

MINUTES OF THE  
LINCOLN COUNTY PLANNING COMMISSION  
MEETING OF APRIL 13, 2015

Vice Chair Bobbitt called the Lincoln County Planning Commission meeting to order at 8:17 pm and roll call was taken.

**OTHER COMMISSIONERS PRESENT**

STEVE MORRILL  
JUDITH PELLETIER  
PHIL SPULNIK  
MARK MCMAHON

**COMMISSIONERS ABSENT**

DICK JOHNSON  
SAM GALASSO  
CRIS TORP

**Staff Present-** Planning Director Onno Husing, Associate Planner Joshua Shaklee, Associate Planner Hui Rodomsky, Permit Specialist Kristine Castillo

QUORUM STATUS

With Commissioners present a Quorum has been reached for the April 13, 2015 Planning Commission Meeting.

APPROVAL OF MINUTES

Vice Chair Bobbitt asked if there were any changes or additions to the draft January 26, 2015 meeting minutes.

No changes were requested.

Commissioner McMahon moved to approve the January 26, 2015 meeting minutes.

Commissioner Pelletier seconded the motion.

The vote was taken and the motion passed with Commissioners Pelletier, Spulnik and McMahon in favor. Vice Chair Bobbitt and Commissioner Morrill abstained.

Vice Chair Bobbitt asked if there were any changes or additions to the draft March 5, 2015 meeting minutes.

No changes were requested.

Commissioner Pelletier moved to approve the March 5, 2015 meeting minutes. Commissioner McMahon seconded the motion.

The vote was taken and the motion passed with Vice Chair Bobbitt, Commissioners Pelletier, McMahon, Spulnik in favor. Commissioner Morrill abstained.

ITEMS FROM THE AUDIENCE

Vice Chair Bobbitt asked if there were any items from the audience that were not on the agenda.

No items from the audience were acknowledged.

PAST ACTION REVIEW FOR PLANNING COMMISSIONERS

Vice Chair Bobbitt asked if there were past actions to review for the Planning Commissioners. No past actions for review were acknowledged.

UNFINISHED BUSINESS

Vice Chair Bobbitt asked if there was unfinished business. No unfinished business was acknowledged.

ACTION ITEMS

Vice Chair Bobbitt asked if there were any action items. No action items were acknowledged.

PUBLIC HEARING

**7.1 CASE FILE #01-TA-15**

**Public Hearing to consider amendments to the Lincoln County Comprehensive Plan and Zoning Ordinance to provide the Planning and Development Director discretion to apply setback standards applicable to industrially zoned lands within incorporated cities, as provided in the municipal code of the respective city, to lands zoned Planned Industrial (I-P) located outside of city limits but within the urban growth boundary (UGB) of the city. The Lincoln County Board of Commissioners initiated the amendments with Resolution #15-18-02.**

Vice Chair Bobbitt cites the applicable criteria as follows:

- A. LCC 1.1230 Legislative Amendments
- B. LCC 1.1385 Planned Industrial Zone I-P

The Commission shall make a recommendation to the Board upon completion of the hearing. Findings required to be made by the Board and the Commission for legislative amendments is as follows:

- (a) Establish that the amendment will be consistent with the Comprehensive Plan goals and policies.
- (b) Establish that there is a public need for the requested change and that the public need will be met by the change.
- (c) Establish that the amendment will be consistent with all other provisions of this Chapter and in conformance with the Statewide Planning Goals and all other applicable statutes and regulations.

STAFF SUMMARY

Director Husing noted the Planning Commission has previously held a workshop on this proposed code amendment. Husing reminded the planning commission that this issue came to the attention of the Planning Department because the owner of a property zoned Planned Industrial I-P was in the planning stages of developing his property and determined the setbacks under Lincoln County Code for I-P properties placed substantial development constraints at the property. Husing also explained that because the parcel in question was created in 1974, under

the County's development code, the property owner was prohibited from applying for a variance (and a variance could have potentially provided the property owner relief from some of those setback requirements).

In the course of reviewing the issues at this property the Planning Department staff found that these setback standards in the I-P zone could, in many cases, could significantly constrain development. Moreover, such properties located within an Urban Growth Boundary (UGB) will be annexed into the adjacent city, at some point in time. Under those circumstances, the staff came to the conclusion it may be in the public interest to amend our development code to grant the Director of the Department the discretionary authority, upon the request of the applicant, to apply setback standards applicable to industrially zoned properties in the adjacent city instead of the existing I-P standards.

Associate Planner Shaklee presented Exhibits A and B, which compile information on the setback requirements of industrial zoned lands in the Cities of Lincoln City, Newport and Toledo. Refer to these exhibits as entered into the record.

McMahon stated he was surprised to learn that many I-P zoned properties are located next to T-C zoning and that such large setbacks existed, under the current code. Associate Planner Shaklee stated that a 50 foot setback applies for properties adjacent to T-C zoned properties that were created after 1980.

A discussion ensued regarding the City of Toledo's setbacks and the implications of amending the code to provide the Planning Director the discretionary authority to apply setback criteria from an adjacent city.

PUBLIC TESTIMONY

**MR. RYAN BLEDSOE**  
**RYAN@NEWPORTNET.COM**  
**(541) 270-0235**

Mr. Bledsoe expressed concerns that City of Newport setback standards would be applied to his facility located within the City's UGB retroactively upon annexation. Mr. Bledsoe stated the property is currently in South Beach and will eventually be annexed. He asked if this code amendment would affect him if he proposed development in the future?

Director Husing stated the code amendment would not be applied retroactively to existing buildings., With future development, Bledsoe could opt to ask the County Planning Department to apply the City of Newport setback standards, if the code amendment is adopted.

Mr. Bledsoe thanked Mr. Husing for the explanation and he expressed his satisfaction with the proposed code amendment to the Planning Commission.

**MR. DENNIS BARTOLDUS**  
**PO BOX 1510**  
**NEWPORT, OREGON 97365**

Mr. Bartoldus attended the earlier work session and he represents Mr. Phillips, the property owner who requested the proposed code amendment. His client's lot was created in 1974. Mr. Bartoldus believes there is a lot of wisdom in amending the code to allow for the flexibility of applying the dimensional standards of the adjacent city. As he noted, it may take some time before the annexation occurs but eventually these properties will become part of the adjacent city. Bartoldus noted structures are built to last 50 or 60 years and it therefore makes sense to apply city standards to a structure that will ultimately be located in that city for most of the life of the structure. Mr. Phillips' property is at the end of an arterial street and does not experience the traffic volume that would necessitate the 30 foot setback to the street. The code amendment, Bartoldus argued, is a simple solution that provides a remedy for his client and other owners of I-P property that may face future development constraints.

#### DELIBERATIONS

Commissioner McMahon stated his view that the proposed code amendment was a common sense change.

Commissioner Spulnik moved to recommend adoption of the new ordinance to the Lincoln County Board of Commissioners, case file #01-TA-15.

Commissioner McMahon seconded the motion. A vote was taken with all in favor and the motion passed.

Vice Chair Bobbitt asked Planning and Development staff to prepare Findings, Order and Final Conclusions.

#### PUBLIC HEARING

Vice Chair Bobbitt reads case file.

**7.2 CASE FILE #02-TA-15: Public Hearing on Case File #02-TA-15; The Lincoln County Planning Commission will consider an Ordinance lifting the moratorium on medical marijuana facilities in the unincorporated areas of Lincoln County and adopting temporary regulations for medical marijuana.**

Vice Chair Bobbitt read the applicable criteria.

#### A. LCC 1.1230 Legislative Amendments

The Commission shall make a recommendation to the Board upon completion of the hearing. Findings required to be made by the Board and the Commission for legislative amendments are as follows:

- (a) Establish that the amendment will be consistent with the Comprehensive Plan goals and policies.
- (b) Establish that there is a public need for the requested change and that the public need will be met by the change.

- (c) Establish that the amendment will be consistent with all other provisions of this Chapter and in conformance with the Statewide Planning Goals and all other applicable statutes and regulations.

#### STAFF SUMMARY

Wayne Belmont addressed several items at the outset of his remarks:

1. In the proposed ordinance, any standard applicable to the Rural Residential RR-5 zone also applies to the Rural Residential RR-10 zone. This distinction was left out of the draft ordinance due to a scrivener's error.
2. He requested the Planning Commission make recommendations on appropriate setbacks for medical marijuana facilities from residential and commercial uses, as indicated on pages 5 and 7 of the proposed ordinance, which were left blank within the proposed code amendments before the Planning Commission.
3. Belmont created a matrix comparing the proposed regulations for Medical Marijuana Dispensary Facilities (MMDF) and Medical Marijuana Grow Sites (MMGS).

County Counsel Wayne Belmont explained that adopting the ordinance was an emergency action, as the moratorium on Medical Marijuana Facilities in Lincoln County will expire May 1, 2015. Because the Oregon Legislature did not provide jurisdictions the ability to extend existing moratoriums, or provide rules at the state level, it is incumbent upon Lincoln County to move quickly to fill this regulatory background with temporary regulations.

Belmont argued that even though it has been voted on by the people of Oregon; there have been few legislative enactments. The matter is currently in a state of flux at the Oregon legislature, which has taken up the question for both medical and recreational marijuana. There are currently 25 or 26 bills pending in front of the legislature related to the regulations. The status of these bills seems to change daily.

Belmont explained that Lincoln County adopted a moratorium on medical marijuana facilities as authorized by state law Senate Bill 1531. Many other local jurisdictions adopted moratoria at this time. Lincoln County took that step, not to prohibit medical marijuana within the community, but to provide time to research the issue and develop a set of land use measures that would reconcile conflicts in the community. Since the adoption of the moratorium, the County has been researching issues related to marijuana distribution and production and the County has been in a wait and see mode to see what the Oregon Legislature was prepared to do this Legislative Session. When the County's original moratorium was implemented, Measure 91 had not yet been voted on. Measure 91 has now been passed into law by the voters in the State of Oregon.

Belmont explained that it was unclear whether the Oregon Legislature was going to learn from the practical experiences of Washington and Colorado (states where marijuana has been legalized) and pursue a more comprehensive, coordinated, and thoughtful approach to

marijuana regulation. Belmont noted that the Oregon Legislature is debating whether to keep medical marijuana entirely separate from recreational marijuana.

Belmont anticipates that the Oregon Legislature will force business owners to choose between a medical or recreational marijuana operation, because they likely won't be allowed to do both in the same establishment. Grow sites will likely be treated in the same manner.

Commissioner Spulnik inquired why the Oregon Legislature would treat medical and recreational marijuana differently.

Belmont stated they are completely different products, different forms of marijuana, different chemicals to treat medical conditions.

Commissioner McMahon asked what the concerns were for having these two marijuana products co-mingled in the same establishment.

Belmont responded that two regulatory environments are apparently being developed. The Oregon Health Authority regulates medical marijuana, using different rules and regulations than that of the Oregon Liquor Control Commission, which is going to regulate recreational marijuana. The process of developing rules at the state level focuses mostly on recreational marijuana.

Commissioner McMahon stated that the implication is that the regulations surrounding medical marijuana are somewhat more flexible?

Counsel Belmont stated the production of marijuana is not really being discussed locally but has gained some momentum at the state level. If the proposed regulations are implemented, Lincoln County will be the first jurisdiction or county in Oregon to regulate grow sites. Belmont expressed surprise that no other jurisdictions, thus far, have dealt with this issue. From a land use perspective, Belmont stated the State of Oregon is not providing guidance about the regulation of grow sites.

Belmont noted the Oregon legislature is working on a highly regulated tracking system they call "seed to sale" for recreational marijuana. The state will have the ability to track where every seed goes, how it is processed and how it is sold. Under that system, as Belmont understands it, there will be no limitations on the amount you can grow.

Medical marijuana will likely not be subject to the same tracking system. Instead, the system under development might be called "seed to sale lite", which continues past practice of allowing patients to grow the number of plants allowed by a registration card. Patients typically do not grow their own medical marijuana. Therefore, a grower can "stack" the cards from individual patients and then they are authorized to grow the number of plants allowed by each card. This system has caused complications in the past. In some parts of the state, significant amounts of the medical marijuana has been diverted to non-medical uses and to other states.

Commissioner McMahon asks all the grow site regulations before us are only for the medical marijuana side.

Planning Director Husing responded that interim regulations before the Planning Commission are time sensitive because the moratorium is about to expire on medical marijuana because the Oregon Legislature has not acted to extend the moratoria. Husing underscored the proposed regulation only pertains to medical marijuana because the timing on when recreational marijuana becomes lawful is different than with medical marijuana.

Husing stated the Planning and Development staff are fielding inquiries from people asking what kind of properties will be zoned for grow sites or dispensary operations. At this point in time, staff doesn't have the guidance it needs and Husing stressed the Department doesn't want to mislead people. On May 1, 2015 the Department anticipates that they will receive numerous inquiries and requests for building permits. However, Husing stated that the regulations Lincoln County hopes to put in place could be completely eclipsed by what the legislature does.

Counsel Belmont remarked that all state efforts to date have failed to address land use. Under these circumstances local governments are left to figure out what to do in the face of this vacuum. Belmont expressed his astonishment that many other jurisdictions are prepared to not take action and people working for some jurisdictions have made inquiries what Lincoln County is going to do. We are trying to fill in some of the gaps, and address some of the voids left in the ballot measures that were passed.

Counsel Belmont stated that the regulation is best divided into two regulatory sides, one addressing dispensaries and the other addressing grow sites.

Lincoln County's approach is very simple: medical marijuana is a regulated medicine and should be allowed where other regulated medicine is allowed by County Code. Staff found that pharmacies and drugstores are permitted in the Retail Commercial C-1 and General Commercial C-2 zones, so the recommendation is that these zones be authorized for dispensaries as an outright permitted use with additional standards. Locating a facility in the I-P zone would require a conditional use permit, just as is required for any other use in an I-P zone. Standards similar to those in C-1 and C-2 would apply but with some additional standards or additional allowances in an I-P zone especially in regards to manufacturing.

The County has also considered the appropriate zoning for processing and manufacturing medical marijuana. The Planned Industrial zone seems to be the most appropriate.

A discussion ensued regarding how the system works between the grow operation, the dispensary and the medical card holder.

Planning Director Husing commented on the sophistication of growers and the high quality and productivity of plants currently being cultivated.

Counsel Belmont highlighted another issue that needed to be resolved: whether or not a grow site can be co-operated with a dispensary and on the recreational side, whether a grow site can be co-operated with a retail outlet. The County would like to see what the final regulatory environment looks like prior to adopting anything more permanent.

The draft ordinance proposes a 5 acre minimum lot size for a grow operation. These operations would be allowed in RR-5, RR-10, A-C and T-C zones. The other regulations follow State law and

what other local jurisdictions are doing, which include: dispensary and grow sites are only permitted indoors, require appropriate containment of odor, limit hours of operations, and disallow co-operation with other grow operations or with recreational marijuana operations (retail or grow operations).

The County defines schools a little bit more broadly than are in the statute to include head start, certified child care facilities, and public parks. Currently an owner of a dispensary must have a back ground check, and the draft ordinance requires that all employees and volunteers at dispensary and grow sites also have background checks through Lincoln County.

One regulation under consideration is how far the setback needs to be from a grow site to an adjacent residential property or dwelling (even in an RR-5 and RR-10). The setback should be measured from the grow site building to the adjacent dwelling site.

Planning Director Husing stated that a grow site in an A-C zone will not qualify the property owner for a farm dwelling. If the state applied the \$80,000 income test for establishing a farm dwelling based on marijuana cultivation, new rural residences would appear all over Oregon's agricultural land. For this purpose, marijuana would differ from conventional farming.

A discussion ensued about Agricultural definitions, dwellings on agricultural.

Counsel Belmont remarked that grow sites regulations would not apply to a personal grow sites intended for personal medical use. Belmont requested that the Planning Commissioners recommend that those activities be allowed to continue (and not be further regulated). Also, once a grow site or dispensary is established and meets the criteria, future development nearby cannot then be used to disqualify the facility (the operation would be considered "grandfathered-in").

Commissioner Morrill asked if there was any guidance or recommendation for the distance from grow sites to a residence.

Commissioner Spulnik asked if a greenhouse would be considered an acceptable structure for an indoor grow site.

Belmont responded that it would be if it met the regulations by controlling the odor, confining all objectionable odors, and would not affect an average reasonable person.

A discussion ensued regarding a homeowners right to complain (against the conditional use) if the grow site fails to contain odor after being established.

A discussion ensued regarding electrical permitting for grow sites and current safety concerns. A discussion ensued regarding personal grow operations, being indoor or outdoor.

Belmont recommended that setbacks for dispensaries should be consistent with current setbacks in commercial zones. For grow operations, he would recommend up to 250 feet.

#### PUBLIC TESTIMONY

**CYNTHIA GEORGE  
41 OLALLA ROAD  
GOING GREEN WEST**

Ms. George expressed displeasure with the Lincoln County Planning and Development Department and staffs' application of County zoning code in regards to her business, Going Green West. She has operated in Lincoln County for over a year, and is licensed by the Oregon Health Authority. Prior to the moratorium, Ms. George stated she met with County planning staff and reviewed uses permitted in the Commercial Tourism (C-T) zone. She represented that the Department told her their dispensary facility at that property would be authorized under the zoning (C-T).

Going Green West is not a pharmacy and Ms. George objected to the County's view that her dispensary is a pharmacy (which she noted is not required by the Oregon Health Authority or state law). . Medical marijuana is not a prescription, but rather a recommendation by a doctor. She explained that her business is a clinic. A family practitioner will be seeing patients there in the near future. The idea of limiting everybody to an indoor grow will perpetuate a black market. Oregon has just voted that everyone over the age of 21 can grow at least 4 plants. Do you even know how much cannabis is going to be produced? The County is trying to come in and control the most vulnerable in the community (patients for medical marijuana). Ms. George stated that she and her associates have followed every rule and have not had one issue or one police call in over a year. The new regulations target the most sick and vulnerable in the County. She stated that miracles are happening, that cancers are being cured. This community, she noted, discriminates with our medical care, taking away medicines simply because they are OMMP patients, leaving people without medical treatment in the community. Now Lincoln County is trying to regulate and take away her business again. She complained that everybody keeps listening to the League of Oregon cities, and that is wrong. The Oregon Health Authority will be determining who will be able to process (medical marijuana). The OLCC (Oregon Liquor Control Commission) is being relieved of their regulatory authority because they are not qualified. The County moratorium was illegally signed; the governor hadn't even put it into law at that time.

Ms. George asked that the planning commission consider her patients in their decision. She then spoke of the efficacy of her product and the amount of product required to treat certain conditions. Hundreds of thousands of research dollars are coming to Oregon. This is not the time to start regulating this emerging industry when miraculous things are starting to happen. Ms. George addressed Planning Director Husing and asked why the zone in which her facility is located (C-T) was not included in the proposed regulations as a zone for a dispensary? Ms. George stated the enforcement actions undertaken by Lincoln County have cost her large amounts of money.

**DONNA ADISON  
435 NE LIGHT ST.  
YAQUINA BAY PROPERTY MANAGEMENT**

Ms. Adison's son has used medical cannabis for many years as an alternative to addictive pain medication. She stated that medical marijuana should not be conflated with recreational

marijuana. The proposed regulation addresses medical and medical only. Ms. Adison further stated that State rules allow medical marijuana to be grown outdoors.

**MR. RYAN BLEDSOE**

**ryan@newportnet.com**

**(541) 270-0235**

Mr. Bledsoe stated that he has worked with the County Planning Department to find an appropriate location for his dispensary. Mr. Bledsoe thinks Lincoln County is “doing things right”. The State of Oregon has done a “phenomenal job” allowing Bledsoe to establish his business and is protecting the rights of medical marijuana users. He also mentioned that the State will regulate manufacturing marijuana products.

In response to earlier discussion, Mr. Bledsoe addressed the issue of odors generated by marijuana facilities. A facility that does not control odor may be subjecting itself to security problems. For this reason, many in the industry have invested in state of the art operations. Vice Chair Bobbitt asked if odors (from grow operations) can be completely contained. Mr. Bledsoe replied that with proper filters and lights that these impacts can be entirely mitigated. He explained that a grow operation that can be smelled outside the operation has not maintained its filters properly.

Vice Chair Bobbitt inquired after the volatility and danger associated with processing marijuana. Mr. Bledsoe stated that yes people are blowing things up. He said that much safer methods are being developed using sugar derivative water products. Alcohol is also used to extract the medicine, and that will be a personal choice.

**DELIBERATIONS**

Commissioner Spulnik asked if Ms. George’s establishment could be grandfathered in. Counsel Belmont stated that his office, the Planning Department, and Ms. George and her attorneys disagree on the nature of her business and the issues present at the property related to its zoning.

A discussion ensued about what the Planning Commission and regulations that were in place to deal with Medical Marijuana facilities.

A discussion ensued regarding the setback requirement on a five acre parcel, and what would be the appropriate distance to that property.

A discussion ensued regarding concerns with fire hazards of marijuana facilities located in the timber conservation zone. Firebreak standards should be the same as for a nonforest dwelling as provided for in Lincoln County Code.

Commissioner Morrill moved to forward and recommend for adoption by the Board of Commissioners an Ordinance lifting the moratorium on medical marijuana facilities in the unincorporated areas of Lincoln County and adopting temporary regulations for medical marijuana facilities, with the following modifications:

1. Indoor grow operations located on land zoned Timber Conservation (T-C) must be required to meet fire safety standards applicable to non-forest dwellings constructed in that zone, per LCC 1.1375(7).
2. Any standards applicable to Medical Marijuana Grow Sites (MMGS) in Rural Residential Zone RR-5 adopted by the BOC, as outlined in the draft Ordinance, shall also apply to properties zoned Rural Residential RR-10.
3. A Medical Marijuana Dispensary Facility (MMDF) located on a property zoned Retail Commercial C-1 or General Commercial C-2 shall meet all setback requirements applicable to any other uses permitted in the C-1 or C-2 zone.
4. A Medical Marijuana Grow Site (MMGS) facility shall be sited 250 feet or more away from a residential dwelling on any other property.

Commissioner Spulnik seconded the motion. The vote was taken with all in favor. The motion is passed.

ADJOURNMENT

Vice Chair Bobbitt adjourned the meeting at 10:43pm.

Respectfully Submitted,

Kristine M. Castillo  
Permit Specialist