



City of Santa Barbara
Community Development Department

Planning Commission Staff Report

REPORT DATE: October 29, 2009

AGENDA DATE: November 5, 2009

TO: Planning Commission

FROM: Danny Kato, Senior Planner *AKD for DYK*

SUBJECT: 2 W. Mission Street – Revocation of Medical Cannabis Dispensary Permit

BACKGROUND

On September 9, 2009, the Staff Hearing Officer (SHO) approved a Medical Cannabis Dispensary Permit (MCDP) for a 600 square foot commercial storefront, located at 2 W. Mission Street (See Exhibit A: SHO Resolution 076-09). Two petitions and 53 letters were received in support, and three letters were received in opposition. Additionally, three people spoke in support, and two people spoke in opposition. The project was not appealed.

On September 15, 2009, Staff received correspondence from the Santa Barbara County Education Office (SBCEO) stating that they run an educational facility at 7 E. Mission Street (Mission Community School). In their correspondence, SBCEO argued that the MCDP for 2 W. Mission should not have been issued because it is within 500 feet of their school. Mission Community School is a community-based educational facility for special needs population.

Section 28.80.090 of the Santa Barbara Municipal Code (Municipal Code) lists 13 criteria that are to be considered when determining whether to grant or deny a permit application for a medical cannabis dispensary. Criteria number seven concerns whether the proposed location is prohibited by state or local law. Section 28.80.060.C of the Municipal Code prohibits the location of dispensaries within 500 feet of a school or park.

The purpose of this hearing is to determine whether the permit was properly issued for the dispensary located at 2 W. Mission. Mission Community School is within 500 feet of the approved dispensary and was operating at the time the dispensary permit was approved. If the Planning Commission determines that the Mission Community School satisfies the definition of a school under the Medical Cannabis Dispensary Ordinance (MCDO), the permit approval is invalid and the permit shall be revoked pursuant to Section 28.80.110 of the Municipal Code.

Normally, requirements, such as locational prohibitions, would be investigated by staff prior to action by the decision making body. In this case, a staff review of the SBCEO's website did not reveal the existence of this educational facility. If the existence of this facility had been known, the issue would most likely have been dealt with at the staff level, and the project would only have appeared on the SHO's agenda if the facility was determined not to be a school. Because the information did not become known until after the SHO's approval of the project and the SHO action was not appealed, this hearing is being conducted pursuant to Section 28.80.110 of the Municipal Code. SBCEO was advised of their opportunity to appeal the decision before the close of the appeal period on September 21, 2009, but SBCEO elected not to appeal the decision.

DISCUSSION

Planning Commission's Purview

If this hearing was an appeal hearing, or a suspension hearing pursuant to SBMC §28.05.020.A, the Commission would conduct a de novo hearing of the permit application. However, the approval was not appealed. Therefore, the City Attorney's Office has determined that a revocation hearing pursuant to Municipal Code Section 28.80.110 is the appropriate means of resolving the issue concerning the Mission Community School. The Planning Commission's role in this hearing is to determine whether the Mission Community School meets the definition of a school under the ordinance.

If the Commission determines that the Mission Community School is a school pursuant to Section 28.80.020.K of the MCDO, then the dispensary must found to be in violation of Chapter 28.80 and the permit will be revoked. If the Commission determines that the Mission Community School does not meet the ordinance's definition of a school, then the permit remains valid.

Definition of "School"

For purposes of the Medical Cannabis Dispensary Ordinance, a school is defined as:

"An institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes an elementary school, middle or junior high school, senior high school, or any special institution of education for persons under the age of eighteen years, whether public or private." SBMC § 28.80.020.K.

Both sentences of the definition emphasize that a school is an institution of learning for minors (those less than 18 years old). The definition also emphasizes the offering of a regular course of instruction as required by the California Education Code. The second sentence lists several types of institutions that are considered schools and a general category of "special institution of education".

Based on the definition of school found in the MCDO, the key factual questions for the Planning Commission to resolve are:

1. Is the Mission Community School an institution of learning for minors?
2. Does the Mission Community School offer a regular course of instruction required by the California Education Code?
3. Is the Mission Community School properly included in or distinguished from the examples of schools listed in the second sentence of the definition (i.e., elementary school, middle or junior high school, senior high school, or any special institution of education for persons under the age of eighteen years)?

SBCEO and the applicant have both submitted information and argument regarding the proper characterization of the Mission Community School for purposes of the Medical Cannabis Dispensary Ordinance. Their letters are attached to this report. (SBCEO's letters: Exhibits B, C and E; Applicant's letter: Exhibit D).

What is a "Regular Course of Instruction Required by the California Education Code?"

The California Education Code (CEC) does not use or define the phrase "regular course of instruction." However, the CEC does define the adopted course of study for certain grades.

CEC Section 51201 states that the adopted course of study for grades 1-2 shall include: English, math, social sciences, science, visual and performing arts, health, physical education, and other studies that may be prescribed by the governing board.

CEC Section 51220 states that the adopted course of study for grades 7-12 shall include: English, social sciences, foreign language, physical education, science, mathematics, visual and performing arts, applied arts, career technical education; automobile driver education and other studies that may be prescribed by the governing board.

State and federal law require public schools to provide modified school programs to ensure that students with disabilities are provided appropriate free public education. These modified programs are called Individualized Education Programs. The CEC sets forth requirements for Individualized Education Programs for students with exceptional needs (i.e. special education for students with disabilities).

Staff's understanding of these community-based facilities is that they are not fixed places of operation. Their location can be dynamic, based on space needs, availability and rents. According to the SBCEO, the community-based program at 7 E. Mission has been in existence for about eight years.

Recommendation

Staff believes the Mission Community School should be categorized as a school for purposes of the MCDO for the following reasons:

1. The facility serves students between the ages of 16 and 22 (minors are currently enrolled, there is no set mix of the student population);
2. The students' Individualized Education Programs include an education component that is required by the California Education Code;
3. The purpose of the school is to allow disabled students to complete their high school education, (as opposed to beginning their college education); and,
4. On the whole, the educational and mental development of the students attending Mission Community School is more similar to elementary and secondary schools than community colleges or other educational institutions geared for adults.

Staff recommends that the Planning Commission find the 2 W. Mission Street dispensary in violation of SBMC §28.80.060.C., because it is located less than 500 feet from a school, and revoke the MCDP approved by the Staff Hearing Officer on September 9, 2009.

Exhibits:

- A. SHO Resolution 076-09
- B. Letter from Joe Sholder, Attorney for SBCEO, 10/14/09
- C. Letter from Florene Bednersh, SBCEO, 10/14/09, and email from Stan Harkness, CA Department of Education, 9/25/09
- D. Letter from Steve Amerikaner, Attorney for the applicants, 10/21/09
- E. Letter from Joe Sholder, 10/22/09



City of Santa Barbara California

CITY OF SANTA BARBARA STAFF HEARING OFFICER

RESOLUTION NO. 076-09
2 WEST MISSION STREET
MEDICAL CANNABIS DISPENSARY PERMIT
SEPTEMBER 9, 2009

APPLICATION OF FRANCISCA MELUSINA EDWARDS, APPLICANT FOR THE SANTA BARBARA GREENCARE COLLECTIVE, 2 WEST MISSION STREET, APN 025-311-013, C-2 ZONE, GENERAL PLAN DESIGNATION: GENERAL COMMERCE AND OFFICE (MST2009-00314)

The project consists of the establishment of a medical cannabis dispensary in a 600 square foot commercial tenant space located at 2 West Mission Street.

The discretionary application required for this project is a Medical Cannabis Dispensary Permit (MCDP) (SBMC §28.80.030).

The Environmental Analyst has determined that the project is exempt from further environmental review pursuant to the California Environmental Quality Guidelines Section 15301 (Existing Facilities).

WHEREAS, the Staff Hearing Officer has held the required public hearing on the above application, and the Applicant was present.

WHEREAS, three people appeared to speak in favor of the application, and two people appeared to speak in opposition thereto, and the following exhibits were presented for the record:

1. Staff Report with Attachments, September 2, 2009.
2. Site Plans
3. Correspondence received in support of the project:
 - a. Mogly's Cavalosti, 2007 State Street, Santa Barbara, Ca
 - b. Brenno M. Ressa, 2530 Las Positas Road, Santa Barbara, Ca
 - c. Chelsea Winkelmeier, 1129 N. Patterson Avenue, Santa Barbara, Ca
 - d. Romelia Alvarado, 123 W. Sola Street Unit 1, Santa Barbara Ca
 - e. Cheryl Keyes, 123 W. Sola Street Unit 7, Santa Barbara, Ca
 - f. Beta-Raquel Rivera, PO Box 735, Santa Barbara, Ca
 - g. Lynett Simpson, 210 Old Mill Road Unit 36, Santa Barbara, Ca
 - h. Hadi Arfaei, 308 Oceano Avenue, Santa Barbara, Ca
 - i. Barbara J. Ellis, 2330 Chapala Street, Santa Barbara, Ca

- j. Edward Steinfeldt, 122 E. Arrellaga Street, Santa Barbara, Ca
- k. Vincent J. Amore, 1426 Laguna Street Unit C, Santa Barbara, Ca
- l. Renee Basile, 1027 Cacique Street, Santa Barbara, Ca
- m. Crecencio Cabrera, 2034 Bath Street Unit 2, Santa Barbara, Ca
- n. Pascual Correa, 2215 Santa Barbara Street, Santa Barbara, Ca
- o. Gloria C. Garcia, 2034 Bath Street Unit 2, Santa Barbara, Ca
- p. Agustin Gonzalez, 83 N. La Cumbre Road Unit 4, Santa Barbara, Ca
- q. Margarita G. Mdel, 83 N. La Cumbre Road Unit 4, Santa Barbara, Ca
- r. Rosie M. Scherf, 408 Santa Fe Place Unit 3, Santa Barbara, Ca
- s. Charles B. Butler, 635 Micheltorena Street, Santa Barbara, Ca
- t. Tammi Medeiros, 2923 La Combadura Road, Santa Barbara, Ca
- u. Thomas Taylor, 2530 Las Positas, Santa Barbara, Ca
- v. Susan McKnight, 550 Flora Vista Drive, Santa Barbara, Ca
- w. Margaret Douville, 1432 Portesuello Avenue, Santa Barbara, Ca
- x. Dennis R Douville, 1432 Portesuello Avenue, Santa Barbara, Ca
- y. Janal Andrews, 4541-F Oaks glen Drive, Santa Barbara Ca
- z. Shayne Kleinebecker, 1315 Anacapa St, Unit B, Santa Barbara, Ca
- aa. Margo Wagner, 16 W. Pedregosa Street, Santa Barbara, Ca 93101
- bb. Kirsten Magnussen, 25 W. Mission St, Unit B, Santa Barbara, Ca
- cc. Samson Kassay, 1900 Chapala, Unit 6, Santa Barbara, Ca
- dd. Eileen Bryan, 2030 State Street, Unit 6, Santa Barbara, Ca
- ee. Jeff Fine, 2030 State Street, Suite 3, Santa Barbara, Ca
- ff. Ryan Woosley, 21 W. Padre Street, Santa Barbara, Ca
- gg. Edward R. McNall, 16 ½ Pedregosa Street, Santa Barb ara, Ca
- hh. Anne Rydfors, 2030 State Street, Suite 5, Santa Barbara, Ca
- ii. Lois Prince, 22 W. Pedregosa Street, Santa Barbara, Ca
- jj. Jen Blankendeckler, 21 W. Padre Street, Santa Barbara, Ca
- kk. Sarada Lewis, 32 E. Padre Street, Santa Barbara, Ca
- ll. Darren C. Sullivan, 2030 State Street Suite 18, Santa Barbara, Ca
- mm. Ken Sherman, 2030 State Street, Santa Barbara, Ca
- nn. Susan Beril, 19 W. Padre Street, Santa Barbara, Ca

- oo. Kevin Brun, 28 W. Pedregosa Street Unit 3, Santa Barbara, Ca
 - pp. Karl P. Bradford, 15 W. Pedregosa Street, Santa Barbara, Ca
 - qq. Mehrdad Fetrat, 28 W. Pedregosa Street Unit 12, Santa Barbara, Ca
 - rr. Marsha Fritzen, 24 W. Pedregosa Street, Santa Barbara, Ca
 - ss. Maggie Gold, 24 W. Pedregosa Street Unit C, Santa Barbara, Ca
 - tt. Susan McKnight, 550 Flora Vista, Santa Barbara, Ca
 - uu. Joycelyn M. Kremer, 28 W. Pedregosa Street Unit 2, Santa Barbara, Ca
 - vv. BiBi Moezn, 28 W. Pedregosa Street Unit 4, Santa Barbara, Ca
 - ww. Thomas Vames, 28 W. Pedregosa Street, Santa Barbara, Ca
 - xx. Victoria Zermeno, 7329 Hillsboro Street, Goleta, Ca
 - yy. Francisco Fragoso, 1231 Blanchard Street, Santa Barbara, Ca
 - zz. Silvia E. Fragoso, 1231 Blanchard Street, Santa Barbara, Ca
 - aaa. Two petitions containing a total of 649 signatures in support (5 petition signers also submitted letters in support).
4. Correspondence received in opposition to the project:
- a. Patricia Thompson Perry, Alisos Investment Company, Inc., 2175 Alisos Drive, Santa Barbara Ca
 - b. Elvina Geauque, 5 W. Padre Street, Santa Barbara, Ca
 - c. Paula Westbury, 650 Miramonte Drive, Santa Barbara, Ca

NOW, THEREFORE BE IT RESOLVED that the City Staff Hearing Officer:

- I. Approved the subject application making the following findings and determinations:
 - A. **MEDICAL CANNABIS DISPENSARIES (SBMC Chapter 28.80)**
 - 1. The dispensary permit complies with the limitations on the permitted locations of a dispensary pursuant to Section 28.80.060 of the Zoning Ordinance, as described in Section VI.A of the staff report.
 - 2. The dispensary permit complies with the criteria set forth in Section 28.80.090 (Criteria for Review of Dispensary Applications) of the Zoning Ordinance, as explained in Section VI.B of the Staff Report and the Applicant's submittal.
 - 3. This dispensary permit is approved conditioned upon compliance with the operational requirements specified in Section 28.80.070 of the Zoning Ordinance and the conditions of approval outlined in Exhibit A.

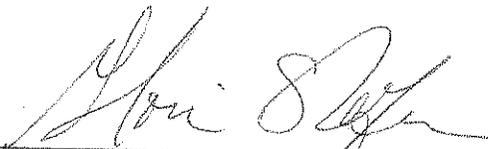
II. Said approval is subject to the following conditions:

1. This Medical Cannabis Dispensary Permit is conditioned upon continued compliance with the operational standards specified in Santa Barbara Municipal Code section 28.80.070.
2. Applicant shall operate the dispensary in accordance with the application information submitted to the City Planning Division on June 30, 2009 and plans submitted August 24, 2009.
3. Prior to commencement of the business, the tenant improvements and modifications to the floor plan in conformance with the revised floor plan submitted June 9, 2009, or as modified City Building Official, shall be completed and shall have cleared final building inspection. The applicant shall obtain a Building Permit for said interior changes.
4. Prior to the anniversary date of the issuance of this permit, the operator shall submit an annual renewal fee, if such fee is established by the City Council.
5. The security/site plan shall be revised to include a total of twelve (12) cameras, including seven (7) outside and five (5) inside.
6. Applicant shall apply for an alarm system permit. Said alarm system shall be installed and registered per SBMC Chapter 9.100 and shall meet the requirements of the Santa Barbara Police Department.
7. The street front windows shall be kept clear of any obstructions including any interior or exterior window treatments to facilitate visibility from the street, unless otherwise approved by the Police Department. The front lobby shall not have any signs or obstructions that would limit visibility of the lobby from Mission Street.
8. Prior to the issuance of a Building Permit, the operator of the dispensary shall be required to apply for and obtain a Business Tax Certificate pursuant to Chapter 5.04, as required by the State Board of Equalization. Dispensary sales shall be subject to sales tax in a manner required by state law.
9. In order to comply with SBMC §28.80.070.A., prior to any involvement with the dispensary, all new employees, volunteer workers, or any person exercising managerial authority over the dispensary shall apply for and obtain a background check cleared through the City Police Department prior to commencement of activities associated with the dispensary.
10. The hours of operation for the dispensary shall be limited to between 10:00 a.m. and 7:00 p.m.

11. The security personnel hired to comply with SBMC Section 28.80.090.B.9 shall be licensed by the California Bureau of Security and Investigative Services. The licensed security personnel's responsibilities shall include enforcing the requirements to disallow cannabis use on the site, control of conduct resulting in disturbances, vandalism, crowd control inside or outside the premises, traffic control problems, cannabis use in public, or creation of a public or private nuisance, or interference with the operation of another business.
12. Exterior lighting shall be reviewed and approved by the Architectural Board of Review.
13. The front entry door shall not be recessed.

This motion was passed and adopted on the 9th day of September, 2009 by the Staff Hearing Officer of the city of Santa Barbara.

I hereby certify that this Resolution correctly reflects the action taken by the city of Santa Barbara Staff Hearing Officer at its meeting of the above date.



Gloria Shafer, Staff Hearing Officer Secretary

9-15-2009

Date

PLEASE BE ADVISED:

1. This action of the Staff Hearing Officer can be appealed to the Planning Commission or the City Council within ten (10) days after the date the action was taken by the Staff Hearing Officer.
2. If the scope of work exceeds the extent described in the Modification request or that which was represented to the Staff Hearing Officer at the public hearing, it may render the Staff Hearing Officer approval null and void.
3. If you have any existing zoning violations on the property, other than those included in the conditions above, they must be corrected within thirty (30) days of this action.
4. Subsequent to the outcome of any appeal action your next administrative step should be to apply for Historic Landmarks Commission (HLC) approval and then a building permit.
5. **PLEASE NOTE: A copy of this resolution shall be reproduced on the first sheet of the drawings submitted with the application for a building permit.** The location, size and design of the construction proposed in the application for the building permit shall not deviate from the location, size and design of construction approved in this modification.
6. **NOTICE OF APPROVAL TIME LIMITS:** The Staff Hearing Officer's action approving the Performance Standard Permit or Modifications shall expire two (2) years from the date of the approval, per SBMC §28.87.360, unless:
 - a. A building permit for the construction authorized by the approval is issued within twenty four months of the approval. (An extension may be granted by the Staff Hearing Officer if the construction authorized by the permit is being diligently pursued to completion.) or;
 - b. The approved use has been discontinued, abandoned or unused for a period of six months following the earlier of:
 - i. an Issuance of a Certificate of Occupancy for the use, or;
 - ii. one (1) year from granting the approval.

GRIFFITH & THORNBURGH, LLP

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October 14, 2009

Our File No.:
3849-0001

VIA EMAIL AND HAND DELIVERY

City of Santa Barbara,
Planning Commission
630 Garden Street
Santa Barbara, CA. 93101

Re: Case #MST 2009-00314 (2 W. Mission Street)

Dear Planning Commission Members:

We serve as general counsel to County Superintendent Bill Cirone and the Santa Barbara County Education Office ("CEO"). For the last eight years, the CEO has operated the Mission Community School at 7 E. Mission Street. The Mission Community School is located within 500 feet of the proposed medical cannabis dispensary at 2 W. Mission Street. Because the Mission Community School is a "school" within the meaning of Municipal Ordinance 28.80.020(K), as well as under applicable state law, the CEO opposes the project because it violates Santa Barbara Municipal Ordinance 28.80.60(C)(1). Superintendent Bill Cirone and the CEO staff believe that the minor-aged special education students who attend the Mission Community School are entitled to the same protection under the Ordinance as other K-12 students attending schools throughout the City of Santa Barbara.

The purpose of this letter is to provide you with the facts and applicable special education law to assist you, the City Attorney and Planning Commission staff with regard to the determination that the Mission Community School is a "school" within the meaning of the ordinance.

THE SCHOOL AND ITS STUDENTS

The CEO provides a wide range of special education services to K-12 special education students throughout Santa Barbara County. These services are provided to "individuals with exceptional needs" as required by both the federal Individuals with Disabilities Education Act (IDEA), and

EXHIBIT B

Cal.Educ.Code §§ 56026(c) (1) through (4). IDEA was originally enacted by Congress in 1975 to ensure that children with disabilities have the opportunity to receive a free and appropriate public education, just like other children. The California Education Code requirements are tailored to meet the requirements of federal law.

As set forth in greater detail in the attached letter of Dr. Florene Bednersh, the CEO's Assistant Superintendent for Special Education, the special education programs run by the CEO include providing transitional services needed by K-12 students with exceptional needs in order to complete their secondary education. Under Cal.Educ.Code § 56341.5(e), by the time students with exceptional needs reach 16 years of age, they are required to have been assessed with respect to post-secondary goals and a plan put in place to begin providing all needed transitional services to complete the K-12 program. The CEO provides these services at two types of locations: on comprehensive high school campuses, where the special education students are served among the general education population, and at community-based school sites like Mission Community School which solely serve special education students. Students who are educated in one of the CEO-operated community based program schools generally have multiple or profound disabilities and/or are able to function best in a more sheltered environment.

Under Cal.Educ.Code § 56345.1, "transition services" means a coordinated set of services, based upon the individual needs of the pupil, that is "focused upon improving the academic and functional achievement of the individual with exceptional needs to facilitate the movement of the pupil from school to postschool activities...." The regular course of instruction follows California State standards but is modified to meet the individual needs of students who have cognitive delays.

In accordance with this statutory mandate, the Mission Community School provides secondary education beginning at age sixteen to those students who, due to their disabilities, have been assessed as being in need of transitional services, and who require a more restrictive environment than is offered at a comprehensive high school. Because of the requirements of state and federal law (see Cal.Educ.Code § 56300), individuals with exceptional needs ranging in age from 16 to 21 years are the targeted student population for these K-12 services. This is a school that is operated for minor-aged pupils, as well as students who have reached age 18, who are in need to transitional services.

The Mission Community School's curriculum emphasizes planning for life after the student completes his/her K-12 education. A fully credentialed special education teacher, supported by two instructional assistants, provides instruction on a regular school schedule of Monday through Friday from 8:15 a.m. to 2:15 p.m. The Mission Community School has the capacity to educate twelve students. The Mission Community School currently serves six students aged seventeen to twenty. The size and age of the school population fluctuates depending upon the needs at any given time to provide these services to students who are identified as benefiting from community based program site, away from the comprehensive high school. The instructional program is designed to serve pupils beginning at age 16. Minor aged pupils are regularly served, in addition to students who have reached age 18. The Mission Community School is not an adult program.

The CEO is authorized to operate the Mission Community School at 7 E. Mission Street pursuant to Cal.Educ.Code § 17289 which provides a waiver of the general Education Code requirements governing school buildings for “community-based” schools that “serve[] fewer than 25 pupils enrolled in kindergarten or any of the grades 1 to 12, inclusive” Cal.Educ.Code § 17289(a) (4). As such, the Mission Community School is duly recognized by the California Department of Education (CDE) as a public school that meets all requisite criteria under both state law and the Ordinance definition. Accompanying the attached letter from Dr. Florene Bednersh is a copy of email correspondence from the CDE confirming that this is the case.

THE SCHOOL FALLS WITHIN THE DEFINITION OF “SCHOOL” IN MUNICIPAL ORDINANCE 28.80.020(K)

Municipal Ordinance 28.80.060(C) (1) prohibits the permitting of a medical cannabis dispensary “[o]n a parcel located within 500 feet of a school or park.” Municipal Ordinance 28.80.020(K) defines a “school” as follows:

An institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes an elementary school, middle or junior high school, senior high school, or any special institution of education for persons under the age of eighteen years, whether public or private.

In the CEO’s view, the Mission Community School falls squarely within this definition.

The Mission Community School is a “public” “institution of learning.” It provides general educational and transition services to K-12 special education students at public expense. The Mission Community School is authorized under Cal.Educ.Code § 17289 and is formally recognized as a school by the CDE.

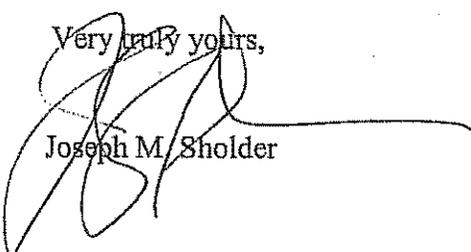
The Mission Community School provides “a regular course of instruction required by the California Education Code.” As noted above, the Cal.Educ.Code §§ 56026(c) (1) through (4) and 56341.5(e) both generally mandate that the CEO provide these students with an education and specifically require that these students receive transitional services. The course of instruction is “regular” because it is provided on a defined and periodic schedule with a curriculum that meets California State standards.

Further, the Ordinance also includes “any special institution of education for persons under the age of eighteen years” That term encompasses schools, like the Mission Community School, operated at locations other than regular school campuses to provide community-based education to “fewer than 25 pupils enrolled in kindergarten or any of the grades 1 to 12, inclusive” Thus, the fact that the Mission Community School doesn’t provide its course of instruction at an elementary school, middle or junior high school, or senior high school is of no moment.

Finally, as required by the Ordinance, the Mission Community School provides "education for persons under the age of eighteen years . . ." The Ordinance can't be fairly read to apply only to institutions which *exclusively* serve minors. If this was the case, Santa Barbara High School would be excluded from the definition of a "school" because it has students over eighteen years old, including those who have special education needs similar to the pupils attending Mission Community School. Neither can the Ordinance be fairly read to include Santa Barbara Community College as a defined "school" because it has some students under eighteen. Rather, the crux of the definition is to exclude post-secondary schools like community colleges and universities and to include elementary and secondary schools. As noted above, the Mission Community School provides special education services for the equivalent of up to grade 12. Thus, it clearly falls within the definition of "school" in the Ordinance.

Representatives of the CEO and I plan to be at the November 5, 2009 hearing on this matter and will be available to answer any questions you may have.

Very truly yours,



Joseph M. Sholder

cc. Bill Cirone, Superintendent County Education Office
Florene Bednersh, Assistant Superintendent, Special Education Services
Scott Vincent, Assistant City Attorney
Danny Kato, Senior Planner



Santa Barbara County Education Office

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October 14, 2009

VIA EMAIL AND HAND DELIVERY

City of Santa Barbara,
Planning Commission
630 Garden Street
Santa Barbara, CA. 93101

Re: Case #MST 2009-00314 (2 W. Mission Street)

Dear Planning Commission Members:

I am Assistant Superintendent for Special Education for the Santa Barbara County Education Office ("CEO"). I am writing to provide you with relevant information regarding the CEO-operated Mission Community School at 7 E. Mission Street and to supplement the material provided to you by our General Counsel, Griffith and Thornburgh, in their accompanying October 14, 2009 letter.

Superintendent Bill Cirone and I object to the proposed medical cannabis dispensary at 2 W. Mission Street because it is within 500 feet of the Mission Community School run by CEO. The Mission School is a "school" under both state law and the City ordinance. It provides a K-12 student population who have profound disabilities with special education services beginning at age 16 as required by state and federal law. Students attend this school because they have disabilities and educational needs which exceed what is available to students at a comprehensive public school. The students who attend this school should be accorded the same rights and protections as all other students in the City.

Consistent with the requirements of the California Education Code, the Mission Community School is one of the community-based schools operated by the CEO to provide special education services to "individuals with exceptional needs." As set forth in the attached September 25, 2009 e-mail from Stan Harkness, Education Administrator for the California Department of Education ("CDE"), the Mission Community School is recognized as a "school" by the CDE.

The CEO is authorized to operate the Mission Community School at 7 E. Mission Street pursuant to California Education Code provisions authorizing the establishment of "community-based" schools that serve fewer than 25 pupils enrolled in kindergarten or any of the grades 1 to 12, inclusive. Students who are educated in one of the CEO-operated community based programs like the Mission Community School generally have multiple or profound disabilities and/or are able to function best in a more restrictive environment. The community based school program

EXHIBIT C

was established fifteen years ago to fill this niche and to provide the state-mandated education to these students. Mission Community School has been operating at its present location for the last eight years.

The focus of the Mission Community School is to provide secondary education to students 16 and above who have needs that cannot be met in a regular classroom. In accordance with law, these students must be evaluated by the time they reach age 16 to determine their post-secondary goals and what transitional services they require. Their disabilities preclude their participation in general educational programs for the majority of the school day. Under state and federal law, the obligation to provide K-12 education to students with exceptional needs does not terminate until age 21 if extended time is required for each student to complete the K-12 program. Because of the severity of the disabilities facing some of our students, our community based program typically has students who are both over and under age 18, but the program is designed and operated to include students who are aged 16 and 17, as well as older students.

The Mission Community School has the capacity to educate twelve students and currently serves six students aged seventeen to twenty. All are students with severe disabilities including mental retardation, orthopedic impairments and autism. The Mission Community School operates from Monday to Friday from 8:15 a.m. to 2:15 p.m. The students are delivered on a school bus to the Mission Community School. Some students stay at the school during the entire day. Some spend part of the day at the school and the remaining part of their day in other programs.

Beginning at age sixteen, a major focus of the students' program is planning for life after the school years. The course of study is specially designed and curriculum follows California State Standards but is modified to meet the individual needs of students who have cognitive delays. So, in addition to academic work for completing units and passing the California exit examination required to obtain a high school diploma, the curriculum also includes instruction in important life skills. This includes: training in self-care, cooking, household chores; vocational instruction to enable students to building upon job skills as necessary steps toward transition into competitive or sheltered employment; and classes in social interaction, and training in using the bus system and shopping. Instruction is provided by a credentialed special education teacher who is aided by two instructional assistants.

In every sense, the Mission Community School is a real school to the students involved. Allowing a medical cannabis dispensary within 500 feet of the Mission Community School would deny students who are unable to attend a comprehensive school site due to their disabilities and special needs the same protections that other students are afforded under the ordinance.

Representatives of the CEO will be at the November 5, 2009 hearing to answer any questions you have regarding the operation of the Mission Community School. Unfortunately, our monthly County Board of Education meeting is scheduled at the same time and Bill Cirone will be unable to attend.

Very truly yours,

Florene Bednersh

Dr. Florene Bednersh
Santa Barbara County Education Office
Assistant Superintendent, Special Education
Services

cc. Bill Cirone, Superintendent County Education Office
Danny Kato, Senior Planner
Scott Vincent, Deputy City Attorney

From: Stan Harkness [mailto:SHarknes@cde.ca.gov]

Sent: Friday, September 25, 2009 1:50 PM

To: Florene Bednersh

Subject: Documentation of School Site

TO: Florene Bednersh
Assistant Superintendent
Special Education
Santa Barbara County Education Office

RE: Community Based School/Documentation of School Site
7 E. Mission, Santa Barbara, CA 93105

Ms. Bednersh:

You requested a response to the question as to whether your community-based school program located in a storefront building is recognized by the California Department of Education (CDE) as a school.

Please see the following which is what CDE uses to define a school:

Definition of a School

The term school is used to refer to **all educational institutions** having the following characteristics:

1. One or more teachers to give instruction;
2. An assigned administrator;
3. Based in one or more buildings; and
4. Enrolled or prospectively enrolled students.

Definition of a Public School

The CDE further defines a public school as a kindergarten through grade twelve **and/or** adult educational institution that:

1. Is supported with public funds;
2. Is authorized by action of and operated under the oversight of a publicly constituted local or state educational agency;
3. Provides educational services to all students who are enrolled;
4. Has an appropriately credentialed teacher (or teachers) who provides instruction;
5. Has at least one appropriately credentialed administrator, usually a principal, who is responsible for all aspects of school administration including supervision and evaluation of staff, fiscal responsibility, student discipline and safety, supervision and evaluation of curriculum, and assessment of academic achievement and school accountability;
6. Administers California statewide assessments to its students at the **required** grade levels;
7. Has an administrator, usually a principal, with access to and responsibility for maintaining official student records for all enrolled students;
8. Except for charters, implements a curriculum that fully meets state requirements as specified in the California *Education Code* relating to required courses of study;
9. Is non-sectarian;
10. Except for charters, the entity's budget structure is consistent with the budget structure of schools operated by the authorizing agency; and
11. Based in one or more buildings that are "Field Act" compliant, unless exempt.

The program in question is, by definition and function, a school.

I hope this answers your question.

Sincerely,

Stan Harkness
Education Administrator
California Department of Education
Special Education Division

October 21, 2009

Steven A. Amerikaner

HAND DELIVERY

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The Honorable Stella Larsen and Members of the Planning Commission
City of Santa Barbara
P.O. Box 1990
Santa Barbara, CA 93101

RE: Case # MST 2009-00314 (2 W. Mission Street)

Dear Chair Larsen and Members of the Planning Commission:

This letter is written on behalf of Francisca and Hans Edwards, the applicants for the Medical Cannabis Dispensary proposed for 2 W. Mission Street, Santa Barbara. Mr. and Mrs. Edwards respectfully request that the Planning Commission determine not to suspend or revoke the Medical Cannabis Dispensary Permit issued by the Staff Hearing Officer on September 9, 2009.

Background

Mr. and Mrs. Edwards are a retired couple, age 65 and 55. For 26 years, they owned and operated a successful apparel business in downtown Los Angeles. The company had 30 employees, and sold Mrs. Edwards' lines of apparel throughout the country to major department stores, catalogue operations and boutiques.

Mr. and Mrs. Edwards studied cannabis dispensaries in other California communities such as San Francisco and Los Angeles with respect to their layout, security and operational efficiencies, and discovered that this business does not require as much floor area as is often provided for it. In 2006, they helped open a dispensary in Los Angeles on Robertson Boulevard in a location with 700 square feet. This proved to be more than ample space for serving the community of Beverlywood. The Edwards have transferred their interest in that dispensary, and are using their savings to open a licensed dispensary in Santa Barbara. Based on their age and business experience, the dispensary they are planning will be run professionally and with true compassion.

Mr. and Mrs. Edwards have been working with City staff since Fall 2008 to find an appropriate location for a legal and permitted dispensary. They consulted numerous times with Planning staff as to each location they considered, both by e-mail and in person. They have been extraordinarily attentive to the requirements of the Medical Cannabis Dispensary Ordinance and the zoning code. They paid particular attention to the map entitled "Medical Cannabis Dispensaries Allowed Location Downtown" distributed by the Planning Department (copy attached).

After a great deal of work, Mr. and Mrs. Edwards settled on 2 W. Mission Street in June 2009. They picked this location based on the following factors:

EXHIBIT D

1. It is located in a low crime area according to a Police Department study they requested.
2. It is close to public transportation (State Street and Mission Street corridors).
3. It is in a quiet area with no bars, clubs or other entertainment venues.
4. There are no dispensaries within 2000 feet of this location.
5. The zoning was appropriate, as confirmed by Planning staff.
6. It is adjacent to a residential neighborhood with a strong concentration of retired and senior citizens which is the demographic Mr. and Mrs. Edwards wish to serve.
7. It is a small building (600 sf), which is perfect for dispensing herbal remedies, including medical cannabis. Planning Staff confirmed that this size was "perfect" for this use.

This site was also reviewed by City staff. Planning staff visited the location on two occasions, including one visit accompanied by a Building Inspector. The only issue they identified was the need for handicapped access at the front entrance, which will be addressed in the building improvement plans.

Mr. and Mrs. Edwards signed a contingent lease for the building, to go into effect once the City permitted the use. They engaged Gil Garcia, a well-respected local architect and former City Council member with a strong background in City land use policies and procedures. Mr. Garcia estimated that the plans and project costs for the project would exceed \$100,000 in order to meet City zoning and building code requirements.

Since security is a major policy concern of the Dispensary Ordinance, building and operational security has also been carefully considered for this project. Mr. and Mrs. Edwards examined a number of security companies and ultimately selected Sierra Group Company, which is highly regarded in the industry. In addition, they spoke with Police Captain Martel to discuss the Police Department's security requirements. Planning staff had a similar conversation with Captain Martel to discuss alarm and surveillance systems, door locking mechanisms, and similar issues. Captain Martel visited the site, approved the security systems and made a few suggestions to improve the plans, all of which are being implemented.

Mr. and Mrs. Edwards completed and submitted an application to the City. The environmental analyst determined that the project is categorically exempt from environmental review as an "Existing Facility."

Outreach to the Community

Mr. and Mrs. Edwards are committed to ensuring a transparent process, and thus took extraordinary steps to let the neighbors know about this project. They engaged Marti Correas, Mr. Garcia's wife, to help in developing a public outreach plan.

In addition to the notice sent by the City of the Staff Hearing Officer Meeting to property owners within 300 feet of the site, Mr. and Mrs. Edwards sent their own letter to those neighbors. In addition, they hired people to go door-to-door in the neighborhood to explain the project and to ask if anyone had concerns or problems with the project.

Only one neighbor contacted Mr. and Mrs. Edwards in response to their letter. They went to visit him (along with Mr. and Mrs. Garcia) and during a conversation this neighbor's concerns were addressed and he indicated his support for the project.

As a result of these efforts, over 650 people signed petitions in support of the project and over 50 individual letters were submitted to the Staff Hearing Officer supporting the project.

In the course of this neighborhood outreach, the existence of an "educational facility" at 7 E. Mission was not discovered. It is not identified as a "school" on the Medical Cannabis Dispensaries Allowed Location Downtown Map used by the City. There is no indication on the building itself or on its signage that there is a "school" at that location. In fact, on the sign board facing the street, the facility is described as "County Education Office – Community Based Program" (see attached photos).

Apparently, no one at City Planning, City Building or the City Police Department were aware of a "school" at that location. From the street, the building looks like an ordinary private commercial building. It is a four-unit commercial structure occupied by a landscape architect, fur salon, commodities firm, and the County Schools facility.

The owner of the building at 7 E. Mission Street stated to me in a personal conversation that he received both the City's notice and the letter sent by Mr. and Mrs. Edwards. He has indicated that he did not forward either notice to any of his tenants of that building.

Staff Hearing Officer Meeting and Subsequent Proceedings

The Staff Hearing Officer Meeting was held on September 9, 2009. Three people spoke in favor of the application and two people in opposition.¹ The Staff Hearing Officer received over 50 letters in support, along with petitions with over 650 names. The Staff Hearing Officer approved the application, making all the required findings under the Ordinance.

According to the owner of the building at 7 E. Mission, on September 11, he read an article in the Santa Barbara News-Press concerning the project at 631 Olive Street. The article mentioned the fact that the Ordinance includes a prohibition on locating a cannabis dispensary within 500 feet of a "school." He then contacted staff from County School about the proposal submitted by Mr. and Mrs. Edwards.

According to Planning staff, they were contacted by County Schools staff on Thursday, September 17 about the pending application.

The ten-day appeal period expired on September 21, and no appeal was filed.

The County Education Facility at 7 E. Mission Street Is Not a Permitted "School" Within the Meaning of the Medical Cannabis Dispensary Ordinance

1. A "School" is Not a Permitted Use At 7 E. Mission Street

The property at 7 E. Mission Street is a small lot which originally had a single family dwelling that was converted to commercial uses. The building was destroyed in 1978 and rebuilt the following year with the same square footage but structured to include four commercial units. Modifications were granted in

¹ After the hearing, Mr. and Mrs. Edwards sat down with these two individuals to discuss their objections. Ultimately, both indicated support for the project and neither person filed an appeal from the Staff Hearing Officer decision.

1978, 1979 and 1991 related to parking. According to the 1991 modification, there should be ten parking spaces on the site.

The County Education Office has stated that it has operated a facility it calls the "Mission Community School" at this location for the past eight years (see letter dated October 14, 2009 from Craig Price, counsel for County Education Office).

"... the Mission Community School provides secondary education beginning at age sixteen to those students who, due to their disabilities, have been assessed as being in need of transitional service, and who require a more restrictive environment than is offered at a comprehensive high school. (Page 2)

The Mission Community School's curriculum emphasizes planning for life after the student completes his/her K-12 education. A fully credentialed special education teacher, supported by two instructional assistants, provides instruction on a regular school schedule of Monday through Friday from 8:15 a.m. to 2:15 p.m. The Mission Community School has the capacity to educate twelve students. The Mission Community School currently serves six students aged seventeen to twenty. (*Id.*)

... the Mission Community School is duly recognized by the California Department of Education (CDE) as a public school that meets all requisite criteria under both state law and the Ordinance definition. (Page 3)

The property is zoned R-2/R-O. "School" is not listed as an allowable use in that zone. "Educational institutions" are permitted in that zone with a CUP (SBMC § 28.94.030, C) but the City's files show no evidence that a CUP has been issued for this parcel. The County Education Office is a "local" agency subject to the City's zoning code (Calif. Gov't Code § 53090 *et seq.*)²

According to the Zoning Code:

School, Elementary or High. An institution of learning which offers instruction in the several branches of learning and study required to be taught in the public schools by the Education Code of the State of California. High schools include junior and senior, parochial and private. (SBMC § 28.04.600).

Educational Institution. An institution of learning giving general academic instruction equivalent to the standards prescribed by the State Board of Education; or, a non-profit institution or center of advanced study and research in the field of learning equivalent to or

² Under certain circumstances, a "school district" may vote to render a city's zoning ordinance inapplicable to certain "classroom facilities," but such a step requires close coordination and communication between the school district and the city (Gov't Code § 53094) and a two third vote of the school board. There is no evidence that those steps were taken here. Indeed, had there been close coordination between the County Education Office and the City, the facility at 7 E. Mission would have appeared on the City's zoning maps.

higher than the level of standards prescribed by the State Board of Education. An educational institution may include administrative offices, classrooms, technical and other support services directly related to the operations of the institution. (SBMC § 28.04.270).

From the foregoing facts, we respectfully submit that the "Mission Community School" at 7 E. Mission Street has not been permitted by the City of Santa Barbara and is not a permitted use at this location under the City's Zoning Ordinance.³

Mr. and Mrs. Edwards wish to be very clear: They do not seek to have the County Education facility at 7 E. Mission Street closed. In fact, they would support the issuance of a CUP to establish this special education program as an "Educational Institution" permitted in the zone, and Mrs. Edwards is willing to volunteer to work at the facility. They believe that community-based programs to help severely disabled young people are vitally important, and wholeheartedly endorse the continuation of this CEO facility at this location.

At the same time, Mr. and Mrs. Edwards believe that this facility cannot and should not reasonably be characterized as a "school" for purposes of the Medical Cannabis Dispensary Ordinance, as discussed further below. Nor is it necessary for the City to treat the County Education facility as a "school" in order to allow it to continue, since it can be treated as an "Educational Institution" and granted a CUP.

Mr. and Mrs. Edwards have raised this zoning code issue for one reason, and one reason only. The fact that this County Schools facility is not noted on the City's records and maps has had a very real impact on Mr. and Mrs. Edwards's plans. If this facility were indeed a "school" and had been properly permitted by the City, it would have been known to City staff and shown on the "Allowed Location" Map distributed by the City along with all of the other "schools" and parks in the City. The Edwards would have learned that the building at 2 W. Mission was within 500 feet of this facility, and would not have invested so much time and money in pursuing permits for that site.

2. The County Education Office Facility is not a "School" Within the Specialized Definition of the Medical Cannabis Dispensary Ordinance.

The Ordinance specifies that a permitted dispensary may not be located within 500 feet of a "school." The intent behind this rule is summarized in a recent staff report for the proposed dispensary at 631 Olive Street:

When the Dispensary Ordinance was created, the intent of requiring the 500 foot distance from schools was to reduce the likelihood that schoolchildren/teens would be walking by the dispensary. Childcare centers, daycare centers and preschools are different in that way from schools, as the children are typically too young to be walking alone.
(Page 3).

³ In addition, there may be a parking deficiency that would preclude use of one of the four commercial units for a "school." According to the County Education Office, there are three employees on site, plus a dozen or fewer students. The zoning code requires one parking space for each employee plus one space for each 100 students. Thus, this use alone requires 4 spaces. If the four units in the building are equal in size, then this unit only has 2.5 spaces in the 10 space parking lot, which is insufficient. This zoning code problem could be solved by issuance of a modification.

The same rationale applies to the County Education Office use at 7 E. Mission Street. According to the Superintendent of that facility:

The Mission Community School has the capacity to educate twelve students and currently serves six students aged seventeen to twenty. All are students with severe disabilities including mental retardation, orthopedic impairments and autism. The Mission Community School operates from Monday to Friday from 8:15 a.m to 2:15 p.m. The students are delivered on a school bus to the Mission Community School. Some students stay at the school during the entire day. Some spend part of the day at the school and the remaining part of their day in other programs.

As noted earlier, there are three instructors on site for the six students. The students do not walk to or from the school, but are transported by bus. It is our understanding that the students are closely supervised at all times, and do not leave the building without an adult companion.

From this description, it is clear that there is no risk that the young adults who attend the "Mission Community School" will walk by the proposed dispensary at 2 W. Mission unattended. Since the purpose of the school separation rule is to reduce that risk, and that goal is already met in this unique fact situation, there is no public purpose in applying the school separation rule to this proposed dispensary.

This conclusion is further buttressed by the language of the ordinance, which clearly applies only to schools that principally serve people under age 18. The Ordinance has a special definition of "school" (§28.80.020K):

An institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes an elementary school, middle or junior high school, senior high school, or any special institution of education for persons under the age of eighteen years, whether public or private.

The use of the phrase "for persons under the age of eighteen years" plainly means "principally for persons under the age of eighteen years." A few examples illustrate the point.

Does "school" include Santa Barbara High School, even though it has students 18 years and older? Clearly, yes.

Does "school" include Santa Barbara City College, even though it has students under 18 years? Clearly, no.

What's the difference? The high school principally serves students under 18 and SBCC principally serves students 18 and older.

The "Mission Community School" has six students, one of whom is under 18. The available evidence indicates that the school principally serves students 18 years and older.

Thus, there is substantial evidence before the Planning Commission on which it should find that the "Mission Community School" is not a "school" within the meaning of the Ordinance.

Mr. and Mrs. Edwards Have Expended Substantial Sums and Incurred Substantial Liabilities in Good Faith Reliance on the Permit Issued by the City and Thus Have a Vested Right to Complete Their Project.

Between November 2008 and September 2009, Mr. and Mrs. Edwards expended tens of thousands of dollars seeking to establish their dispensary. After the permit was approved on September 9, 2009, and in reliance on that permit, the Edwards allowed the lease contingency to expire and thereby bound themselves to a lease for the property at 2 W. Mission Street. In addition, they have expended substantial additional sums preparing final plans for the project.

Under these circumstances, we submit that Mr. and Mrs. Edwards have a fundamental vested right to complete their project. See *Malibu Mountains Recreation, Inc. v. County of Los Angeles*, 67 Cal. App. 4th 359, 367 (1998); see also *Bauer v. City of San Diego*, 75 Cal. App. 4th 1281, 1294 (1999). That vested right constitutes "property" entitled to constitutional protection.

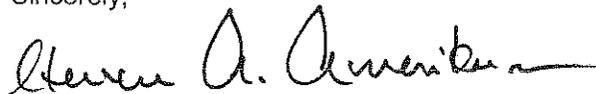
Conclusion

Since the County Education Office facility at 7 E. Mission Street is not a "school" within the specialized definition in the Cannabis Dispensary Ordinance, there is no legal basis for the Planning Commission to suspend or revoke the permit issued on September 9, 2009. Further, since Mr. and Mrs. Edwards have a fundamental vested right to complete their project, any further effort to suspend or revoke their permit implicates a property right subject to constitutional protections.

And, to repeat a point made earlier: Mr. and Mrs. Edwards wholeheartedly endorse continuation of the County Education facility at 7 E. Mission Street, and will support the issuance of a CUP for an "educational institution." They sincerely believe that both the dispensary and the County Education facility can operate within close proximity of each other without any adverse impacts. They have conducted their entire lives based on "good neighbor" principles, and will continue to do so.

Thank you for your attention to these matters.

Sincerely,



Steven A. Amerikaner

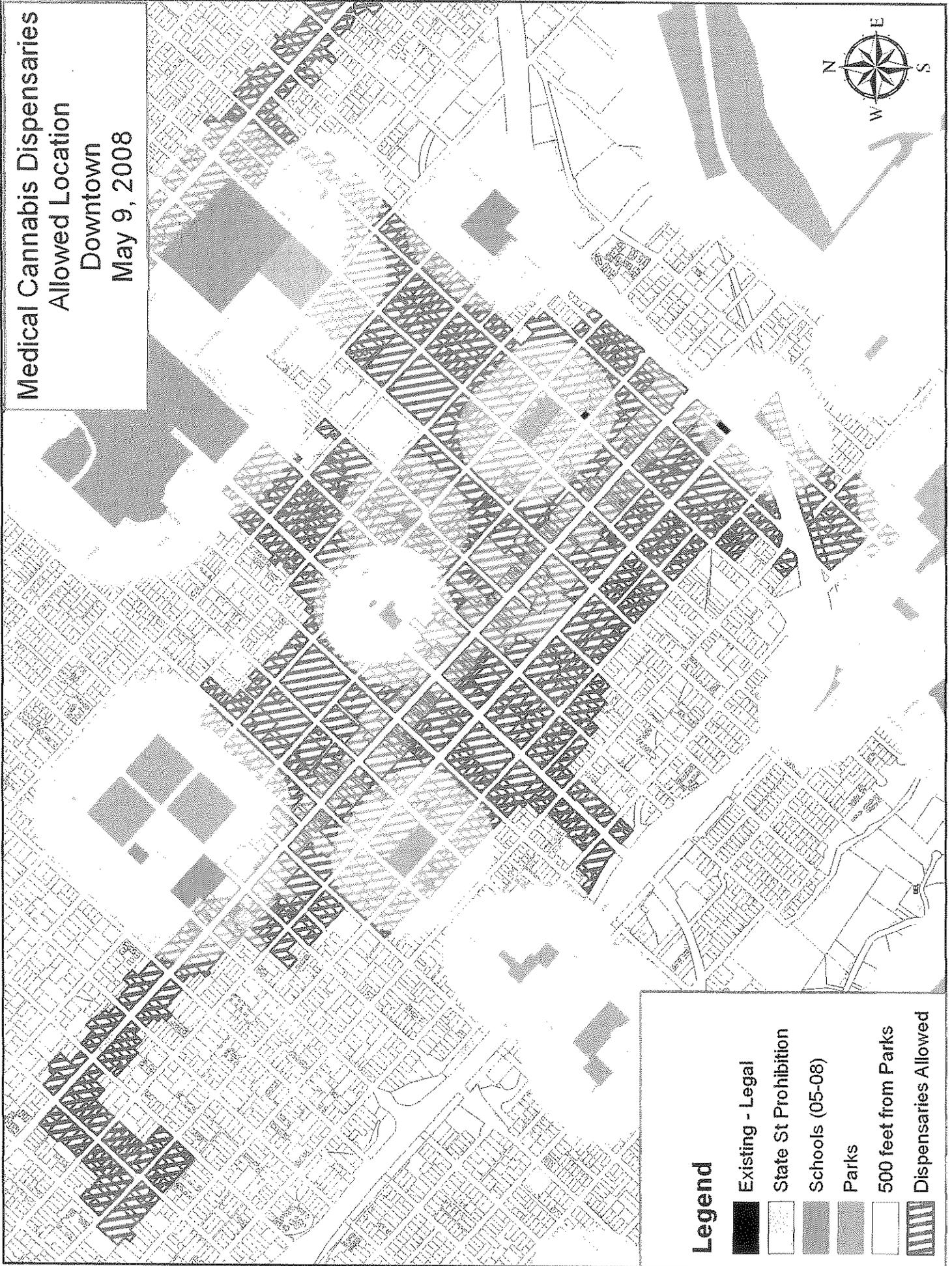
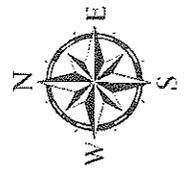
Attachments

City Map: "Medical Cannabis Dispensaries Allowed Location Downtown, May 9, 2008"
Photographs of 7 E. Mission Street (4)

cc (w/attachments)

Danny Kato, Planning Department
Scott Vincent, Assistant City Attorney
Craig Price, Esq., Griffith & Thornburgh
Gil Garcia, Garcia Architects
Mr. and Mrs. Hans Edwards

**Medical Cannabis Dispensaries
Allowed Location
Downtown
May 9, 2008**



Legend

- Existing - Legal
- State St Prohibition
- Schools (05-08)
- Parks
- 500 feet from Parks
- Dispensaries Allowed

COUNTY EDUCATION OFFICE -
-COMMUNITY BASED PROGRAM

COMSUP COMMODITIES, INC.

SYDNEY BAUMGARTER

Landscape Architect

URSULA'S
FUR STUDIO

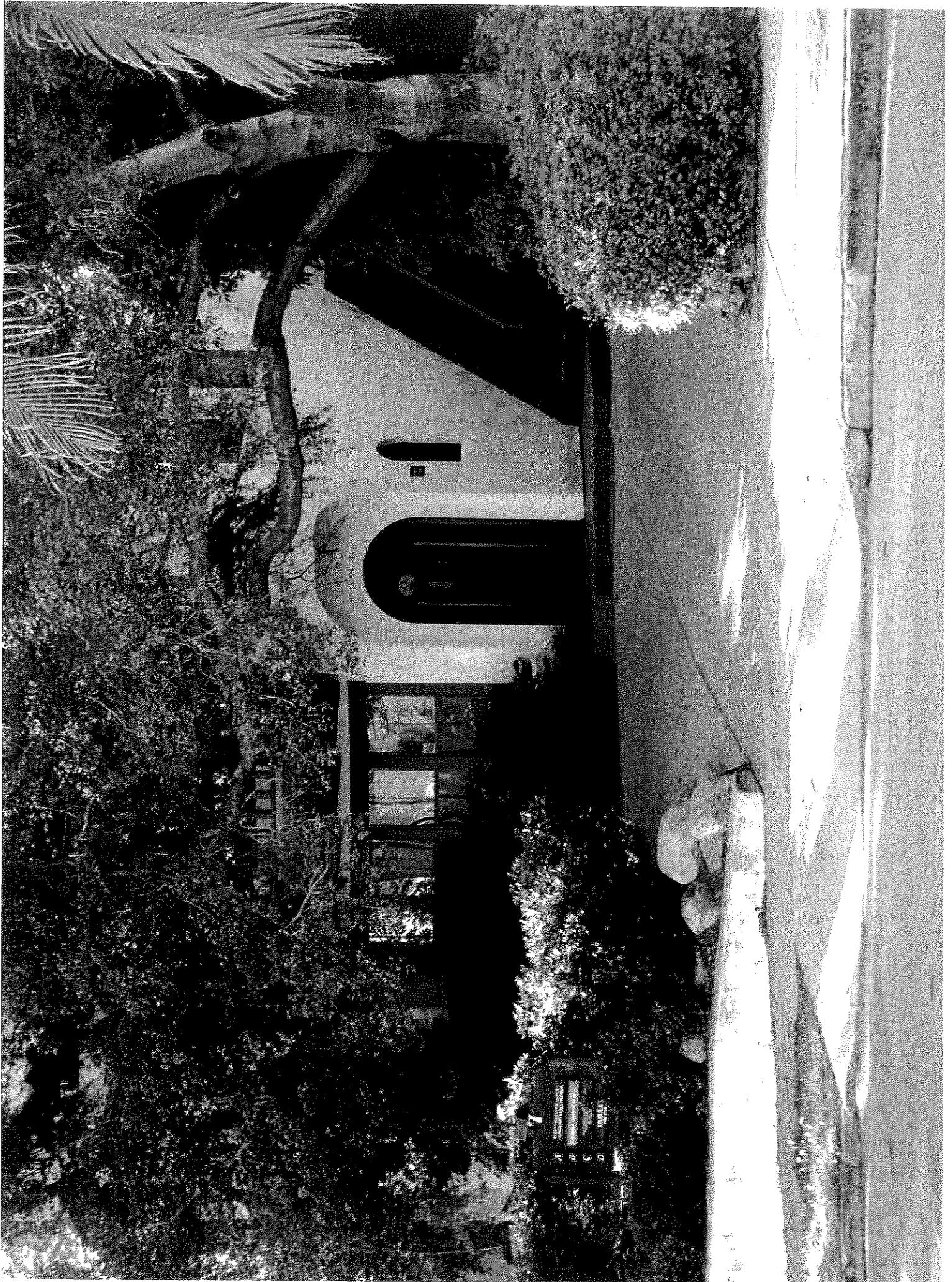
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SENDER'S E-MAIL:
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October 22, 2009

Our File No.:
3849-0001

VIA EMAIL

City of Santa Barbara,
Planning Commission
630 Garden Street
Santa Barbara, CA. 93101

Re: Case #MST 2009-00314 (2 W. Mission Street)

Dear Planning Commission Members:

The Santa Barbara County Education Office (CEO) submits the following response to the October 21, 2009 correspondence from counsel for the project applicants. Our comments are limited to applicants' claims that the Mission Community School is not a "school" under the ordinance.

Applicants have not contested the documentation provided by CEO establishing that the Mission Community School is a duly constituted school under applicable state law. Instead they rely on claims that the Mission Community School is not a "school" under the ordinance because: (1) it doesn't have a CUP; (2) under the ordinance's "specialized definition" there is "no risk" because the severely disabled pupils will not walk by the dispensary; and (3) it does not "principally" serve minors, e.g. it currently serves more pupils 18-20 years old than students who are 16-17 years old.

Each of applicants' claims will be briefly commented upon.

1. The Determination of Whether Mission Community School is a "school" Is Not Dependent upon City Permitting

The CEO has provided substantial documentation establishing that the Mission Community School is a "school" under California law; and further, has provided a written opinion from the

California Department of Education to that effect. Applicants are incorrectly claiming that notwithstanding the state law, the Mission Community School can't be viewed as a "school" because the CEO did not obtain a CUP upon leasing the space eight years ago.

The purpose of the banning cannabis dispensaries within 500 feet of schools, like with all zoning restrictions, is to provide for land use compatibility and to protect sensitive uses. The Mission Community School, which has existed at the site for eight years, serves the educational needs of some of our most vulnerable students. This established school facility is within the ambit of the ordinance just like every other K-12 public school in the City. If a cannabis dispensary is allowed at the proposed location it will be incompatible with the Mission Community School. The land use history of the school is irrelevant. Otherwise, cannabis dispensary applicants might seek to avoid the clear intent of the ordinance by arguing about the permitting history of most other City schools.

That having been said, there was no requirement for a CUP when the CEO entered into a standard commercial lease in 2001 to use the 780 square foot premises for school purposes. The City has long recognized the general zoning exemption for public schools in all areas except for the coastal zone. Recent examples include the relocation of the Santa Barbara Community Academy to La Cumbre Junior High School and the relocation of La Cuesta Continuation School to the former Community Academy site. Likewise, when the CEO relocated El Puente Community School to 402 E. Gutierrez St. two years prior to the Mission Community School lease, it was determined that the school, consisting of more than 10,000 square feet, was exempt from formal permitting requirements, as are schools generally throughout the City pursuant to state law.

2. There Is No Specialized Definition of School in the Ordinance that Allows for an Assessment of Risk Factors

There is no basis for reading anything into the ordinance's ban on dispensaries within 500 feet of schools that allows for evaluations of "risk" factors. The City Council would have provided for such assessments if it so intended, which obviously it did not. The fact that most Mission Community School pupils are severely disabled and closely supervised does not create any *de facto* exception to the clear language of the ordinance. The ban is absolute and applies regardless of whether the student population is "closely supervised at all times" such as most special education students and young elementary pupils.

Applicants attempt to inject a "specialized" definition of "school" into the ordinance by quoting from a staff report narrative from a different project is misplaced. Therefore it is unnecessary to discuss the potential "risks" that would in fact exist if a cannabis dispensary were approved at this location.

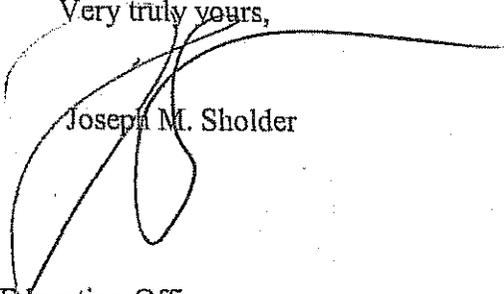
3. The Ordinance's Ban is Not Limited to Schools that "Principally" Serve Minors

The ordinance is not worded to define a "school" in terms of whether it "principally" serves

pupils who are under 18 years of age. As with the case of "risk factors", as described above, applicants seek to inject language into the ordinance that does not exist. Because the Mission Community School is a K-12 "institution of learning for minors" that provides state mandated K-12 instruction, the fact that it also serves disabled students who are 18 years and older, does not deprive it of "school" status under the ordinance.

The state and federal mandate of the Mission Community School is to serve pupils beginning at age 16, who because of their disabilities require transition planning to complete their K-12 education. Because special education laws also require students with severe disabilities to continue to be served through age 21, as may be needed, the Mission Community School operates to provide a Free and Appropriate Education (FAPE) K-12 education to minor aged students and to older students, most of whom have functional ages well below 18. These students are entitled to the same protection under the ordinance as all other children attending K-12 Santa Barbara schools.

Very truly yours,



Joseph M. Sholder

- cc. Bill Cirone, Superintendent County Education Office
- Florene Bednersh, Assistant Superintendent, Special Education Services
- Scott Vincent, Assistant City Attorney
- Danny Kato, Senior Planner

