

# MINUTES BOARD OF ADJUSTMENT OCTOBER 25, 2017

Minutes of the regular hearing of the Board of Adjustment, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

## STUDY SESSION 5:30 PM

### Present:

David Lyon, Vice Chair  
James Frazey  
Kevin Cullens  
Richard Kausal  
David Naugle  
John Puzauskas  
Albert Dare, Sr. (Alternate)  
Jan Sell, Chair

Steve Abrahamson, Principal Planner  
Ryan Levesque, Deputy Director - Planning  
Diane McGuire, Administrative Assistant II

### Absent:

John 'Jack' Confer (Alternate)

**There were 4 interested citizens present at the study session.**

- Copies of two (2) letters of opposition were distributed; one from Emerald Center and one from Total Wine and More.
- Copies of next month's Board of Adjustment agenda(s) scheduled for November 15<sup>th</sup> were distributed.
- Board members questioned whether the criteria regarding measurement of distances for the land uses and adjoining parcels in relation to the subject parcel in question should be addressed at this study session. Mr. Abrahamson responded that these topics would be addressed during the presentation from both staff and the appellant at tonight's regular session, and any questions could be addressed at that time.
- Steve Abrahamson indicated that graphics, in the form of location maps, would be part of the presentation tonight to indicate where the parcels in question were located.
- John Puzauskas questioned how the determination of where a dispensary is allowed is made. Ryan Levesque explained that it was based on the Zoning and Development Code separations and the approved Ordinance that was current at the time of submittal.
- Board members questioned whether the State statute(s) give any general guidance to the City regarding distances and so forth.
- Ryan Levesque responded that the State does offer direction to the City to set up reasonable land use regulations.
- John Puzauskas questioned the Board's deliberations tonight would allow them to even consider changing such a thing? He stated that he cannot change lots of things that go on his life, so how is it possible that the Board can deliberate making a change of this type? How can the Board say that it is not appropriate?
- Ryan Levesque responded that tonight's public hearing intent is not to effect a change but to determine whether the Zoning Administrator's denial opinion was based on currently established criteria. The Board's purpose this evening is to evaluate whether or not City staff has effectively reviewed and enforced the code based on how the language is written in the code. The purpose of tonight's public hearing is to not to change the code, but to interpret the code as applicable to this medical marijuana request.

- Board member(s) stated that so basically City staff measured the distances, and if the Board determines that the measurement is right, the number is right. It is what it is. Is the Board being asked to determine whether the 1520 ft. distance is correct as measured from one point to another?
- Board member(s) indicated that they were aware that the appellant has other arguments as well, but questioned whether it was their job to come to the conclusion if the zoning officer did his job correctly in light of the arguments that will be heard tonight.
- Steve Abrahamson responded to that comment noting that the Board was mixing up the Hearing Officer with the Zoning Administrator and that tonight's case was based on a decision made by the Zoning Administrator for the Community Development Department. Ryan Levesque is the Zoning Administrator.
- Ryan Levesque indicated agreement that tonight's decision was to determine the denied submittal in accordance with the present stipulations of the Zoning and Development Code and approved Ordinance relating to medical marijuana locations as it pertains to location restrictions.
- James Frazey noted that part of the information within the Staff Summary Report attachments indicated that the appellant had someone go to Lifetime Fitness and ask questions. Are Board members allowed to do the same? Is it okay if they want to do that (i.e. as a Board member go and investigate or research this information themselves at Lifetime Fitness)?
- Ryan Levesque explained that based on the information provided by the appellant and their point of view, there will be an opportunity for the Board to present any questions they may have during tonight's public hearing. Board members should base their decision on the information provided in the Staff Summary Report and backup documentation, as provided by the appellant, in the BOA packets which each Board member received. Board members are not being asked to go beyond looking for additional facts or information. The appellant presents their case and analysis and what their findings were. The Board gets to determine if that information is acceptable or not. Both staff and the appellant will have an opportunity at tonight's hearing to rebut their individual findings and their responses to the way some of the measurements and/or land use in question were identified in this case.
- Board member(s) indicated that sometimes they feel inclined to go by the subject site and view it for themselves. Is this appropriate? Mr. Abrahamson responded that is not an issue.
- It was noted by Board member(s) that this issue was made clear two or three months ago, that really, if Board members have any contact with the participants they really aren't doing their job, as they are not expected to be investigators, just to make decisions based on the facts as presented.
- Steve Abrahamson reviewed the procedures for making a motion and how that motion may be presented.

## **REGULAR SESSION 6:00 PM**

### **Present:**

David Lyon, Vice Chair  
James Frazey  
Kevin Cullens  
Richard Kausal  
David Naugle  
John Puzauskas  
Jan Sell, Chair

Steve Abrahamson, Principal Planner  
Ryan Levesque, Deputy Director - Planning  
Diane McGuire, Administrative Assistant II

### **Absent:**

John 'Jack' Confer (Alternate)  
Albert Dare, Sr. (Alternate)

**There were 6 interested citizens present at the regular session.**

**Hearing convened at 6:00 p.m. and was called to order by Chair Jan Sell.**

-----

Chair Jan Sell had a roll call of Board members present. Each Board member acknowledged their individual names as present for tonight's public hearing.

On a motion by Board member Vice Chair David Lyon, seconded by Board Member James Frazey, the Board by a vote of 6-0 approved the Board of Adjustment Minutes for September 27, 2017. (Chair Sell abstained from this vote as he was not present at the September 27, 2017 public hearing.)

-----

**THE BOARD DISCUSSED THE FOLLOWING CASE(S):**

**1. Appeal of the Zoning Administrator's decision to deny the proposed Medical Marijuana Dispensary location at 8611 South Priest Drive, Suite 102 (Unit 104) for PARC DISPENSARY (PL170260). The appellant is Sacks Tierney P.A.**

Steve Abrahamson, Principal Planner, gave an overview of the case:

- He noted that tonight's appeal pertained to the Zoning Administrator's letter of denial, dated August 30, 2017 pertaining to the request for a medical marijuana dispensary located at 8611 South Priest Drive, Suite 102 (Unity 104).
- Mr. Abrahamson explained that the request was submitted on August 14, 2017 and the letter of denial in response to this submittal was issued on August 30, 2017.
- An administrative review of the designated address/parcel was performed by staff, including the appropriate zoning districts in relation to this property.
- Mr. Abrahamson noted that the decision to deny this request was based on three (3) criteria:
  - a. It is located on a parcel within 1500 ft. of a child care facility located at 1616 West Ruby Drive.
  - b. It is located on a parcel within 1320 ft. of a parcel solely devoted to a residential use located at 9010 South Priest Drive.
  - c. A medical marijuana dispensary at this same location was approved on December 22, 2015 (Natural Herbal Remedies/PL150478 and that approval remains active at this time.
- Mr. Abrahamson presented parcel location maps depicting the following:
  - a. The approximate 890 ft. separation measurement between the PARC Dispensary site and the parcel solely devoted to a residential use (91010 South Priest Drive).
  - b. The approximate 1430 ft. separation between PARC Dispensary site and the child care facility (1616 West Ruby Drive).

Mr. Abrahamson asked if the Board had any questions.

Board Member Naugle: I have a question. When you are measuring from the property, you are measuring from the individual condominium unit within that project, correct? Or is it from the suite?

Steve Abrahamson: It is actually from the zoning line, the north parcel.

Ryan Levesque: If I could clarify, the readings in the code identify from parcel line to parcel line. Because it is a condominium unit, you actually get a more finite measurement of that condo unit parcel from the affected property that contains separation use requirements, so I will read the language in the code. Specifically, it says that "a medical marijuana dispensary shall not be operated or maintained on a parcel measured by a straight line in all directions without regard to intervening structures or objects from the nearest point of the property line of a parcel containing the following". Which includes the items that we have described.

Chair Sell: Thank you.

Board Member Naugle: Steve, you mentioned that there had been a previous application that had been approved under different requirements. The nature of that approval, is there a certain amount of time that the applicant needs to perfect that they have applied for?

Ryan Levesque: Yes, that approval was a conditional use approval. That request went through the review process, and they were given 60 days to submit for building permits and provide evidence that the State process was applied or active at the time during that 60 day review period. Subsequently, following the application for Natural Herbal Remedies, the application for the use acceptance that was approved, it went through a building permit review to get a permit and they actually received a Certificate of Occupancy as result of that process.

Steve Abrahamson: Any other questions?

Board Member Frazey: Is this within the same complex or the same unit?

Ryan Levesque: It is the exact same unit.

Board Member Frazey: For clarification on that, the Natural Herbal Remedies was approved and then the unit was constructed for them?

Ryan Levesque: Correct yes. I think it was a very simplistic TI (tenant improvement) permit for tables and chairs to allow office use in that area. There weren't any significant structural improvements that we could recognize, but because of that, the Certificate of Occupancy was issued for office use.

Board Member Frazey: For clarification for you and the applicant then, isn't it part of the appellants comment that they've spent money to improve the space based on what was approved for Natural Herbal Remedies not for PARC. Is that correct?

Ryan Levesque: Yes, that is correct.

Board Member Kausal: Why do we have an issue here?

Ryan Levesque: The application (Parc Dispensary) was applied for after the new Ordinance was adopted on May 23<sup>rd</sup>, in effect on June 25<sup>th</sup> (2017) that had extended separation requirements. The application was submitted after that and did not meet the new requirements. The previous application did at that time.

Board Member Kausal: Is there such a thing as vested property rights?

Ryan Levesque: No not in this case, the use you're referring to is allowed in that zoning. When they submitted the initial application, the specific language and criteria is for that business and it's identified in the original use acceptance letter.

Chair Sell: Could Natural Herbal Remedies (at this address) re-assign/transfer their use permit?

Ryan Levesque: If it's still Natural Herbal Remedies, they would be allowed there under the established permit.

Chair Sell: So they have to operate under the same name. Thank you.

Vice Chair Lyon: Would you say that the use is an entitlement attached to the property?

Ryan Levesque: The use or acceptance is specific to the business that filed the application and the site that they requested for the location. It is required to have the property owner and applicant sign an authorization, so it is designated for them. When we received the (new) application, it was for a new ownership and a new business.

Vice Chair Lyon: So by purchasing that property, you do not necessarily receive that use acceptance yourself? You must be the same entity that applied.

Ryan Levesque: It must be a new application. We don't want to have multiple approvals of multiple businesses and uses on the same site.

Board Member Puzauskas: When the application from PARC was submitted, the applicant knew that there was a new requirement, right? Or was the applicant under the impression that since it was approved, they had the same entitlement?

Ryan Levesque: I could not say that, you'd have to ask the applicant.

Board Member Kausal: I understand that it was inspected within a month of changing ownership. Did the ownership change after that inspection and the issuing of the Certificate of Occupancy or before?

Ryan Levesque: I'm not clear on the ownership change.

Board Member Kausal: Well, the ownership change is the issue here, isn't it?

Board Member Cullens : My interpretation from the documentation is that the ownership changed on August 16, 2016. The Certificate of Occupancy was given on Nov 3<sup>rd</sup>, 2016. So, the ownership changed before the Certificate of Occupancy was issued.

Board Member Kausal: So the Certificate of Occupancy was issued while the PARC Dispensary was pending?

Ryan Levesque: That may be the case, yes, but the use is not for the ownership of the property, it is for the business.

Vice Chair Lyon: The property at 9010 S Priest, can you tell us what its current zoning is? The appellant has listed it at MU-3.

Ryan Levesque: Yes, that's correct. The property is listed as MU-3, Mixed Use, Medium High Density District.

Vice Chair Lyon: So you're saying the uses on that property are entirely residential, so they meet the criteria for solely residential devoted use.

Ryan Levesque: That's correct. So, if you had vertical mixed use, with commercial also on the property, we would not consider the property to be within the requirements for the separation of land use. It is the multi-family designation that triggers the separation requirement(s).

Board Member Kausal: That is confusing. This is MU-3 mixed use, which is commercial also. Is the zoning at say the Circle K or at the Nightclub MU-3 also?

Ryan Levesque: No, those are PCC (Planned Commercial Center District), but there are provisions that would allow residential with a use permit. If that property was devoted to a residential land use, maybe legal non-conforming, then we would consider the separation as a requirement. In the code: "medical marijuana dispensaries shall not be operated or maintained within 1320 feet from a residential zoning district or the property line of a parcel solely devoted to a residential use in any zoning district."

Board Member Kausal: That has been modified?

Ryan Levesque: Previously, there was a 500-foot separation line, now it is 1320 feet.

Board Member Kausal: So the application passed under the previous rules, and now it does not.

[Applicant called to the podium]

Phillip Rudd: Phillip Rudd and Janet Jackim of Sacks Tierney (attorneys) on behalf of the applicant (John Vatistas). We are here to request that the Board overturn the denial of our use acceptance letter to open a medical marijuana dispensary at that location. Mr. Vatistas wanted us to emphasize that he has entered into an agreement with the condo association, Warner Village, that this dispensary will NOT sell recreational marijuana, if and when that is ever passed by the State.

Attorney Rudd stated that the letter of determination based that denial on 3 things:

- a. It is located on a parcel within 1500 ft. of a child care facility located at 1616 West Ruby Drive.
- b. It is located on a parcel within 1320 ft. of a parcel solely devoted to a residential use located at 9010 South Priest Drive.
- c. A medical marijuana dispensary at this same location was approved on December 22, 2015 (Natural Herbal Remedies/PL150478 and that approval remains active at this time.

He stated that it is there opinion that all three (3) of those statements, itemized in the letter of denial, are wrong and we request that the Board overturn the denial.

Attorney Rudd presented the following points of rebuttal:

### **Child Care Facility**

I want to start with the childcare center. I want to emphasize that this is not a Tutor Time or a La Petite; it's a room inside a lifetime fitness center where people drop off their kids for no more than 2 hours and parents stay on the property with their children. It's tucked away in the back of the facility, away from the entrance. That's what we need to picture. It's not a La Petite; it's a room inside another building. Even if this room were considered a childcare facility, we submit that it's not within the 1500 foot restriction. We don't know how that was measured. We submitted a picture that shows the distance is 1933 feet, well in excess. We also added an aerial picture that showed its 1534 feet. Again, well in excess. Even if this were to be considered a childcare facility, it's not within the restriction, so the use should not have been denied on that basis.

If it's not a childcare facility, the distance doesn't matter. There's nothing in the zoning code that defines "childcare facility" so we have to look to state law. State law has some definitions of "childcare" and "childcare facility" [lists section number]. "Childcare" means "the care, supervision, and guidance of children"—here's the important part—"unaccompanied by a parent, guardian, or custodian"—another important part—"on a regular basis for a period of less than 24 hours per day in a place other than the child's or children's own home or homes." "Childcare facility" is defined as "a facility in which a child is regularly provided for compensation for 5 or more children not related to the proprietor."

Here what we're dealing with is a room at a Lifetime fitness where a parent drops their kids off while they go exercise. We've provided in our materials the Lifetime Fitness Policy, "The parent must remain in the Lifetime Fitness Center at all times while the child is in the child center." This is not a situation where a child is unaccompanied by a parent. The parent is in the building. So, it doesn't follow the definition of "childcare."

We had one of our consultants interview the childcare licensing supervisor at ADHS. She said, "The State does not regulate facilities where the parents are on site." This alone removed it from the definition of a childcare facility. The statute also says the facility has to regularly provide childcare for it to be a childcare facility. The timing of children's use makes it so that it is not regularly providing services.

Attorney Rudd told a story where parents of an 8 month old child were disturbed because the child had wandered off from the child care room into the fitness area of a facility. Lifetime Fitness does not meet the definition of a child care facility, and is not identifiable as a child care facility. A woman from ADHS commented that this isn't a situation that they normally regulate because they don't watch kids on a regular and routine basis.

If you compare how gyms and tutoring centers are taxed, the Lifetime Fitness facility is not taxed like a childcare facility. So, the first reason for denial should be rejected.

### **Residential Use**

The second reason for denial is that the dispensary is too close to a residential use. When the city was talking to you, they glossed over what that residential use restriction is. Zoning says, “a parcel solely devoted to a residential use” here, the city says we’re too close to the San Sonoma Apartments. Again, like with the Lifetime Fitness facility, we went to google and found that we are 1753.33 feet away from the Sonoma Apartments. GPS Visualizer says it is 3745 feet away. I’m not sure I buy that one, but the point is we’re not within the 1320 feet that is the limitation. Even if this parcel is residential property devoted solely to residential use, it’s not within the distance restrictions. This parcel with the apartments is zoned MU-3—mixed use! It’s been that way since 2012. The intention of this zoning was for commercial AND residential use. It’s not a residential district. Rather, it provides for proposed commercial development. The apartments might be the only thing there right now, but a week from now, someone might build a commercial property there. Why do we have to wait? It’s zoned MU-3, so it’s not SOLELY residential use. There’s a buffer of commercial property between the proposed dispensary and the apartments. So, we submit that this property does not violate this restriction, so we propose that the denial is improper.

Attorney Rudd indicated that, in this opinion, medical marijuana dispensaries are more disfavored in Tempe than adult oriented businesses, as those types of businesses are not subject to the same location limitations that Tempe applies to dispensaries. Adult oriented businesses in Tempe cannot be located within 1320 ft. of a ‘residential district or the property line of a lot devoted to residential use’. The City employs the modifier ‘solely’ to the word ‘devoted’ to underscore that medical marijuana dispensaries should be more heavily regulated than adult oriented businesses.

Attorney Rudd referenced zoning code terminology in reference to Section 3-403A that there is no special purpose in the location regulations relative to dispensaries; and Section 3-426A regulating medical marijuana businesses. He noted that City Council passed special purpose regulations affecting adult-oriented businesses as they are recognized as having serious objectionable operational characteristics. In contrast, the City has no special purpose underlying the adoption of location requirements as applied to dispensaries, instead of the ‘special purpose’ regarding adult business regulations. Adult-oriented businesses are highly regulated with lots of law about them, but medical marijuana doesn’t have the same regulation, so you would expect they would not be quite as strict. “If it’s interpreted to be not as strict, it’s our expectation that we could see an interpretation as unreasonable and in violation of state law.” The stated purpose for stringent location requirements is lacking.

### **Natural Herbal Remedies – Medical Marijuana Dispensary approved on December 22, 2015**

Attorney Rudd stated, “Finally, let’s talk about the existing use acceptance letter. My client purchased this property and put a lot of money into this property to develop it and THEN got their certificate of occupancy. The Certificate of Occupancy was issued under our watch.”

Attorney Rudd: The City asserts that the existence of this 2015 use acceptance letter issued to Natural Herbal Remedies precludes the issuance of another use acceptance letter to my client. There’s two parts to that I think.

The first part is that it’s our position that we could be grandfathered in to that 2015 use acceptance letter, because it is a vested right. It is something we relied on acquiring this property, developing this property, getting the Certificate of Occupancy on this property. So, those rights that exist under the 2015 use acceptance letter belong to us, as vested rights. But if they don’t, if they don’t, it certainly should not be a basis for denying our use acceptance letter. Particularly if they say, well it can’t be transferred from Natural Herbal Remedies. If that’s the case, then why is it affecting us, it shouldn’t. It shouldn’t impact us at all if that’s the City’s position.



So, all three of the basis for the denial of the use acceptance letter to my client, are faulty, they don't exist. So, what we're asking for the Board to do is to overturn the City's denial of that use acceptance letter, and assert the City to issue the requested letter for the property located at 8611 South Priest Drive in Tempe.

I'm happy to answer any questions to the best of my ability.

Chair Sell: Does anyone have any questions? Yes Mr. Frazier?

Board Member Frazey: Thank you for your presentation. I guess a couple questions, in regard to the appellant's position that the previous denial was at fault with some of the comments that were just made. I can understand the issue of the child facility and Lifetime Fitness not be considered to be a childcare facility. It's their place to say. The parents have to be there, so it's not really a childcare facility. But if it were, as you referenced a La Petite Academy, that would be a childcare facility. You're measuring, but it seems there is something contradictory when you're saying the building for Lifetime Fitness is set so far back that it's outside the building itself, is outside of the building measurements.

Attorney Rudd: That's what our google maps and analysis shows, yes.

Chair Sell: For the building itself?

Attorney Rudd: For the building itself.

Chair Sell: But if it were a La Petite Academy, those measurements still go to the property line and because of the driveway, because of the landscaping and so forth, the building would still be setback, but that would still be a childcare facility within the measurements.

Attorney Rudd: No, it wouldn't be within the measurements, according to our analysis, according to our analysis we're outside of that 1,500 feet.

Chair Sell: The property line or to the building?

Attorney Rudd: You know, to be honest with you I don't know how google maps analyzes that, so from a technical aspect I don't know how google maps analyzes that, but I'm glad you asked that question because there is one other thing I wanted to mention about the childcare facility. Let's say that the City is correct. That property line to property line, if the only thing that is a childcare facility is that little room, do we not measure to that room? I don't know the answer to that question either, but I speculate that that measurement to that room would put us beyond the 1,500 feet as well.

Chair Sell: Well, from my understanding, I guess I accept that argument for that not being "ordinance for the childcare facility might be inaccurate". But a couple other comments if I may, when I read through the process, the processes through which you obtain a use acceptance letter. Then you file your application with the Arizona Department of Health Services, and then you obtain your building permits. It seems that Natural Herbal Remedies had the acceptance letter. You're saying that your client assumed that they could just use that letter and move forward.

Attorney Rudd: I don't know if I'm necessarily saying that. What I'm saying is that if we had just assumed that, we wouldn't have filed this application for this one, right? I think it's a belt and suspenders type of analysis that we knew of the existence of that 2015 use acceptance letter, but we didn't know that. We weren't certain that that 2015 use acceptance letter was still valid and that we could use it. Certainly, in our position that is the case, but we didn't know if the City of Tempe would agree on that. So, we did our work, and then we came in and asked for this current use acceptance letter.

Chair Sell: Okay. And then I guess with the last one it's the apartment complex is a single use facility for residential, correct?

Attorney Rudd: As far as I know, sure. Yeah.

Chair Sell: Okay thank you.

Attorney Rudd: Any other questions?

Chair Sell: Since measurements seem to be one of the big issues here, Mr. Levesque, would you explain how the city does their measurements?

Ryan Levesque:

- Yes. Basically, it is what we already reiterated in the beginning of the presentation that was ignored by the appellant. It's basically that the measurement is taken from the nearest adjoining parcel line from the subject parcel line of the use that requires the separation. So, it's the nearest points and so that measurement was done by a measurement tool, and if there is a discrepancy within five feet or ten feet of a potential measurement conflict, then we will get an exact survey of that done, that we are well within the separation requirements. And I think that the google maps that were shown or provided that was part of that appellants' analysis kind of shows just basically an aerial mid-point map, a star on the map that says google has identified the residential land-use here. And typically, when you search for google, they'll give you're the center-point of the property or parcel along the frontage of the property, but that is not how the measurement is identified in the zoning code language. It's measured by the nearest adjoining property line to the other nearest adjoining parcel line. And that measurement is done, and we have provided those measurements for you.
- I do want to get into and clarify the land use of the childcare facility. We do have a definition within our Zoning and Development Code for a childcare center, a little bit different, but we do use these interchangeably either facility or center, and that definition basically identifies that "childcare centers means any use regulated by the State of Arizona involving the care of other people's children during the day, and that accommodate more than four children for childcare. Some instruction may be offered in connection with such care. You shall not be considered a school with the meaning of this code. See also nursery and daycare school".
- A little bit of history for you on that one back in 2011 when we officially adopted our medical marijuana ordinance, we had about fifty applications, five zero applications that came in. Some of those site applications that came in applied over the Emerald Center area, and we cleared about thirteen medical marijuana use acceptance requests during that time period. Now we were kind of the first step at that time, and then applicants then applied for the State, sort of narrowing the competition, so to speak.
- They applied to the State, and then ultimately one to the north and one to the south were selected. Well during that time period where we cleared thirteen shops, one of them being within the Emerald Center area, we had been approached by a business representative; a resident that frequents the Lifetime Fitness and kind of disputed our clearance of that requirement and request. And part of his arguments said, "Hey, we've got a childcare facility within the Lifetime Fitness." And what we told him is when we did the review, we looked and verified with the State their list of registered childcare centers and they were not listed at that time during the review of that process. So, the member of the fitness facility took it upon himself afterwards, to meet with Lifetime Fitness, evaluate the review and their procedures. What he told us, is at certain times, they do have guest off-night facilities, where on a Friday night the parents are allowed to leave over a certain time period, and leave their kids there under childcare supervision. And so, they had afterward received a childcare license registered with the State of Arizona.

- When we reviewed the analysis for this request, we then looked at the list of State registered childcare centers, and Lifetime Fitness was listed under one of those address sites. And that was our determination.

Board Member Puzauskas: Could you speak a little more on the residential land-use?

Ryan Levesque: Yes.

Board Member Puzauskas: On the residential ability to build commercial?

Ryan Levesque: Certainly. The property at the time, when it was processed for MU-3, there was a proposal to do a two-phase project approach. The first phase identified as the San Sonoma Apartments, and the master plan proposal was a horizontal mixed-use, so not an integrated mixed-use. The other parcel that was in question was a commercial land-use was the parcel directly south of the San Sonoma Apartments. So, they proceeded with their application and permit procedures to get the San Sonoma Apartments and there was never a process and procedure that moved forward with the commercial component of the parcel site. It was a separate subject site, and sort of a horizontal mixed-use, rather than what you might find in a vertical mixed-use environment, where you have both commercial and residential on the same lot. They're two parcels that were processed simultaneously, but were in different phases. So, the land in question of the parcel that has the multi-family apartment residential land-use is fully built out and has permits for the property.

Board Member Cullens: I have a further question. You read the regulation on the childcare facility. You said the City code defines it as a facility regulated by the State, so are you telling us that, that childcare facility in that Lifetime Fitness you've since discovered that it is regulated by the State?

Ryan Levesque: That's correct. There is an active license. I don't think that the applicant made any acknowledgement that they are currently registered or licensed by the State of Arizona right now.

Board Member Cullens: Thank you.

Board Member Lyons: Thank you Mr. Chairman. I'd like to thank the applicant for their great candor in which you have spoken to us. It would be easy for you to be a little bit less candid, and I thank you for your approach. I'd like to ask you a question if I could about the Certificate of Occupancy. Can you tell us please, what do you wish for us to infer from that? What's the implication from the Certificate of Occupancy?

Attorney Rudd: Well part of what I'd like you to infer from that is that we do have vested interest, vested rights in what existed when we acquired this property. This property when we acquired it had the use acceptance letter. That's something, and again I apologize I don't remember who asked the question, but is that something that is an entitlement that runs with the land? And it's our opinion that yes it does, and that entitlement that runs with the land is what assisted us in what prompted us to do what we did with respect to this property, to acquire this property, to develop this property, and to obtain a Certificate of Occupancy. That's what I'd like for you to infer, is that yes we have vested rights with respect to that use acceptance letter.

Board Member Lyon: Okay. Thank you.

Board Member Cullens: So, I have a further question, you stated that you based it from you having vested rights. I'm looking at the original letter of approval December 22, 2015. And item one, last sentence says "Any person or business other than those identified herein, must follow the new application to determine compliance with zoning regulations. So, it doesn't appear that you followed the direction on that original letter. It states within that, I would believe, that means you have no vested rights, that you're being told to reapply if you're not those identified in the letter.

Attorney Rudd: I guess there's a couple ways to look at that, and the first way to look at that is, does it require that specific entity or just that specific business? My take on it would be, of course that business, because that could be the same business, Natural Herbal Remedies is doing the same thing that PARC Dispensary has done. So that requirement, that's the way that I would interpret that. But beyond that, and I know that this was a thick packet of material that we gave you, but it's worth reading, Miss Jakim prepared it. She did an excellent job on it. Part of what she discusses in there is kind of the equities for having vested rights. And it's more than just a black and white legal analysis. What it is, it's the equitable analysis, and that's the cases that she talks about on pages twenty and twenty-one. That's what the courts talk about when they're talking about vested property rights. It doesn't necessarily have to be black and white, statutory. It's an equitable right that these guys relied upon this. And they should be entitled to rely upon this. When they exercised their rights, when they put the dollars in, when they made the effort to get the Certificate of Occupancy. So, it goes beyond the bold language of that letter. It goes into the equities of what vested property rights means.

Board Member Cullens: Thank you for that, for the information.

Board Member Kausal: I've got a question, I think I'll direct it towards the City. Here's where I struggle with this whole thing, it is surrounding the property rights. If there is a dispensary or a Total Wine or a LA Fitness, it changes hands. Does that affect or cause the new owners to go through recertification or zoning to continue on in that business under different ownership? So, if the Lifetime Fitness changes hands and LA Fitness buys that facility, changes the sign on it, are they back to square one, and could they be denied of the right to use that property for its' intended purpose?

Ryan Levesque: What I'll clarify is that land-use is not grandfathered in, and it's not vested rights specifically because of the statements identified under the use acceptance conditional letter for approval. Now that right is granted to Natural Herbal Remedies, and if there becomes or creates ordinances or land-uses that make that business non-conforming, they're still allowed the right to be there in that location. We still have his acceptance letter for that, they received a Certificate of Occupancy and frankly, that Natural Herbal Remedies has never opened up or operated the business at this time. So, we still have questions in doubt as to what their status is with the State, under that license, and what we don't want to do is put a situation where we have to authorize licenses, that would be allowed by the State in the same location.

Attorney Rudd: If I could address that. How is that possible? (laughs). How is that possible? We own that property. Natural Herbal Remedies does not own that property. You cannot have two licensees on that property, because we own it. In all respect, I don't buy that argument, and you shouldn't either.

Ryan Levesque: Natural Herbal Remedies never owned the property in question. They were authorized by the original ownership of the property to proceed with their request. They were merely an applicant or a business for that site location, not the property owners themselves.

Attorney Rudd: Is that relevant?

Ryan Levesque: It's relevant because of the land-use that was allowed with the business that was allowed with the State licensing requirements. So, Natural Herbal Remedies was actually a transfer license from another location in Holbrook, Arizona. And that applicant was granted that right. I know there was some legal dispute with the applicant on whose owner has rights on that business. If they have the rights to this business, then they should be allowed to open that business without the process that we have today. They should be able to move forward without seeking relief from another business that could potentially open up in that same location.

Vice Chair Lyon: I apologize if I take us any further into the weeds with this. Mr. Levesque did I hear you say that Natural Herbal Remedies at no point owned this property?

Ryan Levesque: Not to my knowledge no.

Vice Chair Lyon: Can you enlighten us as to how they were able to apply for a use acceptance at that location without owning the property?

Ryan Levesque: Yes, they have an applicant that was a processor planner and within their request application they have to provide authorization procedure with that application. And so, the land-use planner processed the application on behalf of the business.

Vice Chair Lyon: Okay, so it is by no means conceivable that the person that owned the property would be a different entity than the person that owned the business that will be using it.

Ryan Levesque: Correct.

Vice Chair Lyon: Alright thank you.

Chair Sell: Do we have any questions? Comments? Thank you.

Steve Abrahamson: I failed to indicate that we do have two letters that are in opposition to the appeal. One was generated from the owner of the Emerald Center Property where Ikea, Lone Star Steakhouse, Total Wine and More are located. And secondly, we did receive a letter of opposition to the appeal from the folks at Total Wine and More, from their general offices.

Board Member Kausal: Mr. Abrahamson, can I make a comment on these letters that were provided to us when we sat down here this evening? "Dated October 19<sup>th</sup> from Total Wine and More". What is the nature of their business? This is an alcohol distributor. All you have to be is twenty-one years old to go in there. You can be a sick alcoholic and they pedal alcohol and they're going to complain and expect to have an impact on a State regulated medical priority in the community? And is this supposed to have some kind of bearing on us?

Steve Abrahamson: Board Member Kausal, we don't go through the letters that we receive and deny some of them based upon the way we might feel about a business.

Board Member Kausal: Evidently you do, because you enact an ordinance on the City discriminating against these people that want to fill a demand in the community.

Chair Sell: This is just a letter from a nearby property owner. And you can get letters from someone with a vested interest, and whether it goes in or not, I think what the City does is just present the letters to us. You can take it at whatever way you want. I do have a question, I'll get to you in one moment? Okay. How is it that a building permit, especially with a Certificate of Occupancy was issued to the wrong applicant for this facility?

Ryan Levesque: Board Member Sell, the building permit was applied for without the property owner to Natural Herbal Remedies. That issued license is reviewed under that permit. It was applied by the applicants for the business at that site location. The neighbors, they were the applicants that received the clearance for that request. Now the Certificate of Occupancy is subject to the parcel itself. The Certificate of Occupancy identifies office use, which is not even the correct use for medical marijuana, it's actually a retail establishment that was opened and would be retail and not office. But nevertheless, the Certificate of Occupancy was issued under Herbal Remedies.

Chair Sell: Thank you.

Chair Sell: (In response to a member of the audience who indicated a wish to speak.) Yes sir, would you please state your name?

John: My name is John Vatistas, with Image Productions and will be representing Image as an owner.

Chair Sell: Okay.

John Vatistas stated that:

- I don't do very well with public speaking, so if I sound nervous, please forgive me. I don't do this very often. I wanted to just say a couple things. I heard that the counsel from the Warner Village Association is here to try to prevent me from using this office or this building as medical marijuana. There is a pending lawsuit that I want to read to you, so you hear it from their own attorney, because I went to the Association Board and sat down and said tell me what your issues are. Let's see if we can work out an arrangement, so that you as Board members don't have an issue with the marijuana facility at your complex. They didn't want recreational marijuana use; I didn't want recreational marijuana use. I have four children, three are teenagers, and I just don't think it's appropriate, personally. I agreed with them that I will sign a deed restriction that no one can ever do recreational in this building. And they said as long as you do that, among a few other things which I'll read to you because I want you to hear, this is from I think his law firm, from Travis Law Firm.
- It says "Thank you for your letter of November 3rd. On behalf of Image Productions, the owner of Unit 102, the Warner Village Office Condominium Association is in agreement with the terms purposed in your letter which will allow Image Productions to lease Unit 102 for the use of a medical marijuana dispensary". We talked about a few other things that were not material.
- After, and they wanted this done very quickly, because recreational was being voted on and if they lost that, they could lose the ability to fight recreational being allowed in that building. Or at least it would be much harder for them, in my opinion. So, I cut a deal with them, that was the agreement and then after recreation didn't pass, then they said well Natural Herbal Remedies it was material that they have to occupy the property when our agreement never said that and the reason I tell you that is because it was very important to them that it was only medical, which is exactly what I agreed too.
- So, you may hear a different story today, I'm not sure what it is, but I wanted to explain that to you. And I did everything they said, now it is up to the judge to decide whether their agreement is enforceable. So, I wanted to be upfront with you on that.
- With all due respect Mr. Levesque is incorrect. I did spend quite a bit of money, it wasn't just furniture or office relocation, we have copies of the invoices. Not only was this legal, but architecturally, we had to meet the conditions of the City of Tempe. Something that happened they want to say it doesn't fall within grandfathered in terms of the distance.
- But one thing I had to do, which I personally spoke to Mr. Levesque about, is they changed the rules. I can't tell you exactly what it was but you had to have a minimum of 2500 square feet, and any building would have to have a minimum of three entrances or exits and ingress and egress. But they said because you applied before this law that changed, you had to go to one door in and out.

- So, they said “sorry we can’t approve your building because you are too big in terms of your space” and I said, “but the law changed” and they said, “we don’t care, you have to make it one door or you don’t qualify”. Went back to the architect, the architect did it so that we totally redid the construction so that the reception area was much smaller in capacity, and we had to do several other things to modify where the bathroom was, where the waiting room was, where the reception was and we got approved. It took them 20 days to approve it. But we did that and I don’t think that’s right that we can talk about grandfathering when I couldn’t use that. I’m sorry if I sound ignorant but it is very upsetting to me.
- One thing that I ask you, and I own a real estate company, I have always been in real estate but different business. But just think about this practically, and maybe it doesn’t matter, but you brought up about the alcohol and I happen to agree with you. What would happen today if Total Wine went out of business? Let’s say they lost their lease and their landlord wanted to make it higher, or for whatever reason they went out of business. And then you get another liquor store that wants to come in. They don’t lose their rights. Yet for medical marijuana they say, “sorry this doesn’t apply to you”. If a medical marijuana facility went out of business in six months or the owner got hit by a bus and they had to sell to a new person to buy it, another medical marijuana dispensary what do you say? “Sorry, there was an apartment building now we changed the rules. You put all this money into it and you can’t be there anymore”.
- It doesn’t seem fair. I don’t understand that. One thing that I would like to point out, and I don’t think it was pointed out, and I don’t believe I’m wrong on this. At the time City of Tempe was aware of all the zoning and approvals of the apartment building that they are claiming that I am now too close to. At the time, even with that old ordinance distance, it was still too close. So, they are saying that, just to give you an example, if it was 500 feet and we were within 500 feet away, if I understand how it worked, but they still approved it knowing full well that there was going to be an apartment building there. Now it is a 1000 or 1300 feet, or whatever it is, and it is the same situation but now they are saying “well sorry, we can’t do that”. Well they knew that it was going to be residential, they’re going to say now it’s only and now we figured it out. I don’t know what it is but that also doesn’t seem fair.
- I think that is all I have. I’m sorry that I sound nervous or whatever but this is really important to me and I don’t think it is right, and I hope that if you have any questions that you know that I am here to answer them straight up. I won’t pull any punches or mislead you in any way.

Chair Sell: Thank you I appreciate your comments. It is my understanding under the new law, as far as multi-family or residential uses, that wasn’t it 500 feet?

Ryan: At the time of the original application was filed for natural herbal remedies, the measurement at that time was 500 feet.

Chair Sell: And it is my understanding that the City’s measurement now is 890 feet. Is that correct?

Ryan: To correct, the separation requirement for the prior 2015 applications, the separation requirement was 500 feet. So, the measurement yes was approximately 890 feet. The Ordinance adopted by the City Council on May 25<sup>th</sup>, extended that separation requirement to 1,320 feet. Now as a result of that, when we receive an application after that new Ordinance now, the subject site is not in compliance with that separation requirement.

John Vatis: I'm sorry to interrupt you. When I met with Mr. Levesque about a month ago, he said "as long as you get" - he can tell you if I'm wrong. "Well you applied after the fact", then I said, "if I rescind my application". He said "well as long as the State gives you approval to operate there, there is nothing we can say". So, I said "Well if we just rescind that application, then if the State says go ahead, you can go in", then he said, "there is nothing we can do about it". To me that doesn't make any sense. Why is that a technicality, when it was already approved for a dispensary. He said, "well you have got to get Natural Herbal Remedies to say they are not going to be there". Well I own the building, there is no way there can be two dispensaries there. It doesn't make any sense, and the State would never allow two dispensaries in the same building. It is just illogical.

Chair Sell: Thank you, I understand your point. As far as the letters go I don't give much credence to the letters. I read them and they're nice but...

John Vatis: I'm sorry which letters?

Chair Sell: The two letters of opposition from the nearby property owners.

John Vatis: Oh, no I understand. You have got to consider everything.

Chair Sell: And as far as the child care facility. I was convinced that it was not a child care facility, but after the City did their research into it, the State considered it as one, that it is a child care facility. However, I have a hard time understanding that. I think that to me, that wouldn't be, while it from the law standpoint that is what it is. From a practical standpoint, it isn't. As far as the residential use within the 890 feet or within the 1,320 feet I think that it still holds true. And as far as the Certificate of Occupancy and the vested rights, that's probably the hardest one to deal with right now.

John Vatis: Let me just ask you this. Just being in real-estate, what happens if tomorrow the apartment building was even closer or farther away, you change the rules. Or let's just say it stays the way it is, it is strictly for residential. And they decide to add, which is happening now because I'm involved in certain businesses whether it is assisted living or an apartment building or it is a condominium and they add a Starbucks. And they do not have to go for certain zoning, they get to do it, but they are selling to a third party. Does that mean now it's not residential when they don't even have to apply? I mean it seems arbitrary. Where if I wanted to have, if I was a competitor, let's say I have harvest for example. And I could put up a childcare facility the next day next to my office and leave it there and have one person there an hour a week and say, "Oh you can't use this now because this is a child care facility". After the law has changed, after I have spent all my money after I relied on the City. I did the work after getting the approval for the permit. I got the Certificate of Occupancy. Why would that change after the fact? It would be like telling Total Wine, "sorry you went out of business, or you got hit by a bus, so you lost all your rights. You lost your tenant improvements you lost your business". It doesn't seem fair.

Board Member Kausal: I have a question. And I don't know who to even address this question to, but this idea of vested rights, I heard grandfathering. Who makes a determination? And if that is right or not? Is that us, is that a legal determination? Who would determine, if there were vested interest in this or if they had the right to have this grandfathered. It seems to me, and I'm trying to understand this, that it is a legal issue. Is that not, am I wrong with that? I mean, wouldn't that be something that a court of law would have to address as opposed to Board members or staff members within a community. Does anyone have an idea here?



John Vatis: Obviously I have a conflict of interest answering that. But just think about if you own the building and you spent this money based on the permit and you got the Certificate of Occupancy. Then all of a sudden anything happens. Now you have to give it to another dispensary, but you lost all your rights. The State says to be reasonable in the decisions for the City of Tempe. This is not reasonable.

Board Member Kausal: I understand that completely. But to make that determination, who makes that?

Attorney Rudd: If I may. You certainly have that ability to make that determination by overturning this decision.

Board Member Kausal: I understand that. Also, but I'm an engineer not a lawyer. So, my question is, in any kind of a dispute like that, how would that decision be made? Would it be made in a court of law?

Attorney Rudd: It could be made in a court of law, but it also can be made by this Board. This Board can make that determination, that the basis for that denial of this use acceptance letter was wrong, including the existence of that 2015 letter. In fact, I think this Board can make the determination, and one of the things that we are asking you to do is to make the determination. That the 2015 use acceptance letter applies to this owner for a dispensary. I think you can say that, and tell the City of Tempe to issue the use of the acceptance letter even based on that old letter.

John Vatis: : I'm not a lawyer obviously, but I always use a movie as an example. In the movie 'The Verdict' with Paul Newman, he tells the jury "today you are the wall". You make the decision, that is why you are here. I am hoping that it is in my favor. That is what I have to say.

Chair Sell: Part of the problem, again, is that the State has certain rules regarding the issuance of the licensing. It was issued to another entity, not you, even though you spent the money under that other entity to finish out the space.

John Vatis: It can't be the property owner, it has to be the licensed dispensary, but that has nothing to do with the City of Tempe. The State says you as the landlord, you are not the licensee of the license. So, we submit, the only way that the State says yes, it's okay, if if the owner of the property says okay, I will put a medical marijuana dispensary here. Then we have to apply for a permit at the City. We say, here are our plans, here is the license holder. Let me go a little further, what is the harm if in six months Natural Herbal Remedies went out of business or a year or two years and another one came in. What is the harm to the City of Tempe? They already approved that use. It's like if Total Wine went out of business, they wouldn't have to go and reapply. There is no harm, they already approved that use, and then they changed it after the fact. Again, it doesn't seem fair.

Steve Abrahamson: As just a procedural note, it would be better that before anyone speaks, that they get recognized by Chair Sell to recognize you.

John Vatis: I'm sorry.

Steve Abrahamson: That's quite okay.

Chair Sell: I do have a question for you. Did you make any attempt to try to assume their position or contact them to sell their business or the license to you?

John Vatis: Why would that matter?

Chair Sell: Well because of this particular issue.

John Vatis: Well it's great if you want to get extorted. How much do I have to pay?

Chair Sell: Right.

John Vatis: And I paid a lot to get in there. If it is literally him saying all right City of Tempe, they clearly do not want that, we are not going to approve that. But if I go to them, and they say that we will sell it to you well fine. Is that really why we are here? It doesn't make sense to me, but I do not want to be extorted to do that.

Chair Sell: Okay.

John Vatis: I'm not saying that I would get extorted, but I've paid a lot of money, and getting here has probably paid more than all of it.

Board Member Kausal: I have a question for you sir and you may or may not know this, is anybody in your industry challenging this ordinance in the City of Tempe and is not being reasonable with the State and the State directive?

John Vatis: I don't know, and I'm not an attorney. But I will, and if I lose I lose.

Board Member Kausal: One of the points that you brought up in your documentation was that this was probably the last place that could be considered in Tempe. And this was not the first case of this nature before this Board either. It just seems to me, that for whatever reason the City of Tempe, and I say that widely, I don't know who is adopting these Ordinances, they do not want these facilities in the City of Tempe period. And so, this latest attempt was to just out zone it. If there are no locations available, the question in my mind is how is that considered reasonable, and that's what they are being directed to do by the State under the State laws that have been passed by referendum. So, you don't know whether or not that's being challenged?

John Vatis: I'm not an attorney I don't really get into that. Unfortunately, and I would hate to do this, I want to be a good property owner or a neighbor and that part if the reason why I didn't want to do recreational, I don't want to fight the city. I don't want to do that.

Board Member Kausal: Maybe sometimes that needs to happen.

John Vatis: You have no idea how much it has taken just to get to this point, which I never expected. But again, we could just get another tenant, because we got the Certificate of Occupancy. The City isn't harmed, that's what I don't get. Any other business wouldn't face this but medical marijuana, that's not reasonable. I'm sorry if I sound disrespectful, I'm not trying to be.

Board Member Cullens: I have a question. So, you talk about the original letter that was approved under the other business, and you had vested rights in that. Why did you then reapply for a new approval?

John Vatis: Well that's what they told me that I needed to do. And I said "why? That doesn't make any sense" and they said, "well Natural Herbal Remedies" and I said, "they don't occupy the property" and they said "so". I said, "they aren't going to be there, I own the building" they said, "we don't care". So, I did reapply, then they came up with the other excuses. And I was trying to get the permit and it was like pulling teeth. You talk about being reasonable, they did everything they could to try to prevent me from getting the permit and nobody could believe it. That alone was expensive. Then I have the association that literally says that if you don't do recreation, we don't care. They never met Natural Herbal Remedies, they never talked to the principals, they didn't see any financials, and they knew nothing about it. They only talked to me. And then afterwards, after we had in agreement in writing, they then signed another agreement that stated if you sell the property to somebody else then you lose it. That was never part of our agreement, but that was after recreational failed. So, I didn't want to take the chance, I did the agreement as they asked, and I said I want to be a good building owner, what are your concerns? We came to an agreement. And after recreational failed, they said "oh, out". The other thing they said was "we are not going to approve your security. We have the right to put the cameras anywhere we want, so if you put any cameras outside, we are not going to do it because you have to do it through the CC& R's". I don't know how many times I met with the police department to say, "can I put the cameras inside?" They looked at every single camera, looked at everything and they said, "you

are good, you are approved". Then I got my Certificate of Occupancy, otherwise they would have blocked me for that as well. That's what I feel like is going on right now.

Chair Sell: I think that is everything.

Steve Abrahamson: Chair Sell you still need do a call to the audience.

Chair Sell: Yes, thank you.

Chair Sell noted that he had a speaker's request card from Edward O'Brien.

Edward O'Brien spoke as follows:

- Hello gentleman my name is Edward O'Brien with the Travis Law Firm. My law firm represents the Warner Village Office Condominium Association and its Board of Directors. The Board of Directors of the Condominium Association has approved this statement for me to read tonight with regard to the request for PARC Dispensary to approve zoning approval for a medical marijuana dispensary located at 8611 South Priest Dr.
- The unit is within the condominium association and is a member of the condominium association. Its position of the association that says this use of this unit for the sale of medical marijuana violates the recorded CC & R's, the community declaration, and is not a professional office use. This user section is set forth in section 4.1 of the CC & R's. If a dispensary is to be considered for this location in the City of Tempe, a medical marijuana dispensary would be better suited for a retail building, such as the ones on Priest and Warner on that same corner, opposed to the office condominium buildings that are located behind these retail buildings.
- The City itself has distinguished between retail and professional office uses twice during our discussion here tonight. The association and its members are concern regarding
  - Traffic that would be coming to and departing form the dispensary,
  - The longer hours of operation of the dispensary in comparison to these other professional offices which have a more standard 8 AM to 5 PM, Monday through Friday operation.
  - The security plans purposed for the dispensary.
- The association is currently involved in Maricopa Superior Court lawsuit that is pending, with the owner of this unit, Image Productions LLC, in regards to whether the unit can be utilized as a medical marijuana dispensary. The parties are awaiting a ruling from the Superior Court Judge at this time, but we do not have a date of expected ruling.
- Given the association's concerns regarding wither such use complies with its condominium declaration, the nature of the business, which is retail rather than professional office use, increased traffic and longer hours of operation, it is the association's recommendation that the Board of Adjustments deny PARC Dispensary's appeal of the Zoning Administrators decision.
- Thank you. If the Board has any questions, I would be happy to take them.

John Vatistas: May I just say one quick thing, and I'm sorry.

Edward O'Brien: No questions? Thank you.

John Vatis: I'm sorry, just a real quick point. They say its office, it is medical. So, it is office, medical, dental there is a dentist office in there. It is approved for medical right in the CC & R's and it is medical marijuana. Again, this is some antics, again this is not reasonable. I just wanted you to understand that.

Chair Sell: Anyone else that wishes to speak?

Board Member Naugle: Yes. I guess based on those last two comments from the attorney for the association, the comment that the CC & R's specifically prevent medical marijuana. Is that the statement you are making?

Edward O'Brian: Yes, the association has taken the position that a medical marijuana dispensary is not permitted per the CC & R's. That is at the heart of the case still currently pending with the Maricopa County Superior Court.

Board Member Naugle :Thank you.

Chair Sell: Okay, I don't see any more questions or comments. Now I call for a motion.

Board member Vice Chair Lyon made a motion to deny the appeal and uphold the Zoning Administrator's opinion to deny the dispensary location at 8611 South Priest Drive, Suite 102 (Unit 104).

Board member David Naugle seconded the motion.

**DECISION:** Appeal was denied and the Zoning Administrator's opinion, dated August 30, 2017, to deny the request for a medical marijuana dispensary for PARC DISPENSARY (PL170260) located at 8611 South Priest Drive, Suite 102 (Unit 104) was upheld.

**VOTE:** Appeal was denied by a vote of 5 to 2.  
(Board members Richard Kausal and Kevin Cullens dissenting.)

-----  
Steve Abrahamson made the following announcements:

- The next Board of Adjustment hearing is scheduled for November 15, 2017.

-----  
Vice Chair David Lyon made a motion to adjourn tonight's public hearing; Board member Richard Kausal seconded the motion. Motion was approved by a vote of 7 – 0.

There being no further business the hearing adjourned at 7:38 p.m.

-----  
Prepared by: Diane McGuire, Administrative Assistant II  
Reviewed by:



-----  
Steve Abrahamson, Principal Planner

SA:dm