

COLUMBIA COUNTY BOARD OF COMMISSIONERS
BOARD MEETING

MINUTES

January 25, 2017

The Columbia County Board of Commissioners met in scheduled session with Commissioner Henry Heimuller, Commissioner Margaret Magruder and Commissioner Alex Tardif, together with Robin McIntyre, Assistant County Counsel and Jan Greenhalgh, Board Office Administrator.

Commissioner Heimuller called the meeting to order and led the flag salute.

MINUTES:

Commissioner Magruder moved and Commissioner Tardif seconded to approve the minutes of the January 18, 2017 Board meeting and January 18, 2017 Staff meeting. The motion carried unanimously.

VISITOR COMMENTS:

None.

HEARING: APPEAL BY CHRISTOPHER ARTHUR ON DENIAL OF VARIANCE:

This is the time set for the public hearing, "In the Matter of the Application Submitted by Christopher Arthur for a Variance V 17-02 and MO 17-01 to Setbacks for an Indoor Marijuana Grow Operation in the Rural Residential RR-5 Zone on Turley Road in Warren, Oregon".

Robin reviewed the hearing procedure. The Planning Commission held a public hearing on this matter and denied the application. Mr. Arthur then appealed that decision, which is what the Board will be hearing today. The Board declared no ex parte contact or conflicts of interest. Robin then read the pre-hearing statement into the record which is required by ORS. Robin entered County Counsel's hearing filing into the record, as **Exhibit "1"**, which includes a list of all contents received to date. In addition, a letter from Rod Myers, dated 1.18.17, was entered into the record and marked **Exhibit "2"**.

Deb Jacobs, LDS Planner, came before the Board to give the staff report. As stated, the Planning Commission held a public hearing on this matter and denied the application, which was appealed by the applicant. Deb gave a brief review of this application and went through the applicable criteria. It was determined that there is room on the property to house a building for this operation, but the existing building does not meet the criteria. Based on the findings, it is found it would be detrimental to public safety, health, and/or welfare. Strict criteria of the zoning ordinance would cause hardship for the applicant. Staff is recommending that the Board deny the appeal and the application.

The hearing was opened for public testimony.

PROPONENTS:

Ross Day, attorney for the applicant, Christopher Arthur. Mr. Day noted that today is the first day he has seen the new staff report and would request time to review and respond. That said, he began his testimony. To address staff's report on detrimental impacts- one allegation was no source of water. As the applicant had stated under declaration of penalty under perjury, they will be trucking in water and not using Warren Water. Water rights have not been drafted. The next allegation is waste water, but there is no waste water. This is no different than growing any other plant (botanically). As for traffic impacts, this is a grow site, not a dispensary so there will be no additional traffic. Regarding the issue of odor, the applicant had submitted a letter explaining the improvements to the building to contain two carbon filters that will filter the entire building in 20 minutes of any odors. Ross noted that the applicant doesn't have to eliminate detrimental impacts, only reduce those impacts. To elaborate on this issue, until the buds bloom, there is no smell, and you want to harvest as soon as possible, within 8-12 hours when the oils are at the surface of the bud. The smell has to get through all of the carbon filters and the thick walls of the grow building. As far as noise is concerned, again, reading from the applicant's submission to the Planning Commission, the sound registered at 40 decibels with all equipment running, however the equipment does not run all day, only when it needs to. A truck driving by registers at 70 decibels. The point is, there are no noise impacts. The evidence in the record demonstrated at what lengths the applicant has gone to to address and minimize any impacts. He also noted that the building is currently sited on the most topographically flat area on the property. Finally, the hardship issue. Staff implied that the application should be denied because the applicant moved forward with the operation, without obtaining the appropriate approvals. After meeting with the planning department, the applicant sought advice from an attorney, who told the applicant to move forward with the operation that Columbia County was absolutely wrong. The hardship was not self imposed. The hardship is not the money already invested into the building, it is that the applicant is being told to move the building over 20 feet, remove fruit trees, etc. The purpose of the variance is to minimize impacts. The long and short is that if this were any other plants; i.e. mushrooms, garlic, etc., it would be very pungent and all impacts would be the same. Ross believes that all impacts have been addressed and minimized.

Commissioner Tardif asked how many plants were grown in that building and the economic benefits for the applicant. Ross - there are 24 mature cannabis plants, noting that clones or starters are not counted as a plant. Commissioner Tardif asked what would a mature plant go for at market? Ross was unable to answer the question but will try to get an answer to the Board.

Commissioner Magruder asked if the building was built by the applicant? Ross - no, it was an existing building. Did the applicant look elsewhere for a building that would meet the criteria? Ross explained that the applicant could not find anything else on the market that met the criteria. Does he have a water contract? No, not at this time. He does not have a grow going at this time.

How about deliveries to the site, will it increase traffic. Ross, no it will not. They go out on their own to purchase soil, or supplies.

Commissioner Heimuller asked if the applicants live on the site? Yes. Does the applicant see patients at the site. No, not at the property. Commissioner Heimuller stated that, in doing the math, he comes up with 47 feet that the building would have to be moved. Ross believes it would only end up being 20 feet.

OPPONENTS:

Frank Adams, 56405 Woods Court, Warren: Frank submitted his written testimony into the record, marked **Exhibit "3"**. He is one of the "irrational" neighbors that hears, smells and sees things. The existing building was an agricultural building with only 3 sides. Not a single permit was issued for the improvements made to make this a full commercial building. Once the illegal grow operation was discovered, it was cleaned out. Then the applicant filed for a variance to the setbacks. Criteria 1,2,3 were all self inflicted but the applicant moved forward when told to cease. He believes that the applicant cannot meet the setback requirements and would ask that the Board uphold denial of this application.

Frank then submitted a letter from Frances Martin, entered into the record and marked **Exhibit "4"**.

Rod Myers, 56484 Turley Road, Warren: He lives directly across the street from this operation. He went over the letter he submitted earlier. *"I testified before the Planning Commission about all my observations over the past year concerning the production of marijuana in Columbia County. In all the meetings and hearings he has attended, there has been one constant from the County - If an applicant has followed all of the ordinances and laws from Columbia County and the State of Oregon, then the application could have been approved. What makes this applicant so different, is that they have ignored everybody and everything and in the process has thumbed their nose at Columbia County and all of its residents. For the benefit of all Commissioners, the following is a brief synopsis/timeline of their actions:*

February: PUD installs new transformers and meter bases for the grow building.

March: Continued work on out buildings, pre-application meeting with planning staff 3.31.16.

April - June: Continuation of building conversion; electrical, mechanical, and building improvements. Planting illegal marijuana crop begins.

July - August: Columbia County issues a cease and desist letter on July 11, 2016, applicant's attorney meets with county and given an extension until September.

September: Illegal crop harvested on September 2nd and 3rd; on site meeting inspection by the Planning Department on 9.6.16.

October - November: The Planning Commission hearings on V17-02; Final Order issued November 17, 2016 to deny the request for a variance. I have had to put up with the odor, noise and safety issues I noted in previous testimony as well as additional

suspicious activity coming from the property. So again, I have to ask the question, "what makes this applicant so special?". Is it the applicant himself? his landlord? The laws and ordinances of the County were put here for a reason. The applicant had all the information he needed to proceed properly. He ignored them! Now he wants you, the Commissioners, to bail him out. He's not asking for a variance of 2 or 3 feet to meet the 55 foot setback requirement. He is asking for you to make a 47 foot exception. The applicant is asking you to forgive his ignorance of the law because it is creating a self-inflicted financial hardship. That is not our problem! And lastly, the subject property is a sub-standard RR-5 lot at 1.58 acres. Marijuana grow operations are not allowed on RR-2 zoned property for a reason, it is too close to other residences. Commissioners - the county has a very qualified Planning Department which has researched and investigated this application thoroughly. Please listen to them! The Planning Department has recommended denial and your Planning Commission voted unanimously to deny the variance application. The Scappoose-Spitzenberg CPAC has also voted unanimously to recommend denial. With that, Rod is requesting that the Board deny this application as well.

Greg Hanson, 56410 Woods Court, Warren: He supports the Planning Commission's unanimous decision to deny this application. He has built a lot of buildings on his property with the same type of topography with no problems. He sees no hardship to the applicant. He urged the Board to deny this application.

Rich Bailey, 61132 Bargar Road: He has some experience in building and he has heard a lot of testimony from the applicant's attorney that they can't move the building - well they can! As for noise, the compressor going 24-7 creates much more noise than a truck driving by. As for traffic, if they are having water trucked in, how much more traffic is that going to create. Also, kids will be waiting for the bus right there. Deny it!

Terry Reusser, 56425 Woods Court, Warren: There are 20 residential properties from the site that are down wind of the operation. As for a one time harvest in an 8 hour time frame, he doesn't agree that's going to be the case.

Michael Sheehan, 33126 Callahan Road, Scappoose: It's obvious this application does not comply with the requirements. If the Board approves this, it will be precedent setting. The Scappoose CPAC submitted a letter addressing their concerns and recommending denial.

REBUTTAL:

Ross Day responded. Again he asked for 14 days to review new testimony and the staff report. To answer some of the questions or allegation from the opposition, 1) Permits were issued for the electrical work. 2) What Arthur stated in his declaration was that the attorney advised him that the Columbia County planning code did not have the right to stop the grow operation. 3) It was not stated that marijuana only blooms for 8-12 hours. It

was said that you want to harvest it in the first 8-12 hours after the plant blooms. 4) There is no waste water. It is a plant just like any other, 5) The comment that Mr. Arthur should not be rewarded for violating the law. Yes, he made a mistake and made a poor choice, but has stopped his grow operation, They have not thumbed their noses at the county, They have been complying with the law.

Robin can address any changes to the staff report. Mr. Day has requested 14 days to review however we are up against the 150 day deadline. Mr. Day stated that he would waive the 150 day deadline to allow him time to review all new testimony.

Commissioner Tardif asked Ross questions on harvest times, water uses, topography of the property. What is the process? Ross stated that he is not an expert on marijuana, but after harvest you dry them, and trim them which could take up to a week. This process also happens in the grow building. The water came from Warren Water for the first grow/harvest. Ross indicated that they will no longer be using Warren Water for any further grows. Ross referred to the map to show how the property slopes down. The current set back on the front of the building is 70 ft and needs to be 80 ft.

Commissioner Magruder asked if the plan is to harvest every 3 months? Ross will have to get that information from the client to clarify that.

Commissioner Heimuller commented on a couple of things. First, he explained how it's taken a long time to build the marijuana ordinance. As a reminder, the County did not make the ordinance out of a vacuum. A lot of time has been spent visiting marijuana grow sites and grow buildings and are aware of the odor and mitigation. The bottom line, the county marijuana ordinance was developed for neighborhood protection, trying to keep communities livable, and to compensate for the law passed by the State of Oregon and Columbia County.

With no further testimony coming before the Board, the hearing was closed. After a brief discussion, Commissioner Magruder moved and Commissioner Tardif seconded to leave the record open for 14 days for the applicant's written rebuttal and carry over deliberations to February 8, 2017 at or after 10:00 a.m. The motion carried unanimously.

CONSENT AGENDA:

Commissioner Heimuller read the consent agenda in full. With no changes/additions, Commissioner Magruder moved and Commissioner Tardif seconded to approve the consent agenda as follows:

- (A) Ratify the Select to Pay for week of 1/23/17.

AGREEMENTS/CONTRACTS/AMENDMENTS:

- (B) Construction Contract with Hydro-Temp Mechanical for Courthouse Rooftop Chiller.

The motion carried unanimously.

COMMISSIONER HEIMULLER COMMENTS:

Commissioner Heimuller wanted to congratulate Kiera Single, our new Oregon State Dairy Princess. Kiera is the 5th State Dairy Princess Ambassador that has come from Columbia County.

He reported on the Highway 30 Safety Committee meeting. Discussion was held on the Millard Road project that is still up in the air - details to be worked out.

COMMISSIONER MAGRUDER COMMENTS:

Commissioner Magruder met with the Northwest Labor Council group. They provide a lot of programs to train our young people.

She attended AOC County College last week, which is always very informative.

This year is the 100 Year Anniversary of the Oregon State University Extension Service in Columbia County. The OSU Extension Service provides many programs for our youth, but also programs that assist folks in all walks of life. The OSU Extension Service website has a wealth of information.

COMMISSIONER TARDIF COMMENTS:

Commissioner Tardif also reported on his attendance at the AOC County College. He learned a lot about ethics, meeting law, etc.

There was no Executive Session held.

With nothing further coming before the Board, the meeting was adjourned.

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Dated at St. Helens, Oregon this 25th day of January, 2017.

NOTE: An audio CD of this meeting is available for purchase by the public or interested parties. A video of the meeting is also posted on our website at www.co.columbia.or.us

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: _____
Henry Heimuller, Chair

By: _____
Margaret Magruder, Commissioner

By: _____
Alex Tardif, Commissioner

By: _____
Jan Greenhalgh,
Board Office Administrator