

MINUTES
UMATILLA COUNTY PLANNING COMMISSION
Meeting of Thursday, April 23, 2015
6:30 p.m., Umatilla County Justice Center, Media Room
Pendleton, Oregon

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COMMISSIONERS

PRESENT: Randy Randall, Gary Rhinhart, Cecil Thorne, Tammie Williams, Suni Danforth, Don Marlatt, David Lee

ABSENT: Don Wysocki.

STAFF: Tamra Mabbott, Carol Johnson, Gina Miller

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NOTE: THE FOLLOWING IS A SUMMARY OF THE MEETING. A RECORDING OF THE MEETING IS AVAILABLE AT THE PLANNING DEPARTMENT OFFICE.

CALL TO ORDER:

Chairman Randy Randall called the meeting to order at 6:33 p.m. He read the opening statement and rules of conduct for the hearing.

MINUTES:

The minutes from the January 22, 2015, February 26, 2015 and March 26, 2015 Planning Commission hearings were reviewed and considered for adoption. Commissioner Marlatt moved to adopt the minutes as presented. The minutes were adopted by consensus.

NEW HEARING:

REQUEST FOR A PUBLIC HEARING submitted by JAMES BREEDING on appeal of the following application; CONDITIONAL USE REQUEST, #C-1238-14, JAMES BREEDING, applicant:

Chair Randall opened the hearing and called for abstentions, bias, conflict of interest or declaration of ex parte contact, and there were none.

STAFF REPORT: Senior Planner Carol Johnson stated that James Breeding applied for a Conditional Use Permit to establish a personal use air strip on his Exclusive Farm Use (EFU) zoned property located at 84943 Triangle Station Road northwest of Milton Freewater. She referred to a map showing the subject property on an aerial overview.

Mrs. Johnson read the standards of approval for a personal airstrip, and indicated which ones had been met and which had not. The application was denied by planning staff and the applicant requested a public hearing. Mrs. Johnson noted that the Commissioners packets contain the staff report, comments from notified property owners and the Oregon Department of Aviation. She added that they were given four additional comment letters tonight that were

delivered after the packets were sent. She explained to the Planning Commission that they could decide to uphold the Planning Department's decision to deny, or based on evidence and facts, decide that the criteria are met and approve the conditional use permit request.

Commissioner Rhinhart commented that it appeared there were residences within 500 feet of the airstrip. Mrs. Johnson referred to the map being shown and pointed out the 500 foot buffer zone for adjacent dwellings. Commissioner Rhinhart asked about permitting through the Oregon Department of Aviation; Mrs. Johnson advised the aircraft has to be registered with Oregon Department of Aviation but she didn't know whether or not a permit was required..

APPLICANT REPRESENTATIVE TESTIMONY: Jack Wallace, 84681 Hwy 339, Milton Freewater, OR. Mr. Wallace stated that he is speaking on behalf of Mr. Breeding. He added that he designed and built the airplane to land on Mr. Breeding's air strip.

Mr. Wallace stated that they have addressed issues that were not addressed in the original application and have additional information. Chair Randall asked if the Planning Commission had copies of that information in their packets. Mr. Wallace stated this was information submitted after the application was denied. Mr. Wallace read from a written statement; see the record for a copy. One of the issues that had been raised was the number of aircraft that would be using the airstrip. Mr. Wallace said only those owned by the property owner would use the airstrip. Commissioner Rhinhart stated there had been complaints of multiple planes flying in and out of the property, as well as a helicopter. Chair Randall said the Planning Commission would be considering all the standards and the rights of neighboring property owners. He added that a very important standard is the 500 foot buffer zone.

APPLICANT TESTIMONY: James Breeding, 84943 Triangle Station Road, Milton Freewater, OR. Mr. Breeding joined Mr. Wallace to testify. Mr. Wallace said they talked to Larry Widner, a neighbor who said he would sign a waiver for the 500 foot buffer. He then read the letter Mr. Widner signed; see the record for a copy.

Chair Randall asked what their response was to the letter from the Oregon Department of Aviation. Mr. Wallace said they have submitted an application with a \$500 fee. Mr. Breeding reported someone from the Department of Aviation said they wouldn't come out to inspect the property until he got land use approval.

Commissioner Rhinhart commented that the site plan for the airstrip hadn't been prepared very well and did not show the length of the airstrip and where neighboring homes were located. Commissioner Lee said they needed to know where airstrip was located not just where he parked his plane. He added that there were some real safety concerns with this request.

Mr. Breeding explained that his plane is a Supercub and is the safest plane to fly. Commissioner Marlatt asked where they wanted the airstrip to be located. Mr. Wallace pointed out their preferred area on an aerial map saying it had unrestricted visibility. He added that he designed the plane to take off and land in 500 feet. The plane is referred to as a "STOL" – Short Take Off and Landing. Mr. Wallace said the FAA (Federal Aviation Administration) rule is you must maintain 500 feet from any person, place or thing with an

exception for take offs and landings. Commissioner Danforth asked Mr. Breeding why he didn't use the airstrip in Milton Freewater. Mr. Breeding answered that he doesn't know the owner of that airstrip and his goal is to have the plane on his property so he can easily maintain it.

Chair Randall said that overall the application was denied by the Planning Department because it did not meet the criteria and the Planning Commission is reviewing that denial due to the request for a hearing. He stated that they still didn't meet the criteria with the current application they received. Commissioner Danforth said she agreed with Chair Randall.

Chair Randall asked staff if the Planning Commission's role was to uphold the denial and Mrs. Johnson said if Mr. Breeding presented evidence to show he could meet the criteria they could make a decision to allow the request. She added that the 500 foot standard is not the only one that has not been met. She also clarified that just because a neighbor signs a waiver for the buffer zone, it does not mean they meet the standard. Mr. Breeding told the Commissioners that Sam Humbert circulated a petition gathering signatures of people in favor of allowing the airstrip. Some friends and neighbors signed it but a few did not.

Mr. Breeding asked if the application would be approved if he were to move the airstrip to the area on his property that did meet the 500 foot standard. Mr. Wallace asked if the Commissioners had a copy of the letter of denial from the county. They did have a copy and Commissioner Danforth noted that 5 of the 10 criteria were not met; Mr. Wallace stated he disagreed with that. Discussion followed.

Commissioner Danforth mentioned the complaints from neighbors of the plane flying over their properties, the times of day of the flights and that there were multiple planes flying in and out. She read criterion number four which addresses how having the airstrip will materially alter the stability of the overall land use pattern of the area. Mr. Wallace stated that the area chosen for the airstrip was the side yard of Mr. Breeding's home. Mrs. Mabbott clarified that the criteria numbers three and four have to do with the effect on neighboring properties not his property and the majority of evidence the county has suggests that the use of the plane conflicts with the farming and livelihood of the surrounding properties. Mr. Breeding said he is being blamed for airplanes that fly over whether they are his or not.

Commissioner Danforth stated that she was not trying to make things difficult for Mr. Breeding but there are conditions that have to be met and at this time they have not; especially how his airplane flying over other properties affects the neighbors. Mr. Breeding said he was getting complaints but no one had identified that the aircraft being complained about was his. Commissioner Marlatt stated that the complaints are not the issue; it is the criteria that have to be met that are the issue and there is no evidence to suggest that the criteria can be met.

Mr. Breeding stated that he would move the airstrip to the other part of his property that met the 500 foot buffer. Commissioner Rhinhart told Mr. Breeding that he would need to reapply and address all the unmet criteria. Mr. Breeding asked who he could get to help him with his application and Commissioner Rhinhart suggested that he hire a land use attorney.

Commissioner Danforth commented that she could foresee a potential problem with criterion number seven which states “the location will not necessarily restrict existing and future development of surrounding properties as indicated in the comprehensive plan.” Mr. Breeding stated that the parcels are ten acres and cannot be built upon. He added that it is difficult to farm a ten acre parcel and he is limited with what he can do with the land.

Mr. Breeding stated that if there was anything he could do to make things better for his neighbors he would do it. Commissioner Marlatt said that is why the criteria are established the way they are. When the criteria are met the matter is not arguable and complaints would not be considered.

Mrs. Mabbott told Mr. Breeding that they were not obligated to approve a conditional use permit request and that it will be difficult to approve the landing of an aircraft in the densely populated area where he lives. She stated that if he were to reapply he must show the standards can be met and surrounding neighbors cannot waive standards. She also stated that he is not allowed to fly his or anyone else’s aircraft until he gets land use approval.

Mrs. Mabbott showed Mr. Breeding some photos and he identified one that had his airplane parked on his property. She told him that plane was not supposed to be there.

Commissioner Marlatt clarified that his earlier comments were not meant to imply there would be an automatic approval if Mr. Breeding were to reapply. They have to take into consideration the effect on neighbors lives, as well.

Mr. Breeding said he got more signatures than not and Chair Randall said signatures don’t change the rules. Mr. Breeding asked if the Commissioners would come to an airport to watch his aircraft take off and land so they can hear and see it. Chair Randall stated that the Commissioners were not aeronautics engineers, they were volunteers appointed by the Board of Commissioners. He said he believed that Mr. Breeding wanted to do the right thing and fostering good relations with the neighbors is a good way to start. Chair Randall encouraged Mr. Breeding to hire a land use attorney and work diligently with Mrs. Johnson if he did reapply.

OPPONENT TESTIMONY: Jim Eiseman, 53358 Bade Lane, Milton Freewater OR. Mr. Eiseman stated that he is Mr. Breeding’s closest neighbor to the north and has lived on his property for 18 years. He commented that he has never been approached by Mr. Breeding about landing an airplane or having an airstrip on his property.

He stated that he is also a past pilot and appreciates airplanes but is opposed to an airstrip on Mr. Breeding’s property next to his home. He read from a letter of opposition he emailed to Mrs. Johnson after receiving the public notice sent to surrounding property owners.

He informed the Commissioners that on many occasions he has seen a plane take off to the west and bank right, flying directly over his house while he had guests in his swimming pool and hot tub, causing disturbances. He has seen three different planes coming and going from Mr. Breeding’s property. Mr. Breeding’s airplane is noisy when it is taking off and there are

safety issues. Other planes buzz Mr. Breeding's house and they sometimes fly over 2-3 times without landing.

Mr. Breeding previously stated that he had made very few changes to his property but Mr. Eiseman said that he did culvert 40-50 feet of the creek to accommodate the entire width of his property.

Mr. Eiseman stated that when he purchased his EFU zoned property 18 years ago, it was his understanding that the surrounding land use would remain the same. He contacted the county and got land use approval six years ago for his new home and shop and had assumed that Mr. Breeding also followed the rules for his commercial trucking business. He contacted the county and was told that the airstrip was not permitted but he said that planes have been landing on the airstrip for well over a year.

Mr. Eiseman stated that during the month of March there were ten days that planes were taking off and landing from this airstrip. On March 26th, two planes took off and landed 7 times.

Commissioner Rhinhart asked about the fill Mr. Breeding brought in. Mr. Eiseman said he brought fill in and widened the road over the creek. He added that there is enough culvert to reach over to his property line. Mr. Eiseman noted that there are two creeks that come together on his property and one goes through Mr. Breeding's property. He would like to make sure those creeks are protected.

APPLICANT REBUTTAL: Mr. Breeding said he had the culvert before he purchased his airplane. He added that he didn't have enough money when he bought the property to finish the culvert. He put the culvert in because his place marshes up which restricts the water and he wanted to clear it out. He stated that he does not run a commercial trucking business from his home but has trucks stored there when he is not working. He parks them there to prevent theft and graffiti.

AGENCY TESTIMONY: There were no comments from public agencies.

HEARING CLOSED; DELIBERATION AND DECISION: Commissioner Marlatt stated that the criteria have not been met and the request should be denied. Mrs. Johnson said the Planning Commission needs to adopt the staff report and new exhibits into the record. Commissioner Marlatt moved to adopt the staff report and exhibits and Commissioner Thorne seconded the motion. Motion passed 7:0.

Commissioner Danforth made a motion to deny application #C-1238-14 based on the Findings of the staff report. Commissioner Rhinhart seconded the motion. Motion passed 7:0.

NEW HEARING:

TEXT AMENDMENT #T-15-061, filed by Umatilla County, the purpose is to adopt standards in the UCDO for firearms training facilities consistent with Oregon Administrative Rules Chapter 660-division 33 Section 0130(2)(c). The standards will specifically allow the county to provide for expansion of certain facilities, including a firearms training facility as defined in ORS 197.770. The criteria of approval are found in Umatilla County Development Code 152.750-152.754.

Chair Randall called for abstentions, conflicts or declarations of ex parte` contact. Commissioner Danforth noted for the record that she is a member of the local gun club, but did not feel that this would be cause for any conflict as this was a legislative hearing. Chair Randall asked the rest of the commission if they had any conflicts with Commissioner Danforth participating in this hearing and none were noted.

STAFF REPORT: Tamra Mabbott, Planning Director, presented the staff report. Mrs. Mabbott stated that this was a legislative action to amend the Development ordinance Chapter 152.617 – 152.275. The standards that would be adopted from 152.059 would allow expansion of an existing firearms training facility. This is listed as a land use decision under Ch. 152.059, so the following words were added; “*maintenance, enhancement or expansion of*” a firearms training facility. This amendment also proposes to adopt specific siting standards for the expansion. This proposed text amendment was a legislative action and did not pertain to any specific facility or property. If a facility has been permitted and has been in existence, it would provide the standards for expanding the facility. The standards were lifted directly from the Administrative Rule.

Commissioner Danforth asked about #5A, Ch. 152.167 (subparagraph 5A), where it discussed enclosed structures that could contain up to 100 people. She asked if the proposed language should not read, “group of enclosed structures”. Mrs. Mabbott commented that this was a good question to ask of Mike Robinson, who would be testifying later.

PROPONENT TESTIMONY: Mike Robinson, 1120 NW Couch Street, Portland, OR 97209, representing the East End Rod and Gun Club. Mr. Robinson stated that they agree with the staff report. He commented on Commissioner Danforth’s question, and said that her suggested language change made sense, but the proposed text amendment initiated by the Board of Commissioners follows the Administrative Rule verbatim, and it would be best to not insert any words. The Land Use Board of Appeals (LUBA) has made it clear, in the Rea Family Farms case that the Administrative Rule would allow for expansion of a lawful firearms training facility. He would be uncomfortable from a legal perspective to suggest changes to the Administrative Rule language.

Mr. Robinson stated that they appreciate the Commissioners initiating this text amendment that will implement in the County Code the enhancement, maintenance and expansion of lawful firearms training facilities allowed by state rule. LUBA said this language must be in the county code, so this text amendment will comply with LUBA direction. Mr. Robinson said that the Planning Commission has evidence before them that the proper procedures were

followed to initiate the text amendment, and they drafted proposed findings for consideration. He asked the Planning Commission to make a favorable recommendation for this text amendment to the Board of Commissioners.

PROPONENT TESTIMONY: Verl Pressnall, 524 N Elizabeth, Milton-Freewater, OR. Mr. Pressnall is the current president of the East End Rod and Gun Club. He stated that the club has improvements for safety that they would like to make at their facility that would fall under the content of this text amendment. The club would also like to have a classroom onsite for gun/hunter safety classes. The club is in favor of this text amendment.

Commissioner Danforth asked to review page 11 of the findings. Under #I. OAR 660-012, at the bottom of the second paragraph, it reads, “the Board finds that the Amendment does not create additional trips to the county’s transportation system, and therefore the amendments DO significantly affect any existing.....” Commissioner Danforth stated that this should read, “DO NOT” instead of “DO”. Staff and Mr. Robinson agreed that this was an error and would be corrected.

OPPONENT TESTIMONY: none was offered.

AGENCY TESTIMONY: none was offered.

HEARING CLOSED; DELIBERATION AND DECISION: Chair Randall called for any other comments, and there were none. He closed the hearing and moved to deliberation. Commissioner Rhinhart asked if they were voting on a recommendation to the County Commissioners to adopt this text amendment, and this was confirmed by staff.

Commissioner Rhinhart moved to recommend approval of the proposed text amendment #T-15-061 to the Board of Commissioners, and Commissioner Lee seconded the motion. The motion passed by the following vote; AYES: Thorne, Williams, Rhinhart, Danforth, Marlatt, Lee and Randall. NAYS: none. ABSTENTIONS: none. ABSENT: Wysocki. Motion carried.

NEW HEARING:

TEXT AMENDMENT #T-15-062, filed by Umatilla County. The text amendment will amend section 152.003 adopting definitions of medical marijuana and recreational marijuana and amendment to section 152.616(III) adopting conditional use standards. The text amendment also will amend specific zones to show where a dispensary or laboratory or processing facility may be allowed as a conditional use. The specific zones include: 152.247(N) Retail, Service, Commercial Zone; 152.253(O) Rural Retail, Service, Commercial Zone; 152.303(A)(21) Light Industrial Zone; 152.309(A)(15) Rural Light Industrial Zone and 152.315(A)(15) Limited Rural Light Industrial Zone. Criteria of approval are found in Umatilla County Development Code 152.750-152.754.

Chair Randall asked if there were any abstentions, bias, conflict of interest or declaration of exparte contact; there were none.

STAFF REPORT: Planning Director Tamra Mabbott stated that the Board of Commissioners appointed her to chair the Medical Marijuana Dispensary Study Committee and Commissioner Williams volunteered to be on the committee, as well. The recommendations in the staff report were supported by a consensus of the committee members. Last week, the Board of Commissioners voted to continue the moratorium on medical marijuana dispensaries. If regulations were changed on the state level by the Oregon Health Authority, more members of committee would feel comfortable allowing a medical marijuana dispensary in the county.

Mrs. Mabbott stated that the county has had a moratorium in place for a year and are working on the language for the land use. There was an unpermitted dispensary operating in the county and the Oregon Health Authority refused to address the matter saying they only follow-up on the dispensaries for which they have issued licenses. There are a number of loopholes in their regulations that need to be resolved before the moratorium is lifted. Tonight there are definitions and standards of land use regarding medical marijuana; recreational marijuana is not included as a use in any zone.

Exhibit #5 is coauthored by the attorney for the League of Oregon Cities and the Association of Oregon Counties. It is comprehensive and talks about the ability for a county under home rule charter to continue to have a moratorium. There is a definition of a medical marijuana laboratory, a medical marijuana grow facility or operation, a medical marijuana processing facility, recreational marijuana and a medical marijuana business and a pain management clinic. The definition for a pain management clinic was included because the study committee discussed allowing medical marijuana to be dispensed and administered through a pain management clinic.

Mrs. Mabbott discussed the zones being shown on a map where staff considered allowing dispensaries; they are Retail Service Commercial, Rural Retail Service Commercial, Light Industrial, Rural Light Industrial and Limited Rural Light Industrial. Dispensaries will not be allowed in residential or farm zones.

Commissioner Rhinhart asked why medical and recreational marijuana couldn't be governed by the same rules. Mrs. Mabbott explained the difference between the state laws for each. The Oregon Health Authority regulates medical marijuana and the Oregon Liquor Control Commission will regulate recreational. It is important to have local standards for marijuana so they won't be treated like a retail or a nursery business, which is what was starting to happen before the Board adopted the moratorium.

The Medical Marijuana Study Committee won't meet again until the state legislature is finished because there may be changes.

Mrs. Mabbott displayed other maps of proposed areas where dispensaries could be allowed. Commissioner Rhinhart asked if these proposed areas were for grow operations or sales. Mrs. Mabbott referenced the proposed language definitions of dispensaries, grow operations and laboratories that may be permitted as a conditional use in specific zones but dispensaries and grow operations cannot be co-located by state law. state buffer area for dispensaries and grow operations is 1000 feet from schools. Discussion followed.

Commissioner Danforth asked if a school close to Hwy 11 in Milton Freewater was within the buffer zone of one of the areas zoned to allow dispensaries, etc. could be permitted. Mrs. Mabbott answered that they wouldn't meet the standard and could not get a permit. Discussion followed.

Commissioner Marlatt asked if they were being asked to make recommendation on the distance of the buffer area and Mrs. Mabbott answered that it would be helpful. Chair Randall asked why the county would want to deviate from the state standard of 1000 feet and Mrs. Mabbott answered that the county could regulate time, manner and place. Chair Randall asked if 1000 feet was determined because cities are more populated whereas our area is more rural. Mrs. Mabbott answered that she didn't know how the 1000 feet buffer area was determined. Commissioner Randall stated that one mile is too much and he is comfortable with half a mile.

The current proposed language states that facilities must be no less than one mile from public or private schools, daycare facilities, youth sport facilities, public pools, libraries, play grounds, designated school routes, community colleges or career schools. Commissioner Rhinhart suggested that it would be difficult to site a marijuana facility using those standards. Mrs. Mabbott agreed that if a one mile buffer is used it would be difficult but if the buffer area were reduced to a half a mile it would be easier.

Commissioner Marlatt commented that by including "designated school routes" it was too restrictive. It was suggested that they strike "school routes" from language and replace it with something similar to "school walking routes."

Commissioner Williams commented that her opinion was that a 1000 foot buffer area is sufficient. Commissioner Marlatt stated he agreed with Commissioner Williams. Chair Randall stated that he agreed as well because of the property value potential. Commissioner Rhinhart stated that he thought it should be one quarter mile (1320 feet). Mrs. Mabbott commented that keeping the buffer area at 1000 feet would make administration easier. She clarified that this was referring to obtaining a state license for a dispensary.

Chair Randall asked if the OSU Extension was considered a school and Mrs. Mabbott answered that a school was defined as a facility serving individuals under the age of twenty-one.

Mrs. Mabbott asked if they wanted churches to remain on the list. Commissioner Danforth stated that churches would not want a dispensary next door. They have activities for children and she believes it should remain on the list.

Commissioner Danforth asked if there was a consensus regarding requiring a 1000 foot buffer area and the Commissioners agreed that there was.

Commissioner Marlatt commented that "medical marijuana products shall be properly stored and secured for the facilities to avoid access." It should read "prohibit access" instead. Mrs. Mabbott suggested it could be worded as "stored in a secure location" so if a business is being operated, the product must be in a locked cabinet.

Commissioner Marlatt commented on the language that reads “consumption of the product on site should be restricted.” He stated that the word “restricted” should be changed to “prohibited.” Commissioner Danforth agreed with that. It was decided the wording should read “restricted in accordance with state regulation.”

Mrs. Mabbott noted that the state does not allow both a laboratory and a grow facility to be on the same property. Former Planning Commission member Clinton Reeder was on the Medical Marijuana Study Committee and disagrees with that language so they included language that read “a dispensary and laboratory may be sited on the same lot or parcel as a medical marijuana grow facility if the dispensary is segregated from the grow facility.” The Commissioners agreed they liked that language. Mrs. Mabbott said allowing two businesses on one parcel conflicts with another provision in the code that only allows one business per parcel. She added that they may need to clarify that the business must be the same owner/operator.

Mrs. Johnson asked if a situation could be created where the owner that is dispensing is also testing their own product. Mrs. Mabbott commented that the state did not currently address that; the licenses they issue do not require testing except for mold. Discussion followed.

Mrs. Mabbott said that she had included a standard which stated that “the applicant/landowner will comply with any standards recommended by local law enforcement.” Commissioner Danforth commented that law enforcement doesn’t make the codes. Chair Randall asked if law enforcement would bring problems back to the Board of Commissioners and go through the process of addressing individual issues. Mrs. Mabbott said criminal activity is pursued by law enforcement through state and federal laws. It was suggested that they add language for design standards for safety and security purposes.

The business owner shall provide proof of liability insurance. Commissioner Danforth asked how they will get insurance when the operation of the business is against federal law. Mrs. Mabbott stated she did not have an answer for that. Chair Randall asked if other businesses the county permitted were required to provide proof of insurance for the permits they got. Discussion followed. Chair Randall stated that he wouldn’t like to create more work for the county in enforcing the proof of insurance. Mrs. Mabbott noted that the businesses would be subject to an annual review and the issue of insurance could be a part of that. Commissioner Williams said that if the business was legitimate they would certainly obtain liability insurance. Discussion followed on types of insurance and what it covers. It was decided to strike the language requiring proof of insurance for the business.

A business cannot sell recreational and medical marijuana together. Mrs. Mabbott stated that the majority of the Study Committee was of the opinion that a medical business was separate from a recreational business. Chair Randall commented that allowing a larger, legitimate, franchised business would make fewer dispensaries needed. He added that he would rather have fewer dispensaries overall. Discussion followed.

Commissioner Marlatt asked for clarification about the language that states “the process being shorter for a code violation.” Mrs. Mabbott answered that typically code violations go to a warning giving the land owner 30 days to comply. If they don’t comply then a citation is

issued. The land owners are then scheduled for a circuit court date. The process can take several months. This is a new type of land use and the first violation goes straight to citation without a warning and will be scheduled for circuit court.

Mrs. Johnson said the last update to the code changed things having to do with conditional use permits. If a conditional use became suspect of meeting the conditions, there is a public process to revoke the permit. She asked how this land use will work with that process. Mrs. Mabbott stated that she will check with County Counsel Doug Olsen.

It was decided to take out the word “consuming” from “selling or trading of recreational marijuana shall be prohibited at a medical marijuana facility.” Mrs. Mabbott stated that unless the legislature changes, medical marijuana can be grown for “not for profit” but recreational can be grown for profit. You can’t sell medical marijuana; you are only allowed to provide it to someone for in-kind purposes.

Mrs. Mabbott stated that the proposed language requires a commercial grow operation that is registered with the state to obtain a commercial land use permit.

After some discussion, it was decided to combine B and C and for the language to read “marijuana plants must be grown indoors and not visible from the street, alley or adjacent properties.”

D - Use of the product on site is prohibited.

E - The business must be in good standing with their Oregon Health Authority license.

F - A grow facility located on a single parcel of land may grow marijuana for a maximum of four medical marijuana card holders. That language will prevent the card stacking.

Chair Randall stated that it would be easier to control four larger facilities than twenty-five or thirty smaller ones. Mrs. Mabbott said the consensus of the study committee was that they didn’t want to allow big medical grow operations. Commissioner Rhinhart agreed it would be easier to monitor a larger business than many smaller ones. Commissioner Williams stated that she would prefer to have larger facilities that can meet the regulations and produce a quality product in a building with a safe and a security system. Smaller operations may not be able to afford the equipment they need to keep their businesses safe and secure.

Commissioner Danforth asked if it would be possible to limit the number of dispensaries in an area. Mrs. Mabbott stated that after speaking with Doug Olsen, she didn’t believe it was possible to limit the number through land use law. The only limitations they are able to put in place are the zones where the dispensaries can be located and that they must be 1000 feet apart. Chair Randall commented that the market would take care of itself and determine the number of facilities. It was decided to strike “F”.

G - Hazardous material storage in containment must be reviewed and approved by the local fire marshal.

H – After discussion it was decided to make the buffer area for a grow operation 1000 feet, the same as for a dispensary.

I – The owner/operator must have on site at all times, current documentation of inventory and OHA license.

Commissioner Lee asked if a dispensary would be responsible for someone driving under the influence of marijuana like as a tavern is responsible for someone they have served driving drunk. Mrs. Mabbott stated that was public liability and not a land use issue.

J – The permit shall be subject to an annual review. It was decided to use the same language for a dispensary.

Chair Randall asked for more discussion on “I”. After some discussion it was decided to separate the documentation of inventory and the business license. They decided the inventory did not need to be posted but during business hours the OHA license did.

Commissioner Williams commented that serving on the study committee was difficult because there were many differing opinions. She stated that Mrs. Mabbott had done a good job of chairing the committee.

PUBLIC TESTIMONY: Steve Rodarte, 81970 Lee Estates Lane, Umatilla, OR. Mr. Rodarte stated that “T” doesn’t sound fair. He also said he disagreed with the language regarding the locations being next to daycares because a daycare could open up next to him after his business was already in place. Commissioner Danforth stated that, in her opinion, if someone’s marijuana facility was already established a daycare would not be able to obtain a license within 1000 feet of it. Mr. Rodarte stated that he still thought the language was too restrictive regarding playgrounds and churches.

Mr. Rodarte asked why they added language stating that the plants could not be visible. Marijuana plants can get over six feet tall and the city has an ordinance limiting the height of fences. He stated that “fully shielding the plants” was impossible. He added that there were a lot of restrictions in the language that did not need to be there.

Chair Randall stated that this was a first draft and would be discussed for quite some time before a final version was in place.

Mr. Rodarte said the study committee did great job and encouraged the Commissioners to do their due diligence in continuing to draft the language for these rules.

Mrs. Mabbott stated that the Board of Commissioners hearing is scheduled for April 28th. Because of all the changes that have been made to the document she did not think staff would be ready to present it to the Board. She said they could open the hearing and continue it to a later date. County was going to move forward with the firearms training facility legislation on April 28th. Mrs. Johnson stated that if the Planning Commission decided to continue the discussion regarding the medical marijuana it would be heard at a future meeting. Mrs. Mabbott said she could draft what has been proposed and come back and ask for testimony in

May. Commissioner Marlatt asked Mr. Rodarte to explain his comment about them needing expert testimony. Mr. Rodarte answered that was regarding indoor and outdoor growing.

Chair Randall asked if the Board of Commissioners expected to see this application at their next meeting. He stated that he is comfortable with most changes but doesn't want to rush this. He added that he understood Mr. Rodarte's concerns about the restrictions.

Commissioner Marlatt asked if they allowed public comment at the study committee meetings. Mrs. Mabbott explained that the meetings were a work group and allowed time for public comment. Chair Randall asked if there was language in the code that would protect medical marijuana grow operations and dispensaries from being put out of business because someone decides to open a daycare close by.

Commissioner Williams stated that the committee decided it would be better to have a code in place and to amend it later if necessary. Mrs. Mabbott addressed the business location question saying that if a business is located and another business moves in, the first business would be grandfathered in. Mrs. Johnson stated that if a daycare moved in, the dispensary, etc. would be a non-conforming use because it no longer met the setback. But because they had their permits and existed prior to the daycare they could remain there.

Mr. Rodarte stated that requiring a land use permit for growing should be removed from the document. He added that no one needs to know where you are growing a high value crop; that should not be public knowledge. Chair Randall stated he agreed on one point but added that the financial information for everyone sitting on the Planning Commission was on the Oregon state website because it was law. There was discussion about the location of grow sites being made public. Mr. Rodarte commented that the only people that need to know where a medical grow operation is taking place is law enforcement. Commissioner Rhinhart stated that farmers have to report their crops to the Department of Agriculture and once the grow operations are in operation they will probably have to report to them also.

Mrs. Mabbott suggested the Planning Commission could continue the discussion on whether or not a conditional use permit for a grow operation would be required. She stated that law enforcement would probably agree that it should be required. Chair Randall asked if the Board of Commissioners expected this in front of them soon. Mrs. Mabbott answered that the moratorium is in place until December 31st. Chair Randall asked if the Board would review it and make changes to it if they wanted to or send it back to the Planning Commission for revision. Mrs. Mabbott answered that the Board expects that the matter has been thoroughly vetted by the time it comes to them.

Chair Randall stated that he is comfortable to send this document to the Board of Commissioners with the revisions. Commissioner Williams stated that it might be better to wait to see how the vote goes in the legislature in June. Mrs. Mabbott stated that because this is legislative matter, they could keep the record open until after the legislature votes. Discussion followed.

Chair Randall closed the hearing, keeping record open, and it was decided to continue the hearing until July 23, 2015, at 6:30 p.m. in the media room of the Justice Center.

ADJOURN:

Chair Randall adjourned the meeting at 10:09 p.m.

Respectfully submitted,

Connie Hendrickson
Administrative Assistant