

## COLUMBIA COUNTY PLANNING COMMISSION MEETING

June 20, 2016  
Meeting Minutes

Members Present: Paula Lichatowich, Linda Hooper, Alta Lynch, Dill Dejager, Rod Lloyd and Claudia Frace

Staff Present: Glen Higgins, Deborah Jacob, Todd Dugdale and Kay Clay

Others: Rod & Joan Myers, Keith & Nadine Ekstrom, Terry Boedelker, Daniel Leno, Jessica Boedelker, Graden Blue, Paul & Jessica Hird, Steve & Joyce Berry, Marilyn Conley, Jeff McCracken, Sharon & Larry Ellison, Teri Robinson, Michael Carter, Elisabeth Guisinger, Frank & Rose Adams, Raj Punjabi, Netty ??, M????, Richard, Lugene & Lucille Ontiveros and Lori Shober

Linda Hooper, co chair called the meeting to order at 6:30pm.

Deborah Jacob read the pre hearing statement.  
Judy Loving letter submitted for the record.

No-exparte were declared for MO 16-08

### **BACKGROUND:**

#### **SUMMARY**

RAD Nursery Products LLC has submitted an application to conduct an indoor Marijuana Growing Operation on a 83.31 acre property in the PF-80 zone provided for in Sections 504.16 and 1803 of the Columbia County Zoning Ordinance

On November 25, 2015 the Columbia County Board of Commissioners adopted Ordinance No. 2015-4 related to cannabis regulation in Columbia County, Oregon. The State of Oregon regulates cannabis by provisions in the Oregon Revised Statutes in ORS Chapter 475B. County Ordinance No. 2015-4 amends the Columbia County Zoning Ordinance and sets the time, place and manner regulations for the growing, processing, and retailing of marijuana operations in the county's unincorporated areas. The County must review and approve the applicant's Marijuana Growing Operation Permit requested for MO 16-08 in order to authorize the applicant's proposed indoor marijuana growing operation in the Primary Forest (PF-80) Zone as provided for in Sections 504.16 and 1803 of the Zoning Ordinance.

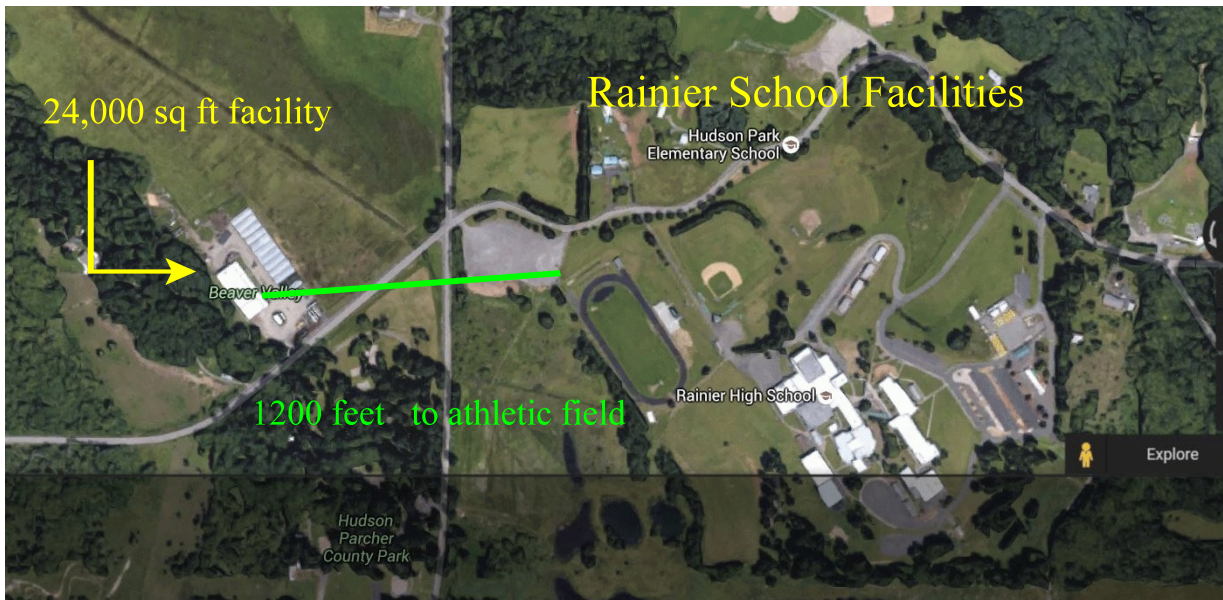
The MO 16-08 application for Administrative Review was deemed complete on April 20, 2016. On April 25, 2016 notices were mailed out to adjacent property owners within 750 feet and affected government agencies. Those notified were given 10 calendar days in

which to submit comments to the Planning Department or to request a public hearing on the matter before the Planning Commission. Within that time period, on May 2, 2016 a Referral was received from a notified party, R. Michael Carter the Superintendent of the Rainier School District # 13, and the Appeal/Referral to the Planning Commission was filed in the Clerks's Office. The Planning Commission will review and approve, deny or approve with conditions the request proposed for MO 16-08.

The applicant, RAD Nursery Products LLC, is requesting approval to establish and operate a Oregon Liquor Control Commission (OLCC) Recreational Marijuana production on a previously developed portion of the ~83 acre property. All marijuana production will occur within the existing 24,000 square foot warehouse that was legally converted (through the county's issuance of Building Permit No. 2008-00409 in April 2008) to a Bark Dust Packaging Facility from an Indoor Fitness Center. Although the 83 acre property contains other accessory structures of greenhouses (shown below), most are no longer on the property, and none of them will be used for the production of marijuana proposed for MO 16-08.

The applicant shall also install an electronic surveillance system throughout the entire 24,000 square foot facility as required by the OLCC for licensed marijuana grow facilities through the provisions in ORS 475B. This will provide the OLCC with 24-hour access to the entire 24,000 square foot facility.

**Aerial View of subject 83.13 acre PF-80 site & proposed location of indoor operation**



The applicant has applied for a Recreational Marijuana Growing License from the State of Oregon OLCC which must be issued by the State before the county can authorize the applicant's establishment of a Recreational Marijuana Growing Operation on the subject property. The OLCC producer application number was provided to LDS with MO 16-08.

On May 25, 2016 the County received written confirmation from Amanda Borup, Policy Analysis at OLCC stating that their office will provide written notification to proposed recreational marijuana growers when they have completed a majority of the OLCC application process, including the required criminal background check. This documentation also informs applicants that OLCC would be able to conduct their required site inspection to verify all marijuana-related facilities comply with the minimum licensing requirements. Before LDS can issue any building permits/authorize any onsite growing as presented for MO 16-08, the County will require the applicant to provide LDS with this OLCC written document confirming that all licensing requirements are met except for the final site inspection(s) by OLCC staff.

The proposed marijuana grow operation prohibited from disposing any wastewater into the facility's existing approved septic system; this septic system will serve the restroom facilities for the employees only. The majority of the wastewater will be recycled into the proposed grow operation and the County Sanitarian shall be required to review and approve the Wastewater Management Plan for consistency with the minimum provisions in OAR 603-095-00800 related to the Water Quality Management Plan for the North Oregon Coast Basin.

On June 13, 2016 during a phone conversation between the Project Planner and Dave Busch (partner of RAD Nursery Products LLC) confirmed the applicant will purchase all irrigation water from Water Safety LLC based in Rainier, Oregon. After talking with the District 1 Watermaster, the applicant has decided not to use the site's existing well (which ties into Beaver Creek) and to consider supplementing Water Safety's water by collecting rain water from the 24,000 sq ft facility's roof. Rainwater collection from an impervious surface is exempt from needing a Water Right pursuant to ORS 537.141. Confirmation from the District 1 Watermaster that the applicant is authorized to irrigate the grown marijuana from Water Safety LLC as well as any collected rainwater shall be required as one condition of approval for MO 16-08.

During the site visit, the applicant explained how they are designing the proposed Indoor Grow Operation to minimize its potential impact on nearby PF-80 and PA-80 properties and their accepted resource related operations.

1. The entire 24,000 sq ft facility will be equipped with a 24-hour electronic surveillance system that will be also be available for OLCC to access 24 - 7.

2. The applicant will only utilize the 24,000 sq ft structure; none of the site's other structures including the 3 greenhouses and detached shop nearby as well as the two other structures located and addressed off Larson Road will be used for growing marijuana. No new structures are proposed or authorized for MO 16-08.
3. The applicant will not have any onsite signage advertising the marijuana grow operation..
4. The weekly deliveries and shipping of products and materials will occur inside and not outside the 24,000 sq ft structure and will use medium size trucks between 10,000 lbs. to 20,000 lbs gvw.
5. The applicant will not use Beaver Creek or the existing well that is tied to Beaver Creek for irrigation. All water will be either be purchased from and delivered by Water Safety LLC or be rainwater that is collected from the roof of the 24,000 sq ft structure.
6. The marijuana will be grown using Deepwater Culture grow practices which is a combination of hydroponic and aeroponic growing techniques. All water will be recycled and/or reused for the proposed operation.
7. The applicant will install odor control carbon air filters and odor control equipment in this facility to reduce odors associated with marijuana grow operations.
8. State and County regulations (in ORS 475B and Section 1803 of the Zoning Ordinance, respectively) prohibit any dispensaries from being located on the same site as grow operations. The State's licensing requirements mandate all products are sold only to licensed dispensaries and electronically tracks the location of all marijuana he produces.

Marijuana is a Schedule I drug under the federal Controlled Substances Act (CSA), and its manufacture, distribution, and possession remain prohibited under federal law. The application requested for MO 16-08 has been approved under local law that is consistent with state law. However, this land use approval provides no immunity from federal prosecution for violation of the CSA.

The provisions in ORS Chapter 475B.070 identify the OLCC's minimum requirements for issuing Licenses to Produce Marijuana, none of which include the 1,000 foot separation from elementary or secondary schools. The only provision in ORS 475B that prohibits marijuana operations from locating within 1,000 feet of public, private or parochial elementary or secondary schools are in ORS 475B.110 (2)(d), which pertains to the *retail selling* of marijuana items and ORS 475B.450(3)(d), which pertains to medical marijuana *dispensaries*. In addition, the provisions in ORS 475B.115 also allow licensed marijuana retailers to remain at their premises if a school establishes itself within 1,000 feet of the licensed retailer unless OLCC has grounds for revoking the license under ORS 475B.210. In sum, Oregon law only prohibits marijuana *retailers* and *dispensaries* from being located within 1,000 feet of a school, not marijuana *producers* such as this applicant.

The Rainier School District objects to this application on the basis that it violates 21 U.S.C. § 860, which prohibits the distribution, possession with intent to distribute, and manufacturing of a controlled substance in, on or within 1,000 feet of a school. Federal laws are codified in the United States Code, and the provision the school district cited is part of the federal Controlled Substances Act. Marijuana remains a controlled substance under federal law and violation of the Controlled Substances Act exposes the applicant to criminal liability under federal law.

However, the attached 8/29/15 Memorandum from the Office of the Deputy Attorney General of the U.S. Department of Justice Titled “Guidance Regarding Marijuana Enforcement” essentially states that the federal government will not focus on prosecuting marijuana crimes under federal law if there are strong state regulations in place for the marijuana production, processing, selling etc.

Specifically on Page 1 the Deputy Attorney General states *“Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels....the Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. Page 3 further explains that in states that have “enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above” and that “enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity.”*

Staff does recommend approval with conditions.

#### **Discussion:**

**Paula Lichatowich** wanted to clarify that the water supply is being handled through the city of Rainier and not through any other source. It was confirmed that the City of Rainier will be providing the water.

**Alta Lynch** wanted to know if it was possible to have a ballot measure to reverse the marijuana ruling in the county, if we are exempt from federal laws and if the planning commission would be responsible for an decision made. It is possible to have a new ballot if someone wanted to take the initiative and lastly the planning commission is not responsible since we are reviewing this under county laws.

**Bill DeJager** wanted to inquire as to why they needed 25 parking spaces if there were no customers and they are needed for employees.

## **Open for public comments**

### **In Favor:**

**Raj Punjabi** - RAD - applicant. This business is a up and aboard business and they will follow all the rules and regulations that need to be met. This company has invested a lot of money in this business and they will have over \$30,000 in the scrubbing operation just to help control odors. There will be no signage on purpose. They will be a licensed retailer only. The state requires extensive security on the premises, there will be a sprinkler system in the building. There are less robberies because of the requirements from the state on the security system. They have to be in compliance with all rules and regulations or they would not be in business. They want to be able to teach kids against drugs and get the education they need to have about drugs. They will be using 10,000 gallons of water a month.

**Claudia Frace** wanted to know effective the air scrubbers are.

**Raj Punjabi** responded that the air scrubbers run continuously and the main period of odor is when the plants are flowering for about 6-8 weeks. The scrubbers they have are very effective. The air indoors is all that is affected and nothing goes outside with this process.

**Paula Lichatowich** wanted to know what type of scrubber was being used.

**Raj Punjabi** replied that they are using CAN100's, which is a 6" fan, 2 fans in each of the rooms. They will be rotated and eventually there will be flowering going all year long due to rotation of crops.

### **Opposition:**

**Michael Carter**, Superintendent of Rainier School District, wanted to point out the effects that this is having in this community, not positive. In the rainy season there is often times lots of flooding and the run off does go in to Beaver Creek, what about the increased traffic due to this business, the roads are not the best now not to mention increase in vehicles. Michael would like to point out that this operation will only be **300'** from a public park. Will there be armed personnel? This is just too close to the school. Can the county be prosecuted at anytime by the government since it has not be approved by the federal government? Just because they have the right to do this certainly does not make it right. Why so close to the park and school?

**Pastor Steve Berry, Pastor Roy Sprunger, Pastor Jeff McCracken, Pastor Paul Rice and Pastor Robert Klukas**, have entered this comment into the record “ The proposed Marijuana growing/producing facility on Old Rainier Road is not located at a suitable location. It is in a location that is too near to the Rainier Schools. Students will be exposed to it on a daily basis as they go to and from school. At a time when these minors are at an impressionable stage in their lives, it sends a wrong message to them. There are already two retail and at least one other grow operations in the Rainier area and to have another one is not in the best interest of the residents. We ask that you deny the application for the permit.”

**Steve Berry** also wanted to point out that this is just too close to the park and that it is not suitable for the area near the school.

**Patrick Opdahl**, speaking on behalf of the Church of Jesus Christ of Latter Day Saints, states that they have property south of this application, there are already four addiction recovery groups in the area. As far as the youth and the community this is a poor choice and we request that the application be denied.

**Richard Ontiveros**, owns property directly next to the site of this application. Concerns regarding the property values, will there be detectors to monitor the odors, how is that measured? How do they detect the level of odors of what leaves the building? Do we need to consider farm use versus agricultural use? Where will the waste go? What about the increase in traffic - trucks entering the property, in the past they have had to swing very wide to turn into the noted property and this creates problems with traffic. In an indoor grow isn't the chance of a fire at high risk? Will the fire code be high for this building? If in the event there ever was a fire how much THC would be released?

**Graden Blue**, feels this location is not a good place for this business since it is too close to the school and park, there will be safety issues, it is not a positive business and we have taught our kids not to do drugs and now you are asking for approval to put this business near the school.

**Jeff McCracken**, Pot store next to a church, the existing experience is not good, The company has made many promises which were not kept, even with scrubbers there is still a smell, created fast traffic and we don't want coal? What is the legal and moral responsibility of the community, pot growing by the school is not a good idea. Who will be making the huge profits - how long will the crime syndicate ignore this? I think that there will be more baggage then what we realize. What by products will there be, there is no tracking record yet, the area will smell like skunks, how is it measured - there are no guidelines. There are many issues around the application - who is it beneficial to?

**Jeff Sorensen**, what odor treatment will there be and how will a odor break through be handled? What is the cost of for a filtration systems? How will the county enforce filtration issues, what recourse will there be to go back to the applicant?

**Teri Robinson**, Marijuana grow by a soccer field, does not seem appropriate. There are already law enforcement issues in the county.

**Tara Sorenson**, has kids in schools of all ages and feels that they should be able to focus their energy on school not what will be growing in the area, its not fair to the students, its not a safe drug and the kids should be concerned with their education not the marijuana grow.

**Larry Ellison**, There are safety issues with this kind of a business, there is a slow emergency response time in the county already. Colorado has issues with the drug cartel, what do we expect? What safety risk are we putting our kids in. Aren't we as parents suppose to protect our kids? Unwanted people will show up and I hope the county expects issues that could arise. We need to keep our kids safe.

**Goodrich**, Opposed to this facility, opposed to legalizing marijuana, it was voted in but why does it have to be approved next to the school and park? We need to be making our youth more employable. Hwy 30 has a lot of deaths on it and this will not help decrease those numbers. We have a bad graduation rate in the county and this business probably won't help those numbers. Medical use is one thing but recreational use is another issue, it is dangerous and should not be thought of as a grand experiment.

**Lugene Ontiveros**, substitute teacher for the school district, there are many drug problems in the schools now. This area is already known as meth alley. There are currently first and second generation users in the school system. This facility should not be next to the park or school, statistics are bad, please do not allow it at this location.

## **Rebuttal**

**Raj Punjabi**, wanted to point out that the Oregon voters did choose to make marijuana legal. There is currently a big process that has to be gone through in order to be accepted by the state. It is the choice of this company to do what is best to control odors and that is why there is a \$30,000 scrubbing system to control odors. They do have a moral compass and wanted to keep this a low profile business, they did not want to draw attention to this location. There will be about 25 employees at the maximum, the additional traffic will be to and from work, no customers will be coming to the site. All the rooms are enclosed within the building. There are concerns about the odors but what about the smell of manure? There will be more ballots presented to the public regarding marijuana in the future. You have to be 21 years or older to be legal and to be on the premises. This business is not here to hurt our youth, in fact they want to help educate kids about marijuana. The waste material will be a 50-50 compost. The fire potential is low due to state requirements. There is a 24 hour surveillance and the grow is monitored from seed to sell. This is a legal business and RAD is not a bad business. There are not laws that will prevent using this location as long as we meet the land use laws.



**Claudia Frace** asked about the odor near the Longview Wa grow.

**Raj** pointed out that they are not required to have odor prevention systems but RAD has decided to have one. CAN100 system with 8 inch fans with filters, two per room, normal maintenance.

Public hearing closed.

**Linda Hooper** said that this is not an easy decision. It is based on compliance and testimony. There are many concerns regarding the smells with the grow and the applicant appears to be addressing those concerns. What is the county's position if the odor became to bad?

**Glen Higgins** mentioned that the staff would work with the applicant and owner. We could monitor it.

**Alta Lynch** wanted to know if a ballot could be done to reverse this decision. That would have to be an initiative for the voters. Alta wanted to verify that with 4 plants there are no regulations on odor for that and anyone can grow that.

**Deborah Jacob** did point out that the applicant could have had an outdoor grow here.

**Paula Lichatowich** made a motion to deny this application based on potential complications for the schools, Rod Lloyd seconded. Motion did not carry.

**Alta Lynch** reviewed that we have land use laws and we have to follow those rules, teaching out kids is very important as well as enforcing the rules. The property owners do have rights also.

**Alta Lynch** made a motion to approve MO 16-08 with conditions, **Claudia Frace** seconded. Four in favor motion carried. 4-2 vote.

**Bill DeJager** wanted to mention that he is opposed to the system but saying that he has found grows on his property not grown by him or his family, By having to go through OLCC maybe that will create legal grows and it will be safer to be controlled by the state. There are many potential issues with an illegal grow.

Other Business:

Meeting adjourned 8:10 pm