



**CITY OF WALLED LAKE
SPECIAL COUNCIL MEETING
PUBLIC HEARING
(ELECTRONIC MEETING PLATFORM)
WEDNESDAY, JULY 22, 2020
7:30 P.M.**

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

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

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

OTHERS PRESENT: City Manager Whitt, Confidential Assistant Jaquays, Police Chief Shakinis, Police Captain Kolke, Fire Chief Coomer, Finance Director Barlass, City Attorney Vanerian, Deputy City Clerk Gross, and City Clerk Stuart

CM 7-17-20 MOTION TO EXCUSE COUNCIL MEMBER LOCH FROM TONIGHT'S MEETING

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

REQUEST FOR AGENDA CHANGES: None

City Attorney Vanerian explained his request to move new business item #2 to #1. Attorney Vanerian said this applicant, Iron Labs, is requesting a variance from a 500 foot setback from a provisioning center and at last evenings city council meeting, July 21, 2020, the council adopted an amendment to this specific ordinance where by the 500 foot setback would no longer be required for a safety compliance facility. City Attorney Vanerian explained technically the ordinance does not go into effect until 21 days after it is published however in approximately three weeks, Iron Labs would no longer need the variance. He explained even if City Council denied the variance request, the 500-foot setback for safety compliance would be void. City Attorney Vanerian recommended council entertain a motion to amend the agenda to move Iron Labs ahead of Pincanna, LLC.

CM 7-18-20 MOTION TO AMEND AGENDA TO PLACE NEW BUSINESS #2 BEFORE NEW BUSINESS #1

Motion by Owsinek, seconded by Lublin, UNANIMOUSLY CARRIED: To amend agenda to place New Business #2 before New Business #1.

Roll Call Vote

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

NEW BUSINESS:

2.	City Council Case:	2020-04
	Applicant:	Iron Laboratories
	Location:	1825 E. West Maple
	Request:	Non-use Variance

Open Public Hearing 7:36 p.m.

Clerk Stuart read into the record City Council Case 2020-04 and their appeal request.

This matter relates to property located at 1825 E. West Maple zoned C-2. The applicant seeks an appeal of the administrative denial of applicant's proposed site plan for a Marijuana Safety Compliance Facility at the above location. Applicant further requests a variance from the 500 ft. setback requirement in Sec. 21-50(e)(7) of the zoning ordinance to allow a Marijuana Safety Compliance Facility within 500 ft. of a Marijuana Provisioning Center.

Attorney Seth Tompkins for Iron Labs thanked council for the opportunity to appeal. Attorney Tompkins explained Iron Labs was prohibited from opening due to the 500-foot setback requirement when Apex was approved. Attorney Tompkins said Iron Labs has been operating in Walled Lake with a license from the state. Attorney Tompkins opined the city would not be burdened by granting this variance however there is a deadline for their state renewal Attestation forms. Attorney Tompkins said this is of the utmost importance to his client, so they do not have to shut down their operations. Attorney Tompkins said this client is also seeking an application so the lab can test in the adult use market. Attorney Tompkins explained his client's operation is no hinderance on the city.

AUDIENCE PARTICIPATION None

Close Public Hearing 7:39 p.m.

**CM 7-19-20 MOTION TO GRANT VARIANCE FOR CITY COUNCIL CASE
2020-04 BASED ON:**

- 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 WILL DO 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.**

Motion by Owsinek, seconded by Costanzo: UNANIMOUSLY CARRIED: To approve non-use variance request for City Council Case 2020-04.

Roll Call Vote

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

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

Open Public Hearing 7:45 p.m.

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

require a 500 foot set back from another provisioning center; to allow a third provisioning center in a C-2 zoning district to operate within five hundred (500) feet of another provisioning center.

Pincanna, LLC attorney Mark Roberts said his client's appeal is based on the city not following its procedures as set forth in the process that was established by resolution adopted March of 2015. Attorney Roberts said the procedure set forth indicated that applications were to be received starting April 2 of 2018. He explained his client, Pincanna, LLC submitted their application the very next day on April 3, 2018 after the submission there was to be an initial review conducted by the City Clerk and Pincanna, LLC was to be advised of any deficiencies in their submission and they heard nothing. He said no formal comments came from the city advising his client to supplement anything. He said he appreciates City Attorney Vanerian sharing his memo and in his memo it points out several site plan deficiencies. Attorney Roberts opined these items were precisely the type of issues that should have been brought to Pincanna's attention. He said if provided, his client would have been given the opportunity to withdraw their application and been given a refund or provide supplements. He said his client was not given this opportunity. Attorney Roberts said the city established procedures and it appears for whatever reason did not follow the process. Attorney Roberts explained Pincanna, LLC entered into a lease agreement with the landowner and they have been paying rent to the landowner with an option to purchase since April of 2018. He said his client has incurred substantial costs for their application. Attorney Roberts said the city acted on May 1, 2018 and it is his position that the deficiencies could have been rapidly supplemented or corrected. Attorney Roberts said the Apex application which was granted approval according to the March 16th document of this year was not even submitted to the city yet. Attorney Roberts said his client was the only provisioning center in this area at the time so the 500-foot setback or separation requirement would not have been applicable.

Attorney Roberts said his client feels there was improper application of city procedures. He said it is his understanding that back in 2018 applicants needed some kind of city approval in order to even apply to the state. He said by the city not providing his client an opportunity to supplement their application they were not able to apply to the state. Attorney Roberts said his client and their parent company were granted state approval in October of 2018. Attorney Roberts said it was not until April of 2019 a year after Pincanna's submittal, did Apex submit for site plan approval. He said there was also an amended site plan as well. He said, yet his client, Pincanna was never notified of anything. Attorney Roberts said there is an April 1st review letter for Apex that recommended the Planning Commission defer action on their submittal. He said the McKenna review letter is dated three days before the Apex site plan was received by the clerk. He said the reason he is pointing this out is that because one of the issues brought out in the memo is that there is no time frame for the review period. Attorney Roberts said all applications should be reviewed equally. He said Apex was advised of deficiencies and given opportunity to correct them and that opportunity was denied to his client. Attorney Roberts said the Planning Commission gave conditional approval to Apex May of 2018, a second approval was given July 9, 2019 which is a full year after his client Pincanna, LLC submitted their application. Attorney Roberts said had his client's application been promptly reviewed as Apex was, they would have been given the opportunity to supplement.

Attorney Roberts explained that the Pincanna proposal was an attractive development in the gateway area of the city. He opined it was a substantial improvement that included new construction and new water taps. Attorney Roberts said bottom line is when his client Pincanna, LLC submitted a plan in 2018 there was no feedback and out of frustration tried to submit a supplemental plan that was rejected from the clerk's office. Attorney Roberts said Apex came before council twice seeking extensions, once in October of 2019 and then again February 2020. He said his client does not feel they were treated according to the city's established procedures plus council granted extra extensions to another facility that submitted a year after Pincanna, LLC.

Attorney Roberts said his client heard from the city twice after their submittal with a denial letter that specified a number of things, including a separation requirement when the city procedures say his clients application was to be evaluated first as being one of the first applications in. Attorney Roberts said his client is frustrated as they were never advised of any of the deficiencies in their submission until July 7, 2020 that was the first list of deficiencies provided which should have occurred May of 2018.

Attorney Roberts said it would be appropriate for the City Council to re-evaluate the Pincanna, LLC proposal, provide opportunity to satisfy any deficiencies and they should have been afforded and considered as if Apex was not in the process of being built.

Attorney Roberts said he wanted to correct one item that when Pincanna, LLC submitted their application, Apex was not under construction at that point. He also said the city attorney memo pointed out Pincanna's insurance was expired and explained his client submitted their application over two years ago.

Attorney Roberts said for the reasons he explained, he thinks on due process philosophy that if his client was denied due process he said his client should have an opportunity to correct by supplement and be considered for approval despite the location of Apex.

Attorney Roberts said as an alternative relief, his client is asking for a variance on the C-2 limitations on the number of provisioning centers and on the separation requirements.

Attorney Roberts said he believes for these reasons strict compliance with separation would do substantial harm to his client and prevent them from using their facility. He said it would appear also that the city did not follow either purposely or erroneously their own procedures as written in 2018.

**CM 7-20-20 MOTION TO RECEIVE AND FILE THE ADMINISTRATIVE
RECORD OF PINCANNA, LLC APPLICATION INTO THE
RECORD OF THIS PROCEEDING**

Motion by Ambrose, seconded by Lublin, UNANIMOUSLY CARRIED: To receive and file the administrative record of Pincanna, LLC application into the record of this proceeding.

Roll Call Vote

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

Mayor Pro Tem Ambrose said he finds Attorney Roberts claims very interesting and concerning. He said he wanted to have the city attorney review the documents and advise council on where they stand with applications and procedures.

Council Member Costanzo said he agrees with Mayor Pro Tem Ambrose.

Mayor Ackley said City Attorney Vanerian's memo provided a lot of information.

City Attorney Vanerian said one option for council is to postpone any action on the appeal this evening and refer to him for review and recommendation. City Attorney Vanerian said Attorney Roberts has raised some interpretative issues as the city's review procedures, what that consist of and what types of deficiencies that we're supposed to advise the applicant of during the initial cursory review during the preliminary stage. He said it would be appropriate for council to be provided recommendations as to the interpretation of that requirement and what was required of the city at the preliminary review step.

City Attorney Vanerian explained issues were raised as it relates to the city's priority system that was adopted. He said his memo explains in detail this process.

City Attorney Vanerian said the applications for Apex and Attitude Wellness were done in accordance with the city's ordinances where an applicant is proposing a new construction in any zoning district or if it pertains to a facility in the industrial zoning district. He explained these applications are reviewed by the Planning Commission first whereas other types of facility are reviewed administratively. Attorney Vanerian explained Pincanna, LLC was proposing use of an existing building in a C-2 zoned district and therefore it was reviewed administratively rather than by the Planning Commission. He said there are different types of review procedures employed between Apex and Pincanna, LLC.

City Attorney Vanerian said it would be appropriate for council to entertain a motion to refer case to city attorney for legal review and recommendation and postpone taking action pending receipt of his review.

Pincanna, LLC attorney Mr. Roberts said he wanted to clarify for council that his client had always proposed a new construction on the site with new water and sewer taps. He said his client met both the priority one and three of the city's priority review schedule.

Council discussed dates and asked City Attorney Vanerian when he would be able to provide legal review report to back to council. City Attorney Vanerian said after the next regular council meeting of August 18th.

CM 7-21-20 MOTION TO SCHEDULE SPECIAL MEETING FOR AUGUST 19, 2020 AT 7:30 P.M.

Motion by Costanzo, seconded by Owsinek: UNANIMOUSLY CARRIED: To schedule special meeting for August 19, 2020 at 7:30 p.m.

Roll Call Vote

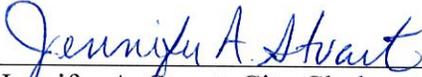
Ayes (6)	Owsinek, Woods, Ambrose, Costanzo, Lublin, Ackley
Nays (0)	
Absent (1)	Loch
Abstention (0)	

AUDIENCE PARTICIPATION: None

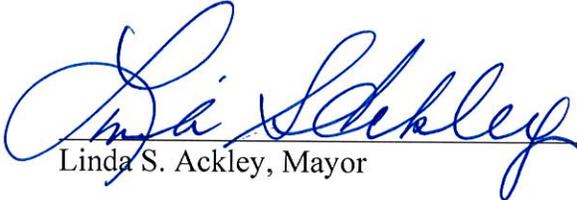
Close Public Hearing 8:02 p.m.

ADJOURNMENT

Meeting adjourned at 8:41 p.m.



Jennifer A. Stuart, City Clerk
approved 8.19.20



Linda S. Ackley, Mayor