

## MINUTES

Creswell Planning Commission  
Creswell City Hall Council Chambers -- 13 South First Street  
Creswell, Oregon  
February 26, 2015  
6:30pm

PRESENT: Blake Oelke, Chair; David Christopher, Robert Grand, Gary Ludeke, Lloyd Safley, and Dan Stockbarger, Commissioners; Madeline Phillips, Maia Hardy, Staff.  
ABSENT: Dennis Grice  
GUESTS: None.

Mr. Oelke called the meeting of the Creswell Planning Commission to order at 6:30pm.

### I. MINUTES OF December 16 , 2014

MOTION: Mr. Christopher motioned, Mr. Ludeke seconded to approve the minutes from December 16, 2014. The motion carried unanimously (6:0).

### II. AUDIENCE (Moved to public hearing)

### III. COMMISSIONER COMMENTS

Mr. Christopher thanked the Chronicle and Mr. Olson for the two articles published in the paper that addressed the topic of public safety.

### IV. OLD BUSINESS

None.

### V. NEW BUSINESS

#### Public Hearing PA-2015-01 Medical Marijuana Legislative Code Amendment

Mr. Oelke provided an introduction to the audience and Planning Commissioners regarding the procedures for a Legislative Hearing. The public hearing opened and members of the audience were invited to sign up to speak, if they desired.

Members of the Planning Commission were polled for actual or possible conflicts of interest. No Commissioners declared a conflict of interest.

#### The Public Hearing opened at 6:35

Ms. Phillips presented the Staff report, beginning with the timeline of procedures the city underwent to notify the public of PA-2015-01, which criteria apply with respect to the City's Comprehensive Plan, and how the application meets or could meet these criteria.

Ms. Phillips explained that the procedure is described in Section 4.1.500: Legislative Amendments to amend Chapter 18 of the Creswell Municipal Code. City Council and Planning Commission initiated an application in November 19, 2014. City Staff sent notice to DLCD on January 16, 2015. On February 5, 2015 Measure 56 Notice was sent to affected property owners to notify them of this Planning Commission public hearing with proposed amendments and maps. Subsequent notifications were posted to the city website and social media sites. On Feb 12<sup>th</sup> and 19<sup>th</sup> Notice of both Planning Commission and City Council public hearings were printed in the Creswell Chronicle. Noticed was placed in legal notices as well in the Register Guard. On Feb 18<sup>th</sup>, notice was sent to referral agencies.

Ms. Phillips informed the audience that the second evidentiary hearing would be held on March 9<sup>th</sup> at 7PM. City council will then consider the Planning Commission's recommendations. She further outlined the criteria relevant to this application:

- Consistency with Oregon Statewide Planning Goals,
- Consistency with Creswell's Comprehensive Plan, and that
- Property within affected area is provided services to support the use or development.

Ms. Phillips provided a summary of the Findings and Fact and addressed the decision-making criteria. In summary, the application meets Goals: 1 (Public Involvement) through public notice and holding several open work sessions and public hearings, Goal 2 (Land Use review) by establishing and following a land use planning process by presenting the factual basis for decision-making actions; and Goal 9 (Economy of the state) that by releasing the current moratorium, these amendments provide business diversification to exist harmoniously with other uses. The application is noted to be consistent with all applicable criteria as stated in the Findings of Fact, Exhibit A.

Mr. Christopher asked if Staff could explain what a Type III Land Use Review entails, for the record.

Ms. Phillips responded that a Type III Land Use Review is a quasi-judicial action that requires that an applicant presents set of criteria that must be adhered to. A Conditional Use Permit requirement implies that the use is not allowed outright, and must get Planning Commission approval. The applicant must pay a fee apply, go meet the applicable criteria, and receive approval from the Planning Commission to proceed. In this case, Planning Commission is developing criteria. Significant notice is required: notice would be sent to affected areas, and system impacts would be considered. For example, undue impact on transportation facilities would require an applicant to go through traffic study, and as a condition of approval an applicant may be required to improve the roadways, water system, or waste water system in order to mitigate impacts or provide compensation to improve systems.

Mr. Christopher noted, for clarity, that it's not "easy." Ms. Phillips affirmed this.

Seeing no additional questions for staff, Mr. Oelke invited those wishing to comment to approach the podium to comment. He invited individuals in the order in which they signed up.

Carol Louder ceded her time to Pat Miller; Jack Louder did the same.

Larry Duncan- 629 Mary Neil Lane. Mr. Duncan stated that he read the two Chronicle articles today. He used to work with enough people that used marijuana; he'd like for Creswell not to allow use of marijuana if we don't have to. He'd like to see Creswell not have a dispensary.

Sam Stats- Restricted address. Local Law enforcement. In his profession he has firsthand experience with the negative impacts of medical marijuana facilities characterized by multiple burglaries of dispensaries. He has seen property crime increase in the vicinity of these facilities, including at nearby local businesses. He does not believe that allowing dispensaries to open will create jobs, noting that dispensaries have limited staff, are often part time jobs, and tend to rely on family members so that owners don't have to pay benefits. Home invasion robberies where clientele start moving into the area, in some cases people have been shot. He stressed that the reward would not outweigh the risk, especially with extended response times.

Mr. Safley asked if the dispensaries Mr. Stats referred to have security systems? Mr. Stats replied that the examples he has knowledge of did not require security systems. Mr. Stats noted that burglars may use adjoining business to get in from next door to avoid security systems.

Ron Jansen- 400 N. Mill St. As a criminal investigator for navy he put 32 people away in Levenworth. He recounted his experience with a drug house in Portland. Foot traffic coming in and out is his primary concern – he is primarily concerned with the location of the proposed dispensary.

Ms. Phillips clarified that an application hasn't been submitted, but that the areas allowed are commercially- and industrially-zoned areas; Residentilly zoned areas are excluded by State law, nor 1000 ft. from a school.

Stan Buchy- 805 Queens Avenue. Mr. Buchy expressed discontent and concern over locating facilities up on Queens Avenue. His neighbors have 36 4-foot marijuana plants growing there now. He noted that it's not a nice thing to have your neighbor growing that much marijuana to smell the smell— like someone ran over a skunk. He doesn't like the fact that he has it there now, doesn't want to have the traffic there, and he has seen many people visiting there to survey the marijuana development. He expressed concern about people coming up to try to take some it; some have guns and any of those dispensaries will have a security with guns. He doesn't want the marijuana or the dispensaries, as they will not benefit the community of Creswell. He noted that "we don't need it in the City limits."

Patrick Miller- 158 Sunday Drive. Mr. Miller expressed that he has a medical marijuana user who lives next door. Kids, people walking dogs, jogging are all typical of his neighborhood; the user brings in a lot of interesting traffic to next door. He speculates that this user is sharing his marijuana with others that are visiting. Marijuana is legal in 20 states, but is still listed as a federally-controlled substance with no medical use. Mr. Miller expressed concern regarding the city's eligibility for federal grants, at odds with federal if we allow it to come into the city. He has seen approximately 30 dispensaries in neighboring larger cities – he hasn't seen many people there, and they don't appear to be making as much money as people think they are. Mr. Miller believes the city is barking up the wrong tree if this is going to bring economic boom to our city; it will bring crime. If there is no application being brought forth, shame on you, because it is not something we want in Creswell.

**With no additional speakers, Mr. Oelke closed the Public hearing at 7:08pm.**

### **Recommendation to City Council**

Mr. Oelke asked a question to Ross Williamson, Creswell's City Attorney: With respect to Mr. Miller's point with the city getting in hot water with federal government; further, Mr. Oelke noted that he always assumed that the City didn't have any legal choice in the matter -- that we had to allow dispensaries to be here. Mr. Williamson noted findings from Counsel from the League of Oregon Cities- It would not jeopardize federal grants. We are simply limiting what state law already allows.

Mr. Williamson answered a second portion of Mr. Oelke's question: Limiting medical marijuana in Creswell to what state law would allow after the moratorium ends on May 1<sup>st</sup> – the proposal will essentially limit the scope of these facilities and their impact on citizens. The City of Creswell cannot not have medical marijuana dispensary if someone wants to have one here. We can, however, limit the locations, we can choose to limit their retail outlets, but we cannot say "no". Cave junction is litigating this issue, and it is before the court of appeals now – it may be three years before we get a decision. We are limiting the scope of where they can locate and what regulations they have for conditional use, to the extent we can.

Mr. Ludeke asked if there are differences in the law between medical and recreational marijuana, and if so, can recreational marijuana be prohibited?

Mr. Williamson replied that there are many differences, as described in Measure 91, which includes a provision allowing cities to put the question on the ballot to become a "dry city." We can't do that until November of 2016 and recreational marijuana takes effect in July of this year (2015). We are all hoping that the Oregon legislature will clear up timelines and provide cities more guidance. The legislature is treating medical and recreational marijuana differently because they are different.

Mr. Ludeke heard that when recreational marijuana becomes allowed, that medical dispensaries will go to the recreational side because there is profit to be made – that medical outlets would go away and combine with recreational. Mr Williamson noted that that is a valid working theory.

Mr. Grand asked if Mr. Williamson could see medical marijuana and recreational marijuana existing in the same space. If, in 2016 Creswell wants to become a dry city, then medical marijuana can still remain separate from that? Mr. Williamson confirmed.

Mr. Williamson noted that he knows that we have a lot of frustration on this issue; cities all across the state are being forced to figure out how to apply the statewide law in our own cities. The process that Maddie (Ms. Phillips) has come up with is as strong as we can go – it provides as much security as we can with what we are given.

Mr. Grand asked a question about grow operations similar to Mr. Buchy's complaint. Mr. Williamson noted that the Planning commission, nor law enforcement, has no way of knowing where card holders are growing marijuana. The limited avenues available include: complaining to OHA which regulates medical marijuana – maybe they will follow up; Local law enforcement can only find out where grow

operations are if they call and ask if there is a legal grow operation – the Sheriff can check to see if they have the card, if they have the maximum allotment of plants.

Mr. Christopher noted that the restrictions include putting restriction on odor for dispensaries and grow operations – that is part of what we are trying to do with the proposed code amendment.

Sam Stats encouraged Planning Commissioners to make the zones as small as we can. Make the permit fees as high as they can so that there is less incentive to come to Creswell. Make it difficult to have that business here. If you are able to change the code so that is a small zone then they will want to go to the city that is giving them more. If we can't prevent it, let's make it difficult.

An unidentified lady from the public asked why the public is not notified about grow operations, but everyone is notified about locating dispensaries. Mr. Oelke noted that the City of Creswell is not and will not be notified if there is a medical grow operation.

Mr. Oelke as the planning commission we didn't have a choice legally – that we can't just say "sorry you can't be in our city," so we as a Planning Commission has tried to restrict them as much as possible. As far as them being visible and security systems. At this point, we cannot just say "no." Mr. Grand noted this is why the Planning Commission chose to require a Type 3 review – Because we wanted those applications to come to the planning commission so that we can attempt to regulate their impacts.

Mr. Oelke revisited the course of restrictions on medical marijuana facilities: restricted from downtown west of the railroad tracks; restricted from commercial areas with resort commercial overlay. The Planning Commission tried to be practical: If one was going to be here, where will it be? Storefronts are empty over there.

Mr. Christopher emphasized that the way to limit this issue begins with the property owners. If a property owner says "No you can't put the business in my store. That will keep them out."

Mr. Miller asked if anyone get money together and open a dispensary? Mr. Stats noted that dispensaries do have taxation and regulations to follow. Background checks are required for owners and employees as proscribed by City jurisdictions.

Ms. Phillips noted that this body is limited to regulating land use decision making, so the purview of the Commissioners can only limit use of land. This body may not provide restrictions unless the business has undo impact on other land uses—City Council regulates time, place, and manner restrictions. Ms. Phillips provided a definition of undue impact conflating it with a nuisance, and further described system development charges that may present a cost barrier for prospective applicants.

Mr. Oelke confirmed that marijuana can be grown in residential areas by virtue of state law.

Mr. Williamson noted that home occupation can only be identified if they are actually doing business, however each cardholder is allowed to grow 4 plants.

Mr. Stockbarger reminded the audience that some people do need medical marijuana whether we like it or not.

### **Decision**

Procedurally, Ms. Phillips reminded Commissioners that there are two different items to decide: 1) Make decision on PA-2015-01 and 2) provide approval for the proposed recommendation. She reminded Commissioners that there are 5 options: Approval, approval with conditions, approval with modifications, denial, or to adopt an alternative.

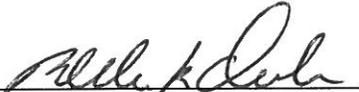
Mr. Grand moved to approve the findings of fact for PA-2015-01, as presented. Mr. Christopher seconded. Motion passes unanimously (6:0).

Mr. Grand motioned to approve the recommendation "Text Amendment to Chapter 18 of the Creswell Municipal Code Regarding Medical Marijuana Facilities" Mr. Stockbarger seconded. The motion passes unanimously (6:0).

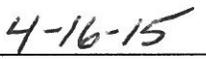
### **VI. ADJOURN**

Mr. Oelke adjourned the meeting at 7:43 pm.

*(Recorded by Maia Hardy)*



Blake Oelke, Chair



Date