



Planning Commission Minutes

July 17th, 2017

Members of the Planning Commission met this day in regular session at City Hall, Brownsville, Oregon at 7:00 p.m.

Present: Commissioners Don Andrews, Gary Compton, Tricia Thompson, Josh Kometz, Bryan Wyant, Mike McDaniel, Scott McDowell, & Administrative Assistant Elizabeth Coleman.

Absent: Commissioner Wingren.

Public: Randy Simpson, Gayle Ashford, Debbie Jensen, Greg Coffman, Tammi Morrow, Kelly Williamson, Bryan Bradburn.

Presiding: Gary Compton.

The Pledge of Allegiance was recited.

The meeting was called to order at 7:00 p.m.

PUBLIC HEARINGS

221 W Bishop Way – Medical to Recreational Marijuana Facility

Chair Compton explained the required statutory statement regarding appeals. Commission Chair Compton asked if there were any conflicts of interest, biases, or ex parte contact. There were none.

One letter in opposition was submitted into public record.

Chair Compton explained the process of the hearing. Mrs. Coleman summarized the staff report; Mr. Simpson & Ms. Ashford came before the Planning Commission on January 23rd, 2017 to request approval of a Conditional Use Permit to operate a medical marijuana facility in the Light Industrial Zone. The application was approved at that hearing.

In May 2017, the applicants submitted an application to change from a Medical Marijuana facility to a Recreational Marijuana retail store, with limited medical marijuana sales. Chair Compton gave the applicant an opportunity to speak about the application. Mr. Simpson stated their request to change to an OLCC licensure with the limited sales and that the City would receive tax revenue from the recreational facility. Commissioner Andrews asked if the recreational store would replace the medicinal; Mr. Simpson stated the recreational side will go through the Oregon Liquor Control Commission, but OMMP cardholders will be able to purchase marijuana tax free. Chair Compton asked for clarification as to the quick change from a medical marijuana facility to recreational retail.



Planning Commission Minutes

Mr. Simpson stated that all along they wanted to open a medical facility but right away it became a business decision; to stay medical wasn't a very good decision. There aren't that many cardholders around that are their customers. He stated they are turning away more customers that don't have cards. Ms. Ashford added that you have to be 21 to enter a recreational facility, and 18 for a medical card. Ms. Ashford also added that OLCC will soon be overseeing the medical marijuana program and are in the process of eliminating that program.

By July 2018, everything will be under OLCC and medical dispensaries will be eliminated. There will still be cardholders under OHA who will be able to purchase marijuana tax free from recreational facilities. Ms. Ashford said they are doing good enough business as medical but the OLCC is basically saying everyone is going to have to go "rec" and that's the bottom line. The applicants stated they are having a lot of requests from people in the community to open a recreational facility so they don't have to drive to other cities and want to see Brownsville get the revenue from it and to see the business thrive.

Commissioner Wyant asked if marijuana can be grown at home, why the need for a facility? Mr. Simpson explained that not everyone has a green thumb or wants to hassle with keeping the plants alive. Comments on the 3% tax the City will receive versus impaired driving concerns surfaced and Chair Compton reminded all that an opportunity to ask questions and clarify or rebut answers would be offered later in the hearing.

Chair Compton summarized the applicants reasoning for the request; OLCC is making changes that will require the change of use. Mr. Simpson added that the OLCC wants to put growing and marijuana sales under one jurisdiction. OHA will still be involved with issuing cards to cardholders and caregivers but will not have a separate grower/sales funnel for medical. Commissioner Andrews asked if one could buy recreational, why is there a need for a medicinal card, the applicants explained it basically depends on the cardholder's usage and whether it's worth paying up to \$500 for a medical card or paying the 20% recreational tax.

Mr. Simpson mentioned the OLCC rules are generally more lax than the medical side. Medical requires records to be kept for a minimum of three years; whereas Recreational records can't be kept for more than 24 hours. The recreational side is more strict in dosages and the amount that can be purchased at one time. Concentrates and edibles are half the dosage of medical. The applicants explained by 2018 the OMMP will only be handling the registration of cardholders and caregivers, the OLCC will handle all growers and sales. All licensed medical will be required to conform to OLCC regulations. Cardholders that want to grow for themselves must live in properly zoned areas. There will be no grower to patient relationship, only caregiver to patient.

Chair Compton opened the floor to those in opposition of the application. Mr. Bradburn of Washington Avenue spoke as a concerned citizen interested in the potential impact a recreational shop may have on the surrounding neighborhood and home businesses in those neighborhoods. Currently, he has a neighbor who is growing a number of plants and when they were harvested last year, the odor was strong enough that he had



Planning Commission Minutes

to keep his windows closed in the heat of summer. He and his wife are concerned that their 4-year old daughter is smelling the odor. If opening a licensed facility in town will alleviate the need for home based grows, providing a funnel for individuals to purchase their medical or recreational marijuana, he would be in favor, however, if home based grows will not be restricted, he opposes the application. Chair Compton explained the narrow focus of the hearing, which is for the recreational facility, and encouraged Mr. Bradburn to contact the Sheriff's Department, Linn County Health Department, politicians, etc. Mr. Bradburn spoke to the fact that the Planning Commission should consider the factors of approving or denying the application and the impact on the community.

Mr. Coffman of Fields Court spoke in favor of the application. Mr. Coffman is a disabled veteran with chronic pain and uses cannabis only as a sleep aid. As his medical care is provided by the Federal government he is not allowed to have an OMMP card. He drives out of the area to a recreational facility. Mr. Coffman said good points were made but it would greatly benefit him and others with similar circumstances if a facility were located in Brownsville.

Ms. Williams of Templeton Street spoke in opposition of the application. Ms. Williams did not feel the proposal was in the best interest of the community, specifically children and youth. Ms. Williams works with youth several times a week and does not want them to think marijuana is safe because it's legal, and expressed concern that packaging would be interesting to minors. She hoped there would be some packaging stipulations placed on the use if the Planning Commission approved the application. Ms. Williams said as a nurse for 12 years she saw marijuana being used infrequently but effectively in managing sleeping, mood & pain but is opposed to recreational use due to the negative effects upon the brain in young people under 21. Ms. Williams also mentioned a neighbor grows marijuana in their backyard and the odor is offensive.

Chair Compton provided the applicant an opportunity for rebuttal. Ms. Ashford stated the age for alcohol is 21 years and studies show alcohol is much more dangerous for development of the brain than marijuana. OLCC is extremely strict on packaging, naming/shape of product, and child resistance. Gummies cannot be in the shape of bears or any shape attractive to children. Mr. Simpson mentioned that a number of people at the giveaway in July 2015 said they hoped marijuana would help their medical condition. Within the next week, hundreds of people said how marijuana was helping their condition; although people are buying it recreationally, they are using it medicinally.

Chair Compton closed the public portion of the hearing for Commission discussion and reminded the Commission that if a question comes up for the applicant from the public a decision to re-open the public hearing will need to be made. Chair Compton explained the criteria used to determine the final decision for a Conditional Use application.

Chair Compton explained he voted in favor of the medical marijuana facility in January 2017, but had some concerns about the recreational side. Chair Compton reviewed the criteria language provided in Chapter 15.125.010 that states, "**In judging**



Planning Commission Minutes

whether or not a conditional use proposal shall be approved or denied, the Planning Commission shall weigh its appropriateness and desirability for the public convenience or necessity to be served against any adverse conditions that would result from authorizing the particular development at the location proposed and, to approve such use, shall find that the following criteria either met, can be met by observance of conditions, or are not applicable.”

His interpretation was the criteria is two-fold in that the Planning Commission is directed to weigh the appropriateness of the proposal against adverse conditions (surrounding area) as well as other criteria such as lighting, building size, parking, etc. Chair Compton also referred to page 6 (Policy P-L55, Finding B) where staff addresses the question of whether the proposed criteria will adversely affect the surrounding uses, stating no empirical evidence had been found to determine the effect of a retail marijuana facility at the proposed location.

Chair Compton provided documentation from the Journal of American Medicine Association in 2016 that provided data regarding the number of incidents involving children, poison control and hospitalization since the legalization of marijuana in Colorado. He was interested to see that research showed the annual calls to a poison center and hospitalizations involving children had increased. Chair Compton felt the empirical data was provided by the Colorado numbers; based on that data, allowing recreational facilities did provide a potential adverse risk to children. Chair Compton was in favor of medical marijuana facilities, but does not feel the application meets the standard regarding adverse conditions and is not in favor of a recreational facility based on the information he found and local cases.

Commissioner Andrews inquired about the Colorado numbers; the increase appeared to be due to poor packaging and poor child supervision; 51% of the cases were from edible product consumption. The applicants stated that the OLCC now requires child resistant containers. Ms. Ashford then stated they do not carry edible products. Commissioner Kometz mentioned that as of two weeks ago, edibles in the shape of gummy bears were indeed being sold at a recreational marijuana site controlled by OLCC.

Commissioner McDaniel expressed concern about the study; numbers are not always accurate. Commissioner Thompson mentioned staff provides information in the reports based on the Brownsville Municipal Code, procedures & policies for Commissioners to base their decisions. Based on the findings provided in the staff report, the application meets the City code. Mr. McDowell went back to the absence of empirical evidence and how the State and Federal governments have said it takes five years to gather that evidence to provide accurate studies. Additionally, the Controlled Substance Act is still being violated on a Federal level. In this case, code criteria and empirical evidence are on the same plane in that both provide unclear guidance.

Chair Compton recalled the most recent Planning Commission discussion that involved potential adverse effects; the CUP for a coffee roasting home occupation brought up the concern of odor and the applicant was required to provide mitigation to alleviate



Planning Commission Minutes

that issue. In his interpretation of the adverse portion of the code, the potential adverse effects on children in the community outweigh the appropriateness of the Conditional Use application. Commissioner Andrews went over the portion of the staff report that addressed the policies of the comprehensive plan and the four criteria and found the applicant to meet all those requirements.

Commissioner Wyant was concerned about the proposal being less than one thousand feet from a public park or playground. Although Blakely Park is considered a pocket park and is considered exempt under that definition by the Park Master Plan, it is also a playground for children; he is still opposed. Commissioner Thompson touched on Mr. McDowell's comments on the accuracy of data & long-term studies involving marijuana facilities, and concluded that the application still met the City requirements.

Commissioner McDaniel re-iterated the importance of not basing the decision on moral judgment and felt the application met the City requirements. Commissioner Andrews hoped that his concern about the adverse effect on children would be addressed with the tightening of OLCC's regulations; if the OLCC was not working toward this end as the applicants' stated, he would be opposed to the application.

Commissioner Kometz said although he had softened his views on medical marijuana, it is still against Federal law; he is opposed to a recreational facility. This brought the discussion to three in favor of and three opposed to the application. Mr. McDowell explained that in this case, the Commission could take an official vote and if the vote was still 3-3 a reconvene may be necessary. The meeting could be tabled, the seventh member of the commission would be provided with the information and could be present to vote. The hearing would still be open. The commission could make a decision at that next meeting.

Chair Compton asked if further discussion would be beneficial; Commissioner Wyant was still very concerned about the public park, playground definition. He asked for more clarification on the definition. Chair Compton came back to the adverse impact on children and the regulations OLCC will be placing on packaging in July of 2018. Commissioner McDaniel also inquired about the definition of the parks. Discussion ensued. Commissioner McDaniel asked if staff could go back and clarify the definition of parks with the attorney for this use. Mr. McDowell said staff could certainly check back with the attorney to clarify the playground definition. Commissioner Kometz requested a vote, Chair Compton asked for a vote by show of hands; Commissioners Thompson, Andrews, & McDaniel were in favor, Commissioners Kometz, Compton, & Wyant were opposed. *Commissioner Andrews made a motion to table the meeting until a seventh member could be present, Commissioner McDaniel seconded and the motion passed unanimously.* The hearing was closed at that time.

January 23rd, 2017 Minutes

Commissioner Andrews moved to approve the minutes of January 23rd, 2017, Commissioner Kometz seconded and the motion passed unanimously.

Dedicated City Email Addresses



Planning Commission Minutes

In an effort to provide ease of email receipts and responses, Mr. McDowell asked the Commission if anyone would prefer a dedicated email address for city business only. The Commission decided a dedicated email address would not be necessary.

Accessory Structures

A few years ago, the Planning Commission addressed some issues around accessory structures on lots with or without a primary structure. Over the years, there have been a number of instances where sheds, shops, barns, etc. have been built without setbacks, ending up on other people's lots, lived in as primary residences, etc. In very limited instances accessory structures are allowed on a lot without a primary use.

Council has been working on some general policy in terms of RV's. The same issue came about that RV's, rather than homes, were being lived in. RV's were being rented out, domestic violence calls to the Sheriff's Department increased. Council passed an ordinance that RV's could not be lived in for an extended period. That ordinance has not been adhered to by several people; Council is currently in the process of making some changes. An RV permit can be obtained for up to six months if a person has an active building permit.

Chair Compton had some questions around the true definition of an accessory structure and the limitations placed on lots without a primary use. Discussion ensued. Chair Compton & Commissioner Andrews will work with Mr. McDowell & Mrs. Coleman on some language around this issue and will bring their findings back to the Commission for review. The Commission can then decide to forward a request to Council for an update to the ordinance.

Dollar General

The Dollar General, a retail store, is very interested in locating to Brownsville on a Volume Commercial property north of the Veterinary Clinic on Main Street. A retail store is an Outright Permitted Use in the Volume Commercial Zone and is not required to come before the Planning Commission for a public hearing. All Outright Permitted Uses are still reviewed by planning, public works, engineering, legal, and any other state, local, and county agency necessary to complete the development. Commissioner Andrews asked about road access; the Linn County Road Department reviews that portion of the development.

Depot Avenue Planned Unit Development

Plans for a Planned Unit Development at end of Depot Avenue has been submitted to the City for review. A PUD is considered a Conditional Use and will come to the Planning Commission for a public hearing. The Budget Committee & Council approved a \$50,000 budget for a Buildable Lands Inventory to expand or designate additional Volume Commercial & Light Industrial lands. Staff will be working with planning consultant Dave Kinney & Linn County on this project.

There being no further business to discuss, the meeting was adjourned at 8:40pm.

ATTEST:



Planning Commission Minutes

Handwritten signature of Elizabeth E. Coleman in cursive script.

Elizabeth E. Coleman
Administrative Assistant

Handwritten signature of Gary Compton in cursive script.

Gary Compton
Commission Chair