



COUNTY OF HUMBOLDT

For the meeting of: 8/25/2020

File #: 20-1005

To: The Humboldt County Board of Supervisors

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

Rocci Costa Appeal of the Planning Commission Denial of Conditional Use Permit to Allow 10,000 Square Feet of Open Air Cannabis Cultivation in the Blue Lake Community Area

RECOMMENDATION:

That the Board of Supervisors:

1. Open the public hearing and receive the staff report, testimony by the applicant/ appellant and public;
2. Close the public hearing;
3. Adopt the resolution (Resolution 20-__). (Attachment 1) which does the following:
 - a. Finds the project exempt from environmental review pursuant to Section 15270 of the CEQA Guidelines.
 - b. Makes the findings to reject the appeal submitted by Rocci Costa; and
 - c. Denies the Conditional Use Permit.

SOURCE OF FUNDING:

The Appellant has paid the appeal fee associated with filing this appeal.

DISCUSSION:

Executive Summary

This is an appeal of the Humboldt County Planning Commission's March 5, 2020 denial of a Conditional Use Permit application to allow 10,000 square feet of unenclosed cannabis cultivation within the Blue Lake Community Planning area. The Planning Commission denial was based on the potential adverse impacts to the health, safety, and welfare of the Warren Creek neighborhood. The CCLUO has an increased level of sensitivity relative to protection of communities and requires ministerial applications under the CMMLUO chose an action to address community compatibility. The applicant chose to apply for a Conditional Use Permit and the Commission found this project is not compatible with the neighborhood. The Planning Commission action is consistent with the

direction given by the CCLUO. The applicant/appellant believes the Planning Commission made errors in their action and was provided information by the public that lead them to the wrong conclusion. The information from the public may have been misleading, but it is clear there is significant public opposition to the application.

Background

The subject parcel is in the Blue Lake Community Plan area. The application was initially filed under the CMMLUO as a Zoning Clearance Certificate, but under the CCLUO the location in the Community Plan Area requires one of three things:

1. Locate the cultivation activities more than 600 feet from any residential boundary, or
2. Enclose the Cultivation, or
3. Obtain approval of a Conditional Use Permit

The applicant chose to pursue a Conditional Use Permit.

Project Description

The project would consist of 10,000 square feet of new open-air outdoor cannabis cultivation, and a 1,000 square foot ancillary nursery on a 5 acre parcel. Existing improvements on the parcel include an agricultural shed, recreational vehicle, a house slab, and a well. The well would only be used for domestic purposes. The applicant will have no more than four employees, including the operator. The proposed irrigation method is rainwater catchment. The estimated annual water usage is about 25,000 gallons. While this is a low amount of water for a 10,000 square foot irrigation, the applicant has stated that they will achieve low water use through dry farming. The applicant will store water in five 5,000-gallon tanks. Power would be provided by P.G. &E.

The parcel is located approximately 200 feet outside of the Mad River 100-year flood plain as shown on the 2017 FEMA Map. The Mad River and Leggit Creek are located to the east of the parcel, but the parcel is not located within the SMA for either Leggit Creek or the Mad River. According to the County's Web GIS, the project is mapped in an area of potential liquefaction.

The project site is accessed from Warren Creek Road, of which 0.95 mile is County maintained. The Department of Public Works (PW) has indicated that Warren Creek does not meet category 4 standards due to being narrow over most of the road and multiple pinch points that have limited sight distance. The applicant submitted a Road Evaluation completed by Green Road Consulting dated December 9, 2019. The Department of Public Works reviewed the Road Evaluation and recommended that in order for the road to meet functional capacity, the applicant would be required to install seven turns-outs on Warren Creek Road prior to commencement of operations. In addition, the applicant would need to restrict the use of any vehicle larger than a regular pickup to off peak hours, being 9:00 AM to 4:00 PM. If approved, the applicant would be required to adhere to these recommendations. On January 11,

2020 the applicant submitted a revised Road Evaluation to address Public Work's comments and added two additional turnouts for a total of nine turnouts and additional "warning signage" to be installed on Warren Creek Road.

The Humboldt Bay Municipal Water District (HBMWD) provided comments on February 6, 2019 expressing concerns about impacts to water quality. HBMWD has a major water transmission line under Warren Creek Road.

Planning Commission Action

Prior to the Planning Commission meeting letters in opposition to the project were submitted from the community (Attachment 5). The community's expressed concern about odor pollution, increased traffic, public safety, and the loss of sense of place and community. One of the main concerns is that the odor from the proposed unenclosed cannabis cultivation will affect the well-established traditions organized by long time community members. Community members have testified that the community on Warren Creek Road traditionally gather to celebrate holidays like the Fourth of July, and parade down Warren Creek Road. The community raised the concern that odor from the cannabis operation will degrade their quality of life and their ability to enjoy these long-standing community traditions.

The Planning Commission received a significant amount of public testimony against the project during the hearing. Public testimony included concerns regarding odor pollution, increased traffic on a narrow road (Warren Creek Road), reoccurring violence associated with the parcel, the current maintenance of the parcel (junk cars and spent soil) public safety, and the loss of sense of place and community. Community members testified that the community on Warren Creek Road traditionally gather to celebrate holidays like the Fourth of July, and parade down Warren Creek Road. The community raised the concern that odor from the cannabis operation will degrade their quality of life and their ability to enjoy these long-standing community traditions.

The Planning Commission Denied the application with a 3/2 vote (Ayes: Mitchell, Levy, and Bongio. Nays: Newman and McCavour. Absent: O'Neill) The staff recommendation was for approval as all the technical requirements of the CMMLUO had been met but based upon the public outcry the Planning Commission in a split vote found the project would be detrimental to the public health, safety, and welfare. The Planning Commission did not provide findings for this action, other than to express concern whether this proposal could be operated at this location without adversely impacting the community.

Appeal

The appellant submitted an appeal premised on the argument that the Planning Commission made errors of discretion in denying the project. The appeal letter takes specific quotes from Commission members as evidence of these errors of discretion.

Appeal Issue 1: There were multiple errors of discretion during the March 5, 2019.

The appellant states that there were multiple errors of discretion during he hearing which obscured the facts and offers the following facts:

- (a) Appellant's Assertions: *Rocci Costa is a fourth generation Blue Lake family man. He is a father of 3 adult children. He is raising his 5-year-old granddaughter with his wife of 27 years in their Eureka home. He is seeking a permit for a small organic family farm to be run by his 21-year old son and himself.*

Response: This is not in dispute.

- (b) Appellant's Assertions: *Rodney Costa is Rocci's brother and is the owner of the parcel. The brothers signed a letter of intent which begins at the time a permit is secured. Rocci Costa has not had control or responsibility for the parcel to date. Concerns of Public Safety are addressed by implementing a permitted and secured farm.*

Response: There was significant testimony by the community expressing concerns about past behavior of people at the property and visiting the property. The applicant/appellant seeks to distance himself from that behavior

- (c) Appellant's Assertions: *A majority of the complaints both written and in person were by a few neighbors, most of whom are half a mile to over a mile away from the proposed site. A large number of them do not live on Warren Creek Road. Many of those who live on Warren Creek Road have encroached on the road right of way. Most of them do not know the Applicant.*

Response: The neighboring property owner, whose residence is within 600 feet of the proposed cultivation has expressed opposition to the project. The other neighbors have expressed similar concern regarding the impact the project would have on their ability to use and enjoy Warren Creek Road for community purposes.

Appeal Issue 2: Errors of Discretion by the Planning Commissioners

- (d) Appellant's Assertions: *The appellant contends that the Planning Commission attributed his brother's lack of stewardship over the property to the applicant/appellant and cited a statement by the maker of the motion that the stewardship and responsibility of the property is "a little bit fuzzy". The appellant contends there is nothing fuzzy and that Rodney Costa (appellant's brother) is responsible for the previous action over the property. The appellant expresses concern that this may have adversely influenced the Commission.*

Response: There was significant public concern expressed relative to the past management of the property and it there was not a clear separation between the property owner and the applicant/appellant. Rodney Costa is still the owner of the property and Rocci his brother is the applicant. It is not possible to know whether the association between the current property owner

and applicant played a role in the decision of the Planning Commission as a whole. This assertion focuses on a comment by the make of the motion and cannot be attributed to the entire Planning Commission or as a basis for their action.

- (e) Appellant's Assertions: *The appellant again cites a statement by a individual Planning Commission as stating: "I don't think this is so much about the cannabis itself, ... as it is about a history of bad blood, bad faith, threats, violence, poor land management choices made on the behalf of this property". Appellant claims that allegations made by neighbors, including threats and violence are unsubstantiated and unassociated with the applicant. The appellant points to fire department and police records of the property that were submitted by neighboring property owners which are old and unrelated to the applicant/appellant . On the contrary the applicant pursued eviction of the squatter identified in the police report when he decided to pursue a cannabis permit.*

Response: The comment by the individual commissioner was focused on the fact that with many controversial cannabis applications the public assigned negative and/or criminal behavior to cannabis applicants. That should not be accepted. The commissioner was attempting to articulate that the negative history on this parcel should not be associated with cannabis, those are two separate issues. Again, a single comment by a commissioner that is not included in a motion voted on by the Commission cannot be interpreted as the feelings of the commission as a whole.

- (f) Appellant's Assertions: *The appellant expresses concern that a commissioner contradicted himself when discussing how to consider public concerns being expressed relative to cannabis (many cannabis cultivators are good neighbors with family values) and that the same consideration is not being provided to the applicant when commissioner stated "In cases where there[are] consequent side effects of having to meet it that would have disadvantages on other property owners...it's appropriate to consider the historical context." Consequent effects of denial are *status quo*, which all parties recognize as actively harmful to the character of the neighborhood. Unmonitored parcel has already drawn squatters, will continue to do so. Consequent effects are an unsafe road, as clarified by Public Works*

Response: A single commissioner made the statement that when there is significant public controversy, and it is a borderline call as to whether an applicant can effectively meet all of the ordinance requirements it is appropriate to consider the historical context. Again, this is a comment of a single commissioner, and not part of the official action of the Commission. It would be speculation to surmise the statements by the public tying the past negative activities of the property owner to the applicant prejudiced the Planning Commission.

- (g) Appellant's Assertions: *The appellant states that he has met all of the commitments to the County and other agencies so far and that therefore Commissioner Levy was incorrect to question whether the history of the property casts doubts on whether the applicant could meet the conditions that would be asked of him if granted a permit.*

Response: The Planning Commission found reason to believe that the applicant did not demonstrate

the ability to manage the site in compliance with cannabis regulations. The Planning Commission did not articulate why they reached this conclusion.

Appeal Issue 3: Zoning - What is Residential Ag?

Appellant's Assertions: *The appellant quotes a commissioner that the area has become more residential than agricultural. The appellant then goes on to describe the larger agricultural parcels in the area, the distances that people live from the project site and the relative density of the area in question.*

Response: The parcel is zoned Agriculture General (AG) and has a land use designation under the General Plan of Residential Agriculture. The commissioner's statement that this area is more residential than agricultural was in response to significant testimony about the strong response of the community who testified against this project and the testimony about the community events held along Warren Creek Road. This is coupled with the fact that this site is in a Community Planning area. The CCLUO requires additional consideration within community planning areas to ensure compatibility with surrounding land uses and control of potential nuisances. In this case the appellant's point is germane. The area immediately around the proposed cultivation site is not residential in character but is farmland and timberland. There is one residence within 600 feet and five residences within 1,500 feet. Much of the opposition comes from people who live over a quarter mile from the cultivation site.

Appeal Issue 4: Attacks on Character

Appellant's Assertions: *Attacks on Character: Public Comments were non-factual, hearsay, unsubstantiated and unmanaged. The unfounded allegations are hurtful and have no place in policy making. a. "Neighbors" are unfamiliar with the Applicant and have conflated negative experiences in the area with the Applicant. There is no factual substantiation of their allegations. The applicant/appellant has submitted information to explain who the applicant is and his history in this county.*

Response: The public who addressed the Planning Commission hearing and spoke were very clearly opposed to the project and did associate the applicant with past poor behavior associated with the project.

Analysis

The application is to allow 10,000 square feet of cultivation on land zoned Agriculture General that is in the Blue Lake Community Plan Area. All requirements for cultivation not associated with the location within the community plan area have been met. The cultivation is on prime soil with a slope of less than 15%, water is from an approved source, there are no tribal cultural resources within 600 feet of the site, and there are no biological concerns. The one concern that needed to be worked out through the review process was access. Warren Creek Road is not a category 4 road. The applicant prepared an engineering analysis to determine what needed to be done to Warren Creek Road to

provide adequate access. These improvements are now part of the project. If this site were not in a community planning area, this amount of cultivation could be approved with a Zoning Clearance Certificate requiring no public hearing.

This is a project submitted under the CMMLUO (1.0). In order to comply with the provisions of the CCLUO (2.0) for ministerial permits in the Community Plan Areas, the applicant requested a Conditional Use Permit. The purpose of the CUP in community plan areas was to provide the community a voice in the what is allowed in their community.

Section 55.4.6.7 of the CCLUO states the intent of the section to require retroactive permitting for Ministerial permits in community plan areas are “*designed to ensure compatibility with surrounding land uses and control of potential nuisance.*” The primary concerns addressed by the public relate to how the property has been maintained and with additional traffic on and necessary improvements to Warren Creek Road.

Maintaining cannabis cultivation sites in a manner compatible with the neighborhood is clearly within view of the ordinance requirements. The applicant appellant has indicated that they are willing to clean up and maintain the property. This could be addressed as a condition of approval.

It was also pointed out at the Planning Commission meeting that the neighborhood goes across the subject site on Warren Creek Road to access the river. Concern was expressed that having a cannabis cultivation site at this location would affect their river access.

The traffic which could result from this cultivation site on Warren Creek Road would be about 8 trips per day (4 round trips). This is not a huge increase in traffic but the increase in traffic does require that the road be improved to provide functional safety. The proposed improvements will improve safety for everybody, but these improvements are not viewed favorably by the community. Some of the proposed turnouts will conflict with existing improvements (fences and other structures), some of which were installed within the public right of way.

The primary concern of the retroactive requirements in the CCLUO is to address odor. In evaluating the Conditional Use Permit the decision making body is to evaluate whether a reduced setback (less than 600 feet) would result in adverse impacts to surrounding land uses. There is only one residence within 600 feet of the proposed cultivation site and that residence is over 500 feet away. If located outside a community planning area this would be a great location for cannabis cultivation. The tension is this is located within a community planning area and has significant community opposition to the application. The Planning Commission action to deny the Conditional Use Permit is in keeping with the purpose and intent of the CUP requirement within a community plan area.

Subsequent to the Planning Commission denial and filing the appeal, Planning and Building staff reached out to members of the community in an effort to set up a community meeting to see if there are actions that could be taken to mitigate concerns. It was expressed by community members, there is no interest in having such a meeting.

Summary

The circumstances with this application are there is a cultivation plan which complies with the requirements of the CMMLUO but since it is in a Community Plan Area, the CCLUO requires something be done to address community compatibility. The applicant has chosen to address this through the Conditional Use Permit option. The Planning Commission found that the application would be detrimental to the public, health, safety and welfare due to concerns with the property ownership and the ability to operate the site in compliance with the ordinance. This was largely based on public testimony.

The appeal argues that the Planning Commission was wrong in denying the permit, but does not address the concerns raised by the public or explain to how this proposed cannabis cultivation site will be compatible with the neighborhood.

Staff therefore recommends that the Board deny the appeal and deny the Conditional Use Permit.

FINANCIAL IMPACT:

There will be no additional effect on the General Fund. The appellant has paid in full the appeal fee associated with this appeal.

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by enforcing laws and regulations to protect residents.

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board of Supervisors has a range of alternatives to the staff recommendation to deny the appeal and uphold the approval of the project, as summarized below:

1. Grant the appeal and approve the Conditional Use Permit. The Board of Supervisors may find that the project could be operated in a manner compatible with the surrounding area and would not impact the public, health, safety and welfare and approve the Conditional Use Permit. Should the Board choose this action staff recommends a continuance of the hearing to allow for revised findings for approval.
2. Approve the project in a modified form. The Board of Supervisors may find that there are components of the project which are acceptable, but others that are not. In that case, a condition should be written to modify the project description to omit the offensive components of the project.

ATTACHMENTS:

NOTE: The attachments supporting this report have been provided to the Board of Supervisors; copies are available for review in the Clerk of the Board's Office.

1. Draft Board Resolutions and Findings
2. Appeal filed by Rocci Costa
3. Resolution of the Planning Commission, Resolution No. 19-73
4. Planning Commission Staff Report
5. Public Comments
6. Letter re Appeal Clarification from Rocci Costa's agent
7. Letter from Rodney Costa
8. Additional Public Comments received

PREVIOUS ACTION/REFERRAL:

Board Order No.: N/A

Meeting of: N/A

File No.: N/A