

April 22, 2019

ATTN: Land Review Office

RE: Appeal Statement for file #'s AR R 19-00118 and AR R 00141

APPELLANTS: Michael and Valerie Fix

The primary reasoning for our appeal of the administrative relief being granted by City Planner Ryan Tefertiller for the relocation of a Medical Marijuana Center (MMC) to 1645 South Tejon, and thus the ability to create a Commercial Center at that location, is that we find it to be in conflict with city code 7.3.205.M.5 on location of MMC's in a manner that violates both the express wording and implicit intent of said code, which reads:

"A medical marijuana center (MMC) shall be located no less than one thousand feet (1,000') from any public or private elementary, middle, junior high or high school, or a residential childcare facility, or a drug or alcohol treatment facility, or any other MMC. This minimum distance shall be measured from the nearest portion of the building used for the MMC to the nearest property line of the school, residential childcare facility, drug or alcohol treatment facility, or other MMC using a route of direct pedestrian access."

Per city code 7.5.906.A.4 on the criteria for appealing an administrative decision, it can be seen that said decision does in fact fall under 7.5.906.A.4.b.1-3: "it was against the express language of this zoning ordinance", "it was against the express intent of this zoning ordinance" and, as a result, "it is unreasonable". As each of these points shall be subsequently proven, it is therefore clear that appealing this decision is both valid and in the best interests of the community.

Firstly, on 7.5.906.A.4.b.1, we can see that such an administrative decision is without a doubt against the express language of zoning ordinance 7.3.205.M.5. That ordinance explicitly states that any MMC must be at least one thousand feet from any other MMC, measured by direct pedestrian access from the edges of the property lines. However, as Mr. Tefertiller has stated, both Rocky Road Remedies at 1530 South Nevada and Native Roots Dispensary at 1433 South Tejon are within 1000 feet of 1645 South Tejon by the appropriate measurement standard, thus the necessity of granting administrative relief.

Though the granting of such administrative relief is acceptable if there is a reasonable justification and it still upholds the intent of the original ordinance, it does not do so, meaning this decision also falls under 7.5.906.A.4.b.2: that "it was against the express intent of this zoning ordinance". Firstly, it can be assumed from the justification for the city's previous decisions on banning sales of recreational marijuana that this ordinance was also crafted at least

partially to improve public health and safety. Therefore, by moving another MMC into the neighborhood and within 1,000 feet of other MMC's, this aspect of the original intent is being violated. For more information on the effects of additional MMC's on an increase in both property crime, marijuana related crime, and marijuana related hospitalizations, please refer to the citizen comment section of the review letter submitted by Tefertiller to the applicant. Specifically, resident and physician, Diane DeMallie refers to studies conducted in Denver and California showing that an "additional dispensary per square mile," is associated with increases in health and safety issues. Secondly, for a more explicit statement of intent, in section 7.3.201.A.6, one of the purposes for the existence of this and other zoning ordinances, it is stated that these ordinances are intended to "Provide for land uses which meet the need of and attract regional populations in addition to the residents". This too fails to be upheld because there are already 4 other MMC's within .2 square miles of the proposed relocation site. Therefore, there are already sufficient facilities to meet the need of regional populations and residents alike, so adding another in violation of the explicit wording of the ordinance is not providing the intended benefit. Additionally, as Mr. Tefertiller himself stated in his approval letter granting administrative relief, he finds another intent of the code to be to avoid the clustering of MMC's in specific areas, which again, this relocation is causing. In fact, this neighborhood currently has the highest concentration of MMC's of anywhere in the greater Colorado Springs area before adding Pure Medical to this section of S. Tejon, with an additional MMC located .3 miles north of LivWell.

Finally, due to that combination of factors, we find the decision to provide administrative relief to fall under 7.5.906.A.4.b.2: "It is unreasonable". In addition to the reasons stated above, allowing this relocation will be creating a concentration of approximately 5 MMC's in .25 square miles or 20 MMC's per square mile, which simply seems unreasonable. Moreover, as can be seen on the attached maps, this will create an even higher concentration of MMC's in the Ivywild neighborhood while there are still few to no MMC's in the regions directly north and south of the neighborhood, serving to unfairly establish the neighborhood as a hub for medical marijuana purchases. If the MMC in question needs to move to another location, it would be far more reasonable for them to relocate to one of the areas of far lower concentration seen on the attached maps, specifically to the south, where none will exist once Pure Medical relocates. Mr. Tefertiller claims this relocation will not hurt similar businesses and will help the established clientele, as they will be relocating within the same neighborhood. This is simply not true, as in the city's own commissioned Traffic Study for the Ivywild neighborhood, the area to be studied does not include the current address of Pure Medical.

Thus, for all of these reasons, we find the approval of administrative relief to have been a poor decision and an appeal of such decision is fully valid and justified.

Google Maps medical marijuana



Map data ©2019 Google 1 mi

FIGURE 6

Google Maps marijuana dispensary

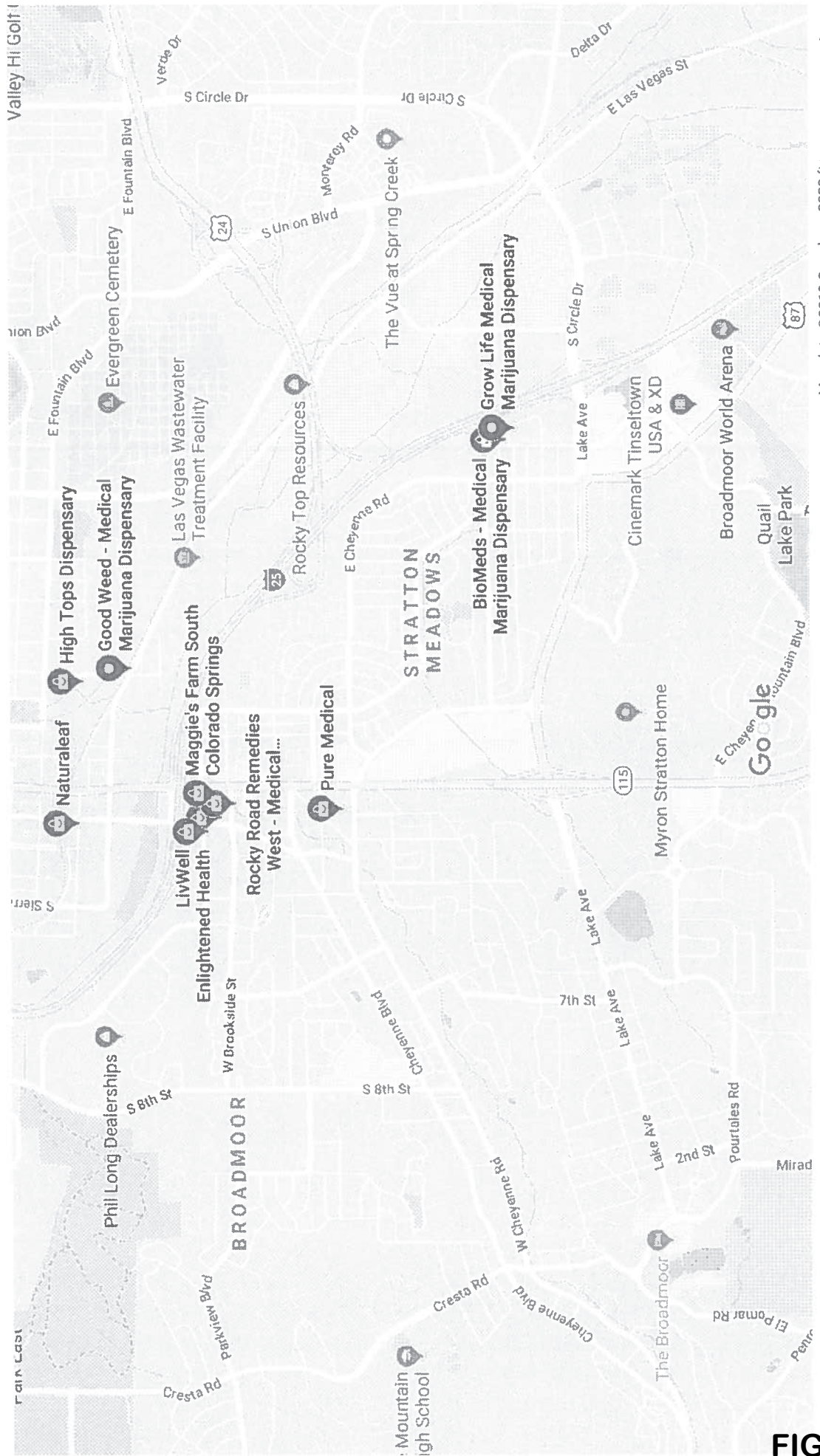


FIGURE 6