



**CITY OF WALLED LAKE
SPECIAL COUNCIL MEETING
(ELECTRONIC MEETING PLATFORM)
WEDNESDAY, AUGUST 19, 2020
7:30 P.M.**

The Meeting was called to order at 7:30 p.m. by Mayor Ackley.

ROLL CALL: Mayor Ackley, Mayor Pro Tem Ambrose, Council Member Costanzo, Council Member Lublin, Council Member Owsinek, Council Member Woods

ABSENT: Council Member Loch

There being a quorum present, the meeting was declared in session.

OTHERS PRESENT: City Manager Whitt, Confidential Assistant Jaquays, Police Chief Shakinias, Police Captain Kolke, Fire Chief Coomer, City Attorney Vanerian, and Deputy City Clerk Gross

CM 8-14-20 MOTION TO APPROVE THE SPECIAL COUNCIL MEETING MINUTES OF JULY 22, 2020

Motion by Owsinek, seconded by Woods, UNANIMOUSLY CARRIED: To approve the special council meeting minutes of July 22, 2020.

CM 8-15-20 MOTION TO EXCUSE COUNCIL MEMBER LOCH FROM TONIGHT'S MEETING

Motion by Ambrose, seconded by Lublin, UNANIMOUSLY CARRIED: To excuse Council Member Loch from tonight's meeting.

REQUEST FOR AGENDA CHANGES: None

UNFINISHED BUSINESS:

1. City Council Case: 2020-03
Applicant: Pincanna, LLC
Location: 1877 E. West Maple
Request: Appeal of Administrative Denial of Marijuana Facility Site Plan Application; Non-use Variance; Request for Interpretation

This matter relates to property located at 1877 E. West Maple Road zoned C-2. Applicant requests City Council to reverse or modify the March 11, 2020 administrative denial of applicant's Marijuana Facility site plan application or alternatively grant the below requested variances to operate a medical marijuana provisioning center at 1877 E. West Maple Rd. The applicant alternatively seeks a variance from C-334-17, Section 21.50 (b) and (e) 7 which limits the number of provisioning centers to not more than two(2) in a C-2 zoning district and further require a 500 foot set back from another provisioning center; to allow a third provisioning center in a C-2 zoning district to operate within five hundred (500) feet of another provisioning center.

City Attorney Vanerian explained city council, at the previous special meeting held on July 22nd to prepare a legal review, opinion and recommendation regarding the issues presented. He said council did already conduct the required public hearing on this appeal at the previous July 22nd meeting and are convening tonight to take final action. City Attorney Vanerian said pursuant to council's direction he prepared a written legal review and recommendation as it relates to the various issues. City Attorney Vanerian said the written legal opinion, legal review and recommendation with the following: 1. That the Pincanna application failed to qualify for final approval for the reasons set forth in his review letter and that council affirm the administrative denial of the provisioning application for those reasons set forth in the legal review. He said council should also consider the proposed request for variances according to the requirements that would normally be applied for purposes of demonstrating a practical difficulty which were laid out in previous memo submitted at the time of the prior meeting. City Attorney Vanerian said he also included a copy of that previous memo with his current legal review. He said the administrative denial held three main reasons. He said Pincanna's application was reviewed and after the application was reviewed, there weren't any remaining provisioning center approvals left to be awarded in the C2 zoning district. He said under the ordinances only two provisioning centers are allowed in the C2 zoning district. City Attorney Vanerian said the city received 18 applications which meant that 16 of those 18 applications required denial. He said only two could be approved. He said all 18 of these applications underwent some level of initial comparative review, including that provided by the city's rules. City Attorney Vanerian said after that process was completed, there were no provisioning approvals left to be awarded in the C2 zoning district. He said because Pincanna had not perfected a higher level of priority, in fact, they did not perfect any level of priority at the time, the two original arrivals were awarded. He said that was one reason why the Pincanna application got denied. He said there simply weren't any remaining approvals to award in in the C2 district. He said the second reason it was administratively denied was because it was located within 500 feet of a previously approved provisioning center that is located directly across the street, the Apex Ultra facility. He said the ordinances requires a minimum distance of 500 feet between provisioning centers. He said when the Pincanna application was reviewed, the one across the street located, less than 500 feet away, had prior approval. He said that was another reason for the denial of the Pincanna application. He said the final reason is Pincanna never submitted proof of state pre-qualification which is another requirement under the local ordinances that must be satisfied in order to qualify for site plan approval. He said those were the three basic reasons why this particular application was denied. City Attorney Vanerian said he provided a detailed written analysis of these issues and reasons why the administrative action that was taken was appropriate under these circumstances. He said he is not going to go into any greater detail as it relates to what he presented by way of his

written legal review and opinion that is available to the public. He said it has been provided to council in advance of tonight's meeting, so he is not going to repeat what he already presented by way of his written legal review. He said so, the reasons are all laid out right there in my written legal opinion and review. He said his recommendation is that the application was appropriately denied administratively and for that reason that the recommended action for city council tonight would be to affirm the administrative denial of that application for the reasons set forth in his legal review. He said if council has any questions he is available.

Mayor Ackley said thank you. She opened the meeting to allow Mr. Roberts, the attorney for Pincanna to speak this evening.

City Attorney Vanerian agreed and explained that would be consistent with the procedure that council followed the last time that the council had heard an appeal of this nature by another applicant.

Attorney Mark Roberts said he did receive a copy of Attorney Vanerian's review, it's thorough and presents a compelling case. He said review is based on false information and a false premise. He said the whole notion of the denial of the appeal was based upon Pincanna failure to propose water and sewer taps. He said as he touched on back in July, Pincanna did propose the construction of a new building. He said if you look at the plan that was submitted which is on page 43 of 81 of the council packets for tonight's meeting, it shows the existing retail building at the southern part of the property. He said the northern part shows it but doesn't say it's a proposed office and storage building. He said that's the new construction. He said the one is existing and the other one is proposed. He said if you look along the property lines there's two lines and it's hard to read on the copy in the packet but if you look at page 44 of 81 which is the next page. He said this is the same document and if you look, the legends clearly show that there's a proposed sanitary sewer and a proposed water main that is running back to that new building. He said so to say that Pincanna was not proposing a new water and sewer cap is simply wrong. He said it's right there on the plan as well as the fact that it goes back to the building that is not designated as existing clearly shows that that is a proposed building. He said a new building would also indicate that the legend also provides for setbacks and the existing setback is shown at 57 feet and the existing retail building is probably 57 feet back but not that office and storage shed. He said clearly, it's not an existing building. He said the whole notion that Pincanna didn't qualify for the first level priority is simply wrong. He said as far as the licensing issue, Pincanna's application said, will present receipt of license of approval from Walled Lake. He said if that wasn't acceptable, Pincanna should have been notified as part of the initial review. He said according to Mr. Vanerian's letter the city was not interpreting it as that they allowed reasonable opportunity for the application. He said if Pincanna had been given that reasonable opportunity they could have done so because it received pre-qualification for a provisioning center before the city even began to review these which apparently didn't happen until December of 2018. He said if Pincanna had been advised that they were under consideration, it would have been very easy for Pincanna to update. He said we submitted April 3, 2018 the very first day you were open to receiving these applications and we heard nothing for almost two years. He said we presented a plan that met the first and third priorities and apparently, we were just overlooked. He said the Pincanna plan was submitted April 3, 2018. He said according to the resolution the review was

supposed to commence May 1st of 2018. He said now, apparently the city started with the C-1 district before it got to the proposals for the C-2 district. He said Pincanna was the C-2 district. He said apparently that began in December of 2018. He said according to the we obtained of one of the successful applicants, they had not submitted their plan as of December 2018. He said to say that Pincanna was not at the highest priority when the process began he opined is wrong. He said Pincanna demonstrated new construction, demonstrated that they were proposing a new sanitary sewer tap, and a new water tap. He said the city attorney's letter is correct that Pincanna was not proposing storm water improvements but that's not part of the priority list anyway. Attorney Roberts said having first and third level should have given Pincanna highest priority and according to the resolution, the first consideration should have given to the one that was submitted first. Attorney Roberts opined there is an issue with the fact that Pincanna's application was submitted April 3, 2018 and one of the applicants weren't received by the city until almost a year later. He said perhaps it was just an error, a typographical error. He said however it seemed as if the city's planning consultant had been working with the one particular applicant before they even submitted their plan. He said because there was a letter dated three days before their plan was submitted according to the city records. He said Pincanna should have been given the opportunity to produce the prequalification letter. He said Pincanna could have easily done that. He said Pincanna did propose new construction and propose a sanitary sewer and water main tap. He said as far as perfecting these, according to the interpretation given by the city attorney, applicants were required to pay the tap fee in order to perfect it. He said Pincanna was never advised of the amount of tap fee or that it was a required fee. He said resolution 2018-10 paragraph three states that there's a list of required fees. He said that's fine, but the tap fee is not in there. He said Pincanna was never advised of what the tap fees were. He said Pincanna was not allowed to perfect this. He said that is being held against Pincanna. He said the 2018 resolution paragraph four does provide that an application will be processed in the order received as determined by the state the application is completed. He said paragraph six priorities would have been met by Pincanna if it was advised by the fees and given the opportunity to pay them. Attorney Roberts said City Attorney Vanerian said both of the successful applicants timely paid their required tap fees. Attorney Roberts asked when did those applicant's pay tap fees and how were they to know how much to pay? He said Pincanna never was given that same opportunity. He said Pincanna was at the least equal if not a higher priority than those other applicants and Pincanna had submitted first. Attorney Roberts said regarding the 500-foot separation, at the time Pincanna submitted their application there was no existing provisioning center within 500 feet. He said as of December 2018, when the city apparently first began reviewing these applications, there was still no existing provisioning center within 500 feet. He said the site across the street from Pincanna, the APEX site didn't even receive conditional approval of its site plan until May 28, 2019. He said that's over a year after Pincanna submitted at least an equal priority submission. Attorney Roberts explained the city's ordinance provides language within 500 feet of an existing provisioning center and the site across the street from the Pincanna site is still not an existing provisioning center. He said he believes that can't be held against Pincanna, they should have been given the equal opportunity to work with the city and develop the plan. He said this is something that could have been avoided. He said Pincanna was clearly in the first priority category or should have been. He said Pincanna presented a cost estimate for the renovation work of over 300,000 and that did not include the estimate for the new construction in the back. He said that was just for renovating the existing

building. He said this is because at the time Pincanna was rushing to get it their application because his clients believed that there was a 24-hour window to submit applications to the city. He said he is not sure if that was truly the case, but they were operating under that belief and that's why they rushed to get this in right away with only the partial cost estimate. He said the city's priority system should have provided for collaboration with Pincanna to develop its proposal. He said that it is consistent with the zoning order ordinance. He said the whole purpose of site plan review is designed to develop the property consistent with the best interest of not only the city but also the development. He said the city ordinance professes to make this a collaborative effort but when it comes down to it, Pincanna was denied that. He said section 21-28 starts out the site plan review process and is established for the following purposes of consultation and cooperation. He said a purpose of site plan review is to provide a framework for consultation and cooperation between landowners and developers in the city in order to harmonize with surrounding planned land. He said that simply wasn't followed and that is the city's own ordinance. He said that's not a resolution, that's part of the ordinance. He said it was not applied to Pincanna. He said the city attorney's letter seems to concede that the Pincanna proposal was not considered because it was working with a later received application to make it an existing provisioning center. He said if Pincanna had been given that same consideration and developed our plans, Pincanna was ready to proceed with this from day one and we could have produced an operational provisioning center within six months of being approved. He said the site that he referred to earlier that was approved back in October of 2018 by the state, it has been generating revenues of 7 million a year and that's in Kalkaska. He said the Walled Lake site was a bigger facility in a much more populated area. He said it could have easily generated two to three times that amount. He said the city could have been a functioning provisioning center and it probably would have been in operation for a year now producing income and it would have been more value at this property which he believes is the intent of the priority process established by the city. He said the city attorney's interpretation of the priorities renders it impossible to perfect first-level priority when the applicant is not even provided the fees. He said Pincanna did propose new construction including new water and sewer services to the property. He said the city attorney's letter indicates Pincanna did not perfect that because the tap fees weren't paid. He said Pincanna was never informed, or they would have been happy to escrow the funds to pay the fees, but we were never given that opportunity. Attorney Roberts said the lack of communication in this entire process is just explicable. He said he does not know precisely why this happened, but it did and quite frankly it's been very detrimental to the city because the city could have had an operating, completely finished provisioning center for at least a year now and now the city is still waiting for the one to be completed. He said Apex barely started construction. He said because the lack of a cost estimate Pincanna was third level priority. He said his clients insist that was part of the April 3, 2018 plan, they produced a partial cost estimate. He said it wasn't for the development but renovations on the existing building. He said Pincanna supplemented that, and the total improvement they were willing to expend on this site is close to \$1 million which is not an insignificant investment. He said finally February 27th of this year, on behalf of his client it came before council and at that time council was considering and they were trying to get all the problems worked out with that site, if we had been given equal opportunity, perhaps the city could have been had a viable option rather than just trying to make something work that was having extreme amount of difficulty. He said if we had been provided the same opportunity, we could have requested, for instance, a pre-site plan review to discuss the potential issues. He said

that is provided for in the city zoning ordinance, but Pincanna was never given that opportunity because we were never informed of the status of our application. He said his clients not only lost potentially a year's worth of revenue, but they have been paying rent on this property this entire time since April of 2018 in order to pursue this potential site. He said the city apparently failed to follow its procedures correctly because Pincanna clearly established high level priority. He said we Pincanna was the first in line according to the city's resolution and ordinances and should have at least had a dialogue with the city, and we received nothing. He said he would urge council to consider Pincanna's appeal and the circumstances surrounding it. He said perhaps there was just an error made in reviewing the plans which clearly shows a proposed sanitary and water main connection and clearly shows new construction. He said council should consider granting some relief to his client, in the form of just an approval to allow it to proceed which may require a variance. He said because of the way the Pincanna plans were handled he opined it would work substantial justice for the application and it would certainly fulfill the interests of the city in doing this because if Pincanna were approved, probably stands a good chance that we'll they would be opening and functioning before the site across the street is complete. He said unless there's any other questions, he has finished his comments. He said he would urge council just to look at those plans and look at the legend and if the council packet is online, go to the legend page of that plan, you can zoom in on it and it clearly shows we're proposing a sewer and water main connection. He opined the failure to consider that probably drove much of the failure of his client to receive fair treatment from the city.

Mayor Ackley thanked Mr. Roberts. She said at this time we will open it up to the council.

Council Member Costanzo said he has one or two points of inquiry for the City Attorney. He said in reviewing the packet he just has a couple questions Mr. Roberts brought up as well. He said when exactly did Apex commit their application to the city.

City Attorney Vanerian said he did not know the exact date. He said it was after Pincanna had submitted its original application in April of 2018. He said Pincanna did submit a supplemental application in January of 2020 of this year and that site plan application was different than what they had initially proposed by way of their original application. He said the size of the rear building changed. He said they were adding additional site improvements such as storm water facilities. He said the January 2020 submittal did identify the rear building as new construction whereas the initial submittal did not identify the rear building as new construction. He said it is included quite a bit more detail like we would normally see with a type of site plan submittal than just the one page we got with the initial application. He said obviously, it was well after the city had already awarded the two available provisioning approvals for the applicants. He said the second one was awarded in July of 2019. He said they Pincanna did not come forward with the supplemental application until six months later. He said both applicants' Apex Ultra and Attitude Wellness, were filed after the original submittal by this applicant. He said there's no question about that however, it's not the timing of the filing of the application that determines the order of review and the action that is taken on those applications. He said it's the priority system, the higher level priority applications are acted upon ahead of the lower priority applications or the non-priority application seven though a lower or non-priority application may have been filed ahead of a higher priority application. He said so it's not the order of the filing. He said the order

of the filing only comes into play if you are deciding between two applications that are essentially equal on all other grounds. He said they both say all the ordinance requirements and then the order of the filing comes into play as essentially the final tie breaker, so to speak. He said we didn't have that situation here. He said the two approved applicants perfected a first and second level priority, so they were reviewed ahead of this application which did not perfect a first or second level of priority due to the failure to pay the required fees.

Council Member Costanzo said the documents he has from the council meeting last month as well as now, have a date of April 4, 2019 for APEX ultra.

City Attorney Vanerian said that may be true. He said that may be the date that they filed.

Council Member Costanzo said his point is if you are waiting for higher priority applicants, you could be waiting forever. He said you could be waiting forever until someone better comes along. He said that's where he is having a little trouble understanding, why there's such a gap on it. He said City Attorney Vanerian mentioned something about the tap fees. Council Member Costanzo asked how Apex knew to pay the tap fees?

City Attorney Vanerian said they have to get that information from the city. He said they come in, say we want to do water and sewer taps for construction as part of site and they request that calculation from the city as to how much that is going to be. He said he believes there may be an actual form for that. He said there were forms completed with the other two and that wasn't done here. He said there was no request from the applicant regarding the amount of tap fees that they would have to pay.

Council Member Costanzo said so the information was never provided because it was never requested. He said it is undisputed it was never paid.

City Attorney Vanerian said as far as the processing of applications one requirement was state prequalification. He said when the city first started receiving the applications in April of 2018, none of the applicants had state pre-qualification because the state process was still relatively new at that time. He said a decision had to be made, take into consideration the qualifications deny and disqualify them all because they were not qualified by the state which wouldn't have been fair to do because you were taking their fee and make them reapply at a later date after they got the pre-qualification, or the city could do what it did do and afford them the reasonable opportunity to go through the process and get their state pre-qualification before making any final decisions or determinations on any of the applications submitted. He said that is what happened. City Attorney Vanerian explained the city started with the application in the C-1 zoning district. He said that process was completed in mid to late December of 2018. He said the beginning of 2019 is really when the city started a more thorough, more in-depth review of the C-2 applications. He said within a few months after that the city received the applications in for the two approved applicants. He said as far as that general timeline of events there.

Council Member Costanzo said the pre-qualifications for license by the state. He said looking at the documents from last month Apex was not pre-qualified from what he understood as of May 1. He asked if are they pre-qualified now.

City Attorney Vanerian said Apex submitted proof of state pre-qualification before they were approved by the planning commission. He said applicants have to have that before they get approved, they cannot get approval without it.

Mayor Ackley said the procedure is that anyone applying for a provisioning center in the city provides pre-qualification on their own. She said the city does not go out and solicit until they finally provide this to us.

City Attorney Vanerian agreed. He said the ordinance affirmatively places that obligation on the applicant. He said it is the applicant's duty and obligation to provide the city with proof of state pre-qualification. He said it is not the city's job to continually hunt around and see if they could find it somewhere on a state website. He said it is the applicant's obligation and duty to submit that. He said if they do not submit it, they can't be approved.

Attorney Mark Roberts said Attorney Vanerian is correct and that Steve Schafer on behalf of Pincanna regularly was in contact trying to get information about this and was just told the review is pending. Attorney Roberts said that that's all Mr. Schafer was told. Attorney Roberts said as far as the need to fill out forms for the tap fees, Pincanna was never advised that there was a form to fill out. He said he thinks that would have been appropriate. He said but more importantly, Apex did not submit their plan initially until April 4, 2019. He said so in December of 2018 when apparently, the review process began, Pincanna had the proposed water and sewer tap and the proposed new building Apex was nowhere on the scene. He said four- or five-months later Apex submits a plan and they get priority all of a sudden. He said what happened in December when the city first started initially looking at these. He said there should have been a determination that Pincanna had the highest priority. He said Pincanna plans clearly show proposed new water and sewer connections. He said he does not know if that was overlooked. He said but the argument Pincanna did not say specifically new office and storage building on the northern part, it is pretty clear if one is marked existing the other one is new. He said but more importantly it is clear from this plan when you look at the legend that these are proposed new water and sewer lines going back to this office and storage building on the northern property line. He said it's inarguable the existing water and sewer lines are clearly designated within the right of way and the lines going back to the building are much darker which is proposed new under the legend. He said at the time the city purportedly in December 2018 began reviewing the C-2 applications we were the high priority on the public. He said Pincanna was never asked to fill out the form for the tap fee which they would have happily done. He said Pincanna had in the application and their proposal to meet the state approval prequalification criteria. He said they could have done that very easily because the way the state has been working it. He explained if you are approved on one site, you don't need to resubmit everything to the state. He said they just review the material they already have, and it would have been done in short order. He said in December of 2018 when the city purportedly started looking at these things, as far as we know, Pincanna was the only game in town. He said despite

repeatedly contacting the city for the status of the review, we were not told anything other than it's under review. He said the level working with the other applicant across the street raises some questions and I don't know why our plan was not given a similar opportunity.

Council Member Lublin said I'm hearing both sides, but I have to support my administration and our attorney. He said in my view that is really where we're at.

Council Member Owsinek said having served on the planning commission as a planning commissioner and having reviewed all of the documentation present by both sides, he too, has to side with the administration that they proceeded with all due diligence. He said he sees no issue and no reason to grant any variances for this applicant. He said he supports the administration and is willing to do so with a resolution.

**CM 8-16-20 MOTION TO APPROVE RESOLUTION 2020-29
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
WALLED LAKE DENYING APPLICANT'S APPEAL IN CITY
COUNCIL CASE NO. 2020-03 AND AFFIRMING THE
ADMINISTRATIVE DENIAL OF APPLICANT'S SITE PLAN
APPLICATION FOR A PROVISIONING CENTER**

Motion by Owsinek, seconded by Lublin, CARRIED: To approve resolution 2020-29 a resolution of the City Council of the City of Walled Lake denying applicant's appeal in City Council Case 2020-03 and affirming the administrative denial of applicant's site plan application for a provisioning center.

Roll Call Vote

Ayes (5)	Lublin, Owsinek, Woods, Ambrose, Ackley
Nays (1)	Costanzo
Absent (1)	Loch
Abstain (0)	

**CM 8-17-20 MOTION TO APPROVE RESOLUTION 2020- 30 A
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
WALLED LAKE DENYING APPLICANT'S REQUEST FOR A
VARIANCE FROM THE 500 FT. SETBACK REQUIREMENT IN
SECTION 21.50(E)(7) OF THE ZONING ORDINANCE FOR THE
REASON THAT APPLICANT HAS FAILED TO DEMONSTRATE
A PRACTICAL DIFFICULTY**

Motion by Ambrose, seconded by Owsinek, CARRIED: To approve resolution 2020-30 a resolution of the City Council of the City of Walled Lake denying applicant's request for a variance from the 500 ft. setback requirement in Section 21.50(E)(7) of the Zoning Ordinance for the reason that applicant has failed to demonstrate a practical difficulty.

Roll Call Vote

Ayes (5)	Lublin, Owsinek, Woods, Ambrose, Ackley
Nays (1)	Costanzo
Absent (1)	Loch
Abstain (0)	

CM 8-18-20 MOTION TO APPROVE RESOLUTION 2020-31 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WALLED LAKE DENYING APPLICANT'S REQUEST FOR A VARIANCE FROM THE TWO (2) FACILITY NUMERICAL LIMITATION IN SECTION 21.50(b) OF THE ZONING ORDINANCE FOR THE REASON THAT APPLICANT HAS FAILED TO DEMONSTRATE A PRACTICAL DIFFICULTY

Motion by Owsinek, seconded by Woods, CARRIED: To approve resolution 2020-31 a resolution of the City Council of the City of Walled Lake denying applicant's request for a variance from the two (2) facility numerical limitation in Section 21.50(b) of the Zoning Ordinance for the reason that applicant has failed to demonstrate a practical difficulty.

Roll Call Vote

Ayes (5)	Lublin, Owsinek, Woods, Ambrose, Ackley
Nays (1)	Costanzo
Absent (1)	Loch
Abstain (0)	

AUDIENCE PARTICIPATION

David Rudoj – Mr. Rudoj said he is the attorney for Apex Ultra World-Wide. He said he understands council has already made their decision but would like to correct a few things for the record. He said he wants to note Apex Ultra World-Wide submitted their application in 2018 not 2019. He said he did not know if that's a typo or the reason for the confusion regarding that. He said there's absolutely no argument that Pincanna's application should have been given first priority and this idea that the city was due to inform them of the need to pay the tap fees is completely laughable and ridiculous. He said it's within the city's administrative rules which can be easily found on the city's web site under the City of Walled Lake marijuana facility administrative rules in section 6, it states the priorities. He said first it states directly in that rule that the tap fees must be paid, tap and connection fees must be paid at the time of the review. He said for Pincanna to claim that it's the city's responsibility to inform them about what is directly in the ordinance and what must be done, he opined is ridiculous. He said but further, section 6 states that you have to propose to establish both city and water service to a property that is unserved by city water and sewer service at the time of the public and that is not true of their application. He said their application purported without actually properly labeling it in a one-

page site plan to bring new water and sewer to a property that already has water and sewer. He said they are just proposing a new build on that property where they bring additional water and sewer. He said not water and sewer to a property that is currently unserved which is stated directly in the priority section of the administrative rules. He said so the application would never have gotten first priority because it was not a property that was unserved by city water and sewer. He said directly there was the fact that the tap and connection fees were required by the ordinance to be paid prior to the review. He said Pincanna understood that their application was being reviewed and they did not make any attempt at all to pay those water and sewer tap fees. He said they did not even perfect first, second or third level of priority at the time nor with that property even in their 20 months later supplemental application meet those criteria as they still even then didn't make the attempt to pay those fees. He said this is not something hidden esoteric information that the city had only given to certain applicants. He said it's available on the city web site. He said this idea that certain information was given to Apex over other applicants is ridiculous because it's available within the administrative rules for the ordinance, for the marijuana facilities which are published on multiple places on city's web site. He said he wanted that to be corrected because there are a lot of assertions that somehow there was unfair treatment to Pincanna that he does not find to be factually accurate at all. He said the information was available for anybody who wanted it, they were just not priority. He said the rules for priority were given before the application submittal deadline and all applicants were aware of these rules and it doesn't qualify for priority one or two. He said, had Pincanna made the proposition it was not unserved, a property unserved by water and sewer. He said because there were these blanketed assertions stated by appellee that are clearly not factually accurate. He said he appreciates the city's time and attention to all of these matters and their careful review of all of these matters.

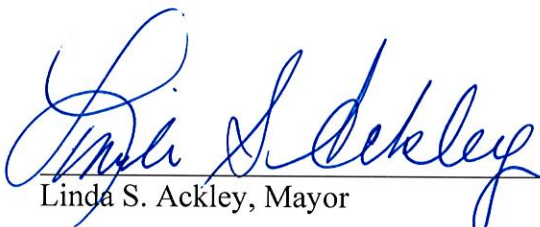
ADJOURNMENT

Meeting adjourned at 8:47 p.m.



Miranda Gross, Deputy City Clerk

approved 9-15-20



Linda S. Ackley, Mayor