



PLANNING COMMISSION MINUTES OF NOVEMBER 1, 2018

The San Joaquin County Planning Commission met in regular session on November 1, 2018 at 6:30 p.m., in the Public Health/Planning Commission Auditorium, 1601 East Hazelton Avenue, Stockton, California.

The meeting was called to order by Kitty Walker, Chair.

The Pledge of Allegiance to the flag was given.

Roll Call:

(present)

Commissioners

Kitty Walker, Chair
Randy Hamilton, Vice Chair
Stan Morri
Sheri Midgley
James Grunsky

County Staff

Zayante (Zoey) P. Merrill, County Counsel
Alex Chetley, Department of Public Works
Michael Kith, Environmental Health Department

Community Development Department Staff

Eric Merlo, Assistant Director
John Funderburg, Principal Planner
Jennifer Jolley, Principal Planner
Stephanie Stowers, Senior Planner
Megan Aguirre, Senior Planner
Giuseppe Sanfilippo, Associate Planner
Alisa Goulart, Associate Planner
Keia Williams, Office Assistant Specialist
Carla Raborn, Accounting Technician II

(absent)

None

ACTION ITEMS:

- 1. TEXT AMENDMENT APPLICATION NO. 1800193 OF KANWAR KELLY** to amend Table 9-405.2 Uses in Commercial Zones to permit Truck Sales and Services – Parking in the C-FS (Freeway Service Commercial) zone with an approved Use Permit application. The project would apply countywide

Megan Aguirre, Senior Planner, introduced the staff report into the record.

Commissioner Grunsky asked if a property he owned would disqualify him from voting on this application.

It was determined that Commissioner Grunsky's property is not zoned C-FS and does not pose a conflict to his participation in the hearing.

Commissioner Walker asked about the typical uses permitted as Truck Sales and Services - Parking, stating that one of the typical uses is storage yards and yet at the same time freeway services and full freeway interchanges are oriented exclusively to serve the needs of the highway traveler.

Commissioner Walker stated that she is having a hard time with the aforementioned quandary, as well as with two of the General Plan goals under LU5.11 where it states that freeway services should be designed in an attractive manner, and that she does not know how long term truck storage meets that goal.

John Funderburg, Principal Planner, states that Megan Aguirre will address Commissioner Walker's concern.

Megan Aguirre, Senior Planner, stated that each case would be reviewed individually, and the request is for the Trucks Sales & Services – Parking use type to be permitted through the Use Permit process, which requires a public hearing and could ensure that proposed projects meet attractiveness requirements.

Commissioner Walker states that she still does not understand how long term truck parking meets the intent of the Freeway Service designation in general, and thinks that it is contrary to why the zone was created. She also stated that the County needs to be particularly careful about the development that occurs in these areas because oftentimes it is the only part that travelers see going through the County.

John Funderburg, Principal Planner, stated that the design of proposed projects would be reviewed for each case and brought to the Planning Commission.

Commissioner Walker stated that she understands that truck parking is needed in the County, but she does not think that the Freeway Service areas are where we should put it because it does not seem to mesh with the General Plan.

Commissioner Morri stated that his concern is the terminology of Truck Sales and Services, emphasizing the word "Sales."

John Funderburg clarified that the Trucks Sales & Services - Sales use type is a conditionally permitted use in the CF-S zone, per a previous Text Amendment.

Commissioner Morri requested clarification on the use type definition and stated concern with the loose terminology.

Commissioner Hamilton asked how long "long term" parking is.

John Funderburg, Principal Planner, states that more research would need to be done to determine

what "long term" truck parking refers to.

Commissioner Walker asks what the definition is right now under Truck Sales and Services - Parking. Does it include long term truck parking?

John Funderburg, Principal Planner, stated that the use type would include long term truck parking, and that long term parking depends on what the operator and the property owner have agreed to. The lease of the property is not within the County's purview.

Megan Aguirre, Senior Planner, states staff's recommendation to forward the item to the Board with a recommendation for approval.

PUBLIC HEARING OPENED:

PROPONENTS:

Kanwar Kelly, applicant, spoke in favor of the project.

Commissioner Walker asked if there is any development near the applicant's property, any truck terminals.

Kanwar Kelly, applicant, stated that there is nothing.

Commissioner Morri asked about a nursery.

Commissioner Walker asked staff if a truck stop could currently be permitted in the C-FS zone.

Megan Aguirre, Senior Planner, said yes.

Commissioner Walker asked staff if a truck stop includes long term parking.

Megan Aguirre, Senior Planner, stated that there is nothing in the Development Title that specifically states that long term parking is included that she is aware of.

Commissioner Walker asked if trucks can be parked indefinitely.

Megan Aguirre, Senior Planner, said yes.

Kanwar Kelly, applicant, stated that most parking is being done illegally, and not at a truck stop.

OPPONENTS:

None

REBUTTAL:

None

PUBLIC HEARING CLOSED.

Eric Merlo, Assistant Director, states that a review of code enforcement cases in San Joaquin County, per a grand jury case, indicates that illegal commercial truck parking has a negative impact on life here. The report also states that San Joaquin County should increase enforcement efforts and that the I-5 corridor was singled out as a particular problem area.

Commissioner Walker states that maybe the areas zoned Freeway Services should not be Freeway Service, and should possibly be General Commercial instead. She stated that this Text Amendment seems to change the zone fundamentally. She also stated that maybe each Freeway Service zone should be evaluated individually for truck parking, rather than allowing it in all C-FS zones.

Commissioner Morri asked if vehicles will be serviced or sold.

Kanwar Kelly states that he has no specific application in mind, so he does not know, but that service is currently permitted in C-FS. Kanwar Kelly reiterates that he has no specific plans in mind.

Commissioner Grunsky stated that electronic logs come into effect next year per CHP, and truckers will not be able to stretch their time on the road, so truck parking will likely increase.

The Commission discussed the use type, and clarifying that there is no parking currently allowed.

Commissioner Walker stated that if a motion is made to deny, staff should take a critical look at Freeway Service Commercial zone to see if there is a better way to provide for truck parking needs in San Joaquin County. She states that the applicant would probably not mind being zoned General Commercial.

John Funderburg, Principal Planner, states that the General Commercial zone requires full services, and that the applicant's parcel would need to be annexed to receive those services.

MOTION:

It was moved, seconded (Walker/Hamilton), and denied with a vote of 3-2 to:

1. To deny the Development Title Text Amendment based on the inability to make the findings, because the proposed text conflicts with General Plan 2035 Land Use Policy LU5.11.

VOTE:

AYES: Hamilton, Walker, Midgley

NOES: Grunsky, Morri

ABSENT:

1. **REVISIONS OF APPROVED ACTIONS APPLICATION NO. PA-1300118 OF PHILLIPS FARMS LLC, (C/O MICHAEL HAKEEM)** for a previously approved Use Permit application to increase the number of attendees at marketing events for an existing large winery from 150 people to 300 people per marketing event. The previously approved Use Permit application was for a large winery with twenty-five (25) marketing events per year with outdoor amplified sound. The project site is located on the west side of Ray Road, 360 feet south of State Route 12 Highway, Lodi (Supervisorial District: 4).

CONSENT

MOTION:

It was moved, seconded (Morri/Hamilton), and passed with a vote of 5-0 to:

1. Approve the Negative Declaration; and
2. Approve the Revision of Approved Actions Application No. PA-1300118 with the findings and Conditions of Approval Contained in the Staff Report.

VOTE:

AYES: Grunsky, Midgley, Morri, Walker, Walker

NOES:

ABSENT:

2. DEVELOPMENT TITLE TEXT AMENDMENT APPLICATION NO. PA-1800249 (TA) OF SAN JOAQUIN COUNTY to add new definitions, uses types and land use development regulations for Commercial Cannabis operations in San Joaquin County. The proposed Commercial Cannabis Chapter 9-1090 includes various types of Commercial Cannabis operations including Cultivation, Manufacturing, Distribution, Retail Sales and Laboratory Testing. (Supervisorial District: ALL)

(This project was continued from the October 18, 2018, Planning Commission meeting. Minor modifications have been made to the project since the October 18, 2018, meeting. See Addendum to Staff Report for Development Title Text Amendment PA-1800249 and amended Staff Report.)

Jennifer Jolley, Principal Planner, introduced the Staff Report into the record.

Commissioner Morri asked what constitutes being secured regarding the locational criteria requiring the applicant to demonstrate that the premises can be secured to the satisfaction of the County. Ms. Jolley deferred Commissioner Morri's question to Zoey Merrill, Deputy County Counsel.

Ms. Merrill stated that it would be perimeter security on the site of the actual Licensed Commercial Cannabis Business and not necessarily the parcel perimeter. There are State requirements on permitting the various types of allowed business. There would be a State level of security as well as a County level of security that would be reviewed.

Chair Walker asked if public services are required for the use of commercial cannabis cultivation and cannabis distribution which are conditionally permitted in the A/G (General Agriculture) – General Plan.

Ms. Jolley confirmed no; that public services are not required for the use of commercial cannabis cultivation and cannabis distribution in the ag zones. Ms. Jolley stated that cultivation and manufacturing require public services the Industrial zones where permitted, but not the agricultural zone.

Ms. Merrill stated it was a decision that was unique to the cannabis use knowing it was somewhat intensive in regards to water and those kinds of issues as are in the State record of the adoption of the law.

Chair Walker asked about coverage by Fire Districts versus no coverage by Fire Districts.

Ms. Jolley pointed out the locations of protected versus not protected by Fire Districts on the map.

Commissioner Hamilton asked if there will only be indoor cultivation.

Ms. Jolley confirmed that it would only be indoor cultivation regardless of the zoning.

PUBLIC HEARING OPENED:

PROPONENTS:

Mr. Ron Hefner, as resident of Escalon, wanted to know how he could apply for a permit.

Chair Walker stated that the Planning Commission is the first step in the process to establish an ordinance and that the Planning Commission will make a recommendation, to the Board of Supervisors, who will need to act on the proposed text amendment. In addition, there is a tax initiative on the ballot that will need to be approved on November 4, 2018, by the voters.

Ms. Merrill stated that at this point, the request for specific information is premature. The Title 4 and 9 Amendments are conditional on the passing of Measure B (Commercial Cannabis Tax). When and if the tax passes on November 4, 2018, that will make Title 4 operative. When and if Title 9 ultimately

gets adopted, the Environmental Health Department (EHD) will be where you will go for permits and information. Environmental Health will be taking applications and processing them when they are determined to be complete. The applicant will receive a notice of complete application from EHD. The applicant can present the notice to the Community Development Department (CDD) and go through the Use Permit process. Once the Use Permit process is complete, the applicant will receive a business license and an annual state license. The applicant will return to EHD where the license will be issued. We expect information to be available to the public on the EHD website by the end of November 2018.

OPPONENTS:

Bruce Blogett of the San Joaquin Farm Bureau in Stockton. The map shows a lot of green areas covered throughout the County the Farm Bureau is concerned with the text amendment moving forward. Processing in the agricultural zone is a major concern. Comments had been submitted via email several weeks ago but apparently didn't get in. The comments will be resubmitted prior to the Board of Supervisors. The concerns are public health and safety. Calaveras County showed that there was an increase in crime and illegal grows throughout all zoning areas. There are limited resources to provide enforcement throughout the entire agricultural zone in the county. This should only be in areas where you do have public water and sewer systems. If a proposal should come that makes sense in the agricultural zone, you can do a variance. There's a special business plan for a Cannabis Business park which can be accepted on a case by case basis. This should not be permitted in the Agricultural zone and confined only to the Industrial zone.

REBUTTAL:

None

PUBLIC HEARING CLOSED.

Commissioner Hamilton stated that he lives in the green zone and works in the green zone throughout the County. Commissioner Hamilton stated that in the future there will be many legally permitted and illegal green houses. He has a lot of issues at night and has experienced three (3) thefts within the past six (6) months. Whether permitted or not permitted in the agricultural zone, he is expecting a lot of problems. The Sheriff's Department does not have the resources to cover the ground.

Chair Walker asked for specifics as to what the locational criteria would be if a grow came into an agricultural area.

Ms. Merrill stated, that on the map you see those locational parameters, as approved by the Board; was an attempt to balance allowing enough opportunities but not allowing too many. Essentially opportunity and equity and a limit utilizing existing criteria in the Development Title. The agricultural aspect was recommended to the Board and ultimately adopted by the Board but only in a very limited fashion. Those allowed parcels have to be within 2,000 feet of a major arterial and that is because Board articulated an understanding that this creates a criminal threat and we need contain that criminal threat. We want to limit it to where First Responders can be there and we are insured that it is on the Sheriff's Office (SO) routes. The other issue is that the Board articulated and then put into policy in the adoption of Title 4 and the tax, these businesses will only be allowed if Measure B (Commercial Cannabis Tax), the tax passes. If Measure B passes, there will then be money available specifically response and enforcement.

Chair Walker asked if we would have to wait for the Use Permit to be submitted, and then decide what the appropriate conditions are such as lighting and/or fencing.

Ms. Merrill stated that the State law in any commercial cannabis operation has specific premises requirements. For example, a green house has to be enclosed. It cannot be plastic. It has to be

secured, locked and in an actual solid building. There are additional security requirements in State law that would be part of the County licensing process and enforced on the local level as well as on the State level. Anything outside of the allowed use would be and should be enforced as an illegal operation.

Commissioner Hamilton stated his concern about the increase in illegal operations and asked how many deputies will the tax dollars buy to patrol the County for illegal grows.

Ms. Merrill stated that she was not able to provide an actual number, but the tax dollars will not go to the legal commercial cannabis businesses. The legal cannabis business has to pay for their application fee, processing of their permit and enforcement. All of the tax dollars that are used in enforcement are going to illegal operations. She stated that the Board made it clear that the legal businesses will have cover all of their costs and it is written into Title 4 and will be reflected in the practice and policy of the departments.

Commissioner Midgley asked what happens if Measure B does not pass.

Ms. Merrill stated that if Measure B does not pass, then Title 4 will not become operative and the proposed Title 9 Amendment will not either. The ban will remain in place.

Chair Walker asked for confirmation that everything will go away if the tax measure is not passed and Ms. Merrill confirmed.

Chair Walker asked if it was extremely likely or almost a guarantee that illegal grows will increase in this County if we don't pass the tax and we don't change to legally regulate cannabis.

Ms. Merrill stated that one of the discussions at the Board was that there will always be a black market. Ms. Merrill stated that Freedman and Koski, a national firm, was hired to assist CDD in the development of Title 4. It was not clear as to whether or not there would be an increase or decrease in illegal grows but it is clear that communities will have increased access to cannabis. A resident of the County, because of state legalization, will be able to drive to Sacramento to obtain legal cannabis. Ms. Merrill was not able to speak to whether or not there will be an increase in illegal grows.

Commissioner Hamilton asked if it's been stated which programs and the dollar amount each program would be funded by this tax.

Ms. Merrill stated that the way a special tax works is that you have to identify the things you can spend the tax on and then it's a Board decision, with the assistance of an advisory committee, as to how the dollars would be spent on any given program.

Chair Walker asked if any additional monies from the tax is going to the fire protection districts since these operations must be within a fire protection district. The assumption being that there will be a higher demand for their services as a result.

Ms. Merrill stated that the reason that they are required to be within a fire district is because commercial cannabis business is a type of business that could potentially need first responders due to the nature of the business.

Chair Walker asked if the cost involved in establishing the use cover any additional cost to fire protection district from the tax.

Ms. Merrill stated that a licensed business, as they go through the process and application, will have to provide fire mitigation, comply with building and fire code and is inspected by the fire district on behalf of the County. The fire district will be involved in the various steps of the process. If the fire district does an inspection, it will be paid an hourly rate for that inspection by the applicant.

Commissioner Hamilton asked how much of the regulations fall on Code Enforcement.

Ms. Merrill stated that at this point none. Environmental Health Department (EHD) is the department that will regulate the County Cannabis License (CCL). EHD will receive the application, review and issue a notice of completion. The applicant will then get the land use permit from CDD, return to EHD will issue the license if approved. EHD will regulate compliance with the license. The Board directed staff to utilize existing processes as much as possible but to recognize where departments are impacted. If there is a Use Permit violation, which would normally fall onto Code Enforcement, in this case that would be both a Code Enforcement/violation of the Use Permit and also a CCL violation.

MOTION:

It was moved, seconded (Midgley/Walker), and passed with a vote of 3-2 to:

1. Forward Text Amendment No. PA-1800249 to the Board of Supervisors with a recommendation for approval based on the ability to make the required Basis for Development Title Text Amendment.

VOTE:

AYES: Midgley, Grunsky, Walker
NOES: Morri, Hamilton
ABSENT:

The meeting adjourned at 8:15 P.M.

Kitty Walker, Chair

Kerry Sullivan, Secretary