

MINUTES

Members Present: Chair Stassens, Vice Chair Tiedge, Commissioners Hall, Hillestad, Morgan, and Thomas

Members Absent: Commissioners Chroust-Masin, Geary, and Pirisky

Staff Present: Mr. Pomeroy, Mr. Koch, and Ms. Sullivan

**1. Approval of Minutes:** May 19, 2016 and June 16, 2016

Chair Stassens called the meeting to order at 6:31 p.m., and called for action on the Planning Commission minutes from the May 19, 2016 meeting and the June 16, 2016 meeting. Commissioner Hall MOVED to APPROVE the minutes as presented; SECONDED by Commissioner Thomas. Motion PASSED unanimously.

**2. Public Hearing (Quasi Judicial)**

◆ **AP 2-16**

Request: Appeal of the McMinnville Planning Director's June 6, 2016 decision that the property at 807 NW Adams Street is prohibited from use for commercial recreational marijuana retail purposes due to its location within 1,000 feet of a public school facility. This decision was made as part of the Director's review of an Oregon Liquor Control Commission "Land Use Compatibility Statement" (LUCS) form submitted by the applicant to the Planning Department offices on June 3, 2016. Local review of LUCS forms are part of the State's licensing and land use coordination requirements for such proposed marijuana activities.

Location: 807 NW Adams Street, and is more specifically described as Tax Lot 8500, Section 20AA, T. 4 S., R. 4 W., W.M.

Applicant: Coleman Risdon

Chair Stassens opened the public hearing at 6:35 pm and called for abstentions, objections to jurisdiction, and disclosures. There were none. She also asked how many commissioners had visited the site. All commissioners present said they did.

Mr. Koch noted that Mr. Geary was abstaining from the meeting because he lives in close proximity to the subject site and within the notification area.

Chair Stassens called for the staff report.

Principal Planner Ron Pomeroy briefly described the application and the purpose of the appeal. He stated the criteria used by the state in determining what constitutes a school facility and required to be buffered from marijuana related uses. Mr. Pomeroy said that based on the evidence and information provided, staff recommends denial of the appeal.

Commissioner Hillestad asked how the 1,000 foot buffer was measured and if just a portion of the property was within the buffer.

Mr. Pomeroy stated the measurement is from property line to property line and that a majority of the site was within the buffer.

Commissioner Tiedge asked for an explanation as to why the map provided as Exhibit 5 to the staff report indicated "not to scale."

Mr. Pomeroy explained that the scale is accurate and internally consistent and generated by the ArcMap program used to determine the buffer. He said that the note is because the graphic is not printed to an architect/engineer scale.

Chair Stassens asked if there were any other questions for staff and reminded the commission of the scope of the appeal and to base their decision on all of the requirements.

City Attorney David Koch explained the City Code that applies to the 1,000 foot buffer established around private and public school facilities. He stated that staff looked to other agencies, such as the Oregon Health Administration (OHA), for guidance as to what constitutes a school facility.

Chair Stassens called for the appellant's testimony.

Mr. Risdon stated that the appeal was not about the 1,000 foot buffer, but the denial of the Land Use Compatibility Statement (LUCS) form. He also inquired about the "not to scale" note on the graphic, and stated that he had a survey completed from the corner of the tennis court block to his property. Mr. Risdon said that survey indicated his property was within 1,000 feet, but if measured to the courts themselves, they were about 1,050 feet from his property.

Mr. Risdon provided the commissioner with additional information for the record, including portions of emails between himself and City Manager Martha Meeker, and Planning Director Doug Montgomery. He then explained the history behind the emails, the building permit process for the property when he had applied for his previous medical marijuana dispensary approval through OHA, and other discussions with staff.

Mr. Risdon then read out loud the guidelines from the Oregon Liquor Control Commission's (OLCC) LUCS form. He restated that the form was to be used to determine zoning and if a use is permitted or not based solely on the zoning regulations.

Mr. Risdon expressed that Mr. Montgomery denied the LUCS form based on the 1,000 foot buffer measured from the tennis court property. He stated that Mr. Montgomery did not deny the form based on the zoning designation, which is what the form is asking for.

Mr. Risdon gave a brief history of the process for obtaining his building permit for the construction of an interior wall, which was required as part of his application process through OHA. He then stated that during that review, Mr. Pomeroy informed him that the tennis courts were a school facility, therefore the building permit would be denied. Mr. Risdon stated he then had conversations with the City Manager and presented subsequent emails from the City Manager and Mr. Montgomery stating that the permit and use for the medical marijuana dispensary would be "grandfathered" in due to the date of his building permit submittal.

Mr. Risdon again expressed to the Commission that Mr. Montgomery denied this current LUCS form based on the buffer issue, not the zoning of the property, since it was previously approved for OHA application. He stated that there was no reason for Mr. Montgomery to deny this current LUCS form.

Mr. Risdon requested that the commission reverse the denial of the OLCC LUCS form based on the written documentation provided.

Commissioner Hillestad asked Mr. Risdon if he had a copy of the survey that was conducted.

Mr. Risdon said he did not have a copy, but that the survey was done from the corner of the block and also the tennis courts themselves.

Chari Stassens asked if there were any questions for Mr. Risdon.

Commissioner Tiedge summarized his understanding of the sequence of events that occurred, from the submittal of building permits to the denial of the OLCC LUCS form.

City Attorney Koch explained that the first permit sought by Mr. Risdon was for a medical marijuana dispensary, which is addressed through OHA and that this current LUCS form was for commercial marijuana retail sales. He stated that the two permits were completely separate from each other. He also stated that his understanding was that the OHA had denied Mr. Risdon's medical dispensary application, and that Mr. Risdon was currently appealing that decision with the State.

Following further discussion by the Commission, Mr. Pomeroy explained that the two applications are separate issues. He stated the application for OHA approval pre-existed the tennis courts being identified as a school facility, which in turn allowed the use to be legally "grandfathered" in, and that request was specific to a medical dispensary and not pertinent to this review. Mr. Pomeroy stated that the current request came after the City established that the tennis courts were a public school facility. The 1,000 foot buffer around the tennis courts location applies to any new OLCC or OHA LUCS form submitted to the Planning Department.

Commissioner Hillestad asked Mr. Koch if there was a hard and fast rule that defined schools or if the Commission could make the determination as to whether the tennis courts were in fact a school facility.

Mr. Koch explained that the commission would have to weigh all of the evidence in the record to determine if the tennis courts are a public school facility. He also advised to evaluate the information provided via email by the school district, as well as any information provided by Mr. Risdon before voting on that determination.

Commissioner Hillestad asked if there was a definitive definition for determining how to measure distance from a property.

Mr. Koch stated, asking Mr. Pomeroy for correction, that we do not provide evidence of the method of measurement and that the state says it measures from the property boundary to the facility. He also noted that the City Council intended for the buffer to be consistent with the state, not to create a different means to measure the 1,000 foot buffer.

Commissioner Hillestad asked if the line went through the building or the parking lot of Mr. Risdon's site.

Mr. Pomeroy explained that the edge of the buffer goes through the building and captures most of the subject property.

Commissioner Hillistad asked Mr. Koch to clarify that, based on what Mr. Risdon said about the minimal use of the tennis courts, they would still qualify as a school facility.

Mr. Koch said that the City uses the same determination as the OHA, which he pointed out denied Mr. Risdon's OHA application on the basis that the tennis courts were in fact a school facility.

Mr. Risdon commented to the Commission that "tennis" was not on the McMinnville High School curriculum, stating that no tennis classes were offered.

Chair Stassens asked if there were any other questions for Mr. Risdon. There were none.

Chair Stassens asked if anyone would like to speak in favor of the appeal. There were none.

Chair Stassens asked if anyone would like to speak in opposition of the appeal. There were none.

Chair Stassens inquired if anyone wished to continue the public hearing. There was no such request.

Chair Stassens asked Mr. Risdon if he wished to waive the seven day period to offer additional testimony.

Mr. Risdon said yes, he wished to waive the seven day period.

Chair Stassens closed the public hearing at 8:12 p.m.

Chair Stassens asked if the commission would like to discuss the material and testimony provided.

Commissioner Morgan stated that based on the information provided, testimony heard, and the issued building permit status for a medical marijuana facility, he felt uncomfortable with the 1,000 foot buffer. He said he was inclined to waive the 1,000 foot buffer requirement until the city clearly defines how the buffer is measured.

Commissioner Tiedge said there are two issues at hand: Are these tennis courts a school and are they within 1,000 feet of the subject site; Is it the courts themselves or property boundary that the measurement is taken from. He stated the question that needed to be answered first was whether or not the tennis courts were considered a school.

Discussion between the Commissioners took place regarding whether the tennis courts should be considered a school facility or not.

Commissioner Tiedge stated that he found the tennis courts were not a school facility.

Commissioner Hillestad also stated that the tennis courts should not be considered a school.

Commissioner Hall indicated that the tennis courts are in fact a school facility, because educational activities occur there.

Commissioner Thomas said that she did not feel that a curriculum was provided; therefore the courts do not meet the definition of a school.

Chair Stassens said that the school provides physical education classes at the tennis courts on a regular basis. She stated that she did not feel any testimony disputed that, therefore; the tennis courts qualify as a school facility.

Commissioner Morgan said he did not think the tennis courts were a school.

Commissioner Hillestad MOVED, based on the determination that the Tennis Courts should not be considered a school, to APPROVE AP 2-16 overturning the prior denial by the Planning Director.

SECONDED by Commissioner Thomas. The motion passed with a 4-2 vote.

### **3. Old / New Business**

Principal Planner Pomeroy stated that there were three items scheduled for the August Planning Commission meeting: 1) a subdivision application from Alan Ruden to develop another phase of the Bungalows at Chegwyn Village; 2) a conditional use permit application from the McMinnville School District to establish a maintenance facility at the former

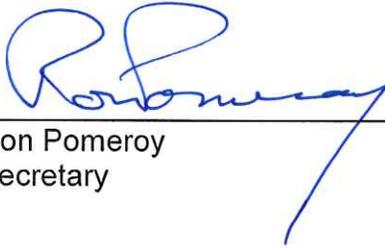
Willamette Graystone location; and 3) a legislative amendment to the Marijuana Activities section of the Zoning Ordinance, to remove the words "state licensed preschool."

Mr. Pomeroy informed the Commission that the new Planning Director, Heather Richards, would be starting with the City on August 1<sup>st</sup> and that a new Associate Planner, Charles Darnell would be joining the Department August 29<sup>th</sup>.

Chair Stassens told the Commission she was running for the City Council Ward 1 vacancy and if selected would be stepping down from the Planning Commission at the end of the year.

#### 4. Adjournment

Commissioner Hillestad MOVED to adjourn the meeting; SECONDED by Commissioner Morgan. Motion PASSED unanimously and Chair Stassens adjourned the meeting at 8:32 p.m.



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Ron Pomeroy  
Secretary