



September 8, 2020

Via Hand Delivery: Stockton City Clerk

Community Development Department, Planning Division
Planning Commission
c/o: City Clerk
425 N. El Dorado Street, 1st Floor
Stockton, CA 95202

**Re: Request for Rehearing of Application No. P20-0038: 3008 E. Hammer Lane, Suite 108
Cannabis Retail Storefront and Delivery**

Dear Planning Commissioners:

We urge the Planning Commission to reconsider the August 27, 2020 denial of applicant Leon Tacardon's ("Applicant") Commission Use Permit to establish a Retail Storefront Cannabis business; Administrative Use Permit to establish a Retail Non-Storefront (Delivery only) Cannabis business; and a waiver of Cannabis business location requirements for a 2,280 square foot commercial space at 3008 E. Hammer Lane, Suite 108 in Stockton ("Project"). The Planning Commission's decision is a prejudicial abuse of discretion in that the Planning Commission did not proceed as required by law; the decision is not supported by its findings; and the findings are not supported by the evidence.

The Planning Commission failed to consider section 16.80.195(A)(6)(c) of the cannabis ordinance. That section provides:

As permitted by 16 Cal. Code Regs. 5026(b), the Review Authority may waive the location requirements as provided in Chapter 16.176. Waivers shall only be considered for unique situations where the literal application of the distance requirement is not reasonable. Waiver determinations will be made on a case-by-case basis.

The Planning Commission determined that it did not need to address the waiver request because it was not approving the Project. However, the Planning Commission was required by law to consider the waiver request. Furthermore, the Planning Commission relied almost exclusively on the reason for the waiver request, the residentially zoned property, to denying the Project. Applicant's waiver request clearly showed the Project can be within 250 feet of the residentially zoned property. By refusing to consider the waiver, the Commission did not proceed as required by law.

The Planning Commission's decision is also not supported by its findings. Findings 1, 3, 5, and 6¹ all relied on the fact that the Project is within 250 feet of the residentially zoned property to deny the

¹ For Finding 2 the Commission did not consider all the standards provided in Finding 2. For Finding 7, that the Project is exempt from CEQA, the Commission did not contest. The Commission inappropriately removed Finding 4 because they could not make a negative finding for it.

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Project. Yet the residentially zoned property being within 250 feet of the Project is not an applicable fact that supports negative findings for Findings 3,5 and 6. It is also not applicable for Finding 1 if the Commission had voted on Applicant's waiver. Since the Commission could not make any negative findings, the Project should not have been denied.

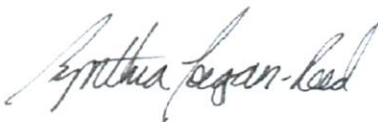
Agencies rendering adjudicatory decisions must set forth findings that bridge the analytical gap between raw evidence and the decision or order. *Topanga Ass'n for a Scenic Community v. County of Los Angeles* (1974) 11 C3d 506, 515-516. In Applicant's case, there was no analysis that connected any evidence regarding the residentially zoned property to the Commission's decision. As discussed further below, there was no evidence submitted, or discussed, regarding the residentially zoned property. Furthermore, for the majority of the findings referencing the residentially zoned property, the Commission did not independently make such reference: the City Attorney made the findings for the Commission. The City Attorney also did not reach consensus amongst the Commissioners that the residentially zoned property was the reason the majority of findings could not be made.

The courts have found that terse statements without supporting analysis that lead to boilerplate rejection are not appropriate. *Glendale Mem. Hosp. & Health Ctr. v State Dep't of Mental Health* (2001) 91 CA4th 129, 140 (agency's administrative findings that were terse statements of boilerplate rejection did not contain sufficient details to bridge analytic gap between the evidence presented and the agency's ultimate decisions). The Commission gave no supporting analysis to support the findings based on the residentially zoned property.

The Commission must present substantial evidence to support the residentially zoned property finding yet they did not present any evidence. The Commission did not put forth any specific nor substantial evidence regarding the residentially zoned property west of the railroad tracks and how the Project would impact such property. The staff report provided evidence to the Commissioners that the unique situation of the residentially zoned property made the literal application of the distance requirement unreasonable. However, the Commission failed to analyze such evidence; reject such evidence; or, provide any evidence to the contrary. Furthermore, by refusing to address Applicant's waiver request, the Planning Commission abused its discretion and prejudiced Applicant's ability to receive approval for the Project.

We urge the Planning Commission to hold a rehearing pursuant to Stockton municipal code section 16.100.020(D). Applicant is also filing an appeal to City Council to protect its appeal rights pursuant to section 16.100.020(A)(2).

Thank you,



CYNTHIA MORGAN-REED

Cc: Ariana Adame
Curtis Devine