No. 125443

IN THE SUPREME COURT OF ILLINOIS

MEDPONICS ILLINOIS, LLC, an Illinois Limited Liability Company, Plaintiff-Appellant, vs. ILLINOIS DEPARTMENT OF AGRICULTURE, RAYMOND POE, Director of Illinois Department of Agriculture, JACK CAMPBELL, Chief of the Bureau of Medicinal Plants of the Illinois Department of Agriculture, Defendant-Appellees, CURATIVE HEALTH CULTIVATION, LLC, an Illinois Limited Liability Company, Defendant-Appellee.	Appeal from the Nineteenth Judicial Circuit, Lake County, Illinois and the Appellate Court for the Second Judicial District of Illinois Circuit Court No. 15-MR-2061 Appellate Court Nos. 2-17-0977, 2-18-0013 and 2-18-0014 (cons.) The Hon. Michael J. Fusz Presiding Trial Judge

BRIEF AND SUPPLEMENTAL APPENDIX OF APPELLEE CURATIVE

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

INTRODUCTION

This is a proceeding in Administrative Review wherein Plaintiff-Appellant, MEDPONICS ILLINOIS, LLC, an Illinois Limited Liability Company ("Medponics"), is challenging the award by Defendant-Appellee, ILLINOIS DEPARTMENT OF AGRICULTURE ("IDOA"), to Defendant-Respondent, CURATIVE HEALTH CULTIVATION, LLC, an Illinois Limited Liability Company ("Curative"), of the Medical Cannabis Cultivation Permit for Illinois State Police District No. 2 issued in 2015, pursuant to the provisions of the Compassionate Use of Medical Cannabis Pilot Program Act, 410 ILCS 130/1 *et seq*. (the "Act"). The permit allows Curative to locate its cultivation center in the City of Aurora, Illinois, which has generally approved by ordinance the location of medical cannabis cultivation centers within its borders and specifically granted to Curative a special use permit to operate such a center on its chosen location in the city in a pre-existing industrial/manufacturing park. While Curative was the highest-scoring and successful applicant for the subject permit, Medponics was fifth out of a field of eight total applicants, based upon its proposal to build a cultivation center in the City of Zion, Illinois.

After consideration of the administrative record and arguments made by the parties, the trial court in Lake County issued a final order vacating the award of the permit to Curative and remanding the matter to the IDOA for re-scoring of the seven remaining applications, based upon its finding that Curative was disqualified from receiving the permit because its proposed cultivation center was within 2,500 feet of an area zoned "exclusively" for residential use in Aurora's R-1 and R-5 zoning districts in violation of setback provisions contained in the Act and IDOA rules. The trial court found that these areas were

"exclusively residential," despite the fact that a myriad of additional and decidedly non-residential permitted and special uses are allowed in these areas by the Aurora Zoning Ordinance ("AZO"), *e.g.*, airports, rail transportation, above ground communication and electric utility facilities, religious institutions, utilities and utility services, alternative energy systems, public drinking water well houses, community centers, educational services (including junior colleges, colleges, universities and trade schools), health and human services, day cares, hospitals or sanatoria, cemeteries or mausoleums, social service agencies, charitable organizations and health related facilities, truck gardening, storm water management facilities and planned developments.

On appeal of the trial court's decision by Curative and the IDOA, the Appellate Court clearly held in its unanimous Rule 23 order authored by Justice Hutchinson, "We reverse the trial court's findings on administrative review as the Illinois Department of Agriculture's interpretation of its own regulation regarding 'an area zoned exclusively for residential use' is reasonable." *Medponics v. Illinois Department of Agriculture*, 2019 IL App (2d) 170977-U ("*Medponics*"), ¶1.[1] In reaching this conclusion, the Appellate Court relies upon established precedent applicable to administrative review proceedings, gave appropriate deference to the IDOA's interpretation of its own regulations, and found as a matter of law that the agency's decision awarding the permit to Curative was not clearly erroneous, arbitrary, unreasonable or inconsistent with past interpretations. *Id.* at ¶¶28-36, A.16-19. The Appellate Court ascertained and gave effect to the intent of the IDOA by reviewing the

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[1] Medponics has included a copy of the Appellate Court's Rule 23 order in the Appendix to its brief at A.1-23.

language of the regulation itself. *Id.* The Appellate Court found that the term "exclusively" is not ambiguous, citing to the Oxford Dictionary and finding that it means "apart from all others," "solely," and "to the exclusion of all others." *Id.* at ¶32, A.17. In conclusion, the Appellate Court held,

> The AZO clearly zoned districts R-1 and R-5 as residential. However, the many other allowed uses in these areas make clear that they are zoned for non-residential special uses as well. In short, they are not "exclusively residential."

Id. at ¶35, A.18. As such, the Appellate Court reversed the judgment of the trial court and affirmed the decision of the IDOA awarding the cultivation center permit to Curative. *Id.* at ¶45, A.23.

In its Brief and Appendix of Appellant ("Medponics Br."), the company provides,

> **Medponics does not contend that the rule at issue is invalid. Medponics contends only that IDOA's interpretation of the rule is wrong and asks only that the rule be applied as it is written**. As discussed throughout, IDOA's interpretation is contrary to established Illinois law regarding special uses and it restricts the application of the Act's cultivation center location requirement to fewer than all municipalities within the state. This interpretation cannot stand and reversal is required.

Medponics Br., p.30 (emphasis added). With the exception of the concession that the relevant rule is valid, the remainder of the arguments of Medponics are simply not persuasive and in no manner meet the standard required to vacate a decision of this nature issued by a state agency in an administrative review proceeding.

The rule, as written, unambiguously provides, "'Area zoned for residential use' means an area zoned **exclusively** for residential use." 8 IL ADC §1000.10 (emphasis added). Simply stated, Medponics has not provided any controlling precedent, convincing argument

or even a theory based upon common sense which requires the conclusion that the R-1 and R-5 zoning classifications in Aurora, which allow for a myriad of often noxious and/or otherwise disruptive commercial and non-residential uses, as detailed above, retain their character as being "exclusively" residential. The intention of the Legislature in adopting the Act was clearly to provide aid and comfort to patients who are seriously ill and to require that applicants for these permits demonstrate that their plans are consistent with the local zoning laws. These goals have been met with the award of the permit to Curative.

There is no indication of why these setback requirements were included in the Act, but everyone involved in this proceeding has agreed that the IDOA has the authority to promulgate its own rule further defining this subject matter concerning the setback, as the statute may be subject to more than one interpretation. The rule has clearly been applied by the IDOA, as written. In the end, Medponics has not presented any cogent reason why the Appellate Court's decision is not well-based in fact or law, especially with the deference provided to the IDOA's decision in this instance. As a result, Curative would request that the Supreme Court affirm the Appellate Court's decision and draw this litigation to a close.

ISSUE PRESENTED FOR REVIEW

Whether cause exists on this record to reverse the decision of the Appellate Court concerning the "exclusively residential" nature of the R-1 and R-5 zoning districts in the City of Aurora?

STATEMENT OF ADDITIONAL FACTS

The Appellate Court does an exemplary job of detailing the relevant facts in its decision which are necessary for an understanding of the issues presented on this appeal. In

its brief, Medponics provides a truncated version of the facts replete with argument and irrelevant material. Curative would suggest that the following additional facts will help the Supreme Court conclude that the Appellate Court's decision is well-based in fact and law and should be affirmed.

A. The Act and IDOA Rules

Throughout the course of this litigation, the main issue of contention between the parties has always related to the 2,500-foot setback requirement for cultivation centers contained in Section 105(c) of the Act, which provides,

> A registered cultivation center may not be located within 2,500 feet of the property line of a pre-existing public or private preschool or elementary or secondary school or day care center, day care home, group day care home, part day child care facility, or an area zoned for residential use.

410 ILCS 130/105(c). The term "area zoned for residential use" is not defined by the Act. *See*, 410 ILCS 130/10. That being stated, the Act does provide, "It is the duty of the Department of Agriculture to enforce the provisions of this Act relating to the registration and oversight of cultivation centers unless otherwise provided for in this Act." 410 ILCS 130/15(b).

In relation to the rules promulgated by the IDOA concerning cultivation centers and the Act, Section 85(b) of the Act provides, "The registrations shall be issued and renewed annually as determined by administrative rule." 410 ILCS 130/85(b). Further, Section 165(c)(8) of the Act provides,

> The Department of Agriculture rules shall address, but not be limited to the following related to registered cultivation centers, with the goal of protecting against diversion and theft, **without imposing an undue burden on the registered cultivation centers**: ... (8) any other matters as are necessary for the fair, impartial, stringent, and comprehensive administration of this Act.

410 ILCS 130/165(c)(8)(emphasis added). Finally, Section 215 of the Act provides, "The Department may adopt rules related to the enforcement of this Law." 410 ILCS 130/215.

The IDOA has in fact adopted rules in relation to the Act, which can be found at 8 IL ADC §1000.10, *et seq*. In these rules, the IDOA has defined the last phrase of Section 105(c) of the Act concerning residential use as follows,

> **"Area zoned for residential use" means an area zoned exclusively for residential use**; provided that, in municipalities with a population over 2,000,000 people, "an area zoned for residential use" means an area zoned as a residential district or a residential planned development.

8 IL ADC §1000.10 (emphasis added). Medponics has never challenged the propriety of IDOA's promulgation of this rule. In fact, the trial court concluded,

> Insofar as the IDOA has approved Rules 8 IL ADC 1000.10 and 1000.100 purporting to interpret the phrase defining areas "zoned for residential use" as cited in 410 ILCS 130/105(c), while the Rules seem to expand the phrase, the Court does not find that the IDOA rules are improper or clearly erroneous. Although it has been suggested the rules go too far, this has not been argued by Medponics. Therefore, the court is accepting these IDOA rules as they are set forth; the Court does not find that the rules are clearly inconsistent with Sec. 130/105(c).

C.3721-22. Nor was this argument concerning the scope of the rule presented on appeal by Medponics, the Appellate Court finding that the "crux of this appeal" is "whether Curative's proposed cultivation center is located within 2,500 feet of areas zoned exclusively for residential use." *Medponics*, ¶25, A.15. As set forth in the introduction to this brief, Medponics is not challenging this premise before the Supreme Court. Medponics Br., p.30.

B. Zoning in Aurora

The Appellate Court mentions the importance of the zoning process in Aurora in

several different places in its decision. *Medponics*, ¶¶5-8, 17 and 33, A.3-6, 12 and 17-18.

The process is relevant and material, as Section 85(d)(11) of the Act provides,

> (d) A cultivation center may only operate if it has been issued a valid registration from the Department of Agriculture. **When applying for a cultivation center registration, the applicant shall submit the following in accordance with Department of Agriculture rules: ... (11) provide a copy of the current local zoning ordinance to the Department of Agriculture and verify that the proposed cultivation center is in compliance with local zoning rules issued in accordance with Section 140.**

410 ILCS 130/85(d)(11)(emphasis added). Section 140 of the Act then provides,

> Local ordinances. A unit of local government may enact reasonable zoning ordinances or resolutions, not in conflict with this Act or with Department of Agriculture or Department of Financial and Professional Regulation rules, regulating registered medical cannabis cultivation center or medical cannabis dispensing organizations. **No unit of local government, including a home rule unit, or school district may regulate registered medical cannabis organizations other than as provided in this Act and may not unreasonably prohibit the cultivation, dispensing, and use of medical cannabis authorized by this Act**. This Section is a denial and limitation under subsection (I) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State.

410 ILCS 130/140 (emphasis added). In relation to the IDOA's rules, Section 1000.100(d)(17) provides,

> (d) An applicant applying for a cultivation permit shall submit, in duplicate, the following: ... 17) **A copy of the current local zoning ordinance to the Department and verification from the local zoning authority that the proposed cultivation center is in compliance with local zoning rules issued in accordance with Section 140 of the Act (Section 85 of the Act)**.

8 IL ADC §1000.100(d)(17)(emphasis added).

In the Fall of 2014, Curative filed its application with the IDOA for the cultivation

center permit in Illinois State Police District No. 2. Attached to Curative's initial application was "Schedule 1(c) Zoning Compliance." C.3360-72. In summary form, Curative stated,

> The subject property is located at 2229 Diehl Road in Aurora, Illinois. **The subject property is located in the M-2 zoning district. Pursuant to City of Aurora Ordinance No. 014-042, a medical cannabis cultivation center is allowed as a special use in the M-2 zoning district**. A copy of the relevant zoning ordinance provisions of the City of Aurora concerning medical cannabis cultivation centers is attached hereto. **The location of the subject property complies with the 2,500 feet setback of Section 105(c) of the Medical Cannabis Pilot Program Act**. The applicant has applied to the City of Aurora for a special use permit for a medical cannabis cultivation center. A copy of the application is attached hereto. The City of Aurora has executed the Notice of Proper Zoning Form and confirmed that the zoning request was filed by the applicant and that the proposed location is in compliance with Section 105(c) of the Medical Cannabis Pilot Program Act.

C.3361 (emphasis added). The "Notice of Proper Zoning Form" simply provides that Curative has in fact applied for zoning approval from Aurora for its proposed cultivation center and is dated September 20, 2014. C.3362. A copy of the actual "Land Use Petition" filed by Curative with Aurora is also included. C.3365.

Curative also included for the IDOA with its application a copy of Aurora Ordinance No. 014-042, which provides that medical marijuana cultivation centers are allowed in the city, as a special use in various zoning districts, ORI, M-1 and M-2, as long as the same comply with the "geographic location restrictions," as set forth in the Act. C.3366-71. This ordinance unanimously passed the Aurora City Council on a vote of 11 to 0 on July 22, 2014, after receiving unanimous "Approval" for passage by the Aurora Planning & Development Committee on July 10, 2014. C.3371-72. The ordinance specifically mentions that on June 10, 2014, a public hearing was held on the ordinance, "[A]t which time all persons present were afforded an opportunity to be heard," following appropriate public notice in the Beacon

News, a newspaper of general circulation in Aurora, as required by law. C.3367. The City Council specifically found that allowing these cultivation centers in their community was in the "best interests of the City and its residents." *Id.*

Following the adoption of the general ordinance described above concerning the approval of medical marijuana facilities in its community, the City Council considered Curative's specific request for a special use permit for its proposed cultivation center in an existing building in an established industrial/manufacturing park on Diehl Road in Aurora. C.5260-68. In the ordinance which was eventually adopted, No. 014-068, the Council noted that it first referred the matter to the Aurora Planning & Development Committee, which after notice and publication, held a public hearing on Curative's request for a special use permit for its cultivation center on November 5, 2014. C.5260. Following that hearing, the Planning Committee unanimously found that Curative's request met the standards of the AZO and recommended "Conditional Approval" of the special use, with the "condition" being that some landscaping be done on the property. C.5260-61 and 5266.

Following the Committee's recommendation, the Aurora City Council considered and adopted Ordinance No. 014-068 on November 18, 2014, allowing Curative's request for a special use for its cultivation center on Diehl Road by a vote of 9 to 3. C.5260-68. In the ordinance, the Council specifically found,

> WHEREAS, the City Council, based upon the conditional recommendation and the stated standards of the Planning Commission, **finds that the proposed Special Use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare, will not be injurious to the use of other property in the immediate vicinity, nor diminish or impair property values in the neighborhood** and, further, the City Council finds that the granting of this Special Use will not impede normal and orderly

> development and improvement of surrounding property for uses permitted in the district and that adequate utilities, access roads, drainage and other facilities are being provided and that the Special Use will in all respects conform to the applicable regulations of the M-2(S) Manufacturing-General zoning classification except as varied herein.

C.5260-61 (emphasis added). The Council retained control over the property, including in the ordinance this provision, "That future proposals for expansion or intensification of whatever kind for the property legally described in said Exhibit "A," except as provided herein, shall be considered only upon proper application, notice and hearing as provided by Section 10.6 of Ordinance No. 3100, being the Aurora Zoning Ordinance." C.5261.

In its decision, the Appellate Court found that a letter from Aurora's Zoning Director addressed to the IDOA's Chief Counsel dated April 29, 2015,[2] as well as some answers to "Frequently Asked Questions" ("FAQs") issued by the IDOA on August 24, 2014, were relevant and material to the 2,500-foot setback issue. 2019 IL App (2d) 170977-U, ¶8, A.5-6. In this regard, the Appellate Court detailed the following facts in its decision,

> On November 4, 2014, the Aurora Planning Commission held a public hearing on Curative's special use petition. Curative was found to have met the standards of the AZO and the petition was recommended for approval. On November 18, 2014, the Aurora City Council granted Curative's special use petition, finding that it "is not contrary to the purpose and intent of *** the Aurora Zoning Ordinance." On April 29, 2015, Edward Sieben, the Zoning Administrator for Aurora sent a letter to Craig

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[2] A copy of the letter is found at C.5271-72 and is also included in the Supplemental Appendix attached to this brief at Supp.A, 10-11. The trial court denied a joint motion by the IDOA and Curative to include this letter in the record. C.5435. Curative appealed this ruling, and while there does not appear to be a specific holding about this issue in its decision, the Appellate Court clearly considered the contents of this letter in reversing the decision of the trial court (*Medponics*, ¶8, A.5-6), so it is clear that the Appellate Court agreed with Curative and found that the contents of the letter should be included in this administrative record.

Sondgeroth, General Counsel for IDOA, regarding: Aurora Non-"Exclusively Residential" Zoning near Curative Health Cultivation, LLC at 2229 Diehl Road, Aurora, Illinois. Sieban's letter read as follows:

> "The Department of Agriculture is charged with registering and regulating up to 22 cultivation centers allowed in the law. The Department of Agriculture Administrative Rules were approved by the JCAR committee on July 15, 2014. *** Section 1000.10 of the Administrative Rules, defines an "Area zoned for residential use" as: "an area zoned exclusively for residential use; provided that, in municipalities with a population over 2,000,000 people, "an area zoned for residential use" means an area zoned as a residential district or a residential planned development." ***
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> The definition set forth in the Administrative Rules raised the obvious question as to what constituted an "area zoned exclusively for residential use." **On August 25, 2014, the Illinois Department of Agriculture released a Frequently Asked Questions** document that addressed this question as follows:
>
> > "The definition of "area zoned residential" is an area zoned "exclusively residential." If the local municipality provides a letter that its zoning districts located within 2500 feet of a cultivation center are not zoned "exclusively" residential because in addition to residential uses, the zoning districts allow for other uses such as churches, parks, schools, utility substations, and/or other planned uses including commercial uses, will that satisfy this requirement?
> >
> > Yes, but the applicant must verify setback regulations are also met, located in the Department of Agriculture Administrative Rules section 1000.40(e). **The Department will rely heavily on local zoning authority's approval.**
> >
> > ***
> >
> > **Aurora's Zoning Code does allow for such**

> **other uses such as churches, parks, schools, utility substations, and/or other planned uses in a residential district. This is clearly laid out in Table 1 of Aurora Zoning Ordinance titled Use Categories** ***. Specifically, this includes the R-1 Zoning District of the nearby Harris Farms and Palomino Springs subdivisions located south of the Prairie Path, the Stonebridge Subdivision zoned PDD with underlying R-1 Zoning, and the R-1 and R-5 Zoning Districts of the East View Estates Subdivision to the west.
> ***."

Medponics, ¶8, A.5-6 (emphasis added). In its analysis, the Appellate Court later found that the answers to the FAQs found on the IDOA's website provided "further guidance" on the setback issue. *Id.* at ¶34, A.18.

In relation to the uses which are allowed in Aurora's zoning districts, the AZO for Aurora is included in Appendix A to its Municipal Code, which can be found at: https://www.aurora-il.org/1425/Zoning. In reviewing the AZO, the provisions concerning "R-1" Districts are set forth in Section 7.5, while the provisions for "R-5" Districts are set forth in Section 7.10. The "Use Regulations" for these districts are set forth in Sections 7.5-4 and 7.10-4, respectively. "Accessory Uses" are defined in Section 4.4 of the Zoning Ordinance, pursuant to Sections 7.5-4.3 and 7.10-4.3. Conveniently, all of these uses are summarized in "Table One" which is attached to the zoning ordinance.[3] This color-coded chart details all of the zoning districts in Aurora and the uses allowed in each district.

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[3] A copy of "Table One" is included in the Supplemental Appendix attached hereto at Supp.A.1-10.

Supp.A.1-10. The chart includes a "key" which provides that "A" represents Accessory Uses; "P" represents Permitted by Right Uses; "S" represents Special Use Review Required; a blank cell on the chart means that the applicable use is not permitted; "L" represents Limited but Permitted Uses; and "P(S)" represents Permitted Uses that may require a Special Use Permit pursuant to the Additional Regulations. Supp.A.1.

Section 4.2-1.2A of the AZO provides, "**Religious institutions shall be permitted in all districts**." (Emphasis added.) The ordinance defines "Religious Institutions" in Section 3.3 as, "Establishments that operate religious organizations, such as churches, temples, monasteries, synagogues, etc." As a result, the Ordinance clearly provides for more than residential uses in the R-1 and R-5 districts, without the need to apply for a special use permit. Supp.A.1-10. In fact, Section 3.3 defines "Residential Area" as, "A **zoning lot designed or used exclusively for residential purposes**." (Emphasis added.) A "Zoning Lot" is then defined in Section 3.3 as, "A plot of ground, made of **one (1) or more parcels** that is or may be occupied by a use, building or buildings including the open spaces required by this ordinance." (Emphasis added.) There is nothing contained in the AZO which provides that entire districts are to be "exclusively residential."

In relation to the uses which are allowed by Aurora in its R-1 and R-5 zoning districts, "Table One" demonstrates that there are a number of accessory and special uses that are allowed. Supp.A.1-10. Specifically, in R-1 Districts, in addition to the permitted uses of Private Household/Dwelling Unit/One Family Dwelling and Religious Institutions, the additional or permissive uses available are for home occupations (including employees), Minor and Major Community Residences (group homes for the disabled with setback

requirements), transportation services, air passenger terminals, rail transportation, parking facilities (residential and non-residential), above ground communication and electric utility facilities, utilities and utility services, alternative energy systems, public drinking water well houses, community centers, public and private golf courses, natural and other recreational parks, educational services (including junior colleges, colleges, universities and trade schools), public facilities and services, health and human services, day cares, hospitals or sanatoria, cemeteries or mausoleums, social service agencies, charitable organizations and health related facilities, truck gardening, storm water management facilities, and planned developments. *Id.*

In relation to R-5 Districts, in addition to the permitted uses related to Multi-Family Dwellings and Religious Institutions, there can be housing for the elderly, home occupations, Minor, Major and Transitional Residences, automated business devices, transportation services, air passenger terminals, rail transportation, parking facilities (residential and non-residential), above ground communication and electric utility facilities, utilities and utility services, alternative energy systems, public drinking water well houses, community centers, public and private golf courses, natural and other recreational parks, educational services (including junior colleges, colleges, universities and trade schools), public facilities and services, health and human services, day cares, nursing, supervision and other rehabilitative services, hospital or sanatoria, mental health facilities, cemeteries or mausoleums, social service agencies, charitable organizations and health related facilities, storm water management facilities, and planned developments. Supp.A.1-10.

C. The Decision of the Appellate Court

The Appellate Court begins its decision with the holding, "We reverse the trial court's findings on administrative review as the Illinois Department of Agriculture's interpretation of its own regulation regarding 'an area zoned exclusively for residential use' is reasonable." *Medponics*, ¶1, A.2. The Appellate Court then provides the background of certain provisions of the Act and IDOA's rules, specifically finding that the agency's requirements for all applicants to provide information concerning compliance with local zoning rules was relevant. *Id.*, ¶¶3-5, A.2-4.

In relation to Curative's compliance with the zoning ordinances in Aurora, the Appellate Court carefully detailed the facts as follows,

> On October 14, 2014, Curative filed a special use petition with the City of Aurora. The petition sought the authorization of the use of Curative's proposed location in Aurora as a medical cannabis cultivation center. The proposed location of Curative's cultivation center is 2229 Diehl Road in Aurora. This location is within 2,500 feet of areas R-1 and R-5, areas zoned as residential under the Aurora Zoning Ordinance (AZO). The AZO defines a "residential area" as "[a] zoning lot or portion of a zoning lot designed or used exclusively for residential purposes." The AZO details certain special, accessory, and limited but permitted uses allowed in each area zoned as a "residential area." Relevant here, area R-1 allows home occupations; community residences; transportation services; air passenger terminal; rail transportation; residential and non-residential parking facilities; electric utility facility; utilities and utility services; alternative energy services; community center; golf courses; natural and other recreational parks; educational services; public facilities and services; health and human services; day care; hospital or sanatoria; cemeteries or mausoleums; social service agencies, charitable organizations, health related facilities, and similar uses when not operated for profit; truck gardening; storm water management facilities, drainage area, and common landscaping areas; and planned development. Area R-5 allows for all of the above listed uses in addition to housing services for the elderly; automated business devices; nursing, supervision and other rehabilitative services; and mental health facilities. On November 4, 2014, the Aurora Planning Commission held a public hearing

> on Curative's special use petition. Curative was found to have met the standards of the AZO and the petition was recommended for approval. **On November 18, 2014, the Aurora City Council granted Curative's special use petition, finding that it "is not contrary to the purpose and intent of *** the Aurora Zoning Ordinance**."

Medponics, ¶¶ 6-8, A.4-5 (emphasis added).

The Appellate Court then detailed the fact that Curative was awarded the subject permit, while Medponics received a notice of denial. *Medponics*, ¶9, A.6. The Appellate Court noted, "Of all entries submitted for applications for permits to operate a cannabis cultivation center in Illinois State Police District 2, Curative finished first in scoring while Medponics was fifth. *Id.*, ¶9, A.6-7. The Appellate Court then detailed the extensive history of this proceeding before the trial court, including several matters which are no longer in dispute. *Id.*, ¶¶10-21, A.7-14.

In its analysis of the issues presented, the Appellate Court first found that Medponics had waived an argument concerning the re-scoring of applications on remand to the IDOA, as it had failed to file a cross-appeal. *Medponics*, ¶23-24, A.14. The Appellate Court then moved on to the issues in contention, including Curative's argument that "the trial court erred in finding that their proposed cultivation center is within 2,500 feet of an area zoned 'exclusively' for residential use;" and the IDOA's contention that "the trial court erred by failing to accord substantial deference to the IDOA's interpretation of its own regulation and that the trial court's interpretation violates rules of statutory construction." *Id.*, ¶25, A.15. The Appellate Court noted, "We begin our analysis with a discussion of the crux of this appeal: whether Curative's proposed cultivation center is located within 2,500 feet of areas zoned exclusively for residential use." *Id.*

In relation to the standard of review, the Appellate Court engaged in the following detailed analysis,

> In administrative review cases, the appellate court reviews the decision of the agency, not the trial court. *Village of Oak Brook v. Sheahan*, 2015 IL App (2d) 140810, ¶ 29. "The applicable standard of review, which determines the degree of deference given to the agency's decision, depends upon whether the question presented is one of fact, one of law, or a mixed question of law and fact." *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill.2d 380, 390 (2001). The factual findings of the administrative agency are considered to be *prima facie* correct and will be reversed only if against the manifest weight of the evidence. 735 ILCS 5/3-110 (West 2016). Questions of law are reviewed *de novo*. *Doe Three v. Department of Public Health*, 2017 IL App (1st) 162548, ¶ 25. Mixed questions of law and fact are reviewed under the clearly erroneous standard. *Id.*
>
> The trial court found that the issue of whether the phrase "area zoned exclusively for residential use" in the IDOA rules includes areas zoned for residential use and specially permitted uses, presents a question of "mixed law and fact." Mixed questions of fact and law are questions in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 211 (2008).
>
> The facts in this case are undisputed. All parties agree that Curative's proposed cultivation center is located within 2,500 feet of two areas zoned for residential use. However, the parties are in dispute as to whether the IDOA's phrase "area zoned exclusively for residential use" includes areas that allow for special uses other than residential. Therefore, this issue presents a question of law which we review *de novo*. *Village of Oak Brook v. Sheahan*, 2015 IL App (2d) 140810, ¶ 30.
>
> Courts apply the same rules in interpreting administrative regulations as in construing statutes. *Weyland v. Manning*, 309 Ill. App. 3d 542, 547 (2000). Thus, we first consider the language of the regulation. If it is clear, we need not look to other aids for construction. *Id.* Generally, a reviewing court affords substantial deference to an agency's interpretation of its own regulations. *Id.* Although we apply the *de novo* standard of review, an administrative agency's interpretation of its own regulations is accorded

> deference by the reviewing court unless it is clearly erroneous, arbitrary, unreasonable or inconsistent with past interpretations. *Portman v. Department of Human Services*, 393 Ill. App. 3d 1084, 1088 (2009).
>
> In interpreting an agency regulation, our primary objective is to ascertain and give effect to the intent of the agency, in this case, the IDOA. *People ex rel. Madigan v. Illinois Commerce Commission*, 231 Ill. 2d 370, 380 (2008). The surest and most reliable indicator of intent is the language of the regulation itself. *Id.*

Medponics, ¶¶ 26-30, A.15-17

The Appellate Court then reviewed the relevant provisions of the Act and IDOA's rules and provided the following analysis,

> The plain language of the IDOA rules intends to prohibit cultivation centers within 2,500 feet of area zoned "exclusively" for residential use. 8 IL ADC 1000.10. The term "exclusively" does not present ambiguity. The term "exclusively" is defined as "apart from all others," "solely," and "to the exclusion of all others." *See* Oxford Online Dictionary, https: //en.oxforddictionaries.com/definition/us/exclusively (last visited Mar. 4, 2019).
>
> Although Curative's proposed cultivation center is located within 2,500 feet of the R-1 and R-5 zoning districts in Aurora, the record reflects that these areas are not exclusively residential. The AZO reflects areas R-1 and R-5 as having a litany of special and accessory uses other than residential. *See supra* ¶ 5. In its ordinance granting Curative a special use permit for a medical cannabis cultivation facility, the City of Aurora stated that Curative's "petition met the standards prescribed by *** the Aurora Zoning Ordinance." Aurora further stated that "the proposed Special Use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare and will not be injurious to the use of other property in the immediate vicinity, nor diminish or impair property values in the neighborhood."
>
> The IDOA provides further guidance on this issue in their answers to frequently asked questions at their website in the following manner:
>
> > "The definition of "area zoned residential" is an area zoned "exclusively residential." If the local municipality provides a letter that its zoning districts located within 2500 feet of a

> cultivation center are not zoned 'exclusively' residential because in addition to residential uses, the zoning districts allow for other uses such as churches, parks, schools, utility substations, and/or other planned uses including commercial uses, will that satisfy this requirement?
>
> Yes, but the applicant must verify setback regulations are also met, located in the Department of Agriculture Administrative Rules section 1000.40(e). The Department will rely heavily on local zoning authority's approval."

See Illinois Department of Agriculture-Medical Cannabis Pilot Program Frequently Asked Questions, https://www2.illinois.gove/sites/agr/Plants/MCPP/Documents/mcppfaq.pdf (last visited Mar. 4, 2019).

> The AZO clearly zoned districts R-1 and R-5 as residential. However, the many other allowed uses in these areas make clear that they are zoned for non-residential special uses as well. In short, they are not "exclusively" residential. Medponics argues that the R-1 and R-5 districts remain zoned exclusively for residential use in the AZO even when non-residential uses are allowed. While this may be a reasonable interpretation, it does not make the IDOA's interpretation of its own regulations clearly erroneous, arbitrary, or unreasonable. "If reasonable readers of a statute could differ over the extent of the regulatory authority it confers, we defer to the agency's interpretation if the interpretation is defensible." *Quality Saw and Seal, Inc. v. Illinois Commerce Com'n*, 374 Ill. App. 3d 776, 782 (2007). That rule holds true even if the agency only recently arrived at the interpretation. *Id.*
>
> Based on the foregoing, we reverse the trial court's November 30, 2017, order finding the award of the cultivation center permit to Curative to be clearly erroneous. The IDOA's interpretation that zoning districts R-1 and R-5 are not "exclusively residential" as defined by its own rules and, therefore, the Act, is a reasonable interpretation based on the administrative record in this case.

Medponics, ¶¶ 32-36, A.17-19. In conclusion, the Appellate Court held, "For the reasons stated, we reverse the judgment of the circuit court of Lake County and affirm the decision of the Illinois Department of Agriculture. *Id.*, ¶45, A.23. This appeal followed.

ARGUMENT

CAUSE DOES NOT EXIST ON THIS RECORD FOR THE SUPREME COURT TO REVERSE THE HOLDING OF THE APPELLATE COURT THAT THE R-1 AND R-5 ZONING DISTRICTS IN THE CITY OF AURORA ARE NOT "EXCLUSIVELY RESIDENTIAL" BECAUSE OF THE MYRIAD OF NON-RESIDENTIAL AND COMMERCIAL PERMITTED, ACCESSORY AND SPECIAL USES THAT ARE SPECIFICALLY ALLOWED IN THESE DISTRICTS BY THE ZONING ORDINANCE.

Medponics begins its argument with the statement, "This point must be made upfront: the Act's cultivation center location requirement is not ambiguous;" while concluding with the following,

> One final point. Medponics does not contend that the rule at issue is invalid. Medponics contends only that IDOA's interpretation of the rule is wrong and asks only that the rule be applied as it is written.

Medponics Br., pp.12 and 30. In between, Medponics fails to provide any compelling or persuasive argument that the relevant rule, "'Area zoned for residential use' means an area zoned exclusively for residential use," has in any manner been misinterpreted or misapplied by the IDOA in awarding the subject cultivation center permit to Curative. While issues concerning medical cannabis are relatively new to the annals of jurisprudence in this state, the law and time-honored standards concerning the review of agency decisions by the courts in administrative review proceedings are well-established.

In the statement of additional facts set forth above, Curative provides extended sections of the Appellate Court's actual decision to demonstrate how it complied with the appropriate standard of review and engaged in well-reasoned and thoughtful analysis which is supported by compelling authority and precedent. Simply stated, the Appellate Court found that an area is not "exclusively" residential if the zoning ordinance provides that a

mega-church can be constructed in an R-1 or R-5 zoning district as a permitted use, or if an airport, hospital, sanatarium, cemetery, commercial development, university or truck garden, among other commercial and non-residential uses, can be dropped in by special or accessory use. In the end, the IDOA's interpretation of its own regulation was and is entirely reasonable in this situation and should not be overturned, especially because the law provides deference to an agency's decision in this situation. The Appellate Court applied the rule, as written, while avoiding any unnecessary analysis. For these reasons, the decision of the Appellate Court should be affirmed by the Supreme Court.

A. The Standard of Review

The trial court found that the question presented on this record was a mixed question of fact and law. C.3721-22. The Appellate court found that a question of law was presented, so its review of the matter was *de novo*. *Medponics*, ¶28. Before this court, Medponics agrees with the Appellate Court and urges that the matter should be considered on a *de novo* basis. Medponics Br., pp.15-16. In response, Curative would note that the Appellate Court cited to the *Portman* decision in its Rule 23 order (*Medponics*, ¶28), which provides, in relevant part,

> The interpretation of an administrative regulation is reviewed *de novo*. *People ex rel. Madigan v. Illinois Commerce Comm'n*, 231 Ill.2d 370, 380, 326 Ill.Dec. 10, 899 N.E.2d 227 (2008); *Weyland v. Manning*, 309 Ill.App.3d 542, 546, 243 Ill.Dec. 355, 723 N.E.2d 387 (2000). **Although we apply the *de novo* standard of review, an administrative agency's interpretation of its own regulations is accorded deference by the reviewing court unless it is clearly erroneous, arbitrary, unreasonable** (*LaBelle v. State Employees Retirement System*, 265 Ill.App.3d 733, 735–36, 202 Ill.Dec. 766, 638 N.E.2d 412 (1994)), **or inconsistent with past interpretations** (*Village of Fox River Grove v. Pollution Control Board*, 299 Ill.App.3d 869, 877, 234 Ill.Dec. 316, 702 N.E.2d 656 (1998)).

Portman v. Department of Human Services, 393 Ill. App. 3d 1084, 1088 (2nd Dist. 2009)(emphasis added).

In turn, the *Portman* decision cites to the Supreme Court's decision in *Madigan*, which provides, in relevant part,

> **In interpreting an agency regulation, our primary objective is to ascertain and give effect to the intent of the agency**, in this case, the Commission. *MD Electrical Contractors, Inc. v. Abrams*, 228 Ill.2d 281, 287, 320 Ill.Dec. 837, 888 N.E.2d 54 (2008). **The surest and most reliable indicator of intent is the language of the regulation itself**. *MD Electrical*, 228 Ill.2d at 287, 320 Ill.Dec. 837, 888 N.E.2d 54. **In determining the plain meaning, we consider the regulation in its entirety, keeping in mind the subject it addresses and the apparent intent of the Commission in enacting it.** *MD Electrical*, 228 Ill.2d at 287, 320 Ill.Dec. 837, 888 N.E.2d 54. **Where the language of the regulation is clear and unambiguous, we must apply it as written, without resort to extrinsic aids of statutory construction**. *MD Electrical*, 228 Ill.2d at 287–88, 320 Ill.Dec. 837, 888 N.E.2d 54.

People ex rel. Madigan v. Illinois Commerce Comm'n, 231 Ill. 2d 370, 380 (2008)(emphasis added). In *Portman*, the Appellate Court also cites to the *LaBelle* decision, which provides,

> [T]his appeal involves a review of an administrative agency's interpretation of its own regulations. **Courts reviewing an agency's decision generally accord the agency broad discretion when making decisions based on the statutes that they must enforce and accord great deference to an agency's interpretation of its own regulations**. (*People ex rel. Illinois Educational Labor Relations Board v. Oregon Community Unit School District 220* (1992), 233 Ill.App.3d 582, 586, 174 Ill.Dec. 549, 599 N.E.2d 95.) This deference stems from a recognition that administrative agencies "can make informed judgments upon the issues, based upon their experience and expertise." (*Illinois Consolidated Telephone Co. v. Illinois Commerce Comm'n* (1983), 95 Ill.2d 142, 153, 69 Ill.Dec. 78, 447 N.E.2d 295.) **Although an agency's interpretation is not binding on the court, the court will give great weight to an agency's construction and application of its own regulation unless it is clearly erroneous, arbitrary, or unreasonable**. *Water Pipe Extension, Bureau of Engineering v. Illinois Local Labor Relations Board* (1993), 252 Ill.App.3d 932, 936, 192 Ill.Dec. 578,

> 625 N.E.2d 733; *Mitee Racers, Inc. v. Carnival–Amusement Safety Board* (1987), 152 Ill.App.3d 812, 816–17, 105 Ill.Dec. 780, 504 N.E.2d 1298.

LaBelle v. State Employees Retirement System of Illinois, 265 Ill. App. 3d 733, 735–36, 638 (2nd Dist. 1994)(emphasis added).

In detailing the standard of review in administrative review proceedings, the Supreme Court has recently summarized,

> The proper standard of review in cases involving administrative review depends upon whether the question presented is one of fact, one of law, or a mixed question of fact and law. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill.2d 200, 210, 319 Ill.Dec. 887, 886 N.E.2d 1011 (2008). An administrative agency's findings and conclusions on questions of fact are considered *prima facie* true and correct. 735 ILCS 5/3–110 (West 2012). As such, an agency's factual findings are not to be reweighed by a reviewing court and are to be reversed only if they are against the manifest weight of the evidence. *Exelon Corp. v. Department of Revenue*, 234 Ill.2d 266, 272–73, 334 Ill.Dec. 824, 917 N.E.2d 899 (2009). Factual determinations are against the manifest weight of the evidence if the opposite conclusion is clearly evident. *Cinkus*, 228 Ill.2d at 210, 319 Ill.Dec. 887, 886 N.E.2d 1011. **Questions of law are reviewed under a *de novo* standard, and mixed questions of law and fact are reviewed under the clearly erroneous standard**. *Exelon Corp.*, 234 Ill.2d at 272–73, 334 Ill.Dec. 824, 917 N.E.2d 899. A mixed question of fact and law examines the legal effect of a given set of facts. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill.2d 380, 391, 261 Ill.Dec. 302, 763 N.E.2d 272 (2001). **Put another way, a mixed question asks whether the facts satisfy the statutory standard or whether the rule of law as applied to the established facts is or is not violated**. *Exelon Corp.*, 234 Ill.2d at 273, 334 Ill.Dec. 824, 917 N.E.2d 899. **An administrative decision is clearly erroneous " 'when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.' "** *AFM Messenger Service, Inc.*, 198 Ill.2d at 393, 395, 261 Ill.Dec. 302, 763 N.E.2d 272 (quoting and adopting the definition of "clearly erroneous" from *United States v. United States Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 92 L.Ed. 746 (1948)).

Beggs v. Board of Education of Murphysboro Community Unit School District No. 186, 2016 IL 120236, ¶ 50 (emphasis added).

The point Curative wants to make in this instance is that whether or not the standard of review is *de novo* or a mixed question of fact and law, deference must be given to the IDOA's interpretation of its own regulations. This is especially true when the agency's decision is reasonable and clearly not erroneous. The bottom line in this situation is that the IDOA did not make a mistake when it determined that the R-1 and R-5 zoning districts in Aurora are not "exclusively residential." This premise is certainly bolstered by the fact that the City of Aurora made the exact same determination. As such, whatever standard is applied by the Supreme Court, the result will be the same. There is simply no cause on this record to reverse the decision of the Appellate Court, so the award of the permit to Curative by the IDOA should be affirmed.

B. <u>The R-1 and R-5 Districts in the AZO are not Zoned Exclusively for Residential Use, as Determined by the Appellate Court, so Medponics has not met its Burden of Proof to Demonstrate that the IDOA's Award of the Subject Permit to Curative should be Reversed</u>

In a "Preliminary Statement" to its argument, Medponics goes through an interesting exercise where it provides dictionary definitions for all of the substantive words in the phrase, "area zoned for residential use." Medponics Br., p.14. The most critical definition provided by Medponics relates to the word "residential," which it defines as,

> **"[R]esidential" means** "used as a residence or by residents" or "**restricted to or occupied by residences**, a residential neighborhood." *See* merriam.webster.com/dictionary/residential, last visited May 28, 2020.

Id. (emphasis added). The most stunning revelation here is that standing on its own, an area which is zoned "residential" is by its definition restricted to dwellings or residences.[4] As

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[4] "Residence" is defined as, "a building used as a home: dwelling." *See*, merriam. webster.com/dictionary/residence, last visited August 10, 2020.

such, Medponics has provided definitive and persuasive support for the Appellate Court's decision in this instance, confirming the interpretation of the relevant rule made by the IDOA and City of Aurora.

In its "Preliminary Statement," Medponics also points to the fact that the Appellate Court found that the company's interpretation of the statute and regulation at issue "may be a reasonable interpretation." Medponics Br., pp. 12-13 (*citing*, *Medponics*, ¶35). Thus, the point would be that while the Appellate Court clearly found that the IDOA's interpretation of the statute and regulation was in fact reasonable, there could also be another way to read the requirements. That being stated, Medponics then changes course and argues that there is no ambiguity in the statute, so no deference should be given to the IDOA's interpretation of its own regulation, citing to the *Quality Saw* decision. *Id.*, p.13. In *Quality Saw*, the Appellate Court held,

> The general rules of statutory interpretation are familiar and well-settled. The interpretation of a statute is a question of law, subject to *de novo* review. **The fundamental principle of statutory construction is to determine and give effect to the intent of the legislature. The statutory language is the best indication of legislative intent**. "When the meaning of a statute is not clearly expressed in the statutory language, a court may look beyond the language [used] and consider the purpose behind the law and the evils the law was designed to remedy. [Citation.] When the language of an enactment is clear, it will be given effect without resort to other interpretative aids." *Petersen v. Wallach*, 198 Ill.2d 439, 444–45, 261 Ill.Dec. 728, 764 N.E.2d 19 (2002). Citing these principles, Quality Saw argues that we must determine the statute's meanings without considering the Commission's interpretation. The Commission responds that we should defer to its interpretation because it has expertise in public utility matters. **Indeed, "if the legislature has charged an agency with administering and enforcing a statute, we 'will give substantial weight and deference' to the agency's resolution of any ambiguities in that statute-even if the ambiguity concerns the extent of the agency's jurisdiction under that statute."** *Illinois Bell Telephone Co. v. Illinois Commerce Comm'n*, 362 Ill.App.3d 652, 656, 298 Ill.Dec. 591, 840

> N.E.2d 704 (2005), *quoting Illinois Consolidated Telephone Co. v. Illinois Commerce Comm'n*, 95 Ill.2d 142, 152, 69 Ill.Dec. 78, 447 N.E.2d 295 (1983). As our supreme court has made clear, " 'the general principle of judicial deference to administrative interpretation applies in full strength where such interpretation involves resolution of jurisdictional questions.' " *Illinois Consolidated Telephone Co.*, 95 Ill.2d at 152–53, 69 Ill.Dec. 78, 447 N.E.2d 295, *quoting Pan American World Airways, Inc. v. Civil Aeronautics Board*, 392 F.2d 483, 496 (D.C.Cir.1968). Thus, if reasonable readers of a statute could differ over the extent of the regulatory authority it confers, we defer to the agency's interpretation if the interpretation is defensible. That rule holds true even if the agency only recently arrived at the interpretation. *Illinois Consolidated Telephone Co.*, 95 Ill.2d at 154, 69 Ill.Dec. 78, 447 N.E.2d 295.

Quality Saw & Seal, Inc. v. Illinois Commerce Comm'n, 374 Ill. App. 3d 776, 781 (2nd Dist. 2007)(emphasis added).

Despite this precedent, Medponics then argues,

> Because the court does not defer to the agency's interpretation of a statutory provision unless it finds the statutory language ambiguous, the starting point is the statute itself. *Sykes*, 2019 IL App (1st) 180458, ¶¶11, 34. A statute will be deemed ambiguous only if it is "capable of being understood by reasonably well-informed persons in two or more different ways." *People v. Marshall*, 242 Ill. 2d 285, 292 (2011). A statute is not ambiguous merely because a term or phrase is undefined. *Metropolitan Life Ins. Co. v. Hamer*, 2013 IL 114234, ¶20. **To the contrary, when a phrase is undefined, the court presumes that the legislature intended the phrase to have its popularly understood meaning, and the court "may employ a dictionary" to ascertain this meaning**. *Id.; see also, Dusty's Outdoor Media*, 2019 IL App (5th) 180269, ¶9; *Poris v. Lake Holiday Property Owners Association*, 2013 IL 113907, ¶48.

Medponics Br., pp.13-14 (emphasis added). Medponics then goes through the above-described analysis where it defines the word "residential," as being an area restricted solely to dwellings and houses, and concludes,

> Applying the foregoing popularly understood definitions, **the Act's cultivation center location requirement is unambiguous and means what it says: the legislature intended that cultivation centers be located more**

> **than 2,500 feet away from areas where people live as demarcated by the applicable zoning ordinance**. Because the pertinent statutory language is unambiguous, the appellate court erred in deferring to IDOA's administrative interpretation of it.

Id., pp.14-15 (emphasis added).

Nowhere does Medponics provide any authority, precedent or support of any kind for the proposition that the Legislature intended that all cultivation centers to be located more than 2,500 feet "away from areas where people live."[5] In fact, in its "Findings" section related to the Act, the Legislature in no manner mentions the issue of setbacks or land use. *See*, 410 ILCS 130/5. Rather, the Legislature provides,

> **[T]he purpose of this Act is to protect patients with debilitating medical conditions**, as well as their physicians and providers, from arrest and prosecution, criminal and other penalties, and property forfeiture if the patients engage in the medical use of cannabis.

410 ILCS 130/5(g). In relation to zoning and land use, the Legislature clearly demonstrated an intent to make sure that the location of these cultivation centers be in conformity with local zoning laws, by requiring that a permit not be issued to an applicant unless it provides, "[A] copy of the current local zoning ordinance to the Department of Agriculture and verify that proposed cultivation center is in compliance with the local zoning rules issued in accordance with Section 140." 410 ILCS 130/85(d)(11). Section 140 then requires,

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5 In a latter section of its brief, Medponics argues that the Appellate Court and IDOA's interpretation of the subject rule would impermissibly limit the scope of the Act's cultivation center location requirement to less than all municipalities in the state. Medponics Br., 25-30. Curative would suggest that if the theory espoused by Medponics is adopted, banning cultivation centers from an area within 2,500 feet (.47 of a mile) of any place where people live, there will be large swaths of the state where cultivation centers would be prohibited. That result would not appear to be consisted with the purposes of the Act, as argued *infra*.

> **A unit of local government may enact reasonable zoning ordinances or resolutions, not in conflict with this Act or with Department of Agriculture or Department of Financial and Professional Regulation rules**, regulating registered medical cannabis cultivation center or medical cannabis dispensing organizations. **No unit of local government, including a home rule unit, or school district may regulate registered medical cannabis organizations other than as provided in this Act and may not unreasonably prohibit the cultivation, dispensing, and use of medical cannabis authorized by this Act**.

410 ILCS 130/140 (emphasis added).

Thus, the purposes of the Act clearly enunciated by the Legislature are first to "protect patients with debilitating medical conditions," then to allow municipalities to enact reasonable zoning ordinances and resolutions, not in conflict with the provisions of the Act or IDOA's rules, without unreasonably prohibiting the cultivation and use of medical cannabis. As set forth in *Quality Saw*, the fundamental principle of statutory construction is to determine and give effect to the intent of the Legislature, with the statutory language being the best indication of legislative intent. 374 Ill. App. 3d at 781. Using the definition of the word "residential," as provided by Medponics, the intention of the Legislature is clear that the setback requirements for cultivation centers are only applicable to areas which exclusively or solely contain dwellings or residences.

In Aurora, religious institutions are permitted uses in the R-1 and R-5 zoning classifications at issue in this appeal (Section 4.2-1.2A of the AZO), so based on this fact alone, the districts are no longer "**restricted to or occupied by residences**," pursuant to the definition of the word "residential" tendered by Medponics. Medponics Br., p.14. Taking into consideration the myriad of additional commercial and non-residential accessory and special uses allowed in these districts, clearly takes the R-1 and R-5 districts out of those

areas which are "**restricted to**" or "**exclusively**" residential, as found by the Appellate Court. As such, the IDOA's rule merely adds clarification to the intention of the Legislature evidenced by the language of the statute. Medponics has not challenged the appropriateness of IDOA's promulgation of this rule, but has simply requested that the Supreme Court interpret it as written. Medponics Br., p.30. That is exactly what the Appellate Court and IDOA have done in this instance. These decisions are completely consistent with the purposes of the Act, as detailed above, further demonstrating the reasonableness of the agency's original decision to award the permit to Curative.

In conclusion, the "Preliminary Statement" contained in the brief of Medponics takes umbrage with the decisions of the Appellate Court and IDOA, while concentrating on the concept of ambiguity. Medponics Br., pp.12-15.[6] These comments are not included in the "Argument" section of Medponics' brief (*Id.*, pp.15-30), but appear to contain its primary contentions concerning the specific holdings made by the Appellate Court. With the exception of a section concerning the standard of review, the remainder of Medponics' brief contains argument concerning issues which were not specifically addressed by the Appellate Court. That being stated, none of the "argument" set forth in the "Preliminary Statement" is persuasive or based upon relevant or controlling precedent. The Appellate Court in this instance held,

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Supreme Court Rule 341(h) does not include directions for an appellant's brief to include a section entitled, "Preliminary Statement." Rather, Rule 341(h)(7) provides for a section entitled, "Argument, which shall contain the contentions of the appellant and the reasons therefore, ... Points not argued are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."

> [W]e reverse the trial court's November 30, 2017, order finding the award of the cultivation center permit to Curative to be clearly erroneous. The IDOA's interpretation that zoning districts R-1 and R-5 are not "exclusively residential" as defined by its own rules and, therefore, the Act, is a reasonable interpretation based on the administrative record in this case.

Medponics, ¶6, A.19. The Supreme Court has clearly held, "[U]nder any standard of review, a plaintiff to an administrative proceeding bears the burden of proof, and relief will be denied if he or she fails to sustain that burden." *Marconi v. Chicago Heights Police Pension Bd.*, 225 Ill. 2d 497, 532–33 (2006), *as modified on denial of reh'g* (May 29, 2007)(citations omitted). In this instance, Medponics has simply not met its burden of proof, so the decisions of the Appellate Court and IDOA should be affirmed.

C. The Location of Curative's Cultivation Center is not Too Close to Areas in Aurora Zoned Exclusively for Residential Use

In the second section of its "Argument," Medponics details the rules for statutory construction of municipal ordinances, then discusses various sections of the AZO. Medponics Br., pp.16-18. Medponics then argues,

> As discussed throughout, the Act requires that cultivation centers be located more than 2,500 feet away from any "area zoned for residential use." 410 ILCS 130/105(c) (A64). The Act does not define the phrase "area zoned for residential use," but the Rules do: "'Area zoned for residential use' means an area zoned **exclusively** for residential use." 8 Ill. Adm. Code 1000.10 (A66) (emphasis added). It is undisputed that the location of Curative's proposed cultivation center is less than 2,500 feet away from Aurora's R-1 and R-5 zoning districts, both of which are zoned exclusively for residential use under the Ordinance. The location of Curative's proposed cultivation center thus violates the Act's location requirement and IDOA's rule administering that requirement.

Id., p.18. Curiously, Medponics does not mention any ruling of the Appellate Court in this section of its brief, seemingly rearguing the same premise as included in its Preliminary

Statement. In response, Curative will simply repeat and reallege its arguments as included in Section B of this brief, *supra*.

Further, the Appellate Court did in fact highlight the action taken by the City Council of Aurora concerning the zoning issues, when it reported,

> On November 18, 2014, the Aurora City Council granted Curative's special use petition, finding that it "is not contrary to the purpose and intent of *** the Aurora Zoning Ordinance."

Medponics, ¶¶ 6-8, A.4-5. In addition, the City Council included the following findings in the ordinance approving the special use for its cultivation center awarded to Curative,

> WHEREAS, the City Council, based upon the conditional recommendation and the stated standards of the Planning Commission, **finds that the proposed Special Use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare, will not be injurious to the use of other property in the immediate vicinity, nor diminish or impair property values in the neighborhood** and, further, the City Council finds that the granting of this Special Use will not impede normal and orderly development and improvement of surrounding property for uses permitted in the district and that adequate utilities, access roads, drainage and other facilities are being provided and that **the Special Use will in all respects conform to the applicable regulations of the M-2(S) Manufacturing-General zoning classification except as varied herein**.

C.5260-61 (emphasis added). Medponics has in no manner challenged the propriety of these detailed conclusions made by the City Council, which conclusively demonstrate that Aurora conscientiously followed the appropriate procedures outlined by the Act and IDOA's rules, while determining that the location of Curative's cultivation center is consistent in every way with the AZO. As a result, none of the material in this section of Medponics' brief helps it meet its burden of proof, as described above, or is in any manner persuasive on any issue which is relevant to this appeal

D. The Concept of Zoning Amendments is Not Relevant to the Issues under Consideration in this Appeal

Medponics begins this section of its argument by stating,

> IDOA and Curative argued below that Aurora's R-1 and R-5 zoning districts are not areas zoned exclusively for residential use because **the Aurora Zoning Ordinance allows the issuance of special use permits for non-residential uses, such as parks and churches, within these districts**. (C2548-C2580, C2583-C2635) **IDOA and Curative thus maintain that the availability of special use permits within these districts changes their zoning designations to something other than exclusively residential**. This interpretation is contrary to the law because it is established that the availability of special use permits within a particular zoning district does not change that district's zoning designation. **Simply stated, special use permits do not function as zoning amendments**.

Medponics Br., pp.18-19 (emphasis added).

As a first point of contention, Curative will note that by characterizing the issues in this proceeding as involving "parks and churches" in the areas zoned R-1 and R-5 in Aurora, Medponics is seriously depreciating the reality of the nature of the accessory and special uses which are in fact allowed in these areas. To begin with, there is no dispute on this record that Curative's cultivation center is located in a pre-existing industrial/manufacturing park zoned M-2 (Manufacturing), which is already located within 2,500 feet of the subject zoning districts. Further, the discussion is not just limited to parks and churches, but includes such intensive special uses as airports, hospitals, sanatoria or mental health facilities, commercial developments and utilities, to name a few, all of which are decidedly non-residential.

In addition, no one has requested a "zoning amendment" in this situation and the topic certainly was not discussed by the Appellate Court. The irrelevance of the argument being made by Medponics in this regard is demonstrated by a review of the some of

precedent cited in support of its position. For instance, in the *Jones* decision, the Appellate Court was reviewing a situation where the plaintiff was contesting the issuance of a special use permit issued by the defendant city to a third party. *Jones v. City of Carbondale*, 217 Ill. App. 3d 85, 87 (5th Dist. 1991). In the case, the Appellate Court found,

> **An amendment to a zoning ordinance changes or alters the original ordinance or some of its provisions**. (*Athey v. City of Peru* (1974), 22 Ill.App.3d 363, 367, 317 N.E.2d 294, 297.) In the instant case Jones argues that because the special use authorizes use of the property contrary to the ordinance, it is an amendment and the voting requirements attendant to an amendment apply. We disagree.

217 Ill. App. 3d at 89 (emphasis added). Here, no one has requested an amendment to any portion of the AZO, and Medponics has not challenged the issuance of the special use permit to Curative by the City of Aurora. Curative has no problem with the rule cited from the *Living Word* decision, "The purpose of special uses is to provide for those uses that are either necessary or generally appropriate for a community but may require special regulation because of unique or unusual impacts associated with them." *City of Chicago Heights v. Living Word Outreach Full Gospel Church and Ministries, Inc.*, 196 Ill. 2d 1, 16 (2001). In fact, this holding in *Living Word* actually helps Curative in this instance, as the "unique or unusual impacts associated with [special uses]," are what remove the R-1 and R-5 zoning districts in Aurora from being "exclusively" residential.

Neither of the additional cases cited by Medponics in this section of its brief are instructive, controlling or germane. In *Consumers Illinois Water*, the issues concerned the constitutionality of a portion of Will County's zoning ordinance concerning the votes required to issue a special use permit. *Consumers Illinois Water Co. v. County. of Will*, 220

Ill. App. 3d 93, 94 (3rd Dist. 1991). In *Monat*, the plaintiff county filed an injunctive proceeding against defendant landowners concerning the keeping of horses on their property. *County of Cook v. Monat*, 365 Ill. App. 3d 167, 169 (1st Dist. 2006). The Appellate Court found that a special use permit issued to a previous owner of the property did not run with the land and affirmed the trial court's decision enjoining the defendants from keeping horses on their property. *Id.* Certainly neither of these cases is in any manner relevant to the issues presented here concerning the special purposes of the Act and IDOA's rules.

In conclusion, Medponics argues, "Because the availability of special use permits in a particular zoning district does not change that district's zoning classification, Aurora's R-1 and R-5 districts remain exclusively residential zoning districts." Medponics Br., p.21. In fact, no one on this record has requested that Aurora amend a zoning district or change its zoning map. The relevant issues here, as clearly found by the Appellate Court, concern the character of the uses allowed in these zoning districts. In fact, the Appellate Court found,

> Although Curative's proposed cultivation center is located within 2,500 feet of the R-1 and R-5 zoning districts in Aurora, the record reflects that these areas are not exclusively residential. The AZO reflects areas R-1 and R-5 as having a litany of special and accessory uses other than residential.

Medponics, ¶ 33. None of the precedent cited by Medponics in this instance is controlling or helps it meet its burden of proof on this record. Both the Appellate Court and IDOA considered the material and relevant factors in complying with the purposes of the Act and rules in this instance. As a result, there is no well-based cause in fact or law to reverse the decision of the Appellate Court based upon the concept of zoning amendments.

E. Medponics has Failed to Present any Authority, Precedent or Argument which Demonstrates that the Appellate Court Inappropriately Considered Materials Outside of the Administrative Record

In reaching its decision, the Appellate Court did consider a letter dated April 29, 2015, written by the zoning administrator of the City of Aurora and directed to the chief counsel of the IDOA, which predated the issuance of the permit to Curative for the subject cultivation center on October 30, 2015. *Medponics*, ¶8 (a copy of the letter is at C.5271-72 and Supp.A, 11-12). The letter was the subject of a joint motion to supplement the record filed in the trial court by the IDOA and Curative. C.5254-71. The trial court denied the motion and Curative appealed that decision to the Appellate Court. C.5435 and 5494-96.

In the letter, Aurora's zoning administrator addresses the specific issues which are pending on appeal in this case and also cited to a document which appeared on the IDOA's website which was entitled, "Frequently Asked Questions" (the FAQs), which again addresses the issues under consideration here. C.5271-71, Supp.App., pp.11-12. In its analysis of whether the areas zoned R-1 and R-5 in Aurora are "exclusively residential," the Appellate Court found,

> The IDOA provides further guidance on this issue in their answers to frequently asked questions at their website in the following manner:
>
> > "The definition of "area zoned residential" is an area zoned "exclusively residential." If the local municipality provides a letter that its zoning districts located within 2500 feet of a cultivation center are not zoned 'exclusively' residential because in addition to residential uses, the zoning districts allow for other uses such as churches, parks, schools, utility substations, and/or other planned uses including commercial uses, will that satisfy this requirement?

> Yes, but the applicant must verify setback regulations are also met, located in the Department of Agriculture Administrative Rules section 1000.40(e). The Department will rely heavily on local zoning authority's approval." See Illinois Department of Agriculture-Medical Cannabis Pilot Program Frequently Asked Questions, https://www2.illinois.gov/sites/agr/Plants/MCPP/Documents/mcppfaq.pdf (last visited Mar. 4, 2019).

> The AZO clearly zoned districts R-1 and R-5 as residential. However, the many other allowed uses in these areas make clear that they are zoned for non-residential special uses as well. In short, they are not "exclusively" residential.

Medponics, ¶¶ 34-35. Thus, while the Appellate Court did not specifically reverse the trial court's decision on the motion to supplement the record, the letter and the FAQs materials from the IDOA's website were clearly considered. *Id.*

In urging the Supreme Court to find that it was improper for the Appellate Court to consider the letter from the zoning administrator and FAQs from the IDOA's website, Medponics relies on the trial court's finding that "Curative did not present any evidence showing that the letter was in fact considered by IDOA in it cultivation permit decision." Medponics Br., pp.22-23. Medponics further argues that there is no evidence in the administrative record which demonstrates that the IDOA considered the FAQs information "as part of the application process." *Id.*, p.25. This being stated, Medponics fails to cite to any authority in support of these propositions that evidence of actual consideration of materials is needed before the same can be considered in administrative review. Failure to cite to authority in support of any argument on appeal can lead to a determination that the argument has been waived. *See*, *People v. Pope*, 2020 IL App (4th) 180773, ¶ 77. In this instance, Medponics has forfeited this argument.

In the alternative, in relation to the record, the Administrative Review Law provides,

> Answer. Except as herein otherwise provided, the administrative agency shall file **an answer which shall consist of the original or a certified copy of the entire record of proceedings under review, including such evidence as may have been heard by it and the findings and decisions made by it.** By order of court or by stipulation of all parties to the review, the record may be shortened by the elimination of any portion thereof. If the complaint specifies that none or only a part of the transcript of evidence shall be filed as part of the answer and if the administrative agency or any other defendant objects thereto, the court shall hear the parties upon this question and make a finding as to whether all, or if less than all, what parts of the transcript shall be included in the answer. No pleadings other than as herein enumerated shall be filed by any party unless required by the court.

735 ILCS 5/3-108 (emphasis added). All this statute requires that the "entire record of proceedings under review" be filed with the trial court. *Id.* In this situation, the IDOA complied with this requirement.

This final proposition is supported by a review of a portion of the motion to supplement the record filed jointly by Curative and the IDOA in the trial court concerning these materials. C.5254-71. In this regard, Curative and the IDOA stated,

> 5. Finally, during the search for the documents described above, counsel for Defendants found a copy of a letter the Zoning Administrator for the City of Aurora, Edward T. Sieben, forwarded to the Chief Counsel of the Department, Craig Sondgeroth, on April 29, 2015, specifically commenting on the"Exclusively Residential" issue decided by the Court at the hearing on administrative review, a true and correct copy of which is attached hereto as Exhibit C. This letter was forwarded to the Department prior to the award of the permit to Curative on October 30, 2015, so it was clearly considered as part of the application process.
>
> 6. All of the documents described above should have been included in "the entire record of the proceedings under review, including such evidence as may have been heard by [the Department] and the findings and decisions made by it," as defined by Section 3-108(b) of the Administrative Review Law. 735 ILCS 5/3-108(b). "On review of an administrative agency decision, this court is limited to considering the record that was before the

> agency and may not consider new or additional evidence." *Board of Education, City of Peoria School District No. 150 v. State of Illinois Educational Labor Relations Board*, 318 Ill. App. 3d 144, 147, 741 N.E.2d 690, 693 (3rd Dist. 1000)(*citing*, *North Avenue Properties, L.L.C.- v. Zoning Board of Appeals*, 312 Ill.App.3d 182,185,244 Ill.Dec. 469,726 N.E.2d 65, 68 (15' Dist. 2000), quoting Section 3-110 of the Administrative Review Law (735 ILCS 5/3-110 (West 1998)).
>
> 7. In this situation, the exhibits attached to this joint motion are not"new or additional evidence," but materials that were clearly considered by the Department during the application process which is at the center of the administrative review proceeding.

C.5258-59. Before the trial court, Curative was attempting to make the point that the Attorney General, on behalf of the IDOA, would not have made these representations in a signed pleading if the same were not "well grounded in fact," as required by Supreme Court Rule 137(a). It stands to reason that the IDOA would have considered these concepts during the application process, especially because the agency found the FAQs were important enough to post on its website, prior to issuing Curative its permit. Medponics has never presented any evidence to the contrary, so the Appellate Court did not engage in error by considering the letter and FAQs in reaching its decision to reverse the trial court's decision

F. Medponics has Waived Any Argument about the Scope of the Relevant Regulation, and in the Alternative, if the Merits are Considered, the Rule Clearly Comports with the Statutory Authority Granted to the IDOA to Administer the Provisions of the Act

Medponics argues that the rule promulgated by the IDOA at issue here, and the agency's interpretation of that rule, "impermissibly limits the scope of the Act's cultivation center location requirement." Medponics Br., p.26. Medponics did not include any allegation in this regard in its complaint or first or second amended complaints for administrative review filed in this cause (C.11-37, 937-63 and 2045-61), and failed to make

any argument along these lines before the trial court. As a result, Medponics has waived this argument. That being stated, even if the argument has not been waived, and the merits of the issue are considered by the Supreme Court, the IDOA has clearly not exceeded its authority in this instance.

1. Medponics has Waived this Argument

A review of the Verified Second Amended Complaint in administrative review filed by Medponics on February 24, 2017, the complaint that was considered by the trial court at its hearing on administrative review, demonstrates that the company did not in any manner allege that the IDOA's interpretation of the "exclusively residential" rule impermissibly limits the scope of the Act's setback requirement. C.2045-61. Further, in its order on administrative review filed on August 24, 2017, the trial court specifically found,

> Insofar as the IDOA has approved Rule 8 IL ADC 1000.10 and 1000.100 purporting to interpret the phrase defining areas "zoned for residential use" as cited in 410 ILCS 130/105(c), while the Rules seem to expand the phrase, the Court does not find that the IDOA rules are improper or clearly erroneous. **Although it has been suggested that the rules go too far, this has not been argued by Medponics**. Therefore, the court is accepting these IDOA rules as they are set forth; **the Court does not find that the rules are clearly inconsistent with Sec. 130/105(c)**.

C.3721-22 (emphasis added). On November 30, 2017, the trial court issued its Final Order, which incorporated its findings, as set forth above. C.5481-82.

In relation to the general rules of appellate practice, the Supreme Court has held, "It is axiomatic that questions not raised in the trial court are deemed waived and may not be raised for the first time on appeal." *Western Casualty & Surety Co. v. Brochu*, 105 Ill.2d 486, 500-01 (1985). In relation to administrative review, the Appellate Court has held, "The

law in Illinois is well-established that if an argument is not presented in an administrative hearing, it is waived and may not be raised for the first time on appeal. *James L. Hafele & Associates v. Department of Employment Security*, 308 Ill.App.3d 983, 987-88 (3rd Dist. 1999). "This is particularly true where the issue is one of construction or interpretation of the statues and rules which most directly concern the agency's operations." *Id.* "[I]t is generally required that a litigant raise any challenges to a statute's validity at the administrative hearing and on review to the circuit court, lest the challenge be waived for purposes of appellate review." *Dombrowski v. City of Chicago*, 363 Ill.App.3d 420, 425 (1st Dist. 2005). While Medponics challenges an administrative rule here, the Supreme Court has held,

> [A]dministrative rules and regulations have the force and effect of law, and must be construed under the same standards which govern the construction of statutes. (*DeGrazio v. Civil Service Com.* (1964), 31 Ill.2d 482, 485, 202 N.E.2d 522; 2 Am.Jur.2d Administrative Law sec. 298 (1962).) Like a statute, an administrative rule or regulation enjoys a presumption of validity. *People ex rel. Colletti v. Pate* (1964), 31 Ill.2d 354, 359, 201 N.E.2d 390.

Northern Illinois Automobile Wreckers & Rebuilders Ass'n v. Dixon, 75 Ill. 2d 53, 58 (1979).

Here, Medponics did not make an argument in its complaint concerning limiting the scope of the Act's setback requirement to all municipalities, and as found by the trial court, failed to pursue the issue in that venue. There is no indication on this record that Medponics made this an issue during the application process before the IDOA, and there is no indication that it tried to file a motion for reconsideration before the trial court concerning the negative finding made against it on this issue. There is also no evidence that Medponics tried to file a cross-appeal before the Appellate Court or bring its own separate appeal of this adverse

finding. While there is apparently no case law directly on point, if the axiomatic rule on appeal is that an issue not raised below is waived (*Brochu, supra*), then the argument made by Medponics in this regard about improperly limiting the scope of the statute should be found by the Supreme Court to be abandoned, forfeited or waived.

2. On the Merits, IDOA's Interpretation of its Own Rule Does Not Impermissibly Limit the Scope of the Act's Setback Requirement

In relation to the promulgation of administrative rules by a state agency, the Appellate Court has held,

> An administrative agency's authority derives from its enabling statute, and the agency has no inherent or common-law authority. *Wood Dale Fire Protection District,* 395 Ill.App.3d at 527, 334 Ill.Dec. 341, 916 N.E.2d 1229. Consequently, if an agency's rules go beyond the scope of the legislative grant of authority or conflict with the enabling statute, the rules are invalid. *Wood Dale Fire Protection District,* 395 Ill.App.3d at 527–28, 334 Ill.Dec. 341, 916 N.E.2d 1229. However, like statutes, administrative rules are presumed to be valid, and the challenging party has the burden of establishing their invalidity. *Julie Q. v. Department of Children & Family Services,* 2011 IL App (2d) 100643, ¶ 36, 357 Ill.Dec. 448, 963 N.E.2d 401. If it can reasonably do so, a court has a duty to affirm a rule's validity. *Julie Q.,* 2011 IL App (2d) 100643, ¶ 36, 357 Ill.Dec. 448, 963 N.E.2d 401.

Village of Oak Brook v. Sheahan, 2015 IL App (2d) 140810, ¶ 43. A court will not substitute its own construction of a statutory for a reasonable interpretation adopted by the agency charged with the statute's administration. *Hadley v. Illinois Department of Corrections*, 224 Ill.2d 365, 371 (2007).

In relation to the rule-making authority granted to the IDOA, the Act provides, "It is the duty of the Department of Agriculture to enforce the provisions of this Act relating to the registration and oversight of cultivation centers unless otherwise provided for in this Act." 410 ILCS 130/15(b). In relation to the rules promulgated by the IDOA concerning

cultivation centers, Section 85(b) of the Act provides, "The registrations shall be issued and renewed annually as determined by administrative rule." 410 ILCS 130/85(b). Further, Section 165(c)(8) of the Act provides,

> The Department of Agriculture rules shall address, but not be limited to the following related to registered cultivation centers, with the goal of protecting against diversion and theft, without imposing an undue burden on the registered cultivation centers: ... (8) any other matters as are necessary for the fair, impartial, stringent, and comprehensive administration of this Act.

410 ILCS 130/165(c)(8). Finally, Section 215 of the Act provides, "The Department may adopt rules related to the enforcement of this Law." 410 ILCS 130/215.

In interpreting the scope of the grant of authority given by a statute to an administrative agency, the Supreme Court has determined that "it is important to consider the purpose of the legislation." *Northern Illinois Automobile Wreckers*, 75 Ill.2d at 61. Here, the Act specifically provides,

> State law should make a distinction between the medical and non-medical uses of cannabis. Hence, **the purpose of this Act is to protect patients with debilitating medical conditions**, as well as their physicians and providers, from arrest and prosecution, criminal and other penalties, and property forfeiture if the patients engage in the medical use of cannabis.

410 ILCS 130/5 (emphasis added). While there is no express purpose stated by the Legislature related to the setback requirement, the Act does provide,

> Local ordinances. A unit of local government may enact reasonable zoning ordinances or resolutions, not in conflict with this Act or with Department of Agriculture or Department of Financial and Professional Regulation rules, regulating registered medical cannabis cultivation center or medical cannabis dispensing organizations. **No unit of local government, including a home rule unit, or school district may regulate registered medical cannabis organizations other than as provided in this Act and may not unreasonably prohibit the cultivation, dispensing, and use of medical cannabis authorized by this Act**. This Section is a denial and limitation

> under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State.

410 ILCS 130/140 (emphasis added).

Here, the ordinances adopted by the City of Aurora certainly do not hinder the cultivation of medical cannabis, so the same are not contrary to the provisions of the Act. In relation to the IDOA's interpretation of its own rule, Medponics argues,

> Here, IDOA's interpretation of its rule defining "residential area" under the Act, like DOC's interpretation of its rule in *Hadley*, impermissibly limits the scope of the Act's cultivation center location requirement. Under IDOA's interpretation, the only municipalities in which the Act's cultivation center location requirement applies are those which do not allow special use permits for non-residential uses in areas zoned exclusively residential. Like the Unified Code of Corrections in *Hadley*, the Act's cultivation center location requirement is unambiguous. It does not contain the limitation advanced by IDOA and Curative here, and the limitation cannot be implied by the court. "Where an enactment is clear and unambiguous, a court is not at liberty to depart from the plain language and meaning of the statute by reading into it exceptions, limitation, or conditions that the legislature did not express." *Evanston Insurance Co. v. Riseborough*, 2014 IL 114271, ¶15 (citations omitted).

Medponics Br., p.27. There are several problems with the analysis of Medponics.

First, the issue in *Hadley* decided by the Supreme Court related to the Department of Corrections' ("DOC") definition of an "indigent" prisoner, which definition conflicted with language in the Unified Code of Corrections exempting indigent prisoners from being charged two dollar co-payments for non-emergency medical and dental services. 224 Ill.2d at 369-85. The Supreme Court found that the rule was improper, as it did in fact conflict with the provisions of the Unified Code. *Id.* Here, the factual scenarios are so disparate that it is hard to see how the holdings in *Hadley* could apply to this situation concerning a setback

related to the cultivation of medical cannabis. Further, there is no reasonable basis upon which to argue that the IDOA's rule concerning the setback is in any manner contrary to the language in the Act. All the IDOA has done in this instance is define an ambiguous term in the Act, consistent with the authority to provide oversight concerning cultivation centers. 410 ILCS 130/15(b). As such, its decision is in no manner arbitrary, capricious or erroneous.

Second, the argument of Medponics wholly fails to address the deference to which agency decisions of this nature are to be afforded and the presumption of validity. *Sheahan, supra.* This deference is based in large part upon the expertise and experience that the relevant agency has with the subject matter of the legislation. Here, medicinal cannabis is essentially an agricultural product which is being produced in an controlled indoor environment. In relation to the legal basis for this deference, the Supreme Court has held,

> We note that the deference accorded a trial judge's experience and expertise under the federal rule is not unlike the deference accorded decisions of our administrative agencies. Indeed, this court has frequently acknowledged the wisdom of judicial deference to an agency's experience and expertise. See *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill.2d 76, 97–98, 180 Ill.Dec. 34, 606 N.E.2d 1111 (1992) (explaining that a significant reason for giving substantial weight and deference to an agency's interpretation of an ambiguous statute is that "agencies can make informed judgments upon the issues, based on their experience and expertise"); *Greer v. Illinois Housing Development Authority*, 122 Ill.2d 462, 495–96, 120 Ill.Dec. 531, 524 N.E.2d 561 (1988) (noting that too much judicial intervention in an administrative action may interfere with the exercise of agency discretion and expertise); *Massa v. Department of Registration & Education*, 116 Ill.2d 376, 388, 107 Ill.Dec. 661, 507 N.E.2d 814 (1987) (deferring to agency's expertise and experience and expressing a reluctance to tamper with an agency decision revoking a professional license); see also *Office of the Cook County State's Attorney v. Illinois Local Labor Relations Board*, 166 Ill.2d 296, 306, 209 Ill.Dec. 761, 652 N.E.2d 301 (1995) (requirement that a litigant exhaust administrative remedies before seeking judicial review permits the agency to use its special expertise in resolving the matter); *Employers Mutual Cos. v. Skilling*, 163 Ill.2d 284, 288, 206 Ill.Dec.

> 110, 644 N.E.2d 1163 (1994)(under the doctrine of primary jurisdiction, a matter should be referred to an administrative agency when it has a specialized or technical expertise that would help resolve the controversy); *Central City Education Ass'n v. Illinois Educational Labor Relations Board*, 149 Ill.2d 496, 523, 174 Ill.Dec. 808, 599 N.E.2d 892 (1992) (labor relations board is "uniquely qualified" to answer certain questions involving collective bargaining given its experience and understanding of the issues). **Even when we have reviewed an agency's interpretation of a statute de novo, we have acknowledged that the agency's interpretation was "relevant." Branson**, 168 Ill.2d at 254, 213 Ill.Dec. 615, 659 N.E.2d 961. Further, when we adopted the clearly erroneous standard of review for mixed questions of law and fact, we again recognized the experience and expertise of the agency and indicated that the standard would be deferential to some degree. *City of Belvidere*, 181 Ill.2d at 205, 229 Ill.Dec. 522, 692 N.E.2d 295.

AFM Messenger Service, Inc. v. Department of Employment Security, 198 Ill. 2d 380, 394–95 (2001).

In this circumstance, the IDOA certainly has experience regulating agricultural endeavors involving setbacks. *See, e.g.*, Livestock Management Facilities Act, 510 ILCS 77/1 *et seq*. (setbacks being detailed in §35). As such, Medponics has failed to provide any legitimate reason why the promulgation of the rule exceeded the grant of authority to the IDOA or why the Supreme Court should not defer to the agency's measured judgment and experience in this field. In this regard, Medponics has noted,

> In the circuit court, IDOA asserted that defining the Act's cultivation center location requirement as "area zoned exclusively for residential use" was reasonable in order to maximize the locations available throughout Illinois for cultivation centers. (C2556) IDOA explained that "the purpose of the Act is to expand the use of medicinal cannabis in Illinois" and that "[r]estricting cultivation centers to a setback requirement of 2,500 feet from any area zoned for residential use, without requiring exclusivity" – such as "mixed use" areas, for example, S. Connor, *Zoning*, §13.12 – "would significantly restrict the space available within which to operate a cultivation center. And cultivation centers – where the cannabis will be grown – are essential to the expansion of medicinal cannabis in Illinois." (C2556)

Medponics Br., p.28. In fact, maximizing the number of available locations would seem to support the Act's principal purpose to aid those patients who are seriously ill (410 ILCS 130/5(g)), and certainly does not support the premise suggested by Medponics that the rule would not be applicable to all of the municipalities across the state.

In conclusion, Medponics cites to the Cannabis Regulation and Tax Act (410 ILCS 705/1-1 *et seq.*), which concerns the promulgation of "recreational" marijuana across this state. Medponics Br., p.29. In particular, Medponics cites to the "Findings" adopted by the Legislature in relation to the recreational marijuana statute, which provide,

> The General Assembly further finds and declares that **this Act shall not diminish the State's duties and commitment to seriously ill patients registered under the Compassionate Use of Medical Cannabis Program Act**, nor alter the protections granted to them.

410 ILCS 705/1-5(d)(emphasis added). If anything, this legislative finding supports the premise urged by Curative and the IDOA throughout the course of this proceeding that the Appellate Court's interpretation of the Act and rules is spot on and should not be disturbed. This is especially true, now that it has been determined that the word "residential" contains a component of exclusivity standing on its own. *See*, Section B of this argument, *supra*. For all of these reasons, the arguments of Medponics should be rejected by the Supreme Court and the decision of the Appellate Court and IDOA affirmed.

CONCLUSION

For all of the reasons stated above, Defendant-Appellee, CURATIVE HEALTH CULTIVATION, LLC, would request that the Supreme Court find that it is not in violation of any setback provisions of the Compassionate Use of Medical Cannabis Pilot Program Act,

410 ILCS 130/1 *et seq.*, or any of the regulations promulgated by the IDOA in support of its requirements, and enter an order affirming the decisions of the Appellate Court and IDOA in this cause awarding the permit for the cultivation center in Illinois State Police No. 2 to Curative, and for any and all further relief which is just and equitable in the circumstances.

Respectfully submitted,

CURATIVE HEALTH CULTIVATION, LLC,
Defendant-Appellee

By: /s/William F. Moran, III
Its attorney

No. 125443

IN THE SUPREME COURT OF ILLINOIS

MEDPONICS ILLINOIS, LLC, an Illinois Limited Liability Company, Plaintiff-Appellant, vs. ILLINOIS DEPARTMENT OF AGRICULTURE, RAYMOND POE, Director of Illinois Department of Agriculture, JACK CAMPBELL, Chief of the Bureau of Medicinal Plants of the Illinois Department of Agriculture, Defendant-Appellees, CURATIVE HEALTH CULTIVATION, LLC, an Illinois Limited Liability Company, Defendant-Appellee.	Appeal from the Nineteenth Judicial Circuit, Lake County, Illinois and the Appellate Court for the Second Judicial District of Illinois Circuit Court No. 15-MR-2061 Appellate Court Nos. 2-17-0977, 2-18-0013 and 2-18-0014 (cons.) The Hon. Michael J. Fusz Presiding Trial Judge

CERTIFICATE OF COMPLIANCE

I, William F. Moran, III, counsel of record for Defendant-Appellant, CURATIVE HEALTH CULTIVATION, LLC, certify that this brief conforms to the requirements of Supreme Court Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service and supplemental appendix, is 47 pages.

Date: 08/12/2020

/s/ William F. Moran, III
Counsel for Defendant-Appellee, Curative Health Cultivation, LLC

No. 125443

IN THE SUPREME COURT OF ILLINOIS

MEDPONICS ILLINOIS, LLC, an Illinois Limited Liability Company, Plaintiff-Appellant, vs. ILLINOIS DEPARTMENT OF AGRICULTURE, RAYMOND POE, Director of Illinois Department of Agriculture, JACK CAMPBELL, Chief of the Bureau of Medicinal Plants of the Illinois Department of Agriculture, Defendant-Appellees, CURATIVE HEALTH CULTIVATION, LLC, an Illinois Limited Liability Company, Defendant-Appellee.	Appeal from the Nineteenth Judicial Circuit, Lake County, Illinois and the Appellate Court for the Second Judicial District of Illinois Circuit Court No. 15-MR-2061 Appellate Court Nos. 2-17-0977, 2-18-0013 and 2-18-0014 (cons.) The Hon. Michael J. Fusz Presiding Trial Judge

NOTICE OF FILING

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PLEASE TAKE NOTICE that on August 12, 2020, an electronic copy of the BRIEF AND SUPPLEMENTAL APPENDIX OF APPELLEE CURATIVE with attached CERTIFICATE OF COMPLIANCE and this NOTICE OF FILING was submitted to the Clerk of the Supreme Court of Illinois for filing on the Odyssey eFileIL system.

/s/ William F. Moran, III
Counsel for Defendant-Respondent, Curative Health Cultivation, LLC

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VERIFICATION OF PROOF OF SERVICE

I, William F. Moran, III, under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, hereby certify that the statements in this instrument are true and correct and that I electronically served copies of this Notice of Filing and the Brief and Supplemental Appendix of Appellee Curative with attached Certificate of Compliance on counsel for the remaining parties to this proceeding at the email addresses referenced above on this 12th day of August 2020.

/s/ William F. Moran, III
William F. Moran, III

SUPPLEMENTAL APPENDIX

TABLE OF CONTENTS OF SUPPLEMENTAL APPENDIX

Table One: Use Categories

A = Accessory Use P = Permitted By-Right Use S = Special Use Review Required Blank Cell = Not Permitted L = Limited but Permitted

P(S) = Permitted but may require a Special Use persuant to criteria in the Additional Regulations Blank Cell = Use Not Permitted

	P	E	R-1	R-2	R-3	R-4	R-4A	R-5	R-5A	B-1	B-2	B-3	O	DC	ORI	M-1	M-2	Additional Regulations
1000 Residence or accommodations	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
1100 Private household / Dwelling Unit		P	P	P	P	P	P	P	P	L	L	S	L	L		L	L	8.2-4.4A; 8.3-4.4B; 8.5-4.4A; 8.8-4.4A; 9.2-4.4A
1110 One Family Dwelling		P	P	P	P	P	P											
1120 Two Family Dwelling						P	P											
1130 ROW Dwelling (Party Wall)							P	P	P									
1140 Multi-Family Dwelling								P	P									
1150 Manufactured Home / Mobile Home Park																		
1200 Housing services for the elderly						S	S	S	S	S	S	S						
1300 Hotels, motels, or other accommodation services	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Definition: This category is comprised of establishments which serve lodging accommodations for travelers and must be staffed with twenty-four-hour clerk service, maid and janitor services. They may offer a wide range of services, from overnight sleeping space to full-service hotel suites. They may offer these services in conjunction with other activities, such as entertainment or recreation.																		
1310 Bed and breakfast inn											S	S	S	L				
Definition: This is a 1300 use category which is comprised of establishments which operate primarily in private homes and small buildings.																		
1320 Rooming and boarding / Single Room Occupancy											S	S						
Definition: This is a 1300 use category which is comprised of accommodation services such as rooming and boarding and single room occupancy establishments, rooming and boarding establishments serve a specific group or membership, such as a dormitory, fraternity or sorority house, or workers' camp, they provide accommodations and may offer housekeeping, meals, and laundry services. Single Room Occupancy are establishments where a room is provided, for compensation pursuant to previous arrangement, as sleeping and living quarters, but without cooking facilities and with or without an individual bathroom. Including but not limited to Lodging house; Rooming house; Dormitory																		
1330 Hotel, minor											S	S		S	S	S	S	
Definition: This is a 1300 use category which is comprised of establishments with fewer than fifty (50) guest rooms established prior to December 01, 1992.																		
1340 Motel											S	S						
Definition: This is a 1300 use category which is comprised of establishments with no common corridor to access guest rooms, the rooms are individually accessible from the outside. Including but not limited to Tourist Courts; Motor Lodges; and Motels.																		

	P	E	R-1	R-2	R-3	R-4	R-4A	R-5	R-5A	B-1	B-2	B-3	O	DC	ORI	M-1	M-2	Additional Regulations
1350 Hotel, limited service											S	S		S	S	S	S	
Definition:	This is a 1300 use category which is comprised of establishments that have more than fifty (50) guest rooms, and has meeting space/banquet facilities for less than 100 persons, no food service and none or one of the following amenities: swimming pool, exercise facility, gift shop or hotel restaurant within the physical confines of the hotel.																	
1360 Hotel, select service											S	S		S	S	S	S	
Definition:	This is a 1300 use category which is comprised of establishments that have more than fifty (50) guest rooms, and has meeting space/banquet facilities for between 100 and 200 persons, limited food service (i.e. continental breakfast) and two or more of the following amenities: swimming pool, exercise facility, gift shop or hotel restaurant within the physical confines of the hotel. In addition to these required amenities others may also be provided for guests including but not limited to: spa facilities, dry cleaning service, recreational activities, or entertainment.																	
1370 Hotel, full service											S	S		S	S	S	S	
Definition:	This is a 1300 use category which is comprised of establishments that have more than one hundred and twenty (120) guest rooms, and has meeting space/banquet facilities for between 200 and 1,000 persons, a hotel restaurant within the physical confines of the hotel and room service that is accessory to the restaurant use and all three of the following amenities: swimming pool, exercise facility, and gift shop. In addition to these required amenities others may also be provided for guests including but not limited to: spa facilities, dry cleaning service, recreational activities, or entertainment.																	
1380 Hotel, convention															P(S)	P(S)	P(S)	
Definition:	This is a 1300 use category which is comprised of establishments that have at least 200,000 square feet of floor area of which a minimum of 50% must be occupied by meeting space/banquet facilities, and has meeting space/banquet facilities for at least 1,000 persons, a minimum of one hotel restaurant within the physical confines of the hotel and room service that is accessory to the restaurant use and all three of the following amenities: swimming pool, exercise facility, and gift shop. In addition to these required amenities others may also be provided for guests including but not limited to: spa facilities, dry cleaning service, recreational activities, or entertainment.																	
1400 Home occupations		L	L	L	L	L	L	L	L									7.2-4
1500 Community Residence	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
1510 Community Residence, minor		L	L	L	L	L	L	L										
1520 Community Residence, major		S	S	S	S	S	S	S	S					S				
1530 Community Residence, transitional								S	S									
2000 General sales, services or office		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
2100 Retail sales or service										P	P	P		P	A	P	P	Otherwise complying with Chapter 25 of the Aurora Municipal Code
2110 Retail sales or service, with a Drive Through											P(S)	P(S)				P(S)	P(S)	
2120 Used clothing stores											P	P		L		P	P	Otherwise complying with Article VII of Chapter 25 of the Aurora Municipal Code

	P	E	R-1	R-2	R-3	R-4	R-4A	R-5	R-5A	B-1	B-2	B-3	O	DC	ORI	M-1	M-2	Additional Regulations
2130 Industrial Arts, manufacture and sales											P	P		P		P	P	
2140 Beer, wine, and liquor store											P	P				P	P	Otherwise complying with Chapter 6 of the Aurora Municipal Code
2150 Meat Market										P	P	P				P	P	
2160 Pawnshop											S	S		S		S	S	Otherwise complying with Article VI of Chapter 25 of the Aurora Municipal Code & 4.3-3.
2170 Flea Market										S	S	S				S	S	Otherwise complying with Article VII of Chapter 25 of the Aurora Municipal Code
2180 Regional consumer goods sales or service											P	P		S		P	P	
2181 Lumber yard and building materials															S	P	P	
2182 Heavy machinery repair and chemical cleaning services																P	P	
2190 Adult businesses																P		Otherwise complying with Article VIII of Chapter 29 of the Aurora Municipal Code
2195 Automated business devices						A	A	A	A	A	A	A		A	A	A	A	
2195.1 Donation collection bin											S	S						
2197 Cigarette or tobacco shops										P	P	P			A	P	P	
2198 Garage Sales		A	A	A	A	A	A	A	A	A	A	A	A			A	A	Section 4.4-10.
0 Banks, Financial Institutions and Insurance										P	P	P	S	P	S	P	P	

	P	E	R-1	R-2	R-3	R-4	R-4A	R-5	R-5A	B-1	B-2	B-3	O	DC	ORI	M-1	M-2	Additional Regulations
2210 Financial institutions with a drive-through facility										P(S)	P(S)	P(S)		S	S	P(S)	P(S)	4.3-3
2220 Alternative Financial Institutions											S	S		S				Sec. 4.3.P; Sec. 11.6-6.1.L
2300 Leasing or renting of real estate or household goods										P	P	P						
2310 Leasing commercial, industrial machinery, and equipment											P	P						
2400 Business and professional, office										P	P	P	P	P	P	P	P	
2410 Employment agency											P	P		L		P	P	
2420 Scientific and Technical offices/laboratory											P	P		P	P	P	P	
2500 Restaurant/Food and beverage services										P	P	P		P		P	P	Otherwise complying with Article VII of Chapter 8 of the Aurora Municipal Code
2510 Bar or drinking establishment											P	P		P		P	P	Otherwise complying with Chapter 6 of the Aurora Municipal Code
2520 Drive-in Restaurant												P(S)				P(S)	P(S)	
2530 Restaurant with a drive-through facility											P(S)	P(S)				P(S)	P(S)	
2560 Caterer											P	P		P		P	P	
2580 Vending machine operator												P		P	P	P	P	Otherwise complying with Article IV of Chapter 8 of the Aurora Municipal Code
2600 Personal services										P	P	P	P	P	A	P	P	Otherwise complying with Chapter 25 of the Aurora Muncipal Code
0 Laundromat										P	P	P		S		P	P	

	P	E	R-1	R-2	R-3	R-4	R-4A	R-5	R-5A	B-1	B-2	B-3	O	DC	ORI	M-1	M-2	Additional Regulations
2620 Drycleaning and Pressing Establishments										L	L	P		P	P	P	P	8.3-4.4A
2700 Pet and animal sales or service (except veterinary)											P	P		P		P	P	
2710 Kennel with Outdoor Pens and Runs																P	P	
2720 Animal Hospital												P				P	P	
2800 Vehicle sales or service establishment	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
2810 Vehicle dealership											P	P		S		P	P	
2811 Car Dealership, entirely used												S				S	S	
2812 Motorcycle, ATV, etc.												P				P	P	
2813 Bus, truck, mobile homes, or large vehicles												P				P	P	
2820 Auto Parts and Supplies										L	P	P		S		P	P	
2830 Repair and other services											P	P		P		P	P	
2831 Gasoline Station											S	S				S	S	
2832 Car Wash, Single Bay											S	P				P	P	
2833 Car Wash, Multiple Bay												S						
2834 Vehicle Repair, Minor											P	P		S		P	P	
2835 Hand Wash, detail shop											P	P		L		P	P	
2836 Vehicle Repair, Major											S	S		S		P(S)	P(S)	4.3-3.M. and 9.2-4.4.B.
0 Vehicle Rental											P	P						

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	P	E	R-1	R-2	R-3	R-4	R-4A	R-5	R-5A	B-1	B-2	B-3	O	DC	ORI	M-1	M-2	Additional Regulations
2900 General contractor, or special trade contractor (off site work)												P	P	P	P	P	P	
2910 Landscaping with Outside Storage																P	P	
2920 Extermination and pest control												P		L		P	P	
3000 Industrial Trade		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
3100 Light Industrial																P	P	
3110 Food, textiles, and related products															S	P	P	
3111 Alcoholic beverages, manufacture																	P	
3120 Wood, paper, and printing products																P	P	
3130 Wholesale trade establishment												P				P	P	
3140 Processing, finishing and assembly facilities												L			P	P	P	8.4-4.4A
3150 Recycling center																P	P	
3200 General Industrial																	P	
3210 Chemicals, and metals, machinery, and electronics manufacturing																P	P	
3211 Petroleum and coal products															S		P	
3212 Machinery manufacturing															S		P	
3220 Nonmetallic mining, quarries and other extraction										S	S	S				S	S	
3 0 Warehouse, Distribution and storage services															P	P	P	

	P	E	R-1	R-2	R-3	R-4	R-4A	R-5	R-5A	B-1	B-2	B-3	O	DC	ORI	M-1	M-2	Additional Regulations
3310 Vehicle terminals and Vehicle storage yards, major															S	P	P	
3311 Vehicle storage yards, minor												P				P	P	
3312 Transit service points, public and private										P	P	P		S		P	P	
3320 Construction storage trailer, temporary																P	P	
3330 Storage of flammable liquid																P	P	
3340 Mini-Storage																P	P	
3400 Heavy Industrial																	L	9.3-4.4.
3410 Recycling yard/junk shop																	L	9.3-4.4.
4000 Transportation, communication, information, and utilities		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
4100 Transportation services		S	S	S	S	S	S	S	S	P	P	P	S	P	P	P	P	
4110 Air passenger transportation terminal		S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	
4120 Rail transportation		S	S	S	S	S	S	S	S	S	S	S	S	P	S	S	S	
4130 Road, ground passenger, and transit transportation										S	S	S				S	S	
4140 Truck and freight transportation services															P	P	P	
4141 Commercial relocators (towing services)												P				P	P	
4150 Courier and messenger services												P		P		P	P	
4160 Parking Facilities, Residential		A	A	A	A	A	A	A	A	A			A	S				
0 Parking Facilities, Non-Residential		S	S	S	S	S	S	S	S	A	A	A	A	S	A	A	A	

	P	E	R-1	R-2	R-3	R-4	R-4A	R-5	R-5A	B-1	B-2	B-3	O	DC	ORI	M-1	M-2	Additional Regulations
4180 Parking Facility, Multi-story Garage											P	P		P	P	P	P	
4200 Communications and information											P	P		P	P	P	P	
4210 Above ground communication and electric utility facility		S	S	S	S	S	S	S	S	P	P	P	S	P	P	P	P	
4220 Telephone Booths											S	S	P	L	S	S	S	
4300 Utilities and utility services		S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	
4310 Alternative energy systems	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	4.4-9.
4320 Public Drinking Water Well House		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
5000 Arts, entertainment, and recreation		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
5100 Performing arts or supporting establishment										P	P	P		P	A	P	P	Otherwise complying with Article VI of Chapter 8 of the Aurora Muncipal Code
5110 Motion picture Theater											P	P		P		P	P	
5120 Art Galleries and Studios											P	P	P	P		P	P	
5200 Special purpose recreational institutions										S	S	S		S	S	S	S	Otherwise complying with Article IV of Chapter 8 of the Aurora Muncipal Code
5210 Community Center		S	S	S	S	S	S	S	S	S	S	S	S	L	S	S	S	
5220 Casino or gambling establishment														P				
5221 Off-track betting facility											S	S		S	S	S	S	
0 Golf Courses, public or private		S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	
0 Outdoor Recreation Places														S				

	P	E	R-1	R-2	R-3	R-4	R-4A	R-5	R-5A	B-1	B-2	B-3	O	DC	ORI	M-1	M-2	Additional Regulations
5250 Gun Clubs and shooting ranges														S				Otherwise complying with Article V of Chapter 8 of the Aurora Municipal Code
5260 Poolrooms												P		P		P	P	Otherwise complying with Division 4 of Article IV of Chapter 8 of the Aurora Municipal Code
5270 Juice bars, dry cabarets, teenage cabarets, and other non-alcoholic bars											S	S		S		S	S	
5400 Natural and other recreational parks	P	P	P	P	P	P	P	P	P	S	S	S	S	P	S	S	S	
5410 Amusement or theme park or fair												S				S	S	Otherwise complying with Article II of Chapter 8 of the Aurora Muncipal Code
6000 Education, public admin., health care, and other inst.		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
6100 Educational services	S	S	S	S	S	S	S	S	S	S	S	S	S	P	S	S	S	
6110 Technical, trade, and other specialty schools										S	P	P	P	P	S	P	P	
6200 Public facilities and services		S	S	S	S	S	S	S	S	P	P	P	P	P	P	P	P	
6210 Correctional institutions																S	S	
6300 Health and human services		S	S	S	S	S	S	S	S	S	P	P	S	P	P	P	P	
6310 Day care		S	S	S	S	S	S	S	S	S	P	P	S	S	S	P	P	
6320 Nursing, supervision, and other rehabilitative services						S	S	S	S	S	S	S						
6330 Hospital or sanatoria		S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	
1 Mental health facility							S	S	S	S	S	S						

	P	E	R-1	R-2	R-3	R-4	R-4A	R-5	R-5A	B-1	B-2	B-3	O	DC	ORI	M-1	M-2	Additional Regulations
6400 Religious Institutions		P(S)	P(S)	P(S)	P(S)	P(S)	P(S)	P(S)	P(S)	P(S)	P(S)	P(S)	P(S)	P(S)	P(S)	P(S)	P(S)	4.2-1
6410 Convents, monasteries, rectories, parsonages, ministerial homes, parish houses, and reading rooms.			P	P	P	P	P											
6500 Death care services											P	P	P	S		P	P	
6510 Cremation services																	L	
6520 Cemeteries or mausoleums		S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	
6600 Associations, nonprofit organizations, etc.											P	P	P	P	S	P	P	
6630 Social Service Agencies, Charitable Organizations, Health Related Facilities, and similar uses when not operated for pecuniary profit		S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	
7000 Agriculture, forestry, fishing and hunting																S	S	
7100 Greenhouse, nursery, and floriculture												P				P	P	
7200 Truck gardening		P	P	P	P	P	P											
7300 Stormwater management facilities, drainage area, and common landscaping areas	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
8000 Planned Development	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	

City of Aurora

Planning and Zoning Division
Development Services Department

Mailing Address: 44 E. Downer Place • Aurora, IL 60507-2067
Office Location: 1 S. Broadway • Aurora, IL 60505
Phone: (630) 256-3080 • Fax (630) 256-3089

Stephane A. Phifer, AICP
Director

April 29, 2015

Mr. Craig Sondgeroth
General Counsel
Illinois Department of Agriculture
P.O. Box 19281
Springfield, Illinois 62794-9281

RE: Aurora Non-"Exclusively Residential" Zoning near Curative Health Cultivation, LLC at 2229 Diehl Road, Aurora, Illinois.

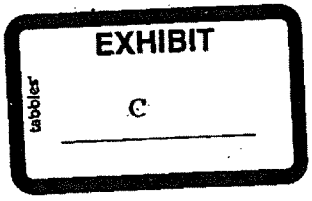
Dear Mr. Sondgeroth:

The Department of Agriculture is charged with registering and regulating up to 22 cultivation centers allowed in the law. The Department of Agriculture Administrative Rules were approved by the JCAR committee on July 15, 2014. In Section 1000.10 of the Administrative Rules, defines an "Area zoned for residential use" as:
"an area zoned exclusively for residential use; provided that, in municipalities with a population over 2,000,000 people, "an area zoned for residential use" means an area zoned as a residential district or a residential planned development." (http://www.agr.state.il.us/pdf/mcppadminrules.pdf)

The definition set forth in the Administrative Rules raised the obvious question as to what constituted an *"an area zoned exclusively for residential use"*. On August 25, 2014, the Illinois Department of Agriculture released a Frequently Asked Questions document that addressed this question as follows:

"The definition of "area zoned residential" is an area zoned "exclusively residential." If the local municipality provides a letter that its zoning districts located within 2500 feet of a cultivation center are not zoned "exclusively" residential because in addition to residential uses, the zoning districts allow for other uses such as churches, parks, schools, utility substations, and/or other planned uses including commercial uses, will that satisfy this requirement?
Yes, but the applicant must verify setback regulations are also met, located in Department of Agriculture Administrative Rules section 1000.40(e). The Department will rely heavily on the local zoning authority's approval." (page 3 http://www.agr.state.il.us/pdf/mcppfaq.pdf)

Aurora's Zoning Code does allow for other uses such as churches, parks, schools, utility substations, and/or other planned uses in a residential district. This is clearly laid out in Table 1 of Aurora Zoning Ordinance titled Use Categories, (https://www.aurora-il.org/documents/planning/ordinance/tbl_1_use_categories.pdf). Specifically, this includes the R-1 Zoning District of the nearby Harris Farms and Palomino Springs subdivisions located south of the Prairie Path, the Stonebridge Subdivision zoned PDD with underlying R-1 Zoning, and the R-1 and R-5 Zoning Districts of the East View Estates Subdivision to the west.



Please contact me at (630) 256-3080 if you have any questions.

Sincerely,

Edward T. Sieben
Zoning Administrator
City of Aurora

Cc: David Hulseberg: Seize the Future Development Foundation
Craig Burkhardt: Barnes & Thornburg LLP