

CROOK COUNTY PLANNING COMMISSION MEETING

June 10, 2020

Meeting minutes are not a complete representation of the discussion at the meeting. An audio recording is available from Crook County Community Development at plan@co.crook.or.us or (541) 447-3211.

Crook County Planning Commission Chairperson Michael Warren II called the meeting to order at 6:05 p.m. The meeting was conducted by WebEx, a call-in service. Commissioners attending the meeting at the Crook County Annex were Chair Warren, George Ponte, Laquita Stec, Linda Manning, Susan Hermreck and Bob Lundquist. Commissioner Gary Bedortha was not present. The following County staff were present at the meeting: Ann Beier, Hannah Elliott, Katie McDonald and Assistant County Counsel John Eisler.

Joe Bessman, Transight Consulting participated by phone on behalf of the applicant. No other parties participated by phone.

Chair Warren opened the meeting.

APPROVAL OF MINUTES

May 27, 2020 – Commissioner Hermreck made a motion to approve the minutes as presented and complimented Katie McDonald for the thorough job. Commissioner Stec seconded the motion. The motion was approved 5-0 with Commissioner Ponte abstaining since he was not present at the May 27 meeting.

Crook County File Number 217-20-000371-PLNG – Conditional Use request to construct a 40,000[/] structure with an area for operating a commercial activity in conjunction with an existing farm use (hemp production). Commercial Activities including the processing of farm crops are allowed as conditional uses under Crook County Code 18.16 (Exclusive Farm Use Zone EFU-3 (Powell Butte Area)), 18.160 (Conditional Uses), and 18.180.010 (Transportation Impact Analysis). The property is identified as Township 15 S, Range 15 E WM, Section 19, tax lot 400; 5205 SW Parrish Lane, Powell Butte.

Commissioner Warren asked if any of the Planning Commission members had a conflict of interest. The members responded that they had no conflicts. The Chair noted that he and Commissioners Stec, Hermreck and Lundquist had attended a site visit earlier in the day. The Chair then asked if anyone had any ex parte contact with the Applicant or any member of the public. The Planning Commission members responded that they had no ex parte contact with the Applicant. Commissioner Lundquist stated that he had been contacted by a neighboring property owner (Mark Mallott) who asked whether written testimony or testimony at the public hearing was most effective. Commissioner Lundquist said that he suggested that verbal testimony was always more helpful but had no other contacts. The Chair asked if any member of the public, including those participating by phone, wished to challenge any member of the Commission. Staff unmuted the phone. No one at the hearing or on the phone raised a challenge. Staff then muted all phone lines.

Katie McDonald, County Planner, described the request and outlined the provisions for a conditional use in conjunction with farm use. She stated that the applicant has the burden of proof in demonstrating that they

met the required criteria. She stated that the Applicant had provided a detailed traffic analysis and other background information to support their application. She mentioned that Community Development staff, including the building department, have been working with the Applicant on different aspects of the project.

Commissioner Lundquist stated that he had read the staff report and found that it was not unbiased. McDonald reminded the Commissioner that the burden is on the Applicant to demonstrate that they meet the criteria and the staff report reflects the Applicant's responses. Staff provides information to support the Applicant's responses or to point out that additional information is needed from the Applicant to meet criteria.

Commissioner Ponte asked a question about extraction on the property.

McDonald stated that the extraction facility had been approved as a site plan review in an earlier decision under the provisions of 18.16.015(1).

Commissioner Ponte then stated that the Planning Commission was just focusing on the current application – not existing uses. Chair Warren confirmed this.

Commissioner Hermreck acknowledged that the Commissioners had just received Exhibit 6. She stated that she also hated to see building on good farm ground but mentioned that the local ordinance doesn't limit the footprint of structures in the EFU zone. She questioned some of the issues raised in exhibit 6 (issues of ownership and road access). She stated that there were issues that staff would need to review and address.

Commissioner Stec had no questions for staff but also stated that they had just received Exhibit 6 and hadn't had time to review it.

Commissioner Manning and Commissioner Lundquist also stated that they would have liked to receive Exhibit 6 earlier. Commissioner Lundquist suggested that the Commission needed time to review and research the issues raised in the document.

Commissioner Warren asked if there were other questions for staff. Hearing none, he asked for comments from state and local agencies. There were no agency representatives present or on the phone.

Chair Warren then called on the Applicant.

Greg Blackmore, Blackmore Planning, spoke on behalf of the Applicant. He stated that it was not uncommon to receive material at the last minute and requested that the record remain open to address issues raised in the new exhibits. He introduced other Lazarus representatives – Rhonda Ahern, Evan Skandalis, Shawn Klaus and Joe Bessman on the phone. Evan Skandalis, the vice president for farm operations for Lazarus, described the plans for the building including packaging of finished products, storage of equipment and storage of hemp.

Commissioner Lundquist stated that, based on the site map, there is currently a 3600[/] building for processing (extraction) and 6000+{/} in the proposed new structure for processing. He asked what the remaining square footage in the proposed building would be used for. He stated that a building that large would be an eyesore for the neighbors and asked why they needed all the space. He questioned how many acres were in production on the site.

Skandalis stated that the building was sized in anticipation of future use. The main use will be for raw material storage for hemp and storage for other materials (hemp seed oil and packaging materials). He mentioned the need for cold storage to better preserve the hemp crop. He said they are trying to anticipate future demand but may not need the entire space and mentioned that they don't intend to bring in material from off site.

Commissioners Ponte, Stec and Manning had no questions.

Commissioner Hermreck asked about the building height and whether or not the Applicants would consider a larger setback from the Mallott's property lines. Skandalis responded that the structure would be less than 30' high and that they could consider a setback greater than the 20' setback required for accessory structures in EFU zones.

Commissioner Lundquist raised questions about the transportation analysis. He asked if the 3-10 trips/day was for employees only – was it for new employees or all employees? Did the analysis include deliveries to and from the new structure? He was concerned about impacts to the intersection of Parrish and Highway 126. He thought the number of loading bays for trucks seemed excessive.

Skandalis addressed the 6000['] of building space for processing and said that square footage for that activity is not set in stone. He said that the site plan accurately reflected the location of that area (in the corner of the building).

Commissioner Manning stated that she understood that product from the property would be processed on site and asked if the Applicant intended to expand by buying/leasing additional property.

Commissioner Ponte asked if the additional trips were due to additional employees or if it included pick-ups and deliveries as well.

Joe Bessman, Transight Consulting answered via phone. He said that the traffic analysis was based on a trip generation model. The activity that was modeled was traffic associated with manufacturing and warehousing from the Institute of Traffic Engineering model. The warehousing model is not specific to agricultural uses but reflects urban type manufacturing/warehousing activities and may provide an overstatement of trips. The trips are based on the square footage of the building and the estimate is an addition of daily trips with 11 additional peak hour pm trips. While it is a worst-case scenario for traffic, it is less than the number of trips that would require a traffic impact analysis. He stated that traffic should not impact the Parrish Lane Intersection. (Staff stated that they would review the 2017 County Transportation System Plan to determine if that intersection had been identified for improvements).

Commissioner Lundquist asked if the traffic analysis looked at accidents at the intersection of Highway 126 and Parrish Lane. Joe Bessman responded that he looked at the most recent data from the Oregon Department of Transportation. Data was from 2013-2017. Commissioner Lundquist asked why there isn't more recent data. Bessman responded that ODOT had to review accident reports from local departments (e.g., Crook County Sheriff's Department) in compiling accident data and that information was not yet available.

Commissioner Hermreck pointed out the page 10 of the staff report stated that the transportation assessment was based on warehousing standards and that no retail sales were proposed on the site.

Greg Blackmore directed commissioners to page 44 of the comprehensive plan regarding commercial farming operations. He stated that the building was designed to accommodate future growth (e.g., the provision of seven truck bays).

He stated that the County code allows the proposed use. Criteria to consider include whether the proposed use would cause a significant change in area farming costs or practices. He said that the proposed use is compatible with neighboring uses and the parcels size was suitable. He stated that the proposed use would not alter character of surrounding uses. He mentioned that public services are adequate to serve the proposed use. The Applicant is working with the County Sanitarian on wastewater and has worked with Crook County Fire and Rescue.

Mr. Blackmore stated that packaging activity is a commercial use in conjunction with agriculture, not an industrial use. He suggested that the proposed use was consistent with packaging of other agricultural products (e.g., lavender farms, the Bend distillery, vineyards).

Chair Warren asked if the transportation analysis was based on a 365-day/year count. If so, did it over-estimate traffic volume? Is some of the traffic seasonal?

Commissioner Lundquist stated that he has seen many changes on the subject property. He asked how many acres have been taken out of production to date? How many additional acres would be lost due to construction of the new structure?

Skandalis referred to the Central Oregon Irrigation District report. That showed that irrigated acreage (73.8 irrigation water rights on the property). He stated that the Applicant has done instream leases to account for the development associated with the greenhouses. He agreed to provide an exhibit to address Commissioner Lundquist's question regarding acreage taken out of production to date and with the addition of the proposed structure.

Commissioner Stec asked if we would be having a similar discussion if an applicant proposed a 40,000[/] building to process alfalfa pellets.

Commissioner Hermreck said that she estimated that approximately 9.5 acres had been taken out of production. She shares the concern about losing agricultural ground but stated that the building footprint meets the basic criteria in the code. She agrees with Commissioner Stec that hemp is recognized as an agricultural crop and should be treated in the same manner as other agricultural activities.

Commissioner Manning stated that it was her understanding that the 40,000[/] building would be used for farm products and would support agricultural activities in the area.

Chair Warren stated that it appeared that the Applicant is planning for the future and requesting capacity now.

Skandalis responded that the building is in pre-design and is a work in progress as they anticipate future business models. He stated that cold storage space in the structure was required to preserve the crop prior to processing.

Commissioner Manning asked if the building would have fans operating. She was concerned about noise.

Evan responded that they want to use a more passive system.

The Chair asked if the Applicant has other testimony. None was offered.

Lisa Andrach spoke in opposition on behalf of neighboring property owners, the Holemans (across Parrish).

Andrach stated that neighbors questioned the intent of the proposal. They have watched development on the property and are concerned about the cumulative loss of productive land over the last 2 years. She stated that the Oregon Supreme Court and appellate courts have issued decisions regarding the standard of “commercial use in conjunction with farm use” and concerns about urban development on rural lands. She stated that her memo pointed out a number of criteria that the Applicant has not addressed.

She stated that there was nothing concrete about the proposal. Was the 6000 square feet used for processing? She stated that it wasn't for processing a farm crop but that the packaging really constituted manufacturing. She asked whether the applicant actually grows 25% of the crop processed on site. She questioned the definition of processing and suggested that the proposed activities really constituted manufacturing.

Andrach stated that while hemp is a farm crop, the CBD oil is not a farm crop. She stated that the Courts had not allowed this secondary activity as a commercial activity in conjunction with farm use. She went on to state that there is no nexus between the proposed use and the local agricultural community. She mentioned that several hemp processing facilities already exist in Prineville, in an urban area.

She had questions about the process. The applicants did not submit a plan. What waste would be generated? What about water use and wastewater?

She questioned the transportation analysis. Did it account for deliveries? Would CBD oil from other sites be brought to the location? What about final products leaving the property? Did the analysis include shipments of packaging materials? What size of trucks would typically make deliveries or pick up finished products? She questioned the number of truck bays. She wanted to know more about impacts on the County road system and whether or not the intersection of Parrish Lane and Highway 126 was projected to fail.

She raised a number of issues regarding impacts of the proposed facility. She stated that there was no evidence that the building/use will enhance the local farming economy. She raised concerns about crime because there were valuable crops being grown on the property. She asked how the Applicant was addressing fire concerns and whether or not they had developed a waste management plan. Neighbors are concerned about draw down of their well and the impact of the facility of groundwater.

Andrach asked about the ownership and operation of the property. She stated that the applicant lives in Seattle. Ownership is in a corporate name. She cautioned the Planning Commission about making a decision contradicting state law.

Chair Warren asked Commissioners if they had questions of Ms. Andrach. Commissioner Lundquist asked about the ownership issues. Commissioner Ponte asked for legal definitions of processing and manufacturing. Ms.

Andrach stated that she would provide definitions. Commissioner Hermreck had no questions. Commissioner Stec stated that the definitions of processing and manufacturing would be helpful. Commissioner Manning had no questions. Chair Warren asked if the staff report addressed the ownership question.

Arleen Curths spoke in opposition. She stated that she seconded Lisa Andrach's comments. She has lived in Powell Butte for over 20 years and stated that State law required EFU ground to be maintained for farm use and that manufacturing should be done on industrial land. She questioned the size of the structure and stated that the applicant's responses were vague. She asked how much product would actually come from off-site. She was concerned about the number of truck bays. She suggested that accident data from the Sherriff's Department could provide more recent information on the intersection of Parrish and highway 126. She was concerned that the traffic information did not considered projected increase in traffic on Highway 126. She again asked what the applicant was planning. Was it a manufacturing/bottling plant? She was also concerned about the ownership of the property. She wants to know and trust her neighbors. Chair Warren asked where she lived, and she replied in the Red Cloud Ranch subdivision.

Chair Warren asked for rebuttal. Greg Blackmore stated that the issues are complex, and they heard the issues for the first time this evening. He requested that the record be kept open. The Chair asked if Commissioners had questions. Commissioner Hermreck suggested a continuance of the hearing and requested that staff and County Counsel review legal issues and recent Court cases regarding the OAR's definition of industrial hemp, the definition of processing and extraction and manufacturing. Commissioner Stec also requested clarification regarding processing of industrial hemp. Commissioners Lundquist, Manning and Ponte had no additional questions.

Commissioner Hermreck moved to continue the public hearing to a time and date certain (July 8, 2020 at 6 p.m.) and asked staff to respond to issues raised in Exhibit 6. Commissioner Stec seconded. Chair Warren called for a vote. Commissioners approved the decision to continue the hearing on a vote of 6-0. The meeting was then adjourned.