

LAKE COUNTY PLANNING COMMISSION

MINUTES

REGULAR MEETING

May 25, 2017

Commission Members

**P John Hess, District I
P Bob Malley, District II
P Eddie Crandall, District III
P Matt Levesque, District IV
P Daniel Suenram, District V**

Staff Members

**P Robert Massarelli, CDD Director
P Michalyn DelValle, Principal Planner
P Byron Turner, Principal Planner
P Shanda Harry, Deputy County Counsel
P Danae Bowen, Office Assistant III**

9:00 a.m. CALL TO ORDER

Pledge of Allegiance was led by Bob Malley.

Comm. moved, 2nd by Comm. to approve the minutes from April 27, 2017

9:01 a.m. CITIZEN'S INPUT – None

9:03 a.m. Public Hearing on consideration of a Resolution of Intent to amend article 72 of the zoning ordinance. At the March 21, 2017 workshop, the Board of Supervisors provided direction regarding the regulation of cannabis in the county. Part of that direction was to expand Article 72 to include “RL” Rural Lands zoning district in addition to “A” Agriculture zoning district as to where the outdoor cultivation of medical cannabis would be allowed. The Board further directed the staff to amend Article 72 to include a self-certification of compliance program. The self-certification would be verified by a compliance monitoring inspection. In order to amend the zoning ordinance a resolution of intent must be adopted by the Board of Supervisors or the Planning Commission. (TECHNICAL CLARIFICATION) (Robert Massarelli)

Shanda Harry, Deputy County Counsel, explained that this item was heard on May 11, 2017 and was approved by a motion. She said it is a resolution and it must be offered as a resolution with a roll call vote. She said it had to be put back on the agenda to accomplish that. She said it is simply a technical correction.

Comm. Malley said the public hearing has already been held and we just need to offer the resolution.

Ms. Harry said that is correct, however if someone wanted to speak on this issue, the public hearing could be reopened, but felt that the people who are present are here to speak on the 9:05 item, which is essentially the same issue.

Comm. Levesque offered the resolution recommending consideration of a Resolution of Intent to amend Article 72 of the Zoning Ordinance.

**ZONING ORDINANCE AMENDMENT APPROVAL BY ROLL CALL VOTE 5
Ayes 0 Noes**

9:05 a.m. Public Hearing on consideration of ZONING ORDINANCE TEXT AMENDMENT (AM 17-01) prepared for the County of Lake to amend Article 72 of the Lake County Code to allow the outdoor collective cultivation of medical marijuana in “RL” Rural Lands and to create a certification of compliance process for cannabis cultivation. (Robert Massarelli)

Robert Massarelli, Community Development Director, provided background information and a power point presentation. He said at the March 21, 2017 workshop, the Board of Supervisors provided direction regarding the regulation of cannabis in the County. Part of that direction was to expand Article 72 to include the “RL” Rural Lands zoning district in addition to the “A” Agricultural zoning district to allow the outdoor cultivation of cannabis in a collective.

Mr. Massarelli presented an Outline of Presentation:

- Board of Supervisor’s Direction
- Proposed Article 72 Amendments
 - Definitions
 - Outdoor Cultivation Zoning Districts
 - Self-Certification of Compliance

Comm. Suenram asked if there will be an inspection by County staff to ensure the accuracy of the self-certification.

Mr. Massarelli said yes, staff will conduct an onsite inspection.

9:37 a.m. Open Public Hearing

Jim Steele, Supervisor District III, confirmed that the Board did hear the item and directed Mr. Massarelli to come up with the changes. He said Mr. Massarelli has done a very professional job and the self-certification is very important and the rules need to be very clear.

Daniel Sosa, Lower Lake resident, spoke to residences on properties to be able to grow cannabis and felt it burdensome and expensive to build. He said the requirement to have a permitted residence on the property should be removed.

Mike Mitzel, Kelseyville resident, would like to see “APZ” added and felt that the rules are too strict and should be looked at on a case by case basis.

Mary Jane Montana, Lakeport resident, commented on the proposed language regarding a Licensed Design Professionals preparing plot plans. She said she understood the necessity, once it is taxed on square footage to be as accurate as possible, but perhaps during the self-certification and compliance process that a plot plan is required, that can be verified in the field when the compliance inspection is done by the inspectors at that time. She said as the ordinance rolls itself out; it can be required for a Design Professional input on things like that. She said at this point, the size of the current parcels and location of the cultivation plots could be verified in the field and may not need to be done by a Design Professional. She said she agreed that a plot plan is needed as part of the permit process.

Comm. Malley commented that when he built a house a plot plan was roughly drawn up and submitted as to where his house was going to be built.

Mr. Massarelli said that they were no longer accepting roughly drawn up plans. He said there are problems in verifying setbacks and in this particular case, since the tax will be based on that area, staff felt that a Design Professional would need to identify it so there is no debate as to the number of square feet involved.

Comm. Malley said that staff will need it up front versus prior to permission of issuing the permit.

Mr. Massarelli said the suggestion at the self-certification stage of not having it done by a Design Professional, then later requiring it, might be a possibility.

9:57 a.m. Opened Public Hearing

George Lolonis, Upper Lake resident, provided a handout to the Commission and spoke to “RR” and “RL” zoning. He said he recognizes the importance of medical marijuana, and would like to be able to grow the legal limit of plants on at least twenty-acres in “RR” zoning.

Milos Leubner, Kelseyville resident, spoke of people who are dependent on pharmaceutical products and pointed out that cannabis does not have any side effects.

Victoria Brandon, Lake County Sierra Club, said she thought what is proposed is a temporary interim measure of Article 72, which is the old rules and it is important to bring it up to date. She said the folks in compliance will be grandfathered in and it will provide priority for the folks who are growing in compliance now. She said when the new system comes in; they will be at the head of the cue for getting the trial permits. She said a lot of the arguments on the long term structure and the business of excluding the primary Agricultural areas, will come up in the future when the larger, long-term regulatory system comes before us. She said people are worried and more concerned than is warranted at this time. She spoke to the primary residence on the property and the primary concern was if you allow grows on unoccupied property, it would open the door to unsupervised, dangerous, rogue activities. She felt that restriction was important. She said expanding Article 72 to “RL” is reasonable and it should have been included in the first place, and she asked what is the practical effect on people who want to grow and does this expansion mean that they are given priority or the right to be grandfathered in, when it changes to a long-term system.

Comm. Malley said if they fit all of the criteria, and become part of the self-certification, then that would allow them to do so.

Ms. Brandon asked if that would include the January 1, 2016, provision.

Mr. Massarelli said that would be correct. He said if someone was in full compliance with Article 72, with the exception that they are on “RL” land, this will allow them to come in and be in compliance.

Ms. Brandon noted, if someone is growing on Rural Land and is in compliance with everything, they can be considered for the pilot project permits if this is all adopted.

Tiffany Wright agreed that Rural Lands should be included in the proposed amendment of Article 72 and felt that a residency requirement should be removed.

Michael Green, Lake County Growers Association (LCGA), said they are supportive of this ordinance although they did have some specific issues with some of it. He said they have previously opposed any permit requirement that would affect personal cultivation of six plants and the permitting scheme should be reserved for commercial cultivation. He said there have been concerns about the Licensed Surveyor requirement, and agree during self-certification it would be over-the-top and would like to see that requirement taken out. He said the LCGA is supportive of some of these technical amendments.

Lee McCarroll, Scotts Valley Road resident, spoke in support of Rural Lands.

Brenna Sullivan, Lake County Farm Bureau, asked staff what the difference is in operations that were compliant before January 1, 2016 and after.

Mr. Massarelli said Proposition 64 provides that if you are in compliance and in good standing with the County, you will be allowed to continue to operate without a State License until the licensing goes into effect.

Ms. Sullivan asked if only “A” zoning would be able to do that.

Mr. Massarelli said that is correct.

Jill Ruzicka asked how many primary residences are built on Rural Lands. She said if this is being set up as a priority for permits in 2018, then it seems that we are setting up a program that will allow those who are growing on lands zoned Agriculture with a primary residence will be the ones who have the top priority in 2018.

Mr. Massarelli said he did not know how many primary residences are built on Rural Lands, but staff could do an analysis. He said Article 72 is strictly for medical marijuana, and you have to be the qualifying patient or the primary caregiver, living in the residence, so there is a nexus between growing the marijuana and the person living there. He said it is not like a commercial operation where you are growing something and harvesting it.

Toni Scully, Kelseyville resident, said there needs to be a way to legalize the cannabis industry, and at the same time doing what is good in this County. She hoped all the rules for pesticides, taxes and Cal/OSHA rules for workers in the field are followed.

Charlene McKnoll, donated a Marijuana Business Law book to the Commission. She thought it would be helpful for the commercial part of it. She spoke to the Rural Lands and residency requirements.

Sue Suenram Lake County resident, felt the citizens and land owners of Lake County were not being protected from the odors of cannabis grows. She felt she had the right to clean air and to not have to smell marijuana. She said that they should be made to grow indoors with filters.

Lance Williams, Lake County resident, spoke in support of Rural Lands,

Debbie Holdenried, Kelseyville resident, agreed with Ms. Scully and Ms. Suenram's comments. She spoke to the timing of the hearings and felt that there would be more farmers attending if the Planning Commission hearings were held in the evenings.

Matt Graham spoke to Article 72 and questioned where the processing and storage can happen if not on the premises. He asked if everyone in the collective had to be residents of Lake County.

Mr. Massarelli said that Mr. Graham is asking a question that he will need to go back and research on how they set up the tax ordinance. He added that everyone in the collective has to be a resident of Lake County, because that is the way the ordinance is set up.

Bob Lipari, Jerusalem Valley resident, said the best way to address many of the concerns about pollution, violence and criminal activity is to pursue the current path to have permitting a legalization process and the pilot program.

Tony Perkins Middletown resident felt this is all going in the right direction. He questioned the residency issue and was not in favor.

10:43 a.m. Closed Public Hearing

Comm. Crandell empathized with the people who are upset about this situation, but it is law. He said his duty right now is to look at Article 72 from the aspect of law and look at the evidence that staff has brought forth.

Comm. Suenram spoke to the law issues and reminded his associates of the oath of office that they have taken and how they should support the constitution of the United States, which prevents them from voting on anything contradictory to the laws of the United States.

Comm. Hess said he respected both of the points of view brought up by Comm. Crandell and Suenram. He asked staff to address the language needed to be tinkered with about the Licensed Surveyor.

Mr. Massarelli suggested changing it to a having a Design Professional provide a certified plot plan of the site. He said staff will spell out on the application form what is required to be on the plot plan. He said when the pilot program is set up, a condition would be that they would have to come in with a survey as part of the process.

Ms. Harry asked what section was being amended.

Mr. Massarelli said it was section 72.5(k), item C, with reference to the Licensed Surveyor.

He said instead of the Licensed Surveyor it would be a Design Professional.

Comm. Levesque said everyone has a phone that can collect accurate GPS data points. He said there could be some language to collect data points that might work.

Mr. Massarelli said as we move forward staff can get input from the County Surveyor with the correct language.

Comm. Malley said he needs clarification on the County's stance on their Oath of Office and how it pertains to passing ordinances that are contrary to Federal law.

Ms. Harry said Federal Law is not the Constitution and this ordinance is part of California Law, so it would not be considered as a conflict to their Oath of Office, however if as individuals, they felt that it is in conflict of this oath of office, that is something to wrestle with.

Comm. Malley said the cannabis issue is not his favorite subject. He said they have been handling these laws, ordinances and articles for many years and if anything it has become more onerous on the County to come up with ways to protect itself versus allowing the State of California to set rules for us to live by. He said we are doing the best we can with what we have been handed. He said he understands the medical needs for cannabis and people do benefit from this. He said the voters of this state voted to allow people to have recreational cannabis. He said he understands the intent of the Board of Supervisors and he was ready to vote on the amendment to Article 72.

Comm. Suenram asked if anyone applying for a permit under Article 72 would be exempt from CEQA.

Mr. Massarelli said Article 72 replacement ordinance will be subject to CEQA and all permits in the future will be subject to CEQA. He said we are not exempting CEQA, but for the purpose of this ordinance this is just for the zoning text amendment and will be in effect for six months or less. He said the main thing today is to get the self-certification process going, so we can find out who is operating legally, identifying those people and give them priority as we move forward.

Comm. Sueneram agreed with changing language to come into compliance with some of the new laws, however he felt there should be more rules and regulations put into place, before opening it up to the County. He said he would like to not see this added to Rural Lands and keep in a smaller contained area.

Comm. Hess said we are trying to stay ahead of the process that is happening at the State level and felt we are doing the very best we can to position ourselves as a County and as a tax-collecting entity. We are trying to have everything in place, learning from Colorado and Washington, rather than sitting back and let it wash over us like some kind of tsunami.

Comm. Suenram said he was afraid of opening the doors too wide at the onset.

There was further discussion by the Commission on twenty-acre Rural Land parcels, and opening it up to a bigger portion of the County.

Comm. Levesque moved, 2nd by Comm. Crandell that the Planning Commission find this Zoning Ordinance Text Amendment (AM 17-01) is exempt from CEQA Guidelines pursuant to Section 15061(b)(3).

ZONING ORDINANCE TEXT AMENDMENT CEQA EXEMPTION 4 Ayes 1 No (Comm. Suenram)

Comm. Levesque moved, 2nd by Comm. Crandell that the Planning Commission recommend approval of the proposed Zoning Ordinance Text Amendment (AM 17-01) applied for by the County of Lake for the reasons listed in the Staff report dated May 10, 2017 and as modified today regarding the language for a Design Professional instead of a Licensed Surveyor per section 72-5k1(c)

ZONING ORDINANCE TEXT AMENDMENT 4 Ayes 1 No (Comm. Suenram)

UNTIMED STAFF UPDATE

- **Direction from the Commission for future Planning Commission Hearings on Cannabis subject matter for County meetings. It has been suggested that meetings be scheduled at 6:00 p.m., because people who hold positions in the business community find it difficult to attend daytime meetings**

Robert Massarelli, Community Development Director, said that this is a request specifically from the Chamber of Commerce and he felt it was the Planning Commission's decision. He said there are some issues with a 6:00 p.m. starting time and noted that the Courthouse is locked up at 5:00 and we would have to find another place to hold the meeting, which may have an additional expense, or hire security to make this room available and pay overtime to staff. He said there are a lot of logistical issues, with the recordings of the meetings. He said he understands the desirability of holding the Commission hearings in the evenings, but staff finds that it would be extremely difficult to do. He said if that is the desire of the Planning Commission, staff could proceed ahead in that direction.

Shanda Harry, Deputy County Counsel, said pursuant to the Planning Commission By-Laws to hold a hearing at any other time, but the 2nd and 4th Thursdays of the month at 9:00 a.m. would require it to be a special meeting, which is not insurmountable, but it cannot be a regular meeting of the Planning Commission.

Comm. Malley asked if the hearing could start mid-day, at 11:30 to 1:30, specifically scheduling it through the lunch hour for folks who want to attend from local businesses. He said if we need to have one in the evening, then we can figure out how the Board of Supervisors wants us to set that up.

Ms. Harry said yes, it could be arranged that way.

Mr. Massarelli said as we move forward, staff will schedule cannabis items through the lunch hour.

Comm. Suenram said he was in support of at least one Special Hearing to otherwise open it up to people who could not normally attend a regular hearing.

Mr. Massarelli said he will do research on what the options are and what the impacts would be and will bring it back to the Commission for further discussion.

Ms. Harry said that Special Hearings can be called by the Planning Commission Chair, She noted from the Planning Commission By Laws, Article III Section 4: *"Special meetings may be called by the Chair whenever he/she deems such meetings expedient, and shall be so called whenever two Commissioners shall request the same of the Chair and he concurs with their request."* She said basically two Commissioners would have to request it and the Chair would have to concur to schedule a special meeting.

Comm. Levesque said he was in support of making this as available to as many people as possible.

Comm. Malley said the meetings are now being recorded live and there is a capability of people calling in. He said people could watch it from home and a live number could possibly be set up for comments.

Office News

Mr. Massarelli introduced the newest addition to the Department, Eric Porter Associate Planner from Oregon. He added that there are still five more vacancies to fill in the Department .

ADJOURNED 11:24

Bob Malley, Chair
Lake County Planning Commission

Respectfully Submitted,

By: _____
Danae Bowen
Office Assistant III