

MINUTES

**CITY OF PACIFICA
PLANNING COMMISSION
COUNCIL CHAMBERS
2212 BEACH BOULEVARD**

October 5, 2020

7:00 p.m.

Chair Nibbelin called the meeting to order at 7:00 p.m.

Chair Nibbelin explained the conditions for having Planning Commission meetings pursuant to the provisions of the Governor’s executive order, N-25-20 and N-29-20, which suspends certain requirements of the Brown Act and pursuant to the orders of the Health Officer of San Mateo County, dated June 17, 2020, to conduct necessary business as an essential governmental function with no public attendance allowed. He also gave information on how to present public comments participating by Zoom or phone.

Chair Nibbelin welcomed new Commissioner Ferguson.

Sr. Planner Murdock took a verbal roll call.

ROLL CALL: Present: Commissioners Berman, Bigstycck, Ferguson, Godwin, Hauser, Leal and Chair Nibbelin
Absent: None

Chair Nibbelin asked Commissioner Ferguson if he would like to introduce himself.

Commissioner Ferguson stated that he is new to this, having his orientation several hours ago. He was happy to be there, meeting everyone and looking forward to everything, acknowledging that he doesn’t know everything.

SALUTE TO FLAG: Led by Commissioner Bigstycck

Commissioner Bigstycck then welcomed Commissioner Ferguson

STAFF PRESENT: Sr. Planner Murdock
Asst. City Attorney Bazzano
Police Chief Steidle
Asst. Planner Gannon

APPROVAL OF ORDER OF AGENDA Commissioner Bigstycck moved approval of the Order of Agenda; Commissioner Godwin seconded the motion.

Asst. Planner Gannon took a verbal roll call.

The motion carried **7-0**.

Ayes: Commissioners Berman, Bigstycck, Ferguson, Godwin, Hauser, Leal and Chair Nibbelin
Noes: None

**APPROVAL OF
MINUTES:**

None.

DESIGNATION OF LIAISON TO CITY COUNCIL MEETING OF OCTOBER 12, 2020:

Chair Nibbelin stated that on the agenda is the 1300 Danman mixed use appeal. He asked who would be willing to serve as a liaison.

Sr. Planner Murdock stated that, since publication of this packet, they learned that both appeals have been continued and they will not need a Planning Commission liaison.

Chair Nibbelin thanked him for the information, and acknowledged that it will be for a future meeting.

ORAL COMMUNICATIONS:

Sr. Planner stated that there were no hands raised.

CONSENT ITEMS:

None

CONTINUED PUBLIC HEARINGS:

- | | |
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| 1. PSD-714-02
UP-904-02
SUB-204-02
Heritage Tree Removal
Authorization
Authorization for Logging
Operations | File No. 2002-001 – Site Development Permit PSD-714-02,
Use Permit UP-904-02, Tentative Subdivision SUB-204-02,
Authorization for Heritage Tree Removal and
Authorization for Logging Operations for construction of four new townhouse duplex buildings (total of eight dwelling units), and associated subdivision for condominium purposes, on an approximately 53,000 sf (1,217 acres) undeveloped lot located on the east side of Monterey Road, approximately 250 feet southeast of the Monterey Road and Hickey Boulevard intersection (APN 009-381-010) in Pacifica. The project would include removal of six heritage trees and 51 non-heritage trees. Recommended CEQA Action: N/A. |
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Sr. Planner Murdock presented the staff report.

Chair Nibbelin asked if the Commissioners had any questions for staff on this item.

Commissioner Berman wondered, following the continuation of the item for a couple of months, if there was any concern with a timeline, either shot clock or statute of limitations.

Sr. Planner Murdock stated that he was not concerned at this point as they were evaluating comments to comply with the California Environmental Quality Act and they need to continue their analysis to ensure that the process is complete before they have any applicable permit streamlining and other project processing timeline concerns.

Commissioner Hauser stated that her question was similar. She appreciated the amount of analysis that staff is doing which she believes is necessary, and she recalled that she pushed hard to continue the item when originally before them in that they have a date certain to continue, and she wanted to ask in understanding development contracts, are they okay to their knowledge, as far as the developers contract.

Sr. Planner Murdock stated that he didn't have any information on that point, but at this stage, the applicant has not indicated a specific timeline that will affect this project from their perspective. He stated that, even if there was such a timeline, it is the city's obligation to fully comply with this obligation under the California Environmental Quality Act and perform a proper analysis of the project to comply with the Municipal Code and he thought that was the imperative from the city's perspective, taking into account the applicant's timelines.

Chair Nibbelin asked if there was any public comment regarding this item.

Sr. Planner Murdock stated that he did not see any hands raised.

Chair Nibbelin closed the Public Hearing.

Commissioner Godwin commented that some neighbors of the project wanted to meet with one or all commissioners, and he agreed to meet with them, and they later decided that they didn't want to meet. He was mentioning it to ensure that everyone was aware when it was scheduled Friday.

Chair Nibbelin was aware that some of the neighbors have reached out to various commissioners. He stated that they have Brown Act concerns regarding meeting in groups that are large enough and they would want to keep that in mind. He stated that he has some experience with respect to County projects. He stated that he wasn't suggesting that this was not appropriate, but insofar as you deal with a majority of the Commission, they would want to consider it before they got together.

Commissioner Godwin stated that he offered a meeting with him only as they had some clarification issues.

Chair Nibbelin understood that there was a request for a larger scale meeting.

Commissioner Godwin agreed that there was that request.

Asst. City Attorney Bazzano stated that she would confirm that there are Brown Act concerns regarding a meeting of a majority of the Planning Commissioners and they need to be cognizant of that. She stated that, regarding Brown Act requirements relating to serial meetings, they want to make sure they avoid those. She stated that, typically, with the development applications, the developer and/or the community will reach out to Planning Commissioners and it was always up to the individual Planning Commissioner whether or not he wants to meet with the applicant or community but any ex parte communications will need to be disclosed as is the practice of the Planning Commission at the time when the application is considered.

Chair Nibbelin thanked her for that information.

Commissioner Berman asked the City Attorney regarding a meeting that involves all the Planning Commissioners or a public meeting that is open to all the public and commissioners, asking what the limits are on that. She also asked, if an individual Planning Commissioner were to meet with a party and that party meets with every other planning commissioner, is that a violation of the Brown Act, called the hub and spoke method.

Asst. City Attorney Bazzano didn't know if this is the right time to get into a conversation about the Brown Act generally since the only thing before the Planning Commission at this time is the consideration of continuance. She stated that, generally speaking, there are two ways a serial meeting can occur, one being the hub and spoke, and why it was important for the Planning Commissioners to be cognizant of anyone who relays information about discussions with other planning commissioners.

Commissioner Hauser moved that the Planning Commission continue the item to the Planning Commission meeting of October 19, 2020; Commissioner Godwin seconded the motion.

Sr. Planner Murdock took a verbal roll call.

The motion carried **7-0**.

Ayes: Commissioners Berman, Bigstych, Ferguson, Godwin,
Hauser, Leal and Chair Nibbelin
Noes: None

NEW PUBLIC HEARINGS

2. MUP-4-18

File No. 2002-011 – Amendment to Marijuana Use Permit MUP-4-18 to allow adult-use cannabis sales within an existing 642-square foot cannabis retail operation approved in 2018 for medicinal cannabis sales only at 2270 Palmetto Avenue (APN 016-294-570). Recommended CEQA Action: Class 1 Categorical Exemption, CEQA Guidelines Section 15301.

Asst. City Attorney Bazzano stated that, before they get started, she thought there is a commissioner who has an announcement.

Commissioner Leal stated that he will recuse himself from this item due to his ownership to real property in the vicinity of the location under discussion at this time. At the recommendation of the City Attorney, he will be on mute and turn off his camera.

Asst. Planner Gannon presented the staff report.

Commissioner Bigstyk asked Chief Steidle if there have been any calls for service at either of the cannabis dispensaries that have been up and running on Palmetto.

Chief Steidle stated that they have a couple of call services at one of the dispensaries but there was nothing that distinguished it, and it could have happened to any business with nothing related to the actual cannabis that would lead to any law enforcement concerns regarding any of the businesses on Palmetto.

Chair Nibbelin had a question for planning and thought it might require some speculation and may not be the kind of question that can be answered. He asked if there was any sense that, moving from purely medicinal to adult recreational may have any impact with respect to foot traffic, vehicle traffic, etc., that might be appreciable impacts that they ought to consider in this context.

Asst. Planner Gannon agreed that it was purely speculation, and she thought it would be an educated guess that they will receive a little bit more foot traffic as you don't need to have a medical card for that, but to keep in mind is that they have five off-street parking spaces on site and those would be available, and there isn't any change to their proposed square footage so those parking spaces should still suffice for the amount of square footage they have.

Sr. Planner Murdock added that, as she mentioned, the overall capacity of the shop to serve customers will not increase under this application. He stated that, even though the product will change from medicinal only to adult use and medicinal cannabis, the ability to service more people or intensify use is not present under the circumstances either. He stated that the outer bounds of this use as evaluated under the original marijuana use permit are not changing from staff's perspective.

Commissioner Berman asked if it also includes the number of employees working there.

Asst. Planner Gannon stated that the number of employees working will not be changing and no aspect of the operation, other than the new type of product sold there, will be changing. She added that the applicant is present to speak to any of those questions.

Jesus Sahagun, applicant, stated he is the CEO for Phog Center LLC and their mission for the past two years was to educate and provide safe access to high quality organic cannabis to provide the best possible service to patients. He stated that their bud tenders are trained with knowledge of all medicinal cannabis products and what they are used for and they take time with all patients to assure that all their needs have been met and all questions answered. Safety is their top priority. The patients are verified to be legal age with proper documentation before they can enter the retail area where they sit down with the bud tender or use their express pick up desk. He stated that, due to Covid-19, they are currently allowing only three patients in the store at a time to allow for social distancing and the bud tenders are wearing masks, gloves and disinfecting the retail area after each patient as well as at the beginning and end of the day. The location is secured with an ADT security alarm system and security cameras inside and outside with live on stream and 90-day backup hard drives which can be provided to Pacifica Police Department within 24 hours. There are always two bud tenders on site during operation. Before leaving the store, all patients will have their medication safely secured inside a plain, white, smell proof and child proof exit bag for extra safety as well as discretion. Aside from products on display for patients to review, all products are stored safely in their storage room where only he and the manager on site have keys. They are always available to answer questions and concerns patients may have and can be reached through several platforms, including email, Instagram, postal mail, as well as direct call. They operate seven days a week excluding major holidays, from 10 am to 8 pm, chosen to protect neighbors from early and late night traffic. He stated that there is no on site consumption allowed. Bud tenders are members of the community who dress respectfully in a shirt and tie when on delivery or in the store. He stated that the past two years have been trying with an abundance of regulatory changes, mentioning some of the specifics. He stated that there are more illegal cannabis retailers on the Peninsula than legal which can be confusing for a lot of residents. He stated that it has been a pleasure to serve the community and he was proud of his staff and the trust they have built with their patients. He stated that they continue to see the relief their patients get from finding the right medication for them, and will continue. They are pleased to see a patient with joy on their face from being pain free as they witness seeing them get their relief from so many problems. He mentioned that they help terminally ill patients who otherwise would not be able to live comfortably and enjoy their lives. They continue to strive for educating the public for these patients. He stated that adult use is a necessity for them to survive in the ever changing cannabis market but they will continue to provide the same customer service and education they are known and loved for and will continue their fight for their patients and appreciate the opportunity to present their spotless record and hope to continue to be a shining example of what good cannabis business can be.

Commissioner Berman referred to the changes in products he will now sell, and asked if there will be different delivery methods or times.

Mr. Sahagun stated that nothing with delivery will change and the products won't change very much, with just a few more products added on in terms of having more variety. He stated that the main difference between adult use and medicinal use is the amount that a medicinal patient can purchase but the products are still available to both platforms.

Commissioner Berman asked how much more can one person versus another purchase.

Mr. Sahagun stated that an adult use patient can purchase up to one ounce of cannabis whereas a medicinal patient can purchase up to eight ounces of cannabis.

Commissioner Berman asked him to confirm that, with the change, there isn't going to be an increase in demand to where he will need more employees.

Mr. Sahagun stated that it shouldn't be. He stated that now they have up to eight employees that they will have on staff which should be more than plenty for them to take care of all the patients.

Commissioner Berman referred to the staff report, stating that it looks like he has five existing parking stalls. She asked if, outside the pandemic, those stalls are sufficient for their operations.

Mr. Sahagun responded affirmatively, explaining that there are usually at least two empty in the back.

Chair Nibbelin opened the Public Hearing.

Sr. Planner Murdock stated that there are no hands raised.

Chair Nibbelin closed the Public Hearing.

Commissioner Bigstyk moved that the Planning Commission **FINDS** the project is exempt from the California Environmental Quality Act; **APPROVES** the amendment to Marijuana Use Permit MUP-4-18 by adopting the resolution included as Attachment A to the staff report, included conditions of approval in Exhibit A to the resolution; and **INCORPORATES** all maps, the applicant's MUP application and all attachments and testimony into the record by reference; Commissioner Berman seconded the motion.

Sr. Planner Murdock took a verbal roll call.

The motion carried **6-0**.

Ayes:	Commissioners Berman, Bigstyk, Ferguson, Godwin, Hauser and Chair Nibbelin
Abstain:	Commissioner Leal
Noes:	None

Chair Nibbelin declared that anyone aggrieved by the action of the Planning Commission has ten (10) calendar days to appeal the decision in writing to the City Council.

Asst. City Attorney Bazzano asked that they invite Commissioner Leal back to the meeting.

COMMISSION COMMUNICATIONS:

Commissioner Bigstycyk stated that his regular “shtick” and wear a mask as someone working with the public all day appreciates it as it shows respect to them as well it keeps everyone a lot healthier when the masks are worn. He then mentioned that he was the liaison to the September 29 Council meeting and as such he had two things to bring up. He was liaison to the Sharp Park Specific Plan hopefully adequately. He stated that it was pretty late in the evening by the time they got there and Council didn’t make any decisions on direction that night, and presumably he may have another opportunity to be a liaison on that or someone else. He stated that earlier in the evening, former Commissioners Rich Campbell and Tom Clifford were both honored in special proclamations by the mayor and he thought that was heartening to see their comrades honored that way. He stated that another thing they were discussing at great length was the Marymount Apartments that the Commission discussed last year. He stated that it was brought to City Council because they decided to turn it into an affordable housing site, 170 units that Council has agreed to put into motion as affordable housing. He stated that they went from a place where they were in an awkward place of rent controlling it to now being affordable housing across the board. He felt it was a nice reason to have a slight delay in their discussion on the Sharp Park Specific Plan, and he felt it was an eventful evening to be a liaison.

Chair Nibbelin thanked him, realizing it was a march into the late evening.

Commissioner Berman referred to the Brown Act, and she didn’t know if now was the appropriate time to discuss it, given the influx of emails and outreach to the Commission. She stated that one item she wanted to comment on was reminding the Commission that she believes it is a violation of the Brown Act to reply all on an email as too many commissioners are part of that email. She asked staff to correct her if she is wrong.

Sr. Planner Murdock stated that it was possible for a reply all incident to result in a Brown Act violation and that is why it is preferable to avoid it. He stated that, if it is a single commissioner sharing information it may not be as concerning but if multiple commissioners dialoguing in response to multiple reply all, it gets into uncomfortable territory and they hope to avoid that. He stated, as information to their new commissioner, when staff sends out communications to the commissioners, they put all the commissioners on bcc (blind carbon copy) so that it is not possible to reply all to the commissioners to avoid that circumstance. He asked that they be particularly cautious when receiving emails from the public who may not exercise the same caution or be aware of the issue at hand that may include all of them on the “to” line or “to” and “cc” and they could inadvertently reply all and constitute a Brown Act violation.

Chair Nibbelin stated that Brown Act training happens occasionally, and he can’t remember the last time he administered or received it, but it was something they may need to think about with an occasional refresher which is not a bad thing. He offered that to staff as food for thought.

Asst. City Attorney Bazzano added that periodically the City Clerk will send out notices for training on AB1234 but, if Planning Commissioners have questions regarding the Brown Act, they should feel free to contact staff or the city attorney’s office.

Sr. Planner Murdock stated that they have some materials which they can share with the commission after this meeting to read up on some of these issues. He stated that they typically offer them as part of a new commissioner orientation, but they were happy to share them as they are informative and helpful.

STAFF COMMUNICATIONS:

Sr. Planner Murdock stated that Commissioner Bigstyk touched on the key points he wanted to touch on, commending Commissioners Clifford and Campbell for their many years of service. He stated that City Council took up discussion of the Sharp Park Specific Plan guiding policy framework. He stated that, as Council got into that discussion, it was clear they needed additional information which staff had not provided, and they are going back to work to gather that information and help Council have a fruitful discussion the next time it is on a Council agenda. He stated that, due to the information they requested, they did not identify a specific date for that, but hoping within the next 4-6 weeks to see if there is an appropriate Council date.

ADJOURNMENT:

There being no further business for discussion, Commissioner Nibbelin moved to adjourn the meeting at 7:40 p.m.; Commissioner Bigstyk seconded the motion.

The motion carried **7-0**.

Ayes: Commissioners Berman, Bigstyk, Ferguson, Godwin,
Hauser, Leal and Chair Nibbelin
Noes: None

Respectfully submitted,

Barbara Medina
Public Meeting Stenographer

APPROVED:

Planning Director Wehrmeister