

**TOWN OF YUCCA VALLEY
PLANNING COMMISSION MEETING MINUTES**

MARCH 3, 2009

Chair McKoy called the regular meeting of the Yucca Valley Planning Commission to order at 7:00 p.m.

Commissioners present: Chair Dennis McKoy, Commissioners Shannon Goodpaster, Dawn Rowe and Margo Sturges

Commissioner Robert Lombardo requested and received an excusal from attendance because he was out of town.

Chairman McKoy led the Pledge of Allegiance.

APPROVAL OF AGENDA:

Commissioner Goodpaster moved that the Agenda be amended to remove approval of the minutes of the January 6, 2009 meeting and approved as amended, which motion was seconded by Commissioner Sturges and passed unanimously by voice vote of the Commissioners present.

PUBLIC COMMENTS: None

PUBLIC HEARINGS: None

DISCUSSION ITEMS:

1. MEDICAL MARIJUANA

Staff requests a policy discussion and direction regarding the establishment of an Ordinance to prohibit or regulate Medical Marijuana Dispensaries.

With reference to the complete printed staff report provided in the meeting packets and preserved in the project and meeting files, Associate Planner Robert Kirschmann presented the project discussion to the meeting.

At its meeting of December 11, 2008, the Town Council adopted an Interim Urgency Ordinance establishing a moratorium on the establishment of medical marijuana dispensaries. This moratorium remained in effect until January 25, 2009. On January 08, 2009 the Town Council extended this moratorium until November 23, 2009 through ordinances 196 and 197.

Staff has surveyed all cities in Riverside and San Bernardino counties. There were a total of 49 jurisdictions surveyed, including the counties. A chart with more detail is attached for the Commission.

Based on this research, staff received the following responses:

- 30 jurisdictions have an ordinance prohibiting medical marijuana dispensaries.
- 5 jurisdictions have no ordinance in place, but do not allow them because they are a violation of federal law.
- 5 jurisdictions have no regulations in place and are unsure how they would respond to the request
- 4 jurisdictions have no ordinance in place, but do not allow them because they are not listed as a permitted use in the Development Code.
- 2 jurisdictions did not respond
- The Palm Springs City Council approved up to 2 medical marijuana dispensaries by ordinance adopted February 18, 2009. The second reading of the ordinance has yet to be scheduled. Hemet has no ordinance in place but would require a Conditional Use Permit.
- 1 jurisdiction had an urgency ordinance which has expired.

No actions have gone before the California Supreme Court on this matter. Within the court system the 4th District, which includes Yucca Valley, has ruled on the City of Anaheim's prohibition. The City of Anaheim prevailed in Superior Court, and therefore Anaheim's prohibition was upheld. The matter has yet to be ruled on in the appellate court.

If the Town chooses to enact a prohibition, the Town may be required to amend that ordinance in the future, based upon those future court rulings. The question before the Commission is whether the Town wants to allow medical marijuana dispensaries to operate in the Town or prohibit them.

Ms. Rowe requested an explanation of the difference between a moratorium and an ordinance that prohibits.

Mr. Kirschmann replied a moratorium is for a temporary period of time to allow the jurisdiction the opportunity to develop an ordinance that would either prohibit or regulate dispensaries.

Deputy Town Manager Shane Stueckle commented there is a special law available to cities giving cities the ability to establish a moratorium. There is approximately a 2 year time period for cities to study, hold public hearings and put into effect the final regulations. For Yucca Valley the question is does the Town want to establish land use regulations that would allow medical marijuana dispensaries. If the answer is yes then discussions would continue to determine in which land use zoning districts such as industrial or commercial, and what other types of standards need to be looked at. If the answer is no then staff would come back with an ordinance that prohibits the establishment of the dispensaries.

The Town used the special moratorium law a few years ago when a large cell phone tower was proposed on a prominent ridgeline. We had no special ordinance to deal with that. The Town Council put a moratorium in place for wireless communications facilities until the public process could be completed and the standards established.

Ms. Rowe asked how a prohibition would affect the existing dispensary.

Mr. Stueckle replied that issue would be tied into the ordinance. We don't have an answer this evening because staff would have to look at what approaches are available to enacting a prohibition. It is not uncommon in a situation like this for the existing business to be amortized or given a certain amount of time to operate and then they must close. We won't know until after the discussion this evening and staff begins working on the ordinance and evaluates the alternatives.

Ms. Sturges asked if there is a difference between a dispensary and a co-op.

Mr. Stueckle replied for Commission discussion purposes the issue is the same.

Ms. Sturges asked if we could be mandated by Federal Law at a later date to not allow dispensaries and isn't there a conflict between State and Federal Law.

Mr. Stueckle replied there is a conflict between Federal and State laws. The Drug Enforcement Agency has been performing raids in CA on dispensaries. During the recent Presidential election the issue was discussed and there was some indication that those raids would cease after the change in administration. Staff does not know if or when those changes would occur. Today the Federal law prohibits and CA law allows dispensaries. The issue this evening is which regulation does the TYV want to enact.

Ms. Sturges requested and received confirmation that the City of Twentynine Palms does not have an ordinance. She asked if this is a question of zoning or whether or not TYV wants to allow them anywhere.

Ms. Stueckle replied those questions are the same. The operation would be a land use issue so that is the matter before the Commission.

Mr. McKoy requested information about the current dispensary.

Mr. Stueckle replied there is an existing facility that has been in operation for a few months. The Town did not have any regulations in place when they opened. They are located in the Monterey Business Center. To the best of our knowledge that is the only one.

Mr. McKoy opened the discussion to the public.

D J Ross of Yucca Valley stated there has been a lot of media coverage about the issue and whether to oppose dispensaries because of an incongruity between Federal and State law was settled by the US Supreme Court who rejected the argument brought by San Bernardino and San Diego Counties. They ruled in favor of CA law superseding in CA. Recently the Director of the Dept. of Justice ("DOJ") stated that it is now policy to uphold State laws and allow the States to regulate themselves. The DOJ will not interfere with either businesses or individuals. As early as March 26th the CA Senate will be voting to legalize medical marijuana for everyone over 21. CA reported 6.6 billion dollars in tax revenues from dispensaries currently in operation. Unfortunately staff only looked at 2 counties, one of which is San Bernardino. San Bernardino lost a law suite with the State. Other counties have established ordinances and have done most of the work for the Town. Those counties are operating successfully with medical marijuana

dispensaries in business. This is a golden opportunity to capture and grow as a community without taxing individuals.

Chantelle Autry of Yucca Valley stated she graduated high school at 17 and went to college. She just graduated from college and is now working a full time job. She has used medical marijuana and is registered. As a patient it really does help her and it should be allowed.

Daniel Woods of Yucca Valley stated he was diagnosed in 1992 with 2 life threatening illnesses. He lost over 60 pounds. He started smoking marijuana to put on weight. He did gain weight and improved. He did not realize marijuana was not accepted in TYV when he bought his home here. He went without it and again lost weight. His social worker told him he had to do something to keep weight on. He was lucky to find the dispensary here and has again regained weight. He is proof that it works.

Brandon Logan of Joshua Tree stated he works full time and has smoked medical marijuana for almost a year. It helps him quite a bit. He asked for the Commissioners consideration.

Jane Fortner of Joshua Tree stated she has been diagnosed with rheumatoid arthritis and other problems. Medical marijuana is not a criminal activity when you are so sick you can't get out of bed or your hands don't work. There is nothing else that helps here and pharmaceuticals can be very addictive. Nobody wants to be addicted to pharmaceuticals. She sees marijuana as very helpful to a lot of people. She hasn't seen any criminal activities around it. She feels much more comfortable having a dispensary than going to the street to buy it. Many people don't have transportation to Palm Springs to get help.

Scott Logan of Morongo Valley stated what started as a moral issue became a social issue and now has become an economic issue. We have 5,000 years of experience with marijuana. It is not associated with violence as are other substances like meth, alcohol and many prescription drugs. The side effect of cannabis is mild euphoria, a sense of well being. It is a far safer substance than others. It would be in the best interest, especially in the face of our economy, to keep the dispensary open and find ways to legislate and tax it as the Federal government has stated it plans. To do otherwise would be arbitrary, unnecessary and capricious. We should at least check out the Palm Springs example and give this dispensary a chance to prove itself. He has been a care giver for quadriplegic and paraplegic patients who used it for neural disorders. Please consider keeping it open. Food handler's permits should be required for people who handle the edibles necessary for people who can't smoke. People need it medicinally where other substances do not do the job.

Eric Moorhouse of Yucca Valley stated alcohol is legal to buy at the age of 21 and is more dangerous than the substance use of marijuana. He grew up around both substances and it is better to use marijuana.

Mark Cain of Yucca Valley stated he is a nurse practitioner and is a licensee with DEA and a prescriber. He believes there are some limited uses for medical marijuana but unfortunately CA chose to enact a law that does not regulate the content of the marijuana that is available in these dispensaries. He cannot write a prescription for 50mg. There are not quality controls built into the law. If the TYV prohibited a

dispensary, that does not prohibit an individual from cultivating and using their own. We all know the hazards of smoking anything, no matter what it is. Medical marijuana is not controllable because there is no control of the content of THC in the cannabis available in dispensaries and that is the problem. If the Council approves an ordinance for dispensaries he suggests language be included to control who the prescribers and users are and that they be registered. It should be limited to residents of the community. We have a problem with prescribers whose licenses have been suspended because of over-prescribing.

The following people did not wish to speak but requested in writing that their support of medical marijuana dispensaries be recorded in the record: Gary McCormick, Rose Cole, Matthew McCormick, Jesse McGuire, Amber Heard, Ryan Autry and Joseph Robertson. Patrick Billings is in favor of dispensaries with regulations.

Lori Green of Yucca Valley is opposed to medical marijuana. More than 56 cities in CA have also banned these businesses including Desert Hot Springs. In September of 2008 guidelines were established by the State Attorney General to help ease the confusion between the State vs. Federal laws. Many cities are having problems ensuring that dispensaries are operating under those guidelines. Under the guidelines marijuana is not to be smoked at or within 1,000 feet of a school or youth facility. The guidelines state a collective or co-op that does not comply is operating outside the protection of Prop 215 and SB 420, therefore breaking the law and may be subjected to arrest and criminal prosecution under current CA law. The dispensary in the TYV is currently operating within 1,000 feet of 2 separate pre-schools as well as another youth facility. It has been noted that customers are frequently and illegally smoking in the parking lot and/or on the dispensary grounds. As a town we are left trying to regulate a business loosely based on misinterpretations of laws which are in conflict with Federal law. This is exactly why medical marijuana should not be allowed in our town. It is absolutely imperative to insure compliance with both State and Federal laws that these stores are not allowed within our town.

Mr. McKoy closed the discussion to the public.

Ms. Sturges stated this is a question of compassion and in certain cases medicinal marijuana is helpful. She is glad it will be available in Palm Springs. She will try to help anyone who needs transportation to the dispensaries in Palm Springs. She believes Yucca Valley is not the place today for a dispensary out of concern for our children. We are not equipped to handle the problems which may arise from dispensaries or co-ops. We have to think about the example we are setting for our kids.

Mr. Goodpaster stated this is a tough issue for the Planning Commission or Town Council to tackle because it is such a social issue. We have to look at the land use issue. He knows there are a lot of reports with very good findings to support medicinal use of marijuana. He agrees that more regulations of the quality and content of marijuana at dispensaries is an issue. This should be a pharmacy issue where it can be in a controlled environment. A dispensary is not the best solution for this town at this time. The location of the current dispensary is not suited for the use because of the proximity of pre-schools, a karate school and a ballet studio. Medical marijuana dispensaries are not suited for the Town now.

Ms. Rowe stated CA law allows the growing of medical marijuana for your own consumption for health reasons. No one wants to see anyone suffer unnecessarily. The ability to grow your own outweighs the loss of a dispensary in our town. She is in opposition to having dispensaries in Town and encouraged staff to develop an ordinance to prohibit them.

Mr. McKoy stated control of usage and under what conditions is the key question. Medical marijuana is available in Palm Springs and he is not in favor of having dispensaries in Yucca Valley.

Mr. Stueckle thanked the Commission for the discussion stating, based upon comments this evening, staff will begin preparing an ordinance to prohibit medical marijuana dispensaries within the Town and coordinate that with the Town Attorney's office.

2. REORGANIZATION OF THE PLANNING COMMISSION

Consensus of the Commission was to continue the reorganization to the next meeting.

CONSENT AGENDA:

Mr. Stueckle commented 2 land uses items are included for review of minor changes and the General Plan Annual Review is included on the Consent Agenda because it was just reviewed by the Planning Commission a few months ago and this is a change from a fiscal year to a calendar year approach.

3. GENERAL PLAN ANNUAL REVIEW for CALENDAR YEAR 2008

A request that the Planning Commission move to accept and file the General Plan Annual Report for the Calendar Year 2008 and forward that recommendation to the Town Council.

4. Conditional Use Permit 09-06, Addition of Art Work Morongo Basin Transit Authority, Yucca Valley Transit Center

A proposal to install one large main sculpture and four smaller sculptures in the landscape planter adjacent to Yucca Trail located at 57430 Yucca Trail and identified as APN's 595-182-02, 03, 04 & 05.

**5. Site Plan Review, SPR 02-07 – Art Miller Building
Request to allow additional Uses**

The applicant requests approval to lease the building to uses other than the general office designation originally approved by the Planning Commission: limited to uses which are permitted within the Commercial Neighborhood land use designation and that require the same amount or less parking than general office. The project is located on the SE corner of Barberry and Twentynine Palms Highway and is identified as APN # 595-371-21

Mr. Goodpaster moved to approve the 3 items remaining on the Consent Agenda. The motion was seconded by Ms. Rowe and passed unanimously by voice vote of the Commissioners present.

STAFF REPORTS AND COMMENTS:

Mr. Stueckle commented the second phase of the Copper Hills development was sent back to the applicant by the Town Council. The project changes have been submitted, additional changes have been requested and if the additional changes are made in a timely manner the project may return to the Town Council in May or June. A project immediately to the north of Copper Hills may come before the Planning Commission in May or June. A new application has been received for the Town Center Mall (former K-Mart building) to add a drive-thru restaurant on the NW corner of the project site along with a sit-down restaurant and retail space on the NE corner of the site.

FUTURE AGENDA ITEMS:

Mr. Kirschmann announced the following future agenda items:

March 17, 2009:

SPR 05-08 – Gateway Professional Center – 2 story, 9,600 s.f. medical-professional center – 55575 Twentynine Palms Hwy.

CUP 01-08 – Warren Vista Center (Rite Aid and Fresh & Easy) Sign Program will not be on the agenda. The revisions have not been received by the Town.

March 24, 2009:

Special joint Town Council & Planning Commission meeting – Native Plant Ordinance.

April 7, 2009:

TM 17985 – Golestani – divide 20 acres into 20 single family residential lots with paved public streets, curb, gutter, sidewalks, etc. – NE corner of Palomar and Juarez

COMMISSIONER REPORTS AND REQUESTS:

Mr. Goodpaster welcomed Ms. Rowe and Ms. Sturges to the Commission

Ms. Sturges thanked the Town Council for the opportunity to serve and complimented the staff. She congratulated MBTA for the quality of the art project. She thanked everyone who attended for their comments.

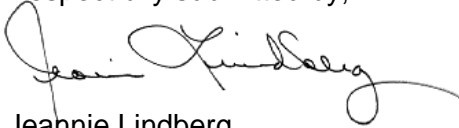
Mr. McKoy welcomed Ms. Rowe and Ms. Sturges to the Commission

ANNOUNCEMENTS:

ADJOURNMENT:

The meeting adjourned at 7:55 p.m.

Respectfully submitted by,

A handwritten signature in black ink, appearing to read "Jeannie Lindberg", with a long, sweeping underline.

Jeannie Lindberg
Administrative Assistant III