

COLUMBIA COUNTY BOARD OF COMMISSIONERS
BOARD MEETING

MINUTES

December 20, 2017

The Columbia County Board of Commissioners met in a scheduled session with Commissioner Henry Heimuller, Commissioner Margaret Magruder and Commissioner Alex Tardif, together with Robin McIntyre, Assistant County Counsel and Jacyn Normine, Board Office Specialist.

Commissioner Heimuller called the meeting to order and led the flag salute.

MINUTES:

Commissioner Tardif moved and Commissioner Magruder seconded to approve the minutes of the December 13, 2017 Board meeting and December 13, 2017 Staff meeting. The motion carried unanimously.

VISITOR COMMENTS:

James D. Huffman 52904 North Cliff Dr. Scappoose: An attorney in Columbia County. It has come to his attention that County and State Police Departments are splitting tickets. It is resulting in hardships and potential false arrest. State Police states there is a policy, but did not want to disclose. An example of splitting tickets is one offense two tickets. You have a defendant going to Circuit Court and Justice Court over the same offense. Commissioner Heimuller suggested that he set a meeting time with the upcoming new Justice Court Judge Diana Taylor, the Sheriff, along with himself and other Attorneys. Commissioner Heimuller will send email to Justice Court Clerks requesting they set some time for a meeting to address this issue.

ORDINANCE No. 2017-4 - ESTABLISH CZ TRAIL ADVISORY COMMITTEE:

This is the time set for the first reading of Ordinance No. 2017-4. With no objections, Robin gave the first reading of Ordinance No. 2017-4, "In the Matter of Establishing the Columbia County CZ Trail Advisory Committee". The second reading will be held in 2 weeks.

HEARING: WILLIAM CUMBY APPLICATION FOR INDOOR MARIJUANA GROW OPERATION:

This is the time set for the public hearing, "In the Matter of the Application Submitted by William Cumby to Conduct an Indoor Marijuana Grow Operation in the Rural Residential (RR-5) Zone on Grandview Drive in Rainier, Oregon".

Robin McIntyre, Assistant County Counsel, -This is an application for a marijuana operating permit and conditional use permit to allow a marijuana grow operation on an approx. 5 acre parcel in a RR-5 Zone. This application was approved subject to conditions by the Planning Commission. The Planning Commission's decision was timely appealed by Craig Bergerson. With no ex-parte or conflicts of interest from the Board, Robin read the pre hearing statement required for land use hearings by statute. Legal Counsel entered file into the record as **Exhibit 1**, this is the record that was before the Planning Commission and anything that has been received to date on this application, which includes the Board Communication from staff, staff report and letters received.

Glen Higgins, Planning Manager: Presented the staff report. Showing maps on the screen of the subdivision, points out the layout of the roads and properties that were not included in the Board packet. Maps entered as **Exhibit 2**. Commissioner Heimuller asked if Grandview Drive was a developed paved road. It is paved, it is a Public Right of way, it is a 20 foot wide 2 lane road, not maintained by the County.

William Cumby has applied to grow marijuana for sale to state licensed dispensaries-indoors with an existing 1400 sq ft accessory shop building. The subject property is 5.04 acres with a dwelling addressed at 28934 Grandview Drive, and is Lot 5 of River Ridge Subdivision.

This application for a Conditional Use and Marijuana Operation Permit to grow marijuana in an RR-5 Zone was heard by the Planning Commission on September 11, 2017. The Planning Commission reviewed and approved, with conditions, this request; and mailed Final Order MO 18-02 & CU 18-04 on September 14, 2017. A timely appeal of the Planning Commission decision was filed by Craig Bergerson, and the Board set the date December 20, 2017 for an appeal hearing.

CCZO Section 1803 Marijuana Land Uses:

(1) State Issued Marijuana License or Registration Required. **(2)** Co-location with a Dispensary, Medical Grows may not be on the same site as a dispensary.

1803.D Additional Standards in the RR-5 Zone :

(1) Growing and producing uses shall be operated by a resident or employee of a resident of the property on which the uses are located. **(2)** The growing and producing uses shall employ on the site no more than five full-time or part-time persons. **(3)** No more than one State issued growing or producing registration or license is allowed for each parcel of record.

The Applicant has met all of the conditions in 1803.

CCZO Section 1503.5 Granting a Permit:

The Commission may grant a Conditional Use Permit after conducting a public hearing, provided the applicant provides evidence substantiating that all the requirements of this ordinance relative to the proposed use are satisfied and demonstrates the proposed use also satisfies the following criteria : **(A)** The use is listed as a Conditional Use in the zone which is currently applied to the site; **(B)** The use meets the specific criteria established in the underlying zone; **(C)** The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements, and natural features

Finding 12:

The applicant was originally planning on obtaining water from a third party retailer, although since the Planning Commission meeting on September 11, 2017, the applicant has altered his methods of obtaining water for his proposed marijuana grow. He is now proposing to harvest rain water via a rain water collection system that he has designed and store this rain water in two 1500 gallon water tanks. Prior to the issuance of building permits for this operation, the applicant shall submit documentation from the District 18 Watermaster stating that this use of rain water collection is exempt from requiring a water right.

In the Conditional Use supplemental questionnaire, the applicant stated that there will be no impact on the roads, ground water, electrical utilities, sewage, and solid waste disposal to any adjacent property. He also states that the plant needs are met inside this sealed room with the aid of LED lights, CO2 burners, air conditioners, de-humidifier's, and the aeroponic grow system which recycles water back into the reservoirs. Although, in the submitted "Supplemental Questionnaire Building and Fire Code Compliance" information, the applicant states that there will not be any CO2 burners used in this marijuana operation . Due to the possible harmful nature of CO2, if the applicant plans on utilizing CO2 for this proposal, Staff recommends a possible condition of approval of this marijuana grow to be that the applicant work with Columbia River Fire and Rescue prior to the utilization of any CO2 burners in this accessory structure.

CCZO Section 1503.(E): CHARACTERISTICS

The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district.

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The physical character of the River Ridge Subdivision neighborhood is new large homes built within 10 years, after 2004. Obviously, the applicant's proposal for indoor marijuana grow will not change the physical features of large residential lots overlooking a view, consisting of quality homes. The owners of the neighborhood have set a bar or standard of living in the subdivision, incorporated in covenants and restrictions called CC&Rs. They do not want businesses to locate in their surrounding area. One could argue that the proposed business venture of marijuana growing would alter this character of the neighborhood. But, whether this alteration would substantially limit, impair or preclude their use of properties is questionable.

Planning Commission:

On September 11, 2017 The Columbia County Planning Commission approved, with conditions, the application MO 18-02 & CU 18-04. During the hearing most testimony in opposition focused on the fact that the proposed marijuana grow is not allowed by the Covenants, Conditions and Restrictions (CC&R) of the subdivision. However, the Planning Commission disregarded this testimony as irrelevant to their decision. The CC&Rs are not part of a county ordinance. Within the allotted appeal period, Craig Bergerson submitted an appeal to the Columbia County Clerk, on September 26, 2017, stating that he does not agree with the decision made by the Planning Commission. The appeal was also accompanied by letters from 7 neighboring residents, including Mr. Bergerson.

Staff recommends that if the Board cannot find the proposal meets Section 1503.5(E) it must DENY the request, if the Board finds that the proposed use meets the criteria in Section 1503.5(E), and does not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses of the zoning district; and, the Board of County Commissioners APPROVES this request to establish a marijuana grow operation on the 5.07 acre RR-5 zoned property, then Staff recommends the conditions listed in the staff report.

APPLICANT:

William Cumby 28934 Grand View Drive- Is a Contractor in Oregon, which is very seasonal, sold his home and moved from Beaverton after doing research on zoning and finding property in Columbia County zoned RR-5. He wanted to cover all his bases before purchasing the property in Columbia County. He had a conversation in length with Hayden Richardson with Columbia County Planning. He asked if there would be any issues parking his construction vehicles on the property during the off season. Hayden told him that as long as he was not conducting business from the property it would not be an issue. Mr. Cumby also told Hayden his intention of a marijuana grow and asked point blank if a public hearing could change criteria for a marijuana grow. If he has met all criteria, he was told that a public hearing could only delay the permits to grow.

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Commissioner Heimuller- asked Mr .Cumby if he received a copy of the CC& R's and if he read and signed the. Mr. Cumby did receive the CC&R's, which have been changed since by the other homeowners. The CC&R's were pretty straightforward, cannot park abandoned vehicles on the property, cannot run a business from the property. The primary use of his property is a residence where he and his family live. His primary contracting business, is not run from this property. He does not want to change the neighborhood, he also would not want to see a dispensary that would increase traffic. He loves the neighborhood.

Mr. Cumby explained that his shop is a 40 x 40 building, another building is inside the building, when doors are open to the shop you will not see marijuana, no fumes will be released into the open. The outer building encloses the grow building. You will not smell, see or hear this operation.

Commissioner Tardif -asked if the original CC&R's included business activities. The original did not include business activities. The amended CC&Rs do state no business activity.

Commissioner Magruder-Why did you not do more due diligence, talk with your neighbors, to tell them what you had planned? You mentioned you have already experienced not fitting in with other neighborhoods in the past.

Mr Cumby- he had tried to be neighborly, he had gone around the neighborhood and knocked on doors, and spoke to those who answered and he introduced himself. With the exception of one neighbor, they seemed to not want to have much to do with him. He wanted to get to know his neighbors before dropping the bomb of growing marijuana. He also feels that what you do behind closed doors, is not your neighbor's business. Once the letters went out regarding the application, the neighbors banded together, had meetings, and did not invite all of the stake holders. You can guess who they did not invite.

Commissioner Magruder- How will you obtain water? Mr. Cumby has done research and had found a water truck in Rainier, but the business has sold. He then purchased two 2500 gal tanks, to collect rain water. He feels that the water trucks were the neighbors' biggest objections during the first hearing. They did not want large water trucks driving on Grand Ave. He understands the issues and agrees that to truck water was not the best way to bring water to the shop.

Commissioner Magruder- the two 2500 gal tanks will supply enough water for the plants you will grow? Yes, with the filtration system, and de-humidifiers the water recycles and goes back into the water tanks. He also explained that the only discharge is at the end of

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the grow that takes about 12 weeks, he would drain the used water into his field where a garden could go, or just to the grass, it is just used fertilized water.

Commissioner Heimuller - asked if he would have employees? Mr. Cumby has a degree in chemical engineering and it would be only he and his wife working with the grow. No other employees.

OPPOSITION:

Craig Bergerson 28825 Grandview Dr. Rainier OR: The originator of the subdivision, he submitted the original CC&Rs. Entered as **Exhibit 3**. The home owners met to vote on the CC&Rs to amend and clarify paragraph (1).

Commissioner Heimuller asked if Mr. Cumby was included in, the homeowners meeting? Mr. Cumby was not at the meeting. They did not need his vote since they had 6 out of 7.

Commissioner Magruder- asked if the meeting was noticed, if Mr. Cumby was informed of the meeting? No, we did not need Mr. Cumby's vote. The CC&Rs indicate that popular vote can amend the CC&Rs.

Commissioner Tardif- to clarify you have a new neighbor, who by his account attempted to introduce himself and be neighborly, with only one neighbor being friendly or willing to have conversation with him. Then this all comes about, instead of including him in the process or get his view points on where he is coming from and get his buy in on the CC&Rs, the other 6 of you decided to exclude him once again, because you did not need his vote, is this correct? Mr. Bergerson said not completely; we did not include him on advise from our attorney.

Chiyomi Ingram 28982 Grand View Dr.- Wanted to bring up that Bill said that he only met with one neighbor, she would guess that would be her and her husband. He talked to us a total of three times. He had an opportunity to tell us this is what he was going to be doing. He did not do that.

Yes, we did have a meeting that did not include Bill. I did run into him at the Cornerstone Café afterwards, where Bill and I continued the conversation about pot growing and what it meant. A few days later he expressed that it was not very friendly that the homeowners held a meeting without him. She offered to hold a meeting at her home if he would like, and he said "no". He has been given opportunity to rectify some situations and has not taken it upon himself to do so. In hind sight if he would have talked with the neighbors, he would have found that not as many were opposed as he thinks.

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It is not only the water truck issue that the homeowners are concerned about. We are also concerned about the noise, smell, land values, wells, chemicals used when cleaning, and the pot trimmings?

The lot next door to Bill Cumby is for sale. I walked the property with the realtor, and we could smell chemical smell that seemed to be coming from his property.

Commissioner Heimuller- asked which lot belongs to her. She owns lot #3.

Commissioner Tardif - how many times does a UPS or Amazon truck come through the neighborhood? She has a delivery about once a month, cannot answer for the other neighbors.

Jeff Trass 28820 Grandview Dr. Lot #1- Wanted to clarify about being approached by Mr. Cumby, the first time I met him was at the September meeting. I know that the Commissioners can not rule on the CC&R's. Mr. Cumby told us that we were acting like children and this is not going to affect our CC&Rs, but it is affecting the neighbors, it affects land value, it affects the CC&R's.

Stan Johnson 75384 Misier Rd Lot 6 -They were not contacted by Mr. Cumby until they went to the meeting on Sept. 11th., However they are not home all of the time. Cumby has run out of water in the past, he has two wells. Commissioner Heimuller asked how he knows how many wells are on the Cumby property. Mr. Johnston knew the previous neighbors. Commissioner Heimuller asked Cumby how many wells does he have. Mr. Cumby has one well that went dry, and is using the well to the west of the property.

At the hearing on Sept. 11th he stated that he had gone into court records and was unable to find that the Cumby shop or the extra building had permits to be built, and it is a site issue.

Stan Johnson is a mechanical contractor since 1967, he has been involved in several of the grow operations. They go in and do service work on these systems, even the kind that Mr. Cumby is talking about and you can smell them.

We got blind sided, that is not very neighborly.

Kathy Johnson 75384 Miser Rd- She has not met with Mr. Cumby, we do not have private meetings, we do not have BBQ's that exclude Mr. Cumby. We just do not want the extra activity. He should have met with all of us, we would have told him this was not the place.

REBUTTAL:

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William Cumby- There are permits for the sho, the barn and the house. He did introduce himself to the neighbors. He did meet with Mr. Trass's wife for over an hour, but it is correct that he did not meet with Mr. Trass, he is a busy man. He left a plate of homemade muffins on everyone's door step, except Mr. Johnson, I did not realize that he was part of the subdivision at the time.

Before the first hearing was ever set, they banded together and joined with a lawyer on how to stop me in various ways. Excluding me completely.

As far as Chiyomi and talking to her at the Cornerstone Café, the waitress the next day asked me who the lady was that was making my business public and accosting me. In front of Chiyomi's home I did ask her why these meetings are happening without me? She did not have answers, and did offer to hold a meeting at her house. They had already banded against me, I figured no one would attend, so what was the point.

I am a chemical engineer, my filtration system is all contained inside the small building. Between the small and large building are three fans that recycle the area of air on the outside of the grow building every five minutes. You change the charged charcoal in the filter, and there is no way the smell will emanate from the grow.

Commissioner Heimuller asked about the chemical smell that the neighbor says she smelled from the adjacent property. Are you growing ? Mr. Cumby said no growing is happening, no lights, nothing. Commissioner Heimuller asked if there were any other chemicals on the property that might have spilled? Just my deck finishing stain of multi colors, but nothing has spilled.

The lot next door, that is for sale, had a couple that was looking at the lot, and told Mr. Cumby that they knew about the marijuana grow, and people call him the "Cabin People".

Glen Higgins. - Confirmed that a Building permit for a 40x40 shop is on record.

With nothing further coming before the Board, the Hearing was closed.

DELIBERATIONS:

Will be held one week from today, On December 27th 2017.

CONSENT AGENDA:

Commissioner Heimuller read the consent agenda in full. With no changes/additions, Commissioner Magruder moved and Commissioner Tardif seconded to approve the consent agenda as follows:

- (A) Ratify the Select to Pay for the week of 12.18.17.
- (B) Rescind the reappointment of Terry Moss, Jeff Dickerson, Jeff Auxier, Jennifer Grant, Paul Aubrey, Janet Evans, Alex Tardif, Stacia Tyacke, Sherrie Ford, Jim Gibson, Luther Schwartz and Molly Matherly to the Local Alcohol and Drug Planning Committee for a three (3) year term.
- (C) Appoint Terry Moss, Jeff Dickerson, Jeff Auxier, Jennifer Grant, Paul Aubrey, Janet Evans, Alex Tardif, Stacia Tyacke, Sherrie Ford, Jim Gibson, Luther Schwartz and Molly Matherly, Ted Grove, Ellyn Bell and Nick Schwartz to the Local Public Safety Coordinating Committee for a three (3) year term.
- (D) Approve Letter of Expectation for Mike Russell.
- (E) Assign Work Crew Supervisor position to non-exempt salary range 23.
- (F) Order No. 85-2017, "In the Matter of Conveying Certain Real Property in Deer Island, Oregon to Daniel H. Koon and Kim L. Koon, Tax Map ID Nos. 6N3W23-00-01500 and 6N3W26-00199 and Tax Account Nos. 21974 and 21919".

AGREEMENTS/CONTRACTS/AMENDMENTS:

- (G) Public Services Contract with RA Outdoors, LLC, for Reserve America Campground Reservation Software Services.
- (H) Purchase and Sale Agreement with Daniel H. Koon and Kim L. Koon, having Tax Map ID Nos, 6N3W23-00-01500 and 6N3W26-00199 and Tax Account Nos. 21974 and 21919 in Deer Island, Oregon.
- (I) Quitclaim Deed to Daniel H. Koon and Kim L. Koon, Tax Map ID Nos. 21974 and 21919 and Tax Map ID Nos, 6N3W23-00-01500 and 6N3W26-00199 and authorize the Chair to sign.

- (J) Amendment #1 to Subaward Agreement by and between Columbia County and SAFE OF COLUMBIA COUNTY For Outreach and Advocacy for Survivors of Abuse; Justice Reinvestment Grant Program.
- (K) Ratify approval of the Agreement with the Fair Housing Council of Oregon for the “Anywhere But Here” Display and authorize Jan Greenhalgh to sign.

The motion carried unanimously.

COMMISSIONER HEIMULLER COMMENTS:

Wishing everyone a very Merry Christmas, and a joyous New Year. Be Safe

COMMISSIONER MAGRUDER COMMENTS:

Wanted to thank Alexis Taylor, Director of Oregon Department of Agriculture. She devoted this last Monday to meet with us here in Columbia County. She has been in Oregon for a year and has almost visited every county within the year. She almost made it, she will be visiting Crook County in January.

I will be ringing bells at St. Helens Safeway between 5-7 p.m. Stop by and see me.

Merry Christmas everyone.

COMMISSIONER TARDIF COMMENTS:

Wishing you all a Very Merry Christmas and Happy New Year. Enjoy a safe and fun holiday season with your family and friends. Remember to live, love and just have fun.

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There was no Executive Session held.

With nothing further coming before the Board, the meeting was adjourned.

Dated at St. Helens, Oregon this 20th day of December, 2017.

NOTE: An audio CD of this meeting is available for purchase by the public or interested parties. A video of the meeting is also posted on our website at www.co.columbia.or.us

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: _____
Henry Heimuller, Chair

By: _____
Margaret Magruder, Commissioner

By: _____
Jacyn Normine
Board Office Specialist

By: _____
Alex Tardif, Commissioner