

LAKE COUNTY PLANNING COMMISSION

MINUTES

REGULAR MEETING

July 23, 2020

Commission Members

P John Hess, District I
P Bob Malley, District II
P Batsulwin Brown, District III
P Christina Price, District IV
P Daniel Suenram, District V

Staff Members

P Scott DeLeon, Interim CDD Director
P Tocarra Thomas, Deputy Director
P Mark Roberts, Principal Planner
P Nicole Johnson, Deputy Cty Counsel
P Kate Lewis, Office Assistant III

REGULAR MEETING

July 23, 2020

9:10 a.m. CALL TO ORDER

Pledge of Allegiance was led by Daniel Suenram.

9:11 a.m. ACTION ON MINUTES

Comm. Hess moved, 2nd by Comm. Malley to approve the minutes from the July 9, 2020 Planning Commission meeting.

5 Ayes 0 No – Motion carried, approved by a roll call vote.

9: 12 a.m. CITIZEN'S INPUT - None

Any person may speak for three minutes about any subject of concern, provided that it is within the jurisdiction of the Planning Commission, and is not already on today's agenda or scheduled for a future public hearing. Total time allotted for Citizen's Input shall be fifteen minutes. Speakers are requested to complete a simple form (giving name, address and subject) available in the Community Development Department office, prior to 9:00 a.m.

Agendas of public meetings and supporting documents are available for public inspection in the Lake County Courthouse, Community Development Department, Third Floor, 255 North Forbes Street, Lakeport, California

Request for Disability-Related Modification or Accommodation: A request for a disability-related modification or accommodation necessary to participate in the Planning Commission meetings should be made in writing to the Planning Commission Assistant at least 48 hours prior to the meeting.

9:12 a.m. Public Hearing on consideration of a Major Use Permit (UP 19-39) and a Mitigated Negative Declaration (IS 19-58). The applicant is Rebecca Hebert, proposing (1) Outdoor Commercial Cannabis license for 43,560 square feet of canopy area, and (2) Mixed-light Cannabis licenses for a total 23,400

square feet canopy area within greenhouses. The proposed location is 1020 Junction Plaza, Clearlake, and further described as APN 010-055-45.

Sateur Ham, Assistant Planner, presented a power point presentation further explaining the project. The presentation included information on the permit request, site description, project description, project analysis and the staff recommendations.

(Brief break due to a Zoom hack)

9:29 a.m. The Commissioners all agreed to try the power point presentation again, and Comm. Suenram directed Sateur Ham to proceed.

Sateur Ham continued with her power point presentation.

Comm. Suenram asked if there were any questions or comments from the Commissioners that needed to be addressed.

Comm. Malley noted the letters from neighbors, and inquired as to how much staff has communicated with the neighbors to find appropriate mitigations.

Comm. Suenram said he has questions about the access which could have a negative impact on the neighbors.

Sateur Ham said that they do have mitigations in place in the Conditions of Approval such as a speed limit on the road, and meeting CalFire requirements for access and maintenance.

Comm. Malley raised some concerns and questioned how they could enforce conditions of keeping the shared access road maintained. He noted that they do not have the right or power to step in on other properties that have no stake in this project, and tell them what needs to be done to keep the access road between their properties and Ogulin Canyon Road at a certain standard of maintenance specifically because of this proposed project.

Mark Roberts, Principal Planner said that because it is a private easement, there would need to be an agreement by all property owners to come together and ensure the upkeep of this road.

Comm. Malley said that there needs to be something in writing that is attached to each of the properties that is an agreement between the property owners to maintain that roadway. He said if they put all of the cost of doing that on this owner, that's one thing, but they will have to come to some type of written agreement that is attached to that property so it can't be changed.

Comm. Suenram asked if Comm. Malley meant that there should be some type of restriction on the permit.

Comm. Malley said that it needs to be in writing and it needs to be part of each of the deeds of the property because it is a deeded access. He said there needs to be an agreement by all property owners that somebody is responsible for the upkeep of this roadway and it has to be maintained to a certain minimum level.

Mark Roberts suggested that they could create a condition that would require that a written agreement be submitted to CDD stating that the private access could meet standards.

Comm. Suenram asked what would happen if they are not able to obtain permission from the neighbors, and if it would make the permit null and void.

Mark Roberts stated that it could potentially impact the project.

Comm. Hess stated that they would potentially learn more and get further clarification once they heard from the public.

Comm. Malley asked about the husband of the applicant and stated that neighbors are concerned because he is a convicted felon.

Scott DeLeon, Interim Director of Community Development, stated that the Ordinance does not address the potential of the situations they are describing. He said the Ordinance calls for applicants to have background checks; it does not include property owners who are not involved in the project. He said that during inspections, if the owner is observed on the property actively participating, then they will be in violation of the project permit and Ordinance.

Comm. Malley said that he went on Facebook and saw that Ms. Hebert and Mr. Finley were in Hawaii last year, so he assumes that they are living closely together. He stated that convicted felons are not permitted to cultivate cannabis. He said he would be remiss if he did not bring up the fact that this couple is running a business, and if he is the owner of the property, they are obviously going to run the business together.

Scott DeLeon said he understands his concerns and this is not the first project in which this has occurred, and shortly after he became Interim Director there was an appeal to the BOS about a very similar situation and the BOS felt that the rules that are in place were sufficient. He said it put an additional burden on the County to ensure that during inspections the owner of the property was not involved. He reiterated that there is nothing in the Ordinance that precludes that from happening.

Comm. Suenram asked if we have the mailing address of the owner of the property on file, and asked if he lived nearby.

Scott DeLeon said he will work on getting that answer presently.

Comm. Hess said that if they live on the same property, it would be very difficult to separate the business from their personal life.

Comm. Malley stated that if they are indeed living together there may not be anyone living on the property except for someone running security, but that doesn't mean that they aren't involved in day to day operations and decision making.

Comm. Hess said that it would be very hard to determine and asked how far we can take this to identify them as a couple.

Comm. Brown said that he has been looking at the letter sent by an opposing party and there's a blur about the involvement of the gentleman that is a convicted felon, and hopes there is some clarity provided by the applicant.

Comm. Price said she echoes Comm. Brown's comment and she is eager to hear from the applicant to get some clarity.

Scott DeLeon said that according to the County GIS the mailing address is a PO Box in Lower Lake, so he cannot confirm whether or not they live together, because there is no physical address.

9:55 a.m. Open for Public Comment

Tom Lasick, Lakeport resident, said that he sent an email the day before and asks that they continue the project. His property is surrounded by cannabis cultivation, and his concern is the impact on the water and his well. He has expressed his concerns in the past about the Ordinance not providing any protections for wells.

Rebecca Hebert, applicant, said that she plans to keep the easement maintained herself in order to appease her neighbors and come up with a plan to maintain the 100ft strip of road.

Comm. Hess asked Ms. Hebert if she had contacted the neighbors directly or if they had contacted her.

Rebecca Hebert said this is the first time she has heard any complaints from the neighbors and today is the first time she has heard anything about a complaint. In regards to her relationship to Mr. Finley, she does live with him on the property; he works out of town every day, and this is solely her project and something she wants to do. She said she started out looking at growing hemp and switched to wanting to grow cannabis in order to make products with cannabis. She said when it comes to (Tim) Mr. Finley, he is not in any way a part of this project, and he is a licensed contractor who works over the mountain in St. Helena in the Napa area.

Sufiyan Hamouda, consultant for the applicant, said he wants to address the mitigation letter sent by Lori Bateman, and clarified that the applicant is able to meet all requirements and has met them from the beginning of her Early Activation. He said Rebecca Hebert (applicant) is open to any further mitigations that are necessary to appease her neighbors.

Comm. Hess noted that there is no one present in the Board of Supervisors chambers to speak.

10:06 a.m. Closed Public Comment

Comm. Hess asked Ms. Hebert about the access and maintenance of the access road, and if she is saying that she is prepared to bear all of those costs, as long as there are no objections by neighbors legally or otherwise.

Rebecca Hebert said that yes she is absolutely prepared to do that.

Comm. Malley referenced the letter from Lori Bateman, and asked if she was one of Rebecca Hebert's neighbors.

Rebecca Hebert said that yes she is one of her neighbors.

Comm. Malley asked if she has seen the letter from Ms. Bateman.

Rebecca Hebert said she has not seen the letter and she has not seen Lori in 3-4 months; the last time she saw her was when she told her she was moving to Mexico and wanted Rebecca to take some of her pigs and other animals.

Comm. Malley said that the letter was written April 26, 2020 from Ms. Bateman to Sateur Ham. He asked if her consultant had seen the letter.

Sufiyan Hamouda said he had not seen the letter until this morning.

Rebecca Hebert said that if Lori Bateman had said something to her, she would have worked with her immediately, but she has not heard about any issues until this morning. She noted that she has put up security gates and repaired holes in the fencing.

Toccarra Nicole Thomas, Deputy Director of Community Development, gave clarity on the letter and the process regarding the communication between staff and the concerned neighbors.

Comm. Malley said there is a three page letter from Ms. Bateman to Ms. Ham regarding the security and safety of livestock; dust control and road maintenance; water usage monitoring, which has been addressed; fire safety and odor control. He stated that she will be sandwiched between two marijuana farms.

Toccarra Nicole Thomas said that there is an extensive Property Management Plan that addresses the majority of these concerns including the 42-90 inspection for road compliance; odor control; 6ft. fence, which could be made into a security type fence.

Comm. Malley noted several of the concerns the neighbor outlined in her letter, including people coming onto her property; dust storms due to excessive and speeding vehicles; loss of livestock due to holes in the fencing. He stated that he was confused as to why this developer (consultant) was not aware of it before this morning.

Toccarra Nicole Thomas said that all of those concerns were addressed in the Property Management Plan and staff had shared all of it with the developer.

Sufiyan Hamouda, he said he can go through each of these bullet points and address each of them.

Comm. Malley said that either he was given a copy of the letter or he was not.

Sufiyan Hamouda stated that all the mitigations were met based on the standards and requirements set forth in Article 27, which is why they are outlined in the Property Management Plan, however he had not seen the actual letter until today.

Comm. Suenram asked about the 20ft. wide access without permission from the neighbors.

Sufiyan Hamouda said the 42-90 access refers to the road way of the property, which has been approved and it was signed off on by the Building Department.

Comm. Malley said that the easement is for 12ft.

Sufiyan Hamouda said he believed it was 16ft.

Rebecca Hebert stated that the easement is on the County books as a 20ft. easement.

Comm. Malley said that he did not see that.

Rebecca Hebert said that she has County papers stating that.

Comm. Malley then spoke about water and said he knows that the County doesn't have a ruling that allows them to set certain amounts of water usage for different properties, but that you are required to put a meter per Water Resources.

Rebecca Hebert stated that she records daily water readings.

Comm. Malley asked for clarification as to which agency is coming out and recording those readings.

Rebecca Hebert stated that no agency checks her readings.

Comm. Malley stated that the State sets these rules about water usage readings, but has nothing in place to enforce or check logs.

Scott DeLeon said that under timing and mitigation monitoring on page 6 of the Conditions they are required to submit an annual performance report about their compliance with the various components of their project, to include the Conditions of Approval, operating manual and other standards. One of the standards in the County Ordinance is that when a well is used it must be located on the premises and they must maintain a record of the water usage. There will be a report that is required and we will require monitoring of the well; it will demonstrate the amount of water being used but it will also demonstrate the well's recovery which will be an indication of any impact to the ground water aquifer.

Comm. Malley said while that is helpful, he wants to know if they show you that their meter reading shows they used a million gallons of water in one year, and that's what they've written down that they will be using, he assumes there is no problem if the well is recovering at that rate. If they are using more than what they say they will, who is going to go in and enforce it.

Scott DeLeon said the county will go in and enforce it. If their water doubles or triples it will indicate that there is something wrong. They've done their analysis and it has the projected water usage and it is consistent with other studies and reports that we've seen.

Comm. Malley thanked Scott and said that having been around for a while he knows things get done with the intent that we will follow up and inspect, and 'it's not what you expect it's what you inspect'; he said we need to make sure that there is ongoing inspection happening to make sure that there is compliance. He said he knows that things are going to fall through the cracks and someone is going to do something that is detrimental to the surrounding property owners.

Scott DeLeon said that he shares his concerns and that it is a concern and a challenge that we are looking at every day with these types of projects. It is a big task and we are going to create a process that will maintain the monitoring of these applicants and the projects that we approve. We are currently doing inspections for the projects that have been approved. He said that he is aware of the requirements to monitor and inspect and that staff is taking it very seriously.

Comm. Malley noted the letter from yesterday, and asked staff to respond as to whether the points are valid or invalid about not having to follow CEQA.

Mark Roberts said in regards to the comments submitted from the CDFA, those concerns are covered in the Conditions of Approval, for example: pg.12 under Hydrology:

'The project will employ Best Management Practices related to erosion and water quality to reduce impacts related to storm water and water quality'.

The CDFA's Comments and Recommendations said:

'The document would be improved if it provided a list or summary of the BMPs to be employed at the Proposed Project and how those BMPs would reduce impacts related to water quality'.

One of the Conditions of Approval, Section F page 4, under Geology and Soils:

'If greater than fifty (50) cubic yards of soils are moved, a Grading Permit shall be required as part of this project. The project design shall incorporate Best Management Practices (BMPs) to the maximum extent practicable to prevent or reduce discharge of all construction or post construction pollutants into the County storm drainage system. BMPs typically include scheduling of activities, erosion and sediment control, operation and maintenance procedures and other measures in accordance with Chapters 29 and 30 of the Lake County Code. Mitigation Measure GEO-2'.

He said that we are coordinating with all agencies for all of our projects, and quoted from the Conditions of Approval, number 6:

'All necessary permits shall be obtained from applicable Federal, State and County agencies having jurisdiction over this project prior to this use permit having any force and effect, including but not limited to, Department of Cannabis Control, Department of Food and Agriculture, Department of Pesticide Regulation, Department of Fish and Wildlife, The State Water Resources Control Board, Board of Forestry and Fire Protection (CalFire), Central Valley or North Coast Regional Water Quality Control Board, Department of Public Health, and Department of Consumer Affairs'.

Scott DeLeon said that we talked about water and there are comments in the letter that we have addressed about the monitoring and work that needs to be done by the applicant and documented in the annual report for measurement regarding any effects to the ground water basin. In the Staff Report there is no distinction of a threshold; the bigger issue is the existing cannabis ordinance not having a threshold requirement.

Comm. Malley said that our job today is to decide. He stated that there needs to be some threshold added to the ordinance at some point. He wanted to make sure that the letter was submitted as part of the record and feels we adequately answered the concerns.

Comm. Suenram asked if they have all permits required.

Mark Roberts explained the process with getting all their licenses and permits during this Early Activation period.

Comm. Suenram expressed his concerns about the EA permits and what they are allowed to do before they have all permits necessary; they are ok to get everything planted

Mark Roberts said that when someone applies for EA they get a temporary license, then they have to pass the background check, then staff gets emails from CDF, at which point we respond with compliant, non-compliant or pending, usually it is pending. The email from CDFA helps give a provisional license which allows them to temporarily cultivate under EA, although they can still be denied by the state.

Comm. Suenram asked what happens when they get the provisional license and then they start planting and then it turns out they did not pass their background or another requirement.

Mark Roberts said that at that point, we would reach out to the CDFA and let them know the applicant did not have the permits necessary, and then the state would step in and do their portion.

Comm. Suenram said he remembers when they did the CDFA permits and that's what we worked on while we got the ordinance in place. It seems like we have a lot of cultivation taking place and they claim they have EA, but they might not. He has significant issues and concerns with Early Activation.

Comm. Price asked Mark to clarify what fees the EA applicants are incurring, and asked if we seeing any type of revenue for that.

Mark Roberts stated that there is an application permit fee (zoning permit), tax requirements, as well as fees for outdoor cannabis grows, once its formally approved then there is a separate bills for indoor vs outdoor.

Comm. Brown said all of his concerns have been answered.

Comm. Malley said he just wants to say that he came into this with quite a few questions and they have been answered and thanked staff for doing their part.

Comm. Hess said that they have identified several things that need to be addressed within the larger Ordinance and that the Board of Supervisors has review periods for these types of things.

Comm. Malley moved, 2nd by Comm. Hess that the Planning Commission find that that the Initial Study (IS 19-58) prepared for the project proposed by Rebecca Hebert on a property located at 1020 Junction Plaza, Clearlake, CA, further described as APN: 010-055-45 will not have a significant effect on the environment, and therefore a mitigated negative declaration shall be approved with the findings listed in the staff report dated June 5, 2020.

**4 Ayes 1 No (Comm. Suenram) Motion carried.
Approved by roll call vote.**

Comm. Malley moved, 2nd by Comm. Hess that the Planning Commission find that the Major Use Permit (UP 19-39) applied for by Rebecca Hebert on a property located at 1020 Junction Plaza, Clearlake, CA further described as APN: 010-055-45 does meet the requirements of Section 51.4 of the Lake County Zoning Ordinance and the Major Use Permit be granted subject to the conditions and with the findings listed in the staff report dated June 5, 2020.

**4 Ayes 1 No (Comm. Suenram) Motion carried.
Approved by roll call vote.**

NOTE: The applicant or any interested person is reminded that the Zoning Ordinance provides for a seven (7) calendar day appeal period. If there is a disagreement with the Planning Commission, an appeal to the Board of Supervisors may be filed. The appropriate forms and applicable fee must be submitted prior to 5:00 p.m. on or before the seventh calendar day following the Commission's final determination.

10:54 a.m. UNTIMED STAFF UPDATE

Scott DeLeon mentioned his budget that proposes a Cannabis Division for Community Development. As of this month we have 200 applications that we are trying to process and staff is struggling to get these done; with that type of workload it is very difficult. He stated that they are working on modifying the Zoning Ordinance due to several consistent issues that arise due to a lack of clarity within the Ordinance. Community Development is a challenging place to work but we are making progress and he is hopeful that things will continue to improve.

Comm. Suenram asked about progress on any rebuilding issues after fires or things like that.

Scott DeLeon said that cannabis is 70-80% of what is being dealt with currently. He mentioned that Guenoc was approved by the BOS and CDD is working on trying to get an engineering consultant on board for Guenoc, which will be paid for by the applicant. Construction continues to occur and they are trying to find ways to make projects happen. He suggested we have one Commissioner at a time join the Planning team for their weekly meetings.

Comm. Suenram said that Kate Lewis would send invitations.

Nicole Johnson, Deputy County Counsel stated that it could be a violation of the Brown Act to have them present for discussions about projects that could come before them as a Commission.

Scott DeLeon said that we are conducting these and it is a great opportunity for younger staff to bounce ideas off one another and it helps to jump hurdles to move projects forward.

Comm. Hess wants to know if there is a clear violation of the Brown Act, because if there is not, he would like to join a meeting.

Nicole Johnson said that she can look into it and get back to them.

Comm. Malley asked if it would matter if different things were discussed in the different meetings.

Mark Roberts added that we are getting ready to do the Annual Cannabis Inspections for those who have been previously approved. He asked how the Commission would like staff to bring those annual inspection reports before them.

Comm. Hess said that the Planning Commission concluded that they wanted everything on a flash drive.

Comm. Suenram said it would depend on what is found and if there is not a lot of issues we could hear about each individual one. If everything was good, just a statement that it was fine, but if there were issues we would have to hear more about those.

Comm. Malley asked how many have been passed in the last year.

Mark Roberts said that he thinks approximately 20-25 were approved, but it could be possibly closer to 40.

Comm. Malley stated that the ones that have no problems you could just give us a list of those with an address so we can recall. The ones with issues, would come individually or in groups of whatever is manageable for us to address at a meeting.

Comm. Suenram said something that might come up is that if an applicant has gone above and beyond so we can recognize them.

Nicole Johnson asked about the purpose of these reports.

Mark Roberts said since it is a revolving door for cannabis, it is more of a learning process to see how our Zoning Ordinance is working or not working during these inspections and see what we can change or improve.

Comm. Malley said these are also Major Use Permits, and if there are violations there would be action that needed to be taken.

Nicole Johnson asked what action would be taken at that moment.

Comm. Hess stated that it would be about following up on the work we've done, in order to be able to further inform the Supervisors should things come up to them.

Nicole Johnson clarified that it is for information and potentially recommendation from the Commission.

Comm. Suenram asked if they would have public comment on that.

Mark Roberts said it would be a non-action item.

Comm. Suenram said he would like some public comment.

Nicole Johnson said that technically the public can speak on any item on the agenda, but we need to be careful that we are not treating these as an item that will have an action; essentially what we are doing is reviewing the permit.

Scott DeLeon said that bringing the annual inspection reports before the Commission is included in Article 27.

Comm. Suenram asked Nicole for clarification, since it is written within the Ordinance it should not be an issue.

Nicole Johnson said she would check the wording of the ordinance.

Comm. Suenram asked staff if they are prepared to report on these at the next meeting or is this something for the future. Nicole can give us her report at the next meeting.

Mark Roberts said that it will probably be in early fall.

Comm. Suenram asked Nicole to give an update at the next meeting on what she found about the meetings and the Ordinance.

Nicole Johnson said she will do that.

11:19 a.m. ADJOURNED

Daniel Suenram, Chair
Lake County Planning Commission

Respectfully Submitted,

By: _____
Kate Lewis
Planning Commission Assistant