

PLANNING COMMISSION MEETING

January 15, 2020

Crook County Planning Commission Chairperson Michael Warren II called the meeting to order at 6:00 p.m. Commissioners present in addition to Warren were Susan Hermreck, George Ponte, Bob Lundquist, Gary Bedortha, and Commissioner Pro Tem Lawrence Weberg. Commissioners Laquita Stec and Linda Manning were not present.

Crook County Planning staff present were Planner Katie McDonald and Technician Hannah Elliott. County Counsel Eric Blaine was also present.

Warren led all persons present in saying the Pledge of Allegiance.

Warren asked the Commissioners present to identify themselves to the audience.

APPROVAL OF MINUTES

No minutes were available for review.

PUBLIC HEARING

Continuation of hearing on Conditional Use – Commercial Activity in Conjunction with Farm Use (Processing Facility) – Stanley Shepard (owner) and Central Oregon Processing LLC, Successor to Evergreen State Holdings, LLC, and (applicant) – Record Number 217-19-000987-PLNG – is requesting a conditional use permit to construct and operate a commercial outdoor processing facility in conjunction with farm use. Commercial activities including processing farm crops are allowed as conditional uses under Crook County Code 18.16 (EFU-3 [Powell Butte Area]), 18.180.010 (Transportation Impact Analysis), and 18.160 (Conditional Uses). The property is identified as Township 14 S Range 14 EWM, tax lot 1400.

Warren read the opening statements. He called upon the Planning Commissioners to state any conflicts of interest, or ex parte contacts. He asked if any member of the public wished to challenge any Commissioner on the item on the agenda.

Conflicts – Bedortha indicated that he had been represented by the applicants' law firm, but that it would not affect his judgement.

Ex-Parte Contacts – Lundquist indicated that he had spoken with his neighbors about the hearing process, and had talked to Planning Director Ann Beier about Swindell's invitation to meet with the Mayor of Grass Valley. He said that Beier had neither encouraged nor discouraged him from doing so, and he had met with the Mayor. He said that he had visited BFF, an extraction company in Madras, and had read an article in the *Central Oregonian* newspaper about the item on the agenda. He said that he had talked to the Oregon Department of Agriculture about the item on the agenda. He said that he had made these contacts for the purpose of educating himself.

Weberg said that he had talked to the Mayor of Grass Valley, and to Planning Director Ann Beier about the item on the agenda.

Blaine was asked to answer procedural questions. He said that the Oregon Revised Statutes (ORS) indicate that ex-parte contacts do not prohibit an item from being heard, provided the contacts are recorded, and the public is informed and given the right of rebuttal. He said that the hearing was being held for the purpose of deliberation, and that parties can offer rebuttals.

Challenges – None.

Warren asked the applicants if they wished to comment on the ex-parte contacts.

Tammy McLeod, one of the applicants, indicated that she did not know about the contacts with the Mayor of Grass Valley

Blaine indicated that the record could be reopened for additional testimony and rebuttal, or that the Commissioners who had made ex-parte contacts could recuse themselves from the hearing.

Weberg said that he had understood that he could ask questions concerning the item on the agenda.

Blaine indicated that information received during ex-parte contacts must be divulged.

Weberg said that he was willing to divulge the information.

Hermreck advised Weberg not to do so.

Weberg said that he had been asked by the appellants to make the ex-parte contacts.

Warren questioned whether Commissioners should do research on items under consideration. He said that should be done by the Planning staff.

Lundquist said that he had understood that he could gather information provided he did not share it.

Blaine said that he disagreed with Lundquist. He said that evidence must be on the record, or Commissioners who had received it must recuse themselves.

Warren said that the record could be reopened only by a majority vote of the Commissioners present, in the event factual material had been received which had not been available previously. He said that, if the record was reopened, new issues could be raised.

Hermreck said that, if the record was reopened, the persons with whom ex-parte contacts had been made would have to be available to provide testimony.

McLeod asked if new evidence could be submitted if the record was reopened.

Blaine said that is required by the ORS. He said that the public has the right to rebut the substance of ex-parte communications. He said that the County's rules did not contemplate the present circumstances. He said that it was uncertain whether new evidence could be received.

Bedortha asked if the hearing could move forward. He said that the decision of the majority of the Commissioners would not be affected by the circumstances.

Blaine said that the votes of the two Commissioners who had received information from ex-parte contacts might be decide whether the application was approved or denied, which would constitute an unfair procedure.

Warren said it could result in an appeal.

Lundquist said he had made ex-parte contacts for his own education. He said that he had been invited by Swindell to meet with the Mayor of Grass Valley. He said that the information he had received from BFF had not changed his mind. He said that his contacts with the Planning Director and the County Counsel had not been ex-parte. He said that he did not want to recuse himself. He said that he would not feel differently if the proposed facility was to be in any other location.

Warren asked Weberg and Lundquist if they would recuse themselves.

Weberg recused himself and left the meeting.

Lundquist declined to recuse himself.

Blaine said the Commissioners could ask the participants if they were willing to move forward with the hearing, without reopening the record.

Warren asked McLeod if she was willing to do that.

McLeod said that she wanted to continue the hearing without new evidence being introduced. She said she did not want to set up any procedural errors. She said she wanted the issue to be decided on its merits.

Bedortha asked if Commissioners could give evidence as participants, rather than as Commissioners.

Blaine said a Commissioner could reveal a conversation as a Commissioner.

Hermreck said that evidence given as a Commissioner would be weighted. She said Commissioners should provide evidence as participants.

Blaine said that, in that case, the Commissioner would have to recuse himself.

Lundquist said that he would like to give background on the issue.

Warren said that Lundquist could be permitted to give the evidence he had received, and the applicant and/or opponents could be permitted to rebut it.

Blaine suggested that the record be reopened.

Warren said that a motion would be needed to reopen the record.

No motion was presented.

Blaine said that the Commissioners could go forward with deliberations, and proceed with a decision. He said that if Lundquist was outvoted on the decision, the issue would be moot. If Lundquist provided the deciding vote, it would constitute a violation of the right of due process.

Hermreck asked if the application could be forwarded to the County Court, which is the appellant body.

Blaine said that the Commission could do that.

Warren said that would not save any time. He said that they should go forward with the hearing.

Bedortha said that the hearing should be continued. He said that no ex-parte information should be received, and deliberations should be on the evidence presently available. He said that closure was needed.

Lundquist said that he had learned a lot about the issue, and he had done nothing wrong. He said that he wanted to participate in the deliberations.

Warren asked if any clarifications were needed.

Hermreck referred to Page 5 of the staff report, describing hours of operation. She said that the hours of operation were listed as 10 hours per day.

Bedortha said that the hours were proposed to be from 6:00 a.m. to 7:00 p.m.

Hermreck asked the reason for the change.

McDonald said that the applicants' Burden of Proof Statement said that more time might be needed for activities such as cleaning. She said that listing the hours would make the limits more enforceable. She said that the 10 hour shift would fall within the time period.

Hermreck said that she did not want conditions placed on agricultural operations. She said that agricultural production is seasonal, and there is a potential for operations during twelve months and twenty hours per day. She suggested that two 10 hour shifts be permitted.

Ponte moved to continue the deliberations, and Hermreck seconded.

Warren said that a motion to approve or disapprove was needed.

Ponte withdrew the motion, and then moved for approval.

Hermreck seconded that motion.

Bedortha asked if the last staff report was being used. He said that the original staff report should be included.

Warren said that was the case. He said there was a question on the necessary permits.

On Condition 1, Hermreck said that the Commission was not qualified to decide on fire prevention measures. She said that the relevant authorities should be involved.

Lundquist said that the DEQ should be involved. He said that reasons why the application should not be approved were not being covered.

Bedortha said the Commission should make sure that all of the conditions were addressed.

Hermreck said that some things were out of the purview of the Commission. She said that the Roadmaster should be involved.

Lundquist said that the FDA should be involved, because food grade material is to be produced.

Hermreck commented that the participation of the Roadmaster was covered in Section 11.

Warren said that Condition 2 requires that the facility conform to the submitted site plan. He said that condition was all right as is.

Warren said that Condition 3 requires notice to the Commission if the footprint is increased by more than 10 percent. The Commissioners discussed this.

Hermreck said that an increase of 10 percent is reasonable, but a greater increase should be reviewed by the Commission.

The Commissioners agreed that an increase of 11 percent or more should be reviewed by the Commission, but that staff should deal with a lesser increase.

Lundquist said that any change in characteristics should go to the Commission.

Warren referred to Condition 5, dealing with changes in ownership.

Hermreck said that the conditional use permit should expire with any change in ownership.

McDonald said that the condition requires that the conditional use permit is not transferable.

Warren said that Condition 6 requires that the applicants bring in a Certificate for Processing from the state Department of Agriculture.

Ponte pointed out that Condition 7 requires approval from all required authorities.

Warren said that Condition 8 deals with hours of operation.

Bedortha said that he does not want to list hours of operation for agricultural operations. He said that 10 hour days should be required, with cleaning on weekends.

Hermreck said that operations should be restricted to five days per week, with cleaning on weekends.

The Commissioners discussed the issue. It was proposed that operating hours be increased to 13 hours per day.

Lundquist said that this is a compliance issue. He said that operations should be limited to 10 hours per day, five days per week.

Ponte said that flexibility should be allowed.

The Commissioners agreed that operations should be limited to 10 hours per day between 6:00 a.m. and 6:00 p.m., Monday through Friday.

Warren said that Condition 9 requires that lighting be downcast and shielded.

Warren said that Condition 10 prohibits living in RVs or travel trailers on the property.

He said that Condition 11 requires that secondary access be from Cornett Loop.

Bedortha asked if night use of the driveway can be limited.

Lundquist said that darkness should be a condition.

Bedortha said that the east access should be used at night, and that night use of the secondary access should be permitted if use of that access is permitted by the Roadmaster.

Hermreck said that access should be left the way it is written.

Warren said that Condition 12 requires a 75 foot setback at all property boundaries.

Warren said that Condition 13 requires that employee parking be on the west side.

Warren said that Condition 14 requires that office space be shared, and that there be no new structures.

He said that Condition 15 requires that equipment be approved by Crook County Fire and Rescue.

Hermreck commented that this is covered by Condition 1.

Warren said that Condition 16 requires a lock box for Fire and Rescue access.

Warren said that Condition 17 deals with traffic.

Ponte asked if traffic concerns had been adequately addressed. He asked how many semitrailer trucks would access the site per day.

Warren said that there will be a maximum of one per day, with a maximum of seven per week.

Lundquist said that delivery times should be limited to 10:00 a.m. to 2:00 p.m.

Ponte said that the applicants should be required to coordinate with the school district to avoid conflicts with school buses.

Bedortha concurred that there should be coordination with the school district, with 15 minutes on either side. He pointed out that hay trucks are not restricted at all. He said that no deliveries should be permitted except between 6:00 a.m. and 6:00 p.m.

Lundquist said that deliveries should be within daylight hours only.

Hermreck pointed out that the proposed use will not be the only operation on the property. She said that haulouts should be limited to operating hours.

Lundquist said that the application should be denied. He said that Swindell had said that the operation could be conducted without a permit, if 25 percent of the product processed is grown on the property or on contiguous properties. Lundquist questioned who is the applicant, and who is the agent. He said that a year round operation belongs in an industrial zone, where containment

basins are required for fuel. He said that plenty of industrial land is available. He said that the Code must be followed.

Warren said that an outright use would be worse for neighboring property owners, as no restrictions could be imposed.

Hermreck concurred with Warren.

Warren called for a motion to approve, with the modified conditions.

Ponte moved for approval, with the conditional use requirements and modifications, and with the staff report to be edited to conform to the approval.

Hermreck seconded.

The Commissioners present approved the motion by a vote of 4-1. Lundquist cast the dissenting vote.

McDonald said that the final decision would be emailed to the Commissioners.

Hermreck moved for adjournment.

Warren adjourned the meeting at 8:05 p.m.

Amended from March 11, 2020 Planning Commission Meeting:

The Planning Commissioners would like to have it noted that the written minutes be supplemented with the audio recording for a clearer understanding of what transpired at the meeting.

This was voted and approved: 4 yes and 2 abstaining

The audio recording of the January 15, 2020 meeting is available at the Crook County Community Development Office.