

TRINITY COUNTY PLANNING COMMISSION

Special Meeting

August 28, 2017 at 7:00 p.m.

Trinity County Library, Weaverville

MINUTES

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1. CALL TO ORDER

Chair Matthews called the meeting to order at 7:00 p.m. Members present: Commissioners Frasier, McHugh, Hoard and Matthews. Members absent: Commissioner Stewart. Staff present: Interim Planning Director Leslie Hubbard, Interim Senior Planner John Jelich, County Counsel Margaret Long, Kelly Snowden, Esq., Director of Transportation Rick Tippett 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 Diane Richards, Jason Rankin and Mike Ware.

Chair Matthews asked County Counsel to respond to Ms. Richards' comments. Counsel Long responded just for clarity, it is her understanding that there was a letter received today from Supervisor Chadwick requesting that there be a substitution for her Commissioner who is unable to be present due to personal issues and will be out for a while. She is not abandoning her seat, she is still a commissioner, and therefore her absence does not allow someone to substitute in. Any commissioner needs to be voted on by the full Board, that hasn't been done, so at this point there is no mechanism to substitute anyone in.

Chair Matthews asked County Counsel to address Mr. Ware's question regarding Planning Commissioners not being able to attend Board of Supervisors meetings, and Supervisors not being able to attend Planning Commission meetings. Counsel Long responded that the Planning Commission is an advisory body, it does not make decisions for the Board of Supervisors, that is why the rule is in place that Supervisors shall not attend Planning Commission meetings; if they do, they are required to disclose it and disclose everything they heard or learned from that; and the reason for that is they are sitting in a quasi-judiciary capacity when they are sitting as the Board of Supervisors. Again, the Planning Commission is an advisory committee, it has a different role and it has different responsibilities; so, for Planning Commissioners to attend Board of Supervisors meeting would not create a conflict. Commissioner Matthews said but no more than two of us could without violating the Brown Act. Counsel Long responded well if it's a public meeting you can, but again, it's a public meeting, it's open to the public, unless you are speaking on behalf of the Planning Commission or rendering any decision that may be before the Planning Commission, that's where the problem arises, but attending as an observer, it would not be an issue.

3. MINUTES – None

OLD BUSINESS – None

NEW BUSINESS

4. RE PROPOSED COMMERCIAL CANNABIS ORDINANCE

PW-16-03

Regarding a Proposed Permanent Ordinance to Allow Commercial Cannabis Cultivation in Trinity County. Located County-wide. Applicant: County of Trinity.

County Counsel Margaret Long presented the staff report. She gave the history of State regulations and advised Trinity County adopted the Urgency Ordinance on August 30, 2016, it was then extended and amended on October 13, 2016 for an additional 10 months and 15 days, and amended once more on December 21, 2016. She said on August 15, 2017 it was brought before the Board of Supervisors for its final extension, but it didn't receive enough votes. As a result, the Urgency Ordinance terminated, and the County reverted back to its personal grow in the county. Ms. Long said the County Ad Hoc Committee has been working on a permanent ordinance for commercial marijuana since prior to August 30, 2016. She said the primary land use considerations for the Commission tonight are: (1) Zoning Districts allowed, (2) Provisions for Opt-out areas, (3) No Grow Areas, (4) Setbacks, (5) Number and type of commercial cultivation licenses, (6) Proximity to a youth-oriented facility, a school, any church, or residential treatment facility and authorized school bus stops, and (7) Designated areas of grow on the property.

Interim Planning Director Leslie Hubbard advised we received twelve letters via email today. Eleven of them are in regard to opt out areas in the North Lake area and one letter covered a broad range of topics. She verified the commissioners received copies.

Counsel Long said staff is willing to take questions before we open public comment and happy to go through the land use issues to figure out your direction to provide back to the Board.

Commissioner McHugh said he had a couple of questions about some of the way the verbiage is used, "legal parcel" is one that he questions, and one or two typos he found that might affect the way we think about a couple of these things. He said No. 17 on Page 2, he doesn't know what that means, and the related use of the term under "Definitions" on Page 4 (i), he reads those two side by side and is confused about what we're trying to do here. Counsel Long stated there is a typo in No. 17 on third line, the word "exemption" to be deleted and replaced with "exception". Commissioner McHugh said somehow on Page 4 (i) is a concept that we applied during the variance hearings and he thinks it's a useful definition, what confused him is the "whereas". Counsel Long responded he is correct, she believes the Ad Hoc Committee worked on defining a legal parcel, which is what you see here in (i). She said it appears that that provision got brought over to the "whereases", and she recommends we use what is in (i) and she made that change. Director of Transportation Tippet said he wants to make sure you understand the intent of No. 17. Normally we define a legal parcel as one that has an APN number and property lines, but in this ordinance, they wanted to allow for some flexibility for people that own both parcels, and so what they wanted to do in a sense is allow for the merging of two parcels that are collectively owned by the same person into one. It's not a land process to go through, but it just a definition if a guy has one, two or three parcels all together, it could be looked at as one continuous parcel instead of three individual parcels; so that really fell under the setbacks where let's say he had his house on one parcel and wanted to grow on the other parcel, he would be allowed to do that if they are contiguous and are owned by the same person.

Commissioner McHugh said on Page 5(w), he thinks the last sentence is a whole separate definition. Counsel Long agreed stating Variance is now separated out from "w" as x, and "x" is changed to "y". McHugh said there is a typo in No. 7(a)(ii) where it says NCRWQCB Order #2015-002, he doesn't think that is correct. Counsel Long agreed stating it should say Order #2015-0023.

Chair Matthews said there's a typo on Page 5, No. 2(d), it references section 3(f) and said it should be 3(e). Commissioner McHugh said on Page 6, No. 3(a)(iii) 1 through 7 regarding license types should go under subsection ii instead of iii. Counsel Long agreed.

Chair opens the hearing to public comment.

Comments received from Lisa Wright, Jonathan Klingenberg, Pat McKassen, Eric Anderson, Lyn Scott, Roger Chatterton, Andrew Tippen, Carol Fall, Debbie Lono, Tom Ballanco, Terry Mines, Lathen Martinez, Sam Lonnie, Charlotte Scott, Susan Bower, Ben Brady, Tom Bishorn, Deidra Brower, Justin Hawkins, Liz McIntosh, Mary Hamilton, Jake from Hayfork, Rob Missay, Nicole Lonnie, Martha Walthurt?? of Peanut, Larry Winters, Tyler Thompson, Sam Brinkley, Patrick Kahn, Kevin Minassy, Jose Acosta, Ryan Tarhill, Stewart Wilson, Sebastian Cantero, Adrian Keyes, Anthony Minassy, Ryan O'Toole, Dr. Tammy Brazil, Brice Wellons, Diane Richards, Scott Morris, Kay Graves, Calema Mae, John Brower, Mike Ware, Adam Lee and Christian Figeroa.

No further comments being received, Chair closes public comment.

Commissioner Frasier asked County Counsel to clarify the whole opt out thing before we start making motions. Counsel Long responded currently the way it is written there are opt outs for Whiskeytown-Shasta-Trinity National Forest, Ruth Lake Community Services District, Trinity County Waterworks District #1, Weaverville Community Services District and Lewiston Community Services District. She said the land use reason for that is established in the urgency ordinance, and under the permanent ordinance now under what was Section 24, but is now Section 25, and it's looking at the density population in some of those areas, so it may be a land use finding as to why they're valid based on discussions with Planning staff who surveyed looking at population areas, so it is based on land use facts. It is not just pulled out of the air or based on preferences amongst individuals, it is based on solid and convincing evidence as established by Planning, which makes it a legal portion of this ordinance.

Director of Transportation Tippett said he wanted to point out these areas are higher density areas and also have zoning established, where if you go to Coffee Creek, Trinity Center, or Trinity Village would be a good example down river. Those are in the land use designation of Village, the zoning is Unclassified, but in Village you cannot pull a permit unless you actually rezone that property to one of the permitted zoning areas, but because Village is broad ranged, it goes from Rural Residential to Agriculture, for the intent of that particular item we've just said that Village until you determine that zoning you can't grow in it; so, in general it provides an overlay for a lot of these areas that are being discussed, which would also be based on zoning and general plan.

Commissioner McHugh said he is not sure what motion to make. It seems a little awkward to say I move the Board adopt this as a permanent ordinance, as amended, but we haven't amended it yet. So, it seems a bit out of sequence that we say it that way.

County Counsel said she would somewhat agree with him, those are parliamentary rules not statute that requires you to make a motion before you can have discussion. That's the Chair's pleasure if he wants to waive that, given the circumstances, to have discussion before a motion is made she thinks would be appropriate. Chair Matthews responded we can go through the list if the Commission wants, he has no problem doing that.

**Zoning Districts Allowed** - Counsel Long stated currently the ordinance excludes TPZ, Residential 1, Residential 2 and Residential 3. The question to the Planning Commission is, has that list changed?

After lengthy discussion about possibly including MH, Mobile Home District, and RO, Residential Office District in the list of exclusions since they are residential districts, no change was recommended by the Commission.

**Provisions for Opt-out Areas** – Counsel Long advised currently the opt-out areas are Whiskeytown-Shasta-Trinity National Forest, Ruth Lake Community Services District, Trinity County Waterworks District #1, Weaverville Community Services District and Lewiston Community Services District.

After discussion regarding including an opt-out for Trinity Center Community Services District and Coffee Creek Fire District, it was the consensus of the Commission to recommend the Board of Supervisors include them as an opt-out area, based on public input received.

**No Grow Areas** - Counsel Long said in looking through the ordinance she didn't see any specific notable areas that were opted out, except for the opt-out provisions and the regulations on designated area grow, because they overlap, and she recommended skipping over this one and if there is anything left that you want to make recommendations for, then we can come back to this one and that's the area you can fit it in.

**Setbacks** – Counsel Long advised setbacks are currently for Type 1, 1B, 1C, 2 it and 2B it is 350 feet from a residential structure on an adjoining parcel, for Type 3 it's 500 feet from adjacent property lines.

After discussion, and considering that the Commission has both approved and denied Variances based on this, it was the consensus to recommend no change currently. However, did recommend the Board look at having the setbacks tied to the property line instead of a dwelling considering the size of the grow in the future, keeping the variance as an option if needed.

County Counsel pointed out there is a provision in the proposed ordinance regarding variances that allow for a Director's Use Permit after inspection after the first year.

Commissioner Hoard said he would like to recommend automatic extension on the variance of at least two or three years, and then at the end of that time frame it can go on to a Director's Use Permit for approval and use consequently. Counsel Long advised that section can be modified to allow for a variance to last for a period of time over one year, that would be appropriate if it's the Commission's pleasure. Commissioners McHugh and Frasier disagreed. Chair Matthews advised since we don't have consensus on this, we'll move on.

**Number and Types of Commercial Cultivation License** – Counsel Long advised currently we have Type I which is “specialty outdoor”, Type IB which is “specialty mixed light”, Type 1C which is “specialty cottage”, Type 2 which is “outdoor”, Type 2B which is “mixed light”, and Type 3 which is “medium outdoor”. There are 500 licenses, five of which can be Type 3.

Commissioner McHugh asked how does the 500 factor into the CEQA Study being done. County Counsel responded the 500 is a baseline that is established for the CEQA Study. You have to establish a baseline, CEQA we will come back and say that's appropriate; if the Commission were to recommend a higher number at this point, that would set people back, we would have to start over. She said she appreciates the concern, the 500 number is not set in stone, it is based on getting legitimate studies done to determine from a land use perspective whether this is an appropriate number. At this time, this is what Planning feels comfortable with based on their experience in determining impacts on the environment, and anything above this would not make them comfortable in terms of concerns regarding CEQA and CEQA statute number. She said again, this is not set in stone, recommendations to the Board of Supervisors is appreciated, but from a staff perspective we would feel more comfortable having this discussion after we get back those studies that are really looking at these aspects.

Chair Matthews stated we have had a lot of comments about the urgent nature of moving forward and if we recommend changes that would be problematic for CEQA. He said the overall number of 500 is something we should discuss at this time. The other three Commissioners were in agreement. Director of Transportation Tippett said he would also like to add, CEQA is a big part, but it's also the ability to

process all this, and we need to start at a point where we are able to process and deliver. He said we are still building a program and as this program gets stronger that can go to the Board.

Chair Matthews said that was “Number”, how about “Type” and asked if there are any issues with the type that’s presented in the permanent ordinance. It was the consensus of the Commission to make no changes to the types of licenses.

**Proximity to a Youth-oriented Facility, a School, any Church, or Residential Treatment Facility and Authorized School Bus Stops** – Counsel Long advised applications will not be allowed within 1,000 feet of a youth-oriented facility, a school, a church or residential treatment facility, and 500 feet of an authorized school bus stop.

Commissioner McHugh asked if variances are available to this requirement. Counsel Long responded variances are available but it cannot go over what the State allows. Chair Matthews said we did have some comments about bus stop moves. Commissioner Frasier said he thinks it’s something we can leave in and come back to later. Commissioner McHugh suggested saying the recommendation is fine, leave it, and then ask staff to present to the Board of Supervisors the option we discussed grandfathering in, the bus stops as of the date of the license application. Consensus was to leave as currently written and review at a later date.

**Designated areas of grow on the property** – Counsel Long advised there are two areas of designated grows on the property: (1) Designated Area shall not exceed 150% of the Area for the license type unless otherwise approved by the Planning Director or by the California Department of Food and Agriculture; and (2) If property has more than a 35% slope, the applicant shall apply for Tier 2 cultivation under the NCRWQCB Order #2015-0023, or regulations established by the State Water Resources Control Board. She said those are the two designated areas we are seeking consideration on.

Commissioner McHugh asked staff if it could remind him what the philosophy is on the 150% slope. Director of Transportation Tippett responded essentially, we didn’t want to be chasing a grow over the whole property. We wanted the grows to be consolidated into certain areas, we wanted to provide flexibility for you to work around the canopy to add separation, and different things like that, and so earlier the Board had chosen 150% and that was based on discussions we had in December last year.

Chair Matthews asked is that 35% slope where the garden is or the cultivation area is, or anywhere on the parcel. Counsel Long responded anywhere on the property. She said you are correct the way it is written 35% slope on the property, in looking at the Interim Planning Director and Director of Building they are saying that was intended. Tippett responded we can take a look at it, but it kind of goes along with what we did for AgForest, we have a large parcel that has a meadow or something we can have them put it down in that area, but it’s something we can look at before we advance it to the Board.

Counsel Long said it sounds to her like we have consensus for no changes at this time, but let staff confirm that the 35% slope is for only areas of grows, or designated areas. Interim Planning Director Hubbard stated we will clarify the 35% slope, but sometimes the property issue, it’s not just the designated area, but roads to access it can be a real issue.

Chair Matthews said we have a couple of other things. One was about the wildlife exclusionary fencing wasn’t required for Type 1C licenses; so basically, the way it is written, the way he reads it, is there is no fencing required around the grow if it’s a cottage Type 1C, which doesn’t make sense to him at all. It seems like if you are requiring other grows to have fence and a locked gate to keep wildlife or people out, why would you change that regulation for a somewhat smaller grow. You would always want to protect your crop from critters he would think. Commissioner Frasier said he would support

requiring fencing on the 1C grow also because he thinks it would be cleaner. Chair Matthews said he was just curious where that came from, the Ad Hoc Committee? County Counsel responded she believes it was actually talked about at a Board meeting at one point, which was during the listening sessions they had in Hayfork and Weaverville. The issue came up about exclusionary fencing being more of an eyesore than the plants, and that especially on smaller grows, it was requested by citizens that you don't have those so that you can use other forms of blocking as opposed to having exclusionary fencing. Commissioner Frasier said that security fencing was the original wording. Director of Transportation Tippett said also it might apply to properties that have a fence around it. Interim Planning Director Hubbard agreed stated avoiding a fence in a fence on these smaller grows. Tippett suggested adding something that says without a permanent fence. Commissioner Hoard said he supports how it is written, without going into the fence within a fence.

After further discussion, Chair Matthews said it looks like we have consensus on Wildlife Exclusionary Fencing is required for 1C license, unless have perimeter fence with a lockable gate.

There was a brief discussion on the two reasons for denial of license.

Commissioner McHugh asked if we are going to talk about Section 2. Chair Matthews asked County Counsel for some feedback on Section 2. He said he is uncomfortable with saying that there is not any foreseeable indirect physical change in the environment, or that there's no significant effect on the environment. Counsel Long responded, to clarify, it is exemption until additional CEQA is coming. She said the way it is currently written, the County's not required to have CEQA on this ordinance until 2018. This is somewhat of a placeholder, but it also is a limited exemption, in the meantime we meet that 500 number and when the study comes back and we are looking at larger numbers, we will have to do full CEQA study. Chair Matthews pointed out in the second paragraph the word "urgency" should be taken out. Counsel Long agreed. She also advised the Commission is not being asked today to make a CEQA finding, you are being asked to make a recommendation to the Board. The Board will adopt the exemptions if it deems appropriate.

Commissioner Hoard asked, referring to Page 7, Section 3(e) regarding transfer of license, if someone purchases this property with a license in September, so they've paid the application fee, are they going to have to pay their fees at March 1<sup>st</sup> again. Tippett responded the permits go from March to March; the point of this provision is if you have the license, you don't lose your license and have to wait in line, we have more applicants than we do licenses available. The thought is, the initial owner makes the investment and that should transfer on to future owners.

Chair Matthews asked for a motion. Commissioner McHugh asked Counsel for a summary of what we've done here.

Counsel Long responded the Planning Commission recommendation as she has written are: (1) relating to the Zoning Areas – Commission recommending no changes at this time; (2) regarding Opt-out – Commission recommending to include opt-out for Coffee Creek Fire Protection District and Trinity Center Community Services District; (3) No Grow Areas – no comments were made on that; (4) regarding Setbacks – Planning Commission says no recommended change at this time, will look in the future to have setbacks tied to property line and/or size of grow; (5) regarding Number and Type of Licenses – recommended no change at this time; (6) regarding Proximity to Youth-oriented Facility, Schools, Church or Residential Treatment Facilities, and Bus Stops – no change at this time, look at removing bus stops in the future; (7) regarding Designated Area of Grow on Property – request staff look at 35% slope to make sure it's consistent with State law; and an additional, the Wildlife Exclusionary Fencing is required for 1C licenses, unless have perimeter fence with a lockable gate.

Commissioner McHugh moved to recommend to the Board of Supervisors that this ordinance be adopted by the Board and include the points of consideration and changes just outlined by County Counsel. Seconded by Commissioner Frasier, and carried unanimously.

County Counsel advised Testing Facilities is on the agenda tonight, and in discussions with the Ad Hoc Committee, they didn't anticipate we would get to it tonight due late hours and it is acceptable to move it to the next meeting, unless the Commission wanted to proceed forward. After a brief poll of the audience to see how many people were here to speak on testing facilities, Chair Matthews said we would go ahead with the item.

Recesses 10:00 p.m., reconvenes 10:05 p.m.

5. **CANNABIS TESTING FACILITIES** **PW-17-03**

Discuss and/or take action to clarify establishment of criteria and regulations in Zoning Ordinance for "Cannabis Testing Facilities" in Trinity County. Located County-wide. Applicant: County of Trinity.

Interim Planning Director Hubbard presented the staff report. She stated as a result of the meeting held on May 25th, the Planning Commission wanted to add Highway Commercial to allowable zoning districts for testing facilities. She said when preparing for the item to go to the Board we read the general description of Highway Commercial and found it doesn't really fit within the general description of that zoning itself. She said the general description of the zoning district is "to provide appropriate sites for the needs of recreation and business travelers", and testing facilities doesn't really fit with that at all, and so it was somewhat of a backwards approach saying just to be fair to people owning property down river, we wanted to be able to give them a shot at being able to have, potentially, having a testing facility, but it would be easier really, an option for them, would be to rezone into an appropriate zoning district. She said as it is right now, to do this the right way, would require either to rewrite the Highway Commercial zoning district general description. Hubbard said staff's recommendation is to take Highway Commercial off of the allowable zoning districts for testing facilities, and people still have the option to rezone a piece of property if they want to look at establishing a testing facility in areas down river that are Highway Commercial. She said there are no changes to any of the suggestions the Commission made with the ordinance itself, it's more of a consistency issue.

Chair opens the hearing to public comment.

Comments received from Mike Ware, Debbie Lono, Mr. McCassen, Liz McIntosh and Tom Ballanco.

No further comments being received, Chair closes public comment on this item.

Commissioner McHugh moved to accept the land uses set forth in the Ordinance Allowing Cannabis Testing Facilities and recommend the Board of Supervisors adopt the ordinance as proposed. Seconded by Commissioner Frasier, and carried unanimously.

6. **MATTERS FROM THE COMMISSION** – None.

7. **MATTERS FROM STAFF** - None.

8. **ADJOURN**

The Chair adjourned the meeting at 10:18 p.m.