

**MINUTES OF THE
PLANNING COMMISSION MEETING
June 12, 2024**

The Imperial County Planning Commission convened a Meeting on Wednesday, June 12, 2024, at 9:00 a.m. in the Board of Supervisors Chambers, El Centro, California.

Staff present: Director, Jim Minnick; Assistant Director, Michael Abraham; Planner I Luis Bejarano; Planner II Gerardo Quero; Clerks- Laryssa Alvarado & Aimee Trujillo.

Chairman Rudy Schaffner called meeting to order at 9:00 a.m.

I. Roll Call: Commissioners present: Schaffner, Cabanas, Kalin, Medina, Wright, Bergh, Pacheco, Hinojosa

II. Pledge of Allegiance:

III. Public Hearings

1. Approval of Minutes: Chairman Schaffner entertained a motion to approve the Planning Commission Minutes for the **May 22, 2024** meeting as submitted by staff; Commissioner Kalin made motion to approve minutes seconded by Commissioner Cabanas and carried on the affirmative vote by the Commissioners present Schaffner (yes), Kalin (yes), Cabanas (yes), Bergh (yes), Medina (yes), Wright (yes), Pacheco (yes), Hinojosa (yes)

2. Consideration of Conditional Use Permit #24-0005 for CUP#08-0024 as submitted by American Towers, Inc. (ATC) for a new (15) fifteen-year re-entitlement for previously approved Conditional Use Permit #05-0012 for an existing 125-foot above ground level (AGL) telecommunications tower. The property is located at 4210 Black Mountain Road, Winterhaven CA 92283, further identified as Assessor's Parcel Number (APN) 039-180-029-000 and legally described as Section 14, T13S, R20E, S.B.B.M. in the unincorporated area of the County of Imperial. (Supervisory District #5), [Gerardo A. Quero, Planner II at 442-265-1736 extension 1748 or via email at gerardoquero@co.imperial.ca.us].

Jim Minnick, Director; Gave a brief description of the project, and introduced Gerardo Quero, Planner II, to read the project into the record.

Gerardo Quero, Planner II; Read the PowerPoint Presentation of the project into the record.

Chairman Schaffner; Asked if there was a representative for the project to approach the podium.

Jill Cleveland, Applicant; Introduced herself via Zoom.

Chairman Schaffner; Asked if she had any questions or comments regarding the project, and if he read and agreed with everything.

Jill Cleveland, Applicant; Stated that she read and did agree with everything on the project.

Jill Cleveland, Applicant; Just one comment, thank you Gerardo for the presentation. The drawings you showed a generator there and we updated those drawings there is no generator in the shelter currently at this time. That's my only comment.

Chairman Schaffner; Opened the public portion of the meeting. There were no public comments; he then closed the public portion of the meeting and turned it over to the Commission for any questions and/or comments.

Commissioner Kalin: Made a motion to approve **Agenda Item #2** seconded by **Commissioner Cabanas** and the affirmative vote by the Commissioners present as follow Schaffner (yes), Kalin (yes), Cabanas (yes), Bergh (yes), Medina (yes), Wright (yes), Pacheco (yes), Hinojosa (yes).

Jim Minnick, Director; Stated **Agenda Item #2** stands approved by this Commission. In which the applicant or any member from the public want to appeal must be done by filing the appropriate appeal in the next ten (10) days.

3. Consideration of Conditional Use Permit 23-0018 and Variance #24-0001 as submitted by WH Lounge LLC., proposes a cannabis dispensary and lounge with delivery service, along with a Variance to allow for a reduction of parking requirements. The project consists of one parcel legally described as LOTS 7 8 9 & 10 BLK 9 TOWNSITE OF WINTERHAVEN S.B.B.M. (056-283-006-000) (509 Railroad Avenue, Winterhaven, CA, and; Supervisorial District #5), [Derek Newland, Planner III at 442-265-1736 or by email at dereknewland@co.imperial.ca.us].

Jim Minnick, Director; Gave a brief description of the project, and introduced Luis Bejarano, Planner I, to read the project into the record.

Luis Bejarano, Planner I; Read the PowerPoint Presentation of the project into the record.

Commissioner Kalin; I've got a question. On the Variance for the parking I think you said there're for the shop and the lounge 47 spaces? Is that required?

Luis Bejarano, Planner I; Yeah

Commissioner Kalin; And how many spaces are in this proposal?

Luis Bejarano, Planner I; In the proposal-

Commissioner Bergh; What I suggest is you read that section that you were talking about the breakdown of the different parking spaces and go back over there.

Luis Bejarano, Planner I; Can you go back to that slide please? The project summary. Yeah so the existing parking is 23 spaces, once we add the two on the abandoned road we have 25 spaces. The total parking required for site under current parking standards is 37 and the total required parking with addition of lounge area is 47.

Commissioner Cabanas; And they are only going to have 25?

Luis Bejarano, Planner I; They are only going to have 25.

Commissioner Bergh; How do you do that? With Volkswagen or what? Skateboards?

Commissioner Cabanas; Can we go back to the slide to see where the housing is? Houses not buildings. There was another one that showed the heavy.

Jim Minnick, Director; Go back to the zoning map.

Commissioner Bergh; So what's the distance between the lounge and the first residence?

Luis Bejarano, Planner I; The lounge and the first residence which is the one that's on the-

Jim Minnick, Director; It's about 100 feet to the south.

Commissioner Cabanas; My concern is that they only have 25 parking spaces and it's very close to a house.

Commissioner Bergh; Some might come back and say well you did it for them, why can't we have the same thing? It sets a interesting precedence.

Jim Minnick, Director; The applicant is here if you'd like to talk to them.

Commissioner Bergh; They aren't going to magically make parking spaces are they?

Jim Minnick, Director; My understanding is that the applicant also controls land to the other side of the highway and when we look at parking requirements, generally speaking for uses, there are two things that we look at. One is physical structure and how long it's been there, whether or not it's, like if it's a vacant lot and we haven't done anything it's really easy to say we want this number of spaces. When you have a built environment and you're retro fitting existing structures we tend to have a problem with making sure we fit the exact requirement of parking. My understanding is the applicant is prepared to use the parking across the street for their employees. We don't differentiate when we say we need X number of parking spots for a type of use between employees and customers so some gains can be made across the street. I'll let the applicant speak on that.

Commissioner Bergh; And those lots are paved?

Jim Minnick, Director; Yes.

Chairman Schaffner; Asked if there was a representative for the project to approach the podium.

Vincent Hallak, Applicant; We are the applicants in this case. I was just coming up to give you guys some information as far as the parking which Jim already tried too. We have the additional parking across the street at the already Off the Charts location and we are going to be housing a lot of our employee parking there as well to mitigate any of the additional parking needed for the Railroad Avenue.

Commissioner Medina; Are you the owner of the land across the street?

Vincent Hallak, Applicant; Yes sir.

Commissioner Cabanas; How many parkings will you have in that additional parking?

Vincent Hallak, Applicant; I think we would be able to take away at least 15 for staff and other customers to use in our parking lot across the street.

Commissioner Cabanas; Can you give me a figure? 25 and 15 that is still 40 and you need 47.

Vincent Hallak, Applicant; I believe in total we have an excess of 20 parking lots or something close to that. We are thinking of adding those extra 15 to the side, the additional would be an overflow to us. We also have parking next door to us in the Temptations building where there is currently a strip club. We also own the lease for the second half of that building which gives us an additional 6 parking. We also have an additional property down the street that we hold the lease to that has additional parking. We have another 5 spots.

Jim Minnick, Director; Part of the request is to reduce the overall requirement for parking that's what the Variance is for. So we understand that in order to do it based on the current black and white is 47 spaces. They are asking for a reduction so they aren't asking to find the 47, they're specifically asking to do less than the 47. They have other places where they can make up some of the difference of 25 and what they are asking for.

Commissioner Kalin; So how do we make the finding that this is not a special accommodation as we normally do with a Variance?

Jim Minnick, Director; It's understandable. You have a built environment you have limited space and there's parking being offered off site to a degree. Again if this was a vacant lot and you were coming in putting in a Dollar General or something they don't have that Variance. When you have a postage stamp of a lot and the use is a commercial the type of parking varies. So if you look at the prior history of that building it never met the parking requirements, ever. It always required more than what their physical space was. This particular use if it was to be at capacity is an excess of what the standard is for the prior uses but it still didn't make it. If 37 was the prior and they want 47, and all we got is 23 without closing the road down it never met that so that is a physical constraint of the findings of Variance. So it's actually an easy find for this particular request.

Chairman Schaffner; How many of these parking spots depends on this leasing that you're talking about? If you lose the lease then you don't have them.

Vincent Hallak, Applicant; We have multiple long term leases within each of them up to 20 years.

Jim Minnick, Director; The County also has a mechanism should you require it to ensure that when you are dealing with commercial properties that parking that's identified off property it creates a recorded easement that requires that off street parking to be connected to the property. If he is saying he has 15 spaces across the street, we verify that we require recorded document that says the property there has to be used for parking for this facility.

Chairman Schaffner; So if the lease is lost for whatever reason what happens to the conditional use permit?

Jim Minnick, Director; You terminate the conditional use permit. Whatever the number of parking spaces that you agree to have if some of it is offsite and they can no longer retain that off site parking right even though we recorded deed against it then you can put in the conditions of approval to void the CUP, absolutely.

Vincent Hallak, Applicant; Just so you guys know we initially were applying into the middle unit, I'm sorry to the first unit which is considerably larger, when speaking to the County trying to get this Variance figured out we actually moved from the very large unit all the way to the end unit which is considerably smaller so that we can help reduce the amount of parking needed for the Variance as well.

Chairman Schaffner; Asked if he had any questions or comments regarding the project, and if he read and agreed with everything.

Vincent Hallak, Applicant; Not everything. There's a few things we would like to discuss.

Jim Minnick, Director; Hold on one second let me finish one more thing. To help understand the parking a little bit it's a lot like the downtown of Brawley or the downtown of Imperial or any of the cities that you live the make up and the street parking for any business. So say for example I go to Inferno, Inferno has no physical parking spots so all of the parking spots for Inferno in Brawley are required to be on the street. These guys are actually asking to say look we can fit enough in our parking lot and we're taking another parking lot from another property that we have. This is better than what we get a lot of times when we're dealing with a built environment or right down the street here in El Centro. We have plenty of that where we don't actually have parking and they all have to park on the street.

Commissioner Cabanas; But they also can be used in the parking lot in the street closest to the houses and have some impact on people living in those houses.

Jim Minnick, Director; Well you can put a condition that says they can't have any parking north of their building.

Stewart Namao, Applicant; We would agree to that too.

Commissioner Bergh; So the parking is across the street I'm assuming Winterhaven Drive is controlled by you

Stewart Namao, Applicant; The lot across the street not the Drive.

Commissioner Bergh; Yes so you're having clients coming back and forth that's going to be exclusively for tenants or consumers

Stewart Namao, Applicant; Mainly we want our employees parking there.

Commissioner Bergh; I would be concerned about someone coming out of there and going across Winterhaven Drive get ran over and say well the County is at fault at that. I don't know everybody wants to sue everybody else.

Commissioner Medina; How many employees do you plan to employ?

Vincent Hallak, Applicant; Truthfully in that store the way that we are going to operate I don't believe we need more than I believe 3-5 employees there because it isn't a full retail. We are applying for a lounge. We don't necessarily need many people to man the fort there we need somebody to watch over and make sure nothing is going wrong in the lounge area then 1-2 employees in the front out with the retail.

Commissioner Cabanas; They had said they wanted to talk about something.

Chairman Schaffner; Did you have something else sir?

Jim Minnick, Director; Stewart you had an issue with the condition. State your name for the record. Condition 13

Stewart Namao, Applicant; I think there was a condition regarding the fiscal analysis. This is the one attached to that right?

Jim Minnick, Director; Yes Condition S-13

Stewart Namao, Applicant; That is one condition that we don't agree on. There was a request for us to pay for a fiscal analysis I think that it would be a \$17,000 fiscal analysis which was kind of not clear from the beginning of applying for this project. We've done CUP's in the past so it's not very consistent with the past CUP's and we're also in the middle of applying. We've been through the environmental analysis and this was brought up after we have already submitted our fees and there was a clear understanding of what fees were going to be attached to it. Then after our environmental meeting, the environmental board approved us for negative effect then came about that there was a \$17,000 fee and it would also delay our project. For some reason we don't get approved it doesn't state that we even get refunded for that. We are not the ones asking for the fiscal analysis I think another department is.

Commissioner Cabanas; Do we have an explanation on that?

Jim Minnick, Director; Yes Rosa Lopez from the Executive office will explain the condition.

Rosa Lopez, Executive Office; Yes regarding Section S-13, the measure or item that was requested of the project to a fiscal impact analysis. On May 7th, the Imperial County Board of Supervisors during the board meeting directed the staff to require projects such as these to have a fiscal impact analysis prior to approval. Immediately when that was directed to County staff I notified County Planning Department and emailed based on the application submitted by the project applicant. We did email them letting them know of the Board direction. You may ask why the direction I think today's questions by Commissioner Bergh and a couple of others about the employees, these kind of type of numbers that is what the fiscal analysis is about is to take a look at the overall impact. I think the Board is noticing that there are many unanswered questions when these projects are approved meaning what kind of impact is that causing not only to County Services but to the communities in that area, our neighboring communities such as Yuma, Arizona those residents in that community what kind of impact that causes. So based on those past experiences yes there has not been done in prior but has pasts do not dictate future recommendations. Because of those we did ask this condition to be placed on their conditional use permit. I believe I spoke to I cannot remember the lady's name, Ms. Vogel, as soon as the last week or the week before we do have a third party consultant that we do contract on a regular basis. We did invoice the applicant \$17,000 but that is because that is what the consultant charges. We did go over the process as soon as we receive payment the consultant will get on it they provide a questionnaire to the applicant and within a week or so we would have it. If the applicant would've responded accordingly, yes we would've had that report today but we did go back and forth on numerous discussions via phone calls and they refused. They basically said they refused to provide payment. The County does not oppose this project. We just simply request that they comply with the requirements that the Board has placed on projects like these. As of today we do request that this item be continued to a later date until Section S-13 is fulfilled.

Vincent Hallak, Applicant; If I may, from my understanding this was only a request that was done and was requested by one of the Board of Supervisors during the last meeting that you guys had for an approval for a dispensary in Seeley I believe or Salton Sea. That request was made during an appeal process and that was something that was requested not something that was necessarily required especially previous to doing

anything. If it is something that the County would like to require from somebody later on in the future for further CUP applications, it's understandable but for somebody who's already been through the process and currently as we are here in the process of it , for us to not have proper notification something in writing something at least telling us hey your specific CUP is going to be affected by this use and give us a chance to speak at that initial point in time to at least defend ourselves then and there when the initial issue was brought up then it's understandable that would've been passed with discussion. Being that it was only requested not required a month ago and our correspondence have only been within a month, for us to be taxed on to a \$17,868 fee for a fiscal study on a business, a very small town that is only going to be bringing more profit and tax revenue to that town, for us we're kind of like why are we being hit with this random fiscal study. You know we understand if it was a much larger town where a larger scale business, you know a cattle plant or something major like that. We're a very small retail business and normally you wouldn't see this type of a fiscal analysis for a small retail mom and pop business inevitably that is what we are. We are a mom and pop business.

Commissioner Cabanas; Rosa was this approved by all Board members?

Rosa Lopez, Executive Office; This was direction provided in the Board meeting. I think what's the misconception is it was brought up by a Board member but the entire Board approved that direction whether or not it was placed on the Board agenda, it was not, but that was Board direction. That is now Board policy. I do have emails trying to reach out to the applicant. Again, I used emails based on the original application whether or not they received it I'm unable to determine that but emails immediately that on May 7th were provided to the applicant and the Planning Department requesting specific language to be placed on the CUP which for the most part they summarized it in the current draft CUP and again, the County that is not opposed to the project itself rather we request that it be postponed to a future Planning Commission date so that they can properly complete a fiscal analysis that this Commission can have those answers that have been posed today regarding the overall effects of this particular project.

Commissioner Bergh; When did you notify them of this?

Rosa Lopez, Executive Office; Immediately. So the Board took a directive to County Staff. That same day I emailed both the Planning Dept, the planner Mr. Derek Newland and Mr. Minnick, and immediately as soon as I got the emails for the applicant based on his application, I emailed them immediately.

Commissioner Bergh; This should be continued until they have a chance to work it out.

Stewart Namao, Applicant; We were emailed after the direction had been made.

Commissioner Cabanas; That is correct. That's the procedure sir.

Stewart Namao, Applicant; We don't get an opportunity to speak up? I mean we have a project

Commissioner Cabanas; Okay your CUP is not approved yet until the members in here approve the CUP. It was a condition that was put to your CUP.

Vincent Hallak, Applicant; It was a condition like she said was only a request but not necessarily a mandated thing within a packet. Normally when you apply for a CUP it tells you that you have this fee, this fee and this fee. These are required in order for you to move forward. This was a \$17,000 fee for a report on a small mom and pop business that at the end of the day is a pretty significant fee that normally fiscal reports are for very large corporations because they have a true impact on the community that's being involved. For a retail establishment its kind of excessive we believe to have a fiscal report plus pushing this back or not being approved based on a report like that is also going to be holding us back and costing us much more not just in construction and in time, in rent and lost revenue from it but also with the initial fee of almost \$18,000 for a report that wasn't necessarily necessary before that meeting had happened. We've also put a CUP in that area we haven't received anything on it before. The other dispensary that is in the area, Aroma, did not have to do the same CUP or did not have to have this same fiscal analysis report so we just feel like it is kind of random. An \$18,000 fee is coming out of nowhere when two things have already been approved there. Why is it now that we are applying again that a third one is requesting this?

Stewart Namao, Applicant; We are already 3 quarters of the process then it got brought up. If it would've got brought up right when we were applying and been clear about it, it's the cost of doing business. But now right before the CUP it gets brought up, it's a little unfair.

Commissioner Bergh; If you had the County as far as 30 days to the next meeting would that meet your timeline?

Rosa Lopez, Executive Office; We would be able to fulfill that analysis provided that applicant provides payment and they do fill out a questionnaire that the consultant provides to them but yes just to clarify again, all future projects related to this will be subject to a fiscal analysis. That was Board policy.

Vincent Hallak, Applicant; Just to be clear that is to this use for anybody applying for cannabis inside the County of Imperial will have to go through a fiscal study?

Rosa Lopez, Executive Office; That is correct. That was the direction provided by the Board on May the 7th.

Chairman Schaffner; We don't have the authority to reverse their decision?

Rosa Lopez, Executive Office; No.

Vincent Hallak, Applicant; Just to be clear when the Board had made their decision did they vote on it to approve it ?

Rosa Lopez, Executive Office; That is policy. That is direction.

Vincent Hallak, Applicant; If one person on the Board asks for it the rest of the Board doesn't have to approve it before it goes through? Action becomes a law? Somebody can sit there and say hey we decided today we're going to add a fiscal analysis to these people because we believe this is going to have a greater impact on this site. A fiscal analysis is supposed to look at mostly negative effects, right? What is a negative effect of adding a retail business into the area that one pulls more people from surrounding counties into that area for added tax generation and beautification of a much older building and area

Commissioner Kalin; You're repeating yourself.

Commissioner Cabanas; You're not happy with the Board's decision then you can go challenge the Board in the next meeting.

Vincent Hallak, Applicant; Just for the clarification it was fully voted with all of them?

Rosa Lopez, Executive Office; Sir it is Board policy. It was direction provided by our Board. It was not voted on but it is direction. That happens on a regular basis

Commissioner Bergh; Prior project had nothing to do with that decision correct?

Rosa Lopez, Executive Office; So the questions just like today that the Commission had regarding the square footage of housing nearby, how many employees, the consultant is an economist. I am not an economist. Those are the types of questions that would be requested for the applicant to provide. We would be able to provide not only this Commission but our Board a full picture of what impact this establishes whether its positive, whether its negative, we don't know. That has been the frustration from the Board that after the fact all these projects have been approved and not only cannabis but numerous other kinds of projects that when they are approved it's really difficult for them to embrace again the overall impact. Yes whatever project I don't recall the name that was brought up on May the 7th it was at that point when the Board decided this is now policy to have a fiscal analysis on all future projects that reflect this type of business.

Commissioner Kalin; Would you like to proceed today or would you like to ask for a 30 day continuance so that you better understand what they're asking for?

Vincent Hallak, Applicant; I believe we understand what it is that they're asking for we're just trying to get more of the clarification as to why is something like this required of a regular retail mom and pop business and it wasn't required for a major cattle plant that was installed in the area? I would say that a cattle plant would have much more a negative effect on surrounding communities than a mom and pop retail which is kind of

where this whole thing came up. We just feel as if it's unwarranted kind of, an excess fee that is being added on to us for particularly no reason in our eyes.

Commissioner Cabanas: Again, it was the Board of Supervisors. So that question goes to the Board of Supervisors.

Stewart Namao, Applicant; I just have a question. We pay this fee and come back in 30 days and we don't get approved do we just consider that as a donation?

Rosa Lopez, Executive Office; So I cannot speak on behalf of the Commission but again this is a requirement so that the Commission can make an overall balanced decision on whatever recommendation they make. Again, it is part of the Conditional Use Permit so you must whether it is approved or not, I can't answer that but it is a requirement. It wouldn't necessarily be a donation it's a requirement.

Stewart Namao, Applicant; It's not a condition set yet. You're requesting it to be set as a condition. It is in the CUP right now, S-13.

Vincent Hallak, Applicant; Would that be after the fact?

Commissioner Kalin; Would you like us to add some other conditions today?

Vincent Hallak, Applicant; No sir.

Commissioner Kalin; Just asking for clarification

Vincent Hallak, Applicant; It's a significant fee

Commissioner Kalin; I think you should ask for a 30 day extension to get all of this clarified. That would be my advice.

Stewart Namao, Applicant; We'll request another 30 days.

Chairman Schaffner; Opened the public portion of the meeting. There were no public comments; he then closed the public portion of the meeting and turned it over to the Commission for any questions and/or comments.

Commissioner Kalin: Made a motion to continue Agenda Item #3 until everyone is agreement to bring project back for approval to Planning Commission, seconded by Commissioner Cabanas and the affirmative vote by the Commissioners present as follow Schaffner (yes), Kalin (yes), Cabanas (yes), Bergh (yes), Medina (yes), Wright (yes), Pacheco (yes), Hinojosa (yes).

Jim Minnick, Director; Stated Agenda Item #3 has been continued by this Commission.

IV. Public Comments, NONE

V. Planning Commissioner Comments,

VI. Director Comments,

Chairman Schaffner; adjourned meeting.

IX. Adjournment: Meeting adjourned at 9:40 a.m.

Submitted by Rudy Schaffner
Chairman of the Planning Commission

Attest:

Jim Minnick, Director of
Imperial County Planning Commission

Laryssa Alvarado & Aimee Trujillo-PC Recording Clerks
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