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From: Marc Chytilo <marc@lomcsb.com>
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Subject: item # 7
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Clerk – please accept the attached as public comment to item # 7 Tuesday.
For planning purposes, I would like to address the board on this item as well.

Thanks

Marc

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ENVIRONMENTAL LAW

May 29, 2020

Chairman Gregg Hart
Santa Barbara County Board of Supervisors
105 E. Anapamu Street, Fourth Floor
Santa Barbara, California 93101

RE: Item # 7, June 2, 2020, Cannabis Permitting Ordinance Amendments

Chair Hart and Members of the Board of Supervisors:

As you are aware, this office has been deeply involved in the implementation of the County's cannabis cultivation permitting program. This office, and the groups and individuals we have represented, are not opposed to cannabis cultivation, but recognize that cannabis cultivation is a particularly impactful form of land use with significant potential impacts, necessitating enhanced impact analysis and public process. For cannabis cultivation to survive as a sustainable industry in Santa Barbara County, land use entitlements must be carefully crafted to address a suite of site-specific and project-specific issues to ensure these operations fit where they are proposed.

Your Board was advised in the West Coast hearing that a Land Use Permit (or Coastal Development Permit) does not provide the County sufficient authority to materially modify or condition cannabis projects. This authority stems from the findings that must be made for permit approval. A Land Use Permit requires only the most basic of land use findings – that a project conforms to the General Plan and zoning ordinance, period. There is no consideration whether the site is suitable for the use, that significant environmental impacts are reduced, whether the project will cause harm to public health, safety or welfare of the neighborhood or whether the project is compatible with the surrounding area. These findings are associated with a Conditional Use Permit. If the County's cannabis review process ignores these issues, the industry will face continuous opposition. **Commercial cannabis cultivation projects can be approved and operated successfully, but only on appropriate sites, scaled to reduce significant impacts, and conditioned to protect public health and not interfere with surrounding uses.**

The Land Use and Development Code and Coastal Zoning Ordinance explain when and why a Conditional Use Permit is appropriate. CUPS are “to provide for uses that are essential or desirable but cannot be readily classified as allowed uses in individual zones by reason of their special character, uniqueness of size or scope, or possible effect on public facilities or surrounding uses.” §§ 35.82.060.A; 35-172.1 (emphasis added).

A CUP “permits the inclusion in the zoning pattern of uses considered by the legislative body to be essentially desirable to the community, but which **because of the nature thereof** or their concomitants (noise, traffic, congestion, effect on values, etc.), **mitigate against their existence in every location in a zone, or any location without restrictions tailored to fit the special problems which the uses present.**” *Upton v. Gray* (1969) 269 ca2 352, 357. CUPs enable a jurisdiction “to exercise some measure of control over the extent of certain uses, such as service stations, which, although desirable in

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limited numbers, could have a detrimental effect on the community in large numbers.” *Van Sicklen v. Browne* (1971) 15 Cal.App.3d 122, 126. Like too many gas stations on a block, too many commercial cannabis cultivation and processing operations will overwhelm that area. If cannabis cultivation projects cannot be “tailored to fit the special problems” that they present, cannabis, or any other new high-impact land use, will not be viable on a long term basis.

This statewide authority and the LUDC itself explain why a CUP is appropriate to guide commercial cannabis cultivation permitting in Santa Barbara County. Cannabis is desirable, but does not belong everywhere that zoning allows, and large numbers of grow sites, and large individual grows, can have a detrimental effect on the community. Odors have not been controlled, and emissions from large grows clearly impact nearby vineyards and rural residences. Site-specific factors determine whether a particular cultivation site is suitable (surrounding land uses, prevailing wind patterns, roadways and access, visibility, habitat and wildlife migration corridors, etc.), and the CUP’s compatibility finding is one appropriate tool for ensuring that site-specific factors are integrated into the land use entitlement. Similarly, project-specific factors should be integrated into each permit – size, type, scale and intensity of the grow; hoops or not; processing location and whether off-site product will be dried and processed; water demand, odor control, etc. Permits must be “tailored to fit” the specific issues presented by each project at each site. While many of these topics may be identified under the current permitting process, the County is unable to condition a project to limit impacts, avoid incompatibilities and reduce oversized projects. A CUP is needed.

Public participation has historically been a hallmark of the County’s land use decisionmaking process. This is not the case with cannabis permits – the public cannot comment on a draft permit or review a draft project-specific environmental analysis. There is no public notice for when a project is about to be approved, and due to ever-changing Project Descriptions, the public does not know what is in a permit until it is approved. Appeals must be filed in 10 days, and project documents can be difficult to access, particularly during the pandemic, to decide whether to appeal. Consequently, virtually every issued permit is appealed.

CUPs are approved by the Planning Commission. The Planning Commission’s hearings afford notice to interested parties, access to project documents, a written staff analysis of the key issues, identifies the evidence present to support the proposed findings, and provides a forum to raise their issues in the presence of the applicant. Neighbors and interested parties can understand project specifics, and raise questions and concerns to staff and the Planning Commission. Applicants have an opportunity to respond to these concerns, and ultimately, in every case, a better project results.

A leading California land use authority described the importance of public processes:

If a decision is only as good as the evidence supporting it, the information-gathering process is important to well-reasoned decisions. **Decisions vetted by civic engagement are more likely to address trouble points and limit the risk associated with any unintended consequences. Such information can also identify solutions that will make the project more feasible.** The information may also be used to craft findings that better support the final decision.

Institute for Local Government, An Ounce of Prevention: Best Practices for Making Informed Land Use Decisions (2006)(emphasis added).

If commercial cannabis projects are processed with public hearings, applicants and concerned neighbors have an opportunity to meet and hear each others' views. Misapprehensions can be corrected, and concerns can be explained. There is a venue and a process to try to address and resolve issues, rather than bringing every dispute to your Board. Unlike virtually every other significant controversial and contentious land use issue in the county, this step is absent when it comes to commercial cannabis cultivation.

The review of the G&K, Busy Bee, West Coast and Santa Rita Valley Ag. projects has established that commercial cannabis projects have a high potential to harm and conflict with surrounding land uses, and that some applicants want to work with and get along with their neighbors. The current permitting process forces applicants to first work exclusively through complicated regulatory issues with County staff, leaving the public in the dark until the last step. Increased transparency and a public process should address this problem, and lead to more compromise projects. Once there are examples of acceptable compromise grows, applicants and neighbors may find agreement and allow projects to more quickly move through the pipeline. Without these examples or suitable projects, and in the absence of County authority to deny and condition oversized, poorly sited projects and approve right-sized and well-sited projects, the permit process will proceed by way of appeals and applicants will be encouraged to ignore community concerns until each permit reaches the Board of Supervisors, if at all.

Your Board has wisely delegated land use permitting jurisdiction to the Planning Commission. Each Commissioner has expended considerable effort to educate themselves about this industry and the land use implications as the Commission considered a number of appeals. Like your Board, the Commission has been stymied in their efforts to approve reasonable, well-sited and right-sized projects that include the necessary conditions to address community concerns and mitigate impacts. After extensive deliberations, including consideration of a broad set of adjustments to specific development standards, your Commissioners voted unanimously to recommend that a Conditional Use Permit be required for all commercial cannabis cultivation projects, both in the coastal zone and inland areas. This is an incremental approach, without reopening the cannabis ordinance and its development standards that have proven themselves insufficient to guide applications and define acceptable projects. This is a step worth taking.

I urge the Board to follow the recommendations of your Planning Commission and require all cannabis cultivation projects in all zone and all areas to secure a Conditional Use Permit.

Respectfully Submitted,



Marc Chytilo