

Confidential

September 23, 2021

Village of Pinckney
c/o Jill Chapman, Village Clerk
Pinckney Village Office
220 S. Howell
Pinckney, Michigan 48169

Re: *Attitude Wellness LLC d/b/a Lume Notice of Appeal*

Dear Clerk Chapman:

My firm represents Attitude Wellness LLC d/b/a Lume Cannabis Co. (“Lume”) with regard to cannabis licensing and regulatory matters. Lume was one of three applicants for an adult-use marijuana retail license in the Village of Pinckney. Lume received a score of 65/85 on its application and was informed, by way of your letter dated August 24, 2021, that it was not selected to receive a license because two other applicants had received higher scores. Lume hereby submits this Notice of Appeal pursuant to Section 113.34(h) of Village Ordinance No. 152, which provides that an applicant may appeal the denial of its application to the Village Council by filing a notice of appeal with your office within 30 days.

The points that Lume did not receive fall into 4 categories:

1. 10 points for not being at least 10% owned by a resident of the Village of Pinckney;
2. 5 points for not being at least 10% owned by a resident of Livingston County;
3. 3 points for not proposing a facility address that consists of a vacant structure that is distressed, blighted, or requires significant additional investment; and
4. 2 points for providing a statement committing to a net zero impact on the environment.

As explained in my letter to you dated June 29, 2021, Lume believes that the residency points are unconstitutional under recent federal court precedent, and the points for renovating a vacant building and reducing environmental impact are unlawful under the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27959(4). I will not reiterate those arguments here. Instead, we have presented them in court, as required under Michigan law. *See Trever v. City of Sterling Heights*, 195 N.W.2d 91, 92 (Mich Ct. App. 1972) (“[N]o element of the city government is vested with the power to determine the validity of ordinances.”); *Conlin v. Scio Twp.*, 686 N.W.2d 16, 20 (Mich. Ct. App. 2004) (facial challenges may proceed directly in court).

Aside from Lume's claims regarding the validity of the Village's scoring criteria, however, Lume respectfully submits that the vacant-structure and environmental-impact criteria were incorrectly applied as to Lume's application. Accordingly, Lume asks the Village Council to reconsider the scores Lume received in those categories.¹

To begin with environmental impact, Lume cares deeply about environmental issues, and it has some of the most environmentally friendly policies in the entire cannabis industry in Michigan—which Lume implemented simply because it is the right thing to do, and well before any municipalities began awarding points for it. Lume was told that it did not receive these points because it submitted a “statement” and not a “plan” to use renewable energy and reduce its environmental impact. But respectfully, that is not correct. Lume submitted substantial information regarding its plans to use renewable energy and to reduce its environmental impact, including copies of its site plan and renderings, which provide solar infrastructure, a rain garden and stormwater management system, and other innovations designed to use renewable energy and reduce environmental impact. Lume is frankly at a loss for why it did not receive these points.

Similarly, as to the facility address, Lume's proposed Facility Address should qualify for all 5 points because it is vacant (i.e., the rear portion is used only for storage) and requires significant additional investment. Indeed, Lume intends to invest \$2.3M renovating the building and property. It appears that the scorers were much more liberal with these points for the other applicants. The score sheet for QPS even explicitly discounts their claim that the fire station is “blighted,” but they got that maximum score anyway. At a minimum, Lume should have received a 3 in this category given its “significant additional investment” of \$2.3M to renovate the building and property.

We also respectfully disagree with some of the scores that were awarded to the other applicants. The Means Project, for example, obtained 10 points for possessing a MRTMA or MMFLA state operating license of the same type applied for in Pinckney. But The Means Project was not even prequalified under MRTMA until June 29, 2021. There is a notation on their score sheet that “provisioning center is same as retail,” but (1) that is factually incorrect; and (2) The Means Project does not have any MMFLA licenses either. Further, as outlined in my June 29, 2021 letter, the Village failed to implement its scoring rubric in a way that was “intended to select applicants who are best suited to operate in compliance with [MRTMA]” within Pinckney because it awarded all three applicants the maximum score in this category. See MCL 333.27959(4). This criterion is a key indicator of suitability, but rather than using a sliding scale to actually differentiate amongst the applicants with glaring distinctions in this category, the Village simply gave every applicant the maximum score. In other words, the Village essentially administered its scoring rubric like a very easy pass/fail test, which impermissibly resulted in giving The Means Project (with *zero* experience “operat[ing] in compliance with [MRTMA]”) getting the same score

¹ Lume concedes that it is not at least 10% owned by a resident of the Village of Pinckney or Livingston County and would not be eligible for those points if the criteria are valid.

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as Lume, which has 24 MRTMA-licensed retailers throughout Michigan, some of which have been operating for nearly two years, and all of which have stellar records of “operat[ing] in compliance with [MRTMA].”

In closing, I just want to reiterate that Lume is supremely qualified to operate a first-class marijuana business in the Village, which would provide tax revenue and help revitalize neighboring businesses for years to come. Again, Lume already has 73 active marihuana business licenses throughout Michigan, including 24 adult-use marijuana retailers, all with a stellar record of state and local compliance. All of the municipalities where Lume has existing stores will attest that Lume has been a great long-term community partner. I sincerely believe that Lume would be a great long-term community partner in Pinckney, as well, should the Village Council take this opportunity to reconsider the denial of Lume’s application.

Thank you for your time and attention to this matter. Please do not hesitate to contact me if you have any questions or need anything else.

Very truly yours,

HONIGMAN LLP

/s/ Kevin M. Blair
Kevin M. Blair