

AP-15-12:

An appeal by iVita Wellness, LLC of the City's decision to deny its application for a Conditional Use Permit to operate a medical marijuana facility at 5500 Colorado Boulevard.

Ms. Stevens noted that the file contained the relevant notice information.

As provided for in the Rules of Procedure, Chairman McFarlin announced the subject matter of the hearing, namely that iVita Wellness appealed Staff's decision to administratively deny its application for a Conditional Use Permit to operate a medical marijuana dispensary because it failed to meet the distance requirements in Section 21-5249 of the LDC. Chairman McFarlin also announced the basic issue framed by the iVita Wellness's written appeal was that the business did comply with the distance requirements of 21-5249 based upon the following sub-arguments: (1) the Sand Creek Regional Greenway trailhead did not fall within the definition of "park" contained in the LDC and (2) even if it were a park, the actual business was more than 1000 feet from the trailhead. Chairman McFarlin explained that the Planning Commission's role was to determine whether the administrative denial was made in error. If the denial was not made in error, the Planning Commission would recommend that City Council affirm the staff's decision. If the denial was made in error, it would recommend to City Council that the decision of the staff be overturned. Chairman McFarlin noted that a decision to overturn staff's decision would not ultimately grant approval of the Conditional Use Permit. It would simply reverse the administrative denial and would allow the application to proceed through the normal hearing process for Conditional Use Permit applications.

Mr. David Foster, attorney for the applicant, argued that staff erred by identifying the trailhead as a park. In support of this argument, Mr. Foster introduced the definition of "public improvement" contained in Section 21-11200 of the LDC, included as "Exhibit A" in the case file, which identifies a trail as a public improvement. It was Mr. Foster's contention that because a trailhead is a "public improvement" it is not a "park." Additionally, Mr. Foster argued that the definition of "park" in Section 7-1000 of the Municipal Code, accepted as "Exhibit B" in the hearing and included in the case file, is solely applicable to chapter 7 of the Municipal Code. Finally, Mr. Foster argued that the city's method of determining the 1,000 foot radius for the distance requirement was incorrect. He argued that the 1,000 foot measurement should be from the portion of the building where the business would be located and not the property line. Mr. Foster offered the language in Section 21-5249 of the LDC in support of his contention, stating that it provides that a park may not be located within 1,000 feet of the Medical Marijuana Business or Primary Caregivers facility, not the property line.

Ms. Stevens argued that the staff did not err in its decision. With regard to the trailhead not constituting a park, Ms. Stevens read the definition of "park" contained in Section 21-11200 of the LDC into the record. That definition states that a public park "shall mean a public-owned parcel of land, with or without improvements, set apart for the recreation of the public." Ms. Stevens stated that there was no dispute that the property is owned by the City and that it is dedicated for the recreation of the public. According to Ms. Stevens, Mr. Foster's argument that because a trailhead might fall within the definition of a public improvement that it could not also be considered a park was without merit because nothing in the LDC suggests that the

terms were intended to be mutually exclusive. Ms. Stevens explained that the term “public improvement” only refers to an improvement that the City has agreed to maintain and the definition of park specifically provides that a park may have improvements. As to Mr. Foster’s argument that the measurement should be taken from the portion of the building in which the proposed business would be located, Ms. Stevens explained that the distance requirements listed in Section 21-11145 in the LDC clearly defines the 1,000 foot radius to be calculated by direct, straight-line measurements from the nearest property line of the property where the use is proposed to the nearest property line of the existing use and that there was nothing in Section 21-5249 to suggest a different method of measurement. In conclusion, Ms. Stevens stated, on behalf of staff, that the Sand Creek Regional Greenway trailhead is publically owned land, with an improvement, that is set apart for the recreation of the public, which is the definition of a park.

Commissioner Cammack asked if the distance requirements for liquor sales are measured in the same way as medical marijuana facilities. In response, Ms. Stevens confirmed that the requirements are consistent for both uses. Chairman McFarlin and Commissioner Cammack expressed their beliefs that the trailhead is in fact a park because it is used for recreational purposes. There being no further discussion, a motion was requested.

Motion:

Commissioner Dreling made the following motion “I move that the Planning Commission make a finding that staff did not err their decision to administratively deny Case #CU-99-12 and recommend that City Council affirm this decision.” Commissioner Jones seconded the motion.

Voice Vote: All Voting Affirmative.