CITY OF WALLED LAKE
REGULAR COUNCIL MEETING
(ELECTRONIC MEETING PLATFORM)
Tuesday, April 21, 2020 | 7:30 P.M.

CALL TO ORDER		
ROLL CALL & DETERMINATION OF A QUORUM		
REQUESTS FOR AGENDA CHANGES		
APPROVAL OF MINUTES	1. Regular Council Meeting and Public Hearing of February 18, 2020	Pg. 4
COUNCIL REPORT		
CORRESPONDENCE		
ATTORNEY'S REPORT	1. Memo Coeus, LLC - Lawsuit Status Report 2. Pincanna, LLC Provisioning Center Appeal Request	Pg. 26 Pg. 42
UNFINISHED BUSINESS	1. Second Reading C-348-20 Oakland County Cross Connection Control Program 2. BDS Medical Growers, LLC Appeal Case 2020-01	Pg. 45 Pg. 48
NEW BUSINESS	1. First Reading C-350-20 Amendment to Chapter 50 pertaining to Tobacco, Vapor and Alternative Nicotine Products by Minors 2. Proposed Resolution 2020-14 Authorizing the City Manager to pursue agreement for title of vacant lot on Gamma Road to dedicate as park space to Marshall Taylor Park 3. Proposed Resolution 2020-15 Healthcare Plan Renewal 2020 Fulltime Employee 4. Bids for Downtown Storm Sewer and Beautification	Pg. 77 Pg. 85 Pg. 87 Pg. 91
MAYOR'S REPORT		
CITY MANAGER'S REPORT		
AUDIENCE PARTICIPATION	*Audience members will be able to speak via electronic means or written comments as instructed below.*	
COUNCIL COMMENTS		

NOTICE OF ELECTRONIC PUBLIC MEETING: Pursuant to Executive Order No. 2020-15, signed by Governor Whitmer on March 18, 2020, which allows participation of the City Council meeting to be made available via electronic communications out of precaution and to limit the potential exposure of the public and staff to COVID-19.

Notice of Electronic Meeting Platform

The City will be utilizing the video/audio-conferencing tool ZOOM. Members of the Walled Lake public body will be able to hear and speak to each other for the entire meeting. Except for closed session portions of the meeting, members of the audience/public will be able to hear members of the Walled Lake public body during the entire meeting but will **only be able to speak** during Audience Participation or Public Hearing.

In order to connect to the meeting through ZOOM using a laptop, PC or Smart Phone, a member of the public may need to do the following:

- Install Zoom App on mobile device.
- Or download Zoom Client at https://zoom.us/download and install on a PC or Mac

Otherwise please click the link below and join the meeting.

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  https://us02web.zoom.us/j/89391548977
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Members of the public participating in during the Audience Participation period via ZOOM will wait in a virtual queue until called upon during the audience participation period. Because of limitations on un-muting and re-muting members of the public, there will be only one audience participation period, *which will be at the end of the meeting* (unless there is a public hearing item, in which case the following procedures will apply to that portion of the meeting as well).

When audience participation is permitted, members of the public will be called one at a time, as would happen during an in-person meeting. The meeting moderator will determine the order of public speakers. If you want to speak, you must use the "Raise Hand" feature for the Mayor to know you need to be unmuted. When you are unmuted, you will have three (3) minutes to share your comments to the public body. At the conclusion of your comments or your three (3) minutes, you will be re-muted and then removed from the queue.

Participants may also choose to submit comments that can be read into the record. Comments can be submitted via an email to clerk@walledlake.com. Written comments will be accepted prior to 4:30 p.m. on the day of the meeting.

Procedures by which persons may contact members of the public body prior to a meeting.

The City of Walled Lake government e-mail addresses of the members of all public bodies utilizing this means of meeting are available on the City's website at:

https://walledlake.us/index.php/contact-us

Procedures for participation by persons with disabilities.

The City will be following its normal procedures for accommodation of persons with disabilities. ***Those individuals needing accommodations for effective participation in this meeting should contact the City Clerk (248) 624- 4847 in advance of the meeting. An attempt will be made to make reasonable accommodations.***

Individuals with Hearing or Speech-Impairments

Users that are hearing persons and deaf, hard of hearing, or speech-impaired persons can communicate by telephone by dialing 7-1-1.

- Individuals who call will be paired with a Communications Assistant
- Make sure to give the Communications Assistant the proper teleconference phone number and meeting ID with password.

For more information please visit:
https://www.michigan.gov/mpsc/0,9535,7-395-93308_93325_93425_94040_94041---,00.html

REGULAR COUNCIL MEETING
PUBLIC HEARING
TUESDAY, FEBRUARY 18, 2020
7:30 P.M.

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

Pledge of Allegiance led by Mayor Ackley.

Invocation led by Mayor Pro Tem Ambrose.

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

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

CM 2-1-20 MOTION TO EXCUSE COUNCIL MEMBER LUBLIN

Motion by Owsinek, seconded by Loch, UNANIMOUSLY CARRIED: To excuse Council Member Lublin.

REQUESTS FOR AGENDA CHANGES:

Mayor Ackley requested to add under Mayor's Report board and commission appointments.

PUBLIC HEARING:

1. Case 2020-02
Applicant: Apex Ultra Worldwide, LLC
Location: 1760 E. West Maple Road
Request: Non-Use Variance

The City Council pursuant to Ordinance No. C-337-18 for limited purposes of hearing and acting upon an appeal under this ordinance, shall act as, and in place of, the Zoning Board of Appeals pursuant to Section 601 of the Michigan Zoning Enabling Act.

This matter relates to property located at 1760 E. West Maple zoned C-2. The applicant is seeking a variance 21.50 (l) requesting an extension of Site Plan Approval.

City Attorney Vanerian explained this is City Council Case 2020-02 applicant is Apex Ultra Worldwide location at 1760 E West Maple Road. The request is for a non-use variance for an

extension of an approved site plan for marijuana facility. Attorney Vanerian explained the site is zoned C-2 and the applicant is seeking a variance from Section 21.50 (l).

Attorney Vanerian explained the applicant received site plan approval on May 28, 2019 from the Planning Commission for a marijuana provisioning center to be constructed on an undeveloped parcel of land. The applicant was sent a form notification letter that always goes out after any site plan approval from the Planning Commission with any conditions that were attached to that approval. Attorney Vanerian said the approval letter explains the approval is good for one year. Under the city's zoning Ordinance, all developments that receive site plan approval are good for one year which means the applicant has one year to pull a building permit for the project, if the applicant does not the site plan approval will expire. The city's Marijuana Facility Ordinance shortens that period of time to 180 days and there also an additional 90-day extension that can be requested by the applicant and granted. In this case the applicant has been moving forward with the new development on a vacant piece of land and does present a number of unique challenges as it relates to soil conditions and meeting engineering requirements for storm water detention facilities.

Attorney Vanerian explained it is a straight forward issue, the council is called upon to exercise its variance powers as it relates to the 180 days expiration and it requires the applicant to demonstrate a practical difficulty, unique situation that was not self-created that would warrant a variance from the shorter 180 day expiration provisions. Attorney Vanerian explained the memo he prepared outlines the five criteria to be met to grant the variance request. Attorney Vanerian said the applicant's attorney is present this evening to explain applicants' position.

Open Public Hearing 7:35 p.m.

Attorney David Rudoi, representing Apex Ultra Worldwide, Michael Beydoun, architect, and owners Anthony Virga and Ryan McMullen.

Mr. Rudoi explained he and his applicant have been working diligently, this is not a case where Apex Ultra has been dragging their feet, there are unique aspects to this property that have caused some delays with engineering. Attorney Rudoi explained after the purchase of the property, when soil boring were done, the property was found to be sitting on 20 feet of crushed concrete and that has presented some unique challenges with this property. Attorney Rudoi explained the applicant's architect and engineer have been working through the process with the city consulting engineer, Boss Engineering. Attorney Rudoi explained there has been a lot of back and forth between the reviews for example, in a review the city engineer requested, due to the water table and crushed concrete, the whole site be raised two feet. Mr. Beydoun provided a new site plan and that plan required a retaining wall. Attorney Rudoi explained the storm drain hook up provided issues with neighboring properties. The city had specific requirements with the easement to be able to use the storm drain and after a lot of negotiation back and forth with neighboring property owners, unfortunately an agreement was not able to be reached. Attorney Rudoi explained Apex then redesigned and created a retaining pond on their second site which falls in Commerce Township and those plans had to be approved with Commerce Township.

Attorney Rudoi said the approval has been gained from Commerce Township. Attorney Rudoi explained Apex has been moving as quickly as possible given the unique aspects of this particular site and the requirements that need to be met. Attorney Rudoi said they have been through nine different site plan approvals now, it does look according to Mr. Beydoun, the most recent submittal will be approved.

Attorney Rudoi explained a lesser variance would not allow the use of the property, Apex is eager to move forward. Attorney Rudoi said these issues were not self-created they are unique to the property that could not have been known about the property before purchasing it, obtaining the soil boring samples and starting the engineering. Attorney Rudoi explained Apex and Mr. Beydoun have been working to design the property to meet the engineering goals. Attorney Rudoi explained there are three parcels involved to meet these requirements, Apex has been doing everything they can do to move as quickly as possible. Attorney Rudoi opined that given the unique aspects of this property, the project could have been done faster. Attorney Rudoi said Mr. Beydoun has done hundreds of similar type site plans that have been approved by other cities, every piece of property has its unique complexities. Attorney Rudoi explained the city ordinance did favor new builds, this particular piece of property had delays that were not the fault of Apex. Attorney Rudoi said he and his applicant implore City Council to grant this variance.

Mayor Ackley asked the length of variance being requested. Attorney Vanerian explained it is up to the applicant for the length of the extension they are asking for.

Attorney Rudoi explained they are requesting the normal site plan approval process time, one year and he understood on the agenda tonight was to amend the marijuana ordinance to remove the 180 days.

City Manager Whitt explained the consulting city engineer and administration have no problem with the extension and recommend approval of request.

AUDIENCE PARTICIPATION

David Maxon, 1386 Appleford – said council needs to get up and walk out of this building. Mr. Maxon said the city is going down the toilet because of council, there is talk on Facebook that the city is going to riot. Mr. Maxon said this is not what they want but will do this to get their city back. Mr. Maxon said they will shut the city down. Mr. Maxon opined to turn the city over to Oakland County they are addressing dispatch and water and sewer already.

Attorney Mark Roberts, Secrest Wardle represents Pincanna, LLC – explained they have submitted a site plan in June of 2018 and the plan has not been reviewed by the Planning Commission as of yet. Attorney Roberts explained Pincanna is a marijuana provisioning applicant. Attorney Roberts opined Apex has had more than enough time, they recognized they bought this property that has been on the market for twenty years. Attorney Roberts explained he is somewhat familiar with the city and this property has been attempted to be developed

before and it has always run into problems. Attorney Roberts said he is here tonight to advocate on behalf of Pincanna to deny the variance or at least schedule the Pincanna site plan review for the Planning Commission even if it is a contingent approval if for some reason Apex cannot proceed, Pincanna would like the opportunity. Attorney Roberts explained Pincanna's proposal includes a significant investment to an existing building in the gateway to the city landscaping, parking, façade work, new building construction, and new water and sewer connections. Attorney Roberts explained Pincanna is self-funded and there will not be any hold up for financing and they bring significant expertise to the marijuana industry and are ready to go. Attorney Roberts said Pincanna will only be a medical marijuana treatment center.

Close Public Hearing 7:48 p.m.

City Manager Whitt explained the city received Pincanna's application. He explained the city has had ten years prior experience with the people from Apex (Bazonzoes) who have done nothing illegal or improper and operated within the law. City Manager Whitt explained administration is not opposed to the other facility, Pincanna' s request may be something to consider, a contingent approval, however, he deferred to the city attorney if both instances could occur.

City Attorney Vanerian explained under the city's marijuana regulations only 2 licenses are available in the C-2 District, the Planning Commission approved two site plans in the C-2 District, Apex and Attitude Wellness. Attorney Vanerian explained right now there are no more licenses to award in the C-2 District. Attorney Vanerian explained if one of the approved facilities should fall through and a license became available in the future, the city would review the other applications and based on the merits and priorities of those applications.

Mayor Pro Tem Ambrose expressed maybe having a plan B in case the 90-day extension does not work for Apex and should the city start a site plan review process for another applicant.

City Attorney Vanerian explained further that if the city had to cross that bridge, the city would review applications they currently have, some applications are reviewed by the Planning Commission, and some are reviewed for an existing building. Attorney Vanerian explained there are a lot of different factors and criteria to decide. Attorney Vanerian said the city received over twenty applications for only two available licenses in the C-2 District.

City Manager Whitt explained there is a licensing process in place and the city is following that process.

CM 2-2-20 TO APPROVE CITY COUNCIL CASE 2020-02 VARIANCE REQUEST FOR A 90 DAY EXTENSION FOR APEX ULTRA WORLDWIDE

Motion by Loch, seconded by Owsinek

Discussion

City Attorney Vanerian explained the applicant is seeking a site plan approval be extended through, for a full year, from the date of approval. Attorney Vanerian explained it would benefit to identify an actual date.

City Manager Whitt explained 90 days may not be enough time and the engineering has to be right and the city has been working with Apex. Manager Whitt explained the applicant is asking for a year and administration does not oppose that extension.

Mayor Ackley explained the meeting of the five variance criteria should be included in the motion.

Council Member Owsinek explained the end date would then be May 31, 2020.

Attorney Vanerian explained the applicant is seeking the same site plan expiration provisions apply in their case that would apply to every other development in the city. Attorney Vanerian explained the applicant would have one year from the date of their site plan approval to pull a building permit and commence construction. Attorney Vanerian explained under the marijuana facility ordinance it makes reference to either obtaining or applying for a State license and that would toll the running of the one-year expiration period.

CM 2-2-20 AMEND MOTION TO APPROVE CITY COUNCIL CASE 2020-02 VARIANCE REQUEST TO INCLUDE THAT APPLICANT HAS DEMONSTRATED A PRACTICAL DIFFICULTY AND MET THE FIVE CRITERIA FOR A VARIANCE; ORIGINAL SITE PLAN APPROVAL WAS GRANTED MAY 21, 2019 AND APPLICANT WILL HAVE ONE YEAR FROM MAY 31, 2019 TO APPLY FOR AN BE ISSUED A BUILDING PERMIT BY MAY 31, 2020 THAT WILL TOLL THE RUNNING OF THE EXPIRATION PERIOD

Motion by Loch, seconded by Owsinek, UNANIMOUSLY CARRIED: To approve City Council Case 2020-02 variance request to include that applicant has demonstrated a practical difficulty and met the five criteria for a variance; original site plan approval was granted May 21, 2019 and applicant will have one year from May 31, 2019 to apply for an be issued a building permit by May 31, 2020 that will toll the running of the expiration period.

Roll Call Vote

Ayes (6)	Ambrose, Costanzo, Loch, Owsinek, Woods, Ackley
Nays (0)	
Absent (1)	Lublin
Abstention (0)	

APPROVAL OF THE MINUTES:

1. **Regular Council Meeting and Public Hearing of January 21, 2020**

CM 2-3-20 MOTION TO APPROVE THE REGULAR COUNCIL MEETING AND PUBLIC HEARING OF JANUARY 21, 2020

Motion by Owsinek, seconded by Woods, UNANIMOUSLY CARRIED: To approve the Regular Council Meeting and Public Hearing of January 21, 2020.

Roll Call Vote

Ayes (6)	Loch, Owsinek, Woods, Ambrose, Ackley
Nays (1)	Costanzo
Absent (1)	Lublin
Abstention (0)	

2. **Special Meeting and Public Hearing of January 28, 2020**

CM 2-4-20 MOTION TO APPROVE THE SPECIAL MEETING AND PUBLIC HEARING OF JANUARY 28, 2020

Motion by Loch, seconded by Owsinek, UNANIMOUSLY CARRIED: To approve the Special Meeting and Public Hearing of January 28, 2020.

Roll Call Vote

Ayes (6)	Loch, Owsinek, Woods, Ambrose, Costanzo, Ackley
Nays (0)	
Absent (1)	Lublin
Abstention (0)	

AUDIENCE PARTICIPATION:

Linda Hyaduck, representative from office of Senator Jim Runestad – invited council and residents to a finance committee meeting at the Novi Civic Center, Monday February 24, 2020 10am to noon.

Janice Leonhardt, 232 W. Walled Lake Drive – on behalf of the Commerce Historic Commission invited council to upcoming event they will be having. Mrs. Leonhardt explained Oakland County will be celebrating its 200th birthday, March 28th and there will be an open house at the Stonecrest building in Walled Lake. Mrs. Leonhardt explained one of the items of celebration are those historic individuals buried in the Commerce and Walled Lake cemetery. Mrs. Leonhardt

explained Mr. Dave Decker is interred in the Walled Lake cemetery and he is one of the descendants on behalf of naming Decker Road.

Mayor Ackley added under New Business council's consideration of support for cemetery research of individuals interred.

Trisha Parsons, Nino's Bakery – asked about the follow up on sidewalks and signage for parking.

Marie Brown, audience member – shouted at Mr. Whitt, stating he was a liar and opined BDS should have a license to operate and asked why it is being held up.

Mayor Ackley explained this is not a question and answer session.

COUNCIL REPORT:

Mayor Pro Tem Ambrose explained studies have been done between Ferland and Pontiac Trail. Mr. Wolfson from the Planning Commission is working with him on obtaining contact information of the surrounding businesses. Mayor Pro Tem Ambrose explained there is survey work currently being done and obtaining that vital information is the first step.

Council Member and Trailway Representative Owsinek explained May 6th the trail council will be having a celebration of opening of the trail. Member Owsinek explained the Hawk System traffic signals for the trail are awaiting approval from the Oakland County Road Commission.

CITY MANAGER REPORT:

1. **Departmental / Divisional Statistical Reports**
    - **a. Police**
    - **b. Fire**
    - **c. Finance**
        - **-Warrant**
    - **d. Code Enforcement**

CM 2-5-20 TO RECEIVE AND FILE THE MONTHLY DEPARTMENTAL / DIVISIONAL STATISTICAL REPORTS

Motion by Loch, seconded by Ambrose, UNANIMOUSLY CARRIED: To receive and file the monthly Departmental / Divisional Statistical Reports.

Discussion

Council Member Woods asked if the salt purchase contract is set up to purchase in the summertime or is this a replenishment.

City Manager Whitt explained the city does have a salt purchase contract and

Assistant City Manager Pesta explained the city participates in a local agreement with Farmington Hills, they complete the bid process in partnership with the city and other municipalities for a lower rate. Mrs. Pesta explained Detroit Salt has been the vendor for the last five years and the city does order during the summertime for that year's use.

Roll Call Vote

Ayes (6)	Owsinek, Woods, Ambrose, Costanzo, Loch, Ackley
Nays (0)	
Absent (1)	Lublin
Abstention (0)	

City Manager Whitt explained city Code Enforcement has recently had to issue citations to businesses in violation of the ordinances to include those persons along Spring Park who have been using residential property for commercial storage use, parking lot, etc. and the court date is scheduled for March 3, 2020.

City Manager Whitt explained citations have also been issued to various shopping plazas for donation box issues and that is also scheduled to go before the courts on March 3rd.

City Manager Whitt addressed the sidewalk questions and explained Planning Commission member Wolfson did collect information from those property owners downtown, the city is not done with the survey, it is only preliminary. Manager Whitt explained the preliminary survey showed encroachment areas, the property owners do own as much as up to 10 feet into the road areas. City Manager Whitt explained, what appears underground is that some areas show owners have dug under the roadway, it means they have tunneled in and then there's the concern of the abandoned coal bins there is more than just a sidewalk concern. Manager Whitt explained until the survey is completed, there will not be a solution. Manager Whitt explained there is also the issue of funding and easements from the property owners.

Council Member Costanzo said last month council discussed the alley ways behind the building's downtown and yet there is nothing on the Code Enforcement report, were those issues resolved.

City Manager Whitt asked Member Costanzo if he was referring to Nino's Bakery specifically and explained Nino's Bakery historically had used others property for their deliveries. Manager Whitt opined this is a dispute between the property owners, it is a civil issue.

City Manager Whitt explained he is working with the owner of the Greenhouse to generate a parking agreement for downtown as they own the vacant property on the

corner of Pontiac Trail and Walled Lake Drive. Manager Whitt explained there is an agreement with the owner for some of the neighboring properties of that parking lot. City Manager Whitt explained in his personal observations, employees of the downtown businesses have been utilizing the parking in front of the businesses. City Manager Whitt explained Nino's Bakery parking is contingent to what is available out front, they depend upon the local parking. City Manager Whitt suggested Nino's Bakery require their employees to park across the street and walk across Pontiac Trail to their place of employment and not park in front of their building taking up patron parking. Manager Whitt explained agreements can be pursued among the downtown business owners and it would help the parking situation. City Manager Whitt opined the businesses downtown need to work together concerning the parking.

2. Presentation by Consulting City Engineer

Bradd Maki, consulting city engineer explained there is survey work for the downtown being done concerning the sidewalks, right of way, and property lines.

a. Downtown Storm Sewer and Mercer Beach Projects

Mr. Maki explained there were two grants, one was obtained and the second is awaiting federal approval. Mr. Maki explained the SEMCOG grant and MDNR grant for Mercer Beach need to work together to be completed by June of 2021. Mr. Maki explained these grants work together for improving the downtown. Mr. Maki explained for the improvements to Mercer Beach the MDNR grant contract does need to go out for bid, but first its plan has to have MDNR approval. Mr. Maki explained there is a draft plan of the area downtown by the beach to include additional parking, replacing sidewalks, installing stamped concrete, curbing the road which will aid in drainage and maintain the integrity of the road, intersection work to aid the roads, street lighting enhancements, and replacing storm sewer piping. Mr. Maki said there will also be new fall safe material at the playground structures, bioswale, new fencing and additional lighting.

Council Member Woods asked about bike lane clearance the law requires certain widths and what is the width of the city bike lanes. Do they meet code. Mr. Maki said yes, the lanes are 5 feet.

Mr. Woods asked about parking on the south side. Mr. Maki said 90-degree parking provides for the most parking.

City Manager Whitt explained angled parking for vehicles has to consider all vehicle types, buses or very large vehicles park in the angled parking and they end up part way in the street and part way in the parking spot. Manager Whitt said with the engineer's design of 90-degree parking this will not happen.

Mr. Maki explained this is conceptual plan, the final storm sewer and beautification plans need to be done as soon as possible, within the next month, construction will be starting in the summer

months with completion by November. Mr. Maki said there will be additional parking on the north side of Walled Lake Drive and replacement of the sidewalk. Mr. Maki explained the second project because of its grant process is looking to be in 2021 for completion. There has been some preliminary work already done for the grants. Mr. Maki explained these two projects are designed to meld and work together.

City Manager Whitt opined that council needs to make a decision to move ahead, this is the beginning of fixing the downtown.

b. Public Safety Campus Expansion Project

Mr. Maki explained this project, should council decide to approve, must move quickly to get bids out for timely construction. This project will include addressing drainage, plantings, and aesthetics, plus improve access to and from the trail. Mr. Maki explained the underground utility design will include installation of an 8-inch water main, fire hydrant, and service line along the north side of parking lot to service that area. Mr. Maki explained there will be storm sewer work in the parking lot areas and detention basin. Mr. Maki explained sidewalks, additional parking, and curb work, will be further improvements to the area.

Council Member Costanzo said, "I have a point of inquiry then, two points of inquiry. When the committee was formed back in June 18 last year, there was a committee formed to do a study session to research the opportunity for this property, what other opportunities were identified in that study session beyond this? What other options were discussed on that committee?"

Mr. Maki said he is not part of the committee. Mr. Maki explained that he follows representation of the city when they asked him to proceed that is how it works.

Council Member Costanzo questioned the consultant engineer, "So was there any other studies asked of you to do on this property from other opportunities that might be available or just was this the only one?"

Consultant Engineer Maki explained the work done is the analysis of what is being presented.

Council Member Costanzo questioned the engineer further, "Second point of inquiry is, we talked about the contaminates do you have a study that you can show us exactly what is going on with that property underneath. One of the questions, discussions I had back in June was possibly getting this property appraised to know exactly what the value is to try and get it back on the tax rolls. Do we have that study? When I go to the MDEQ website on their environmental mapper this property is not listed as contaminated just, the barn is and then properties up and down Maple. But if this is not listed on the MDEQ mapper as being polluted. I would like to see exactly what is going on with that soil so that I understand it because the State does not have it listed as a contaminated site, maybe they do not have the right information or the city has not reported it but I would like to see that information before we go any further on what is going on with that soil, to make an informed decision."

Mr. Maki explained the city has those environmental studies done on this property on file and can find the information as city hall.

Council Member Costanzo said again he would like to have it before there is a vote in order to see what exactly is going on this property before council moves forward on a project like this.

Mr. Maki said this property has contaminates through a good portion of it. Mr. Maki explained the purpose of the capping in the north area was a health hazard according to health standards that required the capping. Mr. Maki said that does not mean there are not contaminates down lower, it means the contaminates are not right at the surface anymore. Mr. Maki further explained council will be dealing with it no matter where in that area, so as long as the material is on site and capped it saves the city from the cost to remove the material off site.

Mayor Ackley explained to Council Member Costanzo his questions are to be directed to city administration.

Council Member Costanzo said before it was capped, he researched the DEQ website and it did not have the site listed and that is why he asked if the city had a study to see the data.

Mayor Ackley said the city has done several studies that show the contaminates.

Mr. Costanzo opined council should table it until he can read the data and then make an informed decision before moving forward.

Mayor Pro Tem Ambrose explained the DEQ provided the remedy of capping the site and prior to that the area was fenced off.

Council Member Costanzo said he did not have a date on the other presentation and asked Mr. Maki if there were any cost estimates on this project.

Consultant Engineer Maki explained to Member Costanzo it is still in the preliminary stages.

City Manager Whitt explained there are estimates for engineering services only, bids need to be generated to obtain the potential construction costs.

Council Member Costanzo said he would like the data, a rough analysis of the numbers to know what this project could cost.

City Manager Whitt said Council Member Costanzo he has brought this up before and said the studies Member Costanzo is asking for are available and have always been available at city hall. Manager Whitt explained to Member Costanzo he will have copies made and placed in Council Member Costanzo's mailbox at city hall. City Manager Whitt explained the contamination will not go away and the best option for the future is to use the site, keeping the site capped and create the multi facility use as a training site for police and fire, access to the trail, additional

parking, and a park area. City Manager Whitt said the proposal goes back to original plan when the property was originally purchased.

City Manager Whitt explained there is other property in the city such as the property owned by the Walled Lake Consolidated School system that is still not sold because there was another contaminated area found on the property. City Manager Whitt opined council should proceed with what the site was originally purchased for a training facility for public safety, farmer's market venue, additional parking, and an addition a memorial and trailhead.

Mr. Maki discussed the proposal costs and how they are in proportion to the projects and stressed there is a short window of time to prepare the necessary bids for these projects to commence.

Mayor Ackley opined the lake is the jewel of the city, the work downtown has to be done.

Council Member Woods asked if council approved, is the city locked into these projects even if grant funding not available.

City Manager Whitt explained the improvements begin at the beach and up to Pontiac Trail. That is why the preliminary work was done, to the extent of the engineering, it does not stop at Ferland, the grant work, yes, maybe, but not the engineering work for the downtown. Manager Whitt explained the DDA will be funding portions of the costs for the Mercer Beach playground grants and the downtown stormwater replacement project and beautification.

CM 2-6-20 MOTION TO APPROVE PROPOSAL FOR CIVIL ENGINEERING DESIGN AND SURVEYING SERVICES DOWNTOWN STORM SEWER REPLACEMENT AND BEAUTIFICATION

Motion by Owsinek, seconded by Loch, CARRIED: To approve proposal for civil engineering design and surveying services downtown storm sewer replacement and beautification.

Roll Call Vote

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

CM 2-7-20 MOTION O TO APPROVE PROPOSAL FOR CIVIL ENGINEERING DESIGN AND SURVEYING SERVICES PHASE II – PUBLIC SAFETY CAMPUS EXPANSION PROPOSAL

Motion by Loch, seconded by Owsinek, CARRIED: To approve proposal for civil engineering design and surveying services Phase II-Public Safety Campus Expansion proposal.

Discussion

Council Member Costanzo said, "I have a point of inquiry, the $65,000 is that going forward or is that included some work we have done already that we may have done through various things of phase 2?"

Mr. Maki said any of the work they have done to this point is included.

Council Member Costanzo gestured to Chief Coomer and said the project itself, this piece of property and having a training facility for our firefighters and our police when there is already a state of the art facility that is being used now, is something that is unneeded in the city. You know we are having trouble maintaining parks and other things around our town and this is just one more burden that is going to be upon the city and opined his opinion that he would like to see the property appraised to see exactly what we are talking about. What can the city get out of the value on this property as well what the soil contamination it holds. Member Costanzo said it sounds like we have already spent a good sum of money on this judging on what is in the expenditures and said this project is something not needed by the city. We have more pressing needs across our city whether it be the Tri-A or sidewalks not just at the beach but up and down Pontiac Trail. We have some serious issues, and this is one of the things that is just going to continue to put a burden on the city. Member Costanzo said let's use the forfeiture funds for our police vehicles and other safety equipment but this project I am against.

Mayor Ackley explained that some funding of this project will be from forfeiture funds.

City Manager Whitt explained the property was purchased for $1.1 million in early 2000 to buy the property to do what we are talking about doing. Mr. Whitt said to suggest that somehow the money we are going do the memorial with can be used in Tri-A or any other place, is not true. Manager Whitt opined that the public safety expansion is a good use of the funding and the DDA will be contributing.

Manager Whitt stated the city voted by 55% against spending money on the trail, the city has spent $80,000 on the trail which was touted as a no cost to the taxpayers trail and then there is the $6 million dollars for a bridge that has no benefit to the City of Walled Lake. Mr. Whitt said to suggest that by constructing a training facility for our police and fire is a waste of money is insulting. Mr. Whitt opined that the city was doing the right thing and managing it the right way. Mr. Whitt said we have a trail parking lot with no depot, the depot was torn down and people were promised a depot. Mr. Whitt opined the City is spending over $80,000 now on the trail and did anybody believe it was going to be that, people were told there would be no cost and there is a cost. Mr. Whitt said when Council Member Costanzo starts talking about money that has been spent somewhere other than Walled Lake instead of what the city needs, the trail is an example.

Mr. Whitt said the city has plans for a real trailhead that invite people to the city from the trail because all that is left down by Pontiac Trail is a vacant parking lot that neighboring businesses use.

City Manager Whitt further explained the new trailhead will be next door to the current public safety campus. Mr. Whitt said the project is a good deal for the taxpayer and is a transparent use of the money as opposed to the other not so transparent deals like the airline trail. Manager Whitt stated he is insulted when council members say that somehow there is a better deal than training our firefighter and police officer.

Council Member Costanzo said the forfeiture funds are no guarantee plus the training facility is still going to be a burden on future taxpayers and another expense for maintenance. Council Member Costanzo say he could debate why the millage failed and that the new facility would be more of a burden. Member Costanzo said this is not entirely a police training facility it is a burn facility that there is no need for or justification for a community our size.

Council Member Costanzo said we are not Chicago, we are not New York, we are 2.7 square miles we do not need a training facility.

Council Member Costanzo said the trailhead behind Dave and Amy's is not developed yet, it is still a work in progress and there are many discussions being had right now of what that can be. Council Member Costanzo said the depot building was voted on and came down for various reasons we will not litigate that at this point because it is just a waste of energy. Council Member Costanzo stated that the fact is, we do not need a police or fire training facility like this it is going to be a drain on future resources plus we do not have forfeiture funds that are guaranteed for the future.

Council Member Owsinek called vote to question.

Council Member Costanzo said point of information are we voting on call to question or voting on the resolution. City Manager Whitt said the resolution.

Roll Call Vote

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

City Manager Whitt explained Mayor Ackley appointed Council Member Owsinek as a representative of the city for the Federal Aid Committee. City Manager Whitt said he, Member Owsinek, Assistant City Manager Pesta and Confidential Assistant Jaquays did attend the recent Federal Aid Committee meeting along with consulting engineer Maki. Manager Whitt said the city had received a prior one-million-dollar grant for Decker Road.

Consulting city engineer Maki explained the city's 2022 project for Decker Road is number 2 on the grant list and an earlier start time is strong and if becomes available, the Decker Road project could be moved up a year.
City Manager Whitt explained the city will have the engineering ready, plans ready, and be situated to move quickly if the city's project is moved up.

CORRESPONDENCE: None

ATTORNEY'S REPORT:

City Attorney Vanerian explained council held a special meeting January 28th, applicant BDS and their attorney has been in communication requesting and pressing for a date for the next meeting. Attorney Vanerian explained he would need at least two weeks to review and finalize his recommendation as he was waiting for transcripts from the meeting. The applicant had a court reporter at the meeting.

Discussion was held and date suggested was Wednesday March 18th at 7:30 p.m.

UNFINISHED BUSINESS: None

NEW BUSINESS:

1. **First Reading C-348-20 Oakland County Cross Connection Control Program**

Finance Director Barlass explained cross connection helps to prevent any backflow into water systems. This ordinance allows WRC to act as the city's agent and operate the program. WRC estimated the program to be about $50,000 a year. The city's water loss has significantly dropped down to 10% from 26% since they have started with the city. Finance Director Barlass explained this is significant and the State of Michigan is cracking down on water operations.

Manager Whitt explained when the city transitioned to WRC, the city gave up a nonprofessional water division and made it a professionally managed operation with WRC. Manager Whitt explained the prior unprofessional water divisions operations were costing the Walled Lake taxpayer hundreds and thousands of dollars. Manager Whitt opined council fixed that by bringing WRC on board, and having professionals operate and maintain the water system.

Finance Director Barlass explained it saved a quarter of a million dollars from a loss in revenues.

City Manager Whitt explain those monies can be put to use in other areas of the city. Manager Whitt explained the city has to professionalize operations and this also applies to cross connections. Manager Whitt explained this saves the taxpayers, if one year was almost a quarter of a million dollars, ask yourself how far back the city could have saved those funds.

CM 2-8-20 TO APPROVE FIRST READING C-348-20 AN ORDINANCE ADOPTING THE OAKLAND COUNTY CROSS CONNECTION CONTROL PROGRAM AND DESIGNATING OAKLAND COUNTY AS THE AGENT FOR ADMINISTERING THE PROGRAM

Motion by Ambrose, seconded by Loch, CARRIED: To approve first reading C-348-20 an ordinance adopting the Oakland County Cross Connection Control Program and designating Oakland County as the agent for administering the program.

Discussion

Council Member Costanzo said he has an issue with the language on page 103, section 82-81, paragraph a, "the right to access property". Member Costanzo explained it should be subject to property owner's permission, court order or a declared emergency.

Finance Director Barlass explained WRC makes numerous attempts to communicate, educate and explain why they need access, they do not just go and enter.

City Manager Whitt explained to Council Member Costanzo that this is standard language, there has been language as this in other ordinances. Manager Whitt explained to Council Member Costanzo that when local government provides services, there has to be certain types of access.

Roll Call Vote

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

2. First Reading C-349-20 Amendment to Section 21.50(l) Marijuana Facility Site Plan Expirations Provisions

City Attorney Vanerian explained this is a proposed amendment to the zoning ordinance that would amend the site plan expiration provisions applicable to marijuana facilities under Section 21.50 (l). Attorney Vanerian explained the difficulty applicants have with the short 180-day expiration provision as seen with applicant this evening. Mr. Vanerian explained this is a zoning ordinance amendment as such it would need to go before the Planning Commission for a public hearing then back to council.

CM 2-9-20 TO APPROVE FIRST READING C-349-20 AN ORDINANCE TO AMEND CHAPTER 51, "ZONING" OF TITLE V, "ZONING AND PLANNING", THE CITY OF WALLED LAKE ZONING ORDINANCE, TO AMEND ARTICLE 21.00 "GENERAL

PROVISIONS", SECTION 21.50 "MARIJUANA FACILITIES" BY AMENDING THE SITE PLAN EXPIRATION PROVISIONS SET FORTH IN SUBPARAGRAPH (L) AS PROVIDED BY THIS ORDINANCE

Motion by Owsinek, seconded by Loch, UNANIMOUSLY CARRIED: To approve first reading C-349-20 an ordinance to amend Chapter 51, "Zoning" of Title v, "Zoning and Planning", the City of Walled Lake Zoning Ordinance, to amend Article 21.00 "General Provisions", Section 21.50 "General Provisions", Section 21.50 "Marijuana Facilities" by amending the site plan expiration provisions set forth in subparagraph (l) as provided by this ordinance.

Roll Call Vote

Ayes (6)	Costanzo. Loch, Owsinek, Woods, Ambrose, Ackley
Nays (0)	
Absent (1)	Lublin
Abstention (0)	

3. Proposed Resolution 2020-09 Defer Special Meeting Requirements for Budget Adoption

CM 2-10-20 TO APPROVE RESOLUTION 2020-09 A RESOLUTION RESCHEDULING THE FISCAL YEAR BUDGET PRESENTATION SPECIAL COUNCIL MEETING OF MONDAY, MAY 18, 2020 TO THE REGULAR COUNCIL MEETING OF TUESDAY, MAY 19, 2020

Motion by Costanzo, seconded by Owsinek, UNANIMOUSLY CARRIED: To approve resolution 2020-09 a resolution rescheduling the fiscal year budget presentation special council meeting of Monday, May 18, 2020 to the regular council meeting of Tuesday, May 19, 2020.

Roll Call Vote

Ayes (6)	Loch, Owsinek, Woods, Ambrose, Costanzo, Ackley
Nays (0)	
Absent (1)	Lublin
Abstention (0)	

4. Proposed Resolution 2020-10 Water Residential Assistance Program (WRAP) to Aid Low Income Families

CM 2-11-20 TO APPROVE RESOLUTION 2020-10 A RESOLUTION FOR THE CITY OF WALLED LAKE TO PARTICIPATE IN THE WATER RESIDENTIAL ASSISTANCE PROGRAM TO AID LOW INCOME WALLED LAKE WATER CUSTOMERS WITH BILL ASSISTANCE AND OTHER WATER SERVICES THAT PROVIDE FINANCIAL RELIEF

Motion by Loch, seconded by Ambrose, UNANIMOUSLY CARRIED: To approve resolution 2020-10 a resolution for the City of Walled Lake to participate in the Water Residential Assistance Program to aid low income Walled Lake water customers with bill assistance and other water services that provide financial relief.

Roll Call Vote

Ayes (6)	Owsinek, Woods, Ambrose, Costanzo, Loch, Ackley
Nays (0)	
Absent (1)	Lublin
Abstention (0)	

5. Commerce Township Historical Society Cemetery Research

CM 2-12-20 TO APPROVE THE COMMERCE TOWNSHIP HISTORICAL SOCIETY LOCATED IN WALLED LAKE TO CONDUCT RESEARCH OF THE WALLED LAKE CEMETERY

Motion by Owsinek, seconded by Loch, UNANIMOUSLY CARRIED: To approve the Commerce Township Historical Society to conduct research of the Walled Lake Cemetery.

Roll Call Vote

Ayes (6)	Owsinek, Woods, Ambrose, Costanzo, Loch, Ackley
Nays (0)	
Absent (1)	Lublin
Abstention (0)	

COUNCIL COMMENTS:

Council Member Woods congratulated Murray's Auto Parts on 45 years of service. The fishing tournament was successful. He explained Dave Galloway from the Walled Lake Improvement Board is retiring and wished him well. There is a fundraising event on March 7th by the Walled Lake Civic Fund who raise funding for the firework display. He said there is an event this weekend, Oakland County West Polar Plunge benefitting the Special Olympics and there are

three police officers participating. Member Woods explained Special Olympics is very dear to him and he and his family recently participated in the winter Special Olympics in Traverse City.

Council Member Owsinek thanked Mr. Tim Moore for 28 years of service on the Parks and Recreation Commission.

Council Member Costanzo explained he went before the DDA again this last week as a follow up discussion on the Main Street program and reengaging in the program, they are beneficial to the city.

Mayor Pro Ambrose explained a retirement gathering will be held for Dave Galloway tomorrow a Langan's All Star Lanes and a new person will be appointed. Member Ambrose explained Mr. Galloway was instrumental in treatment plans for the lake.

MAYOR'S REPORT:

1. **Proposed Resolution 2020-11 Recognition of Years of Service to the Parks and Recreation Commission – Member Tim Moore**

Mayor Ackley read into the record resolution 2020-11.

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF WALLED LAKE

A RESOLUTION OF THE CITY COUNCIL PROVIDING RECOGNITION OF AND EXPRESSING GRATITUDE WITH APPRECIATION TO MR. TIM MOORE FOR HIS YEARS OF VOLUNTEER SERVICE TO THE CITY COUNCIL BY SERVING AS A PARKS AND RECREATION COMMISSION MEMBER

Proposed RESOLUTION 2020-11

At a Regular Meeting of the City Council of the City of Walled Lake, Oakland County, Michigan, held in the Council Chambers at 1499 E. West Maple, Walled Lake, Michigan 48390, on the 18th day of February 2020 at 7:30 p.m.

WHEREAS, per City Charter Section 4.5, it shall be the duty of the Mayor to nominate qualified persons to the Council and various Boards and Commissions; and

WHEREAS, per City Charter Section 4.5, City Council approves the nomination for said appointment; and

WHEREAS, with approval of the City Council, Tim Moore served as a volunteer member of the City's Parks and Recreation Commission since 1992; and

WHEREAS, during his twenty-eight years of service with the Parks and Recreation Commission, Mr. Moore has participated in the process of many successful events and projects throughout the City; and

WHEREAS, as a member of the Parks and Recreation he participated in the process of updating of the City's Parks and Recreation Master Plan document; and

WHEREAS, Mr. Moore has volunteered many hours of time as a Parks and Recreation Commission member providing valued input into shaping the City of Walled Lake's appeal with the implementation of the Parks and Recreation Master Plan document; and

WHEREAS, Mayor Linda S. Ackley has requested that Tim Moore be recognized for his services.

NOW, THEREFORE BE IT RESOLVED that the City Council recognizes and expresses sincere gratitude and appreciation to Mr. Tim Moore for his twenty-eight years of service to the City Council, to the City, and to the Citizens of Walled Lake, Michigan.

CM 2-13-20 TO APPROVE RESOLUTION 2020-11 A RESOLUTION OF THE CITY COUNCIL PROVIDING RECOGNITION OF AND EXPRESSING GRATITUDE WITH APPRECIATION TO MR. TIM MOORE FOR HIS YEARS OF VOLUNTEER SERVICE TO THE CITY COUNCIL BY SERVING AS A PARKS AND RECREATION COMMISSION MEMBER

Motion by Costanzo, seconded by Ambrose, UNANIMOUSLY CARRIED: To approve resolution 2020-11 a resolution of the City Council providing recognition of an expressing gratitude with appreciation to Mr. Tim Moore for his years of volunteer service to the City Council by serving as a Parks and Recreation Commission member.

Roll Call Vote:

Ayes (6)	Woods, Ambrose, Costanzo, Loch, Owsinek, Ackley
Nays (0)	
Absent (1)	Lublin
Abstention (0)	

2. Mayor's Nomination of Giovanni Johnson to the Parks and Recreation Commission Proposed Resolution 2020-12

CM 2-14-20 TO APPROVE RESOLUTION 2020-12 ACCEPTING THE MAYOR'S NOMINATION TO FILL A VACANCY ON THE PARKS AND RECREATION COMMISSION PURSUANT TO THE REQUIREMENTS OF THE CITY CHARTER, MAKING THE APPOINTMENT OF GIOVANNI JOHNSON TO THE PARKS AND RECREATION COMMISSION FOR AN UNEXPIRED TERM

Motion by Ambrose, seconded by Costanzo, UNANIMOUSLY CARRIED: To approve resolution 2020-12 a resolution accepting the Mayor's nomination to fill a vacancy on the Parks and Recreation Commission pursuant to the requirements of the City Charter, making the appointment of Giovanni Johnson to the Parks and Recreation Commission for an unexpired term.

Roll Call Vote

Ayes (6)	Ambrose, Costanzo, Loch, Owsinek, Woods, Ackley
Nays (0)	
Absent (1)	Lublin
Abstention (0)	

3. Mayor's nomination of Robert Robertson to the Parks and Recreation Commission Proposed Resolution 2020-13

CM 2-15-20 TO APPROVE RESOLUTION 2020-13 ACCEPTING THE MAYOR'S NOMINATION TO FILL A VACANCY ON THE PARKS AND RECREATION COMMISSION PURSUANT TO THE REQUIREMENTS OF THE CITY CHARTER, MAKING THE APPOINTMENT OF ROBERT ROBERTSON TO THE PARKS AND RECREATION COMMISSION FOR AN UNEXPIRED TERM

Motion by Ambrose, seconded by Costanzo, UNANIMOUSLY CARRIED: To approve resolution 2020-13 a resolution accepting the Mayor's nomination to fill a vacancy on the Parks and Recreation Commission pursuant to the requirements of the City Charter, making the appointment of Robert Robertson to the Parks and Recreation Commission for an unexpired term.

Roll Call Vote

Ayes (6)	Costanzo, Loch, Owsinek, Woods, Ambrose, Ackley
Nays (0)	
Absent (1)	Lublin
Abstention (0)	

Mayor Ackley said she was approached by one the mothers of a son who is part of cub scouts and was asked if the city would work with them to help with a Special Olympics event. Mayor Ackley asked Council Member Woods with assistance.

ADJOURNMENT

Meeting adjourned at 10:20 p.m.

_____ _____

Jennifer A. Stuart, City Clerk Linda S. Ackley, Mayor

History: Chapter 6, The Council: Procedure and Miscellaneous Powers and Duties: *Section 6.7 (a) A journal of the proceedings of each meeting shall be kept in the English language by the Clerk and shall be signed by the presiding officer and Clerk of the meeting.*

OFFICE OF THE CITY ATTORNEY
CITY OF WALLED LAKE, MICHIGAN

L. DENNIS WHITT
CITY MANAGER

VAHAN VANERIAN, ESQ.
CITY ATTORNEY

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March 11, 2020

Members of Walled Lake City Council
1499 E. West Maple Rd.
Walled Lake, MI 48390

Re: Coeus, LLC v City of Walled Lake
OCCC Case No. 18-170030-CZ
Hon. J. Matis

Dear Members of Council:

I am pleased to inform you that on February 20, 2020, the Honorable Jeffrey Matis of the Oakland County Circuit Court issued an opinion and order in the above captioned matter ***granting*** the City's motion for summary disposition and ***dismissing*** all claims for monetary damages asserted against the City and the named City officials (collectively "City Defendants"). A copy of the opinion and order is attached for your reference. The only claim the judge declined to summarily dismiss is Count V of the complaint seeking a refund of Plaintiff's $750.00 application fee.[1] Other than the claim seeking a refund of the $750.00 application fee, the court granted the City's motion for summary disposition in all other respects finding no basis in law or fact warranting an award of damages against the City or any of the named City Officials[2].

Plaintiff, Coeus LLC, is an unsuccessful applicant for a marijuana provisioning center that failed to satisfy the required approval criteria under the city's marijuana facility ordinances and regulations. In response to the City's refusal to approve Plaintiff's provisioning center applications, Plaintiff filed the above captioned lawsuit against the City Defendants and a successful provisioning center applicant ("Greenhouse"). The lawsuit was filed approximately a year and a half ago, on or about November 18, 2018. Some of the owners of the Plaintiff business entity (i.e. Coeus) are attorneys who are also principal members of the law firm representing the Plaintiff in the litigation (Fleming Yatooma & Borowicz). The original complaint included multiple legal theories based on bald, unsupported allegations that the Defendants supposedly masterminded an elaborate scheme of fraud, conspiracy and corruption that pre-dated and permeated the adoption of the City's ordinances to create an allegedly "sham" system that pre-determined certain applicants would be approved and others would not.

[1] The Court did ***not*** find Plaintiff is entitled to a refund of the application fee, it simply declined to dismiss the refund claim on the grounds assert in the city's motion. Count I, which does not include or apply to the City Defendants, also remains pending.
[2] The named City Official included the Mayor, City Manager, City Clerk and the City Development Coordinator.

Plaintiff's theatrical and attention-seeking accusations of a global conspiracy notwithstanding, the complaint is conspicuously devoid of any supporting factual allegations of actual events, transactions, statements or occurrences that would constitute or otherwise support Plaintiff's conclusory allegations of unseen improprieties. Plaintiff's amended complaint does little more than reference ordinary events occurring in the normal course of business (i.e. adoption and amendment of the required ordinances, review and action upon the applications, phone calls and inquiries regarding the status of the applications, etc.) and then postulates "upon information and belief" these otherwise normal events were being orchestrated by unidentified City officials engaged in some elaborate scheme involving clandestine dealings in smoke filled backrooms to rig the system in favor of the successful applicants who, unlike Plaintiff, demonstrated that they actually satisfied the requirements of the City's ordinances.[3]

Plaintiff's complaint conveniently fails to mention numerous key facts that are not disputed and plainly reveal the denial of Plaintiff's application was necessitated by Plaintiff's failure to satisfy basic requirements under the City's ordinances. For example, Plaintiff ignored the undisputed fact that the City afforded the Plaintiff, and all other applicants, more than six months to meet the City's state prequalification requirement before taking action on any submitted application. Plaintiff admits and concedes the City promptly notified Plaintiff of the City's state prequalification requirement adopted shortly after the City started accepting applications and further concedes the City allowed Plaintiff many months to supplement its pending application to meet the requirement prior to making any final decisions on any submitted application. Plaintiff ignores the undisputed fact that despite having more than six months to do so, ***Plaintiff inexplicably never applied for state prequalification.*** Plaintiff's complaint further fails to mention the City's state prequalification requirement placed no additional burden on Plaintiff or any other applicant given state law mandates state approval of the applicant as a prerequisite to opening or operating a marijuana facility.[4]

Plaintiff ignored the undisputed fact that Plaintiff, ***not the City***, prevented and blocked the approval of its own application by failing and refusing to pursue the required state approvals and otherwise failing to satisfy the basic requirements of the City's ordinances. Plaintiff ignored the undisputed fact that even if the City disregarded the mandate of the ordinance and awarded Plaintiff a license without having the required state prequalification, Plaintiff still could not open or operate the proposed facility because Plaintiff has never obtained the required state approvals.

Perhaps most notably, Plaintiff ignored the undisputed fact that it offered a quid pro quo payment of $30,000.00 per year for each Plaintiff owned facility approved by the City (Plaintiff submitted three separate applications for three different facilities). State law prohibits a municipality from collecting more than $5,000.00 per year, per facility. Plaintiff further ignored the undisputed fact that the lease agreement submitted by Plaintiff for the proposed facility was by and between

[3] In an uncompelling attempt to try and legitimize its eye-rolling Hollywood theory of the case, Plaintiff is constrained to mischaracterizing hearsay newspaper articles concerning blatantly irrelevant applications submitted years ago under the City's former "dispensary" ordinance that was repealed and replaced by the current marijuana facility ordinances adopted pursuant to the state licensing Act that establishes the current licensing scheme.
[4] Once again, because state law mandates state approval of the applicant, requiring state prequalification as a prerequisite to City approval does not favor or disfavor any particular applicant.

Plaintiff and a putative landlord with an unperfected ownership interest in the property under a facially expired purchase agreement.

Notably, the presiding judge afforded the Plaintiff extreme latitude in accommodating Plaintiff's extensive efforts to build an actionable case against the City Defendants. For example, the judge granted multiple opportunities to file several amended complaints to try and fix the fatal flaws in Plaintiff's pleadings. Moreover, the judge postponed ruling on the City's motion for summary disposition for nearly a year after filing, thereby allowing Plaintiff an unusually prolonged period of discovery. The judge granted three extensions of the discovery cutoff date. The judge denied multiple motions by the City to either postpone or limit discovery pending a ruling on the City's dispositive motion. In doing so, the court allowed unheard of depositions of elected officials over the City's strenuous objections solely because Plaintiff "alleged" claims of fraud and corruption that the court ultimately dismissed as meritless. Moreover, because the scope of discovery is nearly limitless in civil actions, Plaintiff's exceedingly aggressive and motivated attorneys left no stone unturned in conducting probing discovery that went far beyond the scope of the pleadings in a desperate attempt to unearth a scintilla of evidence to support their baseless accusations of fraud, conspiracy, corruption, etc. Consequently, for the past year and a half the City and its public officials have been under an intense legal microscope that has included producing thousands of pages of documents, subjecting its highest ranking elected and appointed officials to invasive video depositions lasting for hours, and providing extensive written answers and responses to seemingly endless written discovery requests (interrogatories, requests to admit, etc.). Ultimately, Plaintiff's relentless efforts to find a whisker of evidence in support of its incredulous accusations proved to be an exercise in futility, as the absence of the hard-sought-after evidence confirms the alleged improprieties simply never occurred.

After a year and half of conducting intensive discovery and multiple attempts to amend its pleadings to state a meritorious claim for damages against the City Defendants, the Oakland County Circuit Court thoroughly evaluated the Plaintiff's second amended complaint and the scant supporting evidence proffered by Plaintiff, and found no legal or factual merit to Plaintiff's claims of wrongdoing by either the City or any of the named City officials that would warrant an award of damages in favor of the Plaintiff. Accordingly, the court appropriately dismissed all damage claims against the City Defendants.

The court's ruling supports the City's position that the baseless improprieties and conspiracy theories alleged in the lawsuit constitute harassing, frivolous and vexatious litigation filed for the improper and sanctionable purpose of coercing and bullying the City into giving the Plaintiff a provisioning center license (or substantial settlement) by subjecting the City's public officials to unwarranted, meritless, scandalous and inflammatory accusations that have no factual basis.

Respectfully,

Vahan C. Vanerian

Vahan Vanerian, Esq.
City Attorney

FILED Received for Filing Oakland County Clerk 2/20/2020 4:43 PM

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

COEUS, a Michigan Limited Liability Company,

Plaintiff/Counter-Defendant,

v

CITY OF WALLED LAKE, MAYOR LINDA S. ACKLEY, CITY MANAGER L.DENNIS WHIT, CITY DEVELOPMENT COORDINATOR CHELSEA PESTA, CITY CLERK JENNIFER A. STUART, JOHN AND JANE DOES 1 THROUGH 20, CUSTOM BUILT PROPERTIES, LLC d/b/a/ GREEN HOUSE OF WALLED LAKE, a Michigan Limited Liability Company, JERRY MILLEN, an individual, FRANK MARRA, an Individual, and MATTHEW CECCHETTI, an Individual, jointly and severally,

Defendants,

and

CUSTOM BUILT PROPERTIES, LLC d/b/a GREEN HOUSE OF WALLED LAKE, a Michigan Limited Liability Company, and JERRY MILLEN, an individual,

Defendants/Counter-Plaintiffs.

_____/

Case No: 2018-170030-CZ
Hon. Jeffery S. Matis

OPINION AND ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS, CITY OF WALLED LAKE, LINDA ACKLEY, L. DENNIS WHITT, CHELSEA PESTA AND JENNIFER A. STUART'S MOTION FOR SUMMARY DISPOSITION

This matter is before the Court on Defendants City of Walled Lake, Linda S. Ackley, L. Dennis Whitt, Chelsea Pesta, and Jennifer A. Stuart's (collectively "City Defendants") motion

for summary disposition pursuant to MCR 2.116(C)(7) and (C)(8). The Court heard oral argument and took the matter under advisement.

PERTINENT PROCEDURAL HISTORY

Plaintiff filed its Complaint in this matter on November 19, 2018. The City Defendants filed a motion for summary disposition. While a decision on that motion was pending the Court granted Plaintiff's motion for leave to file an amended complaint. The First Amended Complaint ("FAC") was filed August 28, 2019. On September 12, 2019 the Court granted Defendants Custom Built Properties, LLC d/b/a Green House of Walled Lake ("Green House") and Jerry Millen's ("Millen") motion for summary disposition pursuant to MCR 2.116(C)(8) and granted Plaintiff's request to amend the FAC with respect to those defendants. On September 19, 2019, the City Defendants filed a motion for summary disposition as to Plaintiff's FAC which incorporated its original motion for summary disposition and brief in support. On that same day, Plaintiff filed its Second Amended Complaint ("SAC"). The SAC adds two parties, Frank Marra ("Marra") and Matthew Cecchetti ("Cecchetti"), and adds a count of tortious interference of a business expectancy as to Green House, Millen, Marra, and Cecchetti. The SAC did not alter the claims or factual allegations as to the City Defendants. Therefore, although the City Defendants' current motion for summary disposition requests dismissal of Plaintiff's FAC, the Court finds that it is appropriate under the circumstances to consider the City Defendants' current motion for summary disposition in light of the SAC as the claims against the City Defendants remain unchanged except that they are renumbered.

BACKGROUND

This matter arises out of the City of Walled Lake's (the "City") implementation of its medical marihuana facilities licensing ordinance ("ordinance"). The City passed its original

ordinance in 2017 under the authority of the Medical Marihuana Facilities Licensing Act (MMFLA), MCL 333.27101, et seq., and passed an amended ordinance in January 2018. The ordinance authorizes three licenses for provisioning centers in the city, two in the C-2 zoning district and one in the C-3 zoning district. Thereafter, the City passed a resolution which established the administrative rules for processing license applications for approval to operate medical marihuana facilities. On April 2, 2018, Plaintiff submitted three applications to the City seeking licenses to operate marihuana provisioning centers. It is undisputed that the City received more applications then licenses available. Plaintiff submitted a supplemental application in July 2018 in an effort to comply with the amended ordinance. Plaintiff alleges that following the submissions of its applications, Plaintiff repeatedly but unsuccessfully sought information regarding its applications and the review process. Green House received its licenses to operate on December 10, 2018. Approximately three months later Plaintiff was advised that its request for the C-3 license was denied.

Plaintiff asserts that the City improperly issued licenses to pre-determined parties contrary to representations to Plaintiff that its applications were still under review and potentially eligible for approval and accepted Plaintiff's applications and accompanying fees despite the City's pre-determination of which applicants would be granted licenses. Plaintiff also alleges that the City and the City Defendants were grossly negligent in the processing and denial of Plaintiff's C-3 application in that the City Defendants failed to notify Plaintiff of the results of the preliminary review of the application and because the ultimate denial of the application was premised on the fact that the City amended its ordinance to require state pre-qualification with the State of Michigan Department of Licensing and Regulatory Affairs which was not a requirement when Plaintiff had prepared its application in reliance on the original ordinance.

Plaintiff alleges that the amendment to the ordinance was passed with the direct intent to benefit Millen and Green House because he was a City insider and the City knew he was further ahead in the state approval process than other applicants.

Plaintiff alleges the following claims against the City Defendants in the SAC: Count II- fraudulent misrepresentation; Count III- silent fraud; Count IV- negligent misrepresentation; Count V- unjust enrichment against the City of Walled lake only; Count VI- breach of implied contract; Count VII- promissory estoppel; Count VIII- violation of substantive due process; Count IX- civil conspiracy; Count X- injunctive relief; and Count XI gross negligence. The City Defendants assert that they are entitled to summary disposition of all of Plaintiff's claims pursuant to MCR 2.116(C)(7) and (C)(8).

STANDARD OF REVIEW

Summary disposition under MCR 2.116(C)(7) may be granted when "immunity granted by law" bars a claim. In determining whether summary disposition under MCR 2.116(C)(7) is appropriate, a court considers all documentary evidence submitted by the parties, accepting as true all the contents of the complaint unless affidavits or other appropriate documents specifically contradict them. See *Patterson v Kleiman,* 447 Mich 429, 433-435 (1994).

A motion for summary disposition pursuant to MCR 2.118(C)(8) tests the legal sufficiency of the Complaint. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the non-movant. *Wade v Dept of Corrections*, 439 Mich 158 (1992). A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* at 163. "When deciding a motion brought under this section, a court considers only the pleadings. MCR 2.116(G)(5)." *Maiden v Rozwood*, 461 Mich 109, 119 (1999).

DISCUSSION

The City Defendants first argue that Plaintiff lacks standing to sue the City Defendants. The City Defendants cite no binding authority in support of its position but instead argues that this situation is akin to that of a disappointed bidder because the ordinance is for the benefit of the public not the individual and that issuance of a license is discretionary. The Court is not persuaded that Plaintiff lacks standing in this matter. In support of its position, the City Defendants relie on *Groves v Dept of Corrections,* 295 Mich App 1 (2011). In *Groves,* the plaintiffs attempted to challenge the competitive bidding process for public contracts. The Court in *Groves* recognized that the basis for the rule that denies standing to disappointed bidders to challenge the discretionary award of public contracts recognizes that competitive bidding on public contracts is designed for the benefit of taxpayers and not those seeking the contract. *Id.* at 6. Here, the City Defendants make only the conclusory statement that the ordinance is for the benefit of the public and not the individual and there is no public contract at issue in this case. Moreover, the Court is not persuaded that the issuance of a license to a private entity permitting the entity to operate a business is akin to the process of obtaining a public contract to provide goods or services to a government agency.

Accordingly, the City Defendants' request for summary disposition based on lack of standing is DENIED.

Next, the City Defendants argue that Plaintiff's tort claims (intentional and negligent) all fail to state a claim and are barred by governmental immunity. Plaintiff responds that its tort claims are not barred by governmental immunity because its actions were ultra vires and it pled in avoidance of governmental immunity when it added its gross negligence count. In support of its argument, Plaintiff relies primarily on *Odom v Wayne Cty,* 482 Mich 459 (2008). However,

Odom specifically addressed the circumstances under which governmental employees enjoy qualified immunity for torts not agency tort liability. *Id.* at 461, 479–480. Under the Government Tort Liability Act (GTLA), MCL 691.1401 et seq., a governmental agency engaged in the exercise or discharge of a governmental function is immune from tort liability unless otherwise provided by the GTLA. MCL 691.1407(1). There are only five statutorily-prescribed exceptions to the broad immunity conferred upon governmental entities; the highway exception (MCL 691.1402(1); the motor vehicle exception (MCL 691.1405); the public building exception (MCL 691.1406), the proprietary function exception, (MCL 691.1413); and the governmental-hospital exception (MCL 691.1407(4)). A plaintiff must plead one of the exceptions to governmental immunity. The immunity conferred on governmental agencies is broad, and the exceptions are narrowly construed. *Nawrocki v Macomb Co Rd Com'n*, 463 Mich 143, 158 (2000). Since Plaintiff did not allege that any of these exceptions apply, the only issue to resolve is whether the City was engaged in a governmental function.

A governmental function is "an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law." MCL 691.1401(b); see also *Ross v Consumers Power Co* (On Rehearing), 420 Mich 567, 591 (1984). An agency engaged in ultra vires acts is not immune from tort liability because a governmental agency must be engaged in the exercise of a governmental function to qualify for immunity. *Ross,* 420 Mich at 620. However, even an improperly performed activity is still an authorized governmental function, if the general activity was authorized by law. *Gracey v Wayne Co Clerk,* 213 Mich App 412, 420 (1995), overruled on other grounds by *American Transmissions, Inc v Attorney General,* 454 Mich 135 (1997). In determining whether a governmental agency is engaged in a governmental function, this Court considers "the general activity involved rather than the

specific conduct engaged in when the alleged injury occurred." *Ward v Mich State Univ* (On Remand), 287 Mich App 76, 84 (2010).

While Plaintiff argues that the City and individual City employees engaged in conduct that was fraudulent and corrupt and such acts, by definition, are ultra vires, the Court notes that Plaintiff has focused on the specific conduct alleged to be tortious and not on the general activity. The general activity engaged in by the City Defendants was the adoption and implementation of the ordinance under the MMFLA which expressly authorizes a municipality to enact a local ordinance to authorize medical marihuana facilities within its boundaries which this Court concludes is a governmental function. As such, the City is immune from tort liability in this situation. Otherwise, a future plaintiff would only need to assert a governmental defendant committed an intentional tort to abrogate the GTLA's grant of immunity. See *Genesee Co Drain Comm'r v Genesee Co*, 309 Mich App 317 (2015). Finally, in an attempt to plead outside governmental immunity, Plaintiff has added a claim of "gross negligence" against the City defendants. However, the exception to governmental immunity predicated on gross negligence applies solely to government employees and not to governmental agencies themselves. *Gracey,* 213 Mich App at 420–421.

Furthermore, for the same reasons, the individual Defendants Linda S. Ackley, and L. Dennis Whitt, are also entitled to governmental immunity. In Michigan, the elective or highest appointive executive official of all levels of government are immune from all tort liability when they are acting within the scope of their executive authority. *Ross,* 420 Mich at 632 (1984); MCL 691.1407(5). In this case, Ackley is the Mayor of the City of Walled Lake and Whitt is the City Manager. Plaintiff does not dispute that the mayor of a city and the city manager are the highest elective and appointive executive officials, but rather contends that Ackley and Whitt engaged in

ultra vires acts which by their nature are not governmental functions. As noted above, *Odom*, which Plaintiff relies in support did not address absolute immunity but rather was focused on the immunity granted to officers and employees. *Odom,* 482 Mich at 461, 479–480.

Whether the highest executive official of local government was acting within his authority depends on a number of factors, including the nature of the acts, the position held by the official, the local law defining his authority, and the structure and allocation of powers at that particular level of government. *American Transmissions, Inc. v. Attorney General,* 454 Mich. 135, 141, 560 N.W.2d 50 (1997). Again, while Plaintiff alleges that Ackley and Whitt engaged in fraudulent and corrupt activity it does not allege that the activity engaged in was outside the scope of either's authority nor respond in any meaningful way to the City Defendant's arguments that Whitt was acting within the scope of his authority under the applicable city ordinances. Where an executive official was acting within the scope of his or her authority, that officials conduct is immune from all tort liability even if it is an intentional tort. *Marrocco v Randlett*, 431 Mich 700, 709 (1988).

Next, the City Defendants argue that Chelsea Pesta ("Pesta"), the City development coordinator, and Jennifer Stuart ("Stuart"), the city clerk, are also entitled to governmental immunity. Governmental immunity from negligence claims applies to officers of a governmental agency when they are acting, or reasonably believe they are acting, within the scope of their employment, they are exercising or discharging a governmental function, and their conduct does not amount to gross negligence that is the proximate cause of injury or damage. MCL 691.1407(2). Under *Odom,* 482 Mich 459, MCL 691.407(3) governs intentional tort claims and MCL 691.1407(2) applies only to negligent torts. With respect to the intentional torts, under *Ross*, 420 Mich 567, a governmental employee is immune from tort liability when he or she was

acting within the course of his or her employment, and was or reasonably believed that he or she was acting in good faith, within the scope of his or her authority, the acts were taken in good faith, and the acts were discretionary.

Here, the processing of the license applications would certainly be in the course of Pesta and Stuart's employment with the City of Walled Lake in their respective capacities as coordinator and city clerk. Moreover, there are no allegations in the SAC that could be construed otherwise. Plaintiff has not pled any facts that would lead to the conclusion that either Pesta or Stuart acted with malice. *Odom,* 482 Mich at 475. Moreover, there is nothing in the SAC that would lead to the conclusion that these Defendants engaged in simply ministerial acts. The Court agrees with the City Defendants that the issuance of the licenses was discretionary as there were more applicants than licenses available

With respect to negligent torts, although, MCL 691.1407 does not itself create a cause of action for gross negligence, *Cummins v. Robinson Twp,* 283 Mich App 677, 692 (2009), Plaintiff's references to "gross" negligence in the complaint were evidently Plaintiff's attempt to plead in avoidance of governmental immunity. Plaintiff claims gross negligence by the City Defendants in the application process by failing to follow the procedures established by the ordinance and resolution. However, the Court agrees with the City Defendants that neither the ordinance nor resolution creates a private cause of action and there is no actionable duty created by the ordinance or resolution for the alleged failure to follow those procedures.

Moreover, as to Plaintiff's claims that Plaintiff was never advised of the results of the preliminary review, the resolution provides that notification was required for deficiencies rendering an application incomplete and there is no allegation that the application was incomplete at that time.

In addition, "Gross negligence" is defined as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(7)(a). Here Plaintiff's complaint alleges in a conclusory manner that the City Defendants collectively, without any specific conduct attributed to any of the individuals, engaged in conduct with respect to the processing and denial of Plaintiff's C-3 application that was so reckless as to demonstrate a substantial lack of concern for whether injury or damages resulted and that it suffered damages as a result of the City Defendant's grossly negligent conduct. In response to the City Defendants' motion, and to support their claims of "gross negligence", Plaintiff cited excerpts from Pesta's deposition testimony that demonstrated that she did not advise Plaintiff or any applicants of preliminary approval because she interpreted the ordinance to mean that she was only required to notify if the application was incomplete or deficient. The Court finds that reasonable minds could not disagree that the allegations against Pesta do not rise to the level of gross negligence. At most, the allegations amount to an alleged misreading of the resolution. Evidence of ordinary negligence does not raise questions of fact regarding gross negligence. *Maiden, supra.*

Based on the foregoing, the Court finds that the City Defendants are entitled to summary disposition of Plaintiff's tort claims pursuant to MCR 2.116(C)(7).

The City Defendants next argue that Plaintiff's breach of implied contract and promissory estoppel claims fail as a matter of law because Plaintiff alleges the claims against all of the City Defendants without distinguishing among them. In addition, the City Defendants argue that there was no contractual relationship between Plaintiff and the City or City Defendants. In response, Plaintiff argues only that the language of the ordinance itself created an implied contract and promise sufficient to survive summary disposition in this matter without citation to any legal authority. Plaintiff provides mere conclusory statements without citation to legal authority. This

Court does not search for authority to support a stated position. *Badiee v Brighton Area Schools*, 265 Mich App 343, 379 (2005). Failure to adequately brief an issue constitutes abandonment. *McIntosh v McIntosh,* 282 Mich App 471 (2009).

Furthermore, Plaintiff has failed to overcome the fact that there is no contract between Plaintiff and the City or City Defendants, implied or otherwise, and that the ordinance does not create contractual rights. As shown by the City Defendants, there is a strong presumption that statutes and ordinances do not create contractual rights." *See Studier v Michigan Pub Sch Employees' Ret Bd*, 472 Mich 642, 661 (2005). The issuance of a license is not a contract, it is a regulatory matter. A license is a mere privilege. *Eastwood Park Amusement Co v Stark*, 325 Mich 60, 77 (1949).

Accordingly, the Court grants Defendant's motion for summary disposition as to Counts VI (Breach of implied contract) and VII (Promissory Estoppel).

The City next argues that Plaintiff's unjust enrichment claim must fail because the charge of an application fee is a regulatory fee for consideration of the application. The City relies on *Shears v Bingman*, unpublished decision per curiam of the Court of Appeals issued Aug 24, 2017 (Docket No. 329776) in support of its argument that the where an ordinance provision does not create a contract, a party may not create one under unjust enrichment. However, the application for leave to appeal the *Shears* decision was held in abeyance pending the decision in *Wright v Genesee Co*, 504 Mich 410, 414 (2019), and the Michigan Supreme Court vacated the part of the Court of Appeals' judgment holding that the plaintiffs' claims of unjust enrichment would be barred by governmental immunity and remanded the case for consideration in light of *Wright*, of any motions filed by plaintiff seeking leave to amend the complaint to add their claims of unjust enrichment. *Shears v Bingaman*, 935 NW2d 723 (Mich 2019).

In *Wright,* the court held that "unjust enrichment is a cause of action independent of tort and contract liability" noting that the remedy is restitution not compensatory damages. *Wright v Genesee Co*, 504 Mich 410, 419–20 (2019). Here, Plaintiff has alleged that the City kept application fees under the guise that the application was being considered in accordance with the ordinance and resolution and was enriched at Plaintiff's expense.

Accordingly, the Court cannot find that Plaintiff has failed to state a claim for unjust enrichment and summary disposition is inappropriate as to Count V.

The City Defendants next argue that Plaintiff's due process and equal protection claims fail because Plaintiff has no property interested protected by the rights asserted, damages are not available for the claims, and the allegations and exhibits attached to the Second Amended Complaint belie Plaintiff's claims because they establish that Millen and Green House were not similarly situated. In response, Plaintiff argues that its interest in a benefit is a property interest for dues process purposes relying on *Green Genie, Inc v State of Michigan,* case no. 19-00045-MB. However, the Court finds that *Green Genie* is distinguishable in that the plaintiffs in that case had been granted temporary licenses which is not the case here.

To establish a viable due process claim, a Plaintiff must allege a valid interest in life, liberty, or property. *Bracco v Michigan Tech Univ,* 231 Mich App 578 (1998). "[I]n order to establish an equal protection claim, a plaintiff must first demonstrate that a property or liberty interest has been taken away by the defendant's conduct." *Rudolph Steiner Sch of Ann Arbor v Ann Arbor Charter Tp*, 237 Mich App 721, 740 (1999). Michigan courts distinguish first-time applicants from existing license holders seeking renewal: license holders have a property interest in keeping the license, but new applicants do not have a property interest if they have not previously been granted a license. *See e.g., Morse v Liquor Control Comm'n,* 319 Mich 52

(1947); *Bundo v City of Walled Lake,* 395 Mich 679 (1976); *Wong v City of Riverview*, 126 Mich App 589 (1983); *Wojik v City of Romulus*, 257 F3d 600 (CA 6, 2001).

In this case, Plaintiff asserts a property interest in a license it never held. As such Plaintiff is analogous to first-time license applicants in the foregoing cases. Plaintiff cannot assert a claim upon a license it never held, and thus it suffered no deprivation of a property interest for purposes of Plaintiff's constitutional claims. Moreover, the process under the City's ordinance involves the exercise of discretion as there are more applicants then available licenses. "A party cannot possess a property interest in the receipt of a benefit when the state's decision to award or withhold the benefit is wholly discretionary." *RSWW Inc v Keego Harbor,* 397 F3d 427 (CA 6, 2005).

Accordingly, summary disposition is GRANTED as to Count VIII pursuant to MCR 2.116(C)(8).

In sum, Defendants City of Walled Lake, Linda S. Ackley, L. Dennis Whitt, Chelsea Pesta, and Jennifer A. Stuart's (collectively "City Defendants") motion for summary disposition pursuant to MCR 2.116(C)(7) and (C)(8) is GRANTED in PART and DENIED in PART. The Court grants summary disposition as to the City Defendant's on Counts II, III, IV, VI, VII, VIII, IX, and XI.

This Order does not resolve the last pending claim and does not close the case.

Dated: 2-20-2020

Hon. Jeffery S. Matis, Circuit Court

MEMORANDUM

City of Walled Lake · 1499 E. West Maple Road · Walled Lake, MI 48390 · (248) 624-4847

To: Walled Lake City Council

From: Vahan Vanerian, City Attorney

Re: Pincanna LLC: Provisioning Center Appeal of Site Plan Denial

Date: April 13, 2020

On April 13, 2020, the City received an Appeal of an administrative decision denying the above applicant's application for site plan approval of a Marijuana Provisioning Center. The applicant sought site plan approval to open a Marijuana Provisioning Center on a parcel located in the City's C-2 zoning district commonly known as 1877 E. West Maple. A copy of the Appeal is attached for reference and includes applicant's statement for the basis of the Appeal. Under the City's zoning ordinance, City Council hears administrative appeals arising out of the denial of an application seeking zoning approval of a Marijuana Facility. The Appeal process requires a public hearing before City Council.

Recommendation: That Council schedule a public hearing for purposes of hearing the above referenced appeal.

NOTICE OF CLAIM OF APPEAL OF THE MARCH 11, 2020 DECISION TO NOT APPROVE THE PINCANNA, LLC PROVISIONING CENTER APPLICATION AT 1877 E. WEST MAPLE RD.

Pincanna, LLC files this notice of appeal pursuant to Section 21.50(q)(3) of the City of Walled Lake Zoning Ordinance, as adopted by City Ordinance C-337-18 adopted June 19, 2018. The appeal challenges an administrative decision dated March 11, 2020 by the Assistant City Manager, Chelsea Pesta, to not approve the Pincanna application for a marijuana provisioning center at 1877 E. West Maple Rd. The reason for the appeal contends that the Pincanna application had top priority according to section 6 of City Resolution 2018-10 and is ready to proceed with construction and completion of the improvements immediately upon site plan approval while the successful applicant, Apex Ultra Worldwide, LLC, has failed to meet the condition of approval requiring code compliant completion of the improvement giving rise to the priority. In addition, to the extent the March 11, 2020 decision relied upon a lack of documentation or separation elements of the Zoning Ordinance, the City Clerk denied Pincanna due process by failing to comply with the notice requirements contained in City Resolution 2018-10.

Please schedule a public hearing on this appeal pursuant to Section 21.50(q)(5) of the City of Walled Lake Zoning Ordinance, as adopted by City Ordinance C-337-18 adopted June 19, 2018. Additionally, please advise when the record on appeal is prepared pursuant to Section 21.50(q)(4) and provide a copy to Pincanna. Thank you for your anticipated cooperation.

Respectfully submitted,

SECREST WARDLE

BY: /s/ Mark S. Roberts
MARK S. ROBERTS (P44382)
Attorney for Plaintiff

Dated: April 10, 2020

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above case as disclosed on the pleadings on April 10, 2020 via email, consistent with Governor's Executive Order 2020-42.

TRISHA M. JONES

6007499_1

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF WALLED LAKE

ORDINANCE NO. C-348-20

AN ORDINANCE ADOPTING THE OAKLAND COUNTY CROSS CONNECTION CONTROL PROGRAM AND DESIGNATING OAKLAND COUNTY AS THE AGENT FOR ADMINISTERING THE PROGRAM

THE CITY OF WALLED LAKE ORDAINS:

Section 1 of Ordinance

Chapter 82 "Utilities", Article III "Water Service", Section 82-80 "Adoption of water supply cross-connection rules" is hereby amended in its entirety to read as follows:

Sec. 82-80. Adoption of Water Supply Cross Connection Rules.

The City adopts and incorporates by reference the Oakland County Cross Connection Control Program run in accordance with the Michigan Department of Environment, Great Lakes and Energy and the state of Michigan Public Act 399, 1976 Rule # 325.11401, a copy of which is on file and available for public inspection at the office of the City Clerk.

Section 2 of Ordinance

Chapter 82 "Utilities", Article III "Water Service", Section 82-81 "Inspections for Cross Connections" is hereby amended in its entirety to read as follows:

Sec. 82-81. Inspections for Cross Connections.

It shall be the duty of the City, by and through its designated agent, to cause inspections to be made of all property served by the public water system where cross connections with the public water supply are deemed possible. The frequency of the inspections and re-inspections based on potential health hazards involved shall be established by the department of public works and/or its designated agent. The following shall further apply:

a) *Right of access to property and information.* Representatives of the department shall have the right to enter at any reasonable time any property served by a connection to the public water supply system of the city for the purpose of inspecting the piping system or systems thereof for cross-connections. On request the owner, lessee or occupant of any property so served shall furnish to the inspection agency any pertinent information regarding

the piping system or systems on such property. The refusal of such information or refusal access, when requested, shall be deemed evidence of the presence of cross-connections.

b) *Disconnection and restoration of water service.* The department is authorized and directed to discontinue water service after reasonable notice to any property wherein any connection in violation of this section exists and to take such other precautionary measures deemed necessary to eliminate any danger of contamination of the public water supply system. Water service to such property shall not be restored until the cross-connection has been eliminated in compliance with the provisions of this section.

c) *Protection from contamination.* The potable water supply made available on the properties served by the public water supply shall be protected from possible contamination as specified by this section and by the Michigan Plumbing Code. Any water outlet which could be used for potable or domestic purposes and which is not applied by the potable system must be labeled in a conspicuous manner as: Water Unsafe for Human Consumption.

d) *Conflict resolution.* Nothing in this section shall supersede the Michigan Plumbing Code. Provided, however, in any case where a provision of this section is found to be in conflict with any provision of state statute or City Code, the provision which establishes the higher standard for the promotion and protection of the health and safety of the people shall prevail.

e) *Designation of agent.* The Oakland County Water Resource Commission, Operation and Maintenance Division is hereby designated the agent, authority and administrator of the Cross-Connection Control Program.

Section 3 of Ordinance

Amended only as specified above and in this ordinance, the City of Walled Lake Code of Ordinances shall remain in full force and effect. Only those provisions of the Code Ordinances in direct conflict with this ordinance are hereby repealed.

Section 4 of Ordinance

If any provision of this ordinance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision.

Section 5 of Ordinance

All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this ordinance takes effect are saved and may be consummated according to the law when they were commenced.

Section 6 of Ordinance

This ordinance and the rules, regulations, provisions, requirements, orders, and matters established and adopted hereby shall take effect and be in full force and effect upon publication in accordance with the applicable provisions of state law and City Charter.

AYES:
NAYS:
ABSENTS:
ABSTENTIONS:

STATE OF MICHIGAN)
) SS.
COUNTY OF OAKLAND)

CERTIFICATION

I, the undersigned, the duly qualified and acting City Clerk for the City of Walled Lake, Oakland County, Michigan, do hereby certify that the foregoing is a true and complete copy of an Ordinance adopted by the Walled Lake City Council at a regular meeting held on the __th day of February, 2020.

The above Ordinance was given publication in the Spinal Column on _____ 2020.

_____
JENNIFER STUART, City Clerk
CITY OF WALLED LAKE

_____
LINDA ACKLEY, Mayor
CITY OF WALLED LAKE

Introduced: February 18, 2020
Adopted: _____
Effective: _____

OFFICE OF THE CITY ATTORNEY
CITY OF WALLED LAKE, MICHIGAN

L. DENNIS WHITT
CITY MANAGER

VAHAN VANERIAN, ESQ.
CITY ATTORNEY

1499 E. WEST MAPLE
WALLED LAKE, MI 48390
(248) 624-4847
vvanerian@walledlake.com

April 16, 2020

Members of Walled Lake City Council
1499 E. West Maple Rd.
Walled Lake, MI 48390

Re: Applicant: BDS Medical Growers, LLC
Case No. 2020-01
Location: 933 N. Pontiac Trail
Request: Appeal of Site Plan Denial for Provisioning Center

Dear Members of Council:

Pursuant to the directive set forth in Council Resolution 2020-08, please accept this correspondence as my written legal opinion and recommendation concerning the above referenced Appeal.

Introduction and Procedural History

On January 28, 2020, Council held a Special Meeting to hear an appeal of an administrative denial of an application for a Medical Marijuana Provisioning Center filed by the applicant, BDS LLC. The January 28th Special Meeting included a duly noticed public hearing on the appeal held in compliance with applicable provisions of the zoning ordinance and the Michigan Zoning Enabling Act, *MCL 125.3101, et seq. ("*MZEA*").* Prior to the January 28th hearing, BDS submitted a written Notice of Appeal seeking Council review and reversal of the administrative denial of the applicant's site plan application for a proposed provisioning center. The applicant's Notice of Appeal ("Appeal") includes a written synopsis of the issues presented, reasons and argument in support of applicant's challenges to the administrative denial of the site plan application, relief requested and supporting documentation. The Appeal implores Council to exercise its Administrative Review, Interpretive and Variance powers in granting the relief requested by the Applicant.

In advance of the January 28th hearing, I prepared and submitted a Memo dated January 21, 2020 providing an overview of the Council Appeal process and further including an analysis of applicable ordinances and other pertinent matters discussed in the Memo. A copy of the Memo is attached for ease of reference[1].

[1] The Memo Exhibits were provided with the original Memo but have been omitted from this submittal to reduce bulk.

At the time of the January 28th hearing, the owners and attorneys for BDS addressed Council and presented their case in support of their appeal that included submission of some additional documentation concerning their position regarding issues related to the state application process. Members of the public also addressed Council during the public hearing including the attorney for an approved Provisioning Center, Attitude Wellness, whose facility is located across the street less than 500' from the site that would house the proposed BDS facility. Attitude Wellness vigorously opposed granting the relief requested by BDS for the reasons stated on the record. Attitude Wellness also submitted an advance written opposition to the BDS appeal dated January 22, 2020 that was included as part of the record on appeal. At the conclusion of the January 28th hearing, Council adopted Resolution 2020-08 referring the Appeal to the City Attorney for legal review, opinion and recommendation. Council further postponed any final decision on the merits of the Appeal pending receipt of the City Attorney's legal opinion and recommendation. At the regular February 2020 meeting, Council scheduled a Special Meeting for March 18, 2020 for the purposes of taking further action on the instant Appeal. The March 18, 2020 Special Meeting was adjourned due to the corona virus pandemic and the resulting State and National Emergencies.

Administrative Record[2] and Decision

On April 24, 2018 Plaintiff, BDS Medical Growers ("BDS"), submitted three (3) separate applications to the City of Walled Lake seeking local approval of three separate medical marijuana facilities authorized under the Medical Marihuana Facilities Licensing Act ("Act"), MCL 333.27102, *et. seq*. Specifically, the three applications submitted by BDS consisted of the following: 1) a proposed marijuana processor facility; 2) a proposed marijuana provisioning center and; 3) a proposed marijuana grower facility**.** The grower and processor applications propose new construction of both facilities on an undeveloped portion of an eight (8) acre industrial parcel (parcel no. 17-34-228-008) commonly known as 902 N. Pontiac Trail**.** The grower/processor parcel is partially improved with an existing industrial manufacturing facility (i.e. Erin Industries) owned by Steve Atwell who is also a 25% owner of the applicant, BDS. The new construction proposal for the grower and processor facilities include proposed new water and sewer taps for the newly constructed buildings. The City's marijuana facility application processing procedures afford a first level of priority to applications proposing new water and sewer taps for the facility upon the applicant paying the water and sewer tap fees to the City. To date, BDS has not paid the water and sewer tap fees for the proposed grower and processor facilities. If, and when, BDS pays the water and sewer tap fees, BDS's pending grower and processor applications may be eligible for priority consideration over other grower/processor applications that do not qualify for a first/second level priority.

BDS's marijuana provisioning center application proposes utilizing an existing commercial building with existing water and sewer service. The proposed provisioning center would be located

[2] Because the City received eighteen (18) applications for the two available provisioning center approvals in the C-2 zoning district, all applications were reviewed collectively with comparative reference to one another when acting on any individual application. Consequently, the factors considered in denying an application necessarily include a comparative analysis of the factors considered in approving another for purposes of determining which applicants made a more compelling showing under the City's applicable review criteria and procedures. Therefore, the administrative record for the BDS application includes the administrative record of the other applicants including the two approved applicants.

on a relatively small commercial parcel (parcel no. 17-34-226-013) commonly known as 933 N. Pontiac Trail. The provisioning center property and the grower/processor property are separate and distinct parcels located on opposite sides of Pontiac Trail from one another. The application narrative summarily states the non-facility specific improvements to the property will exceed $20,000.00. Under applicable City review criteria, an application can qualify for a third level of priority if the applicant submits a credible estimate from a qualified contractor demonstrating $20,000.00 or more in non-facility specific improvements. Per the City's application processing procedures, competing provisioning center applicants who propose and perfect a first and/or second level priority (i.e. new water/sewer taps) qualify for priority consideration ahead of applicants demonstrating only a third level (or no level) of priority.

On or about September 22, 2018, the City received the statutorily required notification that BDS submitted a state application seeking state approval for a ***"processor***" facility**.** On October 19, 2018, Steve Atwell, a part owner of BDS, appeared at the City Hall counter and requested the City sign a state Attestation I form for BDS's ***state*** application. The state Attestation I form is part of the ***state*** licensing process. The state Attestation I form presented by Atwell states the City has adopted an ordinance permitting Marijuana Facilities in the City, including any regulations/limitations on those facilities, that the applicant is complying with those ordinances, and further requests copies of any zoning regulations and a description of any violations by the applicant pertaining to marijuana facility related activities. Notably, the Attestation I form presented by Atwell does ***not*** state or identify which location or facility the form pertained to. The form does ***not*** state the applicant has received all required local approvals nor does the word "approve" (or any derivative of the word) appear anywhere in the body of the form. Other than the "processor" facility, the City had ***not*** received any other written notification that BDS had submitted a state application for any other facility at that time. In so far as BDS was following the city's ordinances by submitting a complete and proper application making a facial showing of preliminary eligibility for further consideration, and further considering there was no known evidence of non-compliance with applicable city codes and ordinances, a deputy city clerk signed the state Attestation I form per Atwell's request as there was no apparent reason to withhold execution of the state form at that time[3]. On October 26, 2018, a week after executing and delivering the October 19, 2018 Attestation I form, the City received the statutorily required written notification that BDS had submitted a state application for a provisioning center.

The administrative record reveals the deputy clerk who signed the Attestation I form never understood, believed, intended nor construed the Attestation I form presented by Atwell as constituting an "approval" of any of Plaintiff's pending City applications. To the contrary, the administrative record reveals the clerk who signed the Attestation I form understood and believed that the form simply meant what it said, namely, that the City adopted ordinances authorizing a limited number of marijuana facilities in the city and that BDS had submitted a proper and complete marijuana facility application that facially complies with the city's ordinances and that BDS was not otherwise non-complaint with any of the City's applicable ordinances. The administrative record further reveals that, based on prior communications with Mr. Atwell, the clerk who signed the Attestation I form understood and believed that Mr. Atwell was only handling the applications for the Grow/Processor facilities proposed for location on his existing industrial

[3] The October 19, 2018 state Attestation I form was subsequently re-issued by the City per the state's request due to an apparent notarization error.

site and Mr. Atwell's partner, Robert Manna, was handling all aspects of the Provisioning Center application. Consequently, according to the administrative record, the clerk who executed the state Attestation form presented by Atwell understood and believed that those forms only pertained to BDS's Grower and Processor applications, ***not*** the Provisioning Center application. Notably, on April 3, 2019, the City notified BDS in writing that its Provisioning Center Application had not been approved by the City and remained pending.

On April 1, 2019, the City's code enforcement officer received a complaint that significant work and interior modifications were being performed on the proposed provisioning center building without building permits required by the *Michigan Building Code* and the State Construction Code Act, *MCL 125.1510 – 125.1511*. On April 10, 2019, the City's code enforcement officer performed a walk-through inspection of the building and confirmed substantial work had been performed on the building interior and exterior[4] by and/or at the direction of BDS's members (i.e. Manna and Atwell) without required building, plumbing, mechanical and electrical permits. Performing work on a commercial building without permits required by the Michigan Building Code and State Construction Code Act constitute violations of both local ordinance and state law. Under both state law and local ordinance, a decision rejecting site plan approval shall be based on lack of compliance with requirements and standards contained in the zoning ordinance, other applicable ordinances, and/or state and federal statutes. *See, MCL 125.3501(4) and sections 21.28 G. 8.a.iii. and/or section 21.50(g) of the City's zoning ordinance.* Site plan approval is required only upon a showing of compliance with conditions imposed under the zoning ordinance, other applicable ordinances, and state and federal statutes. *MCL 125.3501(5).* Consequently, the unresolved violations of the *Michigan Building Code* and the State Construction Code Act rendered BDS's Provisioning Center Application ***ineligible*** for approval due to the extensive renovations and improvements undertaken at the direction of Atwell and Manna without required building permits. According to the administrative record, denial of BDS's Provisioning Center application was a clearly warranted option upon discovering the numerous violations of the Michigan Building Code and State Construction Code Act. Instead, considering BDS's application clearly was ***not*** eligible for approval, the City agreed to hold BDS's provisioning center application in abeyance and afford BDS an opportunity to cure the numerous building code violations by obtaining and applying for after the fact building permits and obtaining a certificate of occupancy following inspection and approval of the work previously performed under the after the fact permits.

Thereafter, BDS gradually submitted after the fact applications for the required building, plumbing, mechanical and electrical permits. After numerous disapproved plan reviews due to BDS's failure to submit required information and documentation, the required building permits were issued on July 22nd and August 2nd 2019**.** Following an inspection by the City's Building Official, the City issued a certificate of occupancy dated August 9, 2019 for the proposed provisioning center building confirming the building met minimal building code requirements under the Michigan Building Code.

Meanwhile, the City continued to move forward with processing the numerous competing provisioning center applications submitted by other applicants. At the May 28, 2019 planning commission meeting, the planning commission granted site approval to Apex Ultra to build and

[4] The work performed w/o required building permits included substantial plumbing, mechanical and electrical work; gutting the building interior including removal of existing walls and construction of new walls; exterior siding, etc.

develop a provisioning center on an undeveloped commercial parcel in the City's C-2 zoning district. At the July 9, 2019 planning commission meeting, the planning commission granted site plan approval to Attitude Wellness to demolish an existing building and build a new provisioning center facility on a commercial parcel in the City's C-2 zoning district. The City's marijuana facility zoning regulations place a limit of not more than two (2) provisioning centers in the City's C-2 zoning district. BDS's proposed provisioning center is located in the City's C-2 zoning district. When the planning commission awarded the second and final approval to Attitude Wellness, the planning commission heard and considered two additional provisioning center applicants at the July 9, 2019 meeting who were not approved due to the lack of any remaining approvals in the C-2 zoning district. Subsequent to the planning commission awarding the second and final approval to Attitude Wellness, all remaining C-2 applicants were denied due to the lack of any remaining approvals in the C-2 district. Importantly, the administrative record confirms the planning commission approved the above two provisioning centers in the C-2 zoning district while BDS's provisioning center application remained ***ineligible*** for approval due to the numerous unresolved building code violations which BDS did not cure until weeks after both available provisioning center approvals were awarded to other applicants. As an aggrieved party, BDS could have appealed either or both approvals awarded to Apex Ultra and/or Attitude Wellness but chose not to do so.

The administrative record reveals both approved provisioning centers proposed new construction and new water and/or sewer taps for their new facilities. The administrative record reveals both approved applicants timely paid the required tap fees and therefore both perfected a first and/or second level priority over BDS's application[5]. Both approved provisioning center applicants have further submitted credible contractor estimates documenting non-facility specific improvements that approach or exceed one million dollars respectively. Accordingly, not only have the approved provisioning center applicants perfected a first and second level priority over BDS, the administrative record reveals both approved applicants have also perfected a third level priority status over BDS's application as well.

The approved Attitude Wellness facility is located directly across the street from BDS's proposed provisioning center site. Pursuant to sec. 21-50(e), a proposed provisioning center cannot be located within Five Hundred ft. (500') of another provisioning center. It is undisputed that the approved Attitude Wellness site is well within five hundred ft. (500') of BDS's proposed provisioning center site. The administrative record reveals Attitude Wellness applied for a building permit on October 16, 2019. Construction on the Attitude Wellness facility is now complete.

On August 21, 2019, the Marijuana Regulatory Agency ("MRA") issued a state operating license to BDS. The following day, August 22, 2019, BDS's attorneys served the City with a pre-suit legal demand letter claiming "the license and approval to operate a provisioning center is being

[5] Even though BDS proposed utilizing existing water and sewer connections currently servicing its proposed provisioning center building , BDS nevertheless claims the Provisioning Center application qualifies for a first/second level priority because BDS proposed new water/sewer taps for the grow/processor facilities proposed for construction on a separate disconnected parcel located across the street. Whether establishment of new water/sewer service to a site other than the proposed Marijuana Facility site warrants first/second level priority consideration presents an interpretive issue discussed below. Regardless, because it is undisputed that BDS never paid the required tap fees for the proposed new connections, BDS therefore failed to perfect a first/second level priority at the time of the administrative denial.

inappropriately and unlawfully obstructed by the City." On September 6, 2019, the City responded to BDS's demand letter by once again notifying BDS that the City had not approved BDS's provisioning center application and that the application remained pending. The City's written response further rejected BDS's claim that the City somehow approved its application by executing the aforementioned State Attestation I form. The City's response further states as follows in relevant part: "The City's applicable codes and ordinances do not provide for the required local use approvals by way of executing a state Attestation I form which, as you know, is part of the state licensing process." On or about September 12, 2019, BDS served the City with a lawsuit seeking court ordered approval of BDS's provisioning center application.

On November 4, 2019, written notification of the administrative decision denying BDS's Provisioning Center Application was sent to BDS's attorney.[6] The reasons for denial are set forth in the November 4, 2019 notification letter. A copy of the November 4, 2019 notification of denial is attached for ease of reference.

Analysis

BDS's Appeal alleges the City erroneously denied BDS's site plan application for a provisioning center. Pursuant to section 23.03 (a) of the zoning ordinance, City Council, sitting as the ZBA, may reverse, affirm, vary or modify any order, requirement, decision, or determination presented in a case within its jurisdiction, and to that end, shall have all of the powers of the officer, board or commission from whom the appeal is taken, *subject to the applicable scope of review*, as specified in the zoning ordinance and/or by law. Council, sitting as the ZBA, may impose reasonable conditions in connection with an affirmative decision on an appeal, interpretation or variance request. Section 23.03(b) sets forth the scope of review that applies to appellate review of an administrative zoning decision. Specifically, section 23.03(b) states that the review shall be based on the record of the administrative decision being appealed without consideration of new information which had not been presented to the administrative decision maker from whom the appeal is taken. City Council, sitting as the ZBA, shall not substitute its judgment for that of the administrative official being appealed and the appeal shall be limited to determining, based on the record, whether the administrative official breached a duty or discretion in carrying out the provisions of the zoning ordinance.

BDS's argues the administrative decision maker erroneously interpreted and applied certain provisions of the zoning ordinance in denying its site plan application and these alleged errors further warrant vacating the administrative denial and affirmatively awarding BDS approval of its site plan application. In support of its contention that the administrative decision maker erroneously interpreted and applied certain provisions of the zoning ordinance, BDS cites certain select rules of statutory construction typically employed by courts when attempting to ascertain the intent of a legislative body in enacting statutes and ordinances. However, the legislative body itself (i.e. Council) presumptively knows what it intended in enacting its own legislation. Therefore, reliance upon interpretive rules employed by courts to ascertain the intent of some other body becomes a rather questionable proposition as applied to the legislative body itself when interpreting its own enactments. Courts afford deference to municipal interpretations of local ordinances because local bodies have "reasonable discretion" in interpreting their

[6] As a matter of practice, parties represented by counsel who are engaged in pending or threatened litigation communicate with one another through their respective attorneys. Consequently, the City's November 4, 2019 notification of denial was sent to BDS's attorney by and through the City Attorney.

own zoning ordinances. *Szluha v Twp. of Avon,* 128 Mich App 402 (1983). *See also, Macenas v Vill. Of Michiana, 446 N.W. 2d 102, 110 (Mich 1989); Payne v City of Grosse Pointe,* 271 N.W. 826, 828 (Mich 1937). A zoning ordinance must be reasonably construed with regard to the objects sought to be attained and the overall structure of the zoning scheme. *Szluha,, at pg. 408.*

The interpretive rules set forth in section 23.03(d) of the zoning ordinance embody the reasonable discretion afforded to the local interpreting body when construing the City's zoning ordinance with regard to the objects sought to be attained and overall structure of the zoning scheme. Specifically, section 23.03(d) states as follows in relevant part: "Interpretive decisions shall be made so that the spirit and intent of the zoning ordinance is preserved. Text interpretations shall be limited to the issues presented and shall be based upon a reading of the zoning ordinance as a whole and shall not have the effect of amending the zoning ordinance. Reasonable and practical interpretations which have been applied in the administration of the ordinance shall be considered. Prior to deciding a request for an interpretation, [City Council, sitting as the ZBA,] may obtain recommendations and opinions from staff and consultants to determine the basic purpose of the provision subject to interpretation and any consequences which may result from differing decisions."

In light of the above, I offer the following comments and recommendations concerning the issues raised by way of the instant Appeal:

a) Whether the City's Ordinances provide for approving a pending marijuana facility site plan application by executing a state Attestation I form upon presentation and request by the applicant?

A thorough and careful reading of all relevant provisions of the zoning ordinance (i.e. sections 21.28 "Site Plan Review" and 21.50 "Marijuana Facilities") reveal no language or provisions that would allow or permit approval of a pending marijuana facility site plan application by simply executing a state Attestation I form by a deputy clerk or any other member of the City's staff or administration. The zoning ordinance lays out a detailed process and procedure for reviewing and acting upon marijuana facility applications. The zoning ordinance makes absolutely no mention or reference to execution of state licensing application forms as an acceptable means or consideration in acting upon, or determining an action upon, a City application. Under the City's ordinances, final administrative approval authority vests in the "Development Coordinator". The Development Coordinator position was created by a former Council/Administration when the City had no City Manager. The former DPW Director, Lloyd Cureton, held the "Development Coordinator" position until he left the City many years ago. Since Mr. Cureton's departure, the current City Manager has assumed the duties and responsibilities previously performed by the former DPW Director, including the "Development Coordinator" responsibilities. The City Manager has delegated a portion of the Development Coordinator responsibilities to other City employees, including Chelsea Pesta who signed the BDS Attestation I form. Ms. Pesta's duties and responsibilities relative to the administrative processing and review of marijuana facility applications are limited to the preliminary review step outlined under the City's Marijuana Facility Administrative Rules and Procedures. Final administrative approval authority remains with the City Manager. Consequently, based on the language of the ordinance, there is no reasonable or rational interpretation of the City's Marijuana Facility Rules and Ordinances that would allow or authorize approval of BDS's provisioning center application by simply executing the state Attestation I form by Ms. Pesta.

Ms. Pesta's limited role and authority in processing BDS's Provisioning Center Application finds support in the administrative record. As stated above, the administrative record reveals Ms. Pesta never understood, believed nor intended that her execution of the BDS state Attestation I form constitutes approval or acknowledgement of approval of BDS's then pending provisioning center application. The form itself does ***not*** state that execution of the form constitutes approval or acknowledgement of local approval by the municipality. The form does not state which facility the form pertained to and Ms. Pesta understood and believed that the form pertained only to BDS's processor/grow facilities, not the provisioning center application. When the City originally executed the Attestation I form on October 19, 2018, the City had written notification of a pending state application for a processor facility submitted by BDS, but not the provisioning center. BDS did not serve the City with notification of its state provisioning center application until a week after the City originally issued the October 19, 2018 Attestation I form. Consequently, Ms. Pesta's understanding that the Attestation I form was unrelated to BDS's provisioning center application finds support in the administrative record. BDS's claim that the City's execution of the state Attestation I form constitutes local approval of its then pending site plan applications lacks support in both the administrative record and the City's applicable ordinances.

BDS references an email from a state MRA staff member indicating that, for purposes of the state's own internal licensing process, the state may accept an executed Attestation I form as sufficient indication of local approval even though the form itself does not state the applicant received local approval.[7] Undeniably, the state is free to interpret and utilize its own forms however it chooses for purposes of its own internal licensing process. At the time of the January 28th hearing, BDS's attorney read the first half of the state email aloud, but choose not to read the second half of the e-mail which states as follows: " We are bound by the municipality and their ordinance, so if you do not yet have a license to operate from the municipality we cannot cause that action to take place." Accordingly, contrary to BDS's contention, the state has clearly acknowledged that execution of the state Attestation I form does ***not*** constitute local approval of a marijuana facility and the state "cannot cause that action to take place." The state email further acknowledges that an applicant must otherwise obtain local approval according to the process and criteria under applicable rules and ordinances even though the state may accept an executed Attestation I form as sufficient indication of local approval for purposes of the state's own internal licensing process – "We are bound by the municipality and their ordinance." BDS has otherwise failed to provide any case law or statutory authority in support of its self-serving contention that execution of the Attestation I form in the case at hand constitutes approval or acknowledgement of City approval of its provisioning center application.

Recommendation: That Council find: 1) execution of the BDS state Attestation I form does not constitute nor represent local approval of a marijuana facility under the City's ordinances and procedures and an applicant must otherwise obtain local approval according to the process and criteria under applicable City rules and ordinances even though the state may accept an executed Attestation I form as sufficient indication of local approval for purposes of the state's own internal licensing process, and; 2) the City never intended, understood nor represented that the executed Attestation I forms furnished to BDS applied to BDS's provisioning center application.

[7] It is unclear as to whether the state email pertains to the current Attestation I form that expressly mentions local approval or the former form that Ms. Pesta executed that does not mention local approval.

b) Can establishment of a new water/sewer connection to a site other than the proposed marijuana facility site support first/second level priority status under the City's administrative processing rules?

Under Rule Six (6) of the City's Marijuana Facility Administrative Rules, an application may qualify for first/second level priority if the applicant proposes new water/sewer connections to a site previously unserved by City water and/or sewer service. However, the rule is silent as to whether the site proposed for a new water/sewer connection must be the same site as the proposed marijuana facility. When the City adopted its ordinances authorizing only a limited number of the different types of marijuana facilities, the City anticipated that the number of applications that met minimal requirements under applicable codes and ordinances would likely exceed the limited number of facilities authorized under the City's ordinances. In fact, the City received eighteen (18) applications for the two (2) available provisioning center approvals in the C-2 zoning district. Even though all C-2 applications could potentially satisfy minimal approval criteria under applicable codes and ordinances, all but two inevitably required denial. Consequently, the City adopted a priority system as a mechanism for deciding how to allocate and award the limited number of approvals among applicants otherwise satisfying minimal code requirements.[8] The purposes underlying the City's three tired priority system include encouraging new development and re-development of existing properties, providing additional City revenue through user/tap fees and enhancement of the City's tax base, encouraging water/sewer service to vacant/under-utilized properties that have prolonged vacancy and use related problems due to the lack of City water/sewer service, improving the City's business environment by encouraging new developments/re-developments, etc.

Upon observing the underlying intent and spirit of the City's Marijuana Facility Rules and Ordinances, consideration of a first/second level of priority for an application proposing a new water/sewer connection to a site other than the proposed marijuana facility site arguably represents a reasonable interpretation of the City's Rules and Ordinances when read as a whole, as any new water/sewer connection potentially furthers the purposes underlying the City's Priority System. Here, however, BDS proposes a single new water and sewer connection (i.e. a single new water/sewer combination) as a basis for establishing a first level of priority for three separate facilities proposed by way of three separate applications. In other words, BDS proposes "triple dipping" a single new water/sewer combination as a basis for awarding first level priority for three separate applications/facilities. This approach seems inherently inequitable, dilutes the purposes underlying the Priority System, and opens the door to abusive gamesmanship in the application process. Rather than re-using a proposed new water/sewer connection an indefinite number of times to support first/second level priority for an indefinite number of applications, utilizing a proposed new water/sewer connection once to support first/second level priority for a single application represents a more reasonable and equitable interpretation of the City's Priority System. Where multiple applications for different facilities reference the same new water/sewer connection as a basis for first/second level priority, assignment of first/second level priority to the facility actually served by the proposed new connection represents a reasonable approach. In the case at hand, the proposed new water/sewer connection would serve the proposed new processor/grow facility and the provisioning center application proposes utilization of existing water/sewer connections that serve the existing building. Accordingly, as applied to the case at hand, the more reasonable and equitable approach would be to consider the proposed new water/sewer

[8] Different communities employ different methodologies. Some use a first come/first serve method, others use a random draw, others attempt to assign a number of points from a point range applied to different categories, etc.

connection as an unperfected basis for a first/second level of priority for the grow/processor applications, but not the proposed provisioning center site that already has existing City water and sewer service.

Recommendation: That Council find consideration of a first/second level of priority for an application proposing a new water/sewer connection to a site other than the proposed marijuana facility site may represent a reasonable interpretation of the City's Rules and Ordinances based upon a reading of the ordinance as a whole, where a new water/sewer connection furthers the purposes underlying the City's priority system, however, as applied, BDS failed to establish first or second level priority for its provisioning center application because: 1) the proposed new water/sewer connection serves the proposed grow/processor facility and therefore any resulting first/second level priority status would apply to the grow/processor facility, not the provisioning center, and; 2) As of the date of the administrative denial, BDS failed to pay the required tap fees for the proposed new connections as expressly required by Rule 6 as a prerequisite to first/second level priority status.

c) Whether an approved provisioning center that has not been fully constructed constitutes an existing provisioning center for purposes of the five hundred foot set back requirement under section 21.50(e)(7) of the zoning ordinance.

Section 21.50(e)(7) states a marijuana facility shall not be located less than 500 ft. from an existing provisioning center. The Attitude Wellness provisioning center approved at the July 9, 2018 planning commission meeting is located directly across the street less than 300 ft. from the proposed BDS provisioning center site. BDS claims the administrative decision maker erroneously interpreted and applied section 21.50 (e)(7) in denying its application based on lack of compliance with the 500 ft. setback requirement. Specifically, BDS claims the approved Attitude Wellness provisioning center is not an "existing" provisioning center for purposes of the 500' setback requirement because construction of the Attitude Wellness facility was not complete (and the facility therefore lack a certificate of occupancy and state operating license) and was not actively operating as a provisioning center at the time of the administrative denial.

The City's zoning ordinance does not expressly define "exist" or "existing." BDS offers a conveniently narrow definition of the term that would only include a fully developed and operational facility. At the January 28th hearing, BDS cited select common dictionary definitions in support of its proffered interpretation. Assuming, without conceding, that reference to common dictionary definitions would be appropriate, the dictionary defines the word in vague, non-specific terms as a general state of being that includes both corporeal and incorporeal states.[9] *Webster's* definition of "exist" reveals it's inherently nebulous and elusive meaning: "To have being…under certain conditions". The meaning of "existence" or "existing" has unquestionably alluded any precise agreed upon definition since the dawn of mankind[10]. Reference to dictionary definitions simply confirms the inherent vagueness, ambiguity and imprecision of the term "exist".

Once again, the rules of interpretation set forth in the zoning ordinance require reference to the zoning ordinance as a whole and observation of the intent and spirit of the ordinance when interpreting any specific term or provision. Similarly, when interpreting statutes and ordinances, courts read the statute

[9] In its definition of "exist" *Webster* offers the following example: "Belief in magic still exists"
[10] See, *Descartes Meditations on the First Philosophy*

as a whole construing the words and phrases in the context of the entire legislative scheme, and ultimately interpret the statutory provisions "in harmony with the entire statutory scheme". *Bush v Shabahang*, 484 Mich 156,167 (2009).

BDS's proffered interpretation of "existing" runs afoul of both the interpretive requirements set forth in the zoning ordinance and the rules of statutory construction employed by courts. Specifically, under BDS's interpretation, the City would continue to process applications and approve marijuana facilities even though a provisioning center located less than 500' away had been previously approved but was still under construction. As this case demonstrates, such an approach would result in multiple facilities located less than 500' from one another receiving site plan approval which would either render the 500 ft. setback nugatory if both were ultimately allowed to open or create "a race to open" with the winner receiving the license and the loser being denied with a resulting loss of development investment undertaken pursuant to, and in reliance upon, the City's site plan approval. Moreover, BDS's "race to open" approach would reward and incentivize doing the project on the quick and cheap contrary to the purposes underlying the City's ordinance scheme that seek to incentivize and prioritize constructing new developments with new city utilities that will inherently take longer to open as compared to retreading an older existing facility such as the BDS proposal.

As demonstrated above, narrowly interpreting "existing" to mean only those provisioning centers that are fully constructed, operational and issued a certificate of occupancy creates unavoidable conflicts and inconsistencies with other provisions of the ordinance and further undermines the objectives of the ordinance scheme that seek to incentivize and prioritize new developments. Courts disfavor interpretations of statutes and zoning ordinances that render provisions of a regulatory scheme nugatory or inoperative and instead favor interpretations that give effect to every phrase, clause and word in a zoning ordinance. *Epicurean Dev. v Summit Twp., 2017 WL 786880* (unpublished Michigan court of appeals Opinion, 2017). An interpretation that treats an approved provisioning center as an "existing" provisioning center avoids the problematic conflicts and inconsistencies discussed above and further promotes a reasonable and workable interpretation that preserves observance of all ordinance provisions and furthers the underlying regulatory scheme rather than frustrating its purposes and objectives.

Recommendation: That Council find a provisioning center having site plan approval constitutes an "existing" provisioning center under section 21.50(e)(7) of the City's zoning ordinance regardless of whether the facility is fully constructed, operational and/or issued a certificate of occupancy.

d) Whether the City's Ordinances provide for approving more than two (2) Provisioning Centers in the C-2 zoning district where one or more of the approved facilities is not fully constructed, operational, and issued a Certificate of Occupancy and/or lacks a state operating license.

BDS claims the administrative decision maker misinterpreted and misapplied the City's ordinances by citing the two prior C-2 approvals previously awarded to other applicants (i.e. Apex Ultra and Attitude Wellness) as a basis for denying BDS's site plan application. Notably, as indicated above, the two successful C-2 applicants received site plan approval by the planning commission while BDS's application remained *ineligible* for approval due to the numerous ***unresolved*** violations of the Building Code and Construction Code Act discovered in early April 2019, nearly eight weeks prior to the City approving any provisioning centers in the C-2 district. BDS could have rendered its application eligible

for further consideration when one or more C-2 approvals were still available by simply submitting complete and proper applications for after the fact building permits and obtaining the required inspections in a more expeditious and timely manner. Instead, BDS prolonged the required permitting and inspection process by delaying submission of a complete and proper permit application until late July/early August 2019, weeks after the second and final C-2 approval had been awarded to another applicant. BDS now claims site plan approval of its application was still an option upon curing the Building Code/Construction Code Act violations on August 9, 2019, even though the second and final C-2 approval had been awarded a month earlier to another applicant.

BDS argues the issuance of building permits and a certificate of occupancy for the pre-permit work performed under the after the fact permits constitute or indicate site plan approval of its pending provisioning center application.[11] BDS's argument is flawed and problematic for several reasons. First, a pending site plan application for a proposed new use does not bar the issuance of building permits and a certificate of occupancy for any existing approved uses or a use permitted as of right without first obtaining site plan approval, special land use approval, etc. Here, the existing commercial building had been properly used for many years by a variety of tenants for various different commercial business (e.g. Jewelry store, garage door business, bookstore, etc.). Not all changes in commercial tenancy necessarily require site plan approval, special land use approval, etc. Consequently, while a site plan application remains pending for a proposed new use requiring site plan approval, a building permit and certificate of occupancy may nevertheless be issued that allow for any improvement, use or occupancy of a commercial building allowed as of right without site plan approval, special land use approval, etc. This approach allows continued improvements, uses and occupancies allowed as of right (and a continued source of revenue) while an application for a proposed new use requiring site plan approval remains pending and undetermined. Accordingly, site plan approval is not necessarily a condition precedent to the issuance of a building permit or certificate of occupancy because a commercial property owner may pull a building permit, perform improvements and obtain a certificate of occupancy for all commercial uses permitted as of right or otherwise permitted under existing use approvals for the property. Similarly, upon pulling the proper building and trade permits, a commercial property owner may undertake code compliant structural, mechanical, electrical and plumbing improvements to his/her vacant property with no commitment to any particular future use simply because the property owner believes the improvements will improve the marketability of the property to potential future commercial tenants.

Here, issuance of the August 9, 2019 certificate of occupancy merely approved use and occupancy of the property allowed as of right without site plan approval or otherwise permitted under existing use approvals for the property. *See, Webster Twp. v Scharf,* 2016 WL 3176963 (unpublished Michigan Court of Appeals Opinion, 2016). In fact, the August 9, 2019 C of O expressly states it only verifies minimal building code compliance and does not constitute approval of any particular use otherwise requiring use approval by the City. The City's applicable site plan review ordinances contain no language or provisions providing for approval of a pending Marijuana Facility Site Plan Application by the Building Official through the issuance of a C of O. Moreover, to the extent any of the City's ordinances arguably require site plan approval before undertaking the unpermitted improvements initiated by BDS, BDS would be in further violation of those ordinances in addition to violating the Building Code and State Construction Code Act. Once the City discovers unpermitted work performed

[11] Once again, on April 3, 2019, the City affirmatively notified BDS in writing that no action had been taken on the provisioning center application and it remained pending.

without required building permits, the City must require after the fact building permits and inspections to protect the health, safety and welfare of the public by ensuring and enforcing building code compliance through the permitting and inspection process. Allowing an applicant to manipulate ostensible approval of a pending site plan application by necessitating an after the fact building permit application and inspection process through the applicant's own unlawful conduct represents an unreasonable and inequitable interpretation and application of the City's ordinances.

Section 21.28 J. requires withholding of a certificate of occupancy only where construction is not consistent with an "approved" site plan. Here, the pending site plan application for a Marijuana Facility had not been "approved" and therefore there was no basis to withhold the certificate of occupancy based on use alone where the improvements otherwise met building code requirements and the building had been properly used for many years by various commercial tenants. The administrative record indicates the improvements performed under the after the fact permits were not necessarily unique to a Marijuana Provisioning Center and were capable of being adapted to either a commercial use permitted as of right without site plan approval or a use otherwise permitted under existing use approvals. Section 22.06 (g) mandates issuance of a certificate of occupancy where the building and land use are in accordance with the provisions of the zoning ordinance. Here, the final inspection by the Building Official confirmed building code compliance and there was no evidence of an improper or unpermitted use given the property was vacant at the time of inspection with no evident active use that would in any way violate the zoning ordinance. The Building Official cannot withhold a C of O based on mere suspicion or speculation that the landowner might possibly use the property in the future without first obtaining the required local land use approvals. Here, the state operating license for a provisioning center at the location had not yet been issued at the time of issuance of the certificate of occupancy thereby rendering the proposed future use as a provisioning center speculative and undetermined at best. Importantly, under section 22.06 (h), "The issuance of any certificate of occupancy shall not be construed as a waiver of any provision of this Ordinance." Consequently, the issuance of a certificate of occupancy for the BDS building does not waive the site plan approval requirements applicable to provisioning centers.

Second, zoning ordinance Sec 21.50 (b) "Number and Location" states as follows in relevant part: "The number and ***placement*** of Marijuana Facilities shall comply with zoning district limitations and requirements as follows… Provisioning Center C-2: Two (2)" *(emphasis added).* Consequently, the express provisions of the zoning ordinance unambiguously prohibit the "placement" of more than two (2) provisioning centers in the C-2 zoning district. The numerical and locational restrictions of section 21.50(b) contain no facility qualifiers such as "existing" or "approved". At the July 9, 2019 planning commission meeting, the planning commission interpreted "placement" to mean site plan approval and therefore approved only one of three provisioning center applications presented for consideration of the second and final placement in the C-2 district. As previously stated, Council may consider prior zoning decisions when interpreting the zoning ordinance. Section 21.50 (g) "Action on Application" further mandates denial of site plan approval where the facility would result in the violation of local ordinances: "An application for site plan approval of a Marijuana Facility that…would result in a violation of state or local law or the Rules shall be denied". As previously stated, at the time of the November 4, 2019 denial of BDS's site plan application, the planning commission had previously approved the placement of two (2) provisioning centers in the C-2 zoning district. Both previously awarded placements were unexpired and undeniably valid at the time of the November 4, 2019 denial of the BDS application. Approval of the BDS provisioning center application would have undeniably resulted in a violation of Sec. 21.50(b) by approving the placement of a third provisioning center in the C-2 zoning district where

only two (2) placements are allowed by ordinance. Accordingly, the express and unambiguous provisions of Sec. 21-50 (b) and (g) mandated the denial of BDS's application. BDS's argument that the numerical limitations on provisioning centers in the C-2 zoning district only apply to the non-zoning business licensing process clearly has no merit for the reasons stated above *(See, Sec 10.02(b) and Sec 21.50(b) of the zoning ordinance).*

Recommendation: That Council find: 1) The administrative decision maker properly interpreted and applied the zoning ordinance in denying the BDS site plan application on the basis that two other applicants had previously been granted site plan approval for provisioning centers in the C-2 zoning district where the zoning ordinance limits placement of no more than two (2) provisioning centers in the C-2 district, and; 2) The issuance of the after the fact building permits and August 9, 2019 certificate of occupancy for the BDS building did not constitute site plan/land use approval as a provisioning center where the C of O expressly states it only verifies minimal building code compliance and does not constitute approval of any particular use and where the City's applicable site plan review ordinances contain no language or provisions providing for approval of a pending Marijuana Facility Site Plan Application by the Building Official through the issuance of a C of O.

e) Whether BDS has demonstrated a "practical difficulty" warranting a non-use variance from the 500 ft. setback requirement and the limitation on no more than two (2) provisioning centers in the C-2 zoning district.

As explained in my January 21, 2020 memo, a finding of practical difficulty requires demonstration by the applicant of all the following:

1) Strict compliance with the ordinance requirement will unreasonably prevent the owner from using the property for a permitted purpose or will be unnecessarily burdensome.
2) The requested variance will do substantial justice to the applicant and other property owners.
3) A lesser variance than requested will not give substantial relief to the applicant and/or be consistent with justice to other property owners.
4) The need for the variance is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district.
5) The problem and resulting need for the variance has not been self-created by the applicant and/or applicant's predecessors.

In variance proceedings, it shall be the responsibility of the applicant to provide information, plans, testimony and/or other evidence from which Council may make the required findings. Administrative officials may, but shall not be required to, provide information, testimony and/or evidence on a variance request. Factors to consider in evaluating the above five requirements include the following:

- Upon considering the criteria under the City's ordinances and the Administrative Priority Rules, has BDS made a well-supported showing that, but for the 500 ft. setback requirement and the limitation on no more than two (2) provisioning centers in the C-2 zoning district, BDS qualified for one of two available approvals in the C-2 district ahead of at least fifteen of the

eighteen C-2 applicants? If not, what would be the basis for concluding that the 500 ft. setback requirement and the limitation on no more than two (2) provisioning centers in the C-2 zoning district unreasonably prevent or unnecessarily burden BDS's use of the property as a provisioning center?

- Regardless of the BDS owners' subjective beliefs, did the City make a representation that would lead a reasonable person under the circumstances to believe the BDS's site plan had been approved where a) the City affirmatively and repeatedly informed applicant that its site plan had not been approved, and; b) the City's ordinances contain no provisions providing for the approval of a site plan through the execution of a state Attestation I form and the Attestation I form executed by the City does not state or affirmatively represent local approval of Applicant's site plan application, and; c) the Applicant had actual or constructive notice that two other proposed provisioning centers, including one within 500 ft. of Applicant's proposed site, were under consideration and ultimately approved by the planning commission?
- Will substantial justice to the applicant and other property owners result by granting the variance where all Marijuana Facility Applicants had actual and/or constructive notice of both the numerical limitation and set-back requirement and the resulting risk of being denied in the event two other and/or another applicant within 500 ft received approval for a provisioning center? Moreover, does this represent a need arising out of a condition unique to the BDS property rather than general requirements and risks that apply to all Applicants?
- Will substantial justice to the applicant and other property owners result by granting the variance where a neighboring property owner who received site plan approval for a provisioning center within 500 ft of Applicant's proposed site vehemently opposes the requested variance for the reasons stated on the record?
- Did Applicant create the need for the variances by failing to present and perfect a proposal qualifying for a higher level of priority under the City's Administrative Processing Rules and, if so, would it be consistent with substantial justice to excuse compliance with zoning ordinance requirements and award site plan approval to a less competitive application? Furthermore, what would be the basis for concluding the need for the variance arises out of conditions unique to the property rather than the Applicant simply not presenting a sufficiently competitive application?
- Is the need the for the variance self-created and attributable to applicant's own unlawful conduct of performing work without required building permits that delayed processing of Applicant's application until applicant cured the violations during which time two other competing applicants, including one located less than 500 ft. from applicant's proposed facility, obtained site plan approval by the planning commission for provisioning centers?
- Does the need for the variance arise out of conditions unique to the property where the numerical limitations and set back requirement apply throughout the C-2 zoning district?

At the time of the January 28, 2020 appeal hearing, BDS primarily relied on the following in support of its request for variances: 1) That since the summer of 2019, BDS has spent approximately $472,000.00 on its facility including $66,000.00 for a state operating license despite the fact that the City expressly notified BDS in writing that its application had not been approved and remained pending as of April 3, 2019 and the planning commission approved two (2) other C-2 provisioning center applicants on May 28th, and July 9, 2019 respectively; 2) That after the planning commission granted site plan approval to

the two approved applicants, the City should have sent BDS a letter stating no additional C-2 approvals remained despite the ordinance provisions expressly prohibiting the placement of not more than two (2) provisioning centers in the C-2 zoning district; 3) The need for the variances is not self-created despite the fact that BDS's violations of the Michigan Building Code and State Construction Code Act blocked and delayed action on its own application until after the two available C-2 approvals had already been awarded to other applicants; 4) The City somehow created the need for the variances by requiring after the fact building permits and issuance of a certificate of occupancy necessitated by BDS's violations of the Building Code and Construction Code Act. BDS argues the City further created the need for the variances by issuing the state Attestation I form despite the absence of language in the form stating execution of the form constitutes or acknowledges local approval and further despite the state acknowledging that execution of the state form does ***not*** constitute local approval- "We [the state] are bound by the municipality and their ordinances, so if you do not yet have a license to operate from the municipality we cannot cause that action to take place". Once again, the City's ordinances contain no provisions authorizing site plan approval by executing state application forms and as of April 3, 2019, BDS had written notification from the City that the previously issued state Attestation I forms did not constitute local approval and BDS's application otherwise remained pending with no final decision or action.

Recommendation: That Council consider the above factors in deciding whether BDS has met its burden of satisfying each of the above five (5) criteria needed to demonstrate a Practical Difficulty for each of the two requested variances.

Conclusion

I offer the above recommendations, interpretations, rationale and opinions for Council's consideration in deliberating whether to grant the relief requested by way of the instant Appeal. Based on the administrative record in this appeal, the administrative decisionmaker, in my opinion, properly interpreted and applied the relevant provisions of the city's ordinances in denying BDS's application for site plan approval and BDS has otherwise failed to demonstrate the administrative official breached a duty or discretion in carrying out the provisions of the zoning ordinance that would warrant a departure from the decision reached by the administrative official. BDS, like many other applicants, took an entrepreneurial risk by spending a significant amount of money in hopes of obtaining one of two available provisioning center approvals through a highly competitive process that included seventeen other applicants competing for the two (2) available C-2 approvals. In the event Council decides to adopt the recommendations, interpretations and opinions offered herein, I have prepared a proposed resolution affirming the denial of BDS's site plan application for a provisioning center. I further recommend action on the two requested variances by way of separate motion/resolution including articulation of whether the applicant satisfied/failed to satisfy the above five factors needed to establish a practical difficulty (form motions approving/denying a variance request were previously provided with my January 20th memo to assist Council in this regard).

Respectfully,

Vahan C. Vanerian

Vahan Vanerian, Esq.
City Attorney

MEMORANDUM

City of Walled Lake · 1499 E. West Maple Road · Walled Lake, MI 48390 · (248) 624-4847

To: Walled Lake City Council

From: Vahan Vanerian, City Attorney

Re: BDS Marijuana Facility Appeal

Date: January 21, 2020

On January 28, 2020, a Special Meeting will be held to hear an appeal of an administrative denial of an application for a Medical Marijuana Provisioning Center filed by the applicant, BDS LLC. This memo provides an overview of the appeal and appeal process.

Overview of Administrative Review and Appeal Process

Under applicable City Codes and Ordinances, Marijuana Facilities, including provisioning centers, must receive both City and State approval to lawfully operate in the City of Walled Lake. City approval consists of obtaining both of the following: 1) Site plan approval under the City's zoning ordinance (Ord. Nos. C-334-17 and C-337-18) and; 2) A City business license under the City's General Code of Ordinances (Chapter 18 "Businesses", Article XI "Medical Marijuana Facilities"). Provided the applicant otherwise satisfies applicable approval criteria under the Business Licensing ordinance, the City Business License is typically issued following Site Plan approval and issuance of a State Operating License for the facility. In so far as the instant appeal is limited to the administrative denial of the applicant's request for site plan approval under the City's zoning ordinance, the scope of this memo is limited to discussion of applicable criteria and procedures arising under the City's zoning ordinance.

Under the City's zoning ordinance, an applicant seeking site plan approval for a marijuana facility must submit a complete application, including all required supporting documentation, and pay all required fees and deposits. Upon submitting a complete application, the application is reviewed and acted upon by either the Planning Commission or City Administration pursuant to both the generally applicable site plan review criteria and procedures under section 21.28 ("Site Plan Review") and the facility specific criteria and procedures under section 21.50 ("Marijuana Facilities"). A proposed marijuana facility in either an industrial zoning district or proposing new construction in any zoning district must be reviewed and acted upon by the planning commission, any other proposed facility may be reviewed and acted upon administratively. In so far as the BDS provisioning center

application proposed utilizing an existing building in a C-2 zoning district, it was reviewed and acted upon administratively.

Ord. No. C-337-18 amended section 21-50 by adopting several additional sub-sections including an appeal process under sub-section (q). Under the appeal process, an aggrieved party may appeal any action taken on a site plan application for a marijuana facility by appealing the decision on the site plan application to City Council. The appeal provisions under sub-section (q) confer discretionary powers on City Council relative to affirming, reversing or modifying any action taken on a site plan application for a marijuana facility. City Council appeal powers include powers typically exercised by the Zoning Board of Appeals in zoning matters, including the following:

a) Review of Administrative Decisions. Section 23.03(b) provides for the exercise of this authority by the ZBA. Accordingly, the City Council, sitting as the ZBA for purposes of the instant appeal, has the authority to hear and decide appeals where it is alleged by the appellant (i.e. BDS) that there is error in any decision made by any administrative body or official in interpreting or enforcing any provision of the zoning ordinance. In reviewing administrative decisions, Council review shall be based on the record of the administrative decision being appealed without consideration of new information which had not been presented to the administrative decision maker from whom the appeal is taken. City Council, sitting as the ZBA, shall not substitute its judgment for that of the administrative official being appealed and the appeal shall be limited to determining, based on the record, whether the administrative official breached a duty or discretion in carrying out the provisions of the zoning ordinance.

b) Interpretation. The City Council, sitting as the ZBA, shall have the authority to hear and decide requests for interpretation of the zoning ordinance. Interpretive decisions shall be made so that the spirit and intent of the zoning ordinance is preserved. Text interpretations shall be limited to the issues presented and shall be based upon a reading of the zoning ordinance as a whole and shall not have the effect of amending the zoning ordinance. Reasonable and practical interpretations which have been applied in the administration of the ordinance shall be considered. Prior to deciding a request for an interpretation, City Council, sitting as the ZBA, may obtain recommendations and opinions from staff and consultants to determine the basic purpose of the provision subject to interpretation and any consequences which may result from differing decisions. Courts give substantial deference to a local legislative body's interpretation of its own ordinances.

c) Variances. City Council, sitting as the ZBA, may grant variances from the strict letter and terms of the zoning ordinance by varying or modifying any requirement or provision so that the spirit of the ordinance is observed, public safety secured, and substantial justice done. There are two types of variances, a "use" variance and a "non-use" variance. A "use" variance allows a use of property that is not expressly permitted under the zoning ordinance. In so far as a provisioning center is a permitted (albeit regulated) use in a C-2 zoning district, the instant appeal does not suggest the need for a use variance. A "non-use" variance is a variance from any standard or requirement of the zoning ordinance, such as a deviation from a limitation on the number of facilities, setbacks, etc. As an alternative form of relief, BDS requests non-use variances from the limitations on the

number of provisioning centers in the City and a variance from the applicable setback requirements. A non-use variance may be granted only upon finding a "practical difficulty" exists. A finding of practical difficulty requires demonstration by the applicant of all the following:

1) Strict compliance with the ordinance requirement will unreasonably prevent the owner from using the property for a permitted purpose or will be unnecessarily burdensome.
2) The requested variance will do substantial justice to the applicant and other property owners.
3) A lesser variance than requested will not give substantial relief to the applicant and/or be consistent with justice to other property owners.
4) The need for the variance is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district.
5) The problem and resulting need for the variance has not been self-created by the applicant and/or applicant's predecessors.

In variance proceedings, it shall be the responsibility of the applicant to provide information, plans, testimony and/or other evidence from which Council may make the required findings. Administrative officials may, but shall not be required to, provide information, testimony and/or evidence on a variance request. Form motions for granting or denying a non-use variance have been attached.

Overview of Marijuana Facility Ordinances and Rules

Section 21-50(g) of the Marijuana Facilities ordinance states the City "shall take action on the application according to the applicable review criteria and procedures in section 21-28 and the provisions specific to Marijuana Facilities as set forth in this zoning ordinance." Under the general site plan review provisions set forth in section 21-28, demonstrated compliance with all standards and requirements arising under the zoning ordinance and ***other applicable ordinances and laws*** is a prerequisite to administrative approval of a site plan (sec. 21-28 E. 8., *emphasis added*). Other applicable laws include requirements arising under the Michigan Building Code including issuance of building, plumbing, electrical and mechanical permits prior to commencement of certain improvements to commercial buildings. Section 21-28 E. 8. further authorizes tabling of a site plan under administrative review. The administrative review provisions of section 21-28 further authorize obtaining reviews, findings, recommendations and actions by City officials, professionals and consultants prior to taking final action on a site plan under administrative review which inherently and unavoidably entails delays pending the outcome of the action by these officials. City codes and ordinances place no time requirements on taking action on a site plan under administrative review.

In addition to the procedures and requirements arising under section 21-28, section 21-50 adopts additional regulations, review criteria and procedures specific to Marijuana Facilities. The Marijuana Facility specific provisions under section 21-50 include, but are not limited to, the following in relevant part:

- Only three (3) total provisioning centers city wide: two (2) provisioning centers are permitted in a C-2 zoning district and one (1) in the C-1 zoning district.
- A provisioning center cannot be located within 500 ft. of another provisioning center or a school.
- An applicant must either be pre-qualified by the State of Michigan or have been issued a full state operating license for the proposed facility.
- A Marijuana Facility shall comply with all State Administrative Rules adopted pursuant to the Medical Marijuana Facilities Licensing Act and all other applicable requirements arising under the Act.
- Signed verification by the property owner that he/she consents to use of the property as a Marijuana Facility.
- All facility operations, transactions and activities (except waste disposal) must be conducted in an enclosed building.

Resolution 2018-10 adopts local administrative rules and procedures for the processing of Marijuana Facility applications. These local administrative rules include a three-tiered priority system for processing competing applications for the limited number of available approvals for each type of facility. Applications proposing new City water and sewer service to a property previously unserved by City water and sewer service receive first level priority. Applications proposing either new City water service or new sewer service to a previously unserved property receive second level priority. An applicant must pay all required tap fees before receiving a first or second level priority. Applications proposing $20,000.00 or more of non-facility specific improvements of a general nature documented by a credible estimate from a qualified contractor receive a third level priority.

Resolution 2018-10 further adopts a preliminary review step in the application review process for purposes of determining whether the application is complete and whether the application on its face makes a preliminary showing of eligibility for further review. If the applicant submits a complete application that makes a facial showing of preliminary eligibility, the application undergoes final review for consideration of final approval. Preliminary review consists of a cursory review of the application for purposes of identifying any readily apparent reason requiring denial such as: the proposed facility is in an improper zoning district; the quota established by ordinance for the proposed facility has been exhausted; unpaid/past due financial obligations owning to the City, etc.

Overview of Administrative Record and Decision[1]

On April 24, 2018 Plaintiff, BDS Medical Growers ("BDS"), submitted three (3) separate applications to the City of Walled Lake ***(Exhibits 1-3)*** seeking local approval of three separate medical marijuana facilities authorized under the Medical Marihuana Facilities Licensing Act, MCL 333.27102, *et. seq.* Specifically, the three applications submitted by BDS consisted of the following: 1) a marijuana processor facility; 2) a marijuana provisioning center and; 3) a marijuana grower facility**.** The grower and processor applications propose new construction of both facilities on an undeveloped portion of an eight (8) acre parcel (parcel no. 17-34-228-008)

[1] The complete Administrative Record is on file and available for Council review at the City Clerk's office.

zoned for industrial use, commonly known as 902 N. Pontiac Trail***. (Exhibit 4).*** The grower/processor parcel is partially improved with an industrial manufacturing facility (i.e. Erin Industries) owned by Steve Atwell who is also a 25% owner of the applicant, BDS. The new construction proposal for the grower and processor facilities include proposed new water and sewer taps for the newly constructed buildings. The applicant has not paid the required tap fees for the proposed new water and sewer service.

Plaintiff's marijuana provisioning center application proposes utilizing an existing commercial building with existing water and sewer service. The proposed provisioning center would be located on a relatively small commercial parcel (parcel no. 17-34-226-013) located in a C-2 zoning district, commonly known as 933 N. Pontiac Trail. ***(Exhibit5).*** The provisioning center property and the grower/processor property are separate and distinct parcels located on opposite sides of Pontiac Trail from one another. The application narrative summarily states the non-facility specific improvements to the property will exceed $20,000.00. The application further requests a first level priority based on the applicant proposing new water and sewer service to the proposed grower/processor site located across the street.

On or about September 22, 2018, the City received the statutorily required notification that BDS submitted a state application seeking state approval for a ***"processor***" facility***. (Exhibit 6).*** On October 19, 2018, Steve Atwell, a part owner of BDS, appeared at the City Hall counter and requested the City sign a state Attestation I form for BDS's ***state*** application. The state Attestation I form is part of the ***state*** licensing process. The state Attestation I form presented by Atwell states the City has adopted an ordinance permitting Marijuana Facilities in the City, including any regulations/limitations on those facilities, that the applicant is complying with those ordinances, and further requests copies of any zoning regulations and a description of any violations by the applicant pertaining to marijuana facility related activities. ***(Exhibit 7).*** The Attestation I form presented by Atwell does ***not*** state or identify which location or facility the form pertained to. The form does ***not*** state the applicant has received all required local approvals nor does the word "approve" (or any derivative of the word) appear anywhere in the body of the form. Other than the "processor" facility, the City had not received any other written notification that BDS had submitted a state application for any other facility at that time. In so far as BDS was following the city's ordinances by submitting a complete and proper application making a facial showing of pre-liminary eligibility for further consideration, and further considering there was no known evidence of non-compliance with applicable city codes and ordinances, a deputy city clerk signed the state Attestation I form per Atwell's request as there was no apparent reason to withhold execution of the state form at that time[2]. On October 26, 2018, a week after executing the October 19, 2018 Attestation I form, the City received the statutorily required written notification that BDS had submitted a state application for a provisioning center. ***(Exhibit 8).***

On April 1, 2019, the City's code enforcement officer received a complaint that significant work and interior modifications were being performed on the proposed provisioning center building without building permits required by the *Michigan Building Code*. ***(Exhibit 9).*** On April 10, 2019, the City's code enforcement officer performed a walk-through inspection of the building and

[2] The October 19, 2018 state Attestation I form was subsequently re-issued by the City per the state's request due to an apparent notarization error.

confirmed substantial work had been performed on the building interior and exterior[3] without required building, plumbing, mechanical and electrical permits. ***(Exhibit 9 and 10).*** The City agreed to hold the Plaintiff's provisioning center application in abeyance and afford Plaintiff an opportunity to cure the numerous building code violations by applying for after the fact building permits and obtaining a certificate of occupancy following inspection and approval of the work performed under the after the fact permits.

Thereafter, Plaintiff gradually submitted after the fact applications for the required building, plumbing, mechanical and electrical permits. After numerous disapproved plan reviews due to Plaintiff's failure to submit required information and documentation, the required building permits were issued on July 22nd and August 2nd 2019. ***(Exhibit 10).*** Following an inspection by the City's Building Official, the City issued a certificate of occupancy dated August 9, 2019 for the proposed provisioning center building confirming the building met minimal building code requirements under the Michigan Building Code, but not constituting approval of the proposed use as a provisioning center. ***(Exhibit 11).***

Meanwhile, the City continued to move forward with processing the numerous competing provisioning center applications submitted by other applicants. At the May 28, 2019 planning commission meeting, the planning commission granted site approval to Apex Ultra to build and develop a provisioning center on an undeveloped commercial parcel in the City's C-2 zoning district. ***(Exhibit 12).*** At the July 9, 2019 planning commission meeting, the planning commission granted site plan approval to Attitude Wellness to demolish an existing building and build a new provisioning center facility on a commercial parcel in the City's C-2 zoning district. (***(Exhibit 13).*** BDS's proposed provisioning center is located in the City's C-2 zoning district. Importantly, the planning commission approved the above two provisioning centers in the C-2 zoning district while Plaintiff's provisioning center application remained in abeyance due to the numerous unresolved building code violations which Plaintiff did not cure until weeks after both available provisioning center approvals were awarded to other applicants.

Because both approved provisioning centers are proposing new construction, both are proposing new water and/or sewer taps for their new facilities. Both approved applicants have paid the required tap fees. Both approved provisioning center applicants have submitted credible contractor estimates documenting non-facility specific improvements that approach or exceed one million dollars respectively.

The approved Attitude Wellness facility is located directly across the street from Plaintiff's proposed provisioning center site. Aerial maps confirm the approved Attitude Wellness site is within five hundred ft. (500') of Plaintiff's proposed provisioning center**.** On November 4, 2020, the City notified BDS of the City's denial of its provisioning center application for the reasons stated in the attached denial notification letter.

[3] The work performed w/o required building permits included substantial plumbing, mechanical and electrical work; gutting the building interior including removal of existing walls and construction of new walls; exterior siding, etc.

Overview of Appeal

The Applicant, BDS, filed a timely written Notice of Appeal seeking Council review and reversal of the administrative denial of the applicant's site plan application for a proposed provisioning center. The applicant's Notice of Appeal ("Appeal") includes a written synopsis of the issues presented, reasons and argument in support of applicant's challenges to the administrative denial of the site plan application, relief requested and supporting documentation. The Appeal implores Council to exercise its Administrative Review, Interpretive and Variance powers in granting the relief requested by the Applicant. City Council, sitting as the ZBA, may reverse, affirm, vary or modify any order, requirement, decision, or determination presented in a case within its jurisdiction, and to that end, shall have all of the powers of the officer, board or commission from whom the appeal is taken, subject to the applicable scope of review, as specified in the zoning ordinance and/or by law. Council, sitting as the ZBA, may impose reasonable conditions in connection with an affirmative decision on an appeal, interpretation or variance request.

Specifically, the Appeal alleges the City erroneously denied BDS's site plan application for a provisioning center. As stated above, Council review shall be based on the record of the administrative decision being appealed without consideration of new information which had not been presented to the administrative decision maker from whom the appeal is taken. City Council, sitting as the ZBA, shall not substitute its judgment for that of the administrative official being appealed and the appeal shall be limited to determining, based on the record, whether the administrative official breached a duty or discretion in carrying out the provisions of the zoning ordinance.

In support of its claim that the City erroneously denied its site plan application, BDS argues that the City erroneously interpreted and applied certain provisions of the City's ordinances thereby implicating the Council's interpretive powers. For example, under an allegedly proper interpretation of the City's ordinances advocated by BDS, BDS claims the prior planning commission approval of two other provisioning centers in the C-2 zoning district does not foreclose approval of its proposed provisioning center in the C-2 zoning district. As stated above, when the planning commission approved the two other C-2 provisioning centers, BDS had not yet obtained a C of O for building code compliance and was still in the process of rectifying the Building Code Violations for performing work without required permits. BDS further challenges the City's interpretation of the 500 ft. set back requirement claiming the approved Attitude Wellness facility is not an "existing" facility.

BDS's proffered interpretations of the contested language present potential conflicts with other ordinance provisions and potential practical difficulties in processing and acting upon competing applications for a limited number of facilities. As stated above, prior to deciding a request for an interpretation, City Council, sitting as the ZBA, may obtain recommendations and opinions from staff and consultants to determine the basic purpose of the provision subject to interpretation and any consequences which may result from differing decisions. Courts give substantial deference to a local legislative body's interpretation of its own ordinances.

The Appeal requests non-use variances from certain provisions of the city's ordinances (e.g. numerical limitations and setbacks) as an alternative form of relief. The Appeal contains scant detail and analysis of the factors required to demonstrate a practical difficulty. In variance

proceedings, it shall be the responsibility of the applicant to provide information, plans, testimony and/or other evidence from which Council may make the required findings. Administrative officials may, but shall not be required to, provide information, testimony and/or evidence on a variance request. Form motions for granting or denying a non-use variance have been attached.

Hearing Procedure

The hearing is a meeting subject to the Open Meeting Act and open to the public. In so far as the Council is sitting as the ZBA, the hearing format should generally follow the same format typically employed by the ZBA which includes allowing the applicant to address council and present its appeal, allowing members of the public and interested parties to address Council which will likely include representatives of previously approved applicants, hearing evidence for the limited purpose of considering a request for a variance and demonstrating a practical difficulty. In the event Council requires additional time to consider matters presented in the Appeal or to receive any requested recommendations or opinions from staff and consultant's, Council may postpone any decision on the Appeal to a later date. The decision on the Appeal may be in a writing approved by Council and signed by the Chairperson. Council shall prepare an official record of the appeal and shall base its decision on the record. The official record shall include:

1) The relevant administrative records and the administrative orders issued thereon relating to the appeal.

2) The Notice of Appeal.

3) Such documents, exhibits, photographs, or written reports as may maybe submitted to the Council for its consideration.

OFFICE OF THE CITY ATTORNEY
CITY OF WALLED LAKE, MICHIGAN

L. DENNIS WHITT
CITY MANAGER

VAHAN VANERIAN, ESQ.
CITY ATTORNEY

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vvanerian@walledlake.com

November 4, 2019

James Kelly, Esq. *Sent via email*
30300 Northwestern Hwy. Ste. 324
Farmington Hills, MI 48334

Re: BDS, LLC Marijuana Provisioning Center Application
Proposed Location: 933 N. Pontiac Trail
Zoning District:C-2

Dear Mr. Kelly:

Please allow this correspondence to serve as notification of the City's action on your client's above referenced application seeking local approval for a Marijuana Provisioning Center at the above referenced location. Your client's application has been ***denied*** for the following reasons:

- Unavailability of any remaining provisioning center zoning approvals in the C-2 zoning district. Under the City's zoning and business licensing ordinances, only two (2) provisioning centers are allowed in the C-2 zoning district and the planning commission has previously granted site plan approval for two (2) provisioning centers in the C-2 zoning district.
- Your client's proposed provisioning center is located within 500 ft. of a previously approved provisioning center. Under the City's zoning and business licensing ordinances, a provisioning center cannot be located within 500 ft. of another provisioning center.
- Multiple violations of the building code, state construction code act and zoning ordinance arising out of extensive work, alterations and improvements at and upon your client's proposed provisioning center facility undertaken without required building and trade permits. Notably, the building code violations remained pending and unresolved at the time the planning commission granted site plan approval for the two approved C-2 applicants. The City's applicable zoning and business licensing ordinances require compliance with all applicable state and local laws, codes, ordinances, rules and regulations.
- The two approved C-2 applicants demonstrated and perfected a higher level of priority than BDS under the City's applicable rules and ordinances.
- Apparent misuse of a state attestation form signed by the City for BDS's grower/processor application that appears to have been improperly submitted in support of your client's state provisioning center application. Once again, the City's applicable zoning and business licensing ordinances require compliance with all applicable state and local laws, codes, ordinances, rules and regulations.

- Failure to satisfy all applicable approval criteria and requirements and otherwise making a less compelling application for approval under applicable City review and approval criteria, standards and requirements as compared to other applicants.

Your client has thirty (30) days to appeal the denial of your client's application to City Council as provided by Section 21.50(q) of the City's zoning ordinance.

Please feel free to contact me at my office should you have any further questions or comments regarding this matter.

Respectfully,

Vahan C. Vanerian

Vahan Vanerian, Esq.
City Attorney

Cc L. Dennis Whitt, City Manager

Michigan Marijuana Regulatory Agency

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF WALLED LAKE

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WALLED LAKE DENYING APPLICANT'S APPEAL IN CITY COUNCIL CASE NO. 2020-01 AND AFFIRMING THE ADMINISTRATIVE DENIAL OF APPLICANT'S SITE PLAN APPLICATION FOR A PROVISIONING CENTER

RESOLUTION 2020-

At its Regular Meeting of the City Council of the City of Walled Lake, Oakland County, Michigan, held electronically pursuant to Governor Gretchen Whitmer's Executive Order 2020-15, as extended, on the 21st day of April 2020 at 7:30 p.m.

WHEREAS, pursuant to the Medical Marihuana Facilities Licensing Act, MCL 333.27101, *et seq*, the City of Walled Lake has adopted local ordinances regulating Marihuana Facilities in the City of Walled Lake as provided by and in accordance with the Act;

WHEREAS, pursuant to the City's applicable marihuana facility ordinances and resolutions, the Applicant, BDS Medical Growers LLC, submitted a site plan application seeking local site plan approval for a proposed provisioning center at 933 N. Pontiac Trail, Walled Lake MI.

WHEREAS, on or about November 4, 2019, the City administratively denied the Applicant's application seeking site plan approval for Applicant's proposed provisioning center for the reasons stated and set forth in the City's November 4, 2019 notice of denial.

WHEREAS, the City's Marihuana Facility ordinances provide for an appeal to City Council by an aggrieved party seeking review of a decision concerning action taken on a site plan application for a Marihuana Facility.

WHEREAS, the Applicant, BDS, filed a timely appeal seeking City Council review of the administrative denial of Applicant's proposed site plan for a provisioning center for the reasons stated and set forth in the Applicant's Notice of Appeal ("Appeal"). The Applicant's Notice of Appeal challenges the administrative decision maker's interpretation and application of applicable City ordinances, rules and procedures in denying the Applicant's application and further calls upon Council to interpret terms and provisions of the City's applicable ordinances in a manner proffered by Applicant and grant further relief as requested in the instant Appeal.

WHEREAS, at a duly noticed Special Meeting of City Council held on January 28, 2020, Council held a public hearing on Applicant's instant Appeal where applicant's members and attorneys were afforded an opportunity to address Council and present their instant Appeal and where members of the public were also afforded an opportunity to address Council and offer public comment on the instant Appeal.

WHEREAS, at the conclusion of the January 28, 2020 public hearing on the instant Appeal, Council adopted resolution 2020-08 referring the instant Appeal to the City Attorney for legal review and recommendation for the reasons stated in resolution 2020-08 and further postponed any final decision on the merits of the instant Appeal pending receipt of the City Attorney's legal opinion and recommendation.

WHEREAS, at the Regular February 18, 2020 City Council meeting, Council scheduled a Special Meeting for March 18, 2020 for purposes of taking further action on the instant Appeal, however, the March 18th Special Meeting was canceled due to the Coronavirus Pandemic and the resulting State and National Emergencies. The instant Appeal was subsequently placed on the agenda for the April 21, 2020 Regular Council Meeting for purposes of a taking further action.

WHEREAS, pursuant to resolution 2020-08, the City Attorney prepared and submitted a written legal review and recommendation concerning the issues raised by way of the instant Appeal.

NOW, THEREFORE BE IT RESOLVED, by the Council of the City of Walled Lake, County of Oakland, State of Michigan that City Council hereby receives the City Attorney's April __ 2020 written legal review and recommendation concerning the instant Appeal ("City Attorney Opinion"), which shall be part of the record for City Council Case No. 2020-01;

BE IT FURTHER RESOLVED, that Council finds the opinions, interpretations and recommendations set forth in the April __ 2020 City Attorney Opinion represent reasonable and well supported interpretations, opinions, representations and recommendations concerning the issues raised by way of the instant Appeal;

BE IT FURTHER RESOLVED, that Council adopts and incorporates by reference the opinions, interpretations and recommendations set forth in the April __ 2020 City Attorney Opinion in its entirety as though full stated and set forth herein, including all supporting rational and analysis;

BE IT FURTHER RESOLVED, that based on the administrative record, and for the further reasons stated and set forth in the City Attorney Opinion, Council finds the administrative decision denying the BDS Provisioning Center site plan application was reasonable and warranted as stated and set forth in the November 4, 2019 notice of denial and did not constitute a breach of duty or discretion by the administrative official in carrying out the provisions of the zoning ordinance and that the Applicant/Appellant, BDS, has otherwise failed to demonstrate a meritorious basis for a departure or modification of the administrative denial of its site plan application

BE IT FURTHER RESOLVED, that the relief requested by the Applicant/Appellant, BDS, by way of the instant Appeal is hereby denied and the administrative decision denying BDS's site plan Application for a Provisioning Center is hereby affirmed.

Motion to approve Resolution was offered by _____ and seconded by _____.

AYES:
NAYS:
ABSENTS:
ABSTENTIONS:

RESOLUTION DECLARED ADOPTED.

STATE OF MICHIGAN)
)SS
COUNTY OF OAKLAND)

_____
JENNIFER A. STUART
City Clerk

_____
LINDA S. ACKLEY
Mayor

MEMORANDUM

City of Walled Lake · 1499 E. West Maple Road · Walled Lake, MI 48390 · (248) 624-4847

To: Walled Lake City Council

From: Vahan Vanerian, City Attorney

Re: *Minor in Possession of Tobacco/Vaping Products Ordinance*

Date: February 24, 2020

Attached for first reading please find a proposed ordinance amendment pertaining to use and possession of Tobacco and Vaping Products by minors. Under the City's current code, use and/or possession of tobacco products by minors under 18 years of age is an offense. Since the introduction of non-tobacco nicotine containing products such as vaping, state law has been recently amended to enact regulations and restriction pertaining to the sale, use and possession of non-tobacco nicotine containing products by minors. Under the new state law, use/possession of vaping and other alternative nicotine containing products by minors is a civil infraction punishable by fines and court ordered educational programs and community service. The attached ordinance amendment tracks the new state law by imposing similar fines and offenses for minors in possession of non-tobacco nicotine containing products, including vaping products.

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF WALLED LAKE

ORDINANCE NO. C-350-20

AN ORDINANCE TO AMEND CHAPTER 50, "OFFENSES AND MISCELLANEOUS PROVISIONS" TO ENACT OFFENSES PERTAINING TO THE USE AND POSSESSION OF TOBACCO, VAPOR AND ALTERNATIVE NICOTINE PRODUCTS BY MINORS.

THE CITY OF WALLED LAKE ORDAINS:

Section 1 of Ordinance. Purpose.

The purpose of this ordinance is to adopt penalties and offenses pertaining to use and possession of Tobacco, Vapor and Nicotine containing products by minors. Tobacco, vapor and nicotine products and other types of electronic cigarettes and/or synthetic nicotine products are a rapidly emerging and diversified product class with use among youth and young adults. The use of products containing nicotine poses health risks to youth and young adults including, but not limited to, nicotine addiction and risks associated with developing adolescent brains in ways that may affect the health and mental well-being of the user.

Section 2 of Ordinance. Amendment.

Chapter 50, "Offenses and Miscellaneous Provisions", Article VIII. "Offenses Concerning Underaged Persons", Division 6. "Tobacco" is hereby re-captioned and re-titled as "Division 6. Tobacco and Nicotine Containing Products" and is hereby further amended in its entirety to read as follows:

DIVISION 6. Tobacco and Nicotine Containing Products

Sec. 50-341. Definitions.

The following words, terms and phrases, when used in this Division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) "Alternative nicotine product" means a noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. Alternative nicotine product does not include a tobacco product, a vapor product, food, or a product regulated as a drug or device by the United States Food and Drug Administration under 21 USC 351 to 360fff-7.

(b) "Minor" means an individual who is less than 18 years of age.

(c) “Person who sells vapor products or alternative nicotine products at retail” means a person whose ordinary course of business consists, in whole or in part, of the retail sale of vapor products or alternative nicotine products.

(d) “Person who sells tobacco products at retail” means a person whose ordinary course of business consists, in whole or in part, of the retail sale of tobacco products subject to state sales tax.

(e) “Public place” means a public street, sidewalk, or park or any area open to the general public in a publicly owned or operated building or public place of business.

(f) “Tobacco product” means a product that contains tobacco and is intended for human consumption, including, but not limited to, a cigarette, noncigarette smoking tobacco, or smokeless tobacco, as those terms are defined in section 2 of the tobacco products tax act, 1993 PA 327, MCL 205.422, and a cigar.

(g) “Use a tobacco product, vapor product, or alternative nicotine product” means to smoke, chew, suck, inhale, or otherwise consume a tobacco product, vapor product, or alternative nicotine product.

(h) “Vapor product” means a noncombustible product that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine or any other substance, and the use or inhalation of which simulates smoking. Vapor product includes an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and a vapor cartridge or other container of nicotine or other substance in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. Vapor product does not include a product regulated as a drug or device by the United States Food and Drug Administration under 21 USC 351 to 360fff-7.

Sec. 50-342. Purchase, possession, or use of tobacco, vapor, or alternative nicotine products by minor; prohibitions; false or fraudulent proof of age; penalties; participation in health promotion and risk reduction assessment program; applicability.

(1) Subject to subsection (6), a minor shall not do any of the following:

(a) Purchase or attempt to purchase a tobacco product.

(b) Possess or attempt to possess a tobacco product.

(c) Use a tobacco product in a public place.

(d) Present or offer to an individual a purported proof of age that is false, fraudulent, or not actually his or her own proof of age for the purpose of purchasing, attempting to

purchase, possessing, or attempting to possess a tobacco product.

(2) An individual who violates subsection (1) is guilty of a misdemeanor punishable by a fine of not more than $50.00 for each violation. Pursuant to a probation order, the court may also require an individual who violates subsection (1) to participate in a health promotion and risk reduction assessment program, if available. In addition, an individual who violates subsection (1) is subject to the following:

(a) For the first violation, the court may order the individual to do 1 of the following:

(*i*) Perform not more than 16 hours of community service.

(*ii*) Participate in a health promotion and risk reduction assessment program.

(b) For a second violation, in addition to participation in a health promotion and risk reduction assessment program, the court may order the individual to perform not more than 32 hours of community service.

(c) For a third or subsequent violation, in addition to participation in a health promotion and risk reduction assessment program, the court may order the individual to perform not more than 48 hours of community service.

(3) Subject to subsection (6), a minor shall not do any of the following:

(a) Purchase or attempt to purchase a vapor product or alternative nicotine product.

(b) Possess or attempt to possess a vapor product or alternative nicotine product.

(c) Use a vapor product or alternative nicotine product in a public place.

(d) Present or offer to an individual a purported proof of age that is false, fraudulent, or not actually his or her own proof of age for the purpose of purchasing, attempting to purchase, possessing, or attempting to possess a vapor product or alternative nicotine product.

(4) An individual who violates subsection (3) is responsible for a civil infraction or guilty of a misdemeanor as follows:

(a) For the first violation, the individual is responsible for a civil infraction and shall be fined not more than $50.00. The court may order the individual to participate in a health promotion and risk reduction assessment program, if available. In addition, the court may order the individual to perform not more than 16 hours of community service.

(b) For the second violation, the individual is responsible for a civil infraction and shall

be fined not more than $50.00. The court may order the individual to participate in a health promotion and risk reduction assessment program, if available. In addition, the court may order the individual to perform not more than 32 hours of community service.

(c) If a violation of subsection (3) occurs after 2 or more prior judgments, the individual is guilty of a misdemeanor punishable by a fine of not more than $50.00 for each violation. Pursuant to a probation order, the court may also require the individual to participate in a health promotion and risk reduction assessment program, if available. In addition, the court may order the individual to perform not more than 48 hours of community service.

(5) An individual who is ordered to participate in a health promotion and risk reduction assessment program under subsection (2) or (4) is responsible for the costs of participating in the program if ordered by the court.

(6) Subsections (1) and (3) do not apply to a minor participating in any of the following:

(a) An undercover operation in which the minor purchases or receives a tobacco product, vapor product, or alternative nicotine product under the direction of the minor's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.

(b) An undercover operation in which the minor purchases or receives a tobacco product, vapor product, or alternative nicotine product under the direction of the state police or a local police agency as part of an enforcement action, unless the initial or contemporaneous purchase or receipt of the tobacco product, vapor product, or alternative nicotine product by the minor was not under the direction of the state police or the local police agency and was not part of the undercover operation.

(c) Compliance checks in which the minor attempts to purchase tobacco products for the purpose of satisfying federal substance abuse block grant youth tobacco access requirements, if the compliance checks are conducted under the direction of a substance use disorder coordinating agency and with the prior approval of the state police or a local police agency.

(7) Subsections (1) and (3) do not apply to the handling or transportation of a tobacco product, vapor product, or alternative nicotine product by a minor under the terms of the minor's employment.

(8) This section does not prohibit an individual from being charged with, convicted of, or sentenced for any other violation of law that arises out of the violation of subsection (1) or (3).

Sec. 50-343. Interference with Parental Rights or Legal Guardian.

This Division does not interfere with the right of a parent or legal guardian in the rearing and management of his or her minor children or wards within the bounds of his or her own private premises.

Sec. 50-344. Sale of Tobacco, Vapor, or Alternative Nicotine Products to Minor; Prohibition; Penalties; Signage; Affirmative Defense and Rebuttal; Age Verification; Requirements

(1) A person shall not sell, give, or furnish a tobacco product, vapor product, or alternative nicotine product to a minor, including, but not limited to, through a vending machine. A person who violates this subsection or subsection (8) is guilty of a misdemeanor punishable by a fine as follows:

(a) For a first offense, not more than $100.00.

(b) For a second offense, not more than $500.00.

(2) A person who sells tobacco products, vapor products, or alternative nicotine products at retail shall post, in a place close to the point of sale and conspicuous to both employees and customers, a sign produced by the department of health and human services that includes the following statement:

"The purchase of a tobacco product, vapor product, or alternative nicotine product by a minor under 18 years of age and the provision of a tobacco product, vapor product, or alternative nicotine product to a minor are prohibited by law. A minor who unlawfully purchases or uses a tobacco product, vapor product, or alternative nicotine product is subject to criminal penalties."

(3) If the sign required under subsection (2) is more than 6 feet from the point of sale, it must be 5- ½ inches by 8- ½ inches and the statement required under subsection (2) must be printed in 36-point boldfaced type. If the sign required under subsection (2) is 6 feet or less from the point of sale, it must be 2 inches by 4 inches and the statement required under subsection (2) must be printed in 20-point boldfaced type.

(4) Licensed wholesalers, secondary wholesalers, and unclassified acquirers of tobacco products shall obtain copies of the sign from the department of health and human services.

(5) It is an affirmative defense to a charge under subsection (1) that the defendant had in force at the time of arrest and continues to have in force a written policy to prevent the sale of tobacco products, vapor products, or alternative nicotine products, as applicable, to persons under 18 years of age and that the defendant enforced and continues to enforce the policy. A defendant who proposes to offer evidence of the affirmative defense described in this subsection shall file notice of the defense, in writing, with the court and serve a copy of the notice on the prosecuting attorney. The defendant shall serve the notice not less than 14 days before the date set for trial.

(6) A prosecuting attorney who proposes to offer testimony to rebut the affirmative defense described in subsection (5) shall file a notice of rebuttal, in writing, with the court and serve a copy of the notice on the defendant. The prosecuting attorney shall serve the notice not less than 7 days before the date set for trial and shall include in the notice the name and address of each rebuttal witness.

(7) Subsection (1) does not apply to the handling or transportation of a tobacco product, vapor product, or alternative nicotine product by a minor under the terms of the minor's employment.

(8) Before selling, offering for sale, giving, or furnishing a tobacco product, vapor product, or alternative nicotine product to an individual, a person shall verify that the individual is at least 18 years of age by doing 1 of the following:

(a) If the individual appears to be under 27 years of age, examining a government-issued photographic identification that establishes that the individual is at least 18 years of age.

(b) For sales made by the internet or other remote sales method, performing an age verification through an independent, third-party age verification service that compares information available from a commercially available database, or aggregate of databases, that are regularly used by government agencies and businesses for the purpose of age and identity verification to the personal information entered by the individual during the ordering process that establishes that the individual is 18 years of age or older.

Sec. 50-345. Sale of vapor or alternative nicotine products; display and storage requirements; penalties.

A person who sells vapor products or alternative nicotine products at retail shall not display for sale a vapor product unless the vapor product is stored for sale behind a counter in an area accessible only to employees or within a locked case so that a customer wanting access to the vapor product must ask an employee for assistance. A person who violates this section is responsible for a civil infraction and shall be fined not more than $500.00.

Section 3. Severability

If any section, clause or provision of this ordinance shall be declared to be unconstitutional, void, illegal or ineffective by any court of competent jurisdiction, such section, clause or provision declared to be unconstitutional, void or illegal shall thereby cease to be a part of this ordinance; but the remainder of this ordinance shall stand and be in full force and effect.

Section 4. Savings

All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this ordinance takes effect are saved and may be consummated according to the law in force when they are commenced.

Section 5. Repealer.

All other ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this ordinance full force and effect.

Section 6. Effective Date.

The provisions of this ordinance are hereby ordered to take effect following publication in the manner prescribed by the Charter of the City of Walled Lake.

AYES:
NAYS:
ABSENTS:
ABSTENTIONS:

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

_____
JENNIFER A. STUART, City Clerk
CITY OF WALLED LAKE

_____
LINDA S. ACKLEY, Mayor
CITY OF WALLED LAKE

Introduced: April 21, 2020
Adopted:
Effective: _____

CERTIFICATION

I, the undersigned, the qualified and acting City Clerk of the City of Walled Lake, Oakland County, Michigan, do certify that the foregoing is a true and complete copy of the Ordinance adopted by the City Council of the City of Walled Lake at a meeting held on the ____ day of _____, 2020, the original of which is on file in my office.

_____
JENNIFER STUART, City Clerk
City of Walled Lake

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF WALLED LAKE

A RESOLUTION INSTRUCTING AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE FOR AND AGREE UPON TERMS FOR THE ACQUISITION OF VACANT PARCEL AT THE ENTRANCE OF MARSHALL TAYLOR PARK TO ADD AS PART OF THE PARK

***Proposed* RESOLUTION 2020-14**

At a Regular Meeting of the City Council of the City of Walled Lake, Oakland County, Michigan, held in the Council Chambers at 1499 E. West Maple, Walled Lake, Michigan 48390, on the 21st day of April 2020 at 7:30 p.m.

WHEREAS, Marshall Taylor Park is one of the five city parks that enhance and benefit the community of Walled Lake; and

WHEREAS, Marshall Taylor Park is located along Gamma Street and consists of multiple parcels; and

WHEREAS, the vacant parcel at the entrance, 92-17-35-155-002 was discovered to be under a separate deed that was not owned by the City of Walled Lake; and

WHEREAS, the property owner approached the City to discuss the potential acquisition of said vacant land to ensure the parcel remains as it was assumed, part of Marshall Taylor Park.

NOW, THEREFORE BE IT RESOLVED, by the Council of the City of Walled Lake, County of Oakland, State of Michigan that:

Section 1. The City Council instructs and authorizes the City Manager to negotiate for and agree upon terms for acquisition of vacant parcel 92-17-35-155-002 to ensure parcel remains as is and becomes legally owned by the City of Walled Lake as part of Marshall Taylor Park.

Motion to approve Resolution was offered by _____ and seconded by _____.

AYES: ()
NAYS: ()
ABSENTS: ()
ABSTENTIONS: ()

RESOLUTION DECLARED ADOPTED.

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

_____
JENNIFER A. STUART
City Clerk

_____
LINDA S. ACKLEY
Mayor

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF WALLED LAKE

A RESOLUTION APPROVING A HEALTH CARE BENEFIT PACKAGE FOR FULL-TIME EMPLOYEES FOR THE PLAN YEAR APRIL 1, 2020 TO MARCH 31, 2021

***Proposed* RESOLUTION 2020-15**

At its Regular Meeting of the City Council of the City of Walled Lake, Oakland County, Michigan, held in the Council Chambers at 1499 E. West Maple, Walled Lake, Michigan 48390, on the 21st day of April 2020 at 7:30 p.m.

WHEREAS, the City Council has the sole discretion to approve and amend employee fringe benefits; and

WHEREAS, the City Council has approved various collective bargaining agreements and individual employee agreements which include health care benefits for the employees; and

WHEREAS, the City Council has limited the cost of those medical plan benefits to the hard cap figures imposed by Public Act 152 of 2011; and

WHEREAS, the City Council has determined the benefit package of medical, prescription, dental and vision benefits as proposed to be reasonable and in accordance with the intent of Council.

NOW, THEREFORE BE IT RESOLVED, by the Council of the City of Walled Lake, County of Oakland, State of Michigan that:

Section 1. The Council does hereby approve the following health care benefits for the April 1, 2020 thru March 31, 2021 plan year:

Blue Care Network HMO with prescription drug coverage
Blue Cross Blue Shield of Michigan PPO with prescription drug coverage
Principal Dental PPO
Eye Med

Section 2. The Council does hereby authorize the Finance Director to deposit the deductible into the individual Health Savings Plan accounts that have previously been established.

Section 3. The Department of Finance and Budget memo outlining the employee health insurance plans is made a part of this resolution. (Attachment A)

Motion to approve Resolution was offered by _____ and seconded by _____.

AYES: ( )
NAYS: ( )
ABSENTS: ( )
ABSTENTIONS: ( )

RESOLUTION DECLARED ADOPTED.

STATE OF MICHIGAN)
)SS
COUNTY OF OAKLAND)

_____
JENNIFER A. STUART
City Clerk

_____
LINDA S. ACKLEY
Mayor

DEPARTMENT OF FINANCE AND BUDGET

CITY OF WALLED LAKE, MICHIGAN

L. DENNIS WHITT
CITY MANAGER

SANDRA BARLASS
FINANCE DIRECTOR

1499 E. WEST MAPLE ROAD
WALLED LAKE, MICHIGAN 48390
(248) 624-4847 FAX: (248) 624-1616

Employee Health Insurance Plans

April 1, 2020 to March 31, 2021 Plan Year

It is recommended that Council approve the following insurance package of benefits for qualified City employees. The insurance benefits will remain unchanged from the current plan.

Medical & Prescription Drug Benefits

Continue to offer a choice of two high-deductible plans - Blue Care Network HMO or Simply Blue PPO.

The above high deductible plans will be coupled with a Health Savings Account set up for each employee into which the city will deposit the deductible. Employees will also be able to make pre-tax contributions into their account.

Due to the Affordable Health Care Act requirements all plans have seen significant changes and premiums are no longer categorized by group (single, family, and two-person) but are assigned individually by age. A copy of the individual premium rates is in possession of the Finance Director.

Dental Benefits

Continue dental insurance with Principal Dental PPO with a zero percent change to premiums:

Coverage	Current	Renewal
Employee	35.31	35.31
Employee & One Dep	66.55	66.55
Employee & Two + Dep	111.67	111.67

The above rates were negotiated by the City's agent, Meadowbrook Insurance, from an initial renewal offer of 3.5% increase.

Vision Benefits

Vision insurance will remain with Eye Med. These rates were locked in at a guaranteed rate for 48 months during the 2018 renewal, therefore no change in monthly premium over current:

Coverage	Current	Renewal
Employee	7.79	7.79
Employee & One Dep	14.79	14.79
Employee & Two + Dep	21.67	21.67

Total Employee Annual Cost Medical Coverage

The City of Walled Lake adheres to the requirements of Public Act 152 of 2011 limiting the amount the City may contribute to a medical benefit plan for its employees. The limit a public employer may contribute to a medical benefit plan for coverage years beginning after January 1, 2020 has increased 2.0% and equals the sum of the following:

$ 6,818.87 times the number of employees with single coverage
$14,260.37 times the number of employees with single plus one dependent
$18,596.96 times the number of employees with family coverage

The annual cost of the HMO plan is ***below*** the 2020 limits and no employee contribution is needed. The annual cost of the PPO plan is ***above*** the 2020 limits and a pre-tax employee contribution to the premium of $101.85 per paycheck may be required.

PROJECT: **Downtown Storm Sewer and Beautification**

PROJECT NUMBER: 20-048

PROJECT MANAGER: Bradd Maki

BID DUE DATE: April 1, 2020

OWNER: City of Walled Lake
ADDRESS: 1499 E. West Maple Road, Walled Lake, MI 48390

BOSS Engineering
3121 E. Grand River Howell, MI 48843
517.546.4836 fax 517.548.1670
www.bosseng.com

Bidder Order	BIDDER	Bid Security (Y/N)	Base Bid	Other/Notes/Addendum?
1	Warren Contractors	Y	$747,016.25	
2	V.I.L Construction Inc	Y	$733,351.00	
3				
4				
5				
6				
7				
8				
9				
10				