

MINUTES

1. CALL TO ORDER

Vice Chair Graham Matthews called the meeting to order at 7:00 p.m. Members present: Graham Matthews, Dan Frasier and Kyle Brown. Members absent: Diana Stewart. Staff present: Director Richard Tippet, Senior Planner Carson Anderson, County Counsel Joe Larmour and Clerk Ruth Hanover.

2. PUBLIC COMMENT

Members of the public may address the Planning Commission concerning matters within their jurisdiction, which are not listed on the agenda and to request that a matter be agendaized for a future meeting. No action may be taken on these matters at this meeting.

Comments received from Debbie Lono, Tim Speers, Eleanor Scott, Roger Chatterton, Russ Robinson, Terry Mines, Carol Fall, Duncan McIntosh, Scott Morris, Andrew Franklin, Brian Bonich, Liz McIntosh, Dewey Baird, Eric Anderson, Linda Baird, Mark Schumaker, Susan Bower, Mike McHugh, Don Mullen, Chris Shaffer, Susan Chatterton and Tom Ballanco.

3. MINUTES – December 10, 2015.

Upon motion of Commissioner Brown, second by Commissioner Frasier and carried, approved the Minutes of December 10, 2015 as submitted.

The Vice Chair, at staff's request, took Item 5 out of sequence on the published agenda.

NEW BUSINESS

5. PROPOSED NEG. DEC., GENERAL PLAN AMENDMENT, REZONE, AND TENTATIVE MAP

P-15-15

Public hearing: Proposed Negative Declaration, General Plan Amendment, Rezone, Tentative Map, and lot line adjustment with a neighboring property to create a total of four parcels plus a remainder parcel (parcel sizes vary from 1.7 to 2.5+ acres). The change in land use and zoning designations would include a change from Public Facility to Rural Residential, one acre minimums (RR-1) and a portion of one of the parcels would be from Public Facility to Commercial (C-1). The change in land use and zoning would impact the neighboring parcel (APN 025-430-10) only by insuring that as newly configured, it would all be Commercial (C-1). APN 025-430-14. Applicant: Miller.

Senior Planner Carson Anderson presented the staff report.

Vice Chair Matthews opened the item for public comment.

Comments received from Tom Miller, Applicant. Miller stated he was agreeable to the conditions as outlined in the staff report. He gave a history of the property, stating it was once a rehab facility and the last occupant was a church and hence the Public Facility zoning. He said with regard to the split zoning, there is nothing in the ordinance that prohibits it but it is definitely something to look at, could the areas be functional on their own. He said the difficulty with that is you have a functional residence, is residentially occupied and is a residential use. The church just presents the question what do you do with a 6,000-sq. ft., 6-restroom, facility in terms of intended use if it has a commercial type parking lot. He said the property can all be zoned Commercial it is just that it has a residence on it and for insurance purposes and continued occupancy, it's just cleaner to keep that as a

residential use in a RR zoning, but if the Commission deems it is more appropriate to keep entirely in commercial he can understand. Miller said the mitigation measure regarding ground disturbance, that there was an archeological study done and found nothing on it.

Vice Chair Matthews closed public comment on this item.

Upon motion of Commissioner Brown, seconded by Commissioner Frasier, accepts staff's recommendation to (1) Adopt the IS/MND and the accompanying MMRP, finding that on the basis of the whole record before the Commission, including the initial study and comments received, that there is no substantial evidence that the project will have a significant effect on the environment and that a negative declaration reflects the Commission's independent judgment and analysis; and (2) Accept the tentative approved Lot Line Adjustment as being consistent with the Subdivision Map Act and the County's Subdivision Ordinance;(3) Approve the Tentative Parcel Map on the subject property which creates four parcels and designating a remainder parcel adjustment as being consistent with the Subdivision Map Act and the County's Subdivision Ordinance; and (4) Recommend approval to the County Board of Supervisors of the requested change of the General Plan designation from Public Facilities (PF) to Rural Residential (RR). The change in land use and zoning designations includes a change from Public Facility to Rural Residential one-acre minimums (RR-1) and a portion of one of the parcels would be from Public Facility to Retail Commercial (C-1). The change in land use and zoning would impact the neighboring parcel (APN 025-430-10) only by insuring that as newly configured, it would all be Retail Commercial (C-1). Based on Findings of Fact 1 through 3. Motion carried 3-0.

Recesses 7:26 p.m.; Reconvenes 7:31 p.m.

OLD BUSINESS

4. WORKSHOP RE UPDATE TO MEDICAL MARIJUANA ORDINANCE

Continued Workshop - Preliminary Recommendations to the Board of Supervisors re Update to Medical Marijuana Ordinance

PW-16-01

Senior Planner Anderson presented the staff report. He advised this report basically previews the more detailed staff report you are going to get from your meeting on the 24th of March, it lays out some of the considerations that you're are going to be looking into and moving towards a formal recommendation to the Board of Supervisors. He said before you is a list of the consensus items that you had reached consensus on, there are eight of them. We talk about some of the permitting aspects of this program as well as the need to do careful CEQA analysis, and at some juncture it would be helpful to have Counsel Larmour talk about what's going on in Humboldt County with the litigation and how to steer clear of some of the potential pitfalls related to doing CEQA analysis. He reviewed the individual consensus items:

Item 1 – Indoor vs. Outdoor – Planner Anderson stated there was consensus that the full range indoor mixed grow and outdoor grows that can be licensed under the MMRSA and the Humboldt County Medical Marijuana Ordinance should be allowable. It was the general idea that indoor grows be required based on certain impact threshold criteria such as small parcel size, location within close-in neighborhood settings, sensitive receptor proximity, and where an identified potential for environmental and/or nuisance impacts exist. Outdoor grows would be limited using setback requirements to keep the impacts away from others. He said there was some discussion about the use of generators and reliance per county staff recommendation on current regulations we have in County Code to limit the noise impacts related to generators.

Commissioner Brown asked when is the discussion with counsel about CEQA. Senior Planner Anderson responded it was staff's intention to have a more detailed discussion regarding CEQA on the 24th rather than tonight, but that staff would attempt to address some of the questions he has related to CEAQ. Commissioner Brown stated he sees a strong probability of an EIR at some point, and asked happens to both the proposed ordinance and our existing ordinance during a CEQA lawsuit challenge?

Counsel Larmour responded typically if you are in the process of implementing the ordinance it asks for a stay, and it's not uncommon if it hasn't already been put into place and there is not economic dependence on the

ordinance, that the court would grant a stay because a stay would have a very limited effect. He said obviously, an ordinance has been put in place where you have economic dependence upon an ordinance, it's more difficult to get the court to grant a stay. He said where we are at now, and where Humboldt is at, a stay is likely, if a stay happens it is directed only towards the commercial ordinance.

Counsel Larmour advised the State is in the process of a complete EIR on their regulations. The hope of the County is that they will be able to somewhat work from the EIR that the State has completed and that expense and that work won't fall on the counties individually. There is currently no litigation filed in Humboldt County, there has been an intention to file litigation from an environmental group and essentially they are asking to hold the ordinance pending an EIR. Based on the scope of the ordinance in Humboldt County it is anticipated that a court would likely stay pending a hearing on the merits of the case. He said once the ordinance has been rolled out economic reliance on the ordinance is in place, it's going to be more difficult for the court to deal with. At this stage the initial assessment is a stay is likely.

Commissioner Brown asked if there is an idea when the state might complete the EIR. Counsel Lamour responded just by way of what was learned at the symposium, there was the new director of the new medical marijuana agency, the newly appointed officials at the Health Department and Ag Department, those were put into place to draft the regulations that are starting to come on board. He said they are behind schedule already, which is fairly common for the state. He said the director of medical marijuana had been appointed three days before the symposium and she had not had a chance to review the regulations and was fairly unfamiliar with it. He said, of course, the intent is to keep the 2018 roll out date, but ultimately that seems like it is probably going to be later. Counsel Lamour said the status of the EIR from the state is that they have not yet completed the RFP for an agency to prepare an EIR for them, so to date nobody has started it.

Commissioner Brown asked if the state is going to issue licenses before their EIR is complete. Counsel Lamour responded it's his understanding the state's intention is if they are not ready to go on all fronts, including all departments that have been assigned the duties, that they will not roll out with the licenses. He said the reason for that is these departments and the newly created department have been tasked with writing the regulations, and as of right now those regulations don't exist, and ultimately the EIR is going to direct some of those regulations because the EIR is going to list points of mitigation for the activity. He said the Ag Commissioner in their presentation explained that some of the regulations can't be drafted until an EIR report explains where the points of mitigation exist, and until the Ag Commissioner placing their regulations of course the state would be issuing licenses for an unregulated industry.

Commissioner Frasier stated our current ordinance allows use of generators. He asked, since this is commercial, and not a personal grow, if there is a way to further limit that without putting ourselves in a bind legally, where we could say since this is commercial you have to have power that is not a generator. Senior Planner Anderson responded it was in the commission's power to recommend to the Board, the Board would be the ultimate abitur on that question, but based on concerns about impacts you could make such a suggestion based on findings if you are going to talk about the impacts and how you think changes to or modifications to the Noise Ordinance or some sort of mechanism to kind of tailor it to commercial cultivation sites meets the test based on findings. Counsel Larmour stated he would like to change the language in 1a a little bit in the fact that he wants to make sure that we are not taking a vote of three and changing the consensus. He thinks that the point of this workshop is that staff was given direction based on the Commission's consensus on certain items so he thinks the language of the staff report should be that does this language comport with the consensus that you have reached and if it doesn't what about the language is incorrect. He said ultimately the Commission has reached consensus on these items and staff has been given direction, and tonight would be the time for you to review the language that exists so that when you make a recommendation to the Board of Supervisors the language is consistent with what the commissioners believe the consensus was.

Consensus was reached for retaining the recommendations previously proposed under Indoor vs. Outdoor Grow.

Item 2 – Commercial Grow Limits – Planner Anderson stated there was consensus for defining grow cultivation area size based on language contained in the MMRSA, which references a maximum cultivation area

permissible of 44,000 square feet, just slightly over 1 acre. There was additional consensus that the cultivation area be defined utilizing the “Cultivation Area” definition contained in the Humboldt County draft MM ordinance rather than using a plant count or canopy methodology. He said just a point of further clarification to the commission, staff looked at the definition for “cultivation area” and provided in the staff report is kind of a further refinement of the language, kind of taking what was talked about at the January 14th meeting and adding just a few words to add clarification, so “cultivation area” means the sum of the area of cannabis cultivation as measured around the perimeter of the discrete area of cannabis cultivation on a single premises, defined as a single area that can be readily measured, because that is an important component for the enforcement part of this later on. He said area of cannabis cultivation is the physical space where cannabis is grown and includes, but is not limited to, garden beds or plots, adjoining walkways, the exterior dimensions of greenhouses or structures erected to enclose cultivation areas, as well as the area covered by pots and bags containing cannabis plants on the premises. The cultivation area shall include the maximum anticipated extent of all vegetative growth of cannabis plants to be grown on the premises in a way that can be measured by staff.

Vice Chair Matthews stated he was fine with the refinement. Commissioner Brown stated he guessed we don’t want to add anything here, but for future consideration he would like to add in the language from our existing ordinance about stacked canopies figuring into the full calculation of the square footage. Commissioner Frasier said he had one question which ties into No. 7 - structures erected to enclose cultivation area, if we are going to require fencing around it and its measured by structure to enclose it, the simple definition would be “the area inside the fence”. He said he’s not trying to change the definition but trying to make it simpler for himself. If the fence counts as a structure, then that would be the simple way to measure it. Senior Planner Anderson responded that staff’s intention here is more like an enclosure. He said there is some ambiguity in the wording here but we were thinking of greenhouses or other buildings erected that enclose, not fencing here. Commissioner Frasier said either way he was fine with that definition.

Vice Chair Matthews asked Commissioner Brown how the Commission would like to address the issue of adding language. Commissioner Brown responded he would take the language out of the personal grown ordinance and add it after the last sentence there. Vice Chair Matthews said he thinks it is reasonable otherwise you could have stacked and dramatically increase your square footage. Counsel Larmour said to make the Commission a little more comfortable with the discussion, this is a chance for you to look at the language that is being used and make sure it comports with what you understood your consensus was, and if your consensus was that the grow area was calculated based on one level, then it is okay to request that language be added. He said we are not trying to break new ground tonight, we are trying to get the language down in a fashion that was your intent. He said if your intent was at the time and your understanding, collectively, was that the consensus was no stacked or no multi-level structures, then that is one that can be directed for staff to change. Vice Chair Matthews said his recollection was that we never touched on that topic. Commissioner Brown agreed. Commissioner Frasier agreed, stating he wouldn’t have a problem with adding that.

Vice Chair Matthews stated we are giving direction to staff to add language from the existing ordinance and we are comfortable with the refinement of the definition. Vote: 3-0.

Item 3 – Parcel Size and Linkage with commercial Grow Area Size - Planner Anderson stated there was consensus that there should be a minimum parcel size for new commercial outdoor grows with cultivation areas measured at more than 200 sq. ft.; there was further consensus that the minimum parcel size for new commercial grows be set at two acres (referring back to consensus item 1 re indoor grows because that ties into the dialogue the commission was having when they were discussing this topic). It should be noted that later direction concerning setbacks would make this very limiting, and likely require any grow on a lot that is smaller than 10 acres to be considered for indoor growing, so that was sort of the direction we were trending towards. He said there was further consensus for limiting large commercial grows greater than 10,001 sq. ft. to larger parcels of at least 10 acres or more.

Consensus was reached for retaining the recommendations previously proposed under Parcel Size and Linkage with Commercial Grow Area Size. Vote: 3-0. Commissioner Brown stated he is still opposed to it but it was what we discussed.

Item 4 – Scope of Commercial Activities Allowed (e.g., cultivation, processing, manufacturing and distribution (as permissible in the MMRSA and Humboldt County Ordinance)) – Planner Anderson stated there was consensus that the full array of commercial activities permissible in the MMRS and Humboldt County Ordinance be allowed. On an interim basis, all activities would occur on the property where cultivation is proposed to occur until a more detailed land use framework is developed as part of the County’s final commercial MM ordinance.

Counsel Larmour stated as a side note for the commission, one of the things discussed at the conference is again the state’s package for testing prior to distribution is not going to be in or regulated and there is some indication from consumer groups that may be an area of conflict in the future prior to the testing being in place and the liability that comes with distribution of the product.

Commissioner Frasier stated this is another one of those things where consensus was reached but there was not full agreement.

Consensus was reached for retaining the above recommendation as previously proposed under Scope of Commercial Activities allowed. Vote: 3-0.

Item 5 – Permissible Zone/General Plan Designation Districts for Commercial MM – Planner Anderson stated there was consensus that all new outdoor commercial MM grows be restricted to the A (Agriculture) zone with consideration given as well to as to Unclassified (UNC) zone districts with an Agriculture (A) General Plan designation. Commercial grows in the Rural Residential (RR) zone will be considered as well, although the Commission made clear that potential impacts to neighboring residential uses would need to be carefully considered in granting use permits. He said it was suggested that the County structure an appropriate permitting process based on the MMRSA and Humboldt County tier systems. Anderson said as sort of a side bar, the Commission also discussed grows in the Agriculture Forest (AF) but there was no actual consensus on that point, and there was actual consensus not to allow commercial MM shall not be permissible in the Timber Production Zone (TPZ) and Agriculture Preserve Zone(AP), even on parcels 40 acres or larger. He said as a further side bar related to this to get at some potential impacts, staff outlined the potential use of overlay zoning to provide a further level of planning control for the zone district contexts in which commercial cannabis activities could occur, and this in a way goes to the point that Commissioner Frasier was raising earlier about more finely tailored regulations to deal with impacts in certain districts in the county.

Vice Chair Matthews stated one of the questions he has is regarding Exhibit D. He said he thought it was quite a bit different permitting structure than Humboldt, we were talking about easier on large agricultural and much more difficult on... Commissioner Frasier stated what we talked about permitting falls under Item 6, where we wanted a Conditional Use Permit if there wasn’t giant setbacks and a Director’s Use Permit if there was. Commissioner Brown stated that can be turned into a table. Vice Chair Matthews stated we should strike the last sentence because that is not what we agreed on. Commissioner Frasier agreed, stating that he said there is a good possibility that we could have reached consensus on that and then further down the road we contradicted ourselves, and it needs to be cleaned up, so he does think we should strike the last sentence in the first paragraph of No. 5. Commissioner Brown agreed.

Consensus was reached to retain the above recommendation as previously proposed under Permissible Zone/General Plan Designation Districts for Commercial MM, as revised deleting the last sentence of Paragraph of Item 5, Paragraph 1. Vote: 3-0.

Vice Chair Matthews stated we don’t need to talk about overlays. Commissioner Brown stated he thinks the overlay is a terrific idea but would be better in the long-term ordinance. He said we have to get a General Plan update. Senior Planner Anderson responded staff’s idea is that this would be a more permanent version of the ordinance, rather than if we were going to have an interim ordinance, we wouldn’t have time to develop all the standards and criteria in time to do that.

Item 6 – Appropriate Setback Requirements for MM Uses – Planner Anderson stated there was consensus for requiring large setbacks from property lines: 500 foot setbacks were considered standard, and if proposed by the applicant, the use could be approved through the Director’s Use Permit process. There was further consensus for requiring Conditional Use Permits for uses with proposed setbacks of less than 500-down to 100-feet. Though not explicitly stated, the implication was that setbacks less than 100-feet would not be acceptable, that was staff’s reading of where the discussion is going rather than an actual point voted on by the Commission.

Anderson stated there was further consensus concerning appropriate setbacks from certain types of existing sensitive uses. This includes requiring a minimum separation of 1,000-feet from schools, recreation centers, public libraries and childcare facilities, and requiring 600-foot setback from churches, drug treatment, rehabilitation centers, Native American cultural sites, and public parks. There was additional consensus for requiring a 100-foot setback from public road rights-of-way. There was further discussion about separations from school bus stops, but there was ambiguous information about how we would structure those and how permanent the bus stop locations are, and the Commission opted not to bring that item into your group of consensus points around Item 6. Anderson said lastly, on the consensus itself, consensus could not be reached for limiting commercial grow areas to a maximum percent of the total parcel area, or for taking an alternative approach which would establish a range of setbacks from property lines based on the size of the parcel and the size of the grow cultivation areas. He said there seemed to be some openness to taking up the topic at a later date. He said as a sidebar, staff did have some discussion with local school districts about how bus stop sites are determined, there was some variation in how this was done, in one case, the Mountain Valley Unified School District works very closely with California Highway Patrol and actually submit their locations to the CHP for approval, and noted that changing the locations after that has been done is very difficult and cumbersome and they don’t tend to change overnight. He said it takes a process so it’s not something that can happen rapidly. He said Southern Trinity Joint Unified School District had a different approach where they basically use site lines for the bus drivers as the key determinant, there’s some informal discussion with CHP but nothing binding with them, so the criteria varies.

Vice Chair Matthews asked if the Commission if it wants to add separation from school bus stops, or just stay with the consensus language in the first paragraph. Commissioner Brown stated he thinks we need to include bus stops and staff’s recommendation of 1,000 feet is reasonable. Commissioner Frasier stated he thinks we should go with the consensus reached at the last meeting because they can all agree on that. He said the bus stops may take a little more discussion.

Consensus was reached on 6a for retaining the above recommendation as previously proposed. Vote: 3-0.

Commissioner Frasier stated in south county the bus stops are not quite as cut and dry as most. He said the bus stops are pretty much established, it’s just that there is no formal agreement as to where the bus stops are, it depends if there are kids to get on the bus and the bus might pick them up at a place that is not an established bus stop. He said he does think there could be a problem in the future, but he thinks there should be a setback from the bus stops. He would like to see another number besides 1,000-feet. Commissioner Brown stated the existing ordinance indicates 500 feet as a point of reference. Vice Chair Matthews stated he would be comfortable with the existing ordinance. He said sometimes it seems silly to have a 100-foot setback from a public road that the kids do walk along to get to their bus stop they are potentially going to be within 100-feet of a grow, but obviously, a bus stop is a semi-official location and multiple children collect there, so it makes sense to give it somewhat more protection. He said on one hand it seems silly, we have 1,000 feet and 600 feet, and it seems silly to add another number. Commissioner Brown suggested going with 600-feet.

Consensus was reached on 6b for retaining the above recommendation, and adding a setback between commercial MM activities and public school bus stop locations of 600 feet from sensitive receptors. Vote: 3-0

Item 7 – Appropriate Fencing/Enclosure Standards for Commercial Grows – Senior Planner Anderson stated balanced with the need to preserve the open space values of certain communities there was consensus that the fencing of outdoor cultivation activities should generally be required, but that the type of fencing should be at the discretion of the cannabis cultivator. Anderson said staff was asked to look at various types of fencing that could be considered as part of this, it seemed like those followed a pretty consistent pattern.

There were posts and then typically metal mesh of some kind, chain link, or mesh, or tier fencing, or some other mesh design qualities that would stretch from post to post to provide the screening. He said he didn't see a great deal of variety in terms of the look so the options seem to be limited in terms of the type because they are based on post structure and then some sort of mesh across the posts.

Commissioner Frasier stated he actually has an issue with the language on that. He said the "at the discretion" part, he thinks the consensus that was reached, we want it to read "at the discretion from the list that is supplied by the county", because that's where we have issues now, we don't want to have shade cloth or that kind of thing, we don't want to have anything that says at the discretion of the cultivator. He said if on that list we have boards, different types of wire and that kind of thing, that's fine but there has to be a list. Commissioner Brown stated his recollection was we are looking for fence types that are approved by the County. Vice Chair Matthews stated it was really more for security rather than screening. Commissioners Brown and Frasier agreed.

Item 8 – Requiring a permitted Residence on all Commercial MM Cultivation Properties – Senior Planner Anderson stated that there was previously consensus for requiring that there be a permitted dwelling either on or contiguous to the property where commercial MM grow activity is occurring.

Consensus was reached on 8 for retaining the above recommendation requiring a permitted residence on all MM cultivation properties as previously proposed. Vote: 3-0.

Vice Chair Matthews advised the plan is for staff to develop these into a document that will come back to the Commission on March 24, 2016 for final approval and voting by the Commission and then sending it to the Board of Supervisors.

Counsel Larmour stated the intent of tonight's workshop was to make sure that the language that staff is using is consistent with what the Commission believes the consensus was. He said the next meeting is for the Commission to actually vote and approve the items in the form of a recommendation to the Board of Supervisors. He said the direction to the Commission from the Board of Supervisors was to develop recommendations for an ordinance. He said at some point there is still the hope of a joint meeting with the Board, we will probably receive further direction and/or changes from the Board of Supervisors at that time, and at that time would be the point for us to start to create a draft ordinance.

Commissioner Frasier stated at the next meeting there is the possibility we are going to have issues, and asked if we have items that we can no longer agree on, how do we address that, are we going to attack it again and see if we can resubmit this. Counsel Larmour responded the consensus items were not a vote of the Commission, they are consensus of the Commission on what the recommendation will look like. He said at the next meeting the intent is that the Commission will actually entertain a vote and ultimately decide what the recommendations to the Board of Supervisors is going to look like, if that includes changes to the consensus items in order to get a recommendation to the Board of Supervisors approved, that is where we are at. He said ultimately up to this point there have been workshops to try formulate and discuss what ultimately is the most important issue, the ordinance. He said obviously at the point where the Commission takes a vote that is a different animal and it may have changes that need to be implemented before the recommendations go to the Supervisors. Commissioner Frasier said that is what he was getting at, once we vote we will have a chance to go back in and tweak it.

Counsel Larmour responded if the consensus items in the final presentation of the staff drafted recommendation can't be approved by the Commission by a majority vote, then there will have to be alterations to it. He said the Commission will have to have a quorum and by majority vote advance the recommendations to the Board of Supervisors.

6. MATTERS FROM THE COMMISSION

Commissioner Brown requested at some point when there is time on the agenda he would like to see some type of presentation that explains the way forward on the General Plan and how funding is raised for that. It could be a joint meeting item. Planner Anderson stated he would check into it.

7. **MATTERS FROM STAFF** – None.

8. **ADJOURN**

The Vice Chair adjourned the meeting at 9:24 p.m.