

**PLANNING COMMISSION
MINUTES**

November 26, 2018
6:30 p.m., DSB Auditorium

Commissioners present: Brian Pasko, Mary Phillips, Gerald Murphy, Louise Lopes, Tom Peterson, Michael Wilson, Steven Schroedl

Commissioners absent: Mark Fitz, Christine Drazan

Staff present: Jennifer Hughes, Glen Hamburg, Martha Fritzie, Darcy Renhard

1. Commission Chair Pasko called the meeting to order at 6:35 pm. He announced that if there is to be a continuation of tonight's hearing, it will be on December 10th and will not begin earlier than 7:30 pm.

General public testimony not related to agenda items:

Virginia & Monica Redding – They live at the intersection of Hwy 213 and Hwy 211 in Molalla. Their neighbor grew a crop of what he claimed was hemp this year, which caused multiple health issues for both of them. They don't feel that hemp grows should be able to locate themselves next to neighborhoods and homes as it adversely affects the livability.

Robert May – Mr. May lives a couple of houses away from the Reddings. As the season progressed this year, the smell from the hemp got so bad that he couldn't open his windows in the evening. The hemp farmer also tapped into his well and severely depleted the surrounding wells.

Lowell Gillespie – Mr. Gillespie asked if smelling the marijuana would make one fail a drug test, even if it had not been ingested. Staff replied that it would not.

Diane Mose – Ms. Mose asked if there will be a mandate that drip irrigation be used in the future. Commissioner Pasko suggested that she contact the Oregon Department of Agriculture for that information.

Jennifer Hughes provided an overview of the proposed amendments in ZDO-271. The proposal relates to the number of marijuana production licensed premises and registered grow sites per tract of land. If there are other suggestions for amendments to the Zoning Ordinance, they can be dropped off at the Planning Division offices or emailed to the Planning Division. Tonight's hearing is only to address what is within the public notice.

Commissioner Pasko opened the public hearing to amend Section 841 of the ZDO. For those who are interested, the Board of County Commissioners will be hearing this proposal on January 16, 2019 at 9:30 am in the BCC hearing room.

Glen Hamburg presented the staff report and supporting information for ZDO-271: Marijuana Production License Limits. This proposal would amend Section 841 only and its substantive provisions would affect only AG/F, EFU, and TBR zoned properties. There is also a part of the proposal that would simply provide clarification language and general housekeeping/clean-up of other provisions in Section 841.

Prior to 2016, medical marijuana was regulated like other horticultural products. Currently there is no limit on the number of structures on or licenses for a property. There is no real distinction between medical and recreational marijuana at this point in the ZDO other than setbacks for indoor medical marijuana production that does not meet the County's odor and noise standards. Within Clackamas County there are approximately 200 acres of natural resource land that has been approved by the County for mature (flowering) marijuana production: EFU=66%, TBR=27%, AG/F=7%. Indoor grows account for 40% and outdoor grows account for 60%. Determining whether a producer intended to have multiple licensed premises or registered grow sites from a land use approval is a bit of a trick because the County has never asked property owners how many licenses or grow sites they are planning on having on their permitted properties. We've made some assumptions based on the size of the approved areas. The BCC is concerned that having multiple licenses may bring too much development and activity to sites which might

not be appropriate. The proposal is to limit a tract in AG/F, EFU, or TBR to one registered grow site for medical production or one licensed premises for recreational production.

There were two concerns that the Planning Commission raised during the October study session: 1. Should there be a limitation and how should it be applied; and 2. How will it impact those that are already operating?

Evidence is showing that marijuana may be a more intense farm use than other crops. Other agricultural crops (including hemp) would not be affected by the proposed amendments. If the County does decide to apply limits, the tract limitation would be the most restrictive. If limitations are applied per lot of record, it may be easier for staff to administer, but lots of record also vary greatly by size. The current language in Section 841 sets a minimum area needed to be allowed to produce marijuana based on a tract. It may reduce confusion to also base a license limit on a per-tract standard, as well, rather than per lot of record. Another standard discussed was limiting licenses based on certain acreage, although it is unclear what per-acre limit is appropriate and whether it would apply to both indoor and outdoor equally. With regard to how it might affect those who are already operating, if County approval was given but the licenses were not acquired, then there may not be enough standing to qualify for a non-conforming use.

Staff is recommending approval of ZDO-271 as submitted to the Planning Commission.

Commissioner Wilson asked if both proposals are exclusive or if they have to be enacted together. Glen answered that the non-substantive measures are stand-alone regarding the proposed amendments.

Commissioner Murphy asked if the property owners are the ultimate responsible party for these operations. Glen confirmed that they are.

Commissioner Peterson asked if it was possible to do both recreational and medical grows on the same property. Glen explained that it would be possible as long as there are separate addresses for each.

Glen entered exhibits 9 through 12 into the record.

There were no agencies, CPOs, hamlets, or villages to provide testimony.

Public testimony:

1. Shirley Morgan (Welches) – Ms. Morgan stated that 75% of the marijuana being grown in Oregon is being sold on the black market. It is generating criminal activity and there are illegal uses happening. There is a high volume of traffic generated by these facilities. She would like to see only one allowed per address. Per tract, per lot of record, and per property.
2. John Young (Canby) – You can't take away people's property rights! Even regular farming creates odors—there is manure, fertilizers, sprays, etc. He doesn't want to see people lose their right to create an income.
3. Ramona Notz (Molalla) – The marijuana compound on the property near hers has covered the high value farmland with concrete pads. How will this impact future use of this farmland if it is all covered in concrete?
4. Deanna Mustoe (Molalla) – Ms. Mustoe cannot imagine that all of these sites are legal and okay.
5. Lizzy McKenzie (Oregon City) – She lives next to a grow site. The lights are keeping her up and she can't sleep. It is invading her life and driving her crazy.
6. Al Notz (Molalla) – Mr. Notz shared photos of traditional farms near his home and compared them to the marijuana compound that is being developed. The marijuana operation is 300,000 square feet of concrete on prime farmland. It looks like an industrial complex. This is total destruction and disrespect for our farmland.
7. Karen Fernandes (Eagle Creek) – She is in favor of the proposed ordinance. She has to use an inhaler because of her allergies to the marijuana and the fact that it is right next to her back yard now.
8. Will Martin (Beavercreek) – Mr. Martin lives on Beavercreek Road near Clarkes school. There are seven marijuana grow sites within a mile and a half of his house and the school. There are 17 greenhouses going

up on one of them. He has people coming onto his property illegally because of these grow sites. This is not the environment he wants to raise his kids around.

9. Lowell Gillespie (Oregon City) – Mr. Gillespie is concerned that his property taxes are going to change.
10. Charlie Christianson (Oregon City) – Mr. Christianson lives across from Barton Park on Eaden Rd. He grows grass hay and makes barely enough to pay his taxes. He wouldn't want the County to restrict his ability to grow marijuana if he chose to do so. He did an internship at the facility on 362nd in Boring and did not see any impacts. Everyone got along really well.
11. Jason Beaver (Estacada) – Mr. Beaver is a cannabis compliance specialist. He assured the Planning Commission that no matter what ZDO-271 tries to change and/or fix, there will be a way around it. His clients would circumvent the ordinance by splitting into LLCs. The amount of land actually being used to grow marijuana in the County is miniscule in the grand scheme of things.
12. Patrick Puller (Estacada) – Mr. Puller owns several parcels in the County and has been working on developing them all with marijuana operations. He has worked with the CPOs and done clean-ups on the sites. He has been working with the County to make sure things are done right. He is determined to be a good neighbor, but odors are just a part of any farming operation.
13. Loren Miller (Aurora) – There are four new pole buildings going up on a nearby property that is good farmland. Marijuana produces no nutritional value. The only reason that marijuana was legalized in the State of Oregon was because of the votes in Multnomah and Lane Counties.
14. David Tate (Canby) – Mr. Tate lives on a farm on Macksburg Road. He would like to encourage the least restrictive zoning so that future farmers have the opportunity to stay on their land.
15. Jolene Koch (Molalla) – Ms. Koch also lives on Macksburg Rd. on a dairy farm. There is an ongoing concern for her between State law and Federal law. She feels that there needs to be controls and limits to marijuana farming just as there are for dairy farming and other types of farming.

Commissioner Pasko closed the public testimony portion of the hearing and opened deliberations.

The Planning Commission discussed splitting the proposal into two pieces: the clarification language and the amendments. Commissioner Phillips moved to approve the clarification language as presented in the staff report. Commissioner Lopes seconded the motion. *Ayes=7; Nays=0. Motion passes.*

Commissioner Lopes feels that limiting by acreage gives a better handle on the limitations.

Commissioner Phillips thinks that it makes sense to apply some limitations. It makes sense to do it based on the number of acres per tract, the question is how many.

Commissioner Wilson would like to restrict the number per tract. It would be less cumbersome to administer and also more restrictive.

Commissioner Murphy asked if we could consider applying a 100 foot barrier around each tract. Glen and Jennifer said that was outside of what we have provided notice for.

Commissioner Peterson agrees that there should be a way to regulate and it seems counterintuitive to our agricultural land use laws to have these concrete slabs going on valuable farmlands. He is also concerned about the amount of energy usage on these operations. However, this seems like it is more of an OLCC and State Legislature issue than one for the County.

Commissioner Schroedl pointed out the importance of trying to balance the rights of the land owners vs. the unintended consequences. He is in favor of restrictions, but is looking for some sort of formulaic solution.

Commissioner Pasko pointed out that it was never the County's intent to have all of these licenses in one area. He feels that limiting by acreage is a more fair way to do it.

Commissioner Phillips is concerned not only with the property owner's rights, but with the impacts to neighbors as well. There needs to be a cap so that the agricultural feel of the property is not lost.

Commissioner Lopes suggested a 10-acre minimum.

Commissioner Phillips moved to update the proposed amendments to limit a tract in the AG/F, EFU, or TBR Districts to only one premises licensed by the OLCC for marijuana production or one grow site registered by the OHA, with the following exception: a tract that is larger than five acres may have one additional licensed premises or registered grow site for every additional five acres of area, but a tract may have no more than five total premises and grow sites. Commissioner Schroedl seconded the motion.

After further discussion, Commissioner Phillips amended her motion to allow for one premises/grow site per full 10 acres, rather than per five acres, but still with a maximum of five premises/grow sites per tract. Commissioner Schroedl seconded the motion. *Ayes=5 (Phillips, Schroedl, Lopes, Pasko, Murphy); Nays=2 (Peterson, Wilson). Motion passes.*

There being no further business, the meeting was adjourned at 9:40 p.m.