



## Planning Commission Minutes

July 31<sup>st</sup>, 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, Kelly Williamson, Rob Wingren.

**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 Re-Convene**

Chair Compton re-convened the meeting from July 17<sup>th</sup>, 2017. Mr. McDowell reviewed the details of the last meeting. Commissioner Wingren was not in attendance at the July 17<sup>th</sup> meeting due to unforeseen circumstances. In order to participate in the discussion and vote at the July 31<sup>st</sup> meeting, Commissioner Wingren would be provided with all documentation the Commission had to make a decision, including audio and written notes. Mr. Wingren would have until 5:00 p.m. on the hearing date to obtain the information. Mr. McDowell also explained that the Chair could open the public portion of the meeting at any time.

Mr. McDowell reported out on the attorney's clarifying answer to how the definition of a playground fits in with the proposed use (marijuana facilities locations in the City limits and the 1,000ft rule), in regard to Chapter 15.111 Marijuana Uses. Brownsville Municipal Code 15.111.020 C (3) states **"Public park, playground, recreational facility, or athletic field" means a park, playground, recreational facility, or athletic field that is owned or operated by a government entity or nonprofit organization and that is open to the general public excluding mini parks or pocket parks as defined in the City's Parks Master Plan.**

The attorney confirmed the Park Master Plan is a stand-alone document and the definitions provided within override other general definitions provided from additional sources (Merriam-Webster Dictionary, etc.). The City's Park Master Plan defines Blakely Park as a mini or pocket park; though the Park is within 1,000 ft. of the proposed use, it is excluded by definition, allowing the marijuana facility to be located at 221 W Bishop Way. Therefore, the application does meet that portion of the code. The attorney explained the rationale in this determination that a city should not and cannot zone a use



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out of town. This was the logic used in determined the ordinance language.

Mr. McDowell explained the process for Chair Compton to open the discussion and for the Commission to proceed with a vote. If the vote still ends in a 3 – 3 decision the application will be considered a denial. The applicants can appeal the Planning Commission's vote to City Council within 15 days of receiving the Notice of Decision. The City Council would hold a hearing and could uphold the Planning Commission's ruling or overrule it.

Chair Compton stated that he had contact with several commissioners after the July 17<sup>th</sup> hearing. Chair Compton asked Commissioner Andrews for his interpretation of a portion of the code. Commissioner Wyant asked Chair Compton if he was allowed to question the definition of playgrounds as a Commissioner, Compton felt he was within the bounds of his role, as he was attempting to interpret the code and rules to make a decision. Commissioner Thompson emailed Chair Compton to ask if conditions could be placed on the use of edibles; Chair Compton said he would have to research that information. Mr. McDowell sent an email to remind the Commission not to talk to the public, friends, or family about the hearing. Mr. McDowell appreciated the efforts of the Commission and how this delicate situation has been handled to date. Contact should be limited to staff in terms of ex parte contacts. Important to remember for the future.

Chair Compton said he was open to considering approval of the application with a condition that edibles are not sold, based on the research that showed a 52% increase in poison control calls involving children in Colorado relating to edibles. Commissioner Andrews re-iterated the Planning Commission's responsibility; to be consistent and use the four criteria provided to make decisions, not personal opinions, outside influences, etc. The only questionable criteria he could see was the adverse conditions and surrounding uses. The application meets the zoning code and applicable policies of the comprehensive plan. The Commission discussed at great length the interpretation of "adverse conditions" and whether or not an adverse condition outweighs the appropriateness of the proposed application. The Planning Commission has the ability to base a decision on adverse conditions; according to legal counsel, however, that decision may not provide enough strength to hold up in the appeal process to the Land Use Board of Appeals.

Chair Compton again brought up the past hearings where the adverse conditions/criteria aspect was applied; the coffee roaster and the dog grooming/kennel/boarding/daycare applications both considered adverse conditions related to surrounding uses (neighboring houses). The Planning Commission placed a condition on the dog grooming application where a one-year review was required to determine the impact on the neighbors (complaints of barking, odor, disturbing the peace, etc.) and a filtration system was required for the coffee roaster.

Commissioner Thompson suggested granting the conditional use permit to allow the recreational facility with the condition that edibles could not be sold. Mr. McDowell stated the applicant could voluntarily decide not to sell edibles but according to legal counsel, there are conditions of approval that can be placed on a use and those that



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cannot; this would be considered an undue condition. Discussion ensued. Commissioner McDaniel took into consideration the possible adverse effects on neighboring properties and values; he is now opposed to the recreational facility in Brownsville. Commissioner Wyant said the facility is still within 1,000 feet of a playground and although the state is allowing, this is still against federal law. Commissioner Kometz was also still opposed. Commissioner Thompson spoke to the fact that edibles are sold in a number of marijuana stores in the area; not having one in Brownsville will not change whether or not parents are going to be responsible with their edibles. The applicant has met the criteria required.

Chair Compton offered a vote for those in favor of opening the public portion of the hearing; it was unanimous. Chair Compton gave the applicants the opportunity to speak. Mr. Simpson felt the vote in November 2016 allowing marijuana facilities should have made it easy for the Commission approve the CUP. To him the discussion is irrelevant, other than what Commissioners Andrews & Thompson were saying.

They meet the requirements and Brownsville approved marijuana facilities in November by three votes. Mr. Simpson stated that a number of people do not like to smoke, especially the older generations; tinctures and “medibles” are taken instead. Mr. Simpson said if there were problems with edibles and children in the surrounding areas (Albany, Lebanon, Corvallis) it would be all over the news. That has not happened. The state says you have to allow it somewhere in Brownsville. Ms. Ashford said edibles could be being sold now and no one would know the difference. Medical edibles are twice as strong and a child would be in very bad shape if the medibles were taken. Recreational edibles are half as strong. Ms. Ashford contacted the OLCC and edibles are not sold in gummy shapes or attractive candy shapes. They are following all guidelines, local and state, should not be punished for someone else’s irresponsibility.

Ms. Ashford reiterated that cardholders only have to be 18 years of age, where recreational users have to be 21. OLCC is much more strict than medical. It’s all going OLCC, so it will be more closely regulated. The City of Brownsville has to provide reasonable zoning and by restricting the use by pocket park or by what they sell is going to result in a lawsuit against the City of Brownsville. Ms. Ashford stated that is not a threat just stating a fact. The City is not being reasonable. They have met all the City and State criteria. They were considered a model as far as bookkeeping & tracking product. We (Planning Commission, City) should be proud of what they are doing, closing down the black market. We (Planning Commission, City) should be ashamed of ourselves for placing these types of restrictions when they are simply trying to help their community.

Mr. Wingren had stepped down from the dais to speak as a citizen. Mr. Wingren apologized for missing the last meeting, he had a family emergency. He had been researching the pros and cons of the application and concluded the criteria is fairly boilerplate. The question came up as to whether or not the application is an asset to the community. He felt people were pulling in personal opinions, rather than sticking with the criteria. The majority of the Brownsville voters approved marijuana. Mr. Wingren said there is a lot of personal responsibility when it comes to edibles, no matter what kind of medication one is taking. It’s not possible to regulate every household to make sure they are locking up their medication, liquor cabinets, etc.



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One condition that Mr. Wingren would like to see is how signage and advertising is represented. The OLCC doesn't allow balloon blowups, spinning signs on street corners. He doesn't think neon signs should be allowed either. The Planning Commission did extensive work to find the best location for marijuana facilities and if the Commission is now saying this isn't the place for it, we (Planning Commission) didn't do our jobs. He would like to see a Conditional Use to allow the facility for a year. If he was a voting member, he would vote yes.

Commissioner Thompson asked if the one-year condition could be placed on the CUP. As with the dog grooming/kennel, that condition would be allowed. Mr. McDowell responded to the Commission that as Mr. Simpson said, the State says marijuana facilities are legal. The City also must provide due process. The applicants will be required go through the appeal process if the application is denied. If Council upholds the Commission's decision, Mr. Simpson & Ms. Ashford can then appeal the Council's decision to the Land Use Board of Appeals. According to the attorney, it is very likely that LUBA will approve the application to allow the change from medical to recreational at 221 Bishop Way. At the same time, the Planning Commission has the right to look at the criteria the way they see fit. Discussion ensued.

Commissioner Andrews reiterated that if the Commission bases its decision on personal opinion, that is going outside the required criteria. Chair Compton again likened the review criteria for the application and the potential adverse impacts to the surrounding area to the coffee roaster and dog grooming/kennel; some people don't like the smell of coffee and some people don't mind dogs barking. The Planning Commission tried to be as scientific in their decision making as possible in both of those cases. Chair Compton was strongly in favor of medical marijuana, however, he found information that provided some scientific evidence showing a negative impact on children in terms of recreational marijuana. Discussion ensued.

Chair Compton closed the public portion of the meeting. *Commissioner Andrews moved to approve the application and include recommended conditions of approval, Commissioner McDaniel seconded. The vote was 4 – 2 against the application. Commissioners Kometz, Compton, McDaniel, & Wyant voted against. Commissioners Thompson & Andrews voted in favor. Mr. McDowell explained the process of appeal.*

### **Front Door Orientation – New Construction**

There are a number of lots in town that are deeper than they are wide. This configuration makes it difficult to fit some homes, a manufactured home for instance, lengthwise on the lot, where the front door can face the street. Aside from the aesthetic side of front door orientation, it is essential that 911 emergency response teams are able to easily see the three-digit address on the house. Currently, the Brownsville Municipal Code does not have an ordinance or any reference to the orientation or the architectural front of a home. Staff would like the Planning Commission to allow a revision of the Brownsville Municipal Code to require front door orientation or an architectural front that faces the street. *Chair Compton made a motion for Staff to draft an ordinance that*



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*requires front door orientation or an architectural front to face a City street. Commissioner Kometz seconded and the motion passed unanimously.*

### General Information

There has been some consternation around the potential location of a Dollar General retail store in the Volume Commercial Zone. Dari Mart, Brownsville Body Shop, Chevron, Dr. Glenn Dentistry, & Bishop Royale are all located in the Volume Commercial Zone. Retail stores and businesses such as those are considered an Outright Permitted Use and do not require a hearing in front of the Planning Commission. They do, however, require local, county, State, Federal (if necessary) reviews. Currently, the Dollar General is working to complete requirements set forth by Planning, Public Works, Linn County Road Department, FEMA, DSL, Army Core of Engineers, etc. The City and County have required a HEC-RAS Study (Hydraulic Study) where they will provide proof the development will have no impact on the floodplain.

Mr. McDowell & Mrs. Coleman met with Cross Development, representative for the Dollar General and requested a softer look with brick, rather than a metal building. Cross Development was agreeable to the suggestion. The current sign ordinance allows internally lit signs, and that was not negotiated. Commissioner Thompson was pleased that the developer was open to the change in the texture of the building. There was some discussion about working with the developer of Dollar General to install signage that was more in line with the historical aspects of town. Discussion ensued.

There being no further business to discuss, the meeting was adjourned at 8:16pm.

ATTEST:

  
Elizabeth E. Coleman  
Administrative Assistant

  
Gary Compton  
Commission Chair