



Solano County

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Minutes - Draft Board of Supervisors

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Tuesday, August 29, 2017

6:30 PM

Board of Supervisors Chambers

Special Meeting

CALL TO ORDER

The Solano County Board of Supervisors met on the 29th day of August 2017 in special session in the Board of Supervisors' Chambers at the Solano County Government Center, 675 Texas Street, Fairfield, California at 6:30 P.M. Present were Supervisors Hannigan, Brown, Spering, Thomson and Chair Vasquez. Chair Vasquez presided. Also present were Assistant County Administrator Nancy Huston and County Counsel Dennis Bunting.

ROLL CALL

Present 5 - John M. Vasquez, Erin Hannigan, Monica Brown, James P. Spering and Skip Thomson

SALUTE TO THE FLAG AND A MOMENT OF SILENCE

This meeting of the Solano County Board of Supervisors continued with the Salute to the Flag and a Moment of Silence.

APPROVAL OF THE AGENDA

County Counsel Dennis Bunting requested that the Board add the following urgency item to the agenda:

17-639 Consider an oppose position on AB 653 (Ridley-Thomas) relative to property taxation exemption for property owned in fee or held in trust by Indian tribes or charitable nonprofit organizations which was reviewed by the County's Legislative Committee on August 28, 2017.

Supervisor Brown commented on current codes already in existence that addressed low income housing for Native American tribes.

On motion of Supervisor Thomson, seconded by Supervisor Brown, the Board approved adding the urgency item. So ordered by 5-0 vote.

Supervisor Brown commented on the public speaking period for Item 1.

County Counsel Dennis Bunting noted that public comments from the floor were not allowed during a special meeting but that comments would be allowed under each item as it was taken up by the Board.

On motion of Supervisor Hannigan, seconded by Supervisor Brown, the Board approved the agenda of the Solano County Board of Supervisors for August 29, 2017 as amended. So ordered by 5-0 vote.

1A 17-639

Consider an oppose position on AB 653 (Ridley-Thomas) relative to property taxation exemption for property owned in fee or held in trust by Indian tribes or charitable nonprofit organizations which was reviewed by the County's Legislative Committee on August 28, 2017

Attachments: A - AB 653 Bill Language
 B - AB 653 Assembly Floor Analysis
 D - Napa County Oppose Letter

Assistant County Administrator Nancy Huston noted that hardcopies of the proposed letter was available in the back of the Chamber.

On motion of Supervisor Hannigan, seconded by Supervisor Brown, the Board approved an oppose position on AB 653 (Ridley-Thomas) relative to property taxation exemption for property owned in fee or held in trust by Indian tribes or charitable nonprofit organizations; and Authorized the Chair of the Board to send a letter opposing the bill. So ordered by 5-0 vote.

1 [17-618](#)

Conduct a public hearing to consider a new ordinance amending Chapter 28 (Zoning Regulations) establishing regulations for the non-commercial cultivation of cannabis for personal and caregiver uses in certain zoning districts as recommended by the County Planning Commission (with minor amendments to comply with recent changes in state law); Find that the proposed ordinance is exempt from further environmental review under Section 15061(b)(3) of Title 14 of the California Code of Regulations; and Consider adopting ordinance language amending Chapter 28, either as recommended by the Solano County Planning Commission or as modified based on proposals previously considered by the Solano County Planning Commission

Attachments: [A - Proposed Ordinance as Recommended by County Planning Commission](#)
 [A1 - Exhibit A - County Code Chapter 28 Zoning Tables](#)
 [B - License Types by Solano County Residential Zoning District](#)
 [C - Table 1 - Regulatory Options Considered by County Planning Commission](#)
 [D - Summary of Input Received During Neighborhood Watch Meetings](#)
 [E - Input Received During Community Outreach & Industry Stakeholder Mtgs](#)
 [F - Summary Table - Current Status of Solano Cities Cannabis Ordinances](#)
 [G - Table - Current Status of Adjacent Counties Cannabis Ordinances](#)
 [H - County Planning Commission Staff Reports and Minutes](#)

On motion of Supervisor Hannigan, seconded by Supervisor Brown, the Board approved reading the proposed ordinance amending Chapter 28 (Zoning Regulations) establishing regulations for the non-commercial cultivation of cannabis for personal and caregiver uses in certain zoning districts as recommended by the County Planning Commission (with minor amendments to comply with recent changes in state law) by title only and waived further reading by a majority vote. So ordered by 5-0 vote.

Chair Vasquez noted that the public hearing was to address personal and caregiver cannabis cultivation within unincorporated Solano County.

Director of Resource Management Bill Emlen introduced the item and noted that the proposed ordinance applied to unincorporated Solano County only. He advised that a report out on commercial cannabis cultivation would be brought forward on a future agenda in September. He then noted that there had been many changes to state law in recent months and that the Planning Commission's recommended ordinance had been updated to address those changes. Lastly, he provided information on the interim ordinance for the unincorporated area that was in effect until December 6, 2017 and noted that the agenda item also included information on the options that the Planning Commission were presented with during the three meetings that it discussed the matter.

Deputy County Counsel Davina Smith provided an overview of recent state laws concerning cannabis, and personal/caregiver cultivation comparisons under the state law.

Mr. Emlen commented on the number of maps within the presentation noting that there were multiple zone districts and parcels within the unincorporated County that the proposed provisions would apply to.

Senior Planner Karen Avery provided an overview of feedback from community outreach meetings, a summary of Solano cities' personal/caregiver cannabis ordinances, information on neighboring counties' ordinances, an overview of the Solano County Planning Commission's actions, regulatory factors considered by the Planning Commission, maps of zoning districts and proposed regulations from the Planning Commission for personal and caregiver cultivation.

In response to questions from Chair Vasquez, Ms. Avery provided information on the definition of what a primary dwelling was. She then continued to provide information on the Planning Commission's proposed regulations.

In response to a question from Supervisor Hannigan, Ms. Smith provided information on the definition of what ozone generators were and what common concerns were associated with the use of the generators.

Ms. Avery continued to provide information on the Planning Commission's proposed regulations and presented the following options for the Board to consider:

1. *Adoption of the Planning Commission's recommended draft ordinance with minor changes to reflect changes to state law (MAUCRSA);*
2. *Modify the County Planning Commission Recommended Draft Ordinance by considering other regulatory options reviewed by the Planning Commission but that were not recommended;*
3. *Refer back to Planning Commission for further study; or*
4. *Defer to State law and not adopt local regulations for personal or caregiver cannabis cultivation.*

She then provided information on staff recommendations that the Planning Commission considered and the actions taken by the commission at its meetings on November 17, 2016, January 19, 2017 and March 16, 2017.

In response to questions from Chair Vasquez, Ms. Avery provided information on the Planning Commission's inclusion of a minimum one acre parcel size for outdoor caregiver cultivation and noted that there were many parcels that were at least one acre in size. She then presented maps that indicated the size, locations and types of parcels within the unincorporated County.

Mr. Emlen advised that the Board could also look at the other options that had been considered by the Planning Commission in the past and could include them if they wished. He then noted that the Sheriff's Office had also provided a comment about concerns with allowing outdoor personal cultivation because of crime issues and odor complaints.

In response to a question from Chair Vasquez, Mr. Emlen advised that modifications to the proposed ordinance could be included in the final adoption of the ordinance that evening depending on the nature of the modification.

Chair Vasquez opened the public hearing.

Chair Vasquez invited members of the public to address the Board on this matter and the following comments were received:

A) William Hampton, Suisun City, commented in support of medical marijuana, on oxygen generators, CO2 gas restrictions and in opposition to the proposed regulations.

B) Mike Tomada, Vallejo, commented on the importance of cannabis, on keeping cannabis products from leaving the state and in opposition to the proposed regulations.

C) Robin Cox, representing Solano Public Health, commented on a need for language to address secured storage of cannabis products in all sections of the regulations and submitted a letter from the Public Health Officer with comments on the proposed ordinance.

D) Ray Wood, Vallejo, commented on growth size restrictions, caregiver registration, requirements for authorization from property owners and restrictions on artificial lighting for outdoor cultivation.

E) Mark Van Wyhe, Fairfield, commented on his experience with a neighbor's personal outdoor cultivation and in opposition to allowing outdoor cultivation.

F) Paula Bauer, Vallejo, commented on concerns with on-site inspections timing and cause and on concerns with setback restrictions.

G) Mitch Radulovich, Winters, commented on his experience with growing cannabis outdoors for the medical needs of his son and in support of medical cannabis.

Chair Vasquez closed the public hearing.

Supervisor Brown commented on concerns about requiring inspections and the need to focus those inspections on what was stated on the plot plan to ensure rights were not violated. She then suggested that the landlord provide a provision in their lease that addressed whether or not cannabis could be grown on their property. She advised that she had been looking at what Yolo County, Sonoma County and Mendocino County were doing in regards to cannabis and noted that Mendocino County had hired a third party to conduct inspections. She asked that staff look into this. Lastly, she asked what the cost was for the caregiver cultivation permit.

Mr. Emlen noted that the reference made under public comments to a \$400 permit cost was likely in regards to the cost for an administrative permit.

Supervisor Brown then commented further on inspections and the need for due process. She then commented on concerns with only allowing 48 hours to comply with violations and again noted that the inspections should only be in regards to the cannabis plot plan that was submitted.

In response to a question from Chair Vasquez, Ms. Avery noted that indoor caregiver cultivation would require a plan to show the room that would be used and that an outdoor grow required a plot plan that indicated the setbacks to the property line.

In response to a question from Ms. Avery, Supervisor Brown clarified her prior comment regarding inspections to note that 48 hours was not enough time for an inspection to take place.

Supervisor Hannigan commented on one acre growth size restrictions and limitations. She then commented on the letter submitted from the Public Health Officer concerning indoor health hazards such as mold that could result from indoor cannabis cultivation and asked what was being looked at to address this.

Ms. Avery provided information on proposed personal indoor cultivation restriction recommendations that were intended to address these types of concerns but were not carried forward by the Planning Commission.

Mr. Emlen advised that public education would likely be needed as well.

Supervisor Hannigan read recommendations from the submitted letter to address some of the hazards.

In response to questions from Chair Vasquez, Ms. Avery noted that a permit would not be required for indoor personal cultivation, but would be required for primary caregiver indoor cultivation.

Ms. Smith provided information on past revisions to the proposed ordinance and noted that a recommendation for a registration system for personal cultivation and an administrative permit process for caregiver cultivation was included in the first version of the ordinance that went before the Planning Commission for consideration at its meeting on November 17, 2016.

Chair Vasquez asked whether the ordinance could be changed from what the Planning Commission had recommended or not, depending on what the Board decided.

County Counsel Dennis Bunting advised that substantial changes to the ordinance would require that the ordinance go back to the Planning Commission for its review and comment and then it would come back to the Board for consideration.

Chair Vasquez asked whether the Board could determine that six plants would be allowed to be grown indoors, no matter what the structure was, so long as they were grown indoors and that allowing this would mean that no permit or inspection would be required.

Ms. Smith noted that this specific direction was included in the proposed ordinance and that it also included allowing growth of six plants outdoors.

Chair Vasquez advised that the outdoor cultivation was not included in his statement.

Supervisor Spering asked if precluding outdoor cultivation was a substantial change.

Mr. Bunting noted that it would be and that it would require the ordinance to go back to the Planning Commission.

Mr. Emlen noted that an accessory building might require a building permit.

Ms. Avery confirmed that accessory buildings of 120 square feet or more would require a building permit.

Supervisor Spering asked if discussion had taken place in regards to permits being allowed for individual situations where medical cannabis would be grown outdoors.

Planning Manager Mike Yankovich advised that special circumstances for personal outdoor cultivation had not been discussed.

Supervisor Spering asked if there was a reason why it couldn't be considered.

County Administrator Birgitta Corsello noted that the Planning Commission had recommended a broader restriction in regards to outdoor cultivation and asked if the request was being made to restrict it further.

Supervisor Spering clarified his question and asked whether consideration could be made for those individuals that had a medical need so that they could be allowed to grow a couple plants outdoors.

Mr. Bunting noted that this could be done in the nature of a variance.

Supervisor Spering advised that he was not in support of outdoor cultivation for a number of reasons but that he was in support of medical cannabis within a permitted framework. He asked if there was a way to structure the ordinance so that an individual with a medical need could be considered, and potentially allowed, to grow a couple plants outdoors.

Mr. Emlen commented on a variance process noting that it was difficult to achieve and advised that the Board could add an exemption process in the ordinance to address the matter.

Supervisor Spering asked that the matter be looked into and that the exemption be focused on medical need.

Chair Vasquez asked for clarification as to whether this was being requested as an exemption under personal cultivation only and not under caregiver cultivation.

Supervisor Spering noted that it would be under personal cultivation, not caregiver cultivation.

Ms. Corsello asked for clarification on where the speaker had indicated he was growing the plants outdoors.

Mr. Radulovich advised that he had grown a couple plants outside in a cage behind his barn and noted that it was too expensive to grow the plants indoors.

Chair Vasquez advised that he supported the direction of six plants being allowed to be grown indoors for personal cultivation only and that a variance for individual situations to allow for outdoor cultivation would likely confuse law enforcement as to what was permitted.

Supervisor Sperring commented on the reality of cannabis being grown illegally already and that it would likely continue. He then commented on situations like that of Mr. Radulovich's where people were trying to solve a problem but still wanted to comply with the law. He noted concerns of both recreational and medical cannabis use on a person's health, but also advised that he felt there was a role for medical cannabis in helping individuals. He commented on concerns about the perception that smoking cannabis was not as harmful as smoking cigarettes and advised that the issue of cannabis use would create health challenges for all counties. Lastly, he commented on the need to be careful about impacts to agriculture and food supply and advised that he was in support of indoor cultivation. He then requested that staff include consideration for individual cases that could demonstrate the medical need for outdoor cultivation.

Supervisor Hannigan advised that she was in agreement on the indoor cultivation and further advised that she was also in support of outdoor cultivation. She noted that outdoor cultivation was the least expensive way to grow cannabis and that it was less impactful as to internal dwelling environmental concerns. She commented that she did not think that everyone would start growing cannabis and noted that cigarettes contained more carcinogens and other things that were more harmful than the cannabis plant. She noted that cannabis was also available to patients in edible form. She advised that she was in support of the recommendations from the Planning Commission for both indoor and outdoor personal and caregiver cultivation and of the setback requirements. Lastly, she commented on the need to make sure that permit fees were enough to cover enforcement and community education costs.

In response to a request for clarification from Chair Vasquez on outdoor cultivation, Ms. Avery noted that outdoor caregiver cultivation required an administrative permit from Resource Management but that the personal cultivation did not. She then noted that outdoor personal cultivation did have setback requirements that included the cultivation being on the rear half of the property and twenty feet away from property lines.

Chair Vasquez asked how the setback requirements for personal outdoor cultivation would be verified.

Mr. Emlen noted that voluntary compliance and response to complaints would be the verification method most likely used.

Chair Vasquez noted that no fee was attached to compliance for the personal cultivation.

Mr. Emlen advised that the department could provide early education to assist the public with understanding the regulations.

Chair Vasquez commented that he wasn't sure that it was the responsibility of the County to educate the public in addition to what was already being done to educate them about alcohol, tobacco and other drugs when cannabis was being taken voluntarily and was permitted by the state.

Supervisor Thomson advised that he would only consider support for outdoor cultivation if it was to be grown within a structure. He noted that outdoor cultivation would grow to become a nuisance and would cause expensive inspection and enforcement issues. He advised that he was supportive of indoor cultivation for personal use.

Supervisor Brown commented against banning personal and caregiver outdoor cultivation and noted that the Planning Commission had addressed the regulation needs. She noted that issues with public nuisance could be addressed with code enforcement and then commented in support of allowing caregivers to provide cultivation for their patients.

Supervisor Spering asked for clarification on what staff needed from the Board.

Ms. Smith advised that staff needed clarification on what the Board felt a greenhouse should be defined as and noted that the current definition pertained to outdoor cultivation.

Chair Vasquez, Supervisor Spering and Supervisor Thomson all noted that they felt that the definition for a greenhouse should refer to indoor cultivation.

Supervisor Spering noted that one advantage to using a greenhouse was that the plants would receive some of the benefits of outdoor growing methods.

Chair Vasquez asked if the greenhouse definition needed to be defined structurally.

Ms. Smith advised that a building permit would not be required as long as the greenhouse was under 120 square feet and didn't require electrification or any other need that would cause a building permit to be required. She then advised that a greenhouse would be considered a structure and that its definition would need to clarify whether it would be considered for indoor or outdoor cultivation.

Chair Vasquez noted that the three supervisors had indicated that they would consider it to be used for indoor cultivation.

Ms. Smith asked for clarification from the Board on the direction to proceed with including a variance or exemption process for individuals having a medical need that would allow outdoor cultivation on larger parcels.

Supervisor Spering advised that he would like to see the exemption offered for personal cultivation on an individual case-by-case basis and that it should be for a medical need.

Chair Vasquez clarified that the process should be for the personal cultivation outdoors and not for caregiver cultivation.

Supervisor Spering commented that this was correct.

Chair Vasquez asked if he felt that a greenhouse used for caregiver cultivation would be considered indoor cultivation.

Supervisor Spering noted that he would consider that situation to be an indoor cultivation.

Supervisor Thomson commented on the benefits of medical cannabis and noted a need to be as liberal as possible on the interpretation, however he advised that he had a different position when it came to recreational cannabis use.

Supervisor Brown asked whether a greenhouse had to be enclosed or could be open, how the flowering process would be addressed, and how the building permit process would work if the greenhouse was less than 120 square feet.

Ms. Smith advised that state law had certain requirements for structures that were on the grounds of a residence and noted that a structure was defined as something that would be enclosed and secured with a lock. She noted that a greenhouse would need to be a fully enclosed, rigid structure with non-opaque walls, that could be secured and would not be the commercial style roll up greenhouses.

In response to a question from Supervisor Spering, Mr. Emlen advised that a motion was needed to refer the ordinance and the Board's direction back to the Planning Commission for its comments.

Mr. Bunting clarified that the Board had the option of either proposing a modified ordinance that would go back to the Planning Commission for its recommendation, or sending the ordinance back to the Planning Commission to address the issue of the definition of a greenhouse, to flesh out the definition of the exemption and then refer it back to the Board for consideration.

Supervisor Spering made a motion to send the ordinance back to the Planning Commission for clarification on the definition of a greenhouse, to flesh out the exemption for outdoor personal cultivation for medical needs and to add the restriction to only allow personal indoor cultivation.

Supervisor Thomson seconded the motion.

Ms. Smith asked for clarification on the intent of the Board to allow caregiver cultivation indoors.

Chair Vasquez noted that the direction was to allow caregiver indoor cultivation with the caveat that a greenhouse would be considered as indoors.

Supervisor Spering clarified that this direction was to provide for a focused discussion by the Planning Commission and would not be to open up all areas of discussion again on the ordinance.

Supervisor Hannigan asked for clarification on indoor caregiver cultivation and asked if the direction was to prohibit indoor caregiver cultivation inside of a dwelling but to allow it in a greenhouse.

Ms. Smith noted that the draft ordinance proposed that caregiver cultivation be allowed inside of a residence or inside of a structure on the grounds of residence. She advised that the Board could direct that caregiver cultivation only be allowed in a greenhouse or that it be allowed in a greenhouse with a maximum of 6 plants allowed indoors and the rest allowed outdoors, if the Board wanted to do something like that.

Chair Vasquez commented on the possibility of a detached garage being used by a caregiver to grow 30 plants indoors. He then commented on the requirement for a caregiver to go through a permit process and noted the need to keep this in place.

Supervisor Hannigan commented on the direction to include a greenhouse in the definition of indoor cultivation and asked if it could be specified that outdoor cultivation only take place in a greenhouse.

Chair Vasquez clarified that a greenhouse would be considered indoors.

Mr. Emlen advised that a greenhouse would be a separate building and not a greenhouse that was inside of a dwelling.

Supervisor Hannigan noted that this had addressed her question.

Ms. Smith asked if there was direction to define a greenhouse as outdoor cultivation or that a greenhouse would be defined as indoor cultivation and that all outdoor cultivation would be banned.

Supervisor Hannigan advised that she would prefer that outdoor cultivation be contained within a greenhouse so that it was in a structure and still outdoors.

Supervisor Spering advised that he would like cultivation to be indoors and that a greenhouse would be considered indoors, even if it was in a separate structure.

Mr. Bunting noted that a greenhouse could be considered an extension of indoors.

Mr. Emlen advised that staff would clarify the greenhouse definition to meet the Board's intent.

Supervisor Hannigan asked if this would apply to both caregiver and personal use.

Chair Vasquez and Supervisor Spering both concurred that it would.

Supervisor Hannigan commented on cultivation of cannabis for medical need and advised that it would likely be a more common issue than it was thought to be. She then commented on the need to cognizant of this and to not make the exemption process too cumbersome.

Ms. Smith clarified that the Board was looking for a more liberal interpretation of the exemption for those individuals that needed outdoor cultivation for medical needs.

Supervisor Hannigan advised that she felt that the number of individuals needing the exemption would not be a small number and then asked if a prescription would be required to be submitted for the exemption.

Ms. Smith advised that verification of the medical need would need to be submitted.

Supervisor Hannigan asked if the exemption would be an annual process.

Ms. Smith advised that the administrative permit was an annual renewal and noted that the process would depend upon the Board's direction.

Supervisor Hannigan noted that in most cases the medical need would be for a long-term illness.

Supervisor Thomson clarified that the motion addressed personal and caregiver use and asked about Supervisor Brown's concern about frequency of inspections.

Mr. Bunting noted that the proposed ordinance referred to a site visit.

Supervisor Thomson asked if it was just one inspection annually.

Mr. Bunting and Ms. Smith concurred that it was.

Supervisor Thomson asked about the process for violations.

Ms. Smith advised that a permit would not be issued until the violations were corrected.

Supervisor Thomson asked about situations where there was a consistent violation of the rules.

Ms. Smith advised that staff could look at this when they looked at civil or administrative enforcement and noted that criminal law penalties would apply for possession of more than 6 plants by someone over 18. She noted that the first and second violations would be misdemeanors and that after that there would be potential criminal penalties and county enforcement actions that could be taken.

Supervisor Brown commented on growing cannabis outdoors and noted that direction had gone from being fairly open and liberal to one of constraint and that the state propositions encouraged openness. She asked why there was a need to comply with growing cannabis outdoors within a greenhouse when it would be easier to grow the plants out in the open.

Ms. Smith commented on encouraging civic pride and the need to have some sort of compliance to encourage individuals to follow the County code.

In response to a question from Chair Vasquez, Ms. Smith advised that the proposed ordinance could be enforced by criminal, civil, or administrative penalties and would default to Chapter 28 zoning enforcement penalties. She advised that the Board could take up expansion of enforcement and penalties at a future meeting.

Mr. Bunting noted that staff was already looking into this and that the matter would need to come back at a later date.

Supervisor Brown asked for clarification on the motion and noted that the direction was for the ordinance to go back to the Planning Commission with direction from the Board.

Supervisor Spering confirmed the motion.

Chair Vasquez advised that this was correct and that it was being sent back to the Planning Commission with general direction from the Board.

Supervisor Thomson commented that most people will abide by laws and rules, but that there was always a small group that did not. He then commented on the need to have rules that could be enforced and to have consequences for violations.

Ms. Corsello noted that County Counsel had suggested that the Board look at guidelines as it related to business transactions that occur because many of the complaints had been about cannabis business that was being conducted on properties. She noted that caregivers would be transacting business transactions on behalf of their patients and that staff should bring back code changes to address this. She then noted that a 48-hour notice for inspections was a standard guideline for code enforcement cases and asked if Supervisor Brown would still like this issue to be looked into.

Supervisor Brown indicated that she did not wish to pursue the matter.

Ms. Corsello commented on Supervisor Brown's suggestion for a condition to be put on a lessee by a property owner in regards to types of activities allowed on the property and noted that the County was not involved in these types of business transactions. She noted that staff had included the recommendation that the property owner be required to sign off on the caregiver cultivation permit because it meant that they knew that a business would be setup on their property.

Chair Vasquez noted that this would only be for those individuals that wanted to do this on their property.

The Board voted 5-0 to return the proposed ordinance to the Planning Commission with the direction provided.

ADJOURN:

This meeting of the Solano County Board of Supervisors adjourned at 8:19 P.M. Next meeting of the Solano County Board of Supervisors will be September 12, 2017 at 8:30 A.M., Board Chambers, 675 Texas Street, Fairfield, California.

JOHN M. VASQUEZ, Chair
Solano County Board of Supervisors

BIRGITTA E. CORSELLO, Clerk
Solano County Board of Supervisors

By _____
Jeanette Neiger, Chief Deputy Clerk