

**PARADISE PLANNING COMMISSION**  
**February 15, 2011 - 6:00 p.m.**  
**Paradise Town Council Chambers**  
**5555 Skyway, Paradise, CA**

**M I N U T E S**

**CALL TO ORDER**

The meeting was called to order by Chairman Johns at 6:05 p.m.

**PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA**

**ROLL CALL**

Present at roll call were Commissioners Grossberger, Woodhouse and Chairman Johns. Commissioner Bolin arrived at 6:07 pm. Community Development Director Baker and Town Attorney Moore were also present.

**1. APPROVAL OF MINUTES**

**a. Regular Meeting of December 21, 2010**

It was moved by Commissioner Woodhouse, seconded by Commissioner Grossberger and unanimously carried by those present to approve the minutes of the December 21, 2010 Regular Planning Commission meeting as submitted by staff.

**VOTE:** AYES: Commissioners Grossberger, Woodhouse and Chairman Johns. NOES: None. ABSTAIN: None. ABSENT: Bolin and Serna.

**MOTION CARRIES.**

**Commissioner Bolin arrived at 6:07 pm.**

**2. COMMUNICATION**

**a. Recent Council Actions -** Community Development Director Baker reported on recent Town Council actions taken at the February 8, 2011 Council meeting.

**b. Staff Comments:** Community Development Director Baker informed the Planning Commission that Commissioner Phil Serna has resigned from the Planning Commission, effective February 15, 2011, because he has moved to the City of Chico and is no longer eligible to serve on the Paradise Planning Commission.

**3. PUBLIC COMMUNICATION –None.**

**4. CONTINUED PUBLIC HEARING – None.**

## 5. PUBLIC HEARING

### Items recommended to be determined exempt from environmental review:

**ST. THOMAS MORE SITE PLAN REVIEW PERMIT (PL 10-00346)**  
**APPLICATION: Proposal for the expansion of existing church facilities via the construction of a  $\pm 2,585$  sq. ft. rectory and the permanent establishment of two additional portable classrooms upon a  $\pm 6.19$  acre property zoned Community Services (CS) located at 767 Elliott Road, AP No. 052-080-110.**

Community Development Director Baker recommended that the Planning Commission refer the St. Thomas More application to the Planning Director for re-noticing for the Planning Director hearing scheduled for February 23, 2011, as the public notice did not include information regarding proposed tree felling activity. If referred to the Planning Director hearing, there would only be a one week delay in the hearing process. Mr. Baker stated that no letters or commentary have been received, that the construction is proposed for the west side with the portables to be placed on the east side, and if any controversy arises at the Planning Director hearing, the Planning Director is obligated to refer the matter back to the Planning Commission.

Commissioner Johns opened the public hearing at 6:18 pm.

1. Greg Thomas asked if the plan is available for public inspection and that he is concerned about the additional lighting on the site as he is an adjacent property owner on the Luther Drive side.

Mr. Baker stated the plans are available for inspection at the Community Development Department and explained that the Paradise Municipal Code requires shielding of lighting and if there is a problem, there is an opportunity to address it during the site plan review process.

Chairman Johns closed the public hearing at 6:20 pm.

It was moved by Commissioner Bolin, seconded by Commissioner Woodhouse, and unanimously carried by those present to refer the St Thomas More Site Plan Review Permit (PL 10-00346) and Tree Felling Permit (PL 10-00431) Applications to the Planning Director to re-notice for public hearing on February 23, 2011 for consideration and possible decision making action rather than delay the project to the next regularly scheduled Planning Commission meeting on March 15, 2011.

## 6. OTHER BUSINESS

- a. **Discussion:** Proposed measures to be taken by the Town to regulate medical marijuana dispensaries and medical marijuana collectives and cooperatives with the development and possible adoption of new zoning regulation.

Community Development Director Baker informed the Planning Commissioners that this item is a workshop discussion and is scheduled to provide information to the Commissioners about what might be coming to them in the future, and that no decision is being requested. Mr. Baker referenced the ordinances adopted by the Town Council that established a moratorium on the

establishment of dispensaries, collectives and cooperatives to give the town an opportunity to study the issue and to discuss possible measures to regulate those types of facilities. He stated that a committee has been formed by the Town Manager that is comprised of a Council Member, staff members and the Town Attorney to assist in the study of this issue and that Town Attorney Dwight Moore would make a presentation tonight and lead the discussion on this subject.

Town Attorney Moore referenced the packet of information provided to the Planning Commissioners that includes copies of statutory and case law relating to medical marijuana, as well as copies of local legislation proposed and adopted relating to medical marijuana. Attorney Moore reviewed the text of Proposition 215 which was approved by the voters in 1996 and known as the Compassionate Use Act of 1996. He stated that this does not legalize medical marijuana, but exempts patients and primary caregivers who obtain and use marijuana for medical purposes from criminal prosecution. Attorney Moore stated that the Town cannot limit the scope of state law, and that cities can determine land uses, or sites, for collectives or distribution facilities, and that the Town will be attempting to determine what zoning districts, if any, would be appropriate for collectives dealing with medical marijuana. What the Town will not be dealing with in any detail is the individual person who is a qualified patient or primary care giver. As a general rule, qualified patients and primary care givers can grow, cultivate and possess marijuana on their own property and a city is very limited with how they can regulate that activity. A city can regulate where plants can be grown, so many feet from a neighbor's home for example, whether plants should be shielded from the neighbors, and state a limitation on area used, such as 50 square feet.

Attorney Moore explained that State law does not pre-empt a city's ability to regulate medical marijuana collectives, dispensaries or cooperatives that collectively grow or possess marijuana, and in no way prevents local governments from having laws that are more restrictive. Mr. Moore discussed recent legislation that modified state law to indicate clearly that cities have the right to regulate collective types of facilities and sets out minimum standards such as requiring location to be outside of a 600 foot radius of a school.

Attorney Moore also discussed legislation adopted by other cities, for example, Grass Valley recently adopted an ordinance that bans collectives and dispensaries. He stated that some cities have chosen not to regulate at all, because if a land use is not specified as an allowable use within a zoning code, then the use is prohibited. Some cities have regulated through a use permit that is heard by the Planning Commission and some have chosen to regulate growing areas.

Commissioner Johns asked if individuals are included and the Town Attorney clarified that the legislation would apply to groups of individuals.

Commissioner Bolin asked if all three names referred to the same thing and Attorney Moore explained the differences between a dispensary, which relates to a business that is selling to a qualified user or primary care givers, and a collective or cooperative which relates to a group of qualified users or primary care givers growing medical marijuana together as a group.

Commissioner Grossberger asked if there is a legal limit for an individual, and Attorney Moore stated that provision was struck down by the court. The limitation was adopted by the State legislature after Prop 215 was enacted. Attorney Moore stated that the number of physical plants can be regulated for health and safety reasons. There have been a number of fires associated with the growing of marijuana indoors, so there is also a need to think of health and safety issues

as it is not only a zoning matter. There needs to be criteria on how the sites are regulated. Grass Valley chose to regulate by eliminating collectives, dispensaries and co-ops in the zoning code.

Commissioner Grossberger asked if primary care givers may have more than one patient and Attorney Moore stated that they would have to meet the definition of primary care giver and demonstrate the relationship.

Commissioner Bolin asked what is an operator and Attorney Moore explained that is anyone operating one of these types of facilities.

Commissioner Johns stated that since the dispensaries are not open to the public, there would be a problem in regulating them as a business. Attorney Moore stated that cities are regulating the activity, on land, essentially dealing with a land use that affects an area and impacts to the neighbors, and is not regulating the business. Commissioner Bolin asked how a business (a dispensary) can not be open to the public, and Attorney Moore stated that it would be illegal for a dispensary to be open to the public.

Commissioner Grossberger asked, since medical marijuana cards are not mandatory, how does one determine who is a patient and how can a collective, dispensary or cooperative be held responsible for providing to non-patients. Attorney Moore stated that is a problem as there is no mandatory requirement for a patient to have a card and perhaps the dispensary, collective or cooperative could be held for failure to ask for a card or proof of a person being a primary care giver.

Commissioner Johns asked about fees and Attorney Moore stated that administrative fees could be assessed for the permit as there is not supposed to be a profit from fees. The Attorney General recommends that collective operations organize as a non-profit.

Commissioner Bolin questioned a business that could operate without making a profit. The Town Attorney stated that the operators are working as a group as it is easier to cultivate collectively, and confirmed that it did not mean that money would not change hands and that there would be actual costs associated with the operation. Attorney Moore stated that a city would have to conduct an audit to know what was occurring within the business, that there would have to be a provision in the ordinance, and investigations would depend on circumstances, as there would need to be a reason to investigate. Mr. Moore also confirmed that signs could be addressed in an ordinance and that there would be difficulty in applying different rules for this type of business than those applied to any other business.

Commissioner Bolin stated that pharmacies already sell marijuana and asked if anyone has tried to use this venue for sale of medical marijuana as those dispensaries are already here. Attorney Moore stated he did not have an answer as to why the pharmacies would not sell something other than the synthetic marijuana, that this type of pharmaceutical marijuana is manufactured in a lab and that the Town does not regulate pharmacies, just the location, signage, etc.

Commission Woodhouse stated that it has been over a year since Planning Commission had a hearing on this matter that the Commission was looking for language that would keep the Town out of the situation that the City of Claremont experienced from banning dispensaries. Mr. Woodhouse asked if the rule applies if a collective or cooperative is not allowed, then it cannot be permitted. Attorney Moore stated that it could under the same legal concept that if you don't

say it's allowed, it's disallowed, but that the problem with collectives is that the State law talks about collectives. There is no question regarding dispensaries, as they are not mentioned in any of these laws and are illegal. Even if a dispensary limited the business to qualified patients and primary care givers, they would be illegal.

Commissioner Grossberger asked if collectives are defined, and the Town Attorney stated that he doesn't recall a definition in the State law and that the Town would establish a definition.

Commissioner Bolin clarified that there is a committee formed to develop measures that consists of one Council Member, Police Chief, Town Attorney, Community Development Director, Town Manager, and Assistant Town Manager.

Commissioner Woodhouse stated that he thinks whatever is the outcome with any legal challenge to the Grass Valley legislation will be the linch pin as to whether or not to prohibit totally or to regulate.

Commissioner Johns stated that currently our zoning language has no mention of collectives and asked if that means they are prohibited. Attorney Moore stated they are prohibited to the extent provided in the City of Claremont case wherein the city brought action against an operator of a dispensary.

The Attorney and the Planning Commissioners further discussed the challenges regarding collectives in light of the fact that collectives are specifically mentioned in State law and discussed whether or not there would be instances wherein local law would trump State law with regard to banning or prohibiting collectives and whether or not the State law prohibits a city from prohibiting these types of facilities.

Attorney Moore stated that the Town's ordinance extends the moratorium for ten months and 15 days after the adopted date, and that the Town can adopt a one year extension after that.

Community Development Director Baker stated that the Town Council articulated an expectation that information would be brought back to them sooner, rather than later, and that the Town Manager would like to complete the report on measures taken by the Town in time for the May 3, 2011 Council Meeting. Attorney Moore stated that this is just the first meeting with the Planning Commissioners to familiarize them with where they are and what they are doing, that he has provided information for the Commissioners to review and that the Commissioners could come into the Town Hall and ask questions of staff.

Commissioner Bolin suggested that a Planning Commissioner participate on the committee formed by the Town Manager so they could attend the meeting and report back to the Commission and Community Development Director Baker stated that he would take that suggestion to the Town Manager. Commissioner Grossberger volunteered to be on the committee and other commissioners present concurred with this direction for the committee.

The Town Attorney informed the Commissioners that there is a movement that the State has not embraced to create State-wide law on this matter.

Chairman Johns opened the matter for public comment.

1. Jon Remalia explained to the Planning Commission that he has a serious lung condition, that medical marijuana provides relief for problems caused by the medications required for the lung condition, discussed his idea for establishing a grow room for patients to produce what they need for medication for a year, that it could be done without infringing on schools or churches, would control odor and would not be seen from a public area, which entices crimes. He discussed the Mendocino ordinance which requires growers to go to the Sheriff's Department for a permit and which issues zip ties for the allowed number of plants and only allows a sign for the address. He also stated that there is a requirement that disallows establishment within a certain distance from churches or schools which effectively rules out locations in the downtown, on Pearson Road, and along most of Clark Road and discussed the access regulations and security for a location in Chico where he obtains his medical marijuana.

Chairman Johns closed the public comment.

The Planning Commissioners concurred with the suggestion that one Planning Commissioner participate on the committee formed by the Town Manager to make recommendations regarding measures to be taken by the Town to regulate medical marijuana dispensaries and medical marijuana collectives and cooperatives through the development and adoption of new zoning regulations; accepted Commissioner Grossberger's offer and appointed her to be the representative on the committee; and, directed the Community Development Director to take the recommendation forward to the Town Manager.

## **7. COMMITTEE ACTIVITIES**

### **a. Status Report: Paradise RDA Advisory Committee Meeting**

## **8. COMMISSION MEMBERS**

### **a. Identification of future agenda items (All Commissioners/Staff)**

Community Development Director Baker informed the Commissioners that (1) The Annual General Plan Implementation Status Report needs to go to Council by June 1<sup>st</sup>, so it will come to the Commission in March; (2) That an annexation application for a single applicant will come to the Commission in March (exempt from CEQA); and, (3) Updated the Commission on the status of the planning for the Wal Mart Project.

## **9. ADJOURNMENT**

The Planning Commission meeting was adjourned at 7:36 pm.

  
Chairman

Attest:

  
Planning Commission Secretary