

**SAN MIGUEL COUNTY PLANNING COMMISSION
MINUTES – REGULAR MEETING**

August 12, 2020

On-line Meeting

Present: Lee Taylor, Chair
M.J. Schillaci, Secretary
Ian Bald, Member
Josselin Lifton-Zoline, Member
Tobin Brown, Jr. Alternate

Absent: Matthew Bayma, Sr. Alternate
Pamela Hall, Vice-chair

Planning Staff Present: Kaye Simonson, Planning Director
Troy Hangen, Senior Planner
John Huebner, Senior Planner

County Staff Present: Amy Markwell, County Attorney
Nancy Hrupcin, Legal Assistant, County Attorney's Office

9:16 a.m. Chair called the meeting to order.

APPROVAL OF MINUTES

MOTION by Ian Bald to approve the minutes as written.
SECONDED BY Josselin Lifton-Zoline. **VOTE PASSED 5-0.**

Lee Taylor	<u>Aye</u>	Nay	Abstain	Absent
Pamela Hall	Aye	Nay	Abstain	<u>Absent</u>
Ian Bald	<u>Aye</u>	Nay	Abstain	Absent
M.J. Schillaci	<u>Aye</u>	Nay	Abstain	Absent
Josselin Lifton-Zoline	<u>Aye</u>	Nay	Abstain	Absent
Matthew Bayma	Aye	Nay	Abstain	<u>Absent</u>
Tobin Brown	<u>Aye</u>	Nay	Abstain	Absent

LAND USE CODE AMENDMENT RECOMMENDATION: SECTION 5-29 MEDICAL AND RETAIL MARIJUANA FACILITIES & ESTABLISHMENTS, TO ALLOW LIMITED OUTSIDE COMMERCIAL CULTIVATION OPERATIONS.

Those who addressed the commission: Kaye Simonson, Planning Director
Greg Powers, Division of Water Resources
Mark Caddy, Colorado Parks and Wildlife
Dan Covault, San Miguel County Sheriff
Nolan Murphy, Alpine Wellness

Kaye Simonson, County Planning Director, presented the Land Use Code Amendment to Section 5-29, to allow limited outside commercial cultivation operations for medical and retail marijuana facilities and establishment that the BOCC had directed the Planning Department staff to prepare. The major change proposed is to allow limited outdoor commercial marijuana cultivation operations. The new regulations would allow 20,000 square foot areas of outdoor cultivation on 35 acres or more. Growers could have green houses, or outdoor cultivation areas, or any combination thereof.

There are two options to choose from in the draft amendment. Option 1 retains the LUC's current limitation on a total of three cultivation areas on a parcel greater than 35 acres in size, which would allow about 600 plants total, whether indoors or outdoors. Most premises are licensed by the State for more plants. Option 2 would allow the applicant to request the number of cultivation areas that would allow them to grow the number of plants allowed under their State license. Alpine Wellness has a Tier 1 Retail State license, which allows up to 1,800 plants.

The amendment would also allow the use of non-substantial greenhouses, or hoop houses, on a temporary, up to two-year basis, with an annual inspection to ensure they are being maintained.

There is no change proposed to the plant count limits for personal, non-commercial, cultivation and use.

There was a Planning Commission work session held in Norwood on March 11, 2020 on this topic.

On May 28, 2020 a Temporary Use Permit was granted to Alpine Wellness for the 2020 season to plant 20,000 square feet of outdoor marijuana. The standards contained within the draft Code Amendment were used as guidance in reviewing and issuing that permit. Because of the lateness in the season, Alpine Wellness was only able to fence and plant 5,400 square feet.

Kaye iterated the setback and fencing requirements. Alpine Wellness was required by the state to add an additional layer to their wildlife fence for the temporary use. There is also a proposed addition to the LUC to allow another 3,000 square foot building for hanging and trimming. Screening may be provided where appropriate. There were also some additional submission requirements, including what would the plant count be, to provide fence design, identifying irrigation water source, and providing a drainage and storm water management plan.

Public notice for LUC amendments are not required at this time. There will be a BOCC notice for the September 9, 2020 meeting. There were display ads placed in the Telluride Daily Planet August 7 & 9th. Planning will also place an ad in the Norwood Post. Notified Referral Agencies include the County Attorney, Building Department Official, San Miguel County Sheriff, Towns of Mountain Village, Telluride, Norwood, Ophir and Sawpit, Colorado Parks and Wildlife, the Marijuana Enforcement Division, the Division of Water Resources, and all County Marijuana Licensees.

The following agency comments were received; Sheriff Masters noted concerns regarding security, in particular gates, the location of facility, and the reliability of the operator as a factor. Patti Grafmyer, Town of Norwood asked to be consulted when considering applications in their area.

Greg Powers with the Division of Water Resources noted there are limited times when surface irrigation water is available, and there may be usage restrictions on well permits. Mark Caddy with Colorado Parks and Wildlife requested that we consider requiring removable fence panels to allow wildlife movement through the cultivation areas when growing is not occurring and there is no security risk to the site. He requested that clean-up of hoop house and weed barrier material be required. He also asked that there be some treatment and capture of irrigation run-off, particularly if there are fertilizers in use.

Marijuana Licensee, Dahlia Mertens commented that other counties have not had problems with outdoor cultivation. She was in support of Option 2, which allows up to the State License plant count limit.

Greg Viditz Ward, Marijuana Licensee, asked that we allow screening.

Review standards for Code Amendments have been met. The purposes of the LUC is to provide clear, regulatory framework and to act in the interests of the public, health, safety and welfare.

The Planning Department's recommendation is to adopt the Amendment to the Land Use Code as presented and that the County Planning Commission choose either Option 1 or 2.

Dan Covault expressed his concern over Colorado Parks and Wildlife request to allow animal movement through the area when cultivation is not taking place. Most of these growers are growing year round and their fences encompass their greenhouses. To open those fences reduces the security for their greenhouses.

Kaye read page 7 of the draft, under fences, "Portions of the fence may be required to be removable during periods when outdoor cultivation is not occurring, to allow the seasonal movement of wildlife through the property and where such removal would not compromise the security of the facility". This provision addressing Dan's concerns are included in the draft.

Lee Taylor asked for a description of the security requirements for the state.

Kaye Simonson replied that it basically is an 8' chain link fence, secure gates, and cameras to monitor the operation. Nolan Murphy added that he has 8' fence with two strands of barbed wire. The state wouldn't approve their elk fencing, but did approve the game fencing with a second layer. He also has security cameras and motion sensors on the inside, door sensors, and 40 days of video stored at all times.

Toby Brown stated that when the marijuana cultivation issue first came up there were a lot of concerns of what might happen as a result. He stated he is looking for some direction. He questioned if there been any issues in the West End of the county, and that if things are going

relatively smoothly this really might not be the issue we thought it might be when the regulations were approved?

Dan Covault replied that there has not been the pushback that there was at the beginning. To date he has not received any complaints about any of the regulated operations on Wright's Mesa and they are continuously in compliance with our regulations.

Josselin Lifton-Zoline asked if the growers have to prove adequate water when they apply for the state license. Nolan replied no, not with the state.

She also asked about the runoff and drainage plans, and was wondering if what they are asking for is similarly required of other Agricultural operations on Wright's Mesa? Kaye replied that because this is not an agricultural crop, planning can ask for details of how it is being handled.

Josselin Lifton-Zoline questioned the proposed hoop houses as temporary structures, and if Dan felt this change to now allow them was concerning. Dan replied not with the regulated operations. The sheriff's concerns were with private citizens doing their own marijuana grows in a hoop house with no security. She asked if the grower would have to prove to the county that they had an adequate water supply. Kaye replied that Alpine Wellness was required to get a commercial well permit. Growers cannot use treated water from the Town of Norwood tap.

Lee Taylor asked if any of the irrigation ditches fell under federal control, and if that might be an issue. Nolan said the Lone Cone Ditch which they use is not, so they are good. Alpine Wellness can use the ditch water, and can store it until flow season is over in October. Lee asked if outdoor grows required more water, and Nolan said the outdoor uses less water than the greenhouse.

Dan Covault said the Sheriff's Department is concerned with outdoor odor from marijuana, and annoyance with the outdoor grow, so growers must follow the required setbacks. Other than that, he had no objection to the amendment as written.

9:50 a.m. Dan Covault left the meeting.

Lee Taylor noted a couple of mark-up questions on the language of the amendment.

Toby Brown asked if the hoop houses are meant to be transitional before growers are ready to move into the substantial greenhouse operation. Kaye stated that they are transitional and will require an annual inspection.

MJ Schillaci asked about the number of plants that could be grown in a space.

Josselin Lifton-Zoline asked Nolan Murphy if from his point of view, would Option 1 or Option 2 would be ideal? Nolan answered that Option 2 would be ideal, to avoid having to go through a further review in one year.

MOTION by Tobin Brown to recommend to the Board of County Commissioners to adopt the amendment to San Miguel County Land Use Code Section 5-29 to allow Outdoor Cultivation at a Medical or Retail Cultivation Facility and to allow the temporary use of Non-substantial Greenhouses, based on the finding that the proposed amendment complies with the standards of Land Use Code Section 1-4, Purposes of the Land Use Code, and meets the intent of the marijuana regulations and standards as stated in Section 5-2903, Department of Revenue Marijuana Facilities and Establishments, in that the standards will ensure that licensed establishments are located and developed so they blend into the rural ranching and agricultural landscape, are not highly visible or have the location of these facilities readily apparent to neighboring landowners and the general public. It is further recommended to adopt Option 2 as set forth in the proposed amendment, which allow a facility on a property that is 35 acres or larger to seek approval for the number of cultivation areas necessary to achieve the plant count limits of the State license. **SECONDED** By Josselin Lifton-Zoline.

AMENDMENT TO MOTION: Lee Taylor added that he would like to add an amendment to the motion that the hoop houses be limited to 1 year and to provide for an administrative review for second year.

Tobin Brown and Josselin Lifton-Zoline agreed to the amendment

Lee Taylor asked Kaye if this amendment goes into effect, would the two operators on the mesa need to now apply for an amendment to their special use permit? Kaye responded that yes they would. Nolan has approval for 1 greenhouse and the temporary special use permit for this season. He would need to apply for a new use permit for next year.

VOTE PASSED 5-0

Lee Taylor	<u>Aye</u>	Nay	Abstain	Absent
Pamela Hall	Aye	Nay	Abstain	<u>Absent</u>
Ian Bald	<u>Aye</u>	Nay	Abstain	Absent
M.J. Schillaci	<u>Aye</u>	Nay	Abstain	Absent
Josselin Lifton-Zoline	<u>Aye</u>	Nay	Abstain	Absent
Matthew Bayma	Aye	Nay	Abstain	<u>Absent</u>
Tobin Brown	<u>Aye</u>	Nay	Abstain	Absent

LAND USE CODE AMENDMENT RECOMMENDATION: SECTION 5-30 SHORT-TERM RENTALS, TO PROVIDE CLARIFICATION TO THESE REGULATIONS.

Troy Hangen presented to the commission an amendment to the San Miguel County Land Use Code to update and clarify specific standards of Short Term Rentals including water and trash, length of stay, what structures can be rented, and remediation of taxes.

The goal of the amendment is to clarify a short term stay is less than (30) thirty consecutive days. Short term rentals are only allowed in primary dwellings, not in RV's or accessory dwelling units. Units should only be rented to a single party. Planning also wanted more direction regarding tax remitting. A rental needs to have their Colorado Tax ID on file with the State and County so there can be a direct path for the taxes. Clarification that a rental property must have potable water from a municipality source or a permitted well is included. Trash containers must be bear proof.

The amendment was reviewed by the County Attorney, Amy Markwell, and Mike Bordogna, County Manager.

Planning staff recommended that the County Planning Commission recommend to the Board of County Commissioners to adopt the amendment.

Ian Bald asked how does the tax collection process work and how do you enforce violations? Kaye replied that planning can require a rental to have a state tax id number, and if they fail to file their tax reports with the state, the state enforces that issue.

MJ Schillaci inquired if the county's definitions match the Town of Telluride and Mountain Village's. Specifically the less than (30) consecutive day stay as a transient, short term rental. Troy stated that at 30 days or more it becomes a long term rental and is exempt from the sales tax collection.

Josselin Lifton-Zoline asked for an overview of the number of short term rentals in the county and where it is happening. Troy Hangen replied the Lodging Committee has a matrix to show occupancy rates. Per the Public Health Orders there are regulated occupancies that are allowed per phase. Right now we are on an extended Phase 2 which limits occupancy to 50%. Currently, the Lodging Committee has around 150 properties that they are monitoring for short term rentals. The County has 19 short term rentals that are permitted and planning is reviewing others to make sure everyone is properly permitted.

Josselin Lifton-Zoline asked where properties could have an accessory dwelling unit (ADU). Kaye replied that there can be caretaker units on the 35 acres parcels. An owner can stay in their caretaker unit and rent out the principal house, but cannot live in the primary house and rent out the accessory dwelling unit. In subdivisions like Ski Ranches, they are permitted to have an accessory dwelling unit but cannot short term rent the accessory unit. Due to the affordable housing rules Ski Ranches HOA did not want accessory units to become profit centers.

Lee Taylor asked if the County was monitoring social media for short term rentals that might not be permitted. Kaye replied that her department is not actively seeking them out, but with the COVID-19 public health rules some people are self-reporting their short term rentals. Lee asked if there have been many complaints. John Huebner replied mostly from Hastings Mesa and that one case is in enforcement.

MOTION by Josselin Lifton-Zoline to recommend to the BOCC to adopt the amendments to the San Miguel County Land Use Code Section 5-30 short term rentals based on the finding that the amendment as proposed is consistent with and complies with the review standards in section 5-1802 Land Use Code amendment and is consistent with the Land Use Code 1-4, Purpose of the Land Use Code

SECONDED by Ian Bald. **VOTE PASSED 5-0.**

Lee Taylor	<u>Aye</u>	Nay	Abstain	Absent
Pamela Hall	<u>Aye</u>	Nay	Abstain	<u>Absent</u>
Ian Bald	<u>Aye</u>	Nay	Abstain	Absent
M.J. Schillaci	<u>Aye</u>	Nay	Abstain	Absent
Josselin Lifton-Zoline	<u>Aye</u>	Nay	Abstain	Absent
Matthew Bayma	<u>Aye</u>	Nay	Abstain	<u>Absent</u>
Tobin Brown	<u>Aye</u>	Nay	Abstain	Absent

PLANNING COMMISSION AND STAFF COMMENTS

Kaye Simonson, County Planning Director updated the Commission on various matters.

Two Land Use Code Amendments are upcoming. One regarding Mining and a Two-step review process. Second, to clarify subdivision regulations, process and definitions.

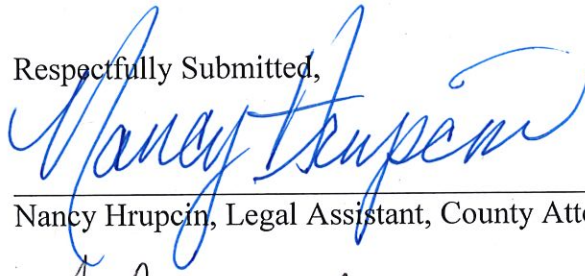
The Telluride Region Master Plan Amendment is on hold until such time when there can be significant public input and discussion. Josselin Lifton-Zoline asked if the DOLA grant money is still available. Kaye responded it is until 2022.

The application for the Burro Mines DOE clean-up waste-rock project is pending.

Lee Taylor asked about the Norwood AT&T Tower and if co-location by other cell carriers is allowed. John Huebner replied it is but that the rental rate is rather high for this tower. T-Mobile is co-located on that tower, but Verizon is not. Verizon does have an application for an improvement modification on the Grayhead Tower.

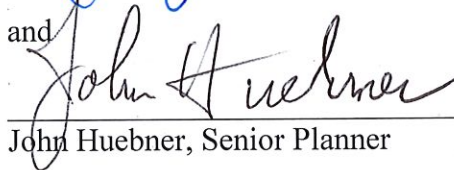
10:54 a.m. Adjourned.

Respectfully Submitted,



Nancy Hrupcin, Legal Assistant, County Attorney

and



John Huebner, Senior Planner

Approved on September 7, 2020.

SAN MIGUEL COUNTY PLANNING COMMISSION



M.J. Schillaci, Secretary

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