

**MINUTES OF THE
LINCOLN COUNTY PLANNING COMMISSION**

MEETING OF MAY 8, 2017

Chair Johnson called the meeting to order at 7:30 pm and asked for roll call.

OTHER COMMISSIONERS PRESENT

BOB PORCH
MARK ESTES
TERRY BUGGENHAGEN
PHIL SPULNIK
JUDITH PELLETIER
RICHARD CUTLER

COMMISSIONERS ABSENT

MARK MCMAHON
ANDRA BOBBITT

STAFF PRESENT: Senior Planner Joshua Shaklee, Planning Director Onno Husing, Permit Specialist Josh Bacher.

1. CALL TO ORDER

With Commissioners present a Quorum has been reached for the May 8, 2017 Planning Commission Meeting.

2. APPROVAL OF MINUTES

Commissioner Buggenhagen motioned to approve minutes from March 27, 2017.

Commissioner Porch seconded.

Chair Johnson asked for a vote on the motion and the Planning Commission voted to approve the minutes for March 27, 2017.

3. ITEMS FROM THE AUDIENCE

NONE

4. PAST ACTIONS REVIEW FOR PLANNING COMMISSION

NONE

5. UNFINISHED BUSINESS

NONE

6. ACTION ITEMS

6.1 Case File #08-C-PC-17: Adoption of Findings, Conclusions, and Final Order.

Chair Johnson states that the Staff findings written to be consistent on what we approved before, and asked Staff to tell us about them.

Senior Planner Shaklee requested that ODOT help us as discussed at the last meeting, their results were emailed out to the Planning Commissioners.

Director Husing stated that the traffic analysis was very important, needed to go back and do more work on the issue. You're entrusting the Staff to look at that product and require what is in those finding becomes the final condition.

Chair Johnson: asked for anymore comments. There were none.

Commissioner Buggenhagen motioned to approve

Commissioner Spulnik seconded.

Commissioner Estes abstained as he did not attend the meeting.

Chair Johnson noted that is was moved and seconded.

Director Husing reiterated to **Commissioner Cutler** what had just happened.

The vote was taken with all in favor except **Commissioner Estes**, who was absent from the March 27, 2017 meeting.

MOTION TO APPROVE AND ADOPT THE FINDINGS, CONCLUSIONS AND FINAL ORDER FOR CASE FILE #08-C-PC-17

7. PUBLIC HEARING

7.1 Case File #03-C-ADM-17: Appeal of administrative approval of conditional use permit to establish a recreational marijuana production site on property zoned Rural Residential RR-5. Conditional use approval authorizes applicant to construct a two-story 78 foot x 40 foot, 4,960 square foot building to accommodate the use.

The subject property is located at 138 S Drift Creek Camp Road in unincorporated Lincoln County, and is identified on Lincoln County Assessor's Map #07-11-36- as tax lot 1102.

Chair Johnson stated the format for the hearing and asked for Ex Parte contacts or conflicts, then asked for the Staff Report.

STAFF REPORT

Senior Planner Joshua Shaklee stated tonight is an appeal of a staff decision 03-ADM-17. It should be noted that property does feature a FEMA Flood Zone, but the proposed facility shall be located outside of that. It was discovered there is a County Property labeled as a park, Drift Creek Park. We received an email from the Public Works Director, it's not an improved park, but classified as "wayside" or "right of way". The size of the proposed facility is limited to 5,000 square feet. He asked the Planning Commission to apply standards of conditional use permits. This is proposed to be an entirely closed facility. No odors, noise, or light should be coming out of the building. **Director Husing** and **Senior Planner Shaklee** performed a site visit. Another concern expressed by the Appellant is adequacy of transportation to the

site and condition of the road and potential impacts. The Applicant presented that fewer trips are going to be generated. During the site visit, one area is somewhat dilapidated; a tree had fallen and was cleared the day before. Entering Drift Creek Camp Road (refers to map on board), there's an easement road providing access to the subject property which is shared by four other homes. The proposal did receive tentative approval by our department. You will hear testimony tonight from the Appellant and Applicant; we ask that you focus on code criteria and Ordinance #484. You may hear other issues between neighbors that shouldn't factor into that decision. At the end of the proceedings, you will make a decision to uphold Staff approval or reverse Staff approval and deny the request by Applicant. Another option is to impose additional conditions of approval on what was presented in the Staff report.

Senior Planner Shaklee finished and asked for questions.

Commissioner Spulnik engaged **Senior Planner Shaklee** and **Director Husing** in a short conversation regarding setbacks and buildings on the property.

Director Husing stated that we have never had the authority to demand a survey, and we did not research the validity of the setback for the original application.

Chair Johnson asked for more questions on the Staff report relative to the application. There were none.

Chair Johnson asked for the first testimony from the Appellant.

APPELLANT

Philip J. Wuest
805 SW Broadway, Suite 1900
Portland, OR 97205

Mr. Wuest, the Attorney representing Carolyn Smith, signed in and provided Senior Planner Shaklee with 5 black binders. They were date-stamped and marked as "Exhibit A". 4 of the binders were handed out to the Planning Commission.

He stated that he isn't certain where the property lines are, it is germane, and the question of a survey is relevant. It is a conditional use meaning it is not going to work everywhere, there are 2 zones where a Recreational Marijuana Production Site is allowed outright, and this is not one of those. Mr. Wuest went on to elaborate on the criteria of Lincoln County Code 1.1630, Standards and Procedures Governing Conditional Uses. The application is not complete; it is in a floodway, occurring in the wetland. It's reasonable to ask the Applicant to get a survey and have a wetland delineation.

Mr. Wuest remarked that the application doesn't provide credible information on operational details. Trimming room, where the crop is prepared after it is harvested, shows seating for 11 people. The application reads that parking won't be much of an issue. Also, water will be collected on the roof, eliminating the need for additional water for some 200 plants. Each plant requires 2 gallons of water for watering, but there is no information submitted by the Applicant or in the Staff report detailing the water system. He inquired how the water will be stored, and how will it impact the wetland. No basis for a decision without that information.

Mr. Wuest brought up transportation and access. The roadway is extremely steep and narrow. It is shown on the two maps that it is not a roadway; it's a private easement for access. To access the proposed site, the private shared driveway has to cross two other properties. If the site is used as proposed, it will allow the Applicant to break a federal law by bringing marijuana onto their own private

property. That is an overburdening of the easement. Building size is another issue; the building footprint itself is well over 3,000 square feet with 2 stories. **Mr. Wuest** thinks the building itself exceeds the 5,000 square feet, and there is no evidence to suggest that it's not. Septic capacity is not addressed in the application nor is it addressed in the Staff Report. The septic approval is for the existing home and rated at 375 gallons per day. He stated that there are site obscuring fence requirements, and because we can't locate the building specifically due to a lack of a plot plan, we can't determine if it meets setback requirements.

Mr. Wuest believes that as noted by Staff is still a public park. He mentioned environmental constraints, and wrapped by referring to the code and criteria. He noted that the Staff Report doesn't include a finding that addresses the compatibility for 1.1630B, and would be happy to answer any questions.

A brief conversation ensued between **The Planning Commissioners, Director Husing, and Mr. Wuest** regarding the water source, land use laws, easements, and information submitted on the original application.

Chair Johnson asked if there is more testimony in support of the Appellant. 49:26

PUBLIC TESTIMONY

Ron Andrews identified himself and signed the Public Attendance Record. He lives at 130 S Drift Creek Camp Road, and moved here about a year a half ago with his wife Jean. He elaborated on concerns about the road and having marijuana grow next to their property, including the odors. He also addressed that the family living in the trailer have dogs at large. **Mr. Andrews** finished up by stating that he has two outbuildings that someone may mistake for the marijuana grow and break in.

A brief conversation ensued between **The Planning Commissioners** and **Mr. Andrews** regarding the location of his property and the dogs running at large.

Chair Johnson asked for other testimony in support in the appeal.

Sid Johnson identified himself and signed the Public Attendance Record. He lives at 2163 S Drift Creek Road, and pointed to his property on the map. We're just north, on the road.

Chair Johnson asked for other testimony in support in the appeal.

Jean Andrews identified herself and signed the Public Attendance Record. She remarked that it's almost impossible to put teeth back in once they have been pulled, and stated that only 4 of the 50 states have legalized recreational marijuana. It's all new, and the Planning Commission is making decisions that will have precedence after this.

A brief conversation ensued between **Chair Johnson, Commissioner Spulnik, and Mrs. Andrews** regarding flooding and compatibility.

Chair Johnson asked for any other supporters of the appeal. There were none. He asked the Applicant to come forward and testify.

APPLICANT REBUTTAL

Coby Randquist
4500 NE East Devils Lake Rd
Otis, OR 97368

Mr. Randquist is **Amberdawn Lowe's** (the Applicant) stepfather and business partner for the application. He is going with **Director Husing's** recommendations as far as the undue burden, and stated that he is not an attorney. He doesn't understand the conflict between state and federal laws. For overall access and condition of the road, they went back through his daughter's paperwork regarding the mortgage and the easement and were unable to find anything that established a set routine or maintenance. If this goes through, they will figure out what to do to maintain the road. He worked with Mr. Andrews to remove a fallen tree that fell across the road. For the Septic capacity they will do some additional investigation. For the water collection plan, he spoke with Nikki Hayes at Tillamook County Water (must have meant Nikki Hendricks) to get the plan approved. **Mr. Randquist** talked to OLCC about security requirements. In regards to the public park, he will defer to the County whether it is a park or sideway. On the size of the building, they bought the building and came out at 6,000 square feet. They altered the plans so the second floor will not run the whole length of the building. They are running a newly legalized business, and want to make sure they are doing everything in accordance of the laws. There are minors living on the property but will have no access to the facility.

Mr. Randquist goes on to describe the three partners' experience. If the conditional use is not approved, they will go back to the County and find a piece of land that will work. He elaborated that the trim room is set up for 11 people and that they will do 4 harvests each year as the growth cycle is 12 weeks. They will need 5 to 10 people on site for trimming. **Amberdawn Lowe** purchased the property in 2012 and has done a lot of outreach. If road use and transportation continues to be an issue, we have parking for four vehicles. They can load everyone on **Amberdawn Lowe's** school bus. They may outsource the trim to a third party company if necessary. **Mr. Randquist** finished by asking for questions.

A brief conversation ensues between **Commissioner Estes, Mr. Randquist**, and an undocumented audience member regarding wind patterns, odors, and filtering.

Director Husing remarked that from a Staff perspective, they have had to learn a lot about marijuana in the last 2 or 3 years. He elaborated on the differences between outdoor and indoor grows.

Commissioner Estes inquired about OSHA requirements, and **Mr. Randquist** replied in the affirmative and elaborated.

Chair Johnson asked for any other questions.

Commissioner Cutler asked if the site is in a wetland, and if there is any danger of flooding.

Director Husing replied that it is a tight squeeze; we wanted to see and visit the property. It is above the wetland, and we would notify the Department of State Lands if it were to go further.

Mr. Randquist added one other thing that per OLCC requirements, anyone that is working in the business has to get a marijuana workers permits which does require a background check.

Chair Johnson asked for any other testimony.

Commissioner Estes inquired about the school bus, and **Mr. Randquist** and **Amberdawn Lowe** responded.

Director Husing noted there is a valid concern about a culvert, and that a road maintenance agreement could be built into the conditional use.

Chair Johnson stated that he is making a list of key points to discuss, and asked for any other testimony in support of the appeal.

Mr. Wuest asked to rebut and said that the existing building is encroaching on the property line. There is no plot plan, but he stated that Staff did indicate the approximate distance from the existing residences

to the area of development. He asked where is the building, parking, and how it is being accessed. He noted that the environmental constraints weren't detailed in the application, and neither was the trimming. **Mr. Wuest** questioned the approval with the Tillamook Water District and the septic capability. He concluded his comments by stating that the roadway is steep and narrow.

Commissioner Spulink asked where **Mr. Wuest's** client lives on the map, and why we aren't hearing from the owners of the property north of the property line. **Mr. Wuest** indicated that those owners have recently passed away.

Chair Johnson stated that the question we have is, do we want to keep this open? Suspect not, but may want to pass it on to Staff. Do we want the testimony to be closed?

Ron Andrews testified again that from 10 o'clock to midnight if there were any noise issues, **Amberdawn Lowe** did come and say they were going to have a party, and he appreciated that. He has stated all of his issues, and just wanted to make sure there is no criminal, noise, or smell issue.

Amberdawn Lowe from the audience remarked that OLCC has made it clear that there is no criminal element involved. Gardens are quiet.

Chair Johnson requested any more from audience, specifically something that hasn't been said.

Amberdawn Lowe signed in and stated that in regards to the septic system, it would be like having 10 people over every three months, like a dinner party.

Chair Johnson asked for anymore comment about the septic, and if anybody wants to keep the record open or closed at this point. He suggested we close, then closed the record at 9:09pm and stated it is up to **The Planning Commission** on how to proceed. He suggested they carry on to make a decision or make a decision on what to have the Staff do, and stated there are five issues to be discussed or have the Staff do more work: odor, setbacks, roadway, traffic and parking, and residential compatibility.

A brief conversation ensues between **The Planning Commission** and **Director Husing** regarding compatibility, the septic system, the roadway, fencing, working hours, and a survey.

Chair Johnson stated that the hearing is closed and to recommend five issues for the Staff to do more work on: survey, roadway, fence, wind, and odor.

Commissioner Spulnik made a motion to uphold the appeal and direct the **Appellant's** attorney to find fact to deny the application.

Commissioner Buggenhagen seconded.

**MOTION TO UPHOLD THE APPEAL FOR
CASE FILE #03-C-ADM-17**

A brief conversation ensues between **The Planning Commission**, **Director Husing**, and **Senior Planner Shaklee** regarding compatibility, meeting criteria, a survey, the motion, appeals, procedural issues, and having the **Applicant** come back with a new application.

Chair Johnson stated the motion is to uphold the appeal, and all were in favor of the motion. Unanimous.

**MOTION TO UPHOLD THE APPEAL FOR
CASE FILE #03-C-ADM-17**

Commissioner Spulnik stated that it is back in the Applicant's hand and to come back with a better application.

Chair Johnson stated that he thinks the **Applicant** knows the handful of issues that **The Planning Commission** is uncomfortable with, and closed the hearing at 9:37pm.

8. PLANNING COMMISSION CONCERNS

Commissioner Spulnik remarked that we have been going through this for 2 years, it is a state law. We had all these checklists, then there was opposition, so we tweaked things here and there.

Chair Johnson asked for other concerns. There were none.

9. ADJOURNMENT

Chair Johnson adjourned the meeting at 9:39 pm.

Respectfully Submitted,

Joshua B. Bacher

Lincoln County Permit Specialist