

APPEAL FORM

Fee: \$5,859.

Date Received:

City Clerk's Office/Rec'd by: *Sandi Bless*

Name of Appellant: **Jerred Kiloh-Amos Flint-The Higher Path Cannabis Retailer/Bear Flag Supply**

TO THE HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL:

RECEIVED

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

NOV 05 2018

The decision of the: (List Board/Commission/Dept.) **Cannabis Sub-Committee**

CITY OF SANTA ROSA
CITY CLERK'S OFFICE

Decision date: **October 25, 2018**

Decision: (approval, denial, other) **Upheld City Staff recommendation for competitive application**

Name of Applicant/Owner/Developer: **Jerred Kiloh-Amos Flint-The Higher Path Cannabis Retailer**

Type of application: (Rezoning, Tentative Map, etc.) **Over concentration, competitive Cannabis retail**

Street address of subject property: **950 Piner Road Santa Rosa, CA**

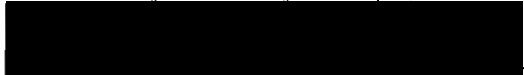
The grounds upon which this appeal is filed are: (List all grounds relied upon in making this appeal. Attach additional sheets if more space is needed.)

1. City Staff released confidential information to the competitor prior to the public release of that information. This information was in what City Deputy Planning Director Hartman called a "red" folder and our competitor was allowed to view the file.
2. The Higher Path provided numerous pieces of new information and personal testimony regarding the qualifications of this applicant at the 10-25-18 meeting. The Sub Committee discounted the new information and seemed compelled to move the issue to full City Council appeal.
3. The City of Santa Rosa staff scoring our application made false and misleading statements on the scoring sheet resulting in significant loss of points in the application evaluation. Had the application scoring included the details provided in our application, which were clearly in place and in the Sub-Committee's packet, information that evaluators said was missing, our application would have outscored the competitor.
5. There are far too many complexities with the errors and oversights made to be seriously considered in a five minute presentation. Five minutes might be fine when application details were not overlooked or preferential treatment by City staff not shown to the competitor. However both situations occurred here.

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

We encourage the Santa Rosa City Council and the City Attorney to read the facts as we have presented in the grounds for the appeal and within the attached narrative. Competitive processes, just like in public bidding, should strive to be fair, thoroughly consider all documents and receive an unbiased review. The Higher Path is the preferred retailer irrespective of the scoring sheet. We ask That the City Council reverse the ruling of the subcommittee and to make a new ruling based on all of new information that is available post staff report.

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.

 11-5-18 Applicant's Agent

Applicant's Signature Date

Brian F. Elliott

Applicant's Name (type or print) Address



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TABLE OF AUTHORITIES

ORDINANCE NO. ORD -2017- 025

ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA ROSA ENACTING COMPREHENSIVE REGULATIONS FOR CANNABIS THROUGH THE AMENDMENT OF SANTA ROSA CITY CODE SECTIONS 20-23. 030, TABLE 2- 2 (ALLOWED LAND USES AND PERMIT REQUIREMENTS FOR RESIDENTIAL ZONING DISTRICTS), TABLE 2- 6 (ALLOWED LAND USES AND PERMIT REQUIREMENTS FOR COMMERCIAL ZONING DISTRICTS), SECTION 20-24.030, TABLE 2- 10 (ALLOWED LAND USES AND PERMIT REQUIREMENTS FOR INDUSTRIAL DISTRICTS), SECTION 20- 36.040, TABLE 3- 4 (AUTOMOBILE AND BICYCLE PARKING REQUIREMENTS BY LAND USE TYPE), SECTION 20- 70.020 (DEFINITIONS), THE REPEAL AND REPLACEMENT OF CHAPTER 20-46 (MEDICAL CANNABIS CULTIVATION) WITH CHAPTER 20-46 (CANNABIS), THE REPEAL OF CHAPTER 10-40 (MEDICAL CANNABIS DISPENSARIES) AND THE ADOPTION OF EXEMPTION FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT — FILE NUMBER REZ17-002

California Health and Safety Code Section 11362.768

AR ORD-2017-025 Table 2-6- Section 3. Amend Section 20-23. 030, Table 2- 6, to read and provide as follows:

Cannabis— Retail (dispensary) and delivery CUP 10 CUP 10 CUP 10 CUP(10) 2046 Drive-through retail sales CUP CUP CUP 2042.064

2046.080 Cannabis Retail (Dispensary) and Delivery. In addition to the General Operating Requirements set forth in Section 20-46. 50, this section provides location and operating requirements for Cannabis Retail (Dispensary) and Delivery. A. Conditional use. A Conditional Use Permit shall be required to operate Cannabis Retail (Dispensary) and Delivery in accordance with Tables 2- 6 and 2- 10. The use permit application shall clearly specify if the use is for medical and/or for adult use retail.

D. Location requirements. In addition to the requirements established in Tables 2- 6 and 2- 10, Cannabis Retail shall be subject to the following location requirements: **Overconcentration.** To avoid overconcentration, a Cannabis Retail use shall not be established within 600 feet of any other Cannabis Retail use established within and permitted by the City of Santa Rosa.

PETITIONER'S OPENING COMMENTS

The petitioner shall demonstrate that the competitive scoring of our Cannabis retail dispensary application was materially flawed, overlooked important considerations and created an unfair advantage for the competitor. Furthermore, the competitive applicant was allowed to view confidential information prior to public release in what was described by City staff as a "red" folder. This has tainted the entire process; what other privilege information was made available to our competitor?

STATEMENT OF APPEALABILITY

City of Santa Rosa 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. **CANNABIS SUB COMMITTEE**

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.

PERTINENT FACTS/BASIS FOR APPEAL

As of the filing of this appeal a Request For Public Information has been filed with the City of Santa Rosa which could not be fulfilled. We expect that that information from the RFPI will provide more pertinent information for this appeal. Additional documentation supporting the argument will be provided in an addendum.

- The competitor location, 925 Piner Road, has a significantly impacted parking lot without this proposed retail operation and abuts a youth oriented Karate studio, Calvary Chapel Church and Fencing school (photos on page 6), not disqualifying but certainly not “preferred”.
- Competitor experience in Cannabis retail operations and management is non-existent while The Higher Path has a fifteen-year history. Our client was seriously underscored on this category. At the public Cannabis Sub Committee Meeting on October 25, 2018, the following persons gave personal testimony to The Higher Path’s management experience with Cannabis retail.

Marvin Pineda-state Lobbyist
Shannon Hatten- Local grower
Hugh Freeman- Anderson valley grower
Jasmine Maes- Local midwife
Chris Candelario-Local distributor RVR
Tim Moreland-former BOE and gov relations for RVR
David Scott-Local grower & birth center client
Wayne Kiloh- Father with Epilepsy
David Hua-SF based POS system
Ryan Bush-SF based POS system
Brian Applegarth-Local CCTA
Kevin Senn-LINX state merchant services

Monica Fine-Local from Healdsburg plant medicine maker
Shannon-Fiddlers Green Santa Rosa

- City staff reviewing the applications failed to reflect our application's details and made statements that these components were not in the application. The original rendering with the details of colors and materials is provided on page 8.
- Prior to the release of the rating results, a City staffer allowed the competitor, to review the "red" folder. We have requested the complete contents of that folder via the RFPI.

TIMELINE

- 950 Piner Road Application submitted On April 17th
- June 11th neighborhood meeting but only for our applicant
- Opposing applicant was able to attend the meeting, took notes and photos on details of application and visual renderings, opposing applicant was not required to have neighborhood meeting
- June 21st, opposing applicant submitted additional material that was closely resembled The Higher Path/Bear Flag application
- Added detail that was not originally in their application that was noted in The Higher Path/Bear Flag application
- The opposing applicant was provided the results of the merit based criteria scores before the information became public
- The extensive parking area was not taken into consideration for 950 Piner Rd.

- In the subcommittee meeting the city seemed to be under the impression that the only parking available was in the rear of the building
- 925 Piner (opposing applicant) shares parking areas with potential sensitive uses. The parking lot is used by the following youth sensitive businesses
 1. Martial arts school (Nor Cal Fighting Alliance)-Youth Sensitive
 2. Fencing school (En Garde Fencing)-Youth Sensitive
 3. Calvary Chapel the Rock (church)-Youth Sensitive
- 925 Piner Rd is approximately 620 feet from Lattice Educational Services (school for special needs kids) property line
- 950 is surrounded by compatible/Cannabis uses 925 is NOT
- The 950 land owner dedicated to refacing 3 buildings
- Much more square footage to be upgraded than 925 Piner Rd.
- Fire sprinkler system is being added to 950 not to 925 Piner Rd
- 950 buildings are much more in need of renovation than 925 providing greater community benefit

ACTION REQUESTED

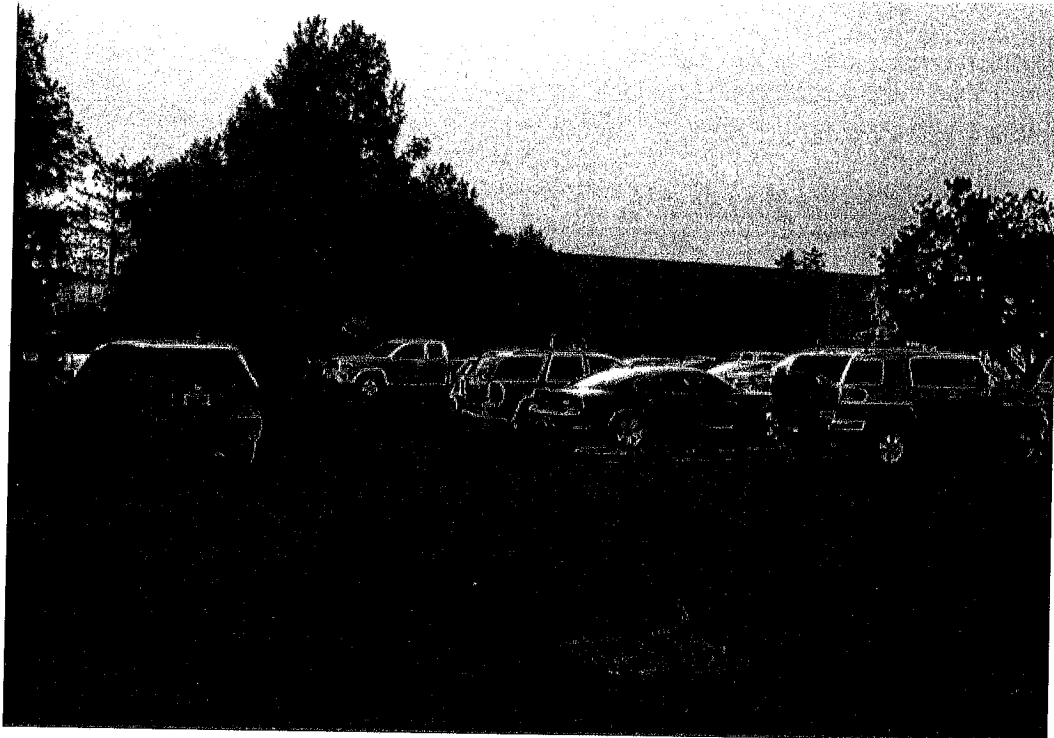
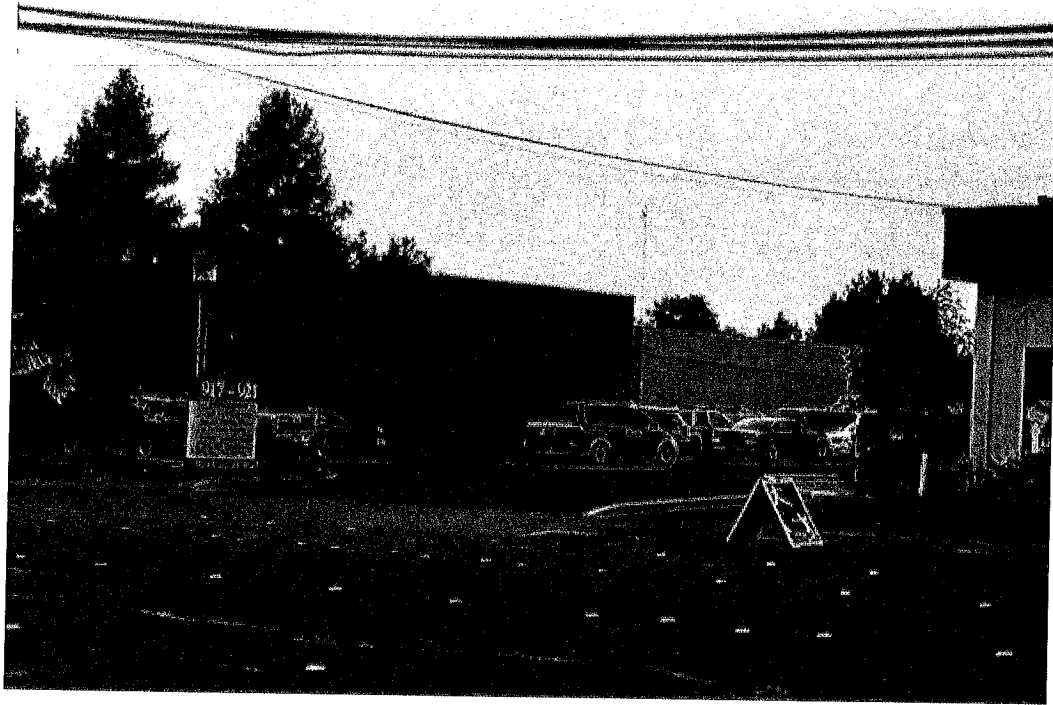
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ARGUMENT

The experience of our applicant alone should be enough to convince the City Council that The Higher Path is the preferred applicant. When that experience is added to the amount of detail provided in our application that was overlooked, our argument is further strengthened (see page 7).

Appellant argues that the competitive process between the applicants at 925 Piner Road Santa Rosa, CA and 950 Piner Road Santa Rosa, CA was materially flawed. Privileged information was provided to the competitor by City staff; this raises many questions and concerns. Our client was required to hold a neighborhood meeting while the competitor across the street was not, how is that an even playing field? The competitor attended the neighborhood meeting and took pictures, notes and asked questions of City staff then revised their application. Our client did not get to sit in on a neighborhood meeting. Staff statements about rendering details were inaccurate yet significant points were lost based on that oversight in two categories of scoring.

EXHIBITS



925 parking impacted at 5:00 pm on a Thursday

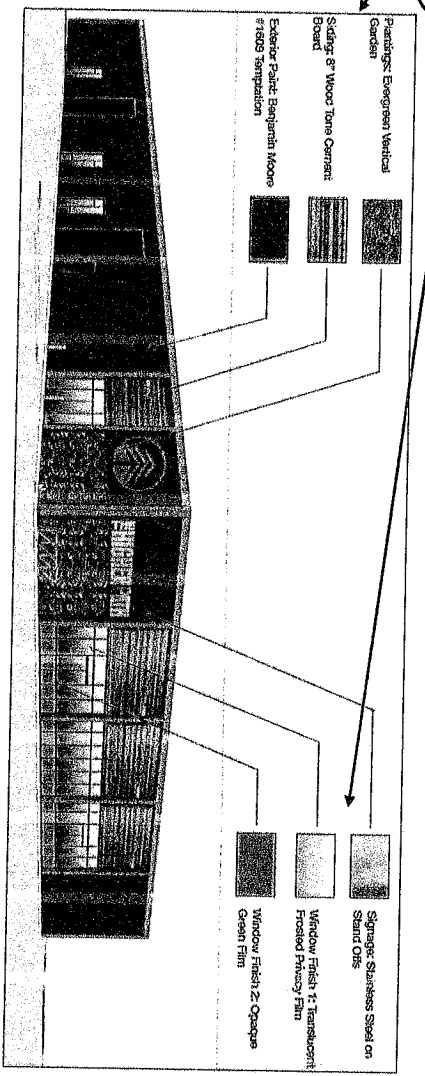
COMMENTS	SCORE	COMMENTS	SCORE
<ul style="list-style-type: none"> • Demonstrates compliance with State regulations. • Demonstrates compliance with County Permit requirements. • <u>Does not refer to General Plan policies.</u> • <u>Demonstrates compliance with City Code.</u> • <u>No experience in cannabis retail, but experienced in cultivation and cultivation related product sales. Sonoma County residents.</u> • <u>Exceptional qualifications and experience of principals.</u> • <u>Very detailed policies and procedures for day-to-day operations.</u> • <u>Application addresses littering and trash but fails to consider other potential nuisance impacts.</u> • <u>Detailed performance timeline.</u> 	15	<ul style="list-style-type: none"> • State regulations addressed. • County regulations addressed, although brief. • Demonstrates Implementation of specific General Plan policies. • Compliance with City Code demonstrated. • <u>Experience with cannabis retail operations in San Francisco.</u> • <u>Demonstrate exceptional qualifications and experiences of principals.</u> • <u>Detailed policies and procedures for day-to-day operations.</u> • <u>Application offers limited consideration of potential nuisance impacts and lacks specificity on how to respond. Describes use of security cameras as a deterrent and 30-min parking limits.</u> • <u>Performance timeline provided, but not very detailed.</u> 	16
<p>* How can you have NO retail experience yet have Exceptional qualifications and experience ?</p> <ul style="list-style-type: none"> • <u>Proposed exterior alterations will enhance visual appearance of existing building and establish a new standard for the surrounding neighborhood. Understated storefront will ensure neighborhood integration.</u> • <u>Adequate odor mitigation plan.</u> • <u>Functional site plan with significant upgrades. Use of quality materials and technology will elevate customer experience.</u> • <u>Application demonstrates a clear and attractive storefront. Bike parking and transit are address, but no mention of pedestrian access.</u> • <u>Building Improvements appear appropriate and may catalyze improvements in the surrounding neighborhood.</u> • <u>New exterior paint and awning. New parking lot lighting.</u> • <u>LED lighting, water efficient fixtures/landscaping, solar panels, electric car charging stations.</u> • <u>Local hiring and extensive employee training. Charitable contributions mentioned.</u> 	17.7	<p>Applicant should have received full points for experience</p> <ul style="list-style-type: none"> • Describes how use and building is compatible with other surround light industrial buildings. Use of lighting and security will help the use fit into the stability and quality of the surrounding neighborhood. • Provides adequate odor control plan. • Applicant proposes a "show and grow" display for educational purposes. • Proposes interior upgrades with quality materials. • Plans show a clear and attractive storefront. Bike parking and access are addressed. 	17.7
	26.5		23.8
	12% more		Delta of 2.7 points
	28.8		22
	27% more		Delta of 6.8 points
		<p>No details on what exterior cosmetic improvements are proposed. No details on materials or colors.</p> <p>Sonoma Clean Power as well as green business practices related to water/energy conservation.</p> <p>Local hiring and employee training. Business is seen as community benefit. Educational seminars on cannabis related topics.</p> <p>These details were provided with the application</p>	See attached cosmetic details
	88		91.3
		79.5	

No Cannabis retailer has more experience in California than the THP team. THP should be the preferred operator if experience and cosmetic details were properly evaluated

Originally Submitted Renderings

Rendering (B) 950 Piner Rd

Details of Materials and Colors



4. **Neighborhood Enhancement (30 points max)**
- i. Quality and extent of improvements to the site, building, and surrounding neighborhoods
 - ii. Integration of project through attractive facade, setbacks, quality materials and colors, landscaping, safe circulation and location of driveways, and ease of parking
 - iii. Environmental benefits - green business practices related to energy and/or water conservation
 - iv. Community benefits e.g. employment opportunities, community programs and contributions.

- Significant upgrades proposed to the interior.
- No details on what exterior cosmetic improvements are proposed. No details on materials or colors.
- Sonoma Clean Power as well as green business practices related to water/energy conservation.
- Local hiring and employee training.
- Business is seen as community benefit. Educational seminars on cannabis related topics.

Dated: November 3, 2018

Respectfully Submitted,



Brian F. Elliott, President
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