



**CITY OF WALLED LAKE
SPECIAL MEETING
PUBLIC HEARING
TUESDAY, JANUARY 28, 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 Lublin, Council Member Owsinek, Council Member Woods

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

OTHER'S PRESENT:

City Attorney Vanerian explained this is a special meeting of the Walled Lake City Council called upon to hear an appeal from an administrative action taken on a site plan for a proposed marijuana provisioning center in Walled Lake.

City Attorney Vanerian explained this appeal calls upon the City Council to exercise three different types of powers that are conferred upon them when hearing a case in the appeal capacity under the city's marijuana facility ordinances.

City Attorney Vanerian explained the first power calls upon council to exercise is the review of administrative decisions. In reviewing administrative decisions, such as the administrative decision to deny the site plan. Council review shall be based on the record of the administrative decision being appealed without consideration of new information which was not presented to the administrative decision maker from whom the appeal is taken.

City Attorney Vanerian explained City Council is sitting as the Zoning Board of Appeals and shall not substitute its judgement 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.

City Attorney Vanerian explained the second power calls upon council to exercise is the council's interpretive powers to interpret certain provisions of the Zoning Ordinance that are raised by way of the instant appeal.

City Attorney Vanerian explained the third power calls upon council to exercise the variance power which allows the granting of variances from the strict requirements of the City's Zoning Ordinance. A non-use variance which is the type of variance that is being requested by the applicant, maybe be granted only by finding a practical difficulty exists. In variance proceedings it shall be the responsibility of the applicant to provide information, plans, testimony and other evidence from which council may make the required findings. Administrative officials may but shall not be required to provide information, testimony, or evidence on a variance request. Mr. Vanerian explained this power is a little different than the first two. He explained this power allows for some consideration of extrinsic evidence and testimony for the purposes of determining of whether a practical difficulty exists or not exists.

City Attorney explained if the appellant plans on presenting any such evidence, the additional extrinsic evidence introduced can only be considered for that purpose. Council will have to exercise compartmentalized decision making, they cannot utilize extrinsic evidence or testimony for purpose of reviewing the administrative decisions or making any interpretations. He explained this is an overview of powers to be exercised by council in this particular case.

City Attorney Vanerian explained the general hearing format as this is a special meeting of City Council held strictly for purposes of holding a public hearing on the appeal for City Council case 2020-01. Mr. Vanerian explained the general hearing format would be to allow the applicant or appellant to address council first and present their case. The City Council may ask questions of the applicant at that time and may engage in somewhat of a question answer dialogue between council and the applicant. After the applicant is done with its presentation then interested parties would go next. They could address council and likewise of council. An interested party is someone who is a neighbor directly abutting the property in question, or another marijuana facility applicant. After that, then the members of the public, any member of the public can address council and share comments, questions, or concerns, etc. to the issue. Keep in mind this is a public hearing and a special meeting, any audience participation or comments must be limited to the issues in this appeal. He said this is not a regular city council meeting; public comment is limited to hearing comments that pertain to this particular appeal.

City Attorney Vanerian explained his recommendation to council to consider moving audience participation to make it part of the public hearing as it would be better for the public to hear from the applicant itself, so they have a better understanding about what the appeal is.

**CM 1-21-20 MOTION TO MOVE AUDIENCE PARTICIPATION TO BE
AFTER THE PUBLIC HEARING**

Motion by Loch, seconded by Owsinek, UNANIMOUSLY CARRIED: To move the audience participation agenda item after the public hearing

Roll Call Vote

Ayes (7) Ambrose, Costanzo, Loch, Lublin, Owsinek, Woods, Ackley
Nays (0)
Absent (0)
Abstention (0)

City Attorney explained before opening public hearing there is a preliminary issue to be addressed.

City Attorney Vanerian explained there is a preliminary issue before the public hearing is opened brought up by the applicant. Mr. Vanerian explained the applicant is requesting Mayor Pro Tem Ambrose be recused from participating in this appeal process for City Council Case 2020-01 because the applicant is of the opinion that Mr. Ambrose may have a conflict of interest or he may have some bias in this matter. The bases of this, in support of the applicant's request, communications were provided encompassing a demand for retraction letter that was sent to certain principals of the applicant by Mr. Ambrose's personal attorney. Mr. Vanerian explained the retraction of claimed derogatory and defamatory statements were in the letter. This is a typical type of letter that is normally sent prior to a lawsuit being filed for defamation and it is on that basis that the request for recusal is being made. Recusal is appropriate if there is actual bias or conflict of interest or even if there is an appearance of bias or conflict of interest. In this case, there is arguably some appearance that there may be some biased opinions because Mr. Ambrose has through his personal attorney demanded a retraction from certain principals of the applicant. He said the statements were of a personal nature that concerned both Mr. Ambrose and his immediate family members as well. Mr. Ambrose does intend to move forward with a defamation lawsuit. City Attorney Vanerian made a recommendation for council to recuse Mayor Pro Tem Ambrose from the appeal process of City Council Case 2020-01.

**CM 1-22-20 MOTION TO RECUSE MAYOR PRO TEM AMBROSE FROM
CITY COUNCIL CASE 2020-01 APPEAL HEARING FOR
REASONS EXPLAINED AND RECOMMENDATION BY CITY
ATTORNEY**

Motion by Owsinek, seconded by Costanzo, CARRIED: To recuse Mayor Pro Tem Ambrose from City Council Case 2020-01 appeal hearing for reasons explained and recommendation by City Attorney.

Roll Call Vote

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

AUDIENCE PARTICIPATION:

Moved to be included after Public Hearing.

Audience to approach the Podium, state their name and address before being authorized by the Chair to speak regarding agenda items only.

PUBLIC HEARING:

1. Case: 2020-01
Applicant: BDS Medical Growers, LLC
Location: 933 N Pontiac Trail
Walled Lake, MI 48390
Request: Non-Use Variance

Mayor Ackley explained this matter relates to property located at 933 N. Pontiac Trail zoned C-2. The applicant is seeking a variance from C-334-17, Section 21.50 (b) and (e) 7 which limit the number of provisioning centers to not more than two(2) in a C-2 zoning district and further require a 500 foot set back from another provisioning center; to allow a third provisioning center in a C-2 zoning district to operate within five hundred (500) feet of another provisioning center. Applicant requests City Council to grant the above requested variances and further reverse or modify the November 4, 2019 administrative denial of applicant's application to operate a medical marijuana provisioning center at 933 N. Pontiac Trail.

Open Public Hearing 7:41 p.m.

Mayor Ackley introduced applicant's attorney Mr. Kelly.

Mr. James Kelly explained he is the attorney for BDS and they applied for and were denied a license to operate a provisioning center within the city. This application was part of a package of applications for a processing center, provisioning center and a grow facility that would have created two to three, 12,000 square foot buildings in the city and improved the city by requiring the applicant to hook up the sewer and water taps which confers a priority status on the application. Mr. Kelly explained if granted, would also increase property tax revenues by tens of thousands of dollars per year and created numerous jobs in the city. Mr. Kelly explained that Mr. Steve Atwell and Mr. Robert Manna have a combined total of more than 50 years' experience owning and operating businesses in the city. They have for many years shown a commitment, not just to the business community of Walled Lake but also the civic government, Mr. Atwell is known as a member of the DDA and that is how he is known to all of you.

Mr. Kelly said it is an unfortunate turn of events that has brought us here today. Mr. Kelly said he believes they were here because of mistakes of the city, probably by staff that maybe did not know what other members of the city were doing. Mr. Kelly said he does not have another explanation.

Mr. Kelly said BDS applied to the city and the city issued three Attestation I forms corresponding to BSD's three different of applications processor, the provisioning center, and grow facility on October 25, 2018.

Mr. Kelly said he now going to refer to the city's argument that BDS apparently misused an Attestation I form or in some way misrepresented what the Attestation I form was for. Mr. Kelly explained the city's argument is completely false. Mr. Kelly said the letter that transmits the Attestation I form, specifically refers to the applicant's provisioning center. Mr. Kelly said it is clearly one Attestation form for each of the three applications. Mr. Kelly explained the city completed the three forms. Mr. Kelly explained later the same person apparently signed the Attestation I form and then notarized her own signature which defeats the whole point of a notary public. The State contacted the applicant, later on the city reissued the same three Attestation I forms. Mr. Kelly said these copies where provided to council.

Mr. Kelly explained the variance request. The city is processing the applications, BDS is doing work on its facility, other applicants are doing work on their facility and apparently on January 9, 2019, the City Planning Commission issued a conditional approval to Attitude Wellness, another provisioning center. Mr. Kelly explained in the meantime, the city does not take the position that BDS is not eligible at that time. Mr. Kelly said that is a belated manufactured thing. Mr. Kelly explained in contrary the city and BDS continued to work on their application and on their site. Mr. Kelly said the city goes out for numerous inspections over the course of July and August. Mr. Kelly said the city is working with BDS, BDS is working with the city and ultimately passing the inspections. Mr. Kelly said there are hiccups along the way, there are things that don't pass inspection immediately. Mr. Kelly said BDS does fix the items and eventually passes their inspections. On August 12, 2019 the city issues a Certificate of Occupancy. Mr. Kelly opined BDS has done what the city required. Mr. Kelly explained BDS submitted the C of O and Attestation I to the State, which shows BDS has met all the local approvals. Mr. Kelly explained the State does their own reviews and grants BDS a state operating license. Mr. Kelly said BDS pays \$66,000 for the state operating license in addition to all the work to bring the building up to code and explains tens of hundreds of thousands of dollars have been spent. Mr. Kelly said there has been a significant investment in the City by BDS.

Mr. Kelly said on August 22, 2019 BDS submits its State Operating License to the city. Mr. Kelly explained the city says no but does not provide any reasons until the November 4, 2019 denial letter. Mr. Kelly explained that is why BDS is before council and this is also explained in their Notice of Appeal.

Mr. Kelly said had it really been the case, had the city's ordinances provided that conditional approval stops the process, the process would have stopped well before all the approvals were made, well before the State issued its license, well before BDS received its Certificate of Occupancy and well before BDS spent all the monies.

Mr. Kelly referenced the November 4, 2019 denial letter. Mr. Kelly said the city gives several reasons for denial, with respect, he opined they are all wrong or mistaken. Mr. Kelly said this council sitting as the Zoning Board of Appeals has a duty to correct these mistakes.

Mr. Kelly said the first reason was that there were no remaining provisioning center approvals in the C-2 district because the Planning Commission granted site plan approvals to two other applicants. Mr. Kelly said this is legal error, this misreads the ordinance. Mr. Kelly explained when council is sitting as the Zoning Board of Appeals, it is different from City Council. The Zoning Board is not here to rewrite the ordinances or formulate new policy, the council may do that as part of a variance. Mr. Kelly explained when looking at the appeal, the existing ordinances that are already in effect, must be applied as they are written and apply the facts to that situation.

Mr. Kelly said what the denial letter does is misquotes and misstates the ordinances. Mr. Kelly said the text of the actual ordinance, limits the availability of licenses not the number of site plan approvals.

Mr. Kelly said the city provided a site plan approval before a license was granted. Mr. Kelly explained as of today, there are two available licenses in the C-2 zoning district. Mr. Kelly explained there is applicant who has an achieved its state license and has met all requirements of the city and want's their license. Mr. Kelly said the city has two available licenses and one of those should go to BDS.

Mr. Kelly said the city's denial letter states, BDS's provisioning center is within 500 feet of a previously approved provisioning center and opined this misstates the ordinance again.

Mr. Kelly referenced the city ordinance and read, "*a marijuana facility shall not be located less than 500 feet from a school or existing providing center.*" Mr. Kelly asked what evidence is there that there is an existing provisioning center. Mr. Kelly explained there is not a provisioning center there, there is a building, they want it to be a provisioning center, but it is not there yet. Mr. Kelly explained the ordinance language does not state a previously approved provisioning center. Mr. Kelly said the city mistakenly gave conditional approval.

Mr. Kelly explained if applicant is denied, which he opined would not happen because council would do the right thing and approve BDS but if denied, they can apply to the circuit court to determine definition of *existing* referring to a business which means operational. Mr. Kelly opined there is not a facility within 500 feet of BDS that provides medical marijuana.

Mr. Kelly explained the November 4, 2019 denial letter references multiple violations of code and law. Mr. Kelly explained when there is construction, there are inspections and they fail that happens in every single project. Mr. Kelly said the items were fixed because the city issued a certificate of occupancy. Mr. Kelly said there are not multiple code violations or violations of other law. Mr. Kelly explained he cannot be more specific because the city did not cite codes or other laws.

Mr. Kelly explained item 4 of the denial letter references priority. Mr. Kelly said there are other applicants that have a higher priority. Mr. Kelly said he mentioned this because of the sewer and water hookups. Mr. Kelly opined there are two available licenses, there is one applicant, BDS and they are the highest priority applicant. Mr. Kelly said the city has the licenses and there is not a provision in the ordinance to hold out because somebody better may come along. Mr. Kelly said the city has to apply the ordinance as it is today.

Mr. Kelly said denial 5, apparent misuse of Attestation I. Mr. Kelly said the city issued three Attestation I forms, corresponding to each of the application applied for by BDS. Mr. Kelly said exhibit M within the Notice of Appeal is a cover letter stamped received by the City Clerk's Office, on October 25, 2019 and it specifically says provisioning center. Mr. Kelly said it is not the case that Steve Atwell showed up to city hall and said I'd like this Attestation I for something else. Mr. Kelly said it was presented to city hall for the provisioning center. Mr. Kelly said city hall issued an Attestation I form. Mr. Kelly said three months later, city hall reissued that Attestation I form. Mr. Kelly explained city hall issued the Attestation I forms and then reissued them. Mr. Kelly said BDS never misused the Attestation I form; the cover letter refers to the provisioning center. Mr. Kelly said there is no case or misuse of the Attestation I form. Mr. Kelly said BDS applied for the Attestation I, got it, and presented to the state. Mr. Kelly said that is the proper use of that form.

Mr. Kelly said he provided the city attorney and council with the Medical Marijuana State Operating License State application and instructions booklet. Mr. Kelly referred to page 54, it has a discussion on what the Attestation I form is. Mr. Kelly said if the City Clerk's Office or city meant something different and that was an error by the city. Mr. Kelly said BDS relied on that error to its significant detriment.

City Attorney Vanerian explained for clarification on the document provided by Mr. Kelly. Attorney Vanerian explained his understanding is that Mr. Kelly is submitting items from the application instruction booklet from the State of Michigan for purposes of explaining how the State uses the Attestation I form which Mr. Kelly believes is as indication of city approval.

City Attorney Vanerian explained in the bottom left hand corner, there is a September 2019 date on the instruction manual. Mr. Vanerian said there was initially a form the State used when the Bureau of Medical Marijuana regulation started. Mr. Vanerian said when Governor Whitmer came into office, her administration restructured and changed the bureau over to the Marijuana Regulatory Agency. The Marijuana Regulatory Agency reviewed all the forms and the applications that the bureau used, and they made changes to them including the Attestation I form. Mr. Vanerian said he has the Attestation I form from September 2019 that goes with this instruction booklet provided by Mr. Kelly and it is not the same Attestation I form that the city signed. Mr. Vanerian explained the current Attestation I form that the instruction booklet applies to states the applicant has municipal authorization to operate. Mr. Vanerian said that is the current Attestation I form. The Attestation I form that the city signed does not contain that statement. There are corresponding instructions of the old instruction booklet by the State

published as a counter part to the Attestation I form that the city has. If reviewed, the language from the old instruction booklet that applies to the Attestation I forms the city signed, the language about the *execution of the Attestation I form constitutes local approval*, is not in there. Mr. Vanerian explained the reason that language is not there is the old Attestation I form did not state that it constituted local approval of the application.

Mr. Kelly said he thinks the old Attestation I form is the city's sworn verification or attestation that the applicant is in compliance with the law, the medical marijuana facilities licensing act, and that is a distinction without a difference. Mr. Kelly explained, granted the new form is clearer, he was not aware of this new form until this moment. Mr. Kelly explained his apologies and opined the Attestation I form old or new, is the city's sworn statement that the applicant is in compliance the medical marijuana licensing facilities acts and its local municipal requirements. Mr. Kelly said part of the requirements of the Attestation I form are that the city adopts a local ordinance and opts into procedures.

Mr. Kelly said that does not change anything. Mr. Kelly reviewed a letter from the State, exhibit D within the applicant's Notice of Appeal. Mr. Kelly reviewed correspondence dated July 15, 2019 from the Medical Marijuana Agency and read that the, *"state accepted Attestation I form and the signature to us, the state, the applicant has approval from the municipality. If the municipality has not issued a license to operate, we are unaware as we took their signature of Attestation I to mean you were approved."*

Mr. Kelly said he is not saying the City Clerk's Office acted in bad faith, but a mistake was made, and the council has the power to remedy.

Mr. Kelly explained the next denial item, failure to satisfy applicable approval criteria. Mr. Kelly said the city could not specify any, we know there are no outstanding issues because the applicant received a certificate of occupancy. The city issued the Attestation I form; the city already made its determination that the applicant is approved.

Mr. Kelly explained for all those reasons he thinks council should grant the applicant appeals. Mr. Kelly said council should hold the November 4th denial letter was an error, that it was a product of a misstatement of the law and misapplication of the city ordinances. Mr. Kelly said there were no defects or errors on BSD's part. Mr. Kelly said BDS is presently entitled to a license. Mr. Kelly said council can still make this right. Mr. Kelly explained the variance request is for an increase in the number of licenses so BDS can have one and the setback requirement be modified so BDS was in an eligible location.

Mr. Kelly said the variance could be granted. Mr. Kelly said to force the applicant to spend \$66,000 on a state license, additional untold estimates of money, nearly half a million dollars on their building is very much an unnecessary burden. Mr. Kelly said if the city provided or wanted to provide that upon conditional approval by the other provisioning centers, the process would stop, it should have said so before BDS spent half a million dollars. This could have been remedied by sending a letter. Mr. Kelly said a letter which part of the administrative record, one

was sent to Attitude Wellness from the July 9th Planning Commission meeting. Mr. Kelly explained the same letter could have been sent to BDS and it would have stopped BDS from spending half a million dollars. Mr. Kelly said correcting a half million-dollar error is substantial justice. Mr. Kelly said the applicant is asking for the least possible variance that would give relief. Mr. Kelly said he does not know how many Attestation I forms or certificates of occupancy the city has given out. Mr. Kelly said BDS is the only applicant who has a state operating license. Mr. Kelly said council can take steps to correct this situation.

Mr. Kelly said finally the problem has to be not self-created. Mr. Kelly opined this is not a self-created problem. Mr. Kelly said this is an error by the City Clerk's office by issuing the Attestation I form, the building department issuing building permits and approvals, and a certificate of occupancy. Mr. Kelly explained with all of this being issued, how would BDS know to do anything different. Mr. Kelly said council can make this right. Mr. Kelly said ultimately at the end of the day, BDS should receive approval and this should be the end of it.

Mr. Atwell addressed board. Mr. Atwell said he has had a long-standing commitment to the city, he was born here and raised here and participated in fundraising for city. Mr. Atwell explained he was asked by council members to bring some more work into the city and bring more property value to his property. Mr. Atwell said his property is the largest undeveloped part of the city, it would be taxed. Mr. Atwell explained the water and sewer taps were made in good faith. Mr. Atwell said he has spent half a million dollars himself with legal fees just getting the licenses and FBI background checks which were expensive. Mr. Atwell opined he was told by Mr. Whitt you have three licenses, there are texts messages. Mr. Atwell said he met with Mrs. Pesta and Mr. Whitt, had no conversation with Mrs. Pesta the conversation was with Mr. Whitt. Mr. Atwell said Mrs. Pesta signed the first set of forms improper. Mr. Atwell said the state returned the forms because they were improper. Mr. Atwell said he approached the city manager explaining the forms were signed incorrectly and he was told to come back to have them resigned. Mr. Atwell said Mrs. Pesta signed them again, all three forms. Mr. Atwell explained registered letters with return receipts were sent. Mr. Atwell said the direct accusation that he is a fraud is disgusting, the city council or somebody in the city would call him a fraud to protect themselves Mr. Atwell said it is not right. Mr. Atwell said there is something wrong here, you all know it and it is not BDS. Mr. Atwell said they have done everything they were asked to do. Mr. Atwell said yes, BDS did start construction on the site improperly because he said he was told by Mr. Whitt to get though the State of Michigan and we will get you your licenses. Mr. Atwell said they were told to stop construction and they stopped. Mr. Atwell said they stopped under the city guidance. Mr. Atwell explained he spoke with code enforcement, explaining the with the rain they needed to get siding up to protect the building. Mr. Atwell explained he was granted permission to do that. Mr. Atwell said all along BDS has done what the city asked. Mr. Atwell said all he wants the city to do is what they said they would do. Mr. Atwell said in his paperwork he said he would provide a certain percentage to the safety part of Walled Lake. He said he is allowed to give to the Fire Department and Police Department. Mr. Atwell said he is a long standing committed resident and business owner in the city. Mr. Atwell explained he had people contact him and explain there is a bus stop near his building, because BDS is Walled Lake resident, they would not be open during the time the school buses are there. Mr. Atwell said

they made that commitment to the city. Mr. Atwell said he will make his employees be off for lunch during the time the buses are there. Mr. Atwell said the city ordinance is disturbing. Mr. Atwell said BDS is the right fit and we have done everything we were asked to do, and he hopes council makes the right decision.

Mayor Ackley opened meeting to other applicants and interested parties.

Kristin Scott, legal representative of Attitude Wellness explained her client is adjacent to BDS at 861 N Pontiac Trail, only 276 feet away. Ms. Scott explained she heard council statements that there are no other applications and that in disingenuous. Ms. Scott explained Attitude Wellness has paid all the water sewer tap fees to get priority under the ordinances, they received Planning Commission approval on July 9th. Ms. Scott explained there were other applicants at the same meeting, but Attitude Wellness received priority because of the new water and sewer tap fees.

Ms. Scott explained she is at a disadvantage here, she submitted a FOIA request to the city to obtain information and her request was denied. Ms. Scott explained when she heard the request for a variance, she then resubmitted another FOIA for the variance application and her FOIA request has not been responded to as of yet. Ms. Scott said that was inappropriate. Ms. Scott explained she then went to the city offices to find the application and there was no application provided. Ms. Scott explained she is going in blind but will continue to dispute the variance request.

Ms. Scott explained BDS is appealing the denial of their application and requesting two non-use variances from the city zoning ordinances. Ms. Scott explained first the city cannot grant a variance request without an actual application outlining the five criteria. Ms. Scott said if the city has one and it was not provided, it is unfair. Ms. Scott said nothing has been provided to council in writing why BDS meets the five criteria/standards for a variance. Ms. Scott explained Attitude Wellness is directly across the street and has invested over \$1.5 million dollars in the building. Ms. Scott opined it is a beautiful building and in the final stages of the construction. Ms. Scott explained they have applied for final state approval and have been provided in 2018, provisional state approval. Ms. Scott explained once final stage approval occurs, the city ordinances state, the city manager shall approve a city operating license, we will be entitled to a city operating license. Ms. Scott said for council to say there are no other approved applicants in the C-2 district is disingenuous. Ms. Scott said they plan to open in March 2020. Ms. Scott said they done everything within the ordinances without any violations and are very proud of what they have done in the community. Ms. Scott said in going through the denial letter, she is familiar with BDS filing a lawsuit against the city. Ms. Scott said she has read some of the pleadings and the part of the appeal, is basically an argument on the merits of BDS's lawsuit. Ms. Scott explained the council is not the judge, BDS is trying to argue their entire case of the lawsuit through the appeal process and that is inappropriate. Ms. Scott said she has read the sworn affidavits from the city filed with Oakland County Circuit Court that BDS obtained the Attestation I form fraudulently. Ms. Scott asked council to uphold their prior decisions and deny the application for BDS. Ms. Scott said in regards to the variance request, BDS has to show that a practical difficulty exists and meet all five criteria not just one or two. Ms. Scott referenced the

five criteria of variance requests. Ms. Scott said BDS cannot argue that granting this variance will do substantial justice to the applicant as well as to other property owners. Ms. Scott said her client, is another property owner and the BDS cannot argue that granting this variance will do substantial justice to her client who operates a facility within 276 feet, who relied in the city's 500-foot buffer zoning ordinance, and limited licenses to two in this C-2 zoning district.

Ms. Scott explained the zoning ordinance again explains a lesser variance than requested will not provide substantial relief to applicant and/or be consistent with justice to other property owners.

Ms. Scott explained the need for a variance is due to the unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district. Ms. Scott said that does not even apply to this applicant, if you look at the other properties in the area, there are no unique properties. Ms. Scott explained the applicant wants the city to ignore the entire zoning ordinance and grant them a variance.

Ms. Scott explained the denial of BDS's license was due to their own self-created hardships. Ms. Scott said the applicant did not follow building code they did work without permits. Ms. Scott explained to her knowledge the applicant did not pay extra water and sewer taps that her client paid to obtain priority status under the ordinance and according to the city fraudulently obtained their Attestation I form for licensing with the State of Michigan.

Ms. Scott explained she has heard the applicant claiming financial hardship; however, the city's zoning application specifically states, *financial hardship or desire for greater profit are generally not sufficient for granting a variance*. Ms. Scott said her client too has also spent a lot of money. Ms. Scott explained BDS did not follow the building code and worked without permits.

Ms. Scott explained that in order for council to grant this variance, the applicant has to show substantial justice to applicant and surrounding property owners.

Ms. Scott explained the city cannot simply look the other way from the violations it accuses BDS of. Ms. Scott said if that is done, how many other applicants are there that did not pay for the heightened priority status under the ordinance. Ms. Scott said council will be faced with appeal requests several times over from aggrieved applicants. Ms. Scott explained if council grants variance, her client will have no choice as an aggrieved property owner to appeal the decisions. It is not in the spirit of the city's zoning ordinance. Ms. Scott explained her client has gone through every single step to follow the city ordinances to a "T". Ms. Scott said her client has invested over \$1.5 million in their facility and they expect to open their doors in March. Ms. Scott said they are awaiting state approval and then the city will be required to provide license because the ordinance states, the city manager shall grant an operating license.

Mayor Ackey explained audience participation is operated the same as the city council meetings with three minutes for explanation.

AUDIENCE PARTICIPATION:

Tyler Johnson – 193 Spring Park – is a homeowner and resident of community. Mr. Johnson said there are two applicants for a license and his concern is for all residents of Spring Park. Mr. Johnson said he opposes the issuance of licenses. Mr. Johnson said the residents are on the losing end of a monopoly where the residents are the last ones considered. Mr. Johnson said they are the ones that make the community great not to have a strangle hold by an industry especially with their neighborhood right in the middle. Mr. Johnson explained owning on a street that will have a dispensary on both sides of the only street entrance does not give his neighborhood a good outlook for the future of Walled Lake.

Rick Greenwell, 395 W. Walled Lake Drive – said presentations were clear to him and it sounds like the potential business owners did everything that they needed to do to start their business, they got their certificate of occupancy, got the state license. Mr. Greenwell said at a certain point in time something happened, and somebody decided to put the stop on their program. Mr. Greenwell said the applicant did have hiccups along the way, they fixed their mistakes, but kept going. Mr. Greenwell opined that in July between then and October 2019 because at the October council meeting last year that is when Mr. Whitt said the applicant, they did not have state license, when in fac they did. Mr. Greenwell said something happened in between that time frame that changed everything, and it does not look good. Mr. Greenwell opined it does not look like things are on the up and up from layman's standpoint. Mr. Greenwell explained the applicant has done everything they needed to do and now there is static.

Bob Daar, 148 Arvida – asked if Attitude Wellness is a locally based organization. Mr. Daar said he attended a council meeting two years ago when licensing was discussed and was told local residents would have first priority. Mr. Daar said for council to review their records and tapes.

Kevin Kernan, 100 Decker Road – said chasing plants, bickering and controversy about the subject. Mr. Kernan explained when the ordinances were for written it was purely for medicinal marijuana and since then there has been decriminalization of marijuana. Mr. Kernan asked if we are talking about marijuana as medicinal or specifically medicinal facilities. Mr. Kernan said liquor licenses need to be reviewed as well because there are liquor licenses that have business within this 500-foot range, there is no medicinal value with alcohol. Mr. Kernan said this plan is biological and can grow anywhere and for people to waste tax dollars to bicker back and forth and waste people's hard-earned money on chasing around trees. Mr. Kernan said if marijuana is invited into the city, we cannot say who can and cannot do it that is not fair to anybody. Mr. Kernan asked if the ordinances been rewritten since the decriminalization.

Peter Stuart, 1580 S Commerce – said allowing the city to have two dispensaries on the same street is a disgrace. Mr. Stuart explained this is a vile industry and it is destroying the social and moral fabric of our culture. Mr. Stuart said this variance is nothing more than Proposal 2.0.

Karen Kolke, 179 Spring Park – said they have a one block neighborhood and feels and like a throw away collateral on this. Ms. Kolke said the ordinance reads not to have within 500 feet of

each other. Ms. Kolke said we are on a dead-end street one way for egress and ingress and the street became even more narrow since the Maher building. Ms. Kolke said we do not have good coming and going on the street. Ms. Kolke asked about the facilities parking at a 90-degree angle, this cuts off the site distance. Ms. Kolke said everyone will make a profit off of this other than the residents. Ms. Kolke said she wished council would consider the residents.

Michelle Fillion, 300 Eagle Pond – said she spoke at meeting in May of 2019 in belief of medical marijuana and explained she is a hospice nurse and understands the benefits. Ms. Fillion did ask that community members be looked at first before outside organizations. Ms. Fillion said all of the arguments in regards to money spent is irrelevant to this case. Ms. Fillion said hardship is to each of the property owners, it is apples to apples.

Jim O'Connor – explained he is not from area but has been following this for a long time. Mr. O'Connor said when city adopted the marijuana ordinances, there was a lot of concerns from the citizens, the city assured the citizens that they wanted to keep the business in the city free of outside influences preferably owned and operated by local citizens or business owners. Mr. O'Connor said Steve Atwell is owner and operator of Erin Industries. Mr. O'Connor explained Mr. Atwell's business financially donates to local causes, youth sports, local schools, employs many residents, serves on the Downtown Development Authority commission for the city. Mr. O'Connor for Mr. Atwell to be a partial owner of one of the city's provisioning centers, is good business for the city. Mr. O'Connor explained BDS business plan has allotted a certain percentage of its profits to be donated to the city for safety. Mr. O'Connor said Mr. Atwell's piece of land is planned to continue to develop that and it is more tax money for the city. Mr. O'Connor asked for council to support Mr. Atwell.

John Simpson, 1860 Weir – listened to the lawyer comment on how nice the building will look, and he is sure Mr. Atwell's building will look nice too. Mr. Simpson asked how much money they will be putting back into the city. Mr. Simpson said he heard Mr. Atwell speak about providing money back into the city. Mr. Simpson said Mr. Atwell sounds like he is going to donate money back to the community which our city needs.

Rok Knight, 938 N Pontiac Trail – concern about parking, these two buildings are right next to each other and customers will be parking into each other's lots if no availability and the flow will come across the street to my business. Mr. Knight said he does not care which one gets a license. Mr. Knight opined this will create a parking nightmare and friction between two business owners and said he believes there will be a murder in this city because of this, broken into, or shot because of the marijuana.

Marilyn Boylan, 761 E Walled Lake Drive - thanked the city attorney for recommendation to move audience participation. Ms. Boylan said she researched other cities and distance requirements were 1000 to 1500 and she thinks it's unfortunate the city is only 500 feet. Ms. Boylan said there is a bus stop is right in the direct area and we are forcing marijuana on young kids. Ms. Boylan opined marijuana is not good for this city.

Close Audience Participation 8:52 p.m.

Close Public Hearing 8:53 p.m.

Mayor Ackley asked council if they wish to allow applicant time for rebuttal with limits.

CM 1-23-20 MOTION TO ALLOW FOR REBUTTALS FROM INTERESTED PARTIES; EACH NOT TO EXCEED A PERIOD FIVE MINUTES

Motion by Costanzo, seconded by Woods, CARRIED: To allow for rebuttals from interested parties; each not to exceed a period of five minutes.

Roll Call Vote

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

Mr. Kelly said the applicant's position and Attitude Wellness, ordinances are clear the city manager shall issue a city operating license upon receipt of state license, the city has no discretion it shall issue the license. Mr. Kelly said that is the position BDS is in, BDS has its state operating license, the city has no discretion and it should have issued the city operating license. Mr. Kelly said they should not even need to be here today. Mr. Kelly explained this is a unique circumstance, there are not any other applicants in BDS's position not even Attitude Wellness, because they do not have a state license. Mr. Kelly opined BDS did everything right, the city issued all of it its necessary approvals, the state reviewed that, and issued its state license to BDS.

Mr. Kelly explained the city said no and it took months for the city to provide a denial letter. Mr. Kelly said it took two months. Mr. Kelly explained if the appeal is granted, Attitude Wellness would be out in the cold because Attitude Wellness would be within the 500 feet of an existing provisioning center which would be BDS. Mr. Kelly opined there is no provisioning center at this point in time, Attitude Wellness does not exist currently. Mr. Kelly explained the ordinances are clear, once issued the state operating licenses the city shall issue the city operating license. Mr. Kelly said the variance is the solution.

Christyn Scott, Attitude Wellness – said her client has site plan approval, BDS does not and has never received site plan approval. Ms. Scott said they are not in the same position as BDS. Ms. Scott said they do own a building at 825 N Pontiac Trail, we are property owners in the city, we will be contributing to a revised tax base, we will triple our tax contribution, we fixed the sidewalk in the front other property as well. Ms. Scott said Mr. Kelly is asking council to completely ignore the zoning ordinances and process because the applicant has not met all five criteria to grant a variance. Ms. Scott BDS cannot meet one of the five. Ms. Scott said in the

strict letter of the law all five have to be met, BDS did not submit an application to back their request for the variance. Ms. Scott said council cannot issue a variance, there is no basis to grant BDS's request.

Mayor Ackley explained because of the complications of the issues involved, council make a motion to ask the city attorney for legal recommendation and opinion. Mayor Ackley explained a another special can be scheduled in the future after city attorney has prepared recommendation.

CM 1-24-20 TO APPROVE RESOLUTION 2020-08 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WALLED LAKE TO REFER CITY COUNCIL CASE 2020-01 FOR LEGAL RECOMMENDATION AND OPINION CONCERNING THE PROPER INTERPRETATION OF APPLICABLE ZONING ORDINANCE PROVISIONS

Motion by Owsinek, seconded by Loch, CARRIED: To approve resolution 2020-08 of the City Council of the City of Walled Lake to refer City Council case 2020-01 for legal recommendation and opinion concerning the proper interpretation of applicable zoning ordinance provisions.

Discussion

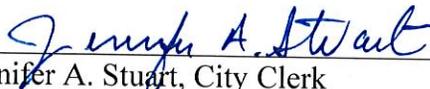
Mayor Ackley explained the city is in litigation with BDS, and opined council has to be cautious and utilize the city attorney for this process.

Roll Call Vote

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

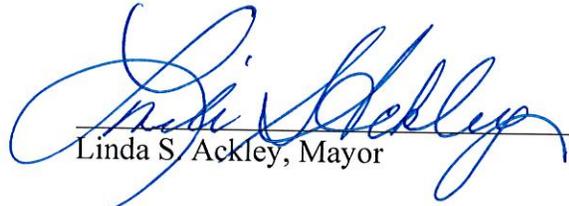
ADJOURNMENT

Meeting adjourned at 9:20 p.m.



Jennifer A. Stuart, City Clerk

approved 2/18/20



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.*