

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

COMMISSIONERS

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

ABSENT:

STAFF: Tamra Mabbott, Gina Miller, Bob Waldher, Brandon
Seitz

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

CALL TO ORDER:

Chair Randy Randall called the hearing to order at 6:31 p.m. He read the opening statement and rules of conduct for the hearing. There were no declarations of bias, ex-partes contact or abstentions.

CONTINUED 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 and amending zones to clarify that where “farm use” is allowed in zones other than Exclusive Farm Use, farming excludes marijuana activities. Amendments are proposed for each zone. Criteria of approval are found in Umatilla County Development Code 152.750-152.754.*

Staff Report: Tamra Mabbott presented the staff report. She said that the packet is different from the packet that the Planning Commission received in April. The April packet was based on Measure 91. The Planning Commission agreed in April to recess on this matter until the State Legislature had finished Measure 91 because there were anticipated significant changes going to be made to it. House Bill 3400A went through 12 versions and is 90 pages long. It did have a significant effect on both recreational and medical marijuana legislation and the state oversight agencies. The Marijuana Committee focused on Sections 133 and 134 that dealt with land use. These sections provide for a county to “Opt Out” of Measure 91, the recreational marijuana piece. Mrs.

Mabbott said she based this current packet on these revised sections and ordinance changes on the assumption that the Planning Commission and the Board of Commissioners would prefer to opt out of Measure 91. This assumption was partly based on the voting record for the county. 62% of Umatilla County voted against Measure 91, and the opt out provision required only a vote against the measure totaling 55%, so this would be a safe option for the county. She also included the voting record for Umatilla County from Measure 67 in 1998, where the county also voted to opt out of the medical marijuana legislation at that time.

Mrs. Mabbott discussed material that had been submitted by Committee member's Tammie Williams and Clinton Reeder. She said that the Committee, made up of a diverse representation of all sides of the issue, came to a consensus on this recommendation to the Planning Commission. The recommendation means that medical and recreational marijuana will not be considered legal in Umatilla County, with the exception of personal medical marijuana card holders that are regulated by the State of Oregon.

Commissioner Marlatt asked about the text amendment and asked why they were considering these land use amendments if the moratorium would prohibit marijuana anyway. Mrs. Mabbott replied that it would be better to have the land use amendments in place since the moratorium was temporary, and also if the moratorium were overturned due to a lawsuit. These code amendments would provide definitions for recreational and medical marijuana and would require a land use permit, in certain circumstances, to grow in our jurisdiction. She said she consulted DLCD (Department of Land Conservation and Development) and County Counsel Doug Olsen on the proposed language. The definitions would allow the County to differentiate a marijuana crop from all other crops.

Mrs. Mabbott discussed the Marijuana Committee, and said that the committee met 8 or 9 times in the last year and determined what the correct approach should be. Mrs. Williams had provided compelling testimony for the benefits of medical marijuana and advocated for the patients in Umatilla County that depend on it. Oversight for medical marijuana dispensaries is done by the Oregon Health Authority (OHA) and two representatives from that agency were invited to participate in one of the meetings. Following the meeting, it became clear to the Committee that the OHA had very poor oversight of this program and even poorer enforcement of their regulations. She cited one example of the lack of their enforcement here in Umatilla County that Code Enforcement has already encountered where a medical marijuana dispensary was operating without their approval so they said they could not do anything about it. OHA stated it was up to local law enforcement to handle the matter. Mrs. Mabbott said that the Committee had created a sub-committee that will be looking into the merits of medical marijuana and will report back to the Committee in January 2016. Megan DeBolt, Umatilla County Health Director, will chair this sub-committee. She stated that if the legislation changes in the meantime and allow the citing of dispensaries, the county will want to have standards on the record before that happens.

Commissioner Rhinhart asked if this proposed code amendment would affect the cities and Urban Growth Areas (UGA), and Mrs. Mabbott advised that it would not affect cities and depending on the joint management agreement between the city and the county would determine how it would affect the UGA's. Mrs. Mabbott has closely followed this bill through the legislature and all the changes. Rob Bovett thoroughly reviewed the bill for the Association of Oregon Counties (AOC) to better understand how the law would affect counties. The county spends a lot of time defending farm ground and commercial use and a medical marijuana dispensary is better suited to property within city limits, as it is more of an urban rather than a rural use. Page 11 and 12 of the packet have the proposed definitions and Mrs. Mabbott cross referenced with the Oregon Administrative Rules (OAR's) for the proposed changes. The county definition of a grow facility would allow for no more than 4 cardholders, which parallels the state definition. She explained "Card Stacking" that has been discussed at length at the Legislative level. Card stacking arose from there being 4 cardholders at one address that were growing for 6+ people, resulting in a tremendous amount of marijuana being grown in one location. She said there is also a definition for a pain management clinic, and this is listed as a type of use.

Mrs. Mabbott stated that industrial hemp is defined in state statute, and is an entirely different matter from marijuana of any kind. Commissioner Wysocki said that hemp is required to have a permit from the Oregon Department of Agriculture (ODA) and has minimum THC, and is a related strain of cannabis. Mrs. Mabbott stated that ODA will not issue a permit inside of a residential zone. She spoke about the definition of farm use in the statute and it was clear that marijuana was defined as a farm use. The proposed language that will prohibit marijuana growing and processing was cross referenced in all the other zones in our code, such as commercial and industrial. In the Retail Service Commercial (RSC) and Depot zone, it is prohibited all together.

Mrs. Mabbott discussed the Exclusive Farm Use (EFU) zone, and the definition was not changed per advice of County Counsel Doug Olsen. There was a provision included that states that marijuana cannot be used to justify a farm dwelling and that a farm stand cannot be used to sell marijuana. There also cannot be a commercial activity in conjunction with an agricultural use that is marijuana related. Commissioner Wysocki asked about seed cleaning facilities, and Mrs. Mabbott said that the county would not issue a permit for such a thing if related to marijuana due to the moratorium. Discussion followed on the tax revenue loss related to the moratorium on marijuana. Undersheriff Littlefield had looked into the matter, and found that the amount would not be that much and it would, for the most part, be going to drug treatment centers. Mrs. Mabbott said that staff had considered where to insert the marijuana prohibition into the language for the rural residential zones, and decided to include it in the definition of farm use that excepted pigs and pig farms rather than the "limitations of use" section.

Commissioner Williams expressed concern for the proponents of medical marijuana and wanted to make sure they had a voice, and that it would just not be the three commissioners voting on what will happen with this. Mrs. Mabbott said that there is a placeholder for the continuing study of medical marijuana by the sub-committee and the

Board can always reverse the moratorium. Commissioner Williams is concerned for the Oregon patients who want to use medical marijuana and don't want to break the law by going to Washington to purchase it, and cannot travel to Portland to obtain it. She doesn't want these people to feel like criminals. Mrs. Mabbott said that there has been compelling evidence about the merits of medical marijuana and the county wants to leave the door open for further consideration. Discussion followed on the many ways of obtaining medical marijuana currently available to Oregon residents, including having a person with a caregiver card. Commissioner Rhinhart asked if the county had considered franchising the dispensaries, so they could control it. He stated that some cities were considering allowing dispensaries.

Proponent Testimony: Clinton Reeder, Helix, OR. Mr. Reeder stated that this has been a challenging project for him and he has had to separate out his personal biases. He talked about several books on this topic that he had read and expressed hope that the regulatory agencies had also consulted these books. Mr. Reeder said that the critical question that needed to be asked was, "What is the character of the community that you want to promote?" He looked for evidence that the marijuana project lifted up the community, but found that communities could expect an 8% drop in the intellect of their youth for those that began using it early on. He said that youth interpret marijuana being legal in Colorado means that it is safe to use. He discussed the difference between THC and CBD, chemical contents of marijuana. The quality of marijuana has increased drastically since the product grown in the 1960's and this has caused an increase of overdoses and visits to emergency rooms.

Mr. Reeder discussed a study in Colorado on the legalization of marijuana and the impact it has had on public safety there. He cited a statement from the Drug Enforcement Agency (DEA), that they have not changed their position that marijuana is still a federal offense and they consider it illegal regardless of the state status. Mr. Reeder mentioned two reports that have come out of the legalization of marijuana, the Ogden memo and the Cole report. These reports say that the states are not ready to handle this market and are not prepared for the repercussions with staff and resources and support to the counties. He spoke about the various Federal agencies and said that their current stance could change with the election of a new president that could come in and decide to suddenly enforce the law against the states that have legalized it. He added that medical marijuana card holders should be participating in a study to document the benefits in order to have the card.

Mr. Reeder spoke about the tax and money/bank issues related to marijuana as being politically motivated. He said that the problem with taxing the recreational marijuana and not the medical, the cost of the medical marijuana goes up as more people who desire it for recreational purposes try to get it the medical marijuana. This will create backdoors for medical marijuana and will lead to more black market recreational marijuana. He said that trafficking of marijuana is a federal offense, so if marijuana from Washington comes into Oregon, this opens the door for Oregon to file a claim against Washington for not controlling their marijuana. The other problem is that banks cannot legally handle cash that is raised from the sale of illegal drugs because it is

considering money laundering and is a federal offense. He said that most banks have a federal charter and will not touch marijuana money at all. Mr. Reeder said that there really are no doctors issuing prescriptions for medical marijuana in the United States, as they would lose their license if they did. They are actually just issuing recommendation letters and that is what the Oregon Health Authority accepts for a medical marijuana card.

Mr. Reeder said the Committee looked at pain clinics and how they handle the use of marijuana for medical purposes. He said that the pain clinics separate their practices from the use of medical marijuana, and the sub-committee will be looking further into this matter. Mr. Reeder concluded his remarks by suggesting that people should talk to a family that has had an addict of some kind, and that family will tell you that drugs are not the way.

Commissioner Rhinhart asked Mr. Reeder about the laws surrounding the growers of medical marijuana and how could they maintain an operation if they are not allowed to grow for a profit. Mr. Reeder spoke from the economics standpoint and how a wage paid to an employee indicated it was a paying business. He said that the Department of Justice had sent the message out that they would address large scale marijuana growers and sellers as criminals, and the smaller volume growers would be left up to local jurisdictions. He assured the Commission that the sale of marijuana in Colorado is profit driven. Commissioner Williams explained how a patient goes about qualifying for a medical marijuana card through the Oregon Health Authority. The patient has to provide medical records from a primary physician showing them to have a qualifying condition that would benefit from medical marijuana. They take these records and see a physician that will issue the letter of recommendation for the State. The doctor cannot issue a prescription as they would lose their license to practice if they did that. Commissioner Williams stated that there have not been any clinical trials done on medical marijuana, but it is widely accepted to be less harmful than other kinds of treatments. She said the Federal Drug Administration (FDA) will take a long time to reach the point where they will address marijuana. The United Nation opposes it, and there is only one country in the world where it is actually legal and they are being pressured to change. Commissioner Williams is an advocate for people having a choice on medical marijuana.

Mr. Reeder stated that because marijuana is still illegal according to the federal government, public officials violate their oath of office and if they take steps to allocate public funds toward something related to marijuana could be subject to prosecution. He said that this matter just needs more time and understanding to be considered credible, and that Colorado created a chaotic condition when they legalized it. Colorado is now being sued by neighboring states for allowing marijuana to cross state lines and he fears that Umatilla County would be subject to similar claims with Walla Walla County if marijuana from our county showed up there.

Commissioner Wysocki asked if Mr. Reeder had found anything in his research about quality control, contaminants and pesticides. He said there are no legal pesticides for marijuana because it is not recognized by the Environmental Protection Agency (EPA). There was an article about detection limits of residue recently that he had read, and it

mentioned Bifenthrin, an insecticide. Mr. Reeder said there is much attention being given to the quality because the THC amounts have risen so high. In Colorado, there is stringent testing and labeling of marijuana produced there and they can back track it all the way to the seed. He said that 4 plants grown in a controlled environment will produce a lot more than 4 plants in the backyard. Mr. Reeder discussed the public costs involved with marijuana. He related an example of a family he is acquainted with that has a family member that has been a long time addict, and how the family has suffered great loss, both emotional and financial, trying to help this family member. Commissioner Williams also spoke about addiction to marijuana as opposed to other types of drugs and alcohol. She said that marijuana holds an average of 11% on the scale for addictiveness when compared to other drugs. Mr. Reeder said that the illusion of safety presents a very real hazard for any community in terms of legalizing marijuana.

Commissioner Wysocki asked how a business for testing cannabis would be treated. Mrs. Mabbott explained that it had been discussed but that it would not be listed as an allowed use. Discussion followed on how a testing lab would impact the proposed amendments. Mrs. Mabbott said that in her interpretation, there is no zone that would allow this use so it would most likely not be permitted. She stated that the Committee had learned that this aspect of the Oregon Health Authority program was very inadequate in their oversight for testing. Under the current law, the grower can actually be the tester for quality control.

Chair Randall called for a ten minute recess.

Opponent testimony: Steve Rodarte. Mr. Rodarte stated that marijuana prohibition is over in Oregon. It has been approved by the state, and the Planning Commission does not get to vote on this. He commented on the marijuana committee and said that it was diverse, but slanted against marijuana. He said that one of the initial committee members was no longer an employee of the state and that the committee was now tainted and his testimony should not have been left in. Mr. Rodarte said that it was sad that Umatilla County was going backwards on the progressive thinking on marijuana. He said that federally, marijuana was legal, and that the United States of America holds the patent to THC. The FDA has approved Marinol in pill form, so it is available when obtained in acceptable ways through the government. He feels that the government is holding down the little people, including medical marijuana growers.

Mr. Rodarte asked about the “4 plants” language. Mrs. Mabbott clarified that a person would not be required to get a Zoning Permit if they had the allowed 4 plants. Mr. Rodarte stated that the State Legislature gave the County Commissioners and City Councils the right to opt out from recreational retail, distribution and testing, but not medical marijuana. He said that the State set the standards as 24 residential and 48 “out of residential”, which equates to 8 cards, not 4 cards as is defined in the proposed amendments. He discussed the shipping of marijuana through the United States Postal Service.

Mr. Rodarte stated that he has his statistics and the proponents have their statistics. He stated that his statistics show the use of opiates and alcohol has decreased where marijuana is legalized. He urged the Planning Commission to talk with the County Commissioners to support medical marijuana so that the county would receive tax dollars. He said that the testing regulations are clearly posted online. Mr. Rodarte said that the only people being hurt by this were the patients. He doesn't necessarily support the recreational marijuana measure. He agreed that the person mentioned earlier in this hearing living in Hermiston was giving out untested, unregulated medical marijuana and the OHA couldn't do anything because he was not registered with them. People are afraid of marijuana but it is not causing deaths like alcohol and drugs. He said that studies show that kids are using less marijuana in countries where it's legal, like Amsterdam. He discussed how the legislation has developed over the last few years.

Chair Randall asked Mr. Rodarte if there was anything specific he would like to oppose. Mr. Rodarte said he opposed the limit to the number of cards to 4, and said that the State would not let the county impose this limit. Mrs. Mabbott stated she would look into this, but her notes indicated a total of 96 plants, equaling 8 cards, only if the person was grandfathered and growing before January 1, 2015. She said that the intention was to limit the card stacking that had been going on, and to require a land use permit if the person had more than 4 cards per address. Mr. Rodarte said that anyone growing medical marijuana was now required to submit monthly reports on how many plants they had, how much product they were drying, and where the product went. He again urged the Planning Commission to support medical marijuana to the Board of Commissioners. He said there is more oversight on medical marijuana than on any other industry in Oregon, including cigarettes, alcohol and opiates.

Commissioner Danforth commented that it had been said earlier that shipping was done, not that it was suggested. She also thanked Mr. Rodarte for his testimony.

Neutral Testimony: none

Public Agency Testimony: none

Chair Randall closed the hearing and moved to deliberation. He stated that he is very concerned about the ramifications of the current Federal illegal status of marijuana, and that the Planning Commission could be breaking the law if they didn't vote for the moratorium. He said this is coming but does not want to be the pioneer, and would rather be the cautious follower. Commissioner Marlatt asked if they adopted this into the code, would they be liable. He suggested putting this into a draft form until the moratorium was lifted. Mrs. Mabbott reiterated that it was important to have the code definitions in place while the moratorium was in place, to keep people from sneaking through any possible loopholes. Commissioner Williams said that she had been told that it would be easier to remove standards that were in place, than to impose them after the fact. Mrs. Mabbott stated that most of the code for the county is defined in state rule as well, and that is why the Committee waited until after April when the legislation was passed. She said that if the sub-committee comes back in January and opens the door to medical

marijuana, they can amend the standards then to permit that. She said this can also be done when the code changes and updates are reviewed every two years.

Commissioner Marlatt asked about the siting standards that had been discussed at the last meeting, and were the moratorium to be lifted, would they have to amend this later. Mrs. Mabbott said that the proposed code amendments do not allow a grow operation in any zone, and HB 3400A also has standards in it for siting.

Commissioner Rhinhart said he is struggling with the issue, and doesn't think the state or county has enough oversight currently for marijuana and we are learning a lot from watching Washington and Colorado. He supports the moratorium but encourages a review every year for changes. Commissioner Rhinhart moved to recommend the proposed code amendment, #T-052-15, to the Board of Commissioners for approval, and Commissioner Marlatt seconded the motion. Mrs. Mabbott clarified the motion as being for the text amendment. Motion carried 8:0.

Chair Randall adjourned the hearing at 8:35 p.m.

Respectfully submitted,

Gina Miller
Secretary