

Public Comment #19
Bos Recd. 11-3-23

From: BOS-District I
Sent: Friday, November 3, 2023 1:43 PM
To: BOS-Clerk of the Board
Subject: FW: BOS 11/7/2023 meeting agenda item 23-1823:Green Gables Cannabis Growers application for Variance V23-0002 and CCUP20-0004
Attachments: Green Gables 10-4-23 LTR BOS(5)(2).docx

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From: Elizabeth Lewicki <elewicki@gmail.com>
Sent: Friday, November 3, 2023 1:36 PM
To: BOS-District II <bostwo@edcgov.us>; BOS-District III <bosthree@edcgov.us>; BOS-District IV <bosfour@edcgov.us>; BOS-District V <bosfive@edcgov.us>; BOS-District I <bosone@edcgov.us>
Cc: Evan R. Mattes <Evan.Mattes@edcgov.us>; aaron.mount@edc.gov.us; Robert J. Peters <Robert.Peters@edcgov.us>; Andy Nevis <Andy.Nevis@edcgov.us>; Christopher J. Perry <Christopher.Perry@edcgov.us>
Subject: BOS 11/7/2023 meeting agenda item 23-1823:Green Gables Cannabis Growers application for Variance V23-0002 and CCUP20-0004

Dear Sir or Madam:

I was informed that comment letters submitted for the 10/10/2023 meeting of the Board of Supervisors would be carried forward to the continued meeting date of November 7th. However, on checking Legistar it appears that most of the earlier comment letters have not been posted for the November 7th meeting.

Attached is a letter I previously submitted, urging the Board to reject the variance request and deny the CCUP.

In addition, it now appears that a County Code Enforcement Complaint has been filed against the property. The County should not grant a discretionary variance while the applicant may have unresolved Code violations.

Please protect the neighboring residents, enforce County ordinances, and deny the variance/CCUP.

Thank you,

Elizabeth Lewicki

Elizabeth K. Lewicki
George L. O'Connell
5225 Bryant Road
Latrobe, CA 95682

October 5, 2023

George Turnboo, Supervisor

Wendy Thomas, Supervisor

Lori Parlin, Supervisor

Brooke Laine, Supervisor

John Hidaahl, Supervisor

330 Fairlane Court Placerville, CA 95667

Re: Green Gables Growers: Application for Variance V23-0002/ CCUP 20-0004

Dear Sir or Madam:

On August 24, 2023, the Planning Commission narrowly approved an application from Green Gables Growers for a Variance and Commercial Cannabis Use Permit, V23-002/CCUP 20-0004, at 6914 South Shingle Road in Latrobe. We reside to the west in the residential neighborhood adjacent to the applicant property. We have owned our property for more than 30 years, and lived for more than 25 years in the home we built.

We urge the Board of Supervisors to reject the Variance and CCUP application. The application must be denied because it can not satisfy the requirement in the County's cannabis ordinance that no cannabis operation can be located within 1,500 feet of, among other things, a school bus stop. In fact, the applicant is directly adjacent to three school bus stops. The Latrobe school superintendent corrected the record at the Planning Commission hearing to show there are three active bus stops. The applicant and staff persist in ignoring the third bus stop directly across the road from the project. The analysis should end here, because there is no possibility of mitigation for the location of three school bus stops. Nor is there any reason to grant a variance from this requirement, which was adopted by the Board and approved by the voters as part of the cannabis legalization process. The setback requirements were enacted to protect the health and safety of our sensitive populations. Indeed, granting the variance requested would confer special benefits to the applicant's property to the detriment of the community.

Promptly after the Planning Commission hearing, we tried to review documents referenced in the Mitigated Negative Declaration (MND), and elsewhere, and which were the basis for the MND. Access to these documents is critical, because the few documents which were slowly produced show that the MND is not supported by the facts. The well report and fire department letters, which we did receive, directly contradict the conclusions of the MND. The many attempts we made to obtain the critical documents are described below. We still do not have many of the documents on which the MND was based. The errors we have already found compel setting aside the MND and denial of the variance.

In addition, there are numerous other problems and deficiencies in the application and MND. The MND should be vacated and the applicant should prepare a full Environmental Impact Report.

1. The applicant can not comply with the requirement that no cannabis operation be permitted within 1,500 feet of a school bus stop. The applicant fails to satisfy the conditions necessary for a variance from this requirement.

The Planning Commission approved a variance to the school bus stop condition, and reduced the setback to zero feet. This action totally frustrates the meaning and purpose of the cannabis ordinance, which the County adopted after a great deal of research and public outreach. Many properties along South Shingle Road can not satisfy the requirement, because school bus stops are located at frequent intervals along South Shingle Road. School buses in this area do not travel down the side roads, so bus stops are densely located along the main road. The fact that there are numerous bus stops along South Shingle Road, which disqualifies many parcels along the road from cannabis operations, is consistent with the goal of protecting school children from the harmful effects of cannabis operations. This conclusion is fully supported by the unanimous resolution of the Latrobe School District opposing the applicant's request for a variance.

The county's Variance Ordinance (Zoning Ordinance Sec. 17.24) requires the applicant to satisfy all four conditions for a variance: a) exceptional circumstances which do not generally apply to similar nearby properties with the same zoning; b) strict application of zoning rules would deprive the applicant of reasonable use of the property; c) the variance is the minimum necessary for reasonable use of the property; and d) the variance is not detrimental to public health and safety or injurious to the neighborhood. The applicant fails to satisfy any of these required conditions.

Applicant's proximity to school bus stops is the same as many properties along South Shingle Road with the same zoning, so the school bus stop requirement is not exceptional under the ordinance. In addition, the applicant currently has a large house and several guest houses on the property, and runs some cattle. Strict application of the school bus stop condition does not impair the applicant's continuing use of his property for a residence, guest houses, cattle ranching, etc. The mere fact that the ordinance precludes a cannabis grow on his property does not impair the applicant's

reasonable use of his property. Furthermore, the variance is detrimental to public health and safety, because children at three bus stops will be exposed to the health and safety risks of a large cannabis grow located immediately adjacent to their bus stops. The variance is also detrimental to the neighborhood due to both the risks to our children and other environmental issues described below. Finally, granting a variance from the setback for sensitive populations in this case, where there are no compelling grounds to do so, will effectively repeal the setback requirement for all other commercial cannabis applications.

Moreover, the fact that large parcels, not adjacent to South Shingle Road, might qualify for a permit in no way supports the applicant's request for a variance. Applicant's treatment under the cannabis ordinance is consistent with the treatment of other small to medium agricultural parcels on South Shingle Road.

The applicant also fails to address the fact that there is a private school for autistic children, and a day program for autistic adults, less than one mile away. Opportunity Acres is located at 7315 South Shingle Road. This school may well not be aware of the application, since the applicant only provided notice to properties within 1,000 feet of the property. This proposed cannabis operation is not consistent with the health and well being of autistic children attending a nearby school.

Finally, there is an historic cemetery, which is still in use, within 1,500 feet of the applicant's property. A commercial cannabis operation, on the scale of an industrial operation, is not consistent with the community's peaceful use of this cemetery.

2. The project does not provide adequate water service for fire protection or for cultivation; the project will also deplete groundwater for neighbors. The MND incorrectly concludes that there is adequate water supply for fire protection and the cannabis grow from a low yield well that is already fully committed to the existing house and guest houses. The MND also incorrectly concludes that the project will not impair ground water supplies for neighboring properties.

The applicant relies on an existing well on the property. The well report, filed 11/24/2014, reports an estimated yield of 1.5 gallons per minute (GPM). As every one who lives with a well knows, this is an extremely low yield. In fact, there are two 5,000 gallon storage tanks on the property which were installed before November 2020, the date of the Latrobe Fire Department Fire Prevention Plan (MND Exhibit B, page 4). The El Dorado Hills Fire Department (EDHFD), in its review of the project dated June 14, 2021, concluded "[t]he project is not currently provided with an adequate means of emergency water supply, storage or conveyance facilities." The MND states that two 5,000 gallon water tanks will provide water for fire suppression. MND XV.a. This is incorrect, because the El Dorado Hills Fire Dept. found the project has inadequate water supply for fire emergencies even with the existing water tanks. The Conditions of Approval prepared by staff for the August 24 Planning Commission hearing acknowledge this major deficiency (p. 11, #43). However, neither the applicant nor staff suggest how the applicant can meet fire emergency requirements. This is a critical

deficiency which puts adjacent homeowners at great risk in the event of a fire at the applicant's operation.

The applicant claims that the proposed project will only require about 150,000 gallons of water per year (.46 acre feet) for the large cannabis grow proposed for the property. The applicant cites EID to the effect that the average single-family home on the west slope uses .45 acre feet of water per year.

The applicant seeks to build 7,825 square feet of greenhouses for mixed light cultivation of marijuana plants. According to a cannabis industry publication, average indoor marijuana plant density is one plant per one square foot of greenhouse. (leafnation.com/cannabis/how-many-cannabis-plants-per-square-foot/ : Horton & Crawford, Jan. 17, 2023) This suggests more than 6,000 plants in this project. Another industry publication reported that a recent scientific review of cannabis cultivation concluded that marijuana growing is extremely water intensive. According to a 2019 survey in Humboldt County (a cooler, wetter climate), indoor marijuana growing used between 2.5 and 2.8 gallons of water per plant per day. (mjjbizdaily.com/cannabis-requires-more-water-than-commodity-crops-researchers-say: Drotleff, Dec. 17, 2021).

We do not know the number of marijuana plants that the applicant intends to plant. For simplicity, we will assume 6,000 plants, a much smaller number of plants than are likely to be planted. Simple multiplication (6,000 plants x 2.5 gallons/day x 365 days/year) demonstrates that the actual water demand for this project is likely more than 5 million gallons of water per year. This is the water demand of almost 36 houses.

The applicant inexplicably claims that the water demands of the project will be met with an existing well with a flow of 1.5 gallons/minute. Yet this well is also the sole supply for an existing large house and four guest houses on the property. Those of us who live on properties with wells are quite familiar with the fact that the existing well and storage tanks are likely barely adequate for the house. What is the source for the 17 acre feet of water for the marijuana grow? Will the applicant seek to drill 36 more wells? What would be the impact to groundwater from drilling so many wells?

Thus, the well on the project property does not provide adequate water service for fire protection or for cultivation. Therefore, the MND incorrectly concludes that there is adequate water supply for fire protection and the cannabis grow. Furthermore, there are no facts in the public record to support the MND conclusion that this project will not impair groundwater supplies for neighboring properties.

3. The project is not compatible with adjoining land uses.

The applicant is allowed to apply for a Commercial Cannabis Use Permit because the property is zoned AG-40, or agricultural. However, this use is not compatible with adjoining land uses. The land to the immediate west is zoned RL-20 and consists of a fully developed rural residential neighborhood of more than 50 homes.

In addition, the land to the immediate north is zoned RL-10, and is also fully developed with single family homes. A major cannabis grow is not consistent with the surrounding residential properties.

4. The project fails to provide adequate electricity services. The MND incorrectly found adequate electricity service from an existing solar array already fully committed to the house, guest houses, and other structures on the property.

The applicant proposes using an existing solar system for the electricity required for this project. Presumably, the existing solar system was designed to supply some part of the electrical needs of the large house, four guest houses, and other structures on the property. There is no evidence that the solar array provides any surplus that can be used for a large cannabis grow project. Thus, the electricity available from renewable sources for cannabis cultivation is much less than claimed in the MND. Indeed, there is likely no surplus solar power available for this project.

A recent cannabis industry publication described the electricity demands for cannabis operations as “astounding.” It stated that “[g]rowing four pounds of marijuana at an indoor facility can consume as much electricity as the average American home uses in a year.” (pullcom.com/newsroom-publications-Putting-the-Green-in-Renewable-Energy-at-Cannabis-Grow-Facilities: Hoffman & Feinn, 5.19.2023).

We do not know how many pounds of marijuana the applicant expects to harvest from this project, but it must be many multiples of four pounds. Thus, the applicant would either need to build a massive additional solar array (if this is even feasible for such a large project), or purchase power from PG&E and also purchase carbon offsets, as required by Section 130.41.200.5.1 of the El Dorado County Code. There is no indication that either solution is feasible, nor that the applicant intends to comply with the clean energy requirements of the ordinance.

Moreover, solar systems only work during the day, and work at maximum efficiency only when the sun is shining. What is the applicant’s source of power at night? In the winter? On any cloudy day?

Thus, this project fails to provide adequate electricity services. The MND incorrectly found adequate electricity for this industrial cannabis cultivation project from an existing solar array which is already fully committed to the house and four guest houses on the property. MND VI.

5. The applicant fails to control odors from the marijuana grow operation.

The applicant has nowhere specified which, if any, active odor control measures will be used to protect neighbors and the public from the notoriously unpleasant odors produced by marijuana cultivation. Thus, we can not determine if any such measures

are likely to satisfy the requirement that the odors produced by the project be fully abated.

6. It is unclear whether the background checks required for a cannabis permit will be satisfied.

Section 130.41.300.4.G requires that no CCUP may be issued until the Sheriff's Office has completed a thorough background check of all owners.

The permit application states that the owner is Robert Sandie. The proposed Findings of Approval state that the background checks for Mr. Sandie and his wife have been completed.

However, according to Zillow, this property was listed for sale from June 16, 2023, through August 21, 2023 (two days before the Planning Commission hearing). We have been informed that Mr. Sandie has, after the Planning Commission approved his variance and CCUP, consulted several real estate brokers to re-list the property for sale immediately after a final approval of a Variance and CCUP. A sale or transfer of the property would, of course, suspend the application for a CCUP. In addition, it is notable that the applicant intends to immediately leave the area, and to abandon responsibility for any problems created by his project.

7. The delays in producing documents relied upon in the MND, and the failure to produce numerous requested documents, has impaired our ability to analyze the CCUP and Variance applications.

Promptly after the Planning Commission hearing on August 24th, we made several phone calls to Evan Mattes, the Senior Planner for this matter, requesting copies or other access to various documents referenced in the materials attached to the Variance and CCUP applications. We requested documents that were not attached to the Legistar file, that is, not publicly available. After receiving no response for 10 days, on Sept. 6th, we visited the Planning Department to request a meeting with Mr. Mattes. He was not available and we did not see the file. On Sept. 8th, we received a late message from Mr. Mattes that documents were attached to the Planning Commission file. This did not respond to our request to review all the other documents that were NOT attached to the Planning Commission file.

About Sept. 18, 2023, the appeals from the Planning Commission decision were set for hearing on October 10th. On Sept. 20th, we sent an email to Mr. Mattes requesting a specific list of documents that were NOT available on Legistar or on the County website. This list included citations to the MND where the documents were referenced. We sent a follow-up email on Sept. 27th, one week later, because we had received no response to our request for documents. We pointed out that this delay was prejudicing our ability to comment on this important matter. We sent copies of this email to two supervisors in the Planning Department. Within hours we received a message from one supervisor, and a response from Mr. Mattes.

The next day, we received 3 documents (the well report and two fire department letters). The well report appeared to be incorrect, because it has the wrong address. After raising this question, Mr, Mattes assured us it was the correct well report because it has the correct APN.

Unfortunately, we did NOT receive the solar panels report, the septic report, or the pest management plan. We also did not receive any engineering report or the consulting agreement with HELIX Environmental Planning, or other documents maintained by HELIX. These documents undoubtedly contain information critical to evaluating whether the project meets the MND requirements. Therefore, we request that the BOS hearing be continued for at least 45 days to allow for the production of requested documents and our review of them.

The three documents we did receive, the well report and two fire department letters, show that the MND incorrectly found compliance with CEQA. Indeed, the documents we received directly contradict the MND. Thus, no Variance or CCUP should be granted until after the application is returned to the Planning Department for a full Environmental Impact Report.

For all of the foregoing reasons, we urge the Board of Supervisors to vacate Variance application V23-0002 and deny the application for a Commercial Cannabis Use Permit CCUP 20-0004. In addition, the Mitigated Negative Declaration should be vacated and the applicant directed to complete a full Environmental Impact Report.

Sincerely yours,

Elizabeth K. Lewicki

George L. O'Connell

Via email

Cc: Evan Mattes, Aaron Mount, Robert Peters

Andrew Nevis, Planning Commission Chair