

**MINUTES OF THE
PLANNING COMMISSION MEETING
October 28, 2020**

The Imperial County Planning Commission convened a Meeting on Wednesday, October 28, 2020 at 9:00 a.m. in the Board of Supervisors Chambers, El Centro, California.

Staff present: Director, Jim Minnick/Assistant Director, Michael Abraham/Planner IV, Joe Hernandez//Clerk, Carina Gomez/Office Assistant, Kimberly Noriega/GIS Tech Jorge Serrano.

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

- I. **Roll Call: Commissioners present:** Schaffner, Bergh, Wright, Cabanas, and Castillo in attendance.

Conference Call: Kalin, and Zuno.

Absent: Medina, Roben

- II. **Pledge of Allegiance:**

- III. **Approval of Minutes:** Chairman Schaffner entertained a motion to approve the Planning Commission Minutes for the September 23, 2020 meeting as submitted by staff. Motion was made by Commissioner **Kalin** seconded by Commissioner **Cabañas** and carried on the affirmative vote by the Commissioners present Schaffner (yes), Kalin (yes), Bergh (yes), Cabanas (yes), Castillo (yes), Wright (yes), and Zuno (yes).

1. Consideration of General Plan Amendment #19-0002, Zone Change #19-0003 & Conditional Use Permit #19-0013 as submitted by West Wind Parking Storage, Inc. The applicant has applied for General Plan Amendment #19-0002 proposing to designate Assessor Parcel Numbers 054-240-022-000, 054-240-023-000, 054-240-024-000 and 054-240-025-000 from an Agriculture designation to a Specific Plan Area designation under Land Use Map of the Land Use Element of the Imperial County General Plan. Concurrently, Zone Change #19-0003 proposes to convert an existing 20-acre parcel (054-24-023-000) from A-2 (General Agriculture) to M-1 (Light Industrial) zone to allow for the expansion of an existing truck parking facility. The project also proposes to correct the existing two established industrial uses under Parcels 054-240-022-000 and 054-240-025-000 from C-2 (General Commercial) to M-1 (Light Industrial) zone. The two parcels consist of existing truck storage facilities. Parcel 054-240-023-000 is currently vacant. No changes to the existing overlay designation for Parcel 054-240-022-000 and 054-240-025-000 are proposed, but would be included to Parcel 054-240-023-000; Assessor Parcel Numbers 054-240-022-000, 054-240-023-000, 054-240-024-000 & 054-240-025-000 (429 E. Heber Road, Heber, CA), (Supervisory District #5). The Commission took the following actions:

Jim Minnick, Director, gave a brief description of the project, and introduced Joe Hernandez, Planner IV, to read the project into the record.

Joe Hernandez, Planner IV, read the project into the record and was there for any questions from the Commission.

Chairman Schaffner, asked if there were representatives for this project present to state their name and address for the record.

Tom DuBose, representing West Wind Parking Storage, Inc., introduced himself and stated that he had read the entire project, and agrees with staff's recommendations.

Chairman Schaffner, opened/closed the public portion of the meeting, there were no public comment and then turned it over to the commission for any questions or comments and entertained a motion.

Commissioner Bergh asked, is parcel currently being farmed at this time?

Jim Minnick, Director, replied it is not currently being farmed.

Commissioner Bergh, asked, what classification is it.

Jim Minnick, Director, responded, A-2, Local.

Commissioner Bergh, asked land value;

Jim Minnick, Director, responded, statewide.

- A. Motion made by Commissioner Kalin and seconded by Commissioner Cabañas, on the affirmative vote by the Commissioners present as follow; Schaffner (yes), Kalin (via phone) (yes), Bergh (yes), Cabanas (yes), Castillo (yes), Wright (yes) and, Zuno (via phone), (yes), to recommend to the Board of Supervisors to make the De Minimus Finding as determined at the August 27, 2020 EEC hearing that the project will not individually or cumulatively have an adverse effect on Fish and Wildlife Resources, as defined in Section 711.2 of the Fish and Game Codes; and, recommend to Board of Supervisors to approve the Resolutions with Findings, for General Plan Amendment #19-0002;
- B. Motion made by Commissioner Kalin and seconded by Commissioner Cabañas, on the affirmative vote by the Commissioners present as follow; Schaffner (yes), Kalin (via phone) (yes), Bergh (yes), Cabanas (yes), Castillo (yes), Wright (yes) and, Zuno (via phone), (yes), to recommend to Board of Supervisors to approve Zone Change #19-0003;
- C. Motion made by Commissioner Kalin and seconded by Commissioner Cabañas, on the affirmative vote by the Commissioners present as follow; Schaffner (yes), Kalin (via phone) (yes), Bergh (yes), Cabanas (yes), Castillo (yes), Wright (yes) and, Zuno (via phone), (yes), and, to recommend to the Board of Supervisors to Adopt the Resolution and Findings, approving Conditional Use Permits 19-0013, subject to all of the Conditions of Approval and authorize the Planning & Development Services Director to sign the CUP upon receipt from the applicant.

Jim Minnick, Director, stated all three actions stand approved for recommendation to the Board of Supervisors, there is no appeal for this recommendation the project will move forward to the Board of Supervisors.

2. Consideration of Similarity of Use as submitted by Diamond Environmental Services proposing an equipment rental business, which include renting portable restrooms (various types), shower trailers, fencing, barricades, and temporary power. On property identified as Assessor Parcel Number(s) 051-420-101 & 0102-000, this proposed site is zoned M-1 (Light Industrial) (1702 W. Evan Hewes Highway, Seeley, CA), (Supervisory District #1), The Commission took the following actions:

Jim Minnick, Director, gave a brief description of the project, stated this project was a continuation from the last meeting it is for consideration of a similarity of use submitted by Diamond Environmental Services and introduced Joe Hernandez, Planner IV, to read the project into the record.

Joe Hernandez, Planner IV, read the project into the record and was there to answer any questions from the Commission.

Jim Minnick, Director, stated he did not attend the last hearing, but did have a conference call with the applicant along with department staff on this matter and we are bringing it before you with the same recommendation that we had before that this be considering a similarity of use.

Chairman Schaffner, asked if there were representatives for this project present to state their name and address for the record.

Adam Stone, introduced himself as Attorney for the applicant, stated they just wanted to come back again today for the similarity of use determination. I think last meeting there was a little miscommunication about what they are looking for. Under the code, in there is an option/avenue for the similarity in use, when the proposed use is not listed specifically on the ordinance. In this situation, we are looking for a rental facility focused around portable toilets, portable showers, trucking to bring those items on and off the property and cleaning and storing those items. What they are seeking is a similarity of use determination because of the permitted uses in the M-1 zone, where they are currently located those are all permitted by right. There isn't anything specifically that calls out anything different than, what this currently is proposing, a station that has storage and rental for these types of equipment facilities. We have the applicant again to talk about some of the necessary factors and some of the items that go over the five (5) criteria's that are used for the similarity in use. On page 9 of the staff report, it talks about the criteria and how the proposed project does align with some of the uses that are allowed by right in the M-1 zone. We are asking for the Planning Commission essentially make the determination of approval of the similarity in use, in which that would allow for us to then to move forward with this project as permitted by right, but it is still what it required the applicant to receive health approval from the health officer and do all the things necessary, which we are going to do, but want to make sure that the similarity in use is approved to proceed with the project as allowed into the code.

Chairman Schaffner, asked the project representative if he read the entire project, and agrees with staff's recommendations.

Adams Stone, stated yes, also mentioned the applicant was present for to answer any questions.

Chairman Schaffner, opened/closed the public portion of the meeting.

Sylvia Rubio, at 975 Jacaranda Dr , El Centro, CA 92243; Business Address: 813 W Brighton Ave, El Centro, CA; introduced herself as broker with Rubio Broker and Associates, have lived in Imperial Valley all her life, Imperial Valley Native, and has been working with their client since January 2020. Stated that they are conscious of what positively or negatively impact the Imperial Valley, so, I know what is best for Imperial Valley and its long-term effects. I understand Diamond Environmental Services began talking to Imperial County Planning & Development Services since February of this year. They are aware there is a process and they have diligently and patiently taken each step required by our County. Based on the M-1 zoning Title 9 information sheet we all believe they fit under the permitted uses. We have come before you on September 23, 2020 Planning Commission, was taken back to planning to clarify if they were not going to need a CUP, apparently they were advised differently. We are here before you again kindly requesting of approval for similarity of use without having to obtain a CUP. In the Title 9, Section 90515, it does state "the following uses in all of those determined to be similar shall be allowed" I know it is difficult to list every single allowed use in that list; but the reason we believe it is similar in use is because, some of the allowed uses are like auto wash, back house, feed, fuel facility, industrial storage, janitorial, nursery, and of course nursery they do use fertilizer and organic fertilizers. I would like to conclude that all the following positives is what they would bring to this area. Our client will be bringing in 8 to 10 positions of employment, improvements to the property, increase property tax space; would eliminate another vacant property open to potential vandalism and transit loitering. Most importantly, our client have stated these portapotties are cleaned out at an approved disposal site, prior to parking them for storage and servicing. They do plan to have a 24 hour staff person on site, in the event of any issues outside regular business hours and the County Public Health Department has also require to approve the site and use, and they are also talking to Imperial County Enforcement Agency for compliance. They are doing their due diligence and trying to comply with our County.

Lastly, I would like to thank you for your time and appreciate your support in allowing them to bring in this company to this perfectly suited property, which will be an asset to the Imperial Valley.

Jim Minnick, Director, commented, the planning department who is the secretary to this commission has reviewed this project and does not oppose the concept that this could be found similar in use by your commission to other uses within the industrial M-1 zone. The nature of what a similarity of use is, if found within the conditional use permit chapter of the ordinance. It states that “any use that is not listed as a permitted use or used with a use permit, must go through this process if you want to put it in the zone” therefore, by default if your commission were to agree that this is similar in nature, it would require a conditional use permit. The only other avenue the applicant has other than that, is to ask for an actual ordinance change, which goes through the process and is a legislative action that required the Board of Supervisors to sign off on. It is an update. So, your job is to determine whether it is similar in nature to the existing zoning we have and then we come back to you with a use permit and then you determine on a sight specific bases if this project fits that location. You do not have the authority to say “it’s similar, it doesn’t require a CUP” the whole pretext of this section is within the CUP code. If the nature was for you to go out and say I’m going to take a look at our laundry list of zones, we have 20 zones, we have two sets of permitted and CUP required per zoning, and 40 different lists in our code, if the pretext was for you to just make that decision without any other back up, it would not be in the CUP chapter of our ordinance. That is what I want to make clear. Our department has no issue with this being found similar in nature, is has no issue with the idea of it being developed, but it has to go through the CUP process, should this commission approve similarity of use. There is not another option for you.

Chairman Schaffner, stated, I was under the impression this would be cleared up before we got here today. We haven’t changed a thing since last time?

Jim Minnick, Director, answered, No.

Chairman Schaffner, called Mr. Stone to come forward and advise where he would like to go from there.

Adam Stone, came forward and stated he thinks that in terms of the reading of the code that way, our opposition is that the code does allow for an avenue outside of the CUP based on the fact that this use is permitted or similar to uses that are permitted by right. Now, the similarity is so much that the rental facility small equipment, rental facility for smaller storage yard, the industrial storage, all those are permitted by right, this isn’t falling under an airport or other uses that are in the CUP zone for the M-1 zoning in use. What we are talking about is the fact that this proposed use, this project, has so many similar uses that are in the M-1 permitted by right classification that, this should fall under that aspect. Reading the conditional use permit section of the code where, Mr. Minnick was referring to that also does give avenues outside of the CUP, administrator routes in the CUP code, and other approval routes, outside of our carved out as exemptions when certain criteria apply and we think that this is one of those cases bases on the similarity of use proposed having so many similar uses in the permitted by right classification not the CUP classification.

Commissioner Cabaña, questioned, Mr. Minnick, there was similar operations in the valley, do they have CUP’s?

Jim Minnick, Director, responded, in looking up that, the ones that we know of have been around for a very long time and we don’t know the nature of which zoning are which, but for example Alpha Sight Logistics have been around since before this code book existed. We don’t have this listed as a use, once you establish as listed as a use which is the cleaning and maintenance of sanitary equipment, which is not exactly the same thing as heavy equipment or rental equipment, different nature. I believe all of us have used a porta-potties once or twice, we understand the nature of it. We understand what is done on site, when its cleaned and transported versus what its actually has to be done at the site for cleanup and prep for the next rental. That was not contemplated, in the code that we have right now. It is not that you cannot find that it is similar, but until we environmentally go through something like this, we do not know whether there is an actual impact. Yes, we do have existing operations out there, yes, they have been around for a long time, this question has not come up before us today, it is not a listed use. If we follow the code, the code says, if you determine is a listed use, then they go through a

use permit process, if you determine it is not a similar use, then it goes through the ordinance process. They want to do something in lieu of the CUP; they would go through ordinance process.

Commissioner Castillo, asked, what would on a reasonable basis, the difference to clean them on site, as to cleaning them out in the field?

Jim Minnick, Director, responded, they are being cleaned on site, but they are being pumped off site. They are not storing clean porta-potties; they are storing empty porta-potties, not cleaned porta-potties. They will still have to prep it for the next user.

Adam Stone, mentioned, the cleaning will be done in a way that it is going to be cleaned from the inside with a wash barrier that is going to be to code compliant with the ability for them to maintained in way where it is done inside during business hours without creating a nuisance. When Mr. Minnick mentioned "the other sites that are existing already and the fact that they are grandfathered in" I think it is still important to know that there still has not been any nuisance or any types of other issues come up from those sites that should cause concerns with this site. My client has seven (7) other sites located throughout California where this issue is not a problem, to have the need to go through the CUP process; they have not had code enforcement actions or nuisance citations for their operations. They lead a clean operation that brings in pre-pumped facilities that are done with a final wash in their contained bay area where there water runoff is all contained and not creating a nuisance and then from there they are stored on site to be rented again to another user in the County Area.

Commissioner Cabañas, asked Mr. Minnick, how difficult would it be for them to go by changing the ordinance itself physically?

Jim Minnick, Director, responded, it is a process, you submit an application that would go through the same CEQA process we would for a use permit, we would have to go before the Planning Commission to do the ordinance update, and the Board of Supervisors to ultimately change, through a legislative action. It is more complicated to, than it would do to do a CUP. Which is why the CUP mechanism is in place for your similarity of use. Think of similarity of use in your commission as a stopgap between what we have listed and actually modifying the code. Now, once you have established this as a similarity of use, other people could use the same similarity of use and when we do the same update internally as a County, we would then convert this similarity of use to an actual listed item of the code. So, that is what the intent of a similarity of use was, we couldn't think of everything, and by default because we haven't thought of it, it hasn't been environmentally assessed it has not gone through a process. That is why you have two different classification in every zone. Permitted uses, uses with the conditional use permit. The ones that were permitted were environmentally assessed that is why they are listed as a building permit. Those that are under a CUP sections are not they have not, been environmentally tested. If there is nothing listed, like this case, the default is to do a use permit, if your commission finds it to be similar in nature that is why it is in the Conditional Use Permit section, and as you all know Conditional Use Permit are sites specific deal. They run with the land, they do all these different things, but the intent is to make sure that project A fits land A, because the same project may not fit the next property.

Chairman Schaffner, commented to Mr. Stone, if you go the route of getting the ordinance changed, you would make it easier for every other competitor who comes down here and plot down. If you go with a conditional use permit, you kind of leaving it difficult for the next person who comes in.

Commissioner Castillo, asked Mr. Minnick, how much time would it take and how much would it cost to do an ordinance change?

Jim Minnick, Director, replied, it would be a time and material deposit starting at \$10,000.00 and would late approximately 2 months longer that it would be to process a CUP.

At this point if the option is to figure out whether it is similar in nature, then a CUP process is the process to do. If they do not want to do a similar in nature, then an ordinance change is the process they would have to do one or the other, there is no hybrid in between.

Commissioner Castillo, asked, so it would be double the cost and more time to change the ordinance?

Jim Minnick, Director, replied, we go through all of the steps we do with Planning Commission, except that with the CUP at this level, this scale, would stop at your commission, unless it get appealed. The ordinance change would require to go before the Board of Supervisors.

Chairman Schaffner, asked if it would be fair for the applicant to bear that cost for other competitors coming to town to get that changed.

Adam Stone, mentioned; between those two options the CUP is better, but again the option of seeing it as a rental facility, a contractor storage yard with a slight new add on with this portable shower facilities that are prep pumped, I think still makes it aligned in the storage rental facility area, storage facility area, janitorial use, that all those are permitted by right. I don't see why there is such a huge distinction with the fact that we are looking at facilities that are pre pumped, cleaned and done with the final clearing on site, in a way that it is not going to create any new nuisance, compared to other existing grandfathered facilities and other uses that already permitted by right under that code section.

Commissioner Bergh asked, would the owner like to step up and say something?

Adam Stone, responded; it sound like the commission would be on board with the similarity in use permitted by right, but there is the pushback on the code allowing that for the CUP.

Chairman Schaffner, replied, yes, we can't go against the code;

Adam Stone, commented; I think the code still does allow for avenues, correct me if I'm wrong, the CUP terminology, the code sections they also allow for other avenues to go through an administrator route that doesn't need to go through Planning Commission hearing, other routes outside of the CUP, a minor CUP or not in the major qualifications.

Jim Minnick, Director, replied; there are three (3) different levels of conditional use permits, there is a minor, intermediate and a major. The minor/intermediate/major can be done administratively, will still have public hearings with one called the Planning Director Action hearing, which it's in lieu of Planning Commission hearings. So, when we have one project or small projects, instead of me getting all of the commission together, I have the right to hold a public hearing in my office. It is still the same process, you do, so it does not change anything, but more like for lot line adjustment or a minor CUP. When we have multiple project then we schedule items to come before the planning commission hearing. If the planning director action does it, it is appealed to planning commission if it is something controversial. There is no mechanism for me to do in lieu of a CUP on a similarity of use. That is what I need the commission to understand. I do not have a choice I have follow what is in the code, as this would be a CUP.

Commissioner Cabañas, asked, which CUP classification would this fall under?

Jim Minnick, Director, answered, intermediate.

Chairman Schaffner, commented to Mr. Stone, he will not be getting a CUP today, we cannot go against the code, would have to make a recommendation to the Board of Supervisors for ordinance change.

Adam Stone, requested a moment to confirm with his client.

Adam Stone, returned and stated, after speaking with my client, they are ok with going through the CUP route, would appreciate that the planning commission provides a recommendation in terms of providing for the least extensive path through the CUP route. I know that Mr. Minnick mentioned the lowest level of conditional use permit isn't possible here, but there is some exemptions there possible or forced to go through the intermediate route maybe somewhere to expedite that since we've gone through a couple rounds of public hearings already, the commission and the project has been reviewed pretty extensively already by the planning department.

Jim Minnick, Director, responded, the planning department will do its best to expedite the CUP process that is all I can identified. My department has not reviewed it from an environmental stand point, my department has not gone through the process that we normally do. But, we will do everything in our power to expedite the process and get back it back before the Planning Commission for you to render a final decision to whether to approve the project or not.

Adam Stone, asked, if there is any way to have the planning director action make the decision instead of coming back to Planning Commission?

Jim Minnick, Director, state he would look into it, but until it goes through the process I cannot commit to that.

Chairman Schaffner, turned it over to the Commission to entertain a motion.

- A. Motion made by Commissioner Bergh and seconded by Commissioner Cabañas on the affirmative vote by Commissioners present and by via-phone as follow; Schaffner (yes), Kalin (yes via-phone), Berg (yes), Cabanas (yes), Wright (yes), Medina (yes via-phone), Zuno (yes via-phone); to Make the Finding that this "Similarity of Use" Determination is Statutorily Exempt from CEQA per Article 18, Section 15268 (a) and (c), Ministerial Projects, of CEQA and Section 90203.10 (F.) of the Imperial County Land Use Ordinance, Title 9, and that no further environmental documentation is necessary; Approve of the Resolution and make the attached Findings to allow the requested use; and; Determine that Equipment – (Small Rental Facility) associated with a portable restrooms and shower trailer are a similar use for the Light Industrial (M-1) Zone (Uses Permitted).

Jim Minnick, Director, this project has been found to be similar in use. There is no appeal pursuant to the code section to the Board of Supervisors. The applicant has now the right to either submit an application for use permit, do an ordinance change or have the option of not having the project go forward.

VI. Public Comments, NONE

VII. Commissioner Comments, NONE

VIII. Director Comments, NONE

IX. Adjournment: Meeting adjourned at 9:34 a.m.



Submitted by Rudy Schaffner;
Chairman of the Planning Commission

Attest



Jim Minnick, Director of
Imperial County Planning Commission
Carina A. Gomez PC Recording Clerk

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