

COLUMBIA COUNTY PLANNING COMMISSION MEETING

October 3, 2016
Meeting Minutes

Planning Commission Members Present: Linda Hooper, Alta Lynch, Jeff VanNatta, Bill DeJager and Claudia Frace

Staff Present: Glen Higgins, Deborah Jacob, Hayden Richardson and Kay Clay

Others: Ralph Pauly, Frank & Rose Adams, Rod & Joan Myers, Bryan & Andrea Babcock, Sean Brophy, Greg Martin, Francis Martin, Brian Gooch, Shannon Brennan, Ross Day, Kimberly Tyler, H W Drumheller, Susan Baker, Greg & Christina Hanson, Ron & Gloria Reeves, Quinn Smith, Bill & Judy Williams, Sally & Glenn Miller, Terry & Cera Reusser, Tamara Long, Christopher & Stephanie Arthur, Amy Ross, Rose & Steve Palmer, Aurelia Erickson, John Erickson, Rich & Ellen Bailey, Roseann Irwin, Logan Lauvray, David Jones, D Stekhuizen, Mike Whitfield

Jeff VanNatta called the meeting to order at 6:30pm

Jeff VanNatta announced that the application for Scott Koller would be heard at a later date. Linda Hooper made a motion to postpone CU 17-02 - Scott Koller until November 7th, 2016, Bill DeJager seconded. Motion carried

Deborah Jacob read the pre-hearing statement

Announced V17-01 was withdrawn

No-exparte was declared on V 17-02

Deborah Jacob presented the staff report for V 17-02

BACKGROUND:

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 time, place and manner regulations for the growing, processing, and retailing of marijuana operations in the county's unincorporated areas.

The applicant (Christopher Arthur) and property owner (OHM Equity), are requesting approval to operate a Medical Marijuana Growing Operations on the ~1.58 acre property where the applicant lives. The applicant has yet to submit documentation to the County confirming that the State of Oregon's Health Authority has issued him a Registered Grower

Card to grow medical cannabis through the Oregon Medical Marijuana Program at this location.

On March 31, 2016 at 11:00 am the applicant and property owner had a Pre Application Meeting (Pre 16-24) with the County Planner and Building Inspector. The purpose of this Pre Application Meeting is to distribute, explain, and clarify the application/requirements for establishing a marijuana growing operation on the 1.58 acre RR-5 zoned subject property. During this meeting, the County provided the applicant and property owner with both a Marijuana Operation Permit Application, a Conditional Use Permit Application and copies of Sections 600, 1503, and 1803 of the Zoning Ordinance.

During this meeting, the county also explained the minimum siting requirements (55 feet from the side and rear property lines and 80' from the front property line) for any indoor marijuana production facilities in the RR-5 Zone. The county also emphasized that the site's existing 2,880 square foot pole building (shown on Page 3 and permitted by the County through BLD 2000-00375) would not comply with these minimum siting requirements. The County explained that although this existing structure could be used for any authorized RR-5 uses, the provisions in Section 1803.2© prohibited it from being converted to a new conditionally permitted indoor marijuana growing operation since it did not comply with these minimum setback requirements.

After receiving complaints from the neighbors, on June 30, 2016, Columbia County opened Code Enforcement Case (COD 2016-00121) for the illegal use (establishing an unauthorized marijuana growing operation) of the property's existing 2,880 sq ft pole building. According to the County Code Enforcement Officer's records, he met the applicant on site on July 6, 2016 and observed the applicant's indoor marijuana growing operation inside this structure. The Code Enforcement Officer then informed the applicant on July 11, 2016 that he was in violation of Sections 1803 and 603.6 of the Columbia County Zoning Ordinance related to Conditionally Permitted Marijuana Growing Operations in the RR-5 Zone. The County also required the applicant to remove all marijuana plants and suspend the growing operations in this structure until these land use authorizations/ permits were approved by the county.

Consequently, on August 11, 2016 the applicant and property owner submitted both the Major Variance and Marijuana Operation/Conditional Use Permit Applications proposals requested for V 17-02 and MO 17-01. On September 6, 2016 both the Project Planner and Code Enforcement Officer conducted a site inspection and verified that all plants had been removed and growing operations had ceased in this structure as shown here



Before the Planning Commission can review the requested Conditionally Permitted Indoor Marijuana Operation proposal however, they will need to review the Major Variance proposal and approve it for compliance with the applicable criteria in Sections 1504.1. If the Commission approves V 17-02, they can then review the proposal after the applicant submits additional documentation (wastewater management plan, approved irrigation source, and documentation from OHA confirming approved registration etc.) with MO 17-01 for consistency with the provisions in Section 1503 and 1803 of the Zoning Ordinance.

In reference to 1504,

- 1 Major Variances: The Planning Commission may permit and authorize a variance from the requirements of this ordinance when unusual circumstances cause undue hardship in the application of it. The granting of such a variance shall be in the public interest.
 - A. A variance shall be made only when all the following conditions and facts exist:
 - 1 The granting of the variance will not be detrimental to the public safety, health, or welfare, or injurious to other property

In a pre-application meeting the needs of the county were presented to the owner/applicant. Odors and noise was reported by the surrounding property owners and multiple people will be affected if this application is approved. The applicant does not meet the criteria.

2. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property.

This is not a unique case because there is enough room for the applicant to meet the setbacks in a new location.

3. This criteria could be met
4. Strict compliance with the Zoning Ordinance would create an unnecessary hardship;

Building a new structure would be a hardship to the applicant, but the applicant incurred expenses after the pre-application meeting, knowing what the requirements were. This hardship was self imposed because the applicant/owner did not follow the requirements from the county. This does not meet the criteria.

5. The granting of the variance will not adversely affect the realization of the Comprehensive Plan nor violate any other provision of the Zoning Ordinance.

This criteria can be met with conditions.

Warren Water Association has not approved water for a commercial agricultural/marijuana operation on the subject property and encourages the applicant/property owner to utilize a private well.

Staff recommends denial of this application.

Discussion: There were no questions from the staff.

Open for public comments

In Favor:

Ross Day, attorney for the applicant, requested a 14 day extension for the record to be left open for comments. Naturally the applicant disagrees with the staffs decision. A big question is why did the applicant go ahead with his business knowing that there were conditions he had to meet with the county. The applicant was advised by a different attorney, not Mr Day, that the county did not have the right to make him meet any requirements. The applicant has clients that needed their medicine and that is what the applicant was trying to achieve. The applicant is not operating at this time. It would be a hardship for the applicant because he can not move the building and to build another one is silly. Again Mr Day request that the record remain open for 14 days for comments and rebuttal.

Opposition:

Rod Myers, I am representing my wife, myself, Glen & Sally Miller, and Kiley & Amy Ross. I am here today to voice my opposition to the proposed marijuana grow and major variance to the set back requirements. I have attended several planning commission meetings in the last few months dealing with indoor and outdoor grows. There have been two constant themes throughout these hearings. Theme one: The applicant has followed the applicable laws and ordinance as required, for example getting the required licenses from the controlling state agency and meeting the requirements of Columbia County Marijuana ordinance. Then when these conditions were met they were allowed to apply for permits and start the construction phase of the project. When all these items were signed off they could plant their marijuana crop! Theme two: the opposition has complained of the odor, the noise, the security, the proximity to schools or children and property values. The applicant, Christopher Arthur, the tenant, and his landlord and property owner, OHM Equity Partners, LLC whose incorporation documents are signed by Joe Kessi, call this application a unique case. I think that is an understatement. As noted in the staff report, the pre-planning meeting was held March 31,

2016 and was attended by the above parties where they were advised of the requirements. They then should have known the site did not meet the minimum setbacks and could not be used for the requested operation. By the time the meeting was held they had already contacted the CRPUD and had a larger electrical transformer installed. Is this what makes this case unique? The applicant must not believe they have to follow the same laws as everyone else. From March through June they converted an agricultural building to a commercial building. All this was accomplished with few if any building or specialty permits. To further show their disdain for the laws, the County and the neighbors, they planted a marijuana crop in the building. Then after neighbors complained, the county code enforcement officer conducted an investigation finding that they were indeed growing medical marijuana for four (4) patients. A cease and desist letter was issued on July 11, 2016 requiring that all marijuana plants and related growing equipments be removed by July 25th 2016 at 5 PM. Shortly thereafter, the County issued an extension of this order to September 4, 2016 allowing the applicant to finish growing and harvesting their crop. By all appearances, they did so on Labor Day weekend. So by the September 6 planning department inspection, the building had been sanitized. The applicant is claiming that he should be given the variance because there are no residences located on the North side of the building for at least 1000 feet, so there can be no detriment to the public. Please refer to exhibit one (1) variance fact sheets as that is the applicants claim in 4 out of the 5 questions. He also claims that it would create a financial hardship because they have invested so much money into this project and they do not want to lose it. Now lets look at theme two, the opposition's argument against. My residence sits 204 feet North/Northeast from the grow building. Previous testimony in other marijuana planning commission meetings has been theoretical in nature because those individuals had not actually experienced a grow operation. I have lived through one (1) complete grow cycle and I am to tell you it was not a pleasant experience. My wife and I are the ones who are going to take the brunt of all the following items. Odor and noise know no direction. They fo not just disappear in to the air. For us there is no escape. **The odor:** My wife and I have awoken by an absolutely obnoxious skunk like smell in the middle of the night. On more than one occasion we have also noticed it at various times throughout the day. An odor so strong and pervasive as to wake someone from a deep sleep causing them to run around the house closing windows is detrimental to one's health. It is surely not beneficial. **The noise:** The North side set back is currently 8 feet per the staff. But is it really? The following equipment has been installed in this space at a point of 3 feet off the property line. There are three(3) large air handlers and one heat pump on the north side of the grow building that they claim will not affect anyone. To date they have only run two(2) unites located in the back 1/3 of the building. We generally keep our windows open most of the time for ventilation and fresh air. If we are watching a movie or television, we must turn up the volume to overcome the noise. I had some surgery this summer that forced me to sleep upstairs. I found it impossible to sleep without closing the windows due to the constant noise, let alone the increased sound during start-up and shutdown of the units. So just how much noise will occur when they start using the front ai handler and heat pump? The applicant has also played music so loudly inside his building that it could be heard inside our house. **The security:** Turley Rd dead-ends into private property (southeast corner applicant's property) and our development (Woods Dr). Since this project has begun, we have seen an increase in traffic that visits our neighborhood. We have come home to find cars

parked in front of our house or the grow site. When approached most say they were just talking or looking around but all seem to depart rapidly. Because they have motion lights on the North side of the building they are illuminated every time the cows walk by day or night.

Children and Schools: Since Turley Road dead ends in front of the grow site, that is where the bus stop is. Seventy feet from the grow building. They should not be exposed to this adult themed venture.

Property Values: I have talked to the Assessor's office about this. They agree that the Woods Heights sub-division is the most valuable in Warren and of the situation warranted they would consider the devaluation question. The staff report indicated that there are twenty (20) homes within 750 feet of the grow site, not including the approximately seven future sites located in the hay field to the north. The twenty homes have valuations ranging from 500 to 800 thousand dollars. If they want to be devalued by an average of \$200,000 that would be a loss of 4 million dollars to the County tax base. Eye opening is it not? Medical marijuana is a non taxed item. Are you ready to trade a non-revenue crop for that lost guaranteed income? The applicant has maintained throughout the staff report that since there are no homes to the North there is no harm, no foul. The odor is not going away. The noise is not going away. In fact, they will become constant because there will be multiple stage crops going on at one time. The security of our neighborhood will only get worse. It will be a detriment to the neighborhood. The applicants other claim is monetary loss. I agree with the staff report that this was "self-imposed" in large part due to poor business decisions and not following the law. But also let me remind the Commission, were it to approve this variance and the "grow" eventually approved, it could never be taken back. And if there was an initiative and public vote to ban marijuana production or selling in the count this site would be grand fathered in. I strongly urge you, the Planning Commission, to deny this request for the variance! It is not a good for the neighborhood! It is not good for the County!

Frank Adams: On July 11th in this very room you had before you an application for a "Marijuana Indoor Grow Operation" an an Applicant, that according to the staff report did everything by the book. I observed as some of you struggled to approve the application. Today you have before you an applicant that has done nothing by the book and in conjunction with his landlord and owner of the property, Mr Joe Kessi, otherwise know as OHM Equity Partners LLC, has willfully and patently ignored all the county standards, ordinances and building codes; all the while renovating a storage barn with open sides, gravel floor , no water or electricity into a fully operational "Commercial Building". First a cull concrete floor was installed, next the open side was enclosed, stacks of 2"x6" construction material was delivered and installed together with stacks of plywood sheeting, electrical and plumbing contractors followed and installation of ridged and flexible duct work together with air handling and condensing units. Ladies and Gentlemen this is not hearsay. On a daily basis I wan an eyewitness during this time frame (February - June 2016). A number of inquiries were made to the County Land Development Services questioning if building permits had been issued or applied for and what was being done? Each time the response was "We have nothing on our books." In early July a Citizen Complaint to the County Land Development Service and filed regarding a possible Marijuana Grow Operation in progress. On July 6th, 2016, the Code Enforcement officier did a property inspection and found an ILLEGAL grow operation, which

was then followed with the issuance of a certified letter to the Applicant on July 12th, 2016, indicating a cease and desist of all grow operations and removal of all related plants and growing equipment no later than July 25, 2016, at 5:00pm. An extension to September 4th followed that date. WHY WERE THESE EXTENSION ISSUED AND WHO NEGOTIATED THESE? OR, WAS THERE A POTENTIAL ILLEGAL HARVEST AT PLAY? ILLEGAL IS ILLEGAL!!!!. The document in my hand clearly shows that the Applicant had a **pre-application meeting** with Land Use Planner Mrs. Jacob on March 31, 2016. St that meeting the land use process, land use ordinances, codes and the required property setbacks were clearly explained and yet the applicant went ahead and ignored all the above and continued with the renovation. Now the Applicant is claiming financial hardship if there application is not approved. To that I say this is “self inflicted”! The request for a variance to setbacks and application to grow marijuana must be **denied!!** This barn is in one of the nicest residential neighborhoods in Columbia County with 20 residences within 750' of this barn. On a daily basis, the neighborhood children are standing within 60' of this building, waiting for their school bus. Buses stop 4 times daily. We are experiencing more traffic through our neighborhood. One can only assume that a criminal element is not far behind. This raises great concerns for all the residents. We are very much concerned that a Marijuana Grow Operation will have a devastating effect on all of our property values! Ladies and Gentlemen, I urge you to consider that the Applicant has demonstrated a total lack of compliance and cannot meet any required setbacks, Therefore **deny, deny** the application!!! Thank you.

Greg Martin, son of Francis Martin, we own the vacant property north of the grow site. It is vacant now but in the future may be developed for approximately 7-8 homes and we do have concerns about the property values being down due to the grow site. There is quite a cash outlay with a new home and one of them being water. The issue of the impact on water needs to be considered. There is a need for the Applicant to have 55' and needing 47' more is asking a lot.

Rich Bailey: Rich and his wife are building a home on Woods Dr. The home owner or contractor should investigate what the needs will be. You should not bend the rules, OHM does not follow the rules, even having a building license. As a contractor's view point the slopes on this property are not an issue.

Rebuttal:

Jeff VanNatta pointed out that we will hold the record open for 14 days, anyone can submit comments for 14 days and then the applicant will have 7 more days to rebut. Mr VanNatta asked if **Mr Day** wanted to rebut now and **Mr Day** said not at this time.

Public hearing closed.

Alta Lynch inquired about the MO application and **Deborah Jacob** explained that there was information missing for that application, some of the information did not match making it incomplete.

We will continue this application at the November 7th, 2016 meeting. The record will remain open for 14 days for comments then an additional 7 days for rebuttal.

Other Business: 7-25-16 minutes approved

Meeting adjourned 7:28 pm