

## **ACTION MINUTES**

### **LAND USE & COMMUNITY DEVELOPMENT COMMITTEE**

December 19, 2011

**MEMBERS PRESENT:** Richard Forster, Supervisor, District II  
Louis Boitano, Supervisor, District IV

Supervisor Boitano called the workshop to order at 9:07 a.m.

**STAFF PRESENT:** Aaron Brusatori, CDA Director  
Anne Watts, Social Services  
Dr. Robert Hartmann, Health Officer  
Chuck Iley, CAO  
Greg Gillott, County Counsel  
Jim Rooney, Assessor  
Jim Wegner, Sheriff's Office  
Linda VanVleck, Code Enforcement  
Mike Boitano, Agriculture Department  
Mike Israel, Environmental Health  
Rich Millar, Building Department  
Randall Shrouf, Public Defender  
Sarah Barron, District Attorney  
Susan Grijalva, Planning Department  
Todd Riebe, District Attorney

**MEMBERS OF THE PUBLIC:** Noele Richmond, Amador County Farm Bureau  
Tom Liberty  
Mark Bolger  
August Gonzaga  
Bobby Stanton  
Jason Cole  
David Dobbie  
Marina Dobbie  
Craig E. Smith  
Robert C. Allen  
R. J. Nidever  
Cathy Vanderford  
Emerson W. Grant

Aaron Brusatori, CDA, said the goal of the workshop is to discuss the concerns of the public with respect to the cultivation of medical marijuana and to provide information that will be used by the Land Use Committee in making a recommendation to the Planning Commission and the Board of Supervisors in developing the ordinance. The workshop was publicly noticed.

## **ISSUES FOR REVIEW AND DISCUSSION TO MINIMIZE IMPACT OF MARIJUANA CULTIVATION ON ADJACENT PROPERTIES.**

Supervisor Forster said the goal is not to impact the quality of life and the property values of people that live near a grow while also preserving the right of those that use marijuana medicinally.

The issues discussed and the comments and points made during the discussion were as follows:

### **SECURITY:**

#### Occupied lands:

- Want to be good neighbors.
- Keep plants discreet, behind a screen of brush, fenced, out of view, locked up and 150' away from neighbors.
- Discourage deer with 6' cyclone fence.
- Odor depends on air flow.
- Fencing attracts attention to gardens and makes them more obvious.
- Just because someone can smell the odor of a marijuana plant doesn't mean it should be a measure as to what is allowable.
- The plants only smell about 6 to 8 weeks out of the year and only under certain atmospheric conditions. Temperature, time of day, or the particular variety of plant all can affect the extent to which odors can be detected.
- Odor doesn't necessarily constitute a nuisance; there are many other activities that generate odor; i.e. livestock, vineyards, etc.
- Odor can affect the quality of life and property value.
- Limits need to be set on where it can be grown, what size parcels, and what setbacks can be applied.
- The ability to grow your own plants takes the criminal element out of getting medicine.
- Indoor grows are more secure and eliminates the odor issue.
- Outdoor grows are necessary because they can be larger and provide the opportunity for people who can't grow.
- Amador County is a right-to-farm county. It's not right to single out the odor of marijuana yet people are to put up with the side affect of farming; i.e. flies, smells from manure, etc.
- It could be made it less noticeable by creating setbacks.

#### Unoccupied lands:

- The lack of proper sanitation and camping becomes an issue when plants are being cultivated on unoccupied lands.
- Portable toilets could be used on unoccupied land as a solution to sanitation problems.
- Butte County allows for one-year agricultural leases under which medical marijuana can be grown.
- Farm labor quarters need a permit; could go through same type of permitting process.

- Need to have a better rapport with law enforcement to ensure things are being done properly and according to the “scripts.”
- It appears the larger grows, rather than the smaller ones, are the problem.
- Use a certain size or number of plants that triggers regulations.

#### **NUMBER OF PLANTS OR CANOPY AREA:**

- It is hard to grow enough medicine with a minimal number of plants.
- 6 plants per person is not enough; 10 plants recommended to provide enough medicine for a year.
- The use as a tincture requires more marijuana than smoking.
- 6 plants was the clinical limit.
- The amount of marijuana required by a patient varies tremendously. It depends on the condition of the patient, the means of ingestion whether it be eating, vaporizing, or smoking.
- The amount produced per plant depends on the skill of the cultivator as well as the variety of plant.
- The number of plants could be used as a limitation. Some jurisdictions use the square footage of the canopy.
- Yield depends on the variety of plant. Certain varieties are better for certain types of uses.
- The size of the area available to grow and cultivate varies from person to person. Some people own 5 acres where someone else may only own an acre. Everyone does not live on a parcel zoned AG.
- Plant count is difficult to quantify.
- The effectiveness of the method of use varies from person to person.
- The State has decided not to enforce the cultivation of marijuana criminally.
- Security and odor could be addressed allowing a canopy of 200 square feet, for example, without any permits.
- Number of plants in 200 square feet varies depending on the variety.
- Need to come up with a way for the police to regulate the gardens.
- A grower bought Febreeze and hung it on the fence to mask the odor. Neighbors have not complained.
- It is the mature plants that create the odor. Regulation of canopy size would allow more plants so cultivating immature plants would be feasible.
- Guidelines and restrictions are needed; however, any limit put on the number or size of plants will be challengeable in Court. The less restrictive the ordinance is, the less likely it will come under challenge.
- Odor is subjective.
- Law enforcement has broad latitude on deciding if what an individual patient is possessing or growing is reasonable. Proof is required as to what is reasonable for the patient’s particular medical condition.
- The County has the right to regulate land use for public health and safety which is covered under the zoning code. Limits can be created and areas can be designated.

### **DISTANCES FROM YOUTH ORIENTED FACILITIES:**

- The distance of 1000' discussed applies to dispensaries.
- Calaveras County has grows adjacent to schools.

### **STAFF COMMENTS:**

- Jim Wegner said most that has been said has been accurate. Laws provide for an affirmative defense for a certain class of people that grow and possess marijuana for medical purposes. In the State of California, there is no plant count that is approved; it is up to the physician's recommendation. A State card is available through the County Public Health Department that carries with it certain immunities. Twenty to thirty cards have been issued in Amador County; however, there are many more medical recommendations throughout the County. He was not aware of fencing in other Counties drawing attention to the grow. A determination needs to be made as to the purpose of the fence before determining whether or not it will be effective. Odor is not controllable but it may be mitigated. The size of canopy could vary depending on parcel size, zoning, and/or how far away the neighbors are. Sanitation on occupied properties will be less of an issue than on unoccupied properties, leased land or public lands. Marijuana is a high priced commodity, a valuable target, and will be susceptible to crime. Law enforcement having more tools such as registering, permitting, selling tags would probably only have a limited benefit, be an added workload, and be a marginal source of revenue. A record of growers is beneficial when complaints are received. Federal funding can be withheld from the Counties that allow grows.
- Todd Riebe said these types of grows are attractive to the criminal element. When there are too many plants, the risk of Federal intervention increases.
- Mike Boitano said marijuana is not defined as an agricultural crop. There aren't any pesticides that can legally be used on marijuana due to the fact that it is not listed on the label.
- Dr. Hartmann said physicians in Amador County do not write scripts for a number of plants but rather for a period of time. The Health Officer recommended using canopy rather than the number of plants as a regulation. He also verified that there are approximately 30 cards issued in Amador County. The fee to register is substantial and the information is electronically transferred to the State. Dr. Hartmann recommended addressing the distance from the youth oriented facilities. There was discussion on whether or not 11362.79 which states 1000 feet from a school applies to marijuana cultivation. Mr. Wegner recommended that the ordinance start restricting the distance from a school with the number of plants

### **TOPICS FOR NEXT MEETING:**

- The clarification of laws regarding distance from youth oriented facilities.
- Setbacks

- Canopy vs. number of plants.
- What constitutes a caregiver.

The next workshop was scheduled for December 27, 2011 from 1 to 3 p.m.

The meeting adjourned at 10:45 a.m.

**NOTE:**        *A CD of the recording of this workshop can be obtained from the Planning Department upon request.*