



City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

Coast Guard City, USA

Planning and Community Development Department

Date: June 15, 2017

From: Michael Scarcelli, PCDD Director

To: Planning Commission

Re: Report on Marijuana Businesses and Complaints Received at Sawmill Creek Plaza

The Planning and Community Development Department has received a signed letter¹ that urged the denial of a conditional use permit amendment for Weed Dudes. The argument requesting denial was based on several points that to sum included 1) Family/residential neighborhood not supported by marijuana business, 2) Traffic/pedestrian concerns with “inebriated” drivers, 3) Negative impact to home resale value, 4) Odor impacts, and 5) Unknown hours of operations. To sum, staff believe only the odor and lack of hours of operation concerns have any merit. However, all complaints are moot as the permit consideration was postponed pending state adoptions of regulations for on-site consumption and more the odor impacts were not attributable to the specific business in question. Further, there is concern that some signers of the group form letter were not informed of the specifics of what they were signing.

1. Which use doesn’t fit: pot or home?

- a. The letter signers argue that the marijuana business is not a good fit for the area.
 - i. I would respond that the code not only within the purpose section of the C-1 and C-2 districts, but also highlighted by the title of the zone and all the use tables clearly and unequivocally establishes the C-1 and C-2 zoning districts as commercial zones that also happen to allow residential uses.² Therefore, I would argue that the residential uses must be tolerant of the commercial uses and that commercial uses take priority as it is a commercial zone first. I would further suggest that separation of

¹ Letter dated May 15, 2017 addressed to Planning Department Board, signed by Kevin Barry of 105 Lillian Drive and approximately 69 other citizens (attached).

² SGC Tables 22.16.015-1, -3, -4, -5, and -6; & SGC 22.16.080

incompatible land uses such as a mixing higher intensity commercial use from residential use should occur in future land use planning.

2. Traffic and Pedestrian Impacts & Inebriated Driving

- a. The concern is that with large numbers of school aged children and a school bus drop-off/pick-up location nearby that potential inebriated drivers could create potential impacts.
 - i. First, there is also a family restaurant nearby and a hotel both of which could be connected to drinking alcohol and potential inebriated drivers – however this is all speculative and not directly connected to the business at hand. Overall, while I appreciate the concern, indirect, speculative fear based objections should not find themselves into reasoning for denying nor conditioning an approval. That would be a winning appeal should a denial or condition be based on arbitrary and capricious opinion not supported by a factual evidence found in the record. There is very strong Alaska case law that protects private businesses from permit denials based on speculative, indirect impacts.

3. Negative Home Resale Impacts

- a. The concern is that the marijuana business will impact the resale of homes.
 - i. There is no objective resale information that shows a statistical drop in home values in that area. More, even if there was, it would have to be directly attributed to this marijuana business to support a denial. With residential homes up against high intensity commercial and industrial type uses and junkyards it is difficult at best to attribute home value impact to the marijuana businesses.

4. Odor Impacts

- a. Odor control was a significant concern.
 - i. There is support for this concern. Staff site investigation did result in observations of marijuana odor within the immediate vicinity of Northern Lights Indoor Gardens. This odor control issue was not attributable to Weed Dudes, but to another business. That aside, it is important to understand the context of how and why that occurred. My understanding is that during a power outage the exhaust and air ‘scrubbing’ system went off. When the power went back on, the exhaust fans reversed direction. In addition, there was a supply issue with carbon filters. Both of these situations have been corrected. The business has installed

baffles and taken steps to have back-up filters to avoid a repeat. It is further suggested that the business have back-up power supply to avoid lack of air scrubbing should a power outage occur again (which is likely). Staff will continue to monitor the odor issue and new odor control measures. Should there be additional odor issues, staff will bring back the specific offending business or businesses for review and consideration of the conditional use permit.

5. Unknown hours of Operation

- a. Concern is that the public did not know the hours of operation.
 - i. Staff has some concern about hours of operation. State marijuana business regulations will limit hours of operation of a retail establishment. These regulations will be stricter than what has been the historical precedent of hours of operation for all other conditional use business currently operating in Sitka. More, a variety of permittable businesses could operate in a C-1 or C-2 zone without restriction. Again, this is a point to consider when doing future zoning and land use changes. To address this concern, staff will request detailed hours of operation for all future amendments.