

1 BOARD OF SUPERVISORS, COUNTY OF LAKE, STATE OF CALIFORNIA

2
3 In the Matter of the Appeal)
4 of Antonio and Doris Guerra-Freire)
5 [AB 19-02]) FINDINGS OF FACT AND DECISION
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7 These proceedings were commenced by virtue of an appeal of the
8 Planning Commission's determination on April 11, 2019, to adopt a mitigated
9 negative declaration and to approve a major use permit (UP 18-23) for an A-Type
10 3 commercial cannabis cultivation site at 15232 Spruce Grove Road in Lower
11 Lake, California. (hereinafter, the "Project").

12 A duly noticed public hearing on the appeal scheduled before this Board
13 was heard on January 14, 2020, and February 4, 2020, at which time, evidence,
14 both oral and documentary, was presented. Based upon the evidence and
15 applicable law, we find the following:

- 16 1. That the Lake County Planning Commission held a noticed public hearing
17 on April 11, 2019, to consider the adoption of a mitigated negative
18 declaration and a major use permit (UP 18-23) which, if approved, would
19 allow an A-Type 3 (outdoor) commercial cannabis cultivation site at 15232
20 Spruce Grove Road in Lower Lake, California.
- 21 2. That on April 11, 2019, the Planning Commission adopted Initial Study 18-
22 28 and mitigated negative declaration and approved Major Use Permit 18-
23 23.
- 24 3. That the Project applicant is Will Dawson.
- 25 4. That the Appellants are Antonio and Doris Guerra-Freire. The primary basis of
26 the Appellants' appeal involves the Appellants' objection to the applicant's use
27 of an existing twenty-foot easement for commercial purposes. The Appellants
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1 seek the imposition of a requirement that, as a condition of this major use
2 permit, the applicant be required to install and use a code-compliant, fire-safe,
3 and dedicated commercial entrance/driveway abutting onto Spruce Grove
4 Road.

5 5. That the Board of Supervisors has conducted a de novo hearing in this matter
6 as required by Section 58.34 of the Lake County Zoning Ordinance.

7 6. That the Appellants presented evidence both documentary and testimonial in
8 support of their appeal. In addition to the appeal and accompanying
9 documentation submitted by the Appellants, legal counsel for the Appellants
10 also submitted a letter brief dated January 10, 2020, with exhibits 1 through 13,
11 and a further written response dated February 3, 2020, with exhibits 14 through
12 18.

13 7. That the Community Development Department presented testimony and
14 documentary evidence relevant to these proceedings including, but not limited
15 to, a staff report dated January 14, 2020, and Exhibits A through G thereto, and
16 a further staff report dated February 4, 2020 and Exhibits A1 through A5
17 thereto.

18 8. That the applicant was present during these proceedings and testified that he
19 was willing to upgrade the existing easement to state and local law standards
20 at his sole expense and had initiated contact with the Appellants through their
21 legal counsel.

22 9. Several members of the public testified to offer their respective opinions as to
23 this matter.

24 10. That this Board finds, based on the evidence and facts presented in this matter
25 as follows:

26 a. That all the findings required for the issuance of a major use permit as
27 described in Section 51.4 of the Lake County Zoning Ordinance are
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1 hereby made by this Board. This Board adopts the analysis and
2 factual determinations of the Community Development Department
3 as provided on pages 5 through 7 of the staff report dated January
4 14, 2020 regarding the findings required for the issuance of this
5 major use permit.

- 6 b. That this Board finds that sufficient information exists in the record
7 of this matter to support the adoption of the initial study IS 18-28 and
8 the mitigated negative declaration. This Board adopts those CEQA
9 findings enumerated in the staff report dated February 4, 2020.

10 This Board hereby adopts the mitigated negative declaration for this
11 Project and grants Major Use Permit 18-23 based upon the findings
12 enumerated on pages 5 and 6 of the staff report dated February 4,
13 2020.

- 14 c. That the Appellants have provided insufficient evidence to support
15 the grounds for this appeal. The Appellants contend that the twenty-
16 foot wide roadway and utility easement running through their
17 property to the applicant's property may not overburdened by the
18 commercial use to which the applicant intends to put his property.
19 The County is not requiring that the Appellants accede to such use.
20 The County is requiring, in Section J.4 of the conditions of approval
21 issued with Use Permit 18-23, that:

22 "The project site(s) shall have access to a public road or a
23 recorded easement that allows for, but is not limited to,
24 delivery trucks, emergency vehicles, sheriff and other law
25 enforcement officers, and government employees who are
26 responsible for inspection or enforcement actions. Driveway
27 encroachments onto County-maintained roadways shall be
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constructed with an encroachment permit obtained from the Department of Public Works.

a. All driveways shall be constructed and maintained so as to prevent road surface and fill material from discharging to any surface water body.

b. The design of all access to and driveways providing access to the site where the cannabis related activity that [sic] is permitted shall be sufficient to be used by all emergency vehicles and shall be approved by the applicable fire district.

c. Gates shall not be constructed across driveways or access roads that are used by neighboring properties or the general public. Gates constructed across public access easements are subject to removal per State Street and Highway [sic] Code.”

d. Considerable time was taken and information was provided by both the Community Development Department and the Appellants as to whether the easement in question constitutes a road or a driveway for purposes of Public Resources Code section 4290-4291 and California Fire Safe Regulations (Title 14 California Code of Regulations, sections 1270.00, et seq.) and the impacts of those laws to the Project at issue here. It is not the role of this Board to fashion the means pursuant to which the applicant secures the access required in the conditions of approval which are described hereinabove. The applicant must meet all conditions of approval to Use Permit No.18-23. Whether and to what extent the private property interests of the Appellants and the applicant can be resolved in such a way as to facilitate the applicant’s compliance with these

use permit conditions is beyond the purview of this Board.

e. This Board does take note of the testimony of Eric Porter, a planner in the Community Development Department, that the inclusion to Section J 7 of the conditions of approval includes in error a sub paragraph referencing a letter from the Department of Forestry and Fire Protection (Cal Fire) dated May22, 2018. This Board hereby removes this subparagraph from Section J 7 of the conditions of approval as having been included erroneously.

11. That this Board has considered and incorporates by reference the Community Development staff memorandum and exhibits thereto submitted to this Board for the hearing, as well as other documentation submitted to this Board.

12. Based upon all the foregoing and for the reasons set forth hereinabove, this Board denies the appeal of the Appellants Antonio and Doris Guerra-Freire.

NOTICE TO APPELLANT: You are hereby given notice that the time within which any judicial review of the decision herein may be sought is governed by the provisions of the Code of Civil Procedure Section 1094.5.

Dated: _____

CHAIR, Board of Supervisors

ATTEST: CAROL J. HUCHINGSON
Clerk to the Board
of Supervisors

APPROVED AS TO FORM:

By: _____
Deputy

ANITA L. GRANT
County Counsel