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NEVADA COUNTY PLANNING COMMISSION
NEVADA COUNTY, CALIFORNIA

MINUTES of the meeting of December 10, 2020, 1:30 p.m., Board Chambers, Eric Rood Administration Center, 950 Maidu Avenue, Nevada City, California via remote

MEMBERS PRESENT: Chair Aguilar and Commissioners Coleman-Hunt, Duncan, and Greeno.

MEMBERS ABSENT: None.

STAFF PRESENT: Planning Director, Brian Foss; Agricultural Commissioner, Chris de Nijs; Principal Planner, Tyler Barrington; Deputy County Counsel, Rhetta VanderPloeg; Administrative Assistant, Shannon Paulus.

PUBLIC HEARINGS:

1. Industrial Hemp
Ord20-4

Page 2, Line 51

STANDING ORDERS: Salute to the Flag - Roll Call - Corrections to Agenda.

CALL MEETING TO ORDER: The meeting was called to order at 1:31 p.m. Roll call was taken.

CHANGES TO AGENDA: None.

PUBLIC COMMENT: Members of the public shall be allowed to address the Commission on items not appearing on the agenda which are of interest to the public and are within the subject matter jurisdiction of the Planning Commission, provided that no action shall be taken unless otherwise authorized by Subdivision (6) of Section 54954.2 of the Government Code. None

COMMISSION BUSINESS: Recognition of service for departing Commissioners.

Planning Director Brian Foss recognized and thanked Chair Aguilar and former Commissioner Rich Johansen for their service. A plaque commemorating their services had been sent to each of them prior to the meeting.

Commissioner Duncan thanked both for their service throughout the years.

Chair Aguilar held up the plaque he received and thanked staff and the other Commissioners for their kind words. He thanked staff for their professionalism and work.

CONSENT ITEMS:

1. Acceptance of 2020-11-12 Planning Commission Hearing Minutes.

Motion to approve the Consent Item by Commissioner Duncan; **second** by Commissioner Greeno.

Motion carried on a voice vote 4/0.

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PUBLIC HEARING:

PLN20-0188; ORD20-4. A Public Hearing to consider a recommendation to the Board of Supervisors to adopt an Ordinance (ORD20-4) for text amendments to Section L-II 3.3 and Section L-II 6.1 to Chapter II Zoning Regulations of the Land Use and Development Code to prohibit cultivation of Industrial Hemp in all zoning districts in the unincorporated areas of Nevada County. **RECOMMENDED ENVIRONMENTAL DETERMINATION:** CEQA Statutory Exemption 15060(c)(2), 15061(b)(3), 15308 and 15321. **PLANNER:** Brian Foss, Planning Director

Director Foss introduced Agricultural Commissioner Chris de Nijs as his co presenter, and they began their presentation.

Ag Commissioner de Nijs stated he had just finished speaking with Mr. Johansen who sent his deep appreciation for his time on the Planning Commission and his regret he was not able to attend today’s meeting. He then began his presentation on industrial hemp. He stated that industrial hemp was defined under Health and Safety Code Section 11018.5(a) and Food and Agriculture Code Section 8100(6) as a strain of cannabis sativa plant species with no more than 0.3% THC. He clarified that THC was the psychoactive ingredient in cannabis. He said that because the definition was based off of THC content, the plants were indistinguishable in the field which could result in issues with law enforcement and code compliance. He reviewed the historical uses of hemp, including oil, seed, fiber, and CBD production. He further stated that CBD was similar to the extract products that one sees from cannabis cultivation. He discussed the 2018 Farm Bill which delisted hemp from the Federal Controlled Substance list and allowed states to begin cultivation. He reviewed the history of California’s urgency legislation, saying that states were required to have an approved regulatory program for hemp cultivation. He added that California’s program was currently under federal review, however it would require additional modifications in the future. He discussed the current program in place with the state and its requirements which were to be administered by the County Agricultural Commissioner. He said that hemp cultivation lacked regulation at the state level at this time, and that Counties that have implemented hemp cultivation have experienced nuisance issues and increased criminal activity.

Director Foss reiterated that regulations at the State level were continuing to evolve, and that at present industrial hemp would not fall under the County’s medical cannabis cultivation ordinance. He stated that the Board of Supervisors had determined that there was a risk of adverse impacts to the County if hemp cultivation were permitted without guidance from the State and creation of a County ordinance. He said that hemp had similar nuisance issues as cannabis, such as odor, as well as compatibility issues with the cultivation of medical cannabis. He stated that due to these reasons, the Board of Supervisors had passed a number of urgency ordinances prohibiting the cultivation of industrial hemp. He explained urgency ordinance law, and that the urgency ordinance would expire in February of 2021. Staff had been instructed by the Board of Supervisors to codify the industrial hemp cultivation ban in order to allow more time for the State to finalize its regulations, offer the opportunity to study how hemp cultivation impacted cannabis cultivation, as well as time to develop standards to address compatibility. He reviewed the proposed changes before the Commission and discussed the comment letters received from the public regarding the issues. He ended his presentation with staffs’ recommendation and offered to answer any questions.

Chair Aguilar asked for any questions of staff.

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Commissioner Greeno asked if further amendments were proposed.

Director Foss answered that further amendments to the proposed ban were not proposed, future amendments to adopt standards to allow industrial hemp were a possibility in the future.

Commissioner Greeno clarified that before them today was the prohibition of cultivation of industrial hemp, however at a future date with additional regulations it could be amended.

Director Foss answered that was correct.

Commissioner Coleman-Hunt asked if hemp would receive its own section in the zoning ordinance or if current sections would be modified.

Director Foss indicated in the staff report where the language to be added to the zoning ordinance was underlined. He added that a definition was being added to clarify what exactly was being banned, as well as clarifying existing uses. He stated that if and when an ordinance were passed to allow cultivation of hemp, it would likely have its own section.

Commissioner Greeno stated that this felt very similar to cannabis as it was the same plant. He asked why the regulatory processes that govern cannabis were not applied to hemp.

Ag Commissioner de Nijs answered that the plants were very similar. He stated that hemp was recognized federally as a legal agricultural commodity and state regulations needed to be consistent with federal guidelines. This was part of the reason why inconsistencies were noted between cannabis cultivation and hemp cultivation.

Commissioner Greeno asked if the Commission were to vote in favor of the proposed recommendation if it would allow the State and County additional time to create additional regulations that could then allow for the cultivation of industrial hemp.

Director Foss answered that was a possibility, however the Board had not directed staff to create any regulations. At the time direction to staff had been to ban the cultivation of hemp, see what the State did, and to focus resources on improving and updating the medical cannabis cultivation ordinance.

Commissioner Greeno asked if the Commission did not make the recommendation to the Board if it would make it legal to cultivate hemp per State and federal laws in Nevada County in an unregulated fashion. He also asked if there would be a way to regulate it.

Ag Commissioner de Nijs answered that if the County did not have any regulations in place then it would defer to State law and would not be subject to zoning regulations.

Deputy County Counsel Rhetta VanderPloeg reminded the Commission that they were viewing a presentation to make a recommendation to the Board of Supervisors, the Commission was not taking any action to adopt. She further clarified that once the Board adopted an ordinance only they could change it. She clarified that this did not mean it would not come back to the Planning Commission for input and recommendations.

148 Commissioner Coleman-Hunt said that she understood that several counties in California had
149 moved forward with hemp cultivation, she asked how those counties were faring.
150

151 Ag Commissioner de Nijs answered that he had spoken with multiple counties who allow hemp
152 cultivation and they have all experienced growing pains. He said that they have experienced
153 nuisance and odor issues as well as theft. He believed there was room for improvement.
154

155 Chair Aguilar asked about the difference between industrial hemp and residential hemp.
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157 Ag Commissioner de Nijs answered that there really was no difference. Industrial hemp was so
158 named because of its historical uses. He added that current State law required a minimum of 1/10th
159 of an acre in order to be considered industrial hemp. He said if they were to allow hemp for
160 personal use it would be classified as cannabis at this time.
161

162 Chair Aguilar clarified that the recommendation was to prohibit all cultivation of hemp, including
163 for personal use.
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165 Director Foss answered that was correct, it would prohibit all cultivation.
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167 Chair Aguilar believed that there was a potential for cross contamination between hemp and
168 cannabis, as well as the reverse. This would result in the destruction of the crop and a significant
169 loss to investors.
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171 Commissioner Duncan said that it was her understanding that they needed to take action before
172 February or else hemp would be allowed. She added that part of the reason for codifying the ban
173 was because the County was waiting for the State to finalize its regulations before moving forward.
174 She commented on the fact that hemp was legal at both the federal and State level and yet the
175 County was banning cultivation. She added that she understood that it was difficult to determine
176 what was and what wasn't hemp without extensive testing. She stated that hemp had a lot of good
177 qualities, however they were not first in line to try and get approved for permitting.
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179 Chair Aguilar remarked on how precedence was given to whoever came first and cited some
180 examples.
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182 Chair Aguilar opened public comment at 2:03 p.m.
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184 Mark Schaefer, a resident of Penn Valley who also served on the Cannabis Advisory Group
185 (CAG), introduced himself to the Commission. He discussed how this process was very similar to
186 what they had undergone several years ago when the cannabis ordinance was moving forward. He
187 reminded the Commission that cannabis had been banned in the County for a long time, and it had
188 taken over a year for stakeholders to provide thoughtful recommendations and input for cannabis.
189 He reiterated that hemp and cannabis were the same plant, and quipped Shakespeare "would a
190 cannabis plant by another name smell the same?". He answered yes, it would, which was an issue
191 that had to be addressed when considering the regulations for cannabis. He stated that for the time
192 being he supported the ban, as any regulations to permit hemp would require a significant amount
193 of time and input from stakeholders.
194

195 Wade Laughter, who lives on Idaho Maryland Road, introduced himself to the Commission. He
196 said that he first began cultivating CBD rich cannabis in 2008, and first grew cannabis that would

197 qualify as hemp in 2012. He said that the hemp industry was really about CBD, not about textiles
198 or fabrics. He said his problem regarding hemp was that it did not require testing and provided no
199 assurance for health and human safety. He said the only testing required per State and federal law
200 was for the THC content which was limited to three tenths of one percent. He addressed the
201 economic aspects of it, stating its cultivation was happening around the world, and the price of
202 quality hemp versus quality cannabis. He discussed his support for the legal and regulated cannabis
203 market the County had been working toward as opposed to the unregulated market, and
204 commented on more appropriate areas for the cultivation of hemp, such as areas where thousands
205 of acres could be cultivated and harvested with combines. He expressed his hope that someday
206 farmers would be able to plant hemp in Nevada County for livestock.

207
208 Daniel Fink, owner of Down Om Farms and representative for Grass Valley Growers Cannabis
209 Cooperative, introduced himself to the Commission. He asked that the Commission keep the ban
210 on hemp in place due to the risk of pollination to small farmers' crops. He stated that Nevada
211 County had high winds which were capable of carrying pollen from a hemp field up to 20 miles,
212 pollinating cannabis crops and rendering them unsellable. This would be a total loss for a farmer.
213 He seconded the lack of economic viability on terrain such as what was found in Nevada County,
214 considering hemp cultivation required large amounts of land and water.

215
216 Sarah Smale, who resides near Perimeter Road in the unincorporated area of Nevada County, an
217 attorney at Origin Group Law, and who serves on the Board of Directors for the Nevada County
218 Cannabis Alliance, introduced herself to the Commission. She supported the extension of the hemp
219 moratorium, and expressed her concern regarding enforcement. She stated that as drafted, the
220 current State regulations required the local Agricultural Commissioner to complete random
221 inspections, ensure crop destructions, etc..., however there was no mechanism in place to provide
222 funding to complete those duties. She said that these concerns were raised in a November 2020
223 memorandum by the Rural County Representatives of California to the California Department of
224 Food and Agriculture (CDFA). She added that waiting until the State regulations were finalized
225 made sense from a local budgeting perspective, especially in Nevada County. She stated that
226 Nevada County Code Compliance were already tasked with enforcement activities for cannabis,
227 and reiterated that hemp and cannabis were the same plant and largely indistinguishable absent
228 testing. She said that hemp cultivation could allow a loophole in which producers could grow
229 cannabis under the guise of hemp. She stated that cannabis farmers were expending significant
230 resources to operate compliant cannabis businesses, and growers were concerned they would be
231 undermined should hemp cultivation be allowed in the County without a clear enforcement
232 mechanism.

233
234 Michael Ingram of Yuba River Organics introduced himself to the Commission. He stated that
235 they were a multi crop producing farm which also included cannabis, as well as one of the first
236 permitted cannabis farms in the County. He was also a member of a cooperative of 10 other farmers
237 known as Sierra Sungrown, and was speaking on their behalf today. He expressed his concern over
238 pollen drift from hemp, stating that research was still in progress. He did not feel that Nevada
239 County should be the guinea pig for this experiment. He added his concern regarding enforcement,
240 stating that hemp cultivation could lead to a loophole for black market cannabis. He also stated
241 that as a farmer interested in growing multiple crops, he encouraged the Commission to actually
242 look at the viability of industrial hemp, stating that growing such small acreages of hemp would
243 not provide a valuable economic resource. He expressed his fear that it would harm the County's
244 valuable cannabis resource.

245

246 Diana Gamzon, Executive Director of the Nevada County Cannabis Alliance, a trade association
247 representing over 300 cannabis farmers, businesses, and supporters, introduced herself to the
248 Commission. She said that over 90% of permitted cannabis farmers in the County were part of the
249 Alliance. She said that the mission of the organization was to provide education, advocacy, and
250 opportunities for connection to support a thriving local cannabis industry. As an organization,
251 their values were steeped in economic development, environmental stewardship, and craft
252 cannabis cultivation. She stated that they supported the Board of Supervisors direction to prohibit
253 the cultivation of industrial hemp, and that the lack of State regulations, enforcement
254 considerations, economic viability, and cross pollination all needed to be considered and studied.
255 She added that CDFA was still in the proposal process for making rules on hemp cultivation, and
256 without the regulatory framework in place it would be irresponsible to move forward. She
257 discussed the memorandum from the Rural County Representatives of California memorandum
258 that was submitted to CDFA in November which expressed objections, including governments'
259 power of authority, lack of transparency, as well as inconsistencies. She also noted that CDFA had
260 not acknowledged Counties authority to adopt land use rules, develop the abatement process,
261 administer business licenses, and other regulatory tasks. She added that at the local level issues
262 needed to be discussed such as odor, environmental impacts, and nuisances. She cited examples
263 from Humboldt County, who recently signed a moratorium and gave direction to provide a
264 permanent prohibition on industrial hemp, and Calaveras County who voted to ban industrial hemp
265 as well. She added that 16 counties in California have either a permanent ban or a moratorium on
266 hemp. She said that regulating the same crop with two different federal legal statutes was a very
267 complex issue and restated her support for the ban.

268
269 Maria Herrera, a Nevada County resident and Board member of the Nevada County Cannabis
270 Alliance, introduced herself to the Commission. She stated that the Commission had heard several
271 very compelling arguments to continue the prohibition on growing industrial hemp. She stated that
272 while they had heard a great deal about how the plants were the same, in the commodity market
273 they were very different. She said that hemp was an industrial endeavor with loud and heavy
274 machinery and required hundreds or thousands of acres of land to make it a profitable venture. She
275 said that cannabis farms were able to scale in size, and that the farmers in Nevada County were
276 still able to compete in the craft cannabis legal marketplace. She stated that hemp did not have a
277 craft market although it was an amazing plant which had fallen into a speculative CBD market,
278 creating a lot of confusion for regulatory agencies. She said that it took an incredible amount of
279 hemp to create a 25 mg CBD pill, which were sold without any consumer protection in gas stations
280 nationwide. She stated that economically, culturally, environmentally, and topographically, hemp
281 did not belong in Nevada County. She said it belonged in counties with large flat areas where
282 traditional agricultural has been diminished by factors such as water rationing, and where farmers
283 were struggling to replace other crops like onions and rice. She expressed her support for the
284 continuation of the ban until such a time as regulatory frameworks were put into place so hemp
285 and cannabis could coexist with one another.

286
287 Chair Aguilar closed public comment at 2:22 p.m.

288
289 Chair Aguilar asked if the State was leaning towards growing hemp indoors to stop cross
290 pollination.

291
292 Ag Commissioner de Nijs answered that as pointed out by Ms. Herrera, hemp was more suitable
293 for larger, more expansive lands. He added that historically hemp had been grown in Kentucky

294 and the eastern portion of Midwest states which have large acreages. He said he really didn't see
295 a hemp cultivation industry in Nevada County.

296
297 Chair Aguilar asked if someone really wanted to grow hemp indoors if that would that stop the
298 smell and cross pollination issues.

299
300 Ag Commissioner de Nijs answered that Yolo County allowed research cultivation of hemp
301 indoors, and that there were possible mitigation measures such as filters, which may be cost
302 prohibitive.

303
304 Commissioner Coleman-Hunt clarified that they were not extending the moratorium, they were
305 discussing a ban and would not be moving forward with discussion on regulations for hemp.

306
307 Director Foss answered that it wasn't necessarily set in stone. He said that they were at the end of
308 the time allowed by the moratorium urgency ordinance and needed to codify an ordinance. He said
309 this ban would be put into code, however the code could be modified at any time with direction
310 from the Board of Supervisors.

311
312 Commissioner Coleman-Hunt stated she was confused because it was being added to the code, and
313 pointed out that they did not put everything that was banned into code. She asked if anyone had
314 come forward requesting to grow hemp in Nevada County.

315
316 Ag Commissioner de Nijs answered no one had expressed interest recently. Some people had
317 inquired in 2019, however he had not had any serious inquiries within the last six months.

318
319 Commissioner Greeno asked about using the same enforcement rules as cannabis to take away the
320 ability to masquerade cannabis as hemp. He asked if there were any other legal crops that were
321 locally banned.

322
323 Ag Commissioner de Nijs answered that hemp was a unique crop. He stated they were not banning
324 it completely as cannabis was still legal, however this was one of the first instances he was aware
325 of in which they were banning a crop that was otherwise legal.

326
327 Director Foss answered that to identify hemp and other strains within current framework, the
328 current medical cannabis ordinance would require some modifications. He added that would likely
329 not address the cross pollination issue.

330
331 Chair Aguilar asked what Commissioner Greenos' concerns were.

332
333 Commissioner Greeno answered that he felt it was a shame that after so many years of prohibition
334 that factions would develop in an industry which would limit the growth of cannabis or hemp.
335 With forward thinking resolutions, he felt there was an equitable solution. He added that other
336 crops had things like crop insurance that protected farmers from losing their livelihood. He felt
337 that if it was not economically viable to grow hemp in Nevada County then it was unlikely to
338 happen, but he did not see the benefit in banning small scale cultivation with the cooperation of
339 neighbors.

340
341 Director Foss stated that those were all valid points and questions that needed to be answered. He
342 said the issue at hand was one of timing and not allowing the unregulated cultivation of hemp

343 which could have unforeseen ramifications. He added that the County had banned the cultivation
344 of cannabis at one point even though it was medically legal. He said that it was within the purview
345 of the Commission to make whatever recommendation they felt necessary to the Board.

346
347 Commissioner Coleman-Hunt said that she felt there was a certain reluctance to do a ban because
348 it felt so final. She asked if there was any way to extend the moratorium another 2 years or a way
349 to ban the cultivation of hemp but allow the Ag Commissioner to continue research.

350
351 Counsel VanderPloeg answered that at this time they did not have another tool available because
352 this had been implemented through an urgency ordinance and moratorium which were about to
353 expire, however the Commission could implement a sunset clause. She added that the legislation
354 on hemp was very fluid at this time, and dedicating time and resources on something speculative
355 might not lead to anything. She appreciated what they were trying to do, but it was very difficult
356 when the State had not yet created a regulatory framework.

357
358 Chair Aguilar stated he supported the ban. He said that the cannabis community had worked very
359 hard to become legal, and this was a way government could offer support to that community. He
360 said in general he was not supportive of banning things of an agricultural nature, and that the
361 Planning Commission had spent a great deal of time discussing how to be more supportive of the
362 agricultural community. He said in this particular case he felt that hemp cultivation would be a
363 detriment, and this was an opportunity to show the cannabis community that they were supported.
364 He asked for any other comments or a motion.

365
366 Commissioner Coleman-Hunt stated she would make the motion although she had expressed her
367 concern about complete prohibitions and bans. She agreed with Chair Aguilar about supporting
368 the cannabis community, which was a very fragile industry at this time, stating they did not want
369 to do anything that would result in another hurdle for them. She added that hearing that there hadn't
370 been any interest from hemp growers to cultivate in this community made her more comfortable
371 moving forward.

372
373 **Motion by Commissioner Coleman-Hunt** to recommend that the Board of Supervisors find the
374 project categorically exempt pursuant to Sections 15060(c)(2), 15061(b)(3), 15308 and 15321:
375 **Second by Commissioner Duncan. Motion carried on a roll call vote 4/0.**

376
377 **Motion by Commissioner Coleman-Hunt** to recommend that the Board of Supervisors adopt the
378 attached Ordinance (ORD20-4) amending Chapter II of the Nevada County Land Use and
379 Development Code Sections L-II 3.3 and Section L-II 6.1 **Second by Commissioner Duncan.**
380 **Motion carried on a roll call vote 4/0.**

381
382 Discussion ensued regarding upcoming Commission meetings and ongoing project statuses.

383
384 **Motion by Commissioner Duncan; second by Commissioner Coleman-Hunt to adjourn.**
385 **Motion carried on voice vote 4/0.**

386
387 There being no further business to come before the Commission, the meeting was adjourned at
388 2:47 p.m. to the next meeting *tentatively* scheduled for January 14, 2021, in the Board of
389 Supervisors Chambers, 950 Maidu Avenue, Nevada City.

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