

MINUTES OF THE SOLANO COUNTY PLANNING COMMISSION

Meeting of June 16, 2011

The regular meeting of the Solano County Planning Commission was called to order at 7:00 p.m. in the Board of Supervisors' Chambers, Fairfield, California.

PRESENT: Commissioners Boschee, Rhoads-Poston, Karah, Cayler, and Chairman Mahoney

EXCUSED: _____

STAFF PRESENT: Bill Emlen, Director, Mike Yankovich, Planning Program Manager; Lim Laughlin, Principal Planner, Jim Laughlin, Deputy County Counsel; and Kristine Letterman, Planning Commission Clerk

Items from the floor - none

THE MINUTES of the regular meeting of April 7, 2011 were approved as prepared.

1. **PUBLIC HEARING** to consider Zoning Ordinance Text Amendment No. ZT-10-01 of **Tree of Life** to add the pharmacy and medical marijuana land use types as permitted uses or conditional uses to the "C-S" Commercial Service Zoning District. The property is located at 4227-29 Lozano Lane .3 miles northwest of the City of Fairfield, APN: 0150-260-070. This project is determined to be categorically exempt from the provisions of the California Environmental Quality Act. (Project Planner: Jim Leland) **Staff Recommendation:** Deny

Mr. Leland explained that this is a request by the Tree of Life to amend Chapter 28 (Zoning Regulations) of the Solano County Code to permit the operation of a medical marijuana dispensary in certain commercial zoning districts. He explained that the applicant has attempted to establish a medical marijuana dispensary on property situated within the Commercial-Service (C-S) Zone District. The applicant filed a business license application in November of 2009 which was not approved since the use is not permitted in the C-S District. The dispensary has been shut down for several months. In addition, the applicant was arrested and charged with violation of the Federal Drug Laws. A trial is pending.

Mr. Leland reviewed staff's written report which included the regulatory background, current situation in Solano County as well as statewide, and an outline of the proposed ordinance amendment. Mr. Leland stated that staff is recommending that the commission recommend to the Board of Supervisors denial of the applicant's request.

Commissioner Rhoads-Poston inquired about the area referred to in the staff report where this type of use would be permitted. Mr. Leland pointed out that the property is located in the Cordelia area and is zoned Business and Professional Office (C-O). He stated that it is comprised of three separate parcels, owned by three separate landowners. Mr. Leland noted that two of the parcels are developed and one parcel is currently vacant.

Commissioner Rhoads-Poston wanted to know if staff has received any feedback as to why potential applicants have not pursued opening this type of business in that area.

Mr. Leland responded that to-date staff has not received any feedback from the public. He noted that when a potential applicant has inquired about operating a dispensary in the county, staff would urge the applicant to set up a pre-business license application meeting with the Sheriff's Office. The applicant was also informed that the sheriff's office is presently not signing off on business licenses for medical marijuana dispensaries. Mr. Leland stated that he was not aware if this had any impact or what the reasons were for these applicants to not pursue filing an application.

Commissioner Rhoads-Poston inquired about the ban that was imposed by the Board of Supervisors and questioned why it was only for a short period of time.

Jim Laughlin explained that under state law there is a provision that the county can enact a moratorium while it investigates what to do about its land use regulations. He said the special requirement for a moratorium is that it must pass with a majority vote. He said the Board approved the initial moratorium which was for 45 days, and if the Board wanted to extend that period of time state law requires that they take a revote which they did, but it did not get a majority vote to continue the moratorium.

The arrival of Commissioner Karah was noted.

Chairman Mahoney stated that marijuana use is still illegal by federal government statutes and the federal government can raid a dispensary at any time. Mr. Laughlin stated that this is true, but it is his understanding that the US Attorney General has taken a position and has directed that his agency will not do that. Mr. Mahoney commented that he could recall that under the previous Administration dispensaries in San Francisco were raided quite often.

Commissioner Cayler stated that she heard a news report that a dispensary, which she believed to be located in Eldorado Hills, was raided recently because it was apparently a for-profit operation.

Commissioner Rhoads-Poston asked for clarification if it is up to each individual county as to whether the sheriff's office will enforce the federal law.

Mr. Laughlin noted that this issue came up in a court decision last summer in Southern California. The court was asked to address whether a county ordinance was preempted by either federal law or state law, and it addressed the federal law issue but declined to address the state law issue. He said that with regard to the federal law, it was broken down to where they recognized that federal and state law are two separate bodies of law, and just because something is illegal under one set of laws does not mean that it needs to be illegal under the other set of laws. He said that there are many cases where federal law regulates something that is unregulated by state law or vice versa. Mr. Laughlin stated that in the case of marijuana, for many years state law and federal law were in perfect agreement, but when voters enacted Prop 215 state law took a turn away from federal law and it said that for certain activities, such as medical marijuana, it would no longer be violating state law. Mr. Laughlin stated that the sheriff can enforce both federal and state law, but as to a county's land use powers, a county is a political subdivision of the state and it enforces state law so its local land use ordinances need to be consistent with state law.

Chairman Mahoney commented with regard to the troubles currently surrounding the City of Isleton. He stated that the Isleton city council entered into negotiations with a business that was going to grow marijuana and then give the city council \$25,000 a month. Mr. Mahoney stated that the federal government is now investigating every council member and the mayor regarding their decision. He said that basically the argument is if they are involved in the drug trade. Mr. Mahoney wanted to know if the commission agreed with allowing this dispensary if there is a possibility that each commissioner could then be investigated by the federal government.

Mr. Laughlin stated that he was not aware of the specifics on the Isleton case, but that lines may have been crossed on what happened in that community. Mr. Laughlin stated that a federal prosecutor can look into anything he feels necessary. He could not say that the commission would be absolutely immune from any investigation, but whether the commission is immune from prosecution is probably the more important question. Mr. Laughlin stated that the court decision from last summer did say that in exercising your land use powers, according to the California Court of Appeal, the commission would not be violating any federal law. Mr. Laughlin commented that Isleton may have gone too far by getting financial contribution for the city whether they did that pursuant to their normal taxing powers or as a special arrangement.

Commissioner Rhoads-Poston stated that she is aware that there are dispensaries in Sacramento and San Francisco counties and wanted to know about Yolo and Contra Costa counties. Mr. Leland stated that he did not know about Yolo County, but stated that there are dispensaries in Alameda County. He also commented that there are dispensaries approved in some coastal cities up and down the state.

Commissioner Cayler stated that the Sacramento city council has scheduled on their agenda the issue of limiting the number of dispensaries within the City of Sacramento because these types of businesses have started to flourish.

Mr. Leland stated that there are no cities in Solano County that have approved medical marijuana dispensaries. He believed that the City of Benicia has calendared a discussion at the council level for regulating them. He did mention that there are dispensaries in the county in various locations that are operating outside of either county or city permitting requirements, particularly in Vallejo.

Commissioner Karah stated that it appears in Vallejo things have fallen through the cracks, and one of the discussions is that we are losing a valuable source of revenue. She commented that if this activity exists, why not deal with it. Mr. Leland stated that he was not aware of the specific motivation of the councils of the various cities and was not aware of the details of why they voted the way they did.

The applicant, Cindy Elizabeth Harris, 936 B 7th Street, Novato, provided the commission with some background information and how she got started in the business. She explained that in working in in-home health care and dealing with people that were cancer ridden, as well as aids patients, she discovered a large need for safe access of medicine. She then starting doing research and working with her own doctors. She said that she has seen the medicine work and it has helped those with chronic pain. It also helps to increase the appetite and to decrease the need to expel which is common for people going through chemotherapy. Ms. Harris stated that she wanted to find an outlet that matched her knowledge and her wanting to help others. She noted that she has had 28 years of experience in this field.

Commissioner Roads-Poston asked Ms. Harris why she decided to come to Solano County to open her business. Ms. Harris explained that her business was initially located in Novato. She explained that this particular field is not always welcome, not because it necessarily brings bad elements, but due to the lack of knowledge. She said that her landlord was pressured by the city to evict them and so they were evicted. She noted that they attempted to find a location in Marin County but were unable to simply because they received a lot of press coverage. Ms. Harris stated that her real estate agent suggested moving to the valley, but in studying the amount of access in Vallejo it was not logical. She said that Fairfield was a good fit because there was no access from here to Dixon. Ms. Harris said that she believed there to be a small dispensary in the valley but it only serves a select group of patients. Ms. Harris stated that the amount of patients they helped within the first 6 months was 15 times what she expected. The need was just there. She said that they do serve patients from Vallejo because some of the collectives in Vallejo were either in bad neighborhoods or did not have the quality of medicine.

Commissioner Karah asked Ms. Harris if her clients from Novato will be driving to Solano County for medicine. Ms. Harris stated that she has since reopened her facility in Marin County in the unincorporated area. She explained that they found the Marin facility about a month after they acquired the facility in Solano County. She said that they would really like to reopen their Solano County facility.

Commissioner Cayler inquired about criminal activity at these types of facilities. Ms. Harris stated that collectives are not the criminal's target of choice. She said that they would much rather go to the guy up the street who is growing his own medicine in his garage because that person does not have security cameras or alarms or anything of that nature to slow him down. Ms. Harris stated that they have never had problems at their facility. She said that in looking at the history of medicinal collectives throughout the state there are not very many that have had problems. She said that they could be a target because they have money and medicine, but so are pharmacies, convenience stores, and banks because they have something that people want, particularly in a time where money issues are a factor.

Commissioner Cayler wanted to know the process for screening patients. Ms. Harris stated that their facility does not screen the patients. She explained that a doctor writes a recommendation and that patient will bring in the recommendation and fill out a membership form. She said that they do verify each patient with the doctor's office. She noted that the average recommendation is for a 12 month period. Ms. Harris said that once the patient's status has been verified their information is entered into the computer system so that they can be identified each time they come into the facility.

Commissioner Cayler wanted to know if there is communication that takes place between dispensaries so that a person cannot visit multiple locations. Ms. Harris stated that they have attempted to create a collective group, but there is currently nothing that controls that. She stated that she did not believe a patient needs more than one collective. She explained that a person may visit a collective and find that the medicine does not work for them, or the choice is not there, or the price is too high and seek out another collective. Ms. Harris stated that the way the law works is that the last collective a person joins is suppose to be their administering facility, but there is no way to verify which collective was the last one joined. She stated that there may be a need if a person travels and cannot make it home before their primary facility closes, it would then be logical that they would have a facility they could access away from home. She likened it to visiting a pharmacy in a different area from where you live.

Commissioner Cayler inquired about the kind of training that is required to run this type of a facility. Ms. Harris said that she got her initial exposure growing up in Mendocino County. She said that she has studied the subject independently because there is no school for it. She said that she has attended some training classes in Southern California.

Commissioner Karah wanted to know how the medicine is prescribed and in what dosage. Ms. Harris stated that there should be a specific dosage, but unfortunately most doctors do not provide an amount and so their facility imposes an internal limit. She said the limit is based on observation of the individual, especially if they are elderly and their mobility is limited, they can be allowed up to two ounces. She noted that the standard is one ounce.

Commissioner Karah wanted to know if the facility provides edibles. Ms. Harris stated that they refer to them as medibles and they come in different strengths and are provided in dosages. She said that they limit what individuals can buy and they do not purchase the items in large quantities so that they can provide access to everyone. She explained that while one strain can work well for one person, it may not work for another, and so it is important to have a lot of variety.

Chairman Mahoney wanted to know how the product is packaged. Ms. Harris said that they use a 4 mil ziplock bag. She said that they did explore using prescription type bottles, but the cost was quite a bit more, plus the waste that it produces is a phenomenal amount.

Chairman Mahoney provided a scenario where someone who has a prescription visits multiple dispensaries and then turns around and sells the product. Ms. Harris explained that the cost in running a dispensary which includes sales tax and overhead that any other regular business would have makes it financially illogical for a patient to do that. She said the product costs anywhere from \$195 up to \$350. Ms. Harris stated that a patient cannot purchase the product at the same price that someone would be selling it for off the street. She said that basically the patient is being reimbursed for the cost of production of their medicine. She said the profit is just not there for someone to buy it and resale it on the street.

In response to Commissioner Karah, Ms. Harris stated that in Marin County they pay the current sales tax rate and last quarter rated out at \$44,000. She stated that they have 7 employees and have a Marin County business license although it is not required since they are a non-profit agency.

In response to Commissioner Cayler, Ms. Harris explained that the employees are contract employees and are actually members of the collective. She stated that the employees were tasked in helping to establish a working facility. She noted that they had experience in managing other facilities and were familiar with the paperwork. She said they did everything from helping patients check in, checking patient verifications, setting up computer systems, waiting on patients, and preparing paperwork. Ms. Harris stated that at their Marin facility they serve 2 patients at a time. She explained that the way they obtain their medicine is from patients who are members of their collective which is called a Close Loop Collective. She said that the patient grows their own medicine and whatever the excess is they provide to the dispensary. Ms. Harris stated that in Solano County they had approximately 4,000 patients.

Chairman Mahoney opened the public hearing. Since there were no speakers either for or against this matter, the public hearing was closed.

Commissioner Boschee stated that he has had a number of friends who have fought cancer and have had surgery, as well as extreme treatment, and were prescribed marijuana which they found to be extremely helpful in dealing with the side effects of their treatment. He stated that he sees some real value to this. He said that it is unfortunate because of the misuse of marijuana that it is difficult for people who really have a need for the medication to be able to get it and to have some pride and dignity in getting it. He stated that the problem people also experience is they feel somewhat that they are a bad person because they are going out and having to get marijuana.

Commissioner Boschee stated that he believes there is a need for the county to try and address this issue. He stated that he is not in favor of this proposal, however he believes the commission should do as staff has suggested and move a step further and begin looking at developing an ordinance that would provide for the legitimate development of these dispensaries in the C-O District. Mr. Boschee stated that it is important to set certain regulations and requirements that will police this activity and give the county some oversight, and provide an outline so that the dispenser knows what is required of them and that the community is protected. Commissioner Boschee stated that he believes it is important for the county to have an ordinance because without one it is like a lot of communities, such as in Vallejo where they have no ordinance so there are no standards on how it is operated or policed. Mr. Boschee stated that it is also important that the county go through a public process. He said there are people who have strong feelings for and against this issue and it needs to be encouraged for people to attend and express their concerns. He said it needs to be a very open and transparent process and needs to be one that the community is invited to attend.

Commissioner Cayler stated that this issue has been discussed in the City of Dixon and they voted twice to not permit dispensaries mainly because marijuana itself is not regulated. Ms. Cayler stated that when her brother was dying of cancer he lived in a state where medical marijuana was legal, but he chose not to use it. She stated that he used the normal medication that kept the nausea down from the side effects of his chemotherapy. Ms. Cayler stated that she asked her doctor who has been in practice for 25 years what his experience has been with regard to this issue and he told her that in his 25 years he had never had a cancer patient inquire about the use of marijuana. He told her that the only patients who did inquire were people who had a drug problem already and they saw it as an easy way to get legal access to the drug. Ms. Cayler stated that she believed there are other and better ways, ways that are regulated so a person knows exactly what they are getting.

Commissioner Rhoads-Poston inquired if Commissioner Cayler's doctor was a hematologist oncologist. Ms. Cayler responded that her doctor is in family practice but he has had many cancer patients.

Commissioner Rhoads-Poston spoke of her experience in seeing tragedy happen as a result of alcohol use. She said she has seen much more stupidity as a result of too much alcohol versus the person who had too much pot because they fell asleep on the couch. She stated that she knows people who have rheumatoid arthritis and have a medical ID card to purchase marijuana. She spoke to the loss of a friend who went through breast cancer and there was not a drug on hospice that could keep the pain away for a constant amount of time. Ms. Rhoads-Poston commented about her own sensitivity to medication and the benefit of having a choice to try other medicines. She said that she also sees it as a tax value. She said that it should be monitored, regulated, and input should be gathered from those who have serious health conditions and can contribute their experiences to the discussion.

Commissioner Cayler stated that she wished that it could be researched more thoroughly.

Commissioner Karah stated that she believes that America lost its battle with prohibition. She said she believes it is inevitable that the drug problem in American needs to be sorted in a different way than to just say no because no does not work. Ms. Karah stated that after discussion with staff this afternoon she was inclined to follow staff's recommendation, but she believed that nothing gets done unless people stand up and say "I don't care that the rules aren't there, it is time to change." She stated that she would vote in favor of this because she believed the only way the world will change on this issue is if many people stand up and say "enough is enough, we have children, and we need to start addressing the drug problem in a different way." Ms. Karah stated that she has had a lot of friends who have had cancer and marijuana has helped them. She said that it is a personal decision and that is what America has been founded on, personal decisions.

Chairman Mahoney spoke about his experience in catching a high school student with weed that was in his dad's prescription bottle. He said that he caught a student a week later with the same prescription bottle that was sold to someone else so the kid was selling and making money off of his dad's medical marijuana card. Mr. Mahoney stated that marijuana and drugs to a high school campus are the bane of a high school campus. He stated that he believed most people who remember the 70's had those friends that became what are called "burn outs". Chairman Mahoney stated that he has coached kids who were great athletes in their sophomore year and by the time they were seniors they did not play anymore because something had change which was usually drugs, peer group, gang activity, girlfriend, or a job. He said that most of the time on a high school campus its drugs and the drug of choice is marijuana. He said that marijuana is a gateway drug. Mr. Mahoney said that his brother passed away due to an addiction and he started out using marijuana. Mr. Mahoney stated that he would be in favor of a countywide ban. He said the commission should ask staff to draft an ordinance to totally ban dispensaries in Solano County because of the mayhem he has seen drugs and drug activity do to a high school campus. He stated that this is not a victimless crime and can negatively affect many families.

Commissioner Karah stated that she did not feel that this is the right time or place to get into this discussion because it gets far too emotive. She believed that there are other possibilities besides an all out ban. She stated that a ban is not helpful and just provides for the drug to go underground. She said the real problem is in not discussing the issue or providing a way for kids to approach the subject. She commented that in Europe kids can sit down with their parents at a restaurant and have a glass of wine, and she believed that this freedom helps in developing a sense of responsibility for something. She said there is nothing more hypnotic than something that is illegal or under the carpet. Ms. Karah stated that she has children and is very concerned of what her kids may be exposed to. She stated that she grew up in a very supportive family and if the kids were going to experiment they were encouraged to do it at home where it is safe.

Chairman Mahoney stated that in dealing with high school kids he is in this on a street level. He said just the questioning that the commission had of the dispensary itself shows the concern. He said it is not regulated, patients can travel from one dispensary to another, and they can sell the product if they choose. He referred to Ms. Harris' example that it is too expensive to resell, but said that he has personally seen it happen. He spoke with regard to the student that was taking marijuana from his own dad and how the dad had no problem with it when he was informed of the matter. Mr. Mahoney stated that he knows it happens because he has dealt with it. He commented that he was aware of one dispensary that was shut down in Vallejo. He said other cities in the

county have moved to ban medical marijuana and have done so for good reason.

Commissioner Cayler stated that she researched the location of the properties where the zoning would be changed to allow this use, and some are located right along the highway and some in remote areas. She commented that in those remote areas it would be difficult for law enforcement to be able to respond to an emergency in a timely manner. Ms. Cayler stated that it could be an opportunity for people to take advantage of the remoteness. Ms. Cayler commented about the teen center in the City of Dixon and one reason they are working so hard to get it up and running is to provide safe activities for teenagers.

Commissioner Boschee stated that this is certainly an emotional issue. He noted that the commission is not debating whether to legalize marijuana. The discussion is about medical use and providing access for those who have a real need so they can, with some respect and honor, acquire the medication they need. He said this affects elderly people who are trying to maintain a quality of life. Mr. Boschee stated that he has known people who have had cancer and who have fought it using regular medications, but the side effects were devastating. He stated that taking too much of any drug is going to damage your body and taking any kind of drug is not good for you.

A motion was made by Commissioner Boschee and seconded by Commissioner Rhoads-Poston to adopt the Resolution recommending the Board of Supervisors DENY the zone text amendment to amend Chapter 28 of the Solano County Code defining a medical marijuana dispensary and establishing standards for such uses in the C-N, C-S and C-O Zoning Districts and, further, direct staff to prepare an ordinance to explicitly permit a medical marijuana facility only in the C-O District, and include the proposed locational and operational standards and schedule the modified ordinance for further hearing by the Commission.

Mr. Laughlin clarified that the first part of the motion is a recommendation on the draft ordinance and that recommendation will go to the Board of Supervisors and the Board can either follow the commission's recommendation or there is a possibility they could adopt the ordinance as drafted. If adopted, staff would not come back with a new version of the ordinance however, if the Board follows the commission's recommendation and denies the proposed ordinance, staff would then come back before the commission with a new version.

The motion failed (2-3) with Commissioners Karah, Cayler and Mahoney dissenting.

A motion was made by Commissioner Karah to recommend that the Board of Supervisors approve the proposed zone text amendment. The motion failed due to a lack of a second.

A motion was made by Commissioner Cayler and seconded by Chairman Mahoney to adopt the Resolution recommending the Board of Supervisors DENY the zone text amendment to amend Chapter 28 of the Solano County Code defining a medical marijuana dispensary and establishing standards for such uses in the C-N, C-S and C-O Zoning Districts. The motion failed 2-3 with Commissioners Boschee, Rhoads-Poston and Karah dissenting.

A motion was made by Commissioner Karah and seconded by Commissioner Rhoads-Poston to adopt the Resolution recommending the Board of Supervisors DENY the zone text amendment to amend Chapter 28 of the Solano County Code defining a medical marijuana dispensary and establishing standards for such uses in the C-N, C-S and C-O Zoning Districts and, further, direct

staff to prepare an ordinance to explicitly permit a medical marijuana facility only in the C-O District and include the proposed locational and operational standards and schedule the modified ordinance for further hearing by the Commission. The motion passed 3-2 with Commissioners Cayler and Mahoney dissenting. (Resolution No. 4550)

2. **PRESENTATION** regarding upcoming recommendations on revisions to the Exclusive Agricultural (A) District, the establishment of Traditional Communities Zoning Districts to implement certain provisions of the 2008 General Plan, to continue to establish additional administrative permits, development standards and land use regulations for a variety of land uses, and to achieve a major re-formatting of the Zoning Regulations. (Project Planner: Jim Leland)

Jim Leland made a presentation describing a series of proposed amendments to the Zoning Regulations. The amendments include: comprehensive revisions to the Exclusive Agricultural Zoning District, New Traditional Communities Districts to implement the Traditional Community designations established in the 2008 General Plan Update, major improvements in the organization, format and usability of the Zoning Ordinance, and further utilization of administrative and minor use permits in lieu of major use permits for a variety of land use categories.

Chairman Mahoney recommended that the commission hold a study session to discuss these amendments prior to an ordinance being brought before the commission. Commissioners Boschee and Rhoads-Poston also voiced their agreement with holding a study session.

Jim Leland stated that staff will divide the process into two study sessions so that agriculture can be addressed separately from the proposed rezonings of residential properties. He noted that the first study session will probably be scheduled for the second meeting in July.

3. **ANNOUNCEMENTS and REPORTS**

Commissioner Rhoads-Poston stated that she attended two meetings last month, one entitled Planning 101: Training for the Planning Commissioner which she found to be very helpful and interesting, and the other class covered the topic of CEQA and other environmental issues.

Commissioner Karah attended the meeting of the Northern California County Planning Commissioners Association.

4. Since there was no further business, the meeting was **adjourned**.