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March 9, 2019

Mayor Tom Schwedhelm  
Vice Mayor Chris Rogers  
Council Member Julie Combs  
Council Member Victoria Fleming  
Council Member Ernesto Olivares  
Council Member John Sawyer  
Council Member Jack Tibbetts

City Manager Sean McGlynn  
Director David Guhin  
Deputy Director Clare Hartman  
Kristinae Toomians

RE: Item 14.2, Appeal of Subcommittee Recommendation of 330/358 Yolanda Ave CUP 18-070

Honorable Mayor and Council:

Our office represents Sunstone Advisors, Inc., (*hereafter* “Sunstone”) and the Friends & Farmers brand, whose application for cannabis retail with storefront and delivery was recommended for approval at the meeting of your Cannabis Subcommittee on November 14, 2018. Our project received unanimous approval by your Subcommittee members, following a thorough review of the project details and additional testimony from applicant teams. On November 26, 2018, an appeal was submitted on behalf of the non-recommended project. We hereby submit this response to the claims made in the appeal.<sup>1</sup>

**EXECUTIVE SUMMARY**

The Appellant’s arguments rely almost exclusively on the allegation that the City’s process was flawed, resulting in undue prejudice to the consideration of their project. Their claims include the assertion that Sunstone submitted late information that was improperly considered by the Subcommittee; that Sunstone failed to submit a full application; that the Subcommittee improperly permitted a material change to Sunstone’s project; that Sunstone made false and misleading statements in their application; and that Sunstone benefited from an unfair advantage due to this office’s relationship with City officials.

Appellants fail to establish any of their allegations. The Subcommittee conducted the relevant hearing in accordance with the principles of due process. The Appellants were

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<sup>1</sup> Appellants arguments rely almost exclusively on the premise that the Sunstone team was allowed to submit late information, which the Subcommittee improperly included in their consideration. We note that the deadline to file the appeal documents was ten days after the Subcommittee hearing, or November 26, 2018. We note, additionally, that Appellants attempt to introduce into the record additional appeal documents, dated February 12, 2019.

afforded a fair hearing and opportunity to be heard. The Subcommittee operated in accordance with City ordinance and State laws governing open and transparent decision-making by taking all evidence, written and oral, into consideration. Sunstone timely submitted a full and complete application. Later developments of the project details do not constitute misrepresentations. Sunstone made true and accurate statements. The Subcommittee conducted its deliberations within the strictures of the Santa Rosa ordinance, irrespective of any affiliation of the project team.

Taking the appellant's colorful claims in the light most favorable to them, Appellants fail to make establish that their project would be preferable to the Sunstone project, or that the City's process was unlawful, inequitable, or enforced outside the scope of the relevant Ordinances. We request that the Appeal be denied, and the decision of the Subcommittee, granting a recommendation of approval to Applicant C (*the Sunstone team*), be reaffirmed.

### **Introduction**

On or about April 1, 2018, Sunstone's brand Friends & Farmers timely submitted an application for cannabis retail uses to the City of Santa Rosa at 330/358 Yolanda Avenue. On or about May 31, 2018, Sunstone received a Notification of Incomplete Application from the City's Planning and Economic Development Department. Or or about June 20, 2018, Sunstone timely submitted additional documents and information, responding to the Notification of Incomplete Application. On or about June 27, 2018, Sunstone received a Notification of Complete Application.

Following the completeness review, City staff determined that Sunstone's project fell within a 600-foot radius of an application submitted by CN Santa Rosa (*Appellants*), as well as three other projects. A hearing before the Cannabis subcommittee was originally scheduled for September 27, 2018, and the Staff report recommended approval of the Appellants' application. Regrettably, that hearing was cancelled, and the item was continued to November 14, 2018. The Staff recommendation did not change in the intervening period, and no additional information was presented to the review committee by the Staff, though each project team had the opportunity to (*and, in the case of the Sunstone team, did*) submit additional late correspondence.

At the November 14, 2018 Subcommittee meeting, following testimony from three of the project teams, including both Appellants and Sunstone, and in accordance with established City protocols for public meetings, the members of the Subcommittee (*Vice Mayor Rogers, and Council Members Olivares and Sawyer*) unanimously voted to overturn the recommendation of the Staff and to advance the Sunstone team to the Planning Commission for final consideration and entitlements. On or about November 26, 2018, Appellants lodged an appeal with the City.

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### **First Ground for Appeal**

*Applicant C failed to submit a complete application insofar as the application did not contain the building and site improvement plans raised during the November 14, 2018 hearing.*

### **Response**

#### **SUNSTONE SUBMITTED COMPLETE APPLICATIONS.**

As outlined above, Sunstone timely submitted an application during the initial application period and timely provided responses to the City's Notification of Incomplete Application. The review process in instances of overconcentration was established by City Ordinance 2017-025, and further interpreted by the Planning & Economic Development department.<sup>2</sup> These regulations constitute the sum total of rules prescribing the application process for competitive retail applicants.

#### **SUNSTONE FOLLOWED CITY ORDINANCES WHEN SUBMITTING PROJECT DETAILS AND INFORMATION.**

Following submission and the closure of the application period, Staff recommendations of projects in overconcentration groupings were limited to a review of the written project narratives. As City staff has frequently made clear, including during the overconcentration review period, projects were evaluated based on the written narratives presented prior to the closing of the Application period, or on or about June 21, 2018. These evaluations led to Staff recommendations which were presented to the Subcommittee for evaluation and a preliminary recommendation.

Formal staff review took into account exclusively the written narratives. The City's application procedure is distinct from providing additional information to Subcommittee members. City staff's recommendations were just that: recommendations. The Subcommittee was well within its rights to consider additional information presented by all applicants, and did in fact do so *in every overconcentration hearing*. As outlined above, the Subcommittee permitted every applicant in an overconcentration area to make a presentation. Each team was granted five minutes to make their presentation. Following the closure of the project team presentations, members of the public were given the opportunity to provide comments on the proposals. Following comments from the public, the Subcommittee deliberated amongst themselves, and, taking into consideration the written and oral testimony of all applicants, elected to support Applicant C – our project team.

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<sup>2</sup> "Cannabis Use Application Retail Use Requirements," updated March 15, 2018. <https://srcity.org/DocumentCenter/View/19568/Cannabis-Retail-Use-Application-Requirements---Checklist?bidId=>. Last accessed March 5, 2019.

Clearly, the Sunstone team adhered to the City's application protocols by timely submitting an application during the initial period, and by submitting sufficient information to respond to the City's notification of incomplete application. Sunstone adhered to the customs and norms of the City's review process by providing additional information to the Subcommittee members prior to and during the project review hearing.

APPELLANTS FAIL TO ESTABLISH THE REVIEW PROCESS WAS UNFAIR OR INEQUITABLE.

When reviewing an administrative decision of a local agency such as the City of Santa Rosa, California Courts impose an abuse of discretion standard.<sup>3</sup>

We should evaluate whether due process principles were followed in reviewing whether a fair hearing took place.<sup>4</sup> The Subcommittee conducted the consideration of the Yolanda/Santa Rosa Avenue overconcentration area in the manner prescribed by the Council Policies. City Staff presented the projects and made a recommendation of approval. Each Project team was allowed to make a presentation; members of the public were invited to and did offer public comment. The Subcommittee deliberated, and cast a vote in favor of supporting the Sunstone team. The Appellants received a fair hearing, and an opportunity to be heard, satisfying the fundamental requisite of due process.

**Second Ground for Appeal**

*Applicant C failed to comply with the requirements for completing an incomplete application.*

**Response**

Sunstone complied with all City-defined timelines and application procedures. Additionally, this Ground fails to advance different or additional bases for the appeal, and we thus object to its inclusion in the record.

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<sup>3</sup> Generally, this involves a review of whether the City proceeded without, or in excess of, its jurisdiction; whether there was a fair hearing; and whether there was any prejudicial abuse of discretion. To evaluate whether an abuse of discretion took place, the Court must determine whether the City proceeded outside a manner required by law; whether the order or decision is not supported by the findings; and whether the findings are not supported by the evidence.

*Topanga Ass'n for a Scenic Cmty*, 11 Cal. 3d at 514 (1974); Cal. Code of Civ. Proc., §1094.5(b).

<sup>4</sup> *Hall v. Superior Court*, 3 Cal. App. 5th 792, 808 (2016).

### **Third Ground for Appeal**

*In its application, Applicant C misrepresented the site and building improvements and/or materially changed its application after the submission deadline, in contravention of the applicable rules and ordinances governing application approval.*

### **Response**

#### THE SUNSTONE TEAM MADE TRUTHFUL AND ACCURATE STATEMENTS.

The Sunstone team submitted a full and final application prior to the deadlines imposed by City regulations. This included submitting an application package before the closing of the initial time period. It also included supplying supplemental information in response to the City's Notification of Incomplete Application.

Additionally, contrary to Appellant's assertions, no applications have been approved. The Cannabis Subcommittee is not empowered with the authority to grant final approval of applications. Rather, the Planning Commission and City Council are the only City of Santa Rosa bodies with the authority to take any action on a Use Permit, such as will be required for all retail applicants.<sup>5</sup> The Subcommittee was granted the authority simply to recommend a particular project for full consideration by the Planning Commission, and that is all they have done. The provision of additional information or modified plans is congruent with the rules and ordinances governing application approval.

#### THE SUNSTONE TEAM FOLLOWED CITY ORDINANCES WHEN AMENDING PROJECT DETAILS.

The additional information provided by the Sunstone team was separate from the Staff's report and recommendation to the Subcommittee. The actual staff report refers to "Green Trove Wellness," which was the name originally submitted to the City. A name change request was submitted prior to the closing of the original application period; however, the staff file was not updated. There were additional design-related elements that were omitted. No additional information submitted entered into the Staff's consideration of the project, or their presentation to the Subcommittee.

#### APPELLANTS FAIL TO ESTABLISH THAT THE PROVISION OF ADDITIONAL PROJECT DATA VIOLATED CITY ORDINANCES.

Conditional use permits are first reviewed and conditioned by City Staff, then reviewed by the Planning Commission and may be appealed to the City Council, per

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<sup>5</sup> Santa Rosa Municipal Code, §20-50.020, Table 5-1.

City Code.<sup>6</sup> Following granting of the Use Permit, each project must then work with the Building department to finalize building plans and obtain final Certificates of Occupancy. An application's details often change over time, and should respond to changed conditions. Suggesting otherwise reflects a lack of understanding of the City's entitlement processes.

The projects which are the subject of this appeal have simply been reviewed for completeness, and the degree to which they responded to the City's established seventeen-point review metric. It was on this basis that the Staff made its recommendation. The Subcommittee reviewed additional written and oral testimony by the project proponents, including Appellants and Sunstone, the public, the staff report and recommendation, and made a recommendation for the Sunstone team. Once through this appeal, the project must still be reviewed and conditioned by the City's departments, which may result in changes to the project. The project will then go before the Planning Commission for approval, which may result in further changes to the project. Finally, once the use permit has been granted, the project will need to be reviewed by the Building Department prior to Occupancy, which may (*and likely will*) result in additional, potentially substantial changes to the project's elements.

THERE WAS NO PREJUDICE TO THE CONSIDERATION OF APPELLANTS' PROJECT.

When reviewing an administrative decision of a local agency such as the City of Santa Rosa, California Courts impose an abuse of discretion standard.<sup>7</sup> In reviewing whether a fair hearing took place, we should evaluate whether due process principles were followed.<sup>8</sup> As outlined above, the Subcommittee conducted the consideration of the Yolanda/Santa Rosa Avenue overconcentration area in the manner prescribed by Council Policies. City Staff presented the projects and made a recommendation of approval. Each Project team was allowed to make a presentation. Members of the public were invited to and did offer public comment. The Subcommittee deliberated and cast a vote in favor of supporting the Sunstone team. Thus, it can clearly be shown that the Appellants received a fair hearing, and an opportunity to be heard.

THE SUBCOMMITTEE'S DECISION WAS SUPPORTED BY THE FINDINGS.

In determining whether the hearing proceeded outside the manner required by law, we must also determine whether the Subcommittee's decision was supported by the

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<sup>6</sup> *Id.*

<sup>7</sup> Generally, this involves a review of whether the City proceeded without, or in excess of, its jurisdiction; whether there was a fair hearing; and whether there was any prejudicial abuse of discretion. To evaluate whether an abuse of discretion took place, the Court must determine whether the City proceeded outside the manner required by law; whether the order or decision is supported by the findings; and whether the findings are supported by the evidence. *Topanga Ass'n for a Scenic Cmty*, 11 Cal. 3d at 514 (1974); Cal. Code of Civ. Proc., §1094.5(b).

<sup>8</sup> *Hall v. Superior Court*, 3 Cal. App. 5th 792, 808 (2016)

findings. In this instance, based on the staff report, and written and oral testimony of the project teams and the public, the Subcommittee's decision was to recommend the Sunstone project. The Subcommittee determined that the Sunstone team had more than amply demonstrated that they had not been awarded sufficient points for the qualifications of the principals, neighborhood compatibility and neighborhood benefit. This was based in part on information presented to the Subcommittee during the hearing, including the Sunstone site plans and extensive community partnerships, some of which had been excluded from the Staff's consideration and which were not included in Staff's allocation of merit points. Thus, the Subcommittee concluded, the Sunstone team would have been the preferred applicant by Staff.

THE FINDINGS OF THE SUBCOMMITTEE WERE SUPPORTED BY THE EVIDENCE PRESENTED.

Appellants cannot sustain a claim that the Subcommittee abused their discretion in recommending the Sunstone project because the findings are supported by the evidence presented. In reviewing an administrative act, such as the one at issue here, California courts generally will grant substantial deference to the agency (the City and its Subcommittee).<sup>9</sup>

In this case, the Subcommittee determined that the evidence presented through testimony from the North Bay Labor Council, First Five Sonoma County, Palms Inn, and Teamsters Local 665 showed the Sunstone project to be more desirable than its competitors in both the Neighborhood Compatibility and Neighborhood Improvement categories. Each were worth twenty and thirty points, respectively, in the City's merit based review. Taking into consideration the additional testimony of the public speakers, the Subcommittee determined the Sunstone team should have been awarded more points in these categories, and had, additionally, made itself an integral member of the Yolanda/Santa Rosa Avenue community.

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<sup>9</sup> Indeed, in reviewing the evidence, "all conflicts must be resolved in favor of the [prevailing party], and all legitimate and reasonable inferences indulged in to uphold the [finding] if possible." *Western States Petroleum Ass'n*, 9 Cal. 4<sup>th</sup> 559 at 571.

#### **Fourth Ground for Appeal**

*Applicant C submitted late information that was considered by the Subcommittee, in violation of applicable rules and ordinances governing application approval.*

#### **Response**

##### CITY RULES AND ORDINANCES WERE FOLLOWED BY THE SUBCOMMITTEE.

City staff made it clear that their recommendations were based on the written narrative. The Subcommittee members always retained the right to consider additional written and oral testimony. This is in order to fully evaluate the desirability and overall effect of a particular project.

Additionally, principles of open government, including the Ralph M. Brown Act, dictate that project review and government decisions must be conducted in public, with the inclusion and due consideration of public input.<sup>10</sup> Indeed, California initiatives have interpreted the Brown Act to provide that statutes furthering the people's right of access are to be broadly construed.<sup>11</sup> It is for this reason that Staff recommendations were reviewed in public by the Subcommittee, and the public (*including project proponents*) invited to provide input for the Subcommittee's consideration. Decisions of the Staff are reviewed carefully, consistent with these principles of open and transparent government. This accords with the will of the people of Santa Rosa, who elect the Council to thoroughly review and vet projects of this nature.<sup>12</sup>

We note that Appellants themselves have asked the Council to consider late-filed and additional information. Under Santa Rosa City Code, appeals filed to contest the decision of the Subcommittee are due ten days after the decision is made. In this case, Appellants timely filed their initial statement of appeal on November 26, 2018, which as determined by the City Clerk. However, Appellants later filed their so-called "supplemental appeal documentation" on February 12, 2019- some seventy-eight days after the expiration of the appeal period- and now, with a straight face, ask that the Council afford that document due consideration that, on its face, contests the City admission of late-filed information. We submit that Appellants have conceded the argument that the City may, properly, receive and consider later-filed information pertaining to projects within its purview.

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<sup>10</sup> California Government Code §§54950-54963.

<sup>11</sup> Proposition 59, November 2004.

<sup>12</sup> "The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know." Cal. Gov't Code §54950



**Fifth Ground for Appeal**

*The Cannabis Policy Subcommittee permitted and approved a material change to Applicant C's existing application in contravention of the established rules and ordinances governing application approval.*

**Response**

Sunstone Advisors provided additional project information and proposals for the Subcommittee's consideration consistent with City code, State law, and common practice.

**Sixth Ground for Appeal**

*The Cannabis Policy Subcommittee permitted and approved a material change in Applicant C's existing application without a hearing on that change in contravention of the established rules and ordinances governing application approval.*

**Response**

City policies, rules, and procedures contemplate changes to projects prior to a public hearing. Further, the project has not been approved; thus, no changes have been incorporated or approved in contravention of City policy.

**Seventh Ground for Appeal**

*The Cannabis Policy Subcommittee failed to apply the application requirements to Applicant C, which mandates that "providing false or misleading information during the application and/or permitting process will result in rejection of the application and/or nullification or revocation of any issued permit." (Cannabis Use Application Process and General Requirements, updated March 15, 2018) (Emphasis added.)*

**Response**

The Appellants assertion lacks the necessary specificity to allow a response to these allegations. We reserve the right to amend our response. However, to the extent that Appellants attempt to assert that later-filed information or plan details submitted by the Sunstone team satisfy the requirements of this ground for appeal, we deny those assertions. The Subcommittee was within its rights to consider all information provided by project proponents, both under City of Santa Rosa ordinance and according to State law.

Here, no projects have been selected nor approved. No actionable misrepresentations could (*or did*) occur. Case law on this issue is reserved for projects on which a final action has been taken, and entitlements granted, and which have failed to deliver on those representations or have proceeded in contravention to those commitments. Here,

### **Eighth Ground for Appeal**

*Applicant C was provided an unfair advantage in the application approval process due to Applicant C's attorney's affiliation with City of Santa Rosa Officials.*

### **Response**

APPELLANTS FAIL TO ESTABLISH THE REVIEW PROCESS WAS UNFAIR OR IMPROPERLY IMPLEMENTED, OR THAT SUNSTONE WAS GRANTED UNFAIR ADVANTAGE.

When reviewing an administrative decision of a local agency such as the City of Santa Rosa, California Courts impose an abuse of discretion standard.<sup>13</sup> In reviewing whether a fair hearing took place, we should evaluate whether due process principles were followed.<sup>14</sup> The Subcommittee conducted the consideration of the Yolanda/Santa Rosa Avenue overconcentration area in the manner prescribed by the Council Policies. City Staff presented the projects and made a recommendation of approval. Each Project team was allowed to make a presentation. Members of the public were invited to and did offer public comment. The Subcommittee deliberated and cast a vote in favor of supporting the Sunstone Advisors team. Appellants received a fair hearing, and an opportunity to be heard.

Appellants assertion regarding this office's affiliation with City of Santa Rosa officials contains an unarticulated corollary assertion that the Subcommittee and Staff entered into the deliberative process with a predetermined outcome in favor of Sunstone. However, California courts have determined that there is no denial of a fair hearing even where Council members come to a hearing with predetermined notions or opinions, or even after having made public statements on the nature of a project or in opposition to it.<sup>15</sup> Thus, Appellants have failed to establish that the Sunstone Advisors project was granted an unfair advantage due to any affiliation with City officials.

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<sup>13</sup> Generally, this involves a review of whether the City proceeded without, or in excess of, its jurisdiction; whether there was a fair hearing; and whether there was any prejudicial abuse of discretion. To evaluate whether an abuse of discretion took place, the Court must determine whether the City proceeded outside the manner required by law; whether the order or decision is supported by the findings; and whether the findings are supported by the evidence. *Topanga Ass'n for a Scenic Cmty*, 11 Cal. 3d at 514 (1974); Cal. Code of Civ. Proc., §1094.5(b).

<sup>14</sup> *Hall v. Superior Court*, 3 Cal. App. 5th 792, 808 (2016)

<sup>15</sup> *City of Fairfield v. Superior Court*, 14 Cal. 3d. 768, 779-780 (1975), *Breneric Assocs v. City of Del Mar*, 69 Cal. App. 4th. 166, 184 (1994); *Stubblefield Constr. Co. v. City of San Bernardino*, 32 Cal. App. 4th 687 (1995).

## **CONCLUSION**

Appellants failed to substantiate any of their allegations. Sunstone submitted its application consistent with the law and provided additional project data as it was developed. The City followed its own ordinances by accepting this additional information and allowing changes to projects under review. The Subcommittee review process was fair, and properly implemented. Sunstone's affiliation with City officials resulted in no advantage. The consideration of the projects was proper.

We respectfully request that the appeal be denied, and that the Sunstone project be referred to the Planning Commission for further review and entitlements.

Respectfully Submitted,

*/ECarlstrom/*

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Cc: Client  
City Clerk