

ACTION MINUTES

LAND USE & COMMUNITY DEVELOPMENT COMMITTEE

October 1, 2019

MEMBERS PRESENT: Richard Forster, Supervisor District 2
Frank Axe, Supervisor District 4

MEMBERS ABSENT: None

PRESENT: Mike Israel, Environmental Health Director
Chuck Beatty, Planning Director
Glenn Spitzer, County Counsel
Katherine Evatt, Foothill Conservancy
Mara Feeny, Foothill Conservancy
Lynn Morgan, Foothill Conservancy
Bill Daly
Ross Anderson
Mary Ann Manges, Recording Secretary

Supervisor Axe called the meeting to order at 1:30 p.m.

AGENDA: Approved.

CORRESPONDENCE: None.

APPROVAL OF MINUTES:

August 22, 2019 – Approved as amended.

PUBLIC MATTERS NOT ON THE AGENDA: Katherine Evatt, representing the Foothill Conservancy, shared that there are about 10 spots available for the 8-hour CEQA training on Tuesday, October 29th at the Jackson Civic Center. She added that the training is \$125 per person and that 3 or more are \$100 per person.

Mr. Spitzer asked if the training offers MCLE (minimum continuing legal education) credits. Ms. Evatt responded that it does.

ITEM 1: CLARIFICATION IS SOUGHT FOR WHETHER A HOME OCCUPATION AND OUTDOOR CANNABIS GROW SHOULD BE PURSUED AS POINTS OF NONCOMPLIANCE - Code Enforcement and Planning

Discussion ensued among the Committee on details about the case and the code. Mr. Israel shared that the question for County Counsel is from one particular case and whether a legal residence is required for home occupations and for a cannabis grow. Mr. Spitzer stated that they cannot have a home occupation without a legal residence on the property and shared that for recreational use 6 plants can be grown indoors and for qualifying medical status that 12 plants can be grown indoors or outdoors. He added that if they have a medical card they can grow up to

12 plants without a legal residence as long as they comply with all the other parameters within the ordinance. It was shared that it is believed that in this case they are qualified patients, but that it will be confirmed with the Code Enforcement Officer upon her return. He added that the requirement of having a legal residence is not so clear for medical use, but that commercial uses are strictly forbidden.

Mr. Israel shared that code enforcement is looking for direction on whether or not the existing home occupation constitutes a violation and that it sounds like it does because a home occupation requires a legal residence in order to be an approved activity. He added that in cases like this, the property goes through enforcement action and the extent of the enforcement by the County has been to record a notice of violation. He asked if there are recurring similar additional occupied structures without permits if they should be pursued individually or open up prior violations and take other action. Supervisor Forster shared that they have been habitual abusers for a long time and that the County has never have been successful in upholding any enforcement action against them and to proceed with what takes minimal staff time and with what will be the most successful.

Discussion continued with the Committee where it was shared that in the past more plants were found on the property than what is allowed and that recently no plants were observed, but that a neighbor said that plants had been moved behind a hill. Supervisor Forster asked to be preemptive for next year to optimize code enforcement efforts with the marijuana. It was added that two structures on the property are not completely legal as far as building permits and that no other action beyond verifying that they were not an immediate threat to health and safety and recording a notice of violation had been taken. It was shared that allowing the two structures to remain could possibly have encouraged others on the property to bring more units for permanent residential use without proper permits.

Mr. Spitzer shared that the abatement process takes a long time to play out and that going to the hearing board is part of the process. He added that abatement on living structures would not be effected.

Committee Action: The Committee made a recommendation to continue on the living structures since they are separate, be preemptive for next year and to also work on whatever have the most evidence for and have the best chance of succeeding so that staff time, money, and effort is minimized.

ITEM 2: SB-2 FUNDING OPTIONS - REVIEW OF POTENTIAL PROJECTS FOR AN SB-2 PLANNING GRANT - Planning

Mr. Beatty shared that the County is eligible to apply for SB-2 funding and the consultant that HCD hired to review all the grant applications has a copy of our application for the Wicklow property, that they are reviewing it, and will recommended any changes before it needs to be submitted by the end of November. He shared that some communities already have received funding. He reminded that these were noncompetitive planning grants and if they meet one of the priority policy areas should be funded particularly if the consultant has given the go ahead on the application. He stated that he hopes to get a consultant hired to do the project design and EIR for the project, and then, as future SB-2 monies are available, continue to apply to competitive grants to get infrastructure and potential housing construction monies. He shared that after the last Land Use Committee meeting he looked into combining this project with the No Place Like Home grant that Health and Human Services (HHS) is applying for. He added that HHS is going to apply on the next cycle for a grant to house people that have been homeless and were severely mentally ill, but are being placed into group housing with a case manager on site. He shared that

if a spot like that works its way into the Wicklow project there is a chance that Behavioral Health can apply for other SB-2 monies for their project and that potential monies could be received by the end of year or the end of January. Ms. Morgan asked if the funds might be used in the Martell Business Park project. Mr. Beatty answered that the Land Use Committee opted at the October 1st meeting to focus on the Wicklow property for the SB-2 grant.

Committee Action: The Committee made a recommendation to get comments back from the consultant and that this will probably be on the second October Board of Supervisors meeting for adoption of a resolution.

ITEM 3: DISCUSSION OF NUISANCE ORDINANCE OPTIONS - Planning

Supervisor Axe introduced the item and opened discussion about a noise ordinance and an abbreviated short term rental ordinance focusing on noise. He shared that a short term rental (STR) is more enforceable. Mr. Spitzer shared that a nuisance ordinance is more broad and that it captures everything and that an STR ordinance focuses on short term rental uses. Mr. Spitzer added that the one page noise ordinance had been placed inside the short term rental ordinance.

Discussion ensued among the Committee. Supervisor Forster shared that the Board of Supervisors direction was clear and that they asked for a nuisance ordinance and that an ordinance was being created for a couple problem properties in the county. Supervisor Axe commented that a nuisance ordinance is hard to enforce and that it captures a lot of people, Mr. Anderson added that he prefers an STR ordinance and that it needs to have teeth. Ms. Evatt shared concerns about the need to witness a violation and enforceability.

Discussion continued about whether an ordinance is going to solve the problems, progressive discipline, warnings, fines and/or penalties and responsibility of property owners. Thoughts were shared about looking to El Dorado County, South Lake Tahoe, and Sonoma County for ideas that action can be taken from. It was shared that the Board usually likes to give a warning first to give people the ability to comply, and if they do not, quickly move to issuing fines. Mr. Israel shared that penal codes 415 and 373A could be used. Ms. Evatt commented that if trying to impose an ordinance on everyone in the county that there is a higher chance of someone complaining. She also asked for clarification of what is natural or unnatural in the noise ordinance. Mr. Ross shared that the owner should be responsible. Supervisor Axe shared concerns about an ordinance possibly conflicting with the county-wide right to farm when it comes to roosters or noise from generators used during power outages causing problems. It was discussed that there would be no reference to an STR ordinance and that with a general noise ordinance anyone in the unincorporated area of the county making noise would be subject to it. Also discussed was that zoning would not be a part of this.

Mr. Spitzer shared that this is a stand-alone ordinance that can go to the Board without going to the Planning Commission. Supervisor Axe shared that he wants to get it to the full Board soon. Supervisor Forster asked to be able to review it before it goes to the Board.

Committee Action: The Committee made a recommendation to continue to draft the noise ordinance and add that the owner shall be responsible for the actions of the inhabitants and a progressive enforcement section with teeth in it. They also recommended that a draft be e-mailed to Supervisor Forster and Axe for any comment before going onto the Board.

The meeting adjourned at 2:35 p.m.