

To: Sonoma County Board of Supervisors
Department or Agency Name(s): Permit Sonoma
Staff Name and Phone Number: Amy Lyle, 707-565-7389
Vote Requirement: Majority
Supervisory District(s): First

Title:

Summary Denial of a General Plan Amendment, Zone Change, and Cannabis Use Permit at 3428 Westach Way, Sonoma, APN 135-061-018; PLP18-0046

Recommended Action:

Adopt a resolution denying the request for a General Plan Amendment, Zone Change, and cannabis Use Permit.

Executive Summary:

This application is being brought forward to your Board for summary denial of a request for General Plan amendment, zone change, and associated use permit application. The General Plan provides that whenever the Permit Sonoma Director determines that a proposed General Plan Amendment is substantially inconsistent with the goals, objectives, or policies of the General Plan, the Director may submit the application directly to the Planning Commission and Board of Supervisors for immediate review and consideration.

Staff recommends summary denial because the project would not be permitted under either of the two proposed General Plan agricultural land use designations, and the proposed industrial designation is inappropriate for the site location. The site is a 4.65 commercially-zoned parcel near the intersection of Highway 12 and Ramal Road. It was lawfully spot zoned Limited Commercial to align land use regulations with a long-established commercial use on the site. The applicant is seeking to transition the use to an indoor cannabis operation, which is inconsistent with the existing General Plan land use and zoning. The applicant has requested a General Plan amendment and corresponding rezone to an agricultural land use designation and zone or to Limited Industrial to enable the indoor cultivation. There is insufficient policy basis to support a General Plan Amendment to another designation for the purposes of cannabis cultivation and there is insufficient public benefit from the proposal to support the general plan amendment and rezone. Rezoning the site to an industrial land use would allow uses inconsistent with the area. Furthermore, the parcel does not meet the minimum 10 acre parcel size requirement to allow for cannabis cultivation in agricultural and resource zones. For these reasons, the Planning Commission recommended on a 4-0-1 vote that the application be denied summarily. Summary denial allows projects with major flaws or unresolvable issues to be scheduled for a decision in an expeditious manner, without unnecessary, lengthy, and expensive analysis. Because summary denial is proposed the proposal is exempt from review under the California Environmental Quality Act ("CEQA") pursuant to Public Resources Code Section 21080(b)(5) and 14 California Code of Regulations, Chapter 3 (CEQA Guidelines), Section 15270(a).

Discussion:

This application is being brought forward for summary denial based on a provision in the General Plan Land Use Element providing that “if at any time the Director of Permit Sonoma determines that the proposed amendment is substantially inconsistent with General Plan Goals, Objectives, or Policies, he or she may submit the application directly to the Planning Commission and Board of Supervisors for immediate review and consideration on policy grounds.” (General Plan Land Use Element, p. LU-7.)

The property’s General Plan land use designation was lawfully spot-zoned to Limited Commercial in recognition of a historic commercial use established in the 1950s and present at the time of adoption of the 1978 General Plan. That commercial use ceased 3-4 years ago. The applicant is requesting:

- General Plan Amendment from Limited Commercial to Land Extensive Agriculture, Land Intensive Agriculture, or Limited Industrial;
- Zone Change from Limited Commercial to either Land Extensive Agriculture, Land Intensive Agriculture, or Limited Rural Industrial to correspond with the proposed General Plan designation that may be most appropriate; and
- Use Permit to allow for 3,802 square feet of commercial cannabis cultivation, 1,668 square feet of propagation space, and 1,168 square feet of processing space, within an existing 10,800 square foot warehouse.

A similar application was previously submitted on March 8, 2018. A letter was sent determining the application could not be processed because the General Plan Amendment did not conform to the goals and policies of the General Plan and that staff could not support the application. The application was withdrawn and a similar application was submitted November 15, 2018.

On December 15, 2018 a letter was sent to Mr. Schwartz determining that the application could not be processed due to the same fatal flaws related to the General Plan designation criteria and staff’s inability to make the necessary findings of public interest. Mr Schwartz was advised that the project would be brought forward to a public hearing for denial.

A Planning Commission hearing was held on September 5, 2019 to review the application and staff’s recommendation for summary denial on the grounds described below. The Commission voted 4-0-1 (one absent) to recommend that the Board of Supervisors deny the application summarily. The Commission noted that a review of the General Plan designation and zoning for the site and neighborhood would be appropriate through a broader General Plan, and that the Commission would consider an alternative project with a more clearly defined public benefit that supports the General Plan amendment.

ISSUE #1: General Plan Amendment- Designation Criteria

A project requesting a General Plan Amendment to an alternative land use designation must meet the applicable General Plan designation criteria. The subject parcel and project area incompatible with the each of the three requested land use designations as described below:

- Land Extensive Agriculture (LEA): Amending the property to the LEA designation is inappropriate because the property (4.65 acres) is under the recommended 60 acre designation criteria.
- Land Intensive Agriculture (LIA): Amending the property to the LEA designation is inappropriate because the property is under the recommended 20-acre minimum and lacks existing or historic agricultural use.
- Diverse Agriculture (DA): Amending the property to the DA designation is inappropriate because the existing development of the property includes an industrial structure with no agricultural use. Cannabis cultivation is not currently recognized as an agricultural use. Pursuant to General Plan Policy AR-4a, the primary use must be “agricultural production and related processing, support services, and visitor serving uses.” Therefore, because no agricultural uses are proposed within the proposed DA designation, the project would be incompatible with the proposed land use.
- Limited Industrial (LI): Amending the property to the LI designation would not rectify the existing limited commercial spot zoning—which is supported by the current General Plan due to the historical use of the property—for the property within an area with agricultural designated properties. Furthermore, the General Plan provides that amendments to add the Limited Industrial designation must meet all of seven specified criteria, including location “near concentrated populations.” (General Plan Land Use Element, pp. 60-61, criterion 4.) This property is over four miles from the nearest incorporated city (Sonoma) and therefore not located near a concentrated area.

ISSUE #2: General Plan Amendment Findings and Zone Change Request

Government Code Section 65358 requires that the Board of Supervisors make findings that a General Plan Amendment is within the public interest. The application proposes to 1) “correct improper zoning,” referring to the spot zoning that occurred on the property; 2) donate electricity from a 10-panel solar system to a non-profit organization as the community benefit for the General Plan amendment; and 3) provide 5% of company profits to a drug awareness program or any other program of choice for 10 years.

In general, applications for General Plan Amendments are considered when the General Plan Amendment itself provides a long-term benefit to the community. For example, the General Plan Land Use Element discusses prior examples of General Plan amendments considered to be in the public interest: (1) the extension of urban services to the City of Healdsburg Animal Shelter property was found to have an adequate public benefit because the project provided a public animal shelter (Policy LU-14h); and the extension of the Larkfield-Wikiup Urban Service Area to include the Sutter Medical Center/Luther Burbank Memorial Foundation site was to allow for a project of significant public benefit, including a hospital and performing arts community center (Policy LU-16z). The proposed electricity donation and profit-sharing improperly monetize the public benefit, potentially setting a precedent that could destabilize the General Plan and open it to any desired land use change in exchange for funding other unrelated charitable interests, programs or services.

The applicant is also requesting a zone change from Limited Commercial to either Land Extensive Agriculture, Land Intensive Agriculture, or Limited Rural Industrial.

The current Limited Commercial land use is the only commercially zoned property in an area of agricultural properties; it was zoned LC to recognize an existing and long-standing commercial use of the property. The historical commercial use (a tachometer facility) ceased 3-4 years ago. A zone change to an agricultural zone requires a corresponding General Plan Amendment which cannot be supported as discussed above. A zone change to an industrial land use designation would exacerbate existing land use inconsistencies and cause compatibility issues with surrounding agricultural and residential uses. Staff explored the possibility of maintaining the LC land use designation and processing a Zoning Amendment to Agricultural Services without a General Plan Amendment. This solution would resolve the General Plan Amendment public benefit challenge in the current proposal and would allow a broader agriculturally-oriented mix of uses for the property. However, this solution would not support the applicant's cannabis cultivation goals because cannabis is not currently identified as an agricultural crop within Sonoma County.

The requested General Plan amendment is a legislative change by the Board of Supervisors. The Board has broad discretion to weigh and balance competing interests in this context, and to deny such legislative requests.

ISSUE #3: Ordinance Requirements - Minimum Lot Size

The cannabis ordinance was amended by the Board of Supervisors on October 16, 2018. The amended ordinance became effective 30 days from the date of passage on November 15, 2018. The amendments included a change to the minimum lot size requirements for cultivation to 10 acres. The cannabis ordinance included a pipeline provision allowing existing projects under 10 acres to continue to be processed if an application was determined to be "complete for processing" prior to the effective date of the ordinance.

The application before the Board was submitted on November 15, 2018, the same day the ordinance became effective. As a result, the application is not a pipeline project and would be subject to the 10 acre minimum lot size if zoned appropriately. More importantly, an application that requires a General Plan amendment and zone change before the requested use permit application cannot be considered "complete for processing" until the proposed use is consistent with its General Plan designation and zoning.

As described under Issues 1 and 2, a General Plan Amendment and rezone to an industrial designation would continue the existing spot zoning for non-agricultural use in an agricultural area without sufficient public benefit to substantiate the request. In addition to the problems with a General Plan Amendment and rezone to either LEA and DA described under Issues 1 and 2, the project does not benefit from the cannabis ordinance pipeline provision on lot size, therefore the proposed use is ultimately inconsistent with the proposed designations.

Prior Board Actions:

Not Applicable.

FISCAL SUMMARY**Narrative Explanation of Fiscal Impacts:**

Not applicable.

Narrative Explanation of Staffing Impacts (If Required):

Not applicable.

Attachments:

Att 1 PLP18-0046 Planning Commission Staff Report and Attachments Dated September 5, 2019

Att 2 PLP18-0046 Letters of Support

Att 3 PLP18-0046 Planning Commission Resolution

Att 4 Planning Commission Minutes dated September 5, 2019

Att 5 PLP18-0046 Draft Board of Supervisors Resolution

Related Items "On File" with the Clerk of the Board:

Not Applicable.