Public Comment #32
BOS Rcvd. 4-8-24

From: Lee Tannenbaum <lee.tannenbaum@gmail.com>
Sent: Monday, April 8, 2024 11:14 AM
To: BOS-Clerk of the Board
Cc: BOS-District I; BOS-District II; BOS-District III; BOS-District IV; BOS-District V
Subject: Agenda item 24-0688, BoS meeting 4/9/2024
Attachments: Re Agenda Item 24-0688.pdf

Please add the attached to public comments for tomorrow's BoS meeting, Item 24-0688.

In addition, we formally request the agenda item be moved to a time slot as many people work full time and cannot spend the entire day in chambers.

Thanks.

lee

Lee Tannenbaum
CEO Cybele Holdings, Inc.
President El Dorado County Growers Alliance
650.515.2484

EL DORADO

Re Agenda Item 24-0688

Supervisors,

We are voicing our concern that the BoS made commitments and are now changing their minds for reasons which appear to be illogical and irrational.

The two reasons cited are predominantly around CEQA and lack of staff time. Please let me address these two first.

1) EDC cannabis ordinance clearly states that all cannabis activity is to be funded by the industry. Knowing that 4 applicants are well into this process and have paid the county well over a million dollars for services, including an average hourly rate of ~$150 hour, the county is certainly making money from the industry. This does not include the annual monitoring fee or the annual permit fee nor the applicants in process. What is more disconcerting is that the expectation was to have FTE's assigned to the cannabis division. This is not the case. I would venture that the single person assigned is spending less than 1/8th of their time working on cannabis. Since it is a self funded ordinance, the comment that there are no staff available time doesn't make sense. A better comment might be to ask why B&P, who is clearly making a profit on the industry, why are they not properly assigning resources to make the program work better?

   The reality is, most of the work has already been completed with the Planning Commission. So there is very little work to do other than research if CEQA would even be triggered, which based on case law and other counties in the state suggest not.

   The purpose of the adhoc is to determine potential policy changes and general ordinance improvements. Once this work is completed (which it is for the most part), then you, supervisors, can determine with staff what can be done to avoid any potential issues, if any. Making a decision to do nothing is not a plan when you all have acknowledged the ordinance is flawed and needs repair.

2) Concerns about CEQA. CA Law states, at a high level, "The California Environmental Quality Act (CEQA) generally requires state and local government agencies to inform decision makers and the public about the potential environmental impacts of proposed projects, and to reduce those environmental impacts to the extent feasible.". Further comments from the state say, "decisions pertaining to a project that will have a direct physical impact on the environment, CEQA also applies to decisions that could lead to indirect impacts, such as making changes to local codes, policies, and general and specific plans".

   California Business and Professions Code ("BPC") Section 26055(h)(1), which

historically allowed cities and counties to be exempted from having to prepare CEQA review for ordinance. However, since BPC Section 26055(h)(1) sunsetted in July of 2021, municipalities must now comply with the full panoply of CEQA requirements regardless of whether they have a discretionary review process in place for the issuance of cannabis related business authorizations

The Supreme Court reversed the decision of the court of appeal affirming the finding of the City of San Diego that adoption of an ordinance authorizing the establishment of medical marijuana dispensaries and regulating their location and operation did not constitute a project, holding that the court of appeal misapplied the test for determining whether a proposed activity has the potential to cause environmental change under Cal. Pub. Res. Code 21065.

The City did not conduct any environmental review when adopting the ordinance, finding that adoption of the ordinance did not constitute a project for purposes of the California Environmental Quality Act, Cal. Pub. Res. Code 21000 et seq. (CEQA). Petitioner filed a petition for writ of mandate challenging the City's failure to conduct CEQA review. The trial court denied the petition. The court of appeal affirmed, concluding that the City correctly concluded that the ordinance was not a project because it did not have the potential to cause a physical change in the environment. The Supreme Court reversed and remanded the case for further findings, holding that the City erred in determining that the adoption of the Ordinance was not a project.

***Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171**

California Supreme Court Holds Adoption of Zoning Ordinance for Medical Marijuana Dispensaries is a "Project" Subject to CEQA

On August 19, 2019, the California Supreme Court issued its decision in *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, in which the Court unanimously held that the City of San Diego's adoption of a zoning ordinance for medical marijuana dispensaries is a "project" subject to CEQA. Although the Court agreed with the Fourth District Court of Appeal and the city in rejecting the petitioner's argument that the adoption of a zoning ordinance is *always* a project, as a matter of law, under Public Resources Code section 21080, the Court reasoned that the adoption of the ordinance at issue was nonetheless the type of activity which, by its general nature, "is capable of causing a direct or reasonably foreseeable indirect physical change in the environment." As such, the Court held, it is a "project" subject to CEQA.

Background

In 2014, the city adopted a zoning ordinance authorizing the establishment of medical marijuana dispensaries in the city and imposing various restrictions on their location and operation. The ordinance specified zones where dispensaries are permitted, included a

cap on the number of dispensaries in any one district, restricted their proximity to sensitive uses, and imposed basic conditions on lighting, security, and hours of operation. At the time the ordinance was proposed, the city determined that the adoption of the ordinance did not constitute a "project" for purposes of CEQA. The city, therefore, did not conduct any environmental review prior to adopting the ordinance.

Following the city's adoption of the ordinance, petitioner filed a petition for writ of mandate challenging the city's decision not to conduct CEQA review. In the trial court, petitioner argued that the adoption of the ordinance should have been found to be a project under Public Resources Code section 21065, which defines a "project" as any activity undertaken or funded by, or requiring the approval of, a public agency that "may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." According to the petitioner, the ordinance had the potential, among other effects, to cause increased vehicle traffic across the city, increase user cultivation, and concentrate dispensary development-related impacts in certain areas. The trial court rejected petitioner's arguments and upheld the city's decision, finding the petitioner's claims were unsupported by evidence in the record.

On appeal, petitioner reiterated its argument regarding the potential to cause physical changes in the environment, and further argued that the adoption of the zoning ordinance was a project as a matter of law under Public Resources Code section 21080. Section 21080 states that CEQA "shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances ..." Pointing to this language, petitioner argued that the enactment of a zoning ordinance is automatically a project under CEQA, regardless of the potential for environmental change. Petitioner's argument was based in part on the Third District's decision in *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, where the court held that the county's approval of a tentative map—another activity expressly listed in section 21080—was a project as a matter of law.

Notwithstanding *Rominger*, the Fourth District Court of Appeal rejected both of petitioner's arguments, holding that the enactment of a zoning ordinance is subject to the same "project" test as any other activity under Public Resources Code section 21065. Further, the court found no error in the city's conclusion that the zoning ordinance was not a project because it lacked the potential to cause a physical change in the environment. According to the Fourth District, the potential environmental effects raised by the petitioner were unsupported by the record and too speculative to establish a potential to physically change the environment.

The Supreme Court's Review

Seeking to resolve the split between the Fourth District's decision and *Rominger*, the Supreme Court granted review to address two issues: (1) whether, under Public

Resources Code section 21080, a public agency's enactment of a zoning ordinance is always project under CEQA, as a matter of law; and (2) whether the enactment of the city's zoning ordinance was a "project" under section 21065.

The Court began its analysis by placing the dispute into context. As the Court explained, CEQA proceeds by way of a three-step process or "decision tree." First, the lead agency must determine whether the proposed activity is a "project" subject to CEQA at all. Second, assuming CEQA applies, the agency must determine whether the project qualifies for one or more of the many CEQA exemptions. Third, assuming no exemptions apply, the agency must undertake environmental review, namely, preparation of an initial study and a negative declaration, mitigated negative declaration, or an environmental impact report. At issue here was the very first step of the process—the city's determination that the adoption of the zoning ordinance was not a "project" subject to CEQA at all.

Turning to the first issue, the Court agreed with the Fourth District that Public Resources Code section 21080 does not dictate the result as a matter of law. Engaging in a statutory interpretation analysis, the Court reasoned that while section 21080 is ambiguous when read in isolation, the Legislature's use of the statutorily defined term "project" in that section must be read to incorporate the definition of "project" in section 21065. Accordingly, the language in PRC section 21080 that CEQA "shall apply to discretionary projects" must be read to provide that CEQA applies to activities that are both (1) discretionary; and (2) meet the definition of a "project" in section 20165. According to the Court, the specific activities listed in section 21080 are merely generic examples of the type of activities approved or carried out by public agencies to which CEQA *could* apply, however, the mere listing of an activity in that section does not supplant the potential "physical change" analysis required under section 21065.

The Court found further support for its reading of section 21080 in the definition of the term "project" in CEQA Guidelines section 15378, which makes clear the enactment of a zoning ordinance is merely an example of an activity undertaken by public agencies; policy considerations against subjecting activities to CEQA where there is no potential to effect the environment; and the legislative history of section 21065 revealing the Legislature's intent to narrow CEQA's application to activities posing a possibility of an environmental effect.

The Court also refuted the notion that its reading of the statute renders section 21080 mere surplusage, noting that the significance of section 21080 is that it states, in the affirmative, the additional requirement that projects must be "discretionary" for CEQA to apply.

After concluding that the adoption of a zoning ordinance is not a project as a matter of law, the Court turned to whether the adoption of the dispensary ordinance in this case

was nonetheless a project subject to CEQA under Public Resources Code section 21065. The Court disagreed with the appellate court and answered the question in the affirmative.

As the Court explained, the governing decision for the "project" inquiry is *Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372. In that case, the Court observed, "Whether an activity constitutes a project subject to CEQA is a categorical question respecting whether the activity is of a general kind with which CEQA is concerned, without regard to whether the activity will actually have environmental impact." In other words, an agency's task in determining whether a proposed activity is a project is to determine if, by its general nature, the activity is *capable* of a causing physical change in the environment, without regard to whether *actual* effects will occur under the circumstances.

Applying *Muzzy Ranch*, the Court held that the city erred in determining that the adoption of the zoning ordinance was not a project subject to CEQA. The Court noted that the ordinance would permit the establishment of a sizable number of new businesses, which could foreseeably result in new construction. Furthermore, the ordinance could cause changes in vehicle traffic patterns as a result of customers, employees, and suppliers. Finally, the Court explained, the necessary casual connection between the ordinance and these effects was satisfied because the adoption of the ordinance was "an essential step culminating in action . . . which may affect the environment." For these reasons, the Court held, the adoption of the zoning ordinance was a "project" subject to CEQA.

The summary of the above is that the CA Supreme court has stated that counties and cities may change their ordinances and not trigger CEQA unless there are significant potential changes to the environment.

Since the General plan is being updated and will require an EIR, let's not waste a good EIR. Let's put the cannabis concerns into the focused EIR that will be required as a part of the EIR for the General Plan update..

It's not about cannabis being good or bad. It's about the pattern of this Board to use semi-judiciary land-use hearings to make political policy statements in a highly visible manner and then quietly drain taxpayer dollars defending these decisions in court. Our closed sessions are a popcorn machine of land-use lawsuits.

The taxpayers are subsidizing the Supervisor's political posturing to a degree they would never support - if they knew.

It is IRRESPONSIBLE of the Board to not fix language in the ordinance that you know is not implementable or defensible. The language has, and will continue to, attract lawsuits. It is your

duty to correct and improve the flaws that you know are there and have admitted to. Every one of you has acknowledged the ordinance is flawed.

It is also irresponsible of this board to allow for the ever blossoming illegal market in our county. The system is flawed, and your continuing to disallow for the broken ordinance to remain in disrepair is fueling the illegal markets.

As a board, or an individual, your policy decisions are to carry out the will of the people. And the people of our great county have overwhelmingly decided to legalize. Your personal feelings should not come into any policy decision.

Sincerely,

Lee Tannenbaum
CEO Cybele Holdings, Inc
President, El Dorado Growers Alliance.

From: carlton4@citlink.net
Sent: Monday, April 8, 2024 1:35 PM
To: BOS-District III; BOS-Clerk of the Board; BOS-District I; BOS-District II; BOS-District IV; BOS-District V
Subject: EDC-Awarding of Facilities Contracts without competitive bidding- up for consent 24-0321

Dear BOS Persons,

Consent item- 24-0321

I have concerns regarding of the awarding of contracts under the current Job Order Contracting Agreement with Gordian. I believe this agreement was not competitively bid as required by law. The services provided by Gordian are not exclusive to them. There are others that provide the same service at the same or less cost to County. You may have been told at one time Gordian was the only provider of this service. While Gordian many years back may have been the "only game in town", this is no longer true.

I respectfully request to the approval of this consent item be tabled until such time County Counsel can do a review to insure compliance with applicable government codes and laws. The risk of not being above board and adhering to the laws would not bode well for the County.

In disclosure I am not a current residence of EDC. My mother is and has been for over 45 years. I also have an uncle still residing in the County, for even longer. (Dist. 3)

Thank you for your attention to this matter,

Chris Carlton
Carlton4@citlink.net

From: Sharen Robach <bsrobach@msn.com>
Sent: Monday, April 8, 2024 1:35 PM
To: BOS-Clerk of the Board
Subject: April 9th Agenda Item No. 32 (24-0688) - Disband Ad Hoc Committee
Attachments: Robach's letter to the EDC Board of Supervisors.doc

Attn: Clerk of the Board

This e-mail is to request that you forward our attached letter of concern regarding the above-referenced agenda item to the Board of Supervisors for review. Thank you.

Barry and Sharen Robach

Attachment

April 8, 2024

Honorable Members of the El Dorado County Board of Supervisors:

Re: April 9th Agenda Item No. 32 (24-0688) – Disband Ad Hoc Committee

Thank you for giving us a chance to voice our concerns.

1. CC&Rs of residential sub-divisions must be upheld. We realize the County does not enforce CC&Rs, but must notify the permit applicant if they appear to go against the applicant's use. The CC&Rs are presented to the County by the developer for a reason. You wouldn't even consider this use if it were in Blackstone (EDH) or Greenstone (EDC).

2. Let the current ordinances run their course before you change them. You don't even know if they work yet.

3. After harvest, the Cannabis should be brought to a centralized location for processing to remove the plants from residential areas as quickly as possible. Just like as is done with agriculture silos close to transit.

4. Variances should be more difficult to get. The applicant can always make their grow smaller to meet the requirements.

Thank you for your time.

/s/ Barry D. Robach
/s/ Sharen D. Robach

Barry D, and Sharen D. Robach
County of El Dorado

From: Christie Anne Clary <caclary@pm.me>
Sent: Monday, April 8, 2024 1:52 PM
To: BOS-Clerk of the Board
Subject: Agenda item #32 (24-0688) - Disband Ad Hoc Committee"

First, I wish to stay that I am not opposed to cannabis, and I completely understand that the voters in El Dorado county approved the ordinance. To malign those of us with well documented and genuine concerns as "not in my backyard" naysayers is an insult.

Originally, I thought an ad hoc committee could help rectify major problems in the permitting process and project documentation that we discovered in our extensive review of the available facts and reports relating to CCUP21-0002. However, documented conflicts of interest have existed on the Planning Commission that has made recommendations to you. They have also volunteered for the AdHoc committee. This gives the public appearance that easing restrictions on growers is the end game. We have first hand experience with the fact that no one in the permitting process is concerned enough to impartially investigate and address the very real environmental hazards and concerns which we raised when we requested a continuance on CCUP21-0002. These hazards and concerns remain. The project and Mitigation approved for CCUP21-2002 actually increases environmental, health and safety hazards.

I am opposed to approving cannabis operations without following the ordinance as currently written. I am also appalled that submitted reports and recommendations for mitigation are not based on factual, well documented. impartial and expert review.

Do not discount the need for a full EIR.

Do not entertain easing restrictions.

Disband the ad hoc committee and require that an impartial planning department and Planning Commission require adherence to the ordinance as written and approved by the voters.

Require current scientific reports and full investigation of any future mitigation recommendations. Stop relying on hear say. Ensure the process protects all the people and the environment.

Entertaining any changes without having ever followed the ordinance as written is the wrong path.

Christie Clary

Sent from Proton Mail for iOS

April 8, 2024
VIA E-MAIL
El Dorado County Boad of Supervisors
% Clerk of the Board
330 Fair Lane Building A
Placerville, CA 95667
edc.cob@edcgov.us

RE: BOS Meeting April 9, 2024 - Agenda item #32 (24-0688) Disband Cannabis Ad Hoc Committee, etc.

Dear Supervisors:

Thank you for recognizing the importance of pausing the Ad Hoc Committee and for upholding the current Ordinances on all applications (new and existing). We are in support of this agenda item and see the benefit of an Ad Hoc Committee but not at this time. We believe it is premature to appropriately staff this committee given the obvious systemic process and procedural issues recently exposed in many of the current projects (e.g. Green Gables, David Harde, Single Source, etc.).

Hold applicants to current ordinances which were passed by the voters. There is clear evidence of stale and conflicting information on the current projects which has degraded the public's confidence and trust in the County's ability to do their best to fairly serve and protect the public and our lands.

Property Line Setback variances cause more impacts to the public and environment due to the significant mitigation requirements – this is a fact! Evaluate each project on it's own set of circumstances as not all locations in the county are equal. For example, applications near residences, wineries, water tributaries, wildlife, etc. require more studies and mitigation. It is arbitrary and capricious for the County to circumvent a full EIR as this only benefits the Project Owners and disregards the Public and Environment safety and health.

Retract the Board of Supervisor's decision of 2year and 3year Operating Permit Renewals and change back to Annually. There is no supporting evidence these projects should be reviewed less frequently. The County needs to provide strong oversight and partnership with the Growers until these projects have reached a mature and stable state.

All public experience information needs to be logged into the County's database to provide transparency and a basis for future analysis and trending. The neighbor near Cybele Holdings (Lee Tannenbaum's Project) has complained about odor and noise but not registered these complaints to the County - these complaints went directly to Mr. Tannenbaum. Taking Mr. Harde's word that no one complained about his Hemp crop is

not sufficient evidence of the public's experience nor is this crop the same as the commercial cannabis crop.

Engage El Dorado Water Agency and Environmental Management Agency to assist Planning Department in assessing accurate water requirements and accurate assessment of water table.

Engage El Dorado Air Quality Management Agency to assist Planning Department in assessing accurate odor and sound impacts. And for planning mitigation that will work and not impact human and environmental health.

Educate Agriculture Commission as to the water and air quality issues which are involved and identify specific goals of the AG Commission review.

Educate Agriculture Commission and Planning Commission to be objective and spot when an EIR is in the best interest of all stakeholders and environment vs. arbitrarily accepting "less than significant" Mitigated Negative Declarations.

Uphold the 1,500 feet setback for the protection of children, religious gatherings, etc. without subjectivity. As you know, the David Harde property line is zero feet from a registered Bus Stop. Mr. Harde applied for his permit at least 12 years after this bus stop was registered.

Actively screen for conflicts of interest in all phases of the project's life cycle.

Commercial Cannabis in El Dorado County is in the infancy stage; there isn't enough history, data, knowledge, and experience with this type of plant or business acumen to prevent impacts to environmental/human health and safety. The level of mitigation required for Property Line Set back reductions alone is concerning, there are other examples. Please disband the Ad Hoc Committee and uphold and apply the Ordinances without prejudice!

Thank you for your consideration.

Cammy Morreale and Michael Morreale