



Mendocino County Board of Supervisors
501 Low Gap Road, Ukiah, CA 95482

September 16, 2019

Re: 09/17/19 Agenda Item 5K/ Tax Appeals Procedures

Honorable Supervisors,

When MCA submitted a memo concerning the Tax Appeals Process for the 06/05/19 BoS Meeting, we focused on some key issues to ensure procedural due process and additional fairness considerations for this first round of appeals. MCA also advocated for a greater breadth of eligible reasons or basis for appeal. We cited a variety of known circumstances that raised credible issues of fairness given the lack of specified basis for eligibility in the ordinance to date. Prior delays in inspections and clear procedures for the permitting program resulted in inconsistencies regarding if, when, and how to demonstrate an applicant was not growing or growing to the level applied for. Please review and consider our 06/05/19 Memo, attached to this memo.

At the June 5, 2019 meeting on this issue, the Board did not deal with specific procedural due process requests or time frames that we were advocating for, but instead asked Staff to come back with specific proposals. The Board also did not agree to the more expansive list of basis for eligibility to appeal, but restricted the basis for eligibility to those cultivators who could demonstrate that they either did not cultivate or did not cultivate at their permit level. Staff now seeks to further reduce the basis for appeal.

Cultivators that did not grow to the level of their permit application MUST be eligible for appeal

Staff is now recommending that the proposed process for appeal, including the Hearing Officer Procedure, further restrict the basis of appeal to only those that did not cultivate at all and do not allow for an appeal even if the cultivator can demonstrate that they did not cultivate to the level of the permit applied for. While we can appreciate the difficulties in creating a fair process for appeal for those who did not grow to the level they initially applied for, we urge the Board to push forward and provide a path for those who didn't grow to the level of their permit, so long as they have proof.

At prior junctures in the Commercial Cannabis Permitting Program there were either NO processes to change the permit application to reflect the current level, the processes were not consistent, or they were not well communicated to applicants. In some cases, applicants were told they had to wait until there was an inspection (which sometimes never happened), in other instances they were told there was not a method to change the level until after the permit was issued. More recently, some applicants were told they had to file a change request, but the process was not well publicized or communicated,

Applicants on resource lands were initially told they might not be able to expand later. As a result, cultivators applied for a larger permit size to preserve that capability. The rule was later clarified to allow expansion, but that change was not consistently communicated. Some of these appellants have inspection forms which establish under-cultivation for their permit size, while others were not

inspected. Additional confusion for appellants on resource lands include (a) those who grew 99 plants in the very old 9.31 program had to drop down to 25 plants after that program went away in 2011 and may not have been able to scale back up right away after 10A.17 was passed, and (b) everyone on resource lands that were expanding to the current allowed levels had to be screened for and possibly required to obtain an Administrative Permit before they could grow the amount applied for.

We fully appreciate that the program has been an evolving process. However, we ask for consideration for appellants who have experienced inconsistencies that there have been along the way. All applicants of Phase 1 should be entitled to appeal if they can prove they did not cultivate to the permit application level.

The proposed cannabis tax appeal hearing procedures need additional clarification and due process protections

The steps outlined in the Proposed Cannabis Business Tax Appeal Hearing Officer Procedures fail to address the following issues:

1. What will the time frame be for the applicant to submit the appeal form, fee, and supporting documentation? We request that the appeals deadline for this first round of appeals be longer than usual due to the delays in clarifying and adopting of a tax appeals process.
2. The proposed procedure fails to establish what criteria will be used to establish “sufficient” evidence of the appellant or “insufficient” evidence of the County to prove otherwise before the decision is made to administratively grant the appeal or send it to a hearing.
3. The proposed procedure fails to indicate what time-frame the appellant would be informed whether the administrative appeal was granted or if the matter was being referred to a hearing officer.
4. The proposed procedures fail to indicate the amount of notice that will be given for the Notice of Hearing. MCA urges that a particularly long notice period be granted for this first year of appeals.
5. The proposed procedures fail to indicate whether the appellant will be allowed to provide additional evidence outside of what was submitted in writing, including the ability to call witnesses.
6. The proposed appeal procedure for the hearing fails to state the level of the burden of proof on the appellant.
7. As stated above, the process fails to include the ability for an appellant to establish they did not cultivate at the size of the permit initially applied for even when there was no established process to prove it along the way. Some appellants can provide an inspection report that details the cultivation size that is different from the permit level applied for. As detailed above, there are reasons why other appellants may not have such documentation.

The fees for filing an appeal may be a defacto bar to filing an appeal

We respectfully request that the administrative determination is utilized with the lowest possible cost for appellants. We additionally request that the hearing process fees are kept to a minimum.

While we appreciate that there may be a need for assessing a cost for an appeal hearing, it is imperative that the fee not be so costly that it becomes a de facto bar to being able to file an appeal, especially considering that those who are likely to be eligible for a tax appeal are the most financially vulnerable such as: fire victims, those who could not afford to scale up but thought they had to apply for the maximum permit size or lose their ability to expand later, and those that in the end, cultivated a smaller amount. We ask for consideration, at least for this first round of appeals, given the history of the program implementation and the unique circumstances of these particular appellants who had no set process by which to establish the right to appeal in the past.

Fairness will encourage participation

Care should be taken to implement a fair tax appeal procedure. By doing so it will encourage more cultivators to come into the program and be regulated because they will see that fair treatment is given. Please consider the long term implications of adopting a tax appeals process that will encourage participation in the regulated market.

As always, we appreciate your willingness to carefully consider the issues and we look forward to answering any questions you may have concerning these matters.

Respectfully,

Mendocino Cannabis Alliance

