

MINUTES OF THE  
**LINCOLN COUNTY PLANNING COMMISSION**  
MEETING OF AUGUST 24, 2015

Chair Torp called the Lincoln County Planning Commission meeting to order at 7:30 pm and roll call was taken.

**OTHER COMMISSIONERS PRESENT**

DICK JOHNSON  
MARK MCMAHON  
BOB PORCH  
JUDITH PELLETIER  
PHIL SPULNIK  
MARK ESTES

**COMMISSIONERS ABSENT**

ANDRA BOBBITT  
SAM GALASSO

**STAFF PRESENT;** Planning Director Onno Husing, Senior Planner Joshua Shaklee, Associate Planner Hui Rodomsky, Permit Specialist Kristine Castillo.

**QUORUM STATUS**

With Commissioners present a Quorum has been reached for the August 24, 2015 Planning Commission Meeting.

Chair Torp asked the Planning Commission to take a moment to reflect on the life of Planning Commissioner Steve Morrill, who passed away in July. Planning Commissioners took turns sharing memories of Commissioner Morrill.

Planning Director Husing stated that he spoke with the Board of Commissioners (BOC) and they expressed their sorrow at the passing of Planning Commissioner Morrill and their thanks for his extended service with the Lincoln County Planning Commission. Husing also shared that the BOC commented that the continuity of service on the Lincoln County Planning Commissioner, as a whole, has helped make the Planning Commission a highly effective body. As a result, the residents and property owners in Lincoln County are extremely well served because of the people who have dedicated so much time and energy to the Planning Commission. Director Husing expressed his views that he was always impressed with Commissioner Morrill's steady and reliable participation on the Planning Commission. Husing shared that he attended Commissioner Morrill's Celebration of Life in Toledo and learned how Commissioner Morrill made many contributions to the community and that he was pleased to represent Lincoln County at that service.

Chair Torp introduced new Planning Commissioners Robert (Bob) Porch and Mark Estes. Commissioners Porch and Estes introduce themselves and described their backgrounds and motivations for seeking a seat on the Lincoln County Planning Commission.

## **MINUTES**

Commissioner Johnson moved to approve the May 21, 2015 Planning Commission meeting minutes as written.

Commissioner Spulnik seconded the motion.

The vote was taken and the motion passed with Chair Torp, Commissioners Pelletier, Spulnik and Johnson in favor. Commissioners Estes and McMahon abstained.

## **ITEMS FROM THE AUDIENCE**

There were no items from the audience.

## **PAST ACTION REVIEW FOR PLANNING COMMISSION**

There was no past action to review for planning commission.

## **UNFINISHED BUSINESS**

There was no unfinished business.

## **ACTION ITEMS**

**PUBLIC HEARING ON CASE FILE #03-TA-15; The Lincoln County Planning Commission will consider amendments to Lincoln County Ordinance #479 which created temporary regulations for medical marijuana facilities in the unincorporated areas of Lincoln County.**

**The Lincoln County Board of Commissioners initiated the amendments with Resolution #15-05-08.**

**Chair Torp** reads the applicable criteria and asked for the staff report.

## **STAFF REPORT**

Planning Director Husing asked County Counsel Belmont to join him in presenting the staff report.

Husing reminded the Planning Commission that Lincoln County created temporary regulations for medical marijuana (MMJ) facilities several months earlier because the moratorium on dispensaries in unincorporated areas of Lincoln County was set to expire. In addition, at that moment in time, the Oregon Legislature had not completed their legislative process as it related to marijuana. Therefore, because the Oregon Legislature has completed their statutory framework, this is now our first opportunity to refine the interim regulations. In addition, because other regulatory processes are underway, the Planning Commission should anticipate that several other rounds of amendments to the development code on this issue will follow once those regulatory processes have been completed.

County Counsel Belmont stated that this was the first opportunity to address issues that came up since the legislative session ended, where some action took place. Despite the fact that work is still being done by the Oregon Health Authority regulating medical marijuana and by Oregon Liquor Control Commission (OLCC) to develop rules around recreational marijuana, a couple of things came to the forefront that needed some immediate attention. Belmont suggested, that an argument could be made that we should hold off and let these other processes play out and then act but there are several time-sensitive issues that compelled us to propose at least several code amendments at this time.

Counsel Belmont described how Measure #91 legalized recreational marijuana as of July 1, 2015 in the State of Oregon. After July 1st a person could legally purchase recreational marijuana. However, the State of Oregon has not yet established a framework where individuals can lawfully purchase recreational marijuana. Therefore, a gap in time exists between when it became legal to possess recreational marijuana and when the rules for growing, processing and distributing marijuana will be completed by OLCC. Therefore, a temporary measure was provided to authorize the limited sales and limited products through Medical Marijuana dispensaries (the purchase of seeds, leaves and flowers only) for recreational use. Belmont learned from the Oregon Health Authority the previous week that these temporary rules to regulate that particular activity were in place. Dispensaries will be required to follow rules governing signage, reporting, and track and report the sales that occur. It is left to local jurisdictions to decide whether to “opt in” or “opt out.” The County can choose to opt in to the temporary sales of recreational sales, and then it will be lawful in Lincoln County, in the unincorporated areas, to sell recreational marijuana at lawfully-established dispensaries.

Many cities/counties are, at present, struggling to make a decision. Incorporated cities in Lincoln County are all up in the air on what they plan to do at this time.

The second issue we wish to bring before the Planning Commission this evening is that the temporary regulations enacted earlier by Lincoln County imposed distance requirements between MMJ facilities and various potential conflicting uses. One potential conflict identified was with public parks. After the code was amended, staff determined these requirements had the unintended consequence of rendering virtually all of the I-P zoned property in South Beach ineligible for MMJ facilities because of South Beach State Park runs the full length of South Beach. Staff is recommending, therefore, that the Planning Commission reexamine that matter this evening.

Director Husing underscored that practically speaking, the only area in the County affected by the amendment to withdraw the 1,000 foot distance requirement for a public park is South Beach. Also as a practical matter, removing this distance requirement from the code will not have an impact on State Park facilities because there are large expanses of swamp and extremely dense brush between where a dispensary would be located on I-P zoned property in South Beach and where public activities within the State Parks facilities take place.

The other major issue to bring before the Planning Commission this evening, because members of the public urged the Planning Commission and the BOC to re-visit this issue, is whether or not dispensaries should also be allowed in the Tourist Commercial (C-T) zone. The County, during the earlier interim code amendment process, chose not to include C-T zones as a place for dispensaries. In making that earlier determination the staff cited issues related to the adequacy of law enforcement coverage in areas where some C-T zones are located, and, the fact that there are ample numbers of properties available in Lincoln County where dispensaries can be located when you include I-P zones and the Commercial zones (C-1, C-2 zones) in Lincoln County. Planning Director Husing stated another reason C-T zones were omitted from zones where dispensaries could be located in the interim regulations was the County sensed that dispensaries are quite similar to pharmacy facilities, and that pharmacies are not a permitted use in in C-T zones.

Commissioner Spulnik asked if liquor stores are in commercial tourism areas.

A discussion ensued about C-T zones in Seal Rock.

Chair Torp referred to Paragraph 8 Subsection B striking (the boundary of) “any property containing a preschool or pre-kindergarten, head start program, community learning center, or certified child care facility regulated under ORS Chapters 329, 329A and 657, and any public park (state, city or county). In an I-P zone, a MMDF may be located within 1,000 feet of any public park (state, city or county).”

Chair Torp stated that if it may be located within 1,000 feet, the facilities could be located right next door to each other. He asked Counsel Belmont if there any better language for that.

Chair Torp asked why put language back in.

Counsel Belmont stated that the standard needs to remain for the other zones, keeping the facilities away from the preschool, prekindergarten, head start programs etc. He noted that the request is just that the Commission recommend to the BOC to amend the ordinance to not include the I-P zones near public parks.

Chair Torp remarked that he would feel more comfortable with setback language built into code.

A discussion ensued regarding whether or not they could change the setback requirement to 250 or 500 feet.

Commissioner Porch stated residential development in these zones has occurred. What is in place to stop one of these facilities being built in one of the vegetated areas?

Planning Director Husing stated that most of these wetlands are protected under state or federal regulatory programs. As such, he concluded, it would be highly unlikely that such a conflict, between residential development encroaching near a dispensary at that location, would result.

Commissioner Johnson asked if there is other I-P zones in County lands near Toledo or Logsdan, for instance, where there might be a park nearby. Staff responded that there are not.

Senior Planner Shaklee remarked that regardless of the specific circumstances of properties in South Beach, a MMJ facility meeting the special standards laid out in Ordinance #479 will have much less of an impact on surrounding properties than the other uses permitted in an I-P zone. Moreover, he noted, these more intensive uses could be located adjacent to a public park under Lincoln County Code. The special standards adopted by Lincoln County are designed to mitigate whatever negative impacts may result from a MMJ facility. Based on the degree of impact, it does not make sense to regulate MMJ facilities differently than other uses in the I-P zone.

Commissioner Estes asked if staff knew how many dispensaries are being proposed.

Planning Director Husing responded it is impossible to know how many people may seek to open dispensaries in unincorporated areas of Lincoln County until they approach the Planning Department. And, for the Planning Department, that's not a relevant factor. One can speculate there may be far too many people opening dispensaries that can operate profitably, but, that's for the market to determine, not the Planning Department. These facilities, he also noted, will also have their own state regulations which may influence their ability to open irrespective to what Lincoln County's zoning provides. Husing underscored that there are approximately 400 properties that could, under the County's existing zoning, be available for dispensaries.

## **PUBLIC TESTIMONY**

Cynthia George stated her facility, Going Green West, is located in commercial tourist zoning and apologized for her behavior during the last meeting. The business has been in operation for over a year. Lincoln County did some action with a moratorium after they were in business. She met with Planning Director Husing, who explained that a bar, or a clinic, could be located in the Commercial Tourist zone. She views her business as a medical facility. She is up in the air on whether to participate in selling recreational marijuana. If they decide to participate, the area devoted to recreational sales would have its own sales area, and its own office area. The facility has the space to do that. They are required to do

a lot to comply with the state. As far as liquor stores in commercial tourism zone, there *are* bars where people are consuming alcohol near schools. She does not think her business is a threat. There has been no theft, no police have been called, and they pride themselves on being part of the community. They serve the community. They are respected in the community as being honest business people. She respectfully requests that C-T zones be considered by the planning commission to be included as zones where dispensaries are permitted. She doesn't think the business will cause any adverse effects. They have had no neighbor problems whatsoever. She believes her facility is actually ideally located at its present location because they don't have foot traffic, only vehicular traffic from the turning lanes on and off Highway 20. They have great parking facilities and all those things so there is great access for the business itself. They don't have tourists or children walking past. They are actually coming to a joint gardening center there. They have glass blowing, yoga, and palates. She wants to turn it into a health facility. The county wants their 25% tax beginning January 1, 2016, they are not looking forward to that because it will be a strain to try and provide the service. But they can do it, the community needs this. They check ID's at the door now and Ms. George doesn't think there has ever been one infraction allowing someone into the facility that was not a patient that was not entitled to the medicine. She invited Commissioners to please feel free to stop in any time, it is a beautiful facility, it really is.

In response to Ms. George's testimony, Planning Director Husing stated that when the Chair asked for an explanation for where C-T zoning exists in the County he did not bring up the C-T zoned property at the corner of Highway 20 and Olalla Road because there are special considerations in place for that property. The property was zoned C-T using an "intent to rezone" process in 1982 when the current owner of that property was approved for the original store under very limited conditions and for very specific activities. It was approved only for recreational use for that store serving commercial tourist activities, and only local recreational traffic, fishing in Olalla Lake and doing recreational boating and only those types of activities. The dispensary that is operating in Olalla, Husing noted, is presently a code violation and that the matter has been forwarded to the judicial system. If, at the end of this process, the BOC adopts a code amendment that will authorize dispensaries in the C-T zone, the property owner would need to come back before the Planning Commission and reopen the "intent to rezone" issue at a later session.

Ryan Bledsoe: Mr. Bledsoe began a journey about 1 1/2 years ago to find out where the proper place to put a dispensary would be. He looked at all the properties available and felt he had found the perfect place. It was well away from schools, certain kinds of traffic and put him away from the city. He really got educated on conditional land use permits. He got his attorney involved and tried to dissect it and compare the business to a bar, but it's not like a bar, so he had to go through the process on applying and doing the right thing, in order to put the place in where he wanted to put it.

Mr. Bledsoe referred to a memo which outlines what the federal government is looking at and how they want to keep this out of children's arms, away from gangs, black market issues. That is really the stated focus here is to keep it safe in the public's hands. The dispensaries and what they have to go through, state, federal, fire marshal, planning. He has not quit because he feels like he is on the right path. He feels like he has done his due diligence trying to find the right spot.

But the property he found was near state park, and there is a road that might go in but if you look at the language from the State, the setback is from door to door, but the setback from the County is from property line to property line. It is confusing because the potential dispensary was ¼ mile from the nearest campsite. Everybody is trying to catch up and trying for the same thing, and no one wants to put anything near schools. Is this a public health risk? He has asked himself all the hard questions.

He is making maneuvers to stay within the letters of the law. The property is in an I-P zone and surrounded by city on all sides. He is doing the right thing and would appreciate the amendment to the setback from I-P zone to state park.

## **DELIBERATIONS**

Commissioner McMahon stated never before has the Commission worked so hard for any other business type, as it has to create places to dispense pot. Where is the line between promoting and trying to limit and control? This question must be answered before a decision can be made.

The second question is: Aren't the uses allowed in the C-T zone practically the same as in the other commercial zones? Maybe a distinction should be made. Seal Rock and Lincoln beach (where most C-T zoned properties are located) are the two areas most affected. But there are a lot of local residences in these areas.

Commissioner McMahon asked whether pot is being promoted so local people or tourists walking down the street can buy a joint? Or are these considered medical facilities?

Commissioner Johnson stated that the Commission is not in the business of promoting or not promoting any particular business or business type, but in the business of county planning. From a planning standpoint, he believes the Planning Commission should ask does this proposal make sense?

Commissioner Spulnik remarked that MMJ dispensary facilities will be low impact businesses. He does not anticipate there being that many pot smokers in the community. The 25% tax will compel most people to grow their own. Most of these businesses, he speculated, will go out of business. The matter at hand is whether the facilities would be allowed in an I-P or commercial zone.

Commissioner Estes asked if we are presented this type of information in future meetings are we going to be looking at specific tax lots.

Planning Director Husing stated that Planning staff can process the conditional uses administratively, which means that individual applications would only come to the Planning Commission if the Department thinks there is any controversy, or, if after the Department issues an approval or denial, that decision is appealed to the Planning Commission. Husing underscored that Planning Department staff is not seeking to promote pot shops. The reason for the ordinance is the legislature did not have any regulations in place before the moratorium expired. In addition, Director Husing noted he was ensuring that the requests made from property owners in Lincoln County to include C-T zoning as a place where dispensaries are authorized were placed before the Planning Commission for consideration. As such, Husing said he was simply playing the role of messenger to ensure that these requests were placed, again, before the Commission, for deliberation.

Commissioner McMahon asked if these facilities would be allowed without conditional uses in these zones.

Planning Director Husing stated that the text amendment will not influence which zones where it is permitted in our code now. Unless you modify that requirement specifically, the facilities will be permitted in the same manner as they were under the original ordinance.

County Counsel Belmont stated that by default, the County opts in if it does nothing. If we opt out then it can't happen until the legislature makes the regulations.

Commissioner Johnson asked if allowing MMJ facilities in the I-P zone is a good idea from a staff perspective.

Commissioner McMahon remarked some types of businesses - alcohol, marijuana, even the sexual stores- may be undesirable for many.

Chair Torp asked Counsel Belmont if he believes we are promoting a particular business or just addressing what the state has dropped in our laps, and by our actions, actively opting *in* creating zones that allow those activities to take place.

County Counsel Belmont stated that a significant majority of voters in Lincoln County approved both medical and recreational marijuana to be able to be sold legally. The County can move aside and let state regulate completely or the County can be proactive and engage with its own regulations. In Lincoln County, there are fewer options compared with some other counties because the majority of voters voted for the sale of recreational marijuana in Lincoln County.

Commissioner McMahon remarked he can agree to the argument that medical marijuana should be provided to buyers, but opting in with recreational being sold in zoning areas that we may not want this to happen.

Commissioner Porch stated that the County should be proactive and exert control while we can.

Commissioner Spulnik motioned on case file #03-TA-15; the Lincoln County Planning Commission accepts the proposed text amendments to the Lincoln County Ordinance #479. In addition, Commissioner Spulnik motioned to recommend to the Lincoln County Board of Commissioners to opt in to early sales of recreational marijuana at medical marijuana dispensaries.

Commissioner Johnson seconded the motion as proposed.

The vote was taken and the motion passed with all in favor.

**MOTION ON CASE FILE #03-TA-15; THE LINCOLN COUNTY PLANNING COMMISSION ACCEPTS THE PROPOSED TEXT AMENDMENTS TO THE LINCOLN COUNTY ORDINANCE #479. THE LINCOLN COUNTY PLANNING COMMISSION FURTHER MOTIONS TO RECOMMEND TO THE LINCOLN COUNTY BOARD OF COMMISSIONERS TO OPT IN TO EARLY SALES OF RECREATIONAL MARIJUANA AT MEDICAL MARIJUANA DISPENSARIES.**

## **WORK SHOP**

**8.1 Presentation and workshop of draft Statewide Planning Goal 18 Beachfront Protective Structures Eligibility Inventory prepared by the Department of Land Conservation and Development, which includes maps and code language proposed to be adopted as part of the Lincoln County Comprehensive Plan. The Inventory includes a database of tax lots located at or near the oceanfront which have been identified as developed or not developed on January 1, 1977, for the purposes of determining eligibility under Goal 18 for rip-rap and other beachfront protective structures.**

Senior Planner Shaklee introduces the workshop as a first step in formally adopting the beachfront protective structure eligibility inventory as part of Lincoln County's Comprehensive Plan.

Senior Planner Shaklee commenced with a slide show presentation.

Shaklee referred to the text of Statewide Planning Goal 18 (Beaches & Dunes) and highlighted that the intent of the guidelines is to reduce the hazard to human life and property from natural or man induced

actions associated with beaches and dunes and guide development to be consistent with natural limitations of beaches, dunes and associated vegetation for development.

Implementation Requirement 5 directs Lincoln County to keep an inventory of tax lots that are eligible for beachfront protective structures. Beachfront Protective Structures or (BPS) are permitted where development existed on January 1, 1977.

Staff deals with this issue when an Oregon Parks and Recreation Ocean Shore Permit Application which requires that we sign off on the compatibility on an Ocean Shore Protection Addendum A (that this particular property and this activity are consistent with our comprehensive plan). Staff also provides notice to owners when building permits are issued for these properties, that they are not eligible for beachfront protective structures.

Senior Planner Shaklee reviews the definitions with the Planning Commissioners.

A discussion ensued regarding legal dwellings or commercial/industrial structures and how they are determined by aerial photos.

Prior to 2005, the Lincoln County Planning department relied on ocean shores aerial maps: aerial photographs with tax lots identified. Tax lots that were clearly developed were eligible for BPS.

In 2005, the Department of Land Conservation and Development (DLCD) created BPS inventory maps in GIS (Geographic Information System), computerized maps used to this day. However, limited funding, staffing and other resources available at that time limited the extent of the research that could be accomplished, resulting in a number of lots having an undetermined status. More information was necessary to see if a certain number of lots qualified for BPS. It was never officially adopted as part of our comprehensive plan.

Planning Director Husing stated that the inventory is used every day at the counter to help people know about the status of their properties under Goal 18. If they feel like we have it wrong, that despite the inventory they are in fact eligible under Goal 18, then we ask them to provide us with additional information.

Senior Planner Shaklee stated in addition to the maps themselves, each tax lot had some comment attached to it describing its eligibility status.

In 2013, National Oceanic and Atmospheric Administration (NOAA) Coastal Fellow Meg Gardner was employed by the Coastal Management Program with DLCD to review and update the 2005 inventory. Ms. Gardner worked with Lincoln County staff, mainly our GIS Technician Eli Adam and relied on primary sources of data to verify eligibility. By early 2015, the draft inventory maps and proposed code language were provided to Planning and Development staff. The paper maps would be adopted as part of the County comprehensive plan and the code language is proposed to amend our code to adopt these maps and the inventory.

Senior Planner Shaklee showed the maps for the 2005 inventory and explained the symbology used for the property status. He then displayed a sample of the draft inventory maps, demonstrating that the properties given "undetermined" status were determined to be ineligible using one method or another. Lots with "undetermined status" basically disappear with the new maps. All of the lots that were deemed to be undetermined or omitted in the original inventory were examined and some determination was made. In addition, a limited sample of both ineligible and eligible lots were also examined. On the ineligible ones the comments were taken into account and gave the reviewers a second look at available information. To make these determinations they relied on aerial imagery,

Lincoln County Assessors information, and subdivision laws at the state and county level and subdivision plat filings.

Senior Planner Shaklee described the methodology of the maps and explained the symbology used.

A discussion ensued regarding why common areas of Planned Developments and condos are ineligible.

Planning Director Husing stated that Lincoln County Planning, when it issues a LUCS that the property does qualify under Goal 18, that, in a sense authorizes the property owner to talk with State Parks about getting a rip-rap permit. There are still many other considerations that OPRD will run them through before they issue an Ocean Shore Alteration Permit.

A discussion ensued regarding rip rap and the eligibility status of different areas of the County, Bayshore and Fishing Rock in particular.

Senior Planner Shaklee went over the code language and informed the Planning Commission they may be asked to adopt the inventory and the language as part of our Comprehensive Plan by the next Planning Commission meeting.

#### FREDERICK BATSON

Mr. Batson stated that he represents property owners in the area that would need protective structures. This proposal is very important, he saw the language and heard about the meeting Friday and is not prepared to address it in any detail. Mr. Batson urged the Planning Commission to take this inventory very seriously. Adopting the inventory makes a list for County staff to look at that anybody on that list will be told that they don't have any right to even talk to Parks and Recreation about getting a protective structure in place for their house. This is a very serious thing for the people that are on that list that are listed as not eligible. There is a big policy decision that is involved. Mr. Batson suspects that most of the affected people don't have any idea that that is what the Commission is and may consider in very short order in a follow up meeting.

Mr. Batson addressed the provision in the draft code language providing a way to appeal an eligibility determination if there is disagreement. The County is trying to adopt a definition that would make it very difficult for people to do that. So the text is not just adopting an inventory but changing the definitions by which eligibility is determined, making it very difficult for people to contest. Mr. Batson wanted the Commission to understand how serious this is to a lot of the property owners.

Commissioner Spulnik asked how staff has changed the definitions since 1977.

Mr. Batson stated that the County is looking to state law. One of the critical factors is what is considered a vacant subdivision as of January 1, 1977. This county thirteen or fourteen out of the seventeen years before 1977 had an ordinance that defined a category property as being a minor subdivision that specifically said those don't need to be recorded as plats and can be given back to the sub-divider. They have changed the definition to say that it is only recorded subdivision plats and have in essence ignored the fact that this county called these things subdivision lots thirteen or fourteen years prior to 1977. So by saying they have to come back to you with evidence of recorded plat, there is a change that makes it difficult for people to appeal the decision later on. So from that perspective, Mr. Batson believes the rules are being changed insofar as what a person would have to do to appeal a determination if the property is a minor subdivision lot without a recorded plat because the county code at that time wasn't required to be recorded. That is where there is a very significant change and doesn't just give people the opportunity to come back and talk to the Planning Commission later. County staff emailed Mr. Batson probably because there have been ongoing conversation about these issues before,

but there are probably a lot of folks out there that do not have a clue that this is going on, or that they will be impacted by this policy issue.

Planning Director Husing stated there is no attempt or desire to press the Planning Commission to make a hasty decision on these matters. This was simply the first opening discussion of this issue and, of course, there will be other opportunities to review these matters in depth in the future.

Commissioner McMahon asked Mr. Batson if he could provide some language that he would like to see in the code that would make it more easily to appeal.

#### **PLANNING COMMISSION CONCERNS**

There were no Planning Commission concerns.

Chair Torp thanked the new Planning Commissioners Porch and Estes and welcomed them to the Planning Commission.

#### **ADJOURNMENT**

Chair Torp adjourned the meeting at 10:07 pm.

Respectfully submitted,

Kristine M. Castillo  
Permit Specialist