

APPEAL FORM

APR 05 2021

Date Received: CITY OF SANTA ROSA
CITY CLERK'S OFFICE

Fee: \$535

City Clerk's Office/Rec'd by: _____

Name of Appellant: Elizabeth S. Hutton on behalf of Protect Our Neighborhoods

TO THE HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL:

The above named appellant does hereby appeal to your Honorable Body the following:

The decision of the: (List Board/Commission/Dept.) Planning Commission

Decision date: March 25, 2021

Decision: (approval, denial, other) Approval of CUP File No. PRJ 19-047

Name of Applicant/Owner/Developer: Karen Kissler aka Alternatives Health Collective

Type of application: (Rezoning, Tentative Map, etc.) CUP 19-117 , PRAP19

Street address of subject property: 2300 Bethards Drive Santa Rosa CA

The grounds upon which this appeal is filed are: (List all grounds relied upon in making this appeal. Attach additional sheets if more space is needed.)

1. SEE ATTACHED

2. _____

The specific action which the undersigned wants the City Council to take is: (Attach additional sheets if more space is needed.)

Reverse the Planning Commission's approval of the CUP and deny the application

Appeals shall be submitted in writing.....on a City application form within 10 calendar days after the date of the decision. The time limit will extend to the following business day where the last of the specified number of days falls on a day that the City is not open for business.

[Redacted Signature] 4/5/21
Applicant's Signature Date

Elizabeth S. Hutton for Protect Our Neighborhoods The UPS Store
2777 Yulupa Avenue, PMB #258 Santa Rosa, CA 95405
Applicant's Name (type or print) Address

(707) 542-8660 (707) 321-4277 Same
Daytime Phone Number Home Phone Number

ae libbysiskhutton@yahoo.com

ZONING CODE PROVISIONS RELATING TO APPEALS:

NOTE: "DRB" refers to the Design Review Board, "CHB" refers to the Cultural Heritage Board, and "Commission" refers to the Planning Commission.

ARTICLE 20-62 - APPEALS

20-62.030 - Filing and Processing of Appeals

- A. **Eligibility.** Any action by the.....DRB, CHB, or the Commission in the administration or enforcement of the provisions of this Zoning Code may be appealed by any aggrieved person in compliance with this Article....

- B. **Timing and form of appeal.**
 - 1. **General appeals.** Appeals shall be submitted in writing, and filedon a City application form within 10 calendar days after the date of the decision. The time limit will extend to the following business day where the last of the specified number of days falls on a day that the City is not open for business.

20-62.030 - Filing and Processing of Appeals

- 3. **Place for filing**
 - c. Appeals from the decisions of the DRB, CHB, or Commission shall be addressed to the Council and filed with the City Clerk.

- 4. **Pertinent facts.** The written appeal shall state the pertinent facts of the case and shall specify the following:
 - a. The decision appealed from (e.g., City assigned case number).
 - b. The basis for the appeal.
 - c. The specific action which the appellant wants taken in the appeal.
 - d. Each and every ground upon which the appellant relies in making the appeal.

- 5. **Filing fee.** Appeals shall be accompanied by the required filing fee, in compliance with the Council's Fee Schedule.

Appeal to City Council – Attachment re Grounds:

1. THE RESOLUTION ADOPTED BY THE PLANNING COMMISSION ON MARCH 25, 2021, (“THE RESOLUTION”) IS NOT SUPPORTED BY THE RECORD IN REGARD TO PUBLIC COMMUNICATIONS AND COMMENTS.

In issuing the Resolution, the Planning Commission found, in part,

“[T]he Planning Commission held a duly noticed public hearing on the application at which all those wishing to be heard were allowed to speak **or present written comments** and other materials; and...

[T]he Planning Commission has considered the application, the staff reports, oral and written, the General Plan and zoning on the subject property, the testimony, **written comments**, and other materials presented at the public hearing.”

The record does not support these findings. This matter was originally set for hearing on February 25, 2021. The Staff Report at that time recommended approval of the application. The only “Public Correspondence” attached at that time was a sheaf of preprinted forms prepared by applicant and solicited from her current customers at her existing dispensary in West Santa Rosa. The file was devoid of any voice in opposition to the application. The Staff Report for that hearing completely omitted all community input in opposition to the project. These included emails and objections that poured into the City offices following the overflow neighborhood meeting on January 22, 2020. Also omitted was a binder prepared by Protect Our Neighborhoods containing a 137-page Petition signed by 222 Bennett Valley citizens detailing their objections and outlining the many specific reasons the proposed project would impact their neighborhood deleteriously. Only as the result of the undersigned’s informing the Planner of the applicant’s failure to follow proper noticing procedures, the matter was continued from February 25th to March 25th.

The Staff Report for the March hearing purported to include all Public Correspondence in support and in opposition to the application including Late Correspondence, however once again, the Petition opposing the application was omitted from the Public Correspondence. The Public Correspondence also revealed shocking concerns relating to the Public Correspondence in support of

the application. These issues relating to the Public Correspondence included the following:

(A) ALL "PUBLIC" SUPPORT FOR THE APPLICATION WAS THE PRODUCT OF APPLICANT'S BLATANT ATTEMPTS TO PURCHASE "VOTES" AND TO STUFF THE BALLOT BOX.

The Late Correspondence included the disclosure that the emails and comments in support of the application were the result of Ms. Kissler's having solicited her current customers of her existing dispensary with the following email:

"*Please Accept this Gift* If you email aross@srcity.org and send a copy to alternativescollective@gmail.com, or appear at the hearing, get a PreRoll for a Penny next time you come in!" (emphasis added.)

This "free joint" offer revealed the fallacy behind the sheaf of preprinted forms with check-off boxes prepared and obtained by the applicant containing no demonstrable evidence of any ties or interests in the Bennett Valley neighborhood. Similarly the offer tainted any other communications in support of the application including emails and speakers at the public hearing. Ms. Kissler offered them all the same bribe.¹

For the Planning Commission, Public Correspondence and comments are the "vote" of the public. Nothing submitted as the result of this payoff can be considered "testimony" or true public comment. In the face of the information as to Ms. Kissler's and Alternatives' solicitation, the Commission should have ignored any public comments in support of the application and treated Ms. Kissler's payoffs as grounds for denial of the application.

In effect, this applicant paid for "votes." In sanctioning these "votes" as evidence, the Commission condoned the applicant's deliberate attempt to manipulate and pervert our political system for her own financial gain. Knowing the illegitimate source of those comments, the Commission should have rejected them as "testimony" of any sort, whether written or oral, and should not have given them any weight in the consideration process. The approval of the application should be reversed on these grounds, alone, and in combination with the other defects,

¹ As documented in the February 19, 2021, correspondence to the Planning Commission from the undersigned, Sonoma County Superior Court Judge Ottenweller concluded Ms. Kissler was not credible in connection with her actions before him in a case involving her non-payment to her workers. His assessment of Ms. Kissler was endorsed by the Court of Appeals in McClain v. Kissler (2019) 39 Cal.App.5th 399, 417-418, in which the Court noted, "Kissler had lied under penalty of perjury at least once before."

as discussed below, in the evidence presented to the Commission and in the resulting Resolution.

(B) THE COMMISSION FAILED TO REVIEW ALL WRITTEN COMMENTS AND OTHER MATERIALS IN OPPOSITION TO THE APPLICATION - THE STAFF REPORT OMITTED THE 137 PAGE PETITION FILED ON OCTOBER 21, 2020, BY PROTECT OUR NEIGHBORHOODS SIGNED BY 222 CONCERNED BENNETT VALLEY CITIZENS IN SPITE OF THE FACT THE PLANNER HAD BEEN REMINDED OF THE EXISTENCE OF THE PETITION IN ADVANCE OF THE HEARING.

On October 21, 2020, members of Protect Our Neighborhoods filed a Petition objecting to the application and proposed dispensary with the Planning Department. The Petition is 137 pages long and contains 222 signatures by citizens directly impacted by the application.

A reminder of that Petition was relayed to the Planner before the original Commission hearing date of February 25, 2021, and yet the Petition was not included in the agenda for that date or for the continued hearing date of March 25, 2021. In the March hearing, a member of the public noted the Petition's existence and one Commissioner inquired about it, only to be told by the Planner that the Petition could not be located.²

With knowledge that the Petition existed and had not been included in the Public Correspondence information, the Commission nonetheless proceeded to vote on the matter with no concern for the fact that the voice of the community, specifically 222 residents, impacted by the application was being ignored. After the Bennett Valley citizens sounded the alarm that their voice had been ignored, and after they offered proof that it had been properly submitted well in advance of the hearing, the Petition was thereafter 'found' in the City's records days after the Commission adopted the Resolution reciting it had considered all of the written comments and other materials presented. Clearly it had not.

Even in the face of the actual notice during the public hearing that the Petition had been filed and was omitted from the Public Correspondence, the Commission proceeded to vote on the matter with no concern for the fact that the voice of the community impacted by the application was being ignored. In so doing, the Commission betrayed its obligation to review the complete record and to consider the objections and reasons for those objections from the Bennett

² On March 30, 2021, the City confirmed the fact the Petition had been received by the City and scanned into the record when it was received in October, 2020.

Valley citizens. Contrary to the Resolution finding, clearly the Commission did not consider all of the written comments and materials presented for the public hearing. The omission of the Petition from review readily demonstrates yet another defect in the Resolution and independently constitutes grounds for the reversal of the Planning Commission's approval of the application and adoption of the Resolution.

2. THE RESOLUTION ADOPTED BY THE PLANNING COMMISSION ON MARCH 25, 2021, ("THE RESOLUTION") IS NOT SUPPORTED BY THE RECORD IN REGARD TO ITS RELIANCE IN ITEMS C, D, AND F ON THE TRIP GENERATION ESTIMATE OF W-TRANS DATED JANUARY 20, 2021 OR W-TRANS ESTIMATES OF ANY OTHER DATE. AT APPLICANT'S BEHEST, W-TRANS HAS ISSUED MULTIPLE AND DIFFERING OPINIONS ON VARIOUS DATES, RENDERING NONE OF THEM CREDIBLE. THERE IS NO TRIP GENERATION ESTIMATE DATED JANUARY 20, 2021, IN THE RECORD.

When the Commission originally was to hear this matter on February 25, 2021, Ms. Kissler had solicited a Trip Generation Estimate dated February 16, 2021, which was included in the attachments for that meeting. That estimate projected **546** new round trips daily as the result of the proposed dispensary, which report took great pains to note it was based on Santa Rosa and Sonoma County data. Appellants are not aware of any Trip Generation Estimates by W-Trans prior to that date and particularly have seen nothing in the record to support the reliance by the Planning Commission and the Staff on a Trip Generation analysis dated January 20, 2021. In fact, Cameron Nye of W-Trans has issued multiple and changing estimates though none dated January 20, 2021.

In response to the eye-popping numbers contained in the February 16, 2021, estimate, the undersigned communicated with the Planner to express the objection to the enormous impact and risks posed by that traffic increase. In response, a mere two weeks later, Ms. Kissler emailed the Planner advising that in response to the undersigned's "concerns," she called the W-Trans engineer, Cameron Nye, and got a different estimate which she referenced as a decrease to **12** trips per day, down from Mr. Nye's original number of 546. That email and the attached email from Cameron Nye, are included in Attachment 12 to the Agenda for the March 25, 2021, hearing.

In fact, in the attachment, Mr. Nye stated, "Following up on our [referencing his call with Karen Kissler] phone conversation, I wanted to respond in writing to the comment about the daily trip generation," and went on to state his new estimate as to daily round trips was **120** per day, claiming the original numbers used Colorado data and his new number (a reduction of 80%) was based on Santa Rosa and Sonoma County data. As pointed out in public comments at the March

hearing, the two opinions were entirely inconsistent and not arguably reliable because the original opinion expressly represented it was based on Santa Rosa and Sonoma County data. Therefore the revised opinion was nonsensical and there was no explanation as to why a call from Karen Kissler produced this dramatic change³. The circumstances of the “revised” opinion undermine any representation that W-Trans was reporting as an independent expert – in fact, W-Trans was working only for Ms. Kissler.

Unbeknownst to appellants, after emailing Ms. Kissler, Mr. Nye prepared an “Updated Trip Generation Estimate” dated March 9, 2021, which was included in the agenda for the March 25, 2021, meeting. Without actually explaining why he now had information which he didn’t have two weeks earlier, Mr. Nye again represented the previous estimate was based on Colorado data while the updated estimate was based on Santa Rosa and Sonoma County data, again without acknowledging the February 16, 2021, estimate made NO reference to Colorado. However in his Updated Estimate, Mr. Nye came up with yet another number different both from his February 16, 2021, estimate and the estimate he emailed to Karen Kissler on March 1, 2021. This time he decided the project “would be expected to generate **97** new trips on a daily basis,” thus reducing his estimate even further from the 120 he had come up with a week before and a whopping **92 percent drop** from his original estimate of 546 three weeks earlier.

Neither the Planner nor the Commission questioned these inconsistencies nor did they inquire as to what Ms. Kissler said or suggested so as to elicit the revised opinions. In fact, with multiple and differing Trip Estimates in the record, the Commission had NO reliable estimate before it on which to make a determination as to the Trip Estimate and, on which to base the Resolution findings in Sections C, D, & F. Furthermore, the record contained no Trip Estimate dated January 20, 2021, the date referenced repeatedly in those portions of the Resolution, and even if such an estimate had existed, the multiple revisions of that estimate at Ms. Kissler’s behest undermined any possible validity of such an estimate or any other estimates generated by W-Trans.

The non-existent Trip Generation Estimate of January 20, 2021, is the lynchpin of Sections C and D of the Resolution. In reliance on that mythical estimate, the Commission found in Section C, “[A]n additional study is not required pursuant to the City’s Standard Guidance for the Preparation of Traffic Impact Analysis,” and in Section D, that the project “does not trigger the need for additional study pursuant to the City’s Standard Guidance for the Preparation of Traffic Impact Analysis.” The Planning Commission had NO grounds upon which to make either of these findings.

³ See Footnote 1 as to why the Planner and Planning Commission should have been alarmed about this call and Mr. Nye’s spectacular reduction in his calculations.

As with Sections C and D of the Resolution, the absence of any reliable estimate, and the virtual guesswork contained in the multiple opinions from W-Trans also eviscerates the Commission's findings in Section F of the Resolution in which it concluded the project was exempt from CEQA pursuant to CEQA Guidelines Section 15332. That section of CEQA requires a finding the "[a]pproval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality." In that Section F of the Resolution, the Commission referred to the March 9, 2021, W-Trans estimate rather than the mythical January 20, 2021, estimate; however given the history of the ever-changing estimates by W-Trans, clearly the Commission had no credible evidence before it on which to make a finding as to that exemption.

The unreliability and ever-changing estimates from W-Trans and the reliance by the Commission on a non-existent estimate independently and jointly constitute grounds for the reversal of the Commission's approval of the application and adoption of the Resolution. The requirement that these findings be grounded on facts, not fiction, is fundamental to the safety and due process of the neighborhood impacted by the proposed application. The above-referenced portions of the Resolution as adopted by the Planning Commission are unsupported by any credible, professional evidence.

3. THE RESOLUTION ADOPTED BY THE PLANNING COMMISSION ON MARCH 25, 2021, ("THE RESOLUTION") IN SECTION F THAT THE PROJECT IS EXEMPT FROM CEQA GUIDELINES SECTION 15303 IS NOT SUPPORTED BY THE RECORD.

In the Resolution, Section F, the Commission found the "Project is categorically exempt" from CEQA Guidelines Section 15303 "because it involves the conversion of an existing structure from one use to another where only minor modifications to the structure are made." In reaching that conclusion, the Commission ignored subsection (c) of CEQA Section 15303 which provides for the exemption for "similar structures not involving the use of significant amounts of hazardous substances."

The project in this case involves significant amounts of hazardous substances in the form of cannabis. That definition is found in the Section 20-46.050 of the City Code, subsection (E) requiring a cannabis operator to "comply with all applicable Health and Safety Code and California Fire Code requirements related to the storage, use and handling of hazardous materials and the generation of hazardous waste." This requirement is referenced in the Commission record as an attachment to the Yorke Engineering report dated January 21, 2020. Given the City's own specification that cannabis is a hazardous substance, the claimed exemption to CEQA under Section 15303 is unsupported. Accordingly, this project falls within the requirements of CEQA and is not exempt. The

Commission's finding in this regard is defective and grounds for yet another, independent basis for reversing the approval by the Planning Commission.

4. THE RESOLUTION ADOPTED BY THE PLANNING COMMISSION ON MARCH 25, 2021, ("THE RESOLUTION") IN SECTION E THAT THE GRANTING OF THE PERMIT WOULD NOT CONSTITUTE A NUISANCE OR BE INJURIOUS OR DETRIMENTAL TO THE PUBLIC INTEREST, HEALTH, SAFETY, CONVENIENCE, OR WELFARE OF THE NEIGHBORHOOD IS NOT SUPPORTED BY THE RECORD.

The proposed use of the location in question is inconsistent and incompatible with the neighborhood and the previous use of the property. The proposed location is inconsistent with the City's commitment to place dispensaries in commercial and industrial districts. The proposed dispensary is in the middle of a safe, densely populated residential neighborhood. Neither the Planner nor the Commission addressed this inconsistency of the City's declared intentions with the proposed location of the dispensary nor did the Planner or the Commission address the undisputed issues of increased crime and traffic raised by the citizens in the Public Correspondence and those who spoke against the application. As noted previously, the Commission was unconcerned that it had failed to review the 137 page Petition from Protect Our Neighborhoods signed by 222 Bennett Valley citizens and which contained substantive reasons for the opposition. This application seeks to place an active, retail dispensary open 9-9, seven days a week, in a location previously occupied by unobtrusive offices with virtually no traffic, and open only during business hours, Monday-Friday.

The change of use and impact on the public is enormous. As documented by the public correspondence before the Commission, this is an area down the street from a park where people walk, ride bikes, and enjoy their safe neighborhoods. A school bus stop is directly across the street from the proposed project. A business with armed guards open until 9:00 PM constitutes a nuisance to the neighborhood by bringing increased traffic and parking⁴ at hours that had been calm and safe, by attracting criminal risks to a neighborhood noted for its safety,

⁴ As discussed above, the multiple W-Trans reports cannot withstand scrutiny and cannot be considered reliable for any reason. However it is noteworthy that the W-Trans "analysis" as to parking is also suspect. It consistently excuses the inadequate parking facilities while ignoring the fact the proposed retail use will generate significant parking demand in excess of the previous use and in part suggesting there is on-street parking available. The Planner simply rubber-stamped this conclusion. Had W-Trans and the Planner visited the area during the 5-9 hours proposed for operation, they would have discovered the on-street parking is packed with parking from the neighbors who live in the densely populated apartment and condominium complexes immediately adjacent to the proposed location. Hence, the proposed use is an additional burden on the neighborhood and directly intrudes on their lives.

and by diminishing the health and safety of those citizens residing in the neighborhood – the very neighbors whose voices the Commission did not consider.

Section E of the Resolution is not supported by the facts or by the Public correspondence and testimony. This deficiency in the Resolution provides yet another independent basis for the reversal of the Planning Commission's approval of the application.

CONCLUSION

Procedurally and substantively, the Commission failed to act properly in adopting of the Resolution of March 25, 2021. For the reasons detailed above, appellants respectfully submit and request that the City Council reverse the decision of the Planning Commission and deny the application under review.

Dated: April 5, 2021



Elizabeth S. Hutton on behalf of
Protect Our Neighborhoods