

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

2
3 In the Matter of the Appeal)
4 of Todd Hosfelt)
5 [AB 19-05]) FINDINGS OF FACT AND DECISION
6 _____)

7
8 These proceedings were commenced by virtue of an appeal of the Planning Commission's
9 determination on May 23, 2019, to adopt a Mitigated Negative Declaration and approve a major
10 use permit (UP 18-39) to allow an A-Type 3B (medium mixed light) commercial cannabis
11 cultivation site at 10544 Bachelor Valley Road in Witter Springs, California (hereinafter, for
12 purposes of this appeal, the "Project").

13 A duly noticed public hearing on the appeal scheduled before this Board was heard on
14 March 10, 2020, at which time, evidence, both oral and documentary, was presented. Based
15 upon the evidence and applicable law, we find the following:

- 16 1. That the Lake County Planning Commission held a noticed public hearing on May 23,
17 2019, to consider the adoption of Initial Study 18-52, approval of a Mitigated Negative
18 Declaration and the approval of Major Use Permit No. 18-39 to allow an A-Type 3B
19 (medium mixed light) commercial cannabis cultivation site at 10544 Bachelor Valley Road,
20 in Witter Springs, California. The use permit would allow up to 29,880 square feet of
21 cultivation area and up to 19,920 square feet of canopy inside six (6) greenhouses.
- 22 2. That on May 23, 2019, the Planning Commission adopted the Initial Study 18-52,
23 approved the Mitigated Negative Declaration, and approved Major Use Permit 19-39 for
24 this Project.
- 25 3. That the Project applicant is Vivian Smith. That the Project site, a property of slightly
26 over thirty-three (33) acres, is split-zoned RL-WW-SC Rural Lands-Waterway-Scenic
27 Corridor, and RR-WW-SC, Rural Residential-Waterway-Scenic Corridor, both of which
28

1 allow commercial adult-use cannabis cultivation subject to the approval of a use permit.

2 The applicant also seeks an A-Type 13 Self-Distribution license, which was not an
3 available option when the Applicant originally applied for a use permit.

4 4. That the Appellant is Todd Hosfelt. The Appellant offers several bases for this appeal:
5 (1)Dark skies concerns; (2) Dredging/excavating/grading concerns; (3) Staff failure to
6 provide a water availability analysis; (4) Storm water discharge concerns; and (5) Failure
7 to create a proper record.

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

10 6. That the Appellant testified that he is an adjoining property owner and has both health and
11 safety concerns with this large-scale project. He believes there is a lack of truthfulness on
12 the part of the Applicant and her husband in regard to this Project. In addition to
13 testimony, through his legal counsel, the Appellant offered written documentation and
14 multiple exhibits thereto. Appellant's legal counsel, Andre Ross, made a presentation
15 outlining the concerns of his client and further provided oral argument in support of his
16 client's appeal.

17 7. That the Community Development Department presented testimony and documentary
18 evidence relevant to these proceedings including, but not limited to, a power point and a
19 staff report dated March 10, 2020, and Exhibits thereto. Interim Community
20 Development Director Scott DeLeon testified that the staff report incorrectly identifies the
21 use permit applicant as Vivian Smith and Michael Smith. Mr. De Leon clarified that while
22 Michael Smith is the owner of the property, Vivian Smith is the sole applicant for the use
23 permit which is the subject of these proceedings. Mr. De Leon also offered some
24 additional language to be added to the use permit conditions of approval to address the
25 concerns raised in these proceedings related to the earthen dam which exists on the
26 Project site.

27 8. That a consultant for the Applicant, Trey Sherrell, provided a Project description and
28

1 outlined the efforts made in the course of the use permit application process.

2 9. Several members of the public testified in support of this appeal. One member of the
3 public testified in support of the Applicant.

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

5 a. That all the findings required for the issuance of a major use permit as described in
6 Section 51.4 of the Lake County Zoning Ordinance are hereby made by this
7 Board. This Board adopts the analysis and factual determinations of the
8 Community Development Department as provided on pages 2 through 7 of the
9 staff report dated March 10, 2020 regarding the findings required for the issuance
10 of this major use permit.

11 b. That this Board finds that sufficient information exists in the record of this matter to
12 support the adoption of Initial Study Number 18-52 and the Mitigated Negative
13 Declaration for this Project. This Board hereby finds that based upon Initial Study
14 18-52, this Project will not have a significant effect upon the environment and,
15 therefore, this Board approves a Mitigated Negative Declaration for this Project.
16 based upon the findings enumerated in the March 10, 2020 staff report.

17 c. That the Appellant has provided insufficient evidence to support any of its grounds
18 for this appeal. As to each and every ground for appeal, this Board hereby
19 adopts the responses presented by County staff on pages 2 through 7 of the
20 March 10, 2020 staff report. On or about March 9, 2020, the Appellant also
21 offered an additional basis for the appeal which was not part of his original appeal
22 documentation. The additional basis for the appeal involves the contention that the
23 Project property owner should have been subjected to a background check and
24 had that occurred, the criminal history of the owner could have disqualified the
25 owner as an applicant. As this Board made clear in the course of these
26 proceedings, Article 27 of the Lake County Code requires only the applicants and
27 their employees in commercial cannabis cultivation operations to undergo
28

background checks. As the Community Development Department stated, the owner of the Project site is not the Applicant for this Project. Further, evidence was presented during these proceedings that the site owner is also not an employee of the Applicant. Therefore, the background check requirement of Article 27 is inapplicable to this Project owner and this Board finds that evidence relating to his criminal history is irrelevant here.

11. That this Board hereby adopts the findings presented on pages 6 and 7 of the March 10, 2020 staff report and approves Major Use Permit 19-39 for this Project with the following additions to the Conditions of Approval:

a. Added as Condition number 21 to "Section A General" of the Conditions of Approval:

"Prior to cultivation and/or final occupation, a report documenting the adequacy of the existing earthen dam shall be prepared by a licensed civil engineer and submitted to the Community Development Department for review and approval."

b. Language added to the first bullet point of "Section L Timing and Mitigation Monitoring (2)" of the Conditions of Approval to read as follows:

"The project parcel, including a visual inspection of the existing earthen dam, shall be inspected by the Community Development Department on an annual basis and/or less frequently if approved by the Community Development Director. A copy of the results from said inspection shall be provided to the applicant for inclusion in their Performance Review Report."

12. 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 by the Appellant and by the Project Applicant.

13. Based upon all the foregoing and for the reasons set forth hereinabove, this Board denies the appeal of the Appellant Todd Hosfelt.

1 NOTICE TO APPELLANT: You are hereby given notice that the time within which any
2 judicial review of the decision herein may be sought is governed by the provisions of the Code of
3 Civil Procedure Section 1094.5.
4
5
6

7 Dated: _____

CHAIR, Board of Supervisors

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

APPROVED AS TO FORM:

14 By: _____
15 Deputy

ANITA L. GRANT
County Counsel