



Legislation Details (With Board Report)

File #: RES 21-005 **Name:** PLN170296 - CHAPIN APPEAL
Type: BoS Resolution **Status:** Passed - RMA Administration
File created: 12/23/2020 **In control:** Board of Supervisors
On agenda: 1/12/2021 **Final action:** 1/12/2021

Title: Public hearing (continued from October 20, 2020) to consider:
a. An appeal by Don and Barbara Chapin from the August 12, 2020 Planning Commission decision denying an application (PLN170296/Cabrera/The Chapin Living Trust) for commercial cannabis retail activities, commercial cannabis non-volatile manufacturing activities, and cannabis cultivation within an existing greenhouse and associated buildings in the Farmland zoning district, located at 115 & 115-A Monterey Salinas Highway (McShane’s Nursery), Salinas (APN: 207-131-004-000 and 207-131-005-000); and
b. Provide direction on options for amendment to General Plan and zoning for the application.
Proposed CEQA Action: to be determined with processing of application and General Plan or zoning amendments

Sponsors:

Indexes:

Code sections:

Attachments: 1. Board Report, 2. Attachment A - October 20, 2020 Board Report, 3. PowerPoint Presentation, 4. Completed Board Order Item No. 27

Date	Ver.	Action By	Action	Result
1/12/2021	1	Board of Supervisors	approved - rma administration	Pass

Public hearing (continued from October 20, 2020) to consider:
a. An appeal by Don and Barbara Chapin from the August 12, 2020 Planning Commission decision denying an application (PLN170296/Cabrera/The Chapin Living Trust) for commercial cannabis retail activities, commercial cannabis non-volatile manufacturing activities, and cannabis cultivation within an existing greenhouse and associated buildings in the Farmland zoning district, located at 115 & 115-A Monterey Salinas Highway (McShane’s Nursery), Salinas (APN: 207-131-004-000 and 207-131-005-000); and
b. Provide direction on options for amendment to General Plan and zoning for the application.

Proposed CEQA Action: to be determined with processing of application and General Plan or zoning amendments

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Receive an update from staff on options for amendment of the General Plan and zoning for an application (PLN170296/Cabrera/The Chapin Living Trust) for commercial cannabis retail activities, commercial cannabis non-volatile manufacturing activities, and cannabis cultivation within an existing greenhouse and associated buildings in the Farmland zoning district; and
- b. Provide direction on pursuing a General Plan Amendment and Zoning Amendment to add a Special Treatment Area Overlay for parcel(s) along State Route 68, including the subject parcel; and
- c. Remand the application to the Planning Commission.

PROJECT INFORMATION:

Applicant: Ricky Cabrera

Appellant: Don and Barbara Chapin on behalf of the Chapin Living Trust

Agent for Appellant: Cerissa Skinner
Property Owner: The Chapin Living Trust
Parcel Size: 0.79 acres and 2.0 acres respectively
Zoning: Farmlands/40 acre [F/40]

SUMMARY:

On October 20, 2020, the Board of Supervisors conducted a public hearing on Don and Barbara Chapin's appeal of the Planning Commission's denial of an application (Cabrera/The Chapin Living Trust) for commercial cannabis retail activities, commercial cannabis non-volatile manufacturing activities, and cannabis cultivation within an existing greenhouse and associated buildings at the current site of McShane's Nursery in the Farmland zoning district. The Planning Commission denied the project as inconsistent with zoning because cannabis retail sales are not allowed in the Farmland Zoning District per County's cannabis regulations (Chapter 21.67 of the County Code). At the October hearing on the appeal, the Board directed staff to discuss options with the applicant and return with a status update on January 19, 2021. However, there is no Board meeting on January 19, 2020, so staff has re-noticed the hearing and brought this matter back to the Board.

At the October 20 hearing, staff presented the Board with options to address the proposed project's inconsistency with zoning. Options include: amending the 2010 General Plan and zoning to establishing a Special Treatment Area (STA) Overlay to resolve the inconsistency; or amending the cannabis regulations (Chapter 21.67 of the Monterey County Code) to allow retail cannabis in the Farmland zone. For the overlay option, there are two potential paths for the Board to consider:

- 1) Apply the STA Overlay to the Chapin property only; or
- 2) Apply the STA Overlay to multiple properties in this vicinity that have been developed with commercial type uses.

After discussion with staff, the owner has indicated willingness to amend their application to include a General Plan amendment and zoning amendments to establish a Special Treatment Area and Zoning Overlay that would allow cannabis retail sales on the subject property.

Staff seeks direction from the Board on the preferred option with regard to the STA Overlay. In particular, direction is requested regarding options for the scope of the STA Overlay, which could include only the subject property, or the subject property as well as a number of additional properties in the area with existing commercial businesses. Staff has not contacted any other properties' owners at this point.

Staff finds that the best planning approach would be to apply the STA Overlay to the multiple properties in the area where commercial development has occurred. However, adding properties that are not part of the Chapin application could increase processing time to conduct additional analysis and to address any concerns from the other property owners. Therefore, staff recommends that only the subject property be included at this time. In the future, the County could choose to expand the STA Overlay through a separate action.

DISCUSSION:

On October 20, 2020, the Board heard an appeal of the Planning Commission's denial of the Chapin application to amend the site's General Development Plan and Use Permit to allow for commercial cannabis retail

activities, commercial cannabis non-volatile manufacturing activities, and cannabis cultivation within an existing greenhouse and associated buildings in a Farmland zoning district at the current site of McShane's nursery. The Board voted to continue the hearing to the January 19, 2021 Board of Supervisors' meeting to allow the applicant time to discuss options with staff.

The applicants propose to operate a cannabis business to include cannabis retail sales at the current site of McShane's nursery at 115 and 115-A Monterey Salinas Highway (Hwy 68). Because the property is zoned Farmland and cannabis regulations in Title 21 specifically do not allow cannabis retail sales in the Farmland zoning district, the Planning Commission denied the application.

Staff presented three options at the October 20, 2020 hearing for consideration should the Board desire to provide a path forward to allow a retail cannabis facility on the property. Option 1 was an amendment to the Zoning Code to allow retail cannabis facilities in the Farmland zoning district. Option 2 was changing the zoning of the parcel from Farmland to Commercial. Option 3 was establishing a Special Treatment Area (STA) to specifically allow retail cannabis at this site. Of the three options, staff is most supportive of the adoption of an STA because this would avoid the broad reaching impacts of allowing retail cannabis facilities on all Farmland Zoning designated properties, and it avoids the spot zoning concern with changing the zoning of a single property surrounded by farmland area. This area has been identified by the County and the City of Salinas as an area where commercial expansion should be avoided. Establishment of an STA can recognize the existing commercial uses while avoiding any further expansion. Establishment of an STA would require an amendment to the 2010 General Plan and amendment to the zoning.

The applicant/owner met with staff to further discuss options on December 7, 2020 and agreed to submit an amendment to their application to apply for a STA. Staff now requests Board direction to move forward. Should the Board direct staff to pursue a STA, there are multiple options for the scope of that area. The STA could include only the subject property, or it could include the subject property as well as one or more nearby existing commercial businesses. Existing businesses in the area include a tattoo shop directly adjacent to the north of the subject property, and multiple businesses approximately 250 yards north of the subject property, on the opposite side of SR 68. Businesses in that area include a gas station, a convenience store, a car wash, a music store, a nursery, a butcher shop, a seed supply company, a sound company, a psychic, and a Montessori childcare center.

From a planning perspective, applying a STA to the multiple properties in the area that have existing commercial uses would make sense, as it would recognize the legal nature of these uses without allowing for further expansion, and would serve to "clean up" the multiple existing legal non-conforming uses. However, this approach would expand the scope of required analysis and CEQA review. The other property owners have not yet been contacted or given an opportunity to weigh in on the possibility of a STA which would include their land. Discussions and resulting potential conflicts and research could add significant processing time. While staff does support exploration of a potential STA that includes all properties with existing commercial uses in the area, this may be better achieved through a long-range planning effort separate from the subject project due to the extended timeframe and financing the broader effort would require. Therefore, staff recommends that at this time an STA be processed for only the Chapin property in conjunction with the subject application. If a broader STA were not pursued through the Chapin project as staff recommends, the Board can still choose to direct staff to pursue creation of a broader STA in the future, by adding it to the work program as a long range planning effort.

Creation of an STA will require processing of a General Plan Amendment and a zoning ordinance. These

actions would be considered a project under CEQA and would require environmental review under CEQA. General Plan Amendments are limited by state law to four per year, and by County policy to two per year (GP Policies LU-9.6 and 9.7 and Chapter 21.91 of the Monterey County Code). Per the process established in Chapter 21.91, General Plan amendments are to be grouped and brought to the Planning Commission in February and August for recommendation and brought to the Board of Supervisors in April and October. Monterey County Code Chapter 21.67 will also need to be amended to state that retail cannabis facilities may be allowed if specifically stated in an applicable Special Treatment Area. If the Board directs staff to continue with these amendments, the amendments legally require recommendation by the Planning Commission. Therefore, staff would propose, following appropriate environmental review, to bring the Chapin application for the cannabis business together with the draft General Plan and zoning amendments to the Planning Commission for recommendation and thereafter return to the Board to consider the General Plan and zoning amendments together with the application. Accordingly, with respect to current action on the pending appeal, staff is recommending that the Board remand the Chapin application back to the Planning Commission for recommendation prior to the Board considering for approval. Should the Board direct staff to move forward with processing a STA to allow a cannabis retail facility on the Chapin property, the property owner will need to submit an amended application to request the STA, as well as payment of the required fees to cover staff time for processing and CEQA review.

FINANCING:

Funding for staff time associated with this project is included in the FY2020-21 Adopted Budget for HCD-Planning

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This action represents effective and timely responses to our HCD customers. Processing this application in accordance with all applicable policies and regulations also provides the County accountability for proper management of our land resources.

Check the related Board of Supervisors Strategic Initiatives:

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

Prepared by: Cheryl Ku, Senior Planner

Reviewed by: Brandon Swanson, HCD Planning Services Manager

Approved by: Carl P. Holm, AICP, HCD Director

The following attachments are on file with the Clerk of the Board:

Attachment A - October 20, 2020 Board Report

cc: Front Counter Copy; Planning Commission, Brandon Swanson, HCD Planning Services Manager; Cheryl Ku, Planner; Cerisa Skinner, Agent; Ricky Cabrera and the Chapin Living Trust, Owners; The Open Monterey Project (Molly Erickson); LandWatch (Executive Director); Project File PLN170296.