

MINUTES

1. CALL TO ORDER

Chair Stewart called the meeting to order at 7:00 p.m. Members present: Dan Frasier, Mike McHugh, John Brower, Diana Stewart and Graham Matthews. Staff present: County Counsel Margaret Long and Clerk Ruth Hanover. Director Tippet present 7:03 p.m.

2. PUBLIC COMMENT

Members of the public may address the Planning Commission concerning matters within their jurisdiction, which are not listed on the agenda and to request that a matter be agendized for a future meeting. No action may be taken on these matters at this meeting.

No comments received.

OLD BUSINESS – None.

NEW BUSINESS

3. COMMERCIAL CANNABIS VARIANCES AND USE PERMITS

PW-16-01

Discuss and/or take action regarding the use of “variances” and “use permits” for the purpose of implementing Ordinance No. 315-816 re Commercial Cannabis Cultivation Regulations.

Director Tippet handed out copies of Ordinance No. 315-816, stating in addition to variances and use permits, one of the things he was asked is if the Commission had reviewed the ordinance itself. Tippet said County Counsel is going to go through that real quick.

County Counsel Margaret Long stated this is just an overview, and more importantly she is present just to answer any questions the Commission has regarding the ordinance, or to clarify any issues that it may want to discuss. She said important aspects of the ordinance that pertain to the what the Commission is doing, in its function, starts in Section 5, those are the limitations that have been placed, it talks about the Commission’s role in determining it; specifically, Section 5 talks about where marijuana can or cannot be cultivated under this ordinance. She said the ordinance specifically states that if you are compliant and you get a permit, the Personal Grow Ordinance does not apply, but this ordinance does apply to you. She reviewed the areas where marijuana cannot be grown under this ordinance. She said an applicant can ask for a variance and the Commission will be the one with the initial say on whether there is a variance on this or not. She wants to make sure it knows what the planning use things are and what you are going to be looking at going into the future. Long said there is an appeal process if an application is denied, and currently the initial appeal process goes through the Planning Commission.

Commissioner McHugh stated the requirement for the setbacks calls out specifically that you can apply for a variance, there are many restrictions in zoning districts, such as setbacks. One that we see often, it comes up as a variance, to allow someone to build an accessory building before a residence is built in a residential zone, and none of those say the applicant can apply for a variance, this one does. Are we supposed to read some meaning into this particular one, you can apply for a variance, when none of the others say it? Counsel Long responded no, that’s not to be read into. The law allows you to grant variances, if they are applicable, it doesn’t need to be physically outlined in the ordinance. She said that

is probably done as a way to inform the reader that there is that process available, because this is, and will be one of the issues heavily debated regarding this ordinance.

Chair Stewart asked if the Board of Supervisors is contemplating a Grading Ordinance. Director Tippet responded actually they are; if we weren't dealing with the jail, this, and a lot of other things we are, and had a planner on board, we would be initiating that process right away because we are in the process of getting funds from outside sources to adopt a grading ordinance. He said the State Water Board would like to see it and he has wanted one since the first day he walked in the door, because if there is a problem you have some way to rectify that problem. He said it usually takes about a year, sometimes two, to get through the process, but he wouldn't be surprised if it wasn't discussed this summer. Counsel Long stated the Board has stated in open session that a Grading Ordinance is top priority, the Chair has worked very hard to get funding for it, at least secure it, it's just a process that needs to go to the Board.

Director Tippet stated that he and County Counsel were asked to come in and do a quick discussion on use permits and variances, and what were the applications between use permits and someone who could apply for a variance. To kind of sum it up, a use permit is something that where a property has uses that are allowed, and what usually happens is the zoning code will say uses allowed on this property but you must secure a use permit first. Then in there are other situations like in a Rural Residential area, and the church wants to locate in that Rural Residential area, they go for a use permit if it is allowed by the code. He said we have a couple of examples like that around the county. Tippet said a variance is something where the planning rules don't necessarily allow it, but that there are extenuating circumstances that might take place at some locations in the county that say that you can consider it and make a determination that you want to use a variance, and there are rules that kind of govern that. Tippet said in looking at the staff report Interim Planner John Jelich had provided background on some of the laws that govern the variances. He said he wants to get into what a conditional use permit is and what a variance is and so as he said Trinity County Zoning Ordinance provides a list of allowable uses within the zoning district, and following that list the ordinance provides for another list that are not permitted as a matter of a right, but except you need to have a use permit to allow for it, and that would be a conditional use permit. He said on the back of the staff report is an example of Industrial and is a very good example of where you would run into use permits. Tippet said in Industrial it goes on to say you are allowed to have a use permit for properties that essentially involve welding shop, plumbing shop, wholesale sales and storage, warehouse and mini storage, cabinet shop, auto repair shop, agricultural uses other than hog raising, office uses less than 5,000 square feet, construction storage yards. He said really kind of what those uses are, is they are uses you are expected to have in that type of zoning. Industrial means you are going to have some sort of manufacturing, but they expect you to have manufacturing. Then there is one we hear a lot about is Agriculture, so you have... not necessarily will an application always be agriculture, but sometimes you do and usually it's in a nursery type setting or something similar to that, but there are times when the uses go beyond that and they have impacts. He said what best sums it up is if you look at the zoning for Industrial, even where you are allowed to have a use permit and it actually provides a set of rules that say "you can have this use, but if you have these conditions you need to get a use permit." Tippet said that is the best way to describe where you have things that separate it and in the case of Industrial, a cabinet shop can have it unless they were using more than three gallons per minute in a critical watershed, then they would have to get a use permit, or if they had air quality problems they would have to get what is called a Resource Review from the Air Quality District, that is an indicator that there is a lot of use, they would have to go get a use permit. So even though a cabinet shop less than 10,000 square feet would fit into that use and be used out by right, but the problem is they have a particular condition that kicks in and they need a use permit, but the first one is just the fact that it is allowed by right. The other one is "exceeds noise, or requires a water permit, or generates air emissions, liquid, solid or hazardous wastes, etc. He said it kind of gives you an indicator of what they are looking for, if it is just a standard run of the mill thing it's okay to go without a use permit, but if you have something interesting there then you need to get a use permit. Tippet said

Dollar General (in Hayfork) is a good example of where they didn't go through the process of obtaining a use permit, they were more than 5,000 sq. ft. in a commercial area, so therefore they didn't fit within that parameter, but it said that use would be allowed through a use permit, that's why we had to go through a hearing, we also had to go through the hearing about the variance, but that is one of the factors that kicked it over into that category. He said we talked about uses by right in an Industrial zoned district, but there is also a list of uses that would not be uses by right and you have to get a Conditional Use Permit, and read from that list, stating these will have big impacts and are things that are going to need a lot of input from the community in that good evaluation moves forward. He said that is probably the best way to describe when you have a use permit and when you don't, and what the separations are between them; sometimes though, it does get vague, they will have in there that you are allowed to do this particular use on Industrial property and then they will list a couple of other properties that it will be allowed on such as Agriculture is allowed on Industrial and Rural Residential; the Rural Residential has to get a use permit but maybe the Industrial you do, and sometimes those are the little irregularities we talk about and then there are times when those ones are right on the cusp, the Planning Commission can make a decision that, that should be an activity that is comparable to other activities and be allowed without a securing a use permit. You do have some flexibility in some of the simpler questions such as that to make a determination that allows someone to move forward without having to bring every one back for a use permit, and usually in the code it will say "other activities as determined by the Planning Commission."

Tippett said one of the other things you will hear a lot about is "non-conforming use" and non-conforming use means you build a building and the laws that govern over that building change after you build it, and so you are allowed to use that building by use, but it would be called a "permitted non-conforming use." He said the gas station in Wildwood is a very good example of that, they built a gas station back quite a while ago, it was in an Unknown (Unclassified) classification and they were allowed to build it because of the way the zoning rules were at that time; they operated and things were okay, then the gas station burned down to the ground, and when it burns down there is a provision that you have to do certain things within a certain timeframe to continue to enjoy that non-conforming use, but if you don't do those things then you lose the non-conforming use and have go through the use permit process. He said if you voluntarily knock the building down, then that non-conforming use goes away and you would have to go get a use permit if it requires a use permit; but when you hear the word non-conforming it just means that when it was done it was okay but now it doesn't conform to the rules but it does continue to operate as it does at that period.

Tippett moved on to Authority to approve use permits, stating that the Planning Commission has the main authority but there has been some delegated authority to the Planning Director because essentially there are a lot of things that are on the cusp and you might want to make sure that they are reviewed. He said the Board allows the Planning Director to issue Director's Use Permits and those are rather simple use permits and if they fall within a particular set of rules they are allowed. He reviewed the use permits that the Planning Director is currently authorized to approve.

Counsel Long interjected with respect to the urgency ordinance discussed earlier, as part of the process when you are reviewing potential variances or reviewing potential appeals you are going to get an idea as the Planning Commission of areas that could be potentially be a good Director's Use Permit, something that you are seeing frequently or something you are thinking does require oversight, but not to the extent that you have to bring it to the Planning Commission each time. She said from the Board's perspective, they are looking for that guidance from you as you are going through that, if you see something that would qualify as a Director's Use Permit of bringing it back to them for direction so they can consider it further; which is why we are talking about it in this capacity because you are going to have the first look at a lot of items and going to be able to make those determinations and make recommendations to the Board.

Director Tippett said when you say use permit, it doesn't have to be a yes/no situation. You can say we would like to see the Director have permission to issue use permits, but we want them only under these following conditions, and we want to be very descriptive on them. He said to be quite honest, from a staff perspective, we like it the more when you draw lines because it makes it easier for us to answer to that; when they are very vague, the applicants will usually read it one way and we read it another way, and then there will be an upset because overlap in how one is reading it vs. the other and so they believe we are being unfair to them.

Director Tippett then moved on to variances, stating variances set a rule, but there might be extenuating circumstances that go beyond that rule and allow that particular thing to take place. He reviewed that portion of the staff report regarding State Law and the County Zoning Ordinance. He said of particular importance is the paragraph from California Government Code, Section 65906 reading "Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated." Tippett said that paragraph is really the most important part is you can't be willing to grant a variance to Neighbor A and if Neighbor B has the same situation going on, but you don't like Neighbor B, you can't say "oh I don't like the way you're handling your business, we're not going to grant you a variance because you are messy." He said you can't base it on the applicant, you have to base it on the land use involved on that property. He said if everybody on the block's house is blue and you are going to allow one guy to paint his house yellow, then the next guy comes in and wants to paint his house yellow and asks for a variance, you have to grant that variance because you let that first guy paint his house yellow unless you establish something up front that says every two houses or five houses can be yellow and all the rest can't, then you have established a perimeter that applies to everybody.

Tippett went on to the next paragraph which states "a variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulations governing the parcel of property." He said the best example of that would be you can't allow for a mill to be located on a residential parcel and you can't issue a variance for the mill, so you would tell that guy to go rezone his property and zone it for Industrial. He said there are points where the zoning change is very significant. Tippett then reviewed Section 31 of the Zoning Ordinance.

Tippett stated there are no time limits unless stated in variances, but there may be situations where you want to issue time limits on variances and that would be if you were in the permitting process where it requires annual renewal, or something where there is something being allowed to take place because something on adjoining properties in that area might be doing and it might be a situation where it might change over time; or if you granted that variance, conditions that can be dynamic, and that you might want to go back and review them every once in a while, so you set a time limit on it.

Chair Stewart asked what happens if you grant a variance for someone to have a goat farm because the neighbors are all okay with it, there are no objections, and it fits in with the use of the property basically, so you grant the variance and then the next-door neighbor sells and the new people that come in don't want a goat farm next to them. Director Tippett responded first of all usually we try to avoid issuing variances based on the neighbors saying it's okay. What we do is the opposite and have a hearing; you are going to have people that like it, but what you're really listening for is the people that bring out issues related to what they want to do and see if you can apply that to proper land use. He said let's say we have a public hearing and no one says anything, you as the Planning Commission can make the determination because the neighbors aren't concerned right now, but I have a concern that after it gets put in they might not like it, so what we are going to do is allow for a certain time period and go back and review that, so you would put a time limit on that variance. Counsel Long stated it does run with the land, so if the property is sold it will run with the land until the time limit is reached or it is removed.

Counsel Long stated the most typical part at looking at variances is the desire to look at the effect it has on the neighbors and what we have to remember in this capacity is we are looking at land use issues. So, we are not looking at financial hardship or community benefit or whether it is a worthy cause or something we want to support; we are looking at it strictly from a land use base to determine whether there is a hardship base on the property, not the people involved. She said it is very hard but that's what you want to do, but that's one thing to keep in mind when we are considering variances.

Commissioner Matthews asked if there is any guidance on the time limits. If someone were to establish a business is going to have to invest his money to get that business going and asked what is a reasonable time frame for them to recoup the cost of their investment, is there any guidance for that. Director Tippett responded no, there is nothing he can give you as a specific example of timelines that we issue. He said we don't have anything that is codified.

Commissioner Frasier stated we dealt with that with Mercer Frasier, where they had to come in every so many years for a variance and then when we heard it there was never any issue with it. Tippett agreed stating it was at the rock plant in Mad River. He said again, it was one of those things that do we want it to allow it to go on forever; there is uncertainty, especially in regulatory requirements and if he remembers right in was in the flood plain, so it had things going against it and today it was okay but we couldn't tell if it would be going down the road. He said it allows for the most effective use of the land but it also puts them kind of on notice that it's going to be time soon to move on.

Commissioner McHugh asked if it was a five-year variance and at the end of the five years nothing had changed and they want to keep doing their business, do they have to go through the variance process again. Tippett responded in the affirmative. He stated from a staff standpoint, we don't want to have to bring variances back all the time, but also, we want to make sure we catch it at a period where you would be able to review it where we believe you would want to have a chance to review it.

Commissioner McHugh stated in the spirit of the earlier comment about recommending to the Board when Director's Use Permits might be appropriate; variances he has seen in the statute can't be delegated to staff, they are determined by the Zoning Board, or the Planning Commission in our case, so we can't delegate to staff to say at the end of five years if nothing has changed, give them another one; but could that be converted to a use permit situation, so the Director can just deal with it next time, and if he sees housing is encroaching, then bring it back to the Commission? Counsel Long responded no, for variances you don't get a Director's use aspect to it. So, if there is a point where a variance is something you believe needs to be modified permanently, that's where you go back and change your code and you make it part of the code. But you cannot give away your right to make determinations on individual variances, based on the fact that you are the delegated body who has to hear them. And there is the right to notice of public hearing for anyone who asks for it. She said just to summarize that, she wants to make it clear that variances are indefinite, when you create that variance it is indefinite unless you specifically state otherwise, and there is no guidance on what otherwise means, that is a decision you make while looking at staff situation and looking at the land use aspects of it; but if you don't make a decision on it, it will continue indefinitely.

Director Tippett continued stating what is interesting is if you don't a variance, you can lose the rights to a variance. He said where that comes in quite often is in building, if you are building something and within a certain time frame if you don't build it you know maybe... you don't want to have a vacant property out there and everybody move away then all the sudden a guy comes out and builds something that might be offensive to the new neighborhood, so that's why they put variances on. It's a good example going back to Dollar General, imagine approving that and then ten years later they say okay we are going to use our variance now and you show up. Yes, it would very much upset the new neighborhood. He said the Planning Commission can grant an extension of up to one year for that variance. They have one year to use it, if they don't use it then it expires and they can't come in and ask

for another year extension.

Tippett then moved on to Flood Plain Ordinance Variances stating you are not supposed to build in the flood plain, but with a Flood Plain Permit, which is essentially a variance that allows you to build in the flood plain, we had one two years ago, and that person didn't build their house in the flood plain, so the flood plain permit expired. He said the authority to approve a variance is with the Planning Commission, but it also says that the Planning Director has no authority to approve variances. This differs from his or her limited authority to approve certain use permits and to make minor modifications in Planning Commission issued use permits, as discussed above under the use permit heading. He said also if you look in the Zoning Ordinance on Use Permits, there are some that are very gray but look like they are meant to be intended on issuing a use permit, and there is a provision in the Zoning Ordinance that says that he can issue a Use Permit, a Director's Use Permit, but he's supposed to report to the Commission immediately after he does that, and there's been a couple of times where he has taken action and then reported to the Commission.

Director Tippett stated there are some things included about the CEQA in situations where they are needed, so that is available for the Commission's reading.

Commissioner Brower asked if Director Tippett could come up with some more examples of uses of variances in Trinity County in recent times. Director Tippett responded Dollar General was a good example of a variance request. They had the use permit for the more than 5,000 sq. ft. buildings, but then they had the variance about the setback on the back property line, they were supposed to be set back 20 feet from the property line and they were only set back 5 feet. He said there was another variance, he thinks it was on drainage. But it had a variance in there and you had to take action that the variance was proper to grant and the Commission made findings. He said another that was particular to Chair Stewart was that it is hard to grant a variance when you are already granting other things. Commissioner Frasier stated it was to grant a use permit that would require a variance was the big issue.

Commissioner Frasier asked what we can suggest to the supervisors to do it ministerially. He said if it's a variance Director Tippett can't do it. You can't grant a use permit for a variance to setbacks. Tippett responded yes you actually can. You would not grant a variance but you would say our setbacks should be 20 feet, but in situation X, Y, Z the Planning Director can issue a Director's Use Permit for that, so you can go 10 feet instead of 20 feet if you have these particular situations and the Planning Director has a chance to look it over and review it for a cumulative effect, the Board might be willing to allow the Director to issue a use permit based on those particular things.

Commissioner Frasier asked wouldn't that language have to be in the code before we start going there? Counsel Long responded that is correct, because if you are going to do something of that nature, you are modifying the code to allow there to be discretion to the Director. You will be making recommendations to the Board of Supervisors to actually modify it. It won't be a power of the Commission, you will be making a recommendation.

Tippett stated as we read a little bit ago it says 350 feet to an adjoining parcel or if you were growing cannabis or requesting a permit... Brower corrected him stating it is 350 feet to a residential structure. Tippett agreed, stating to a residence, but use the word variance. He said so variance means every one of those shall come to you. If there is a pattern that develops that you were to want to give flexibility to the Planning Director to make decisions based on certain particular situations; you can ask him to prepare something to bring back to the Commission to recommend to the Board, or we can agendize it and have that discussion and then take a recommendation to the Board, to either modify a particular ordinance in which it was written or modify the Zoning codes that we have available. He said in marijuana that is something that was written for marijuana so you might want to end up revising that particular part of that ordinance, but if it was something more in general that applied to everything then

you would go and ask for that revision to be applied to zoning.

Commissioner Matthews asked if the Commission was going to go over the issues that were presented. Counsel Long stated those were presented more in terms to illuminate you about things that are going to be coming before you. She said what is going to happen is there are some variances as part of the marijuana ordinance that have been submitted, what will happen is they will be presented to you at probably your next meeting and you will actually be sitting in semi-judicial capacity over those, making those decisions. This is just to make sure you know the process and understand what is coming next because she anticipates the next meeting will be a blast of several variances that you are going to have to make determinations on. We wanted to make sure that as you do that, you have in the back of your mind that the Board in looking to see if there are any things that you are seeing on a repeated basis, things that can be fixed to make it clearer, so we don't have to go through the variance process on these things. She said that's why they wanted to have this meeting ahead of time to get your mindset for when they specifically come to you, which she believes will be at the next meeting. Director Tippett stated he thinks he mentioned earlier, we are targeting December 15th as a special meeting and keep the commercial cannabis separate from regular meetings.

Chair Stewart said so we really need to see the kinds of variances and special use permit questions that come up to get a sense of what they are so we can then make some kind of decision as to what we want to ask the Board to do. Director Tippett responded in the affirmative stating that is why he put some samples in there, things that we have seen come across. He said he had to be careful to try to not be specific to any one thing because you know if you are pointing someone out, you have to have the ability for them to come in and be heard without having something specific in there.

Commissioner Brower said he had some questions about variances and use permits. What sort of notice is usually given to neighbors, how far away, how far in advance, what public comment opportunities do they have? Counsel Long responded notices are sent to owners of properties within 300 feet of the requested variance, the person requesting the variance also gets a notice of the time and place of the hearing 10 days prior to the hearing and they have an opportunity to present their case before the Planning Commission. And then any individual who protests it or agrees with it has an opportunity to be heard as well.

Chair Stewart opened the hearing to public comment.

Comments received from Terry Mines of Junction City, Jose Acosta of Friend Mountain area near Hayfork, and Tom Ballanco of Douglas City.

No further comments being received, Chair closes the item to public comment.

Commissioner McHugh asked if it was possible to speak about some of the hypotheticals, and asked if we needed a motion.

Counsel Long responded no, this is for educational purposes so please feel free to talk about them.

Commissioner McHugh said he was thinking about neighborhoods opting in opting out. He said in some sense opt in notion ties to comments about a group of parcels being relieved of setback requirements, because that group is in a grow area, whereas other areas can opt out. He said that concept hasn't been developed by the Board yet, they opted out for the water districts. He said it occurs to him that we can do some recommending to the Board on the notion of setbacks. He asked if Applicant A applies for a variance on a setback because of the 350' issue to a neighboring residence, and the neighbor is also cultivating, you can see where the argument that it is not considered a nuisance can carry some weight, how do you know if the neighbor is cultivating? He

said he doesn't think we can base it on someone walking out and saying there is a garden over there, it strikes him that we would want to say we will grant that variance potentially if the neighbor also applies and has a legitimate application, and now we know the likelihood of that person not finding it a nuisance is probably true, and the unpermitted grow is now a permitted grow so now a variance might make sense. Chair Stewart stated especially since that neighbor will need a variance. McHugh said carrying that example further, if the neighbor sells the residence to a non-grower then we're back to the time limit thing, and it would seem like the variance would run with the permit, and if the permit is renewed then at the time the variance is looked at again the grower is gone and there is a resident there. He said if things don't change and the guy doesn't move away, then he would like to see the grower that had the initial application have to go through a variance process every year. He said we should recommend to the Board that the Director looks at it and says nothing has changed so let's keep it going and make it a Director's Permit issue for the setback issue; unless the whole opt in opt out thing happens to a neighborhood and then this looks like it would fold into that. He said it looks like this would fit in, if a group of cultivators want to opt in and reduce the setbacks mutually then that's an opt in kind of thing to do. McHugh said in the meantime we might consider issuing one year variances, at least the ones that run with permits, until a use permit says it gets renewed upon inspection by the Director unless things change.

Counsel Long stated that is exactly the kinds of things the Board is asking the Commission to look at, is those types of issues that can be resolved with some modifications and prevent you from having to hear fifty variance applications based on adjoining neighbors cultivating. She suggested that is something the Commission might want to direct staff to bring back to you at the next meeting, a formal recommendation to the Board on something of that nature, or you can also wait and hear a couple of variance applications first, but staff is open either way.

Chair Stewart stated personally she thinks that would be wonderful for staff to go ahead and work on that.

Commissioner Frasier stated he had one issue to bring up and the setback variances for adjoining parcels. In past discussions, and like recently they issued a limited number of permits as cumulative impacts; so, if we do a use permit and there are no setback requirements then we can end up with a thousand parcels right next to each other it becomes one solid grow, and that can become a CEQA issue. He said what he is saying is, if you grant a variance because your neighbor is growing also and that becomes a Director's Use Permit, he's open to discussion, but there has to be some sort of a limit set on that so it can't be an entire Trinity Pines Subdivision where it's all 2-acre parcels and they are all grows, so it basically becomes one giant 2,000 parcel grow but there are cumulative impacts there. He said he can see where people are going with this, if your neighbors are doing it then who cares, but then there is the whole CEQA thing of are we still covered.

Counsel Long responded that is something staff can look into, but when you grant a Director's Use Permit there can be provisions in it to prevent this type of cumulative grow from happening. For example, if it would result in the cumulative effect that would trigger CEQA, a restriction can be placed on it so that when the Director is evaluating it he will say it meets this criteria but unfortunately, its cumulative effect would be detrimental to the environment and it cannot go forth. She said we can consider that, it's a valid point.

Commissioner McHugh said he'd like to point out this can happen anyway because 350' setback is from a neighboring residence. You can have no 350' conflicts and end up with a 2-acre grow. Commissioner Frasier responded he realized that, but that limits it to a 2-acre grow. If you take away the setback requirements you could have... Commissioner McHugh said by the 2-acres he means on all the collective parcels, you could have 50-acre grow, you can presume it for all

different parcels with no 350' conflict, the setback doesn't solve any issues. Commissioner Frasier responded what he is talking about is you could be driving down this street and right behind every house, the whole length of the street, you could have a solid wall with only a fence between them, it becomes a CEQA issue. Chair Stewart said but you don't necessarily have to have no setback, you just don't necessarily have to have a 350' setback. Director Tippett stated one way to handle that would be you could, and remember we're talking about a thin line between getting a Director's Use Permit and then still having to come back and get a variance, you can say I will allow it only if one adjacent parcel might be too close. If you had houses that were set 200' apart and you had one house in the middle you might be able to get it for the neighbor, but he can't get it because another neighbor is within 350', so he wouldn't be able to grant a permit for that and then it would become a variance situation where they would have to come in and have that item heard by the Commission.

Commissioner Frasier said he was open to work on it, but he thinks there are a lot of things we need to be mindful of as we do. Director Tippett responded to be honest the more you share, the easier it is to craft something that you as a commission would like to see and take to the Board for consideration.

Commissioner Matthews stated he agrees there is the potential for cumulative impacts when you start granting variances; he has no idea, if you have 4 or 5 parcels all together who are all growing, and they have this 350' to neighbor who isn't growing outside of them, does the cumulative effect of having that many grows together create more of a nuisance.

Chair Stewart asked if this was something the Commission could reach consensus on, that we would like staff to look at this, craft something and bring back to us. Commissioner Matthews said sure. Commissioner Frasier stated we could either do it that way or hear a couple of variances first. Commissioner Brower asked if we do come up with these recommendations we would be recommending to the Supervisors that they change or amend the existing urgency ordinance to be considered by the Planning Commission for a variance. Counsel Long responded in the affirmative. Commissioner Brower said he thinks instead of spending time adjusting the emergency ordinance, we would be better off spending time crafting a really good long term land use ordinance, it could be adopted it within 10 months. Counsel Long rephrased stating when you are making recommendations to the Board, it is the Board's pleasure when they are ready to bring it to a permanent ordinance, so potentially you would be making recommendations for the permanent ordinance.

Director Tippett stated one of the other things he wanted to point out to Commissioner Brower is one of the things that people sometimes forget about the urgency ordinance is, we are also going through the process of environmental review process to determine CEQA impacts that go on with 500 permitted grows and other numbers that might be assigned at a later date. He said he can't guarantee, we might have the rules all squared away, but we still might be taking a look at the environmental impacts as to what's going on. He cautioned that starting a land use policy right now while we are just now starting to kind of get a grasp, we are starting to review what's going on with them environmentally, so that we can answer those questions in a year or two years; that is part of why he would caution the Commission, to start on a long-term thing until we get through a year first.

Commissioner Matthews said the other question is like an email that came to one of the supervisors, are there other scenarios, like this one that talks about being backed up to a national forest so there's no neighbors at all. Commissioner Frasier said then there is no 350' setback, it's a 350' setback from a residence and there isn't going to be one on national forest land, so it's moot.

Chair Stewart stated the consensus is for staff to look at this, craft something and bring back to the Commission.

Director Tippett stated he won't be surprised if on the 15th we do have some variances that apply right to this situation, because there are some applicants that want to continue on with processing their permit, and until we change the rules we are going to continue that. So, you might see some variances that we act on and then we will also have a discussion on this particular item where you can formulate some direction for him to pass on to the Board.

Commissioner McHugh said when you look at the proposal that staff is going to bring back, one thing leaps to mind, particularly the cumulative effect. Six months ago, this commission voted on 500' setback from property lines. That would have had more of an effect of avoiding cumulative effect than the case you are talking about, so he believes there was some spirit of avoiding cumulative effects, so it would be good to see staff's recommendation on that. He said the final comment he'd make is that according to our ordinance, variances are issued due to size, shape and topography, so one question presumably each applicant will be asked – why don't you move the garden 350' away from the neighbor to eliminate that issue. It can't be done in the size, shape and topography land, but if it could be done on the property then the question why is a variance needed. He thinks that's part of application process getting to this point. They might not need a variance if they would move the garden on the parcel, or make it smaller or whatever. He said he's not suggesting that people shouldn't do the business that they want to do but there's some obvious questions that should be asked before it gets to the Commission. Director Tippett stated that is something that you as a commission would evaluate because there might be situations two people that are growing adjacent to each other might say I'd like my garden here because it's close to the house and I know you are doing it so I will locate it over here knowing that we will need a Director's Use Permit or something for that. But you as a commission might say no, we don't want any gardens that are within 350', we want you to make every effort to be out of the way, and then make that as a condition of a Director's Use Permit that, that has been evaluated. He said those are the kinds of things that you can, as a commission, can say we want you to make sure you look at this and make sure that it can't be located over there because of convenience, you do not want that close to a structure and if it's possible to move it, you must move it, and then if that's in there he can't issue a Director's Use Permit, it has to be a variance, and it's up to them to come prove their case to you. Chair Stewart asked can we also specify with a Director's Use Permit timeline, like you can have this Director's Use Permit for 3 years, would there be any value in to that. Director Tippett responded it would ride with the permit, but what he would probably recommend to the Board is that it be something that would be renewed with the permit the following year, then essentially what you would be doing is verifying that the conditions haven't changed. He said probably the biggest thing is going to be when someone moves.

4. **ADJOURN**

The Chair adjourned the meeting at 8:22 p.m.