Corridor Community Plan Area;

WHEREAS, the project site is legally described as Lots 43 to 48 inclusive, Block 2 of the Subdivision of Pueblo Lot 277, also known as Aschoff and Kelly's Subdivision, Map No. 578, January 12, 1889;

WHEREAS, on March 25, 2015, the Hearing Officer of the City of San Diego denied Conditional Use Permit No. 1292271 pursuant to the Land Development Code of the City of San Diego;

WHEREAS, on April 8, 2015, Dana Gagnon filed an appeal of the Hearing Officer's decision;

WHEREAS, on May 28, 2015, the Planning Commission of the City of San Diego considered the appeal of Conditional Use Permit No. 1292271 pursuant to the Land Development Code of the City of San Diego;

WHEREAS, on September 2, 2014, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et. seq.) under CEQA Guidelines Section 15303 (New Construction or Conversion of Small Structures); and the Environmental Determination was appealed to City Council, which heard and denied the appeal on January 13, 2015 pursuant to Resolution No. 309469;

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of San Diego as follows:

That the Planning Commission adopts the following written Findings, dated May 28, 2015.

FINDINGS:

Conditional Use Permit Approval – Section §126.0305

- 1. The proposed development will not adversely affect the applicable land use plan.**

The proposed project is a request for a Conditional Use Permit to operate in a 4,367 square foot tenant space within an existing 13,950 square foot building. The 0.45-acre site is located at 3486 Kurtz Street in the IS-1-1 Zone, Airport Influence Area (San Diego International Airport) and Coastal Height Limitation Overlay Zone within the Midway/Pacific Highway Corridor Community Plan Area.

The site is designated Light Industrial within the Midway/Pacific Highway Corridor Community Plan. The Midway/Pacific Highway Corridor Community Plan area includes a variety of commercial uses such as retail shopping centers, discount stores, adult entertainment uses, hotels, motels, restaurants and both heavy and light industrial uses. This community portion contains little residential development. All of the surrounding parcels are in the IS-1-1 zone and the existing uses are consistent with the Light Industrial designation of the community plan. The proposed MMCC, classified as commercial services, is a compatible use for this location with a Conditional Use Permit and is consistent with the community plan, therefore will not adversely affect the applicable land use plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare.

The proposed project is a request for a Conditional Use Permit to operate in a 4,367 square-foot building located at 3486 Kurtz Street.

MMCCs must comply with San Diego Municipal Code (SDMC) Section 141.0614 which requires a 1,000 foot 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. There is also a minimum distance requirement of 100 feet from a residential zone. The limit of four MMCCs per Council District (36 city-wide) and the minimum distance requirements were adopted in order to minimize the impact on the City, residential neighborhoods and to avoid adverse impacts upon the health, safety and general welfare of persons patronizing, residing or working within the surrounding area.

The proposed MMCC located at 3486 Kurtz Street is within 1,000 feet of an approved MMCC located at 3452 Hancock Street and therefore would be detrimental to the public health, safety and welfare of the community.

3. The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.

The proposed project is a request for a Conditional Use Permit to operate in a 4,367 square-foot building located at 3486 Kurtz Street.

MMCCs must comply with San Diego Municipal Code (SDMC), Section 141.0614 which requires a 1,000 foot 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. There is also a minimum distance requirement of 100 feet from a residential zone.

The proposed MMCC located at 3486 Kurtz Street is within 1,000 feet of an approved MMCC located at 3452 Hancock Street and therefore does not comply with the regulations of the Land Development Code.

4. The proposed use is appropriate at the proposed location.

The proposed project is a request for a Conditional Use Permit to operate in a 4,367 square-foot building located at 3486 Kurtz Street.

MMCCs must comply with San Diego Municipal Code (SDMC), Section 141.0614 which requires a 1,000 foot 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. There is also a minimum distance requirement of 100 feet from a residential zone.

The proposed MMCC located at 3486 Kurtz Street is within 1,000 feet of an approved MMCC located at 3452 Hancock Street and therefore is not at an appropriate location.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Planning Commission, Conditional Use Permit No. 1292271 is hereby DENIED by the Planning Commission to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 1292271, a copy of which is attached hereto and made a part hereof.

Edith Gutierrez
Development Project Manager
Development Services

Adopted on: March 25, 2015

Job Order No. 24004639