

**MINUTES**

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**1. CALL TO ORDER**

Chair Diana Stewart called the meeting to order at 7:00 p.m. Members present: Diana Stewart, Dan Frasier, Kyle Brown, Graham Matthews and Tom McKnight. Staff present: Senior Planner Carson Anderson, County Counsel Joe Larmour and Clerk Ruth Hanover. Others present: Kelly Sheen, GIS Specialist. Director Tippet present 7:39 p.m.

Chair Stewart advised tonight the Commission will be discussing the (1) Scope of Commercial Activities Allowed, (2) Appropriate Setback Requirements, (3) Appropriate Fencing/Enclosure Standards and (4) Requiring a Permitted Residence on all properties where medical marijuana is cultivated.

The chair advised if people wish to speak about the items discussed at the last meeting they may do so at the open comment period which were (1) Indoor vs. Outdoor Grow, (2) Appropriate Grow Limits and Boundary Definition (3) Parcel Size and Linkage with Commercial Grow Area Size, and (4) Zone District/General Plan Designation Areas in which Commercial medical marijuana is permissible.

**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.*

Chair Stewart advised each speaker will be limited to 3 minutes.

Comments received from Liz McIntosh, Mike McHugh, Terry Mines, James Osburn, Carol Fall, Tammy Rachert, Brian Bogovech, Eleanor Scott, Duncan McIntosh, Steve Renton, Tom Ballanco, James Noel, Tammy Frasier, Glenn Almond, Roger Chatterton, Mike Frasier, Jessica Chase, Jeff Bedell, Hodge Calvin, John Peters, Russell Churchill, Bill German, Erica Peters, Richard Bain, John Brower, Chris Schaefer, Nedra Brower and David Mills.

**3. MINUTES – None.**

**OLD BUSINESS**

**4. WORKSHOP RE UPDATE TO MEDICAL MARIJUANA ORDINANCE**

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

Senior Planner Anderson advised he wanted to clean up some of the language in the staff report to reflect the Commission's consensus for wording of "Commercial" instead of "Aggregate" and "Cultivation Area" instead of "Canopy". He said under 2d, he had erroneously added "and AF (Agricultural Forest)" as there was some discussion about Agriculture Forest at the last meeting, but that it should just read "A (Agriculture)." He said Agricultural Forest also appears in 5b on Page 3 and should be stricken. Anderson stated Rural Residential was provisionally under consideration, and what you did there was basically ask staff, because there were some concerns voiced by all of you about Rural Residential and small parcel sizes, to bring back information on the permitting process. He said under Item 5c in the last sentence where it talks about Rural Residential zone, he added "and in other zones where there is potential for adjacency impacts."

Director Tippet commended Senior Planner Anderson for is well written staff report.

Senior Planner Anderson reviewed the items deferred from the January 14, 2016 meeting. He said on consensus Item No. 4 which deals with the scope of commercial activities allowed, it is referencing the Medical Marijuana Regulation and Safety Act here, as well as the Humboldt County ordinance. The Humboldt County Board of Supervisors actually passed the final draft version of the ordinance that we saw previously; they took out some of the other concerns that he had voiced that the Planning Commission had raised earlier such as the Timberland Production Zone, that was actually put back in.

Chair Stewart began with **Item 4, Scope of Commercial Activities Allowed (e.g., cultivation, processing, manufacturing and distribution (as permissible in the MMRSA and the Humboldt County ordinance).**

Discussion regarding extension of March 1<sup>st</sup> deadline. Director Tippett advised it is on the Governor's desk. Commissioner Frasier stated he didn't think we should rush if there is an extension of the deadline. Chair Stewart responded it was recommended at the last meeting that until that is signed, we have to assume that the urgency ordinance is necessary and we need to proceed with that. Director Tippett interjected that the Board direction is that they want to have something in place early in the season so we have a set of standards before things get going in June or July.

County Counsel Larmour stated just to be clear the Board has directed us to aim for that March 1<sup>st</sup> date. Until we get direction that they want to slow the process down, if they do, we are to continue forward as if that March date existed. He advised that this is no longer proceeding as an urgency ordinance, it's proceeding as an interim ordinance.

Chair Stewart opened public comment for Item 4 only, Scope of Commercial Activities Allowed.

Comments received from Terry Mines, Joe Brower, Sandy from Mad River, Richard Bain, Clyde Crosswhite, Duncan McIntosh, Tom Ballanco, Liz McIntosh and Jeff Bedell.

Chair Stewart closed public comment on this item.

Chair Stewart stated, in her opinion as a Commissioner, we should follow the suggestion of staff, and for the interim ordinance limit it to the zone areas where it is allowed to be cultivated. After polling the commissioners, consensus was reached on the item (3-2: Frasier/ Matthews-No).

Recesses 8:26 p.m., reconvenes 8:37 p.m.

Chair Stewart went back to Item 4 very briefly so Commissioners Frasier and Matthews could state why they are not in agreement with recommendation of staff on the scope of commercial activities allowed.

Commissioner Frasier stated the issue he has is, at this point we don't have any language in any area where permitted to grow, there are so many levels that we don't have in our codes any limits on propane, butane, etc., you don't want that in a Rural Residential or anywhere around Rural Residential, and until that is included he can't support it.

Commissioner Matthews stated his perspective is if marijuana is going to be cultivated then there should be commercial processing and manufacturing allowed in appropriate zone areas. He said it will create jobs, and it will actually reduce the impacts in some areas, because if you process and manufacture in Rural Residential or Agriculture you are going to have more traffic and more things like that in those areas. He said if you are processing and manufacturing in a commercial or industrial section, you are going to have it in place where those impacts are already expected to occur.

Chair Stewart then moved on to **Item 6 – Appropriate Setback Requirements for MM Uses.**

Senior Planner Anderson stated on Page 7 there is a list of what is commonly known as sensitive receptors. Those include schools, recreation centers, libraries, childcare facilities, school bus stops, drug treatment/rehabilitation facilities, churches/places of worship, identified native American cultural sites, public parks, and public right-of-

way. He said he has presented a range of setbacks required in other jurisdictions, and per the recommendation of the MMRSA and certain organizations such as California Cannabis Voice Trinity County, this is a very common separation, if you are within a quarter mile of a sensitive receptor, analysis is done to see how you can potentially impact that use and you have to be at least 600 feet away from it. The separation distances typically range from 600 to a quarter mile. He said he also wanted to highlight something Siskiyou County's ordinance has, although their ordinance is focused on personal grows, is not accommodating to commercial grows as a graduated setback standard. He's not sure that's applicable here but the idea that the size of the grow determines the size of the setbacks is a premise that the Commission should consider. He said the largest grow which is 24 mature or 36 immature plants requires a 20-acre parcel size or greater. He said there is some discussion here about dealing with the issue of impacts rather than strictly from the standpoint of setbacks, basing on the percentage of acreage or square footage of the parcel, and perhaps setting a figure that is reasonable. He also referred to prior discussion about the idea centering the cultivation area or the cultivation activities in the center of the parcel which also has the effect of pulling activities away from the perimeter of the property and therefore there is greater potential for reducing the level of impacts to the neighboring properties.

Chair Stewart opened public comment on Appropriate Setback Requirements only.

Comments received from Bill Huber, Duane Sceper, Sam Dayton, Benton Blake, Terry Mines, Tammy Frasier, Carol Fall, Clyde Crosswhite, John Peters, James Noel, Mike McHugh, Jose Acosta, Liz McIntosh, Hodge Calvin, Casey Ballanco, Duncan McIntosh and John Brower.

Chair Stewart closed public comment on this item.

Chair Stewart stated we need to make a decision, do we want to make the setback for public right-of-ways and setback from your neighbors a percentage or square foot.

Director Tippett stated if you were to do a 300' setback all the way around the property, you are requiring 51 acres, if you do a 1,000' setback it was 206 acres.

Commissioner Brown commented on a 40 acre parcel you would be allowed to grow a full range of the tiered licenses. He said the 30 acres on the County's rescinded grow ordinance for minimum was based on a 500' setback.

Planner Anderson advised staff would offer to look at various scenarios and bring back at the next meeting. Chair Stewart agreed and tabled the matter to the next meeting for more information.

Commissioner McKnight stated he would like for staff to look at contiguous properties under the same ownership.

Commissioner Brown stated he would support a case by case variance process. His main concern is the distance from residential structures when he is talking about setbacks, so he would like it included in the discussion.

Director Tippett advised in the current marijuana ordinance for personal grows has setback requirements and those were based on the location of the garden in relationship to the house that is adjacent to that garden.

Consensus was reached on 6a setbacks - 1,000' from Schools, Recreation Centers, Libraries and Commercial Child Care Facilities; 600' from Drug Treatment/Rehabilitation Facilities; 600' from Churches or Places of Worship; 600' from Identified Native American Cultural Sites; 600' from Public Parks; and 100' Public rights-of-way. (3-2: Frasier/Brown-No).

The Chair moved on to 6b – limiting large commercial outdoor grows (22,000 sq. ft. or greater) to larger parcels of at least 10 acres or more.

Commissioner Brown stated he would limit it all to larger parcels of 30 acres or more for outdoor grows.

Commissioner McKnight said he was fine with 10 acres or more.

Commissioner Frasier said he would go with 10 acres or more, but would prefer 30 acres or more.

Commissioner Matthews stated it should be at least 10 acres; when asked if he would say 10 acres or more, Matthews didn't have answer at the moment.

Chair stated she would say 30 acres or more.

Commissioner Frasier asked about the order of Item 6.

Planner Anderson stated your decisions here will help us in finalizing the recommendations so if you want to skip over this item and come back to it.

County Counsel stated it is a different item as far as it is not addressing setbacks, he thinks it should have been discussed in No. 3. He recommended completing the discussion on setbacks prior to trying to have public comment and coming back.

Commissioner Matthews stated where the confusion was when we were talking about parcel sizes, all we agreed on was a consensus for a minimum, we didn't agree on tiers or different cultivation areas for different size parcels, all we agreed on was minimum parcel size and so we never really finished that item.

Chair moved on to Additional Considerations.

Planner Anderson stated this is theoretical framework to help people understand permitting licensure processes. He said basically this is the idea of density of activity in an area where something is proposed and various distances or radius; a radius of 1 mile, a radius of 2 miles. He said Director Tippet had an idea that if you were trying to understand impacts in a really built up area that doing radius around public schools; a 3-mile radius around a public school would show very closely what some of the potential impacts are.

Tippet said when we talk about density what we are really looking at is cluster of grows in communities. You want to look at where that grow is located, how many other grows are in the area around it, proximity to schools, etc. He said he would like more time to develop and bring that information back to the Commission. Chair Stewart tabled the matter to the next meeting.

Commissioner McKnight stated he wanted to add items for variance. Said his big concern is forcing the grow site to be centered; in special situations where your property is such that you have to level the hillside to create a level spot to grow. One of his concerns is the impact to the property itself.

Planner Anderson commented it might be useful at this juncture, because the details are going to be worked out by the Board, he thinks it might be helpful for the Commission to say it wants consideration of hardships, so that there are certain circumstances on the property, such as enforcement of setback standards, will actually aggravate environmental impacts in consideration of variance criteria. He said when staff has more time it will work out the specifics so they are consistently applied on the problems. He said there must be some sort of consideration of hardship cases that allows for variances under certain circumstances.

Consensus was reached on **6e** for considering possible deviations from these setback requirements when there are topographic or other physical characteristics on the property, or in the environmental setting, or other features are present, that provide screening of the property and could serve to moderate impacts experienced by sensitive receptors. (5-0)

Chair Stewart went back to **Item 6b** limiting large commercial outdoor grows (22,000 sq. ft. or greater) to larger parcels of at least 10 acres or more.

Commissioner Brown stated he would limit it all of it to larger parcels of 30 acres or more for outdoor.

Commissioner McKnight stated he was fine with 10 acres.

Commissioner Frasier stated he would go along with 10 acres or more, he still prefers larger.

Commissioner Matthews stated he thinks it should be at least 10 acres or more.

Chair Stewart said she would go for 30 acres or larger.

Chair Stewart said so 6b and 6c, because 6c is the same type of thing and we will need to come back to it.

Chair Stewart went on to **Item 6d** regarding 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 area – the setback for small parcels with large grow cultivation areas being proportionally greatest compared to those for large parcels. She said this is where staff is looking for scenarios.

Director Tippett stated if the Commission could provide some guidance then we can go back and calculate the areas, what the minimum acreage would be for that particular section that you wanted to see. Do you want 100' setbacks with it centered on the property, do you want other numbers like 1,500 where you would have 500' on the side property and 100' in the front., it's just exactly what are you looking for; say for instance, what about someone on a private road, do you want 500' all around, and what about property that backs up to National Forest land, what kind of setbacks do you want to use.

Chair Stewart stated she would like to see what the impact would be, what size parcel you would need to have 100' square foot setbacks all around; 100' next to a road and 500' around; someone that is on a private road 500' all the way around; and also backing up to National Forest land.

Commissioner Frasier said if you take a 2-acre parcel with whatever the square dimensions are and use 30% of the property. Director Tippett responded the problem is most properties are not square. We do get the acreage from the Assessor Parcel Map and can figure a percentage of the acreage, but then again, parcels are not square so sometimes it gets funky.

Chair Stewart said she thought we already decided we're not using percentage.

Commissioner Matthews responded you wanted to get consensus on the sensitive receptors, Commissioner Brown's proposal is 500' and that requires a 30-acre parcel. He said the advantage of a percentage is that it treats everybody equally, because it is just based on your parcel dimensions. Everyone has the same setbacks even if the parcel is rectangle. He thinks that is a big advantage.

Chair Stewart stated you still come up with the issue of if you do a percentage on a smaller parcel then you could end up pretty close to your neighbor.

Commissioner Matthews said a 2-acre parcel is 90,000 sq. ft. roughly, it's 295' of size that is square, so if you take 30% of your dimensions that's roughly 85' setback on both sides. There is an area of 100' by 100' within its 295' where you could potentially grow. It has nothing to do with the size of the grow, it just means your grow has to be within that footprint, it doesn't give you that maximum size. You can place it within that box, but he assumes that we are going to have grow sizes based on parcel sizes.

Commissioner Frasier stated any grow in Rural Residential should have a Use Permit.

Chair Stewart stated we need to make a decision as to whether, for all property setbacks, we are going to use a percentage or feet.

Director Tippett replied we can figure both.

Counsel Larmour said he wanted to bring to the Commission's attention the code enforcement side of this, if you

are looking at a percentage as a requirement and a different setback for each parcel, although that's a nice way of doing it so you can make it somewhat compatible with the property, but it is difficult from a code enforcement standpoint.

Planner Anderson stated just based on what the MMRSA says and what the Humboldt County Ordinance says, all the other agencies that are going to be reviewing this such as the Regional Water Quality Control Board, all of them are calling for applications where you specify what your growing situation is going to be, what your operation is going to be like, and then there is a paper file that will list what was agreed to. That would include the setbacks, that would include your operational conditions that restrain cannabis activities.

Chair Stewart asked staff to bring back information on 10-acre parcel, 5-acre parcel, 30-acre parcel.

Tippett responded staff would. He said he didn't hear anything regarding setbacks for federal lands that back up to the parcel.

Commissioner Frasier asked about the existing MM Ordinance setbacks, because he wasn't here when that was done.

Planner Anderson stated it was based on property where the cultivation activity is proposed and we didn't have anything about federal lands where there is criteria like that.

Commissioner Matthews stated it seems that could be part of the variance process. If they have unoccupied land, federal or whatever. They can apply for a variance.

Chair Stewart stated what staff is asking is to look up information for us, do we want to give him a setback for federal land. She said she felt no.

Commissioner Frasier responded no keep it simple, let's just do setbacks from property lines.

Chair Stewart stated we have covered all of the Items in 6 dealing with setbacks.

Commissioner Frasier asked if this can be moved back where it should be, under Item 3.

Tippett advised what we have here is a list of things that we are trying to reach consensus on and we still have to return with that actual document that gets forwarded to the Board.

Chair opened public comment on to Items 6b and 6c.

Comments received from Duane Sceper, Clyde Crosswhite, Tom Ballanco, Terry Mines, Mike McHugh, Duncan McIntosh, James Noel and John Brower.

Chair Stewart closed public comment on these two items.

After discussion, consensus was reached on 6b to define large commercial grows greater than 10,001 sq. ft. to larger parcels of at least 10 acres or more. (3-2: Brown/Stewart - No)

Discussion regarding limiting commercial outdoor grow areas to a maximum percent of the total parcel area.

Counsel Larmour explained that both the fixed setbacks approach and percentage approach could be used where appropriate, but that the percentage approach does pose code enforcement difficulties.

Consensus of the Commission on Item 6c was to oppose the percentage model for establishing setbacks, and further to oppose all outdoor commercial grows be required to be in the center of the property. (3-2: Matthews/Brown-No)

Director Tippett read the different types of permits that could be available.

Planner Anderson suggested we skip No. 7 and move on to No. 8.

Commissioner Frasier stated we didn't reach consensus regarding Use Permits and we shouldn't go any farther into that issue.

Planner Anderson reviewed the Use Permit process.

Chair Stewart moved on to **Item 8, Requiring a Permitted Residence on all MM Cultivation Properties.**

Planner Anderson advised when the current MM Ordinance was developed it required a permanent residence be located onsite in order to link personal MM grow activity as an accessory use of the residents of that property, it did not address the linkage of commercial grows with a permitted onsite residence.

Chair opened public comment on Item No. 8.

Comments received from Duane Sceper, Clyde Crosswhite, James Noel, Terry Mines, John Peters, Andrew Franklin, Tom Ballanco, Curt Connor, Duncan McIntosh, Daso Ballanco, Mike Frasier, John Brower and JB Foster.

Chair Stewart closed public comment on this item.

Commissioners were pretty much in agreement with requiring permitted residence or structure on commercial grows. Commissioner McKnight stated his only problem with this is on contiguous pieces of property owned by the same property owner, especially in rural residential settings when there is a residence on just one of the parcels.

Chair stated we're in agreement regarding the permitted residence. Director Tippett stated staff will bring back the question of contiguous parcels with requiring permitted residence.

Consensus was reached on Item 8a, that the grower applying for a use permit should be required to show that there is a permitted dwelling on the property where the commercial grow is proposed, said proposal intended to discourage growers serving the black market from outside Trinity County for setting up operations.

Commissioner Frasier stated he wants staff to address Use Permits.

Commissioner Brown asked if staff could clarify school.

Planner Anderson advised staff has worked out a tentative schedule with the County Administrative Officer and there will be a joint meeting between Planning Commission and Board of Supervisors on March 1<sup>st</sup>, our regular Planning Commission meeting on February 17<sup>th</sup>, and then tentatively the first meeting of the Board of Supervisors will be March 1, 2016.

**NEW BUSINESS** – None.

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

**6. MATTERS FROM STAFF**

Planner Anderson advised staff will be bringing in the Water Policy to Review probably in March. Also CalFire has new regulations by the state. He advised there will be a community forum on Medical Marijuana hosted by Estelle Fennel occurring tomorrow in Redding, Senator Mark McGuire and Assemblyman Jim Woods, as well as people from the Regional Water Quality Control Board will be there. He said the Regional Water Quality Control Board will have more meetings to be held in Ukiah, Arcata and Willow Creek and one more.

Director Tippett advised the 2014-2019 Housing Element is now up on the internet (Planning Department page).

Director Tippett advised, regarding public comment letters, the deadline is one week prior to the meeting. We need to have any correspondence going to the Commission by Wednesday the week prior to the Planning Commission meeting. Anything received after the close of business on the Wednesday prior to the Planning Commission meeting will be held and distributed at the next meeting of the Commission.

**7. ADJOURN**

The Chair adjourned the meeting at 11:02 p.m.