

BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Accepting the Appeal, and )  
Overturning the Planning Director's Approval, )  
of Docket SDR-01-17: Denial of a Permit to Allow )  
Processing of Marijuana on Property located at ) Board Order 17-260  
15500 SW Dusty Drive, Tax Lot 5510-1200 )  
Applicant: Richard E. Wagner )

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on June 29, 2017, Commissioners Stan Primozych, Mary Starrett and Richard L. "Rick" Olson being present.

IT APPEARING TO THE BOARD as follows:

A. By application dated January 18, 2017, Richard E. Wagner requested county Site Design Review and approval for a State-licensed cannabis production facility, on his property located at 15500 SW Dusty Drive. The property, also identified as Tax Lot 1200-5510, is approximately 6.74-acres and is zoned EF-80;

B. On February 24, 2017, the Planning Director approved the application, with conditions. Notice of the decision was issued on March 3, 2017, and on March 17, 2017 an appeal of the approval was timely filed by neighbors Harihara Mahesh, Parvathy Mahesh, Van and Glenda Keck, Willie Levy, Patti Levy and Moe Momtazi. A hearing was held before the Board on April 13, 2017. The hearing was then continued to May 25, 2017 for deliberation, following a three-week period in which the record remained open for additional written testimony and evidence, rebuttal, and the applicant's 'final word.' Following additional notice to interested parties and as otherwise required by law, the hearing was continued to June 1, 2017; and

C. On June 1, 2017, following receipt of a staff recommendation to approve the application with additional conditions of approval, the Board voted 2-1 to accept the appeal, overturn the Planning Director's decision, and to deny the application, with staff directed to prepare written findings for final adoption on June 22, 2017. On June 22, 2017, staff requested, and was given, one additional week to prepare written findings for final adoption; NOW THEREFORE,

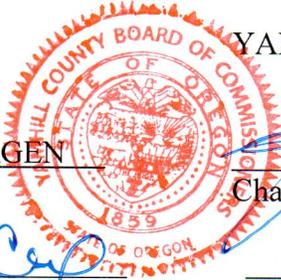
IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. The appeal filed in this matter is accepted, the Planning Director's decision to approve Docket E-06-16 is hereby overturned, and the application is denied.

Section 2. The findings attached as Exhibit A, and incorporated herein by reference, are hereby adopted in support of this order.

DONE this 29<sup>th</sup> day of June, 2017 at McMinnville, Oregon.

ATTEST:



YAMHILL COUNTY BOARD OF COMMISSIONERS

BRIAN VAN BERGEN  
County Clerk

Chair

Stan Primozich  
STAN PRIMOZICH

By: Crystal Cox  
Deputy Crystal Cox

Commissioner

Mary Starrett  
MARY STARRETT

FORM APPROVED BY:

Commissioner

Richard L. Olson  
RICHARD L. "RICK" OLSON

Timothy S. Sadlo  
Senior Assistant County Counsel

**EXHIBIT A – BOARD ORDER 17-260  
FINDINGS FOR DENIAL**

**DOCKET NO.:** SDR-01-17

**REQUEST:** A site design review application for a marijuana processing facility inside an existing agricultural building.

**APPLICANT:** Richard E. Wagner

**TAX LOT:** 5510-1200

**LOCATION:** 15500 SW Dusty Drive, McMinnville

**ZONE:** EF-80, Exclusive Farm Use

**CRITERIA:** Sections 402.02(E) and 1101.02 of the *Yamhill County Zoning Ordinance* and ORS 215.283(r)

**A. Background Facts**

1. *Parcel Size:* The subject parcel is 6.74 acres.
2. *Access:* 15500 SW Dusty Drive, McMinnville
3. *On-Site Land Use:* The property has primarily been utilized for cattle and horse pasture, rural living, with some potential for the development of a vineyard in the future. The aerial imagery and building permit records indicate there are several buildings currently in place on the property, including the principal dwelling, and three accessory buildings consisting of a barn, detached garage, and a workshop. The applicant has also indicated that he would like to build a structure for use as a “soil building” along the eastern boundary of the parcel, approximately 30’ setback from the property line. The applicant has also proposed siting a water tank, to be located east of the dwelling, which will be approximately 40’-47’ in diameter and 7’-10’ deep. The applicant would also like to develop a cistern measuring approximately 30’ in diameter and measuring approximately 10’ deep directly to the east of the dwelling. The applicant has also noted two separate, outdoor, marijuana grow areas, one directly to the south of the dwelling accounting for approximately 9,600 square feet, with the second grow area located west-southwest of the dwelling and measuring approximately 10,800 square feet in area. The applicant has also proposed the development of a parking area on the property, adjacent to the northeast corner of the dwelling.
4. *Surrounding zoning and land uses:* The surrounding properties are zoned EF-80, Exclusive Farm Use District, with the exception of Erratic Rock State Park located approximately ½ mile to the southeast of the applicant’s nearest property line. The surrounding area is a mix of rural residential and agricultural uses; the farm uses currently taking place in the area include vineyards, grass seed, and hay fields.

5. *Water:* The applicant has indicated that water will be provided by an on-site well in addition to “rain water harvesting.”
6. *Sewage Disposal:* An on-site septic system serves the dwelling.
7. *Fire Protection:* Sheridan Rural Fire Protection District.
8. *Soils:* The Yamhill County Soil Survey shows the majority of the parcel is made up of Chehalis Silty Clay Loam, Newberg Silt Loam, and Newberg Fine Sandy Loam, high-value farmland.
9. *Overlay zones:* The property is not located within an overlay zone.
10. *Previous Actions:* The present configuration of the parcel was established via lot line adjustment with the adjacent parcel to the west, Tax Lot 5509-700, pursuant to Docket L-39-16.

## **B. Ordinance Provisions and Analysis**

Section 402.02(E) of the *Yamhill County Zoning Ordinance* (YCZO) lists as a permitted use:

- E. *A facility for the processing of farm crops located on a farm operation and provides at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage, or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm uses. The application will also be subject to Section 1101, Site Design Review.*

ORS 215.283(r) states: The following uses may be established in any area zoned for exclusive farm use:

*A facility for the processing of farm crops or for the production of biofuel, as defined in ORS 315.141, if the facility is located on a farm operation that provides at least one-quarter of the farm crops processed at the facility, or an establishment for the slaughter, processing or selling of poultry or poultry products pursuant to ORS 603.038. If a building is established or used for the processing facility or establishment, the farm operator may not devote more than 10,000 square feet of floor area to the processing facility or establishment, exclusive of the floor area designated for preparation, storage or other farm use. A processing facility or establishment must comply with all applicable siting standards but the standards may not be applied in a manner that prohibits the siting of the processing facility or establishment.*

The applicant proposed to grow at least one-quarter of the crop processed at the facility. The applicant stated that the crop will be grown in an outdoor space of approximately 20,400 square feet. It should be noted that the growing of marijuana is not part of this site design review application as it does not require a site design review approval. The applicant has proposed to use an approximately 5,000 square foot area of the barn for processing. Approximately 1,700 square feet of the barn will also be utilized as the nursery space.

### C. Site Design Review

Section 1101.02 of the YCZO governs site design review.

Review of a site development plan shall be based upon consideration of the following:

- (1) *Characteristics of adjoining and surrounding uses;*
- (2) *Economic factors relating to the proposed use;*
- (3) *Traffic safety, internal circulation and parking;*
- (4) *Provisions for adequate noise and/or visual buffering from noncompatible uses;*
- (5) *Retention of existing natural features on site;*
- (6) *Problems that may arise due to development within potential hazard areas.*
- (7) *Comments and/or recommendations of adjacent and vicinity property owners whose interests may be affected by the proposed use.*

In general, the applicant has failed to meet his burden. The applicant has the burden to prove there is substantial evidence that supports his application. He failed to submit materials sufficient for the County Board of Commissioners to appropriately evaluate the claim, based on his failure to provide a sufficient Preliminary Site Development Plan. Additionally, the applicant failed to meet his burden under 1101.02, in providing substantial evidence that the processing plant could operate in harmony with the surrounding properties, as more fully set forth below.

Yamhill County Zoning Ordinance (YCZO) § 1101.04 states the requirements for Site Design Review Applications. It states:

#### *Preliminary Site Development Plan Requirements.*

*The following site design information shall be represented at a scale of 1"=5', or an appropriate scale as may be approved by the Director:*

- A. *Existing site conditions as follows:*
  1. *Site topography at the following minimum intervals:*
    - (a) *Two (2) foot intervals for slopes of up to 15%;*
    - (b) *Five (5) or ten (10) foot intervals for slopes in excess of 15%; and*
    - (c) *Identification of areas exceeding 35% slopes.*
  2. *Site drainage, creeks, ponds or areas of standing water, potential flooding and soil or geologic hazard;*

3. *Major trees 8" in diameter at five (5) feet height, together with areas of significant natural vegetation. Where the site is heavily wooded, an aerial photograph, not to exceed 1"=400' may be submitted; and only those trees that will be affected by the proposed development need be sited accurately;*
4. *Classification of soil types within the site and discussion of their suitable uses;*
5. *Existing structures, improvements, roadway access and utilities, together with the film volume and page number of all easements affecting the property; and*
6. *Existing land uses, ownerships, property lines and building locations on adjoining and adjacent property within three hundred and fifty (350) feet of the subject property. Proposed changes and improvements to the site as follows:*

*B. Proposed changes and improvements to the site as follows:*

1. *Proposed site improvements, including:*
  - (a) *Boundary lines and dimensions for the property and proposed topographical changes;*
  - (b) *All proposed structures, including finish floor elevations and setbacks;*
  - (c) *Vehicular and pedestrian circulation patterns and parking, loading and service areas;*
  - (d) *Site drainage plan, including location of sumps or settling ponds; and*
  - (e) *A boundary survey and cross sections, and profiles as may be required by the Director.*
2. *Proposed utilities, including subsurface sewerage, water supply system and electrical services. Inverse elevations shall be shown for all underground transmission lines.*
3. *Proposed access to public roads and highways, railroads or other commercial or industrial transportation systems.*
4. *Proposed landscape plan, to include appropriate visual screening and noise buffering, where necessary, to ensure compatibility with*

*surrounding properties and uses.*

5. *Proposed on premise signs, fencing or other fabricated barriers, together with their heights and setbacks.*

C. *A written statement to accompany the site development plan, containing the following:*

1. *A statement of present ownership of all lands included within the proposed development; and*
2. *A schedule of expected development.*

The submitted Site Plan fails to provide any information as to site topography, site drainage, classification of soil type, identification of Access and Utility Easements for the property, and existing Land Use uses, ownership property line and building locations on adjoining and adjacent properties within 350 feet (1101.04(A)(1)(2)(4)(5)(6)). Additionally, the Site Plan fails to show all of the proposed changes and improvements to the site, including but not limited to proposed topographical changes, finish floor elevations, vehicular circulation patterns, parking, loading and service area, site drainage plans, and a boundary survey cross section (1101.04(B)(1)(a)(b)(c)(d)(e)). Additionally, the applicant failed to provide current utilities, access to public roads, proposed landscaping plan (including appropriate visual screening and noise buffering for compatibility analysis), and proposed on-premises or other fabricated barriers, signs, and fencing including their heights, and setbacks (1101.04(B)(2)(3)(4)(5)).

If an applicant provides a sufficient application pursuant to YCZO 1101.04, then the Board of County Commissioners evaluates the application based on YCZO 1101.02. It states:

*Evaluation of Site Development Plans.*

- A. *The review of a site development plan shall be based upon consideration of the following:*
  1. *Characteristics of adjoining and surrounding uses;*
  2. *Economic factors relating to the proposed use;*
  3. *Traffic safety, internal circulation and parking;*
  4. *Provisions for adequate noise and/or visual buffering from noncompatible uses;*
  5. *Retention of existing natural features on site;*
  6. *Problems that may arise due to development within*

*potential hazard areas.*

7. *Comments and/or recommendations of adjacent and vicinity property owners whose interests may be affected by the proposed use.*

B. *All development applications for site design review are subject to the development standards of the underlying zoning district and may be modified pursuant to satisfaction of the considerations provided in subsection 1101.02(A). The Director may waive submittal requirements consistent with the scale of the project being reviewed, upon determining that requirements requested to be waived are not necessary for an effective evaluation of the site development plan.*

### **Characteristics of adjoining and surrounding uses**

Regarding factor (1) above, the surrounding area is a mix of agricultural use, with vineyards to the north and west, forest use to the east and southeast, along with scattered rural residences. The nearest residence is located on the eastern adjoining property, approximately 300 feet from the applicant's eastern property line.

The applicant's proposed site is a remote rural parcel that is just under seven acres in size. Access is obtained by turning off of Highway 18, several miles out of Sheridan, onto a rural paved country road, then traversing a 7/10 of a mile single lane, gravel road, with several significant curves and a 400-foot elevation change with some areas steeper than 15% grade.

The nearest rural residence shares an east-west boundary with the applicant. Their future vineyard, and current garden, is just on the other side of a 30-foot wide easement, east of the applicant's property. The future vineyard would be approximately 70 to 80 feet from what the applicant labels as a "soil building", and approximately 170 feet from the processing facility. The neighbor's home is approximately 300 feet from the applicant's eastern property line.

Approximately 150 feet north of the processing facility, is a world class vineyard, which is a Demeter Certified Biodynamic farm. The vineyard, Momtazi Vineyard, has been featured in international conferences on terroir (soils), and has been recognized as one of the five best vineyards in the State by Wine Enthusiasts Magazine, out of the 500 plus vineyards in the State. The Momtazi Vineyard surrounds the applicant's property on two sides. Two-hundred-eighty of its five-hundred-sixty acres are planted in wine grape vines. Maysara Winery produces wine from the grapes. Momtazi Vineyard also sells grapes to other wine makers.

The applicant's property and all of the surrounding properties are rural in nature. They all utilize wells for domestic purposes and/or winery and/or farm purposes. Momtazi Vineyards has water rights dating back to 1997. All of the parcels in the area are served by individual septic systems. The area is served by the Sheridan Fire Department. They have approximately a fifteen to twenty minute drive to access this site at the end of this single-lane gravel road.

The Board finds that the characteristics of the surrounding area are not conducive to a farm processing facility. The infrastructure including water, waste disposal and transportation is not sufficient to support a processing facility. The placement of a processing facility at this site would significantly harm and change the characteristics of the surrounding area.

**Economic factors relating to the proposed use.**

Regarding factor (2), above, the applicant failed to submit any evidence as to his economic capacity to accomplish the different tasks necessary to process marijuana at the proposed site. The Sheridan Fire Department required a 32,000-gallon reservoir. The applicant's application showed a 53,000-gallon cistern and a 129,000-gallon water tank, a soil building, re-purposing a barn into a 5,000 square foot processing facility, and a 1,700 square foot nursery space, future parking, and outdoor grow areas. In addition to the applicant failing to provide any designs for the different structures, and the remodel of the barn, including cross-section, utility plan, etc., the applicant failed to provide a construction schedule, how much it would cost, and any evidence of his ability to pay for the work.

There is scant evidence of the processing activity. Equipment will be needed but there is no evidence as to what, how much it will cost, nor whether the applicant has the necessary monetary resource. There will be byproduct from the process but no evidence of how he would dispose of the processed waste including the plant product and/or the processed wastewater after the desired materials are removed. The lack of information makes it impossible for the Board to analyze the applicant's capacity to accomplish the intended purpose. Moreover, the applicant failed to provide any proof that he is economically capable of accomplishing any of these tasks, plus the tasks required by the OLCC, including fencing, security cameras, and an off-site security system.

The applicant indicated that he was going to fill the different water tanks, cistern, and required fire protection tank with water captured from the roof of the barn. The water captured from the roof of the barn would be capable of providing only a fraction of the needed water. The applicant failed to demonstrate how he could economically obtain other water resources including applying for water rights for processing. There was no demonstration of any capacity to do that, either from the perspective of enough water available in the local watershed, nor any evidence of economic resolve to accomplish obtaining the water rights.

In contrast, the wine industry is estimated to provide over three-billion dollars in annualized income to the State of Oregon. There are four regions where winery activities are active in the State. The Northern Willamette Valley, where Momtazi Vineyard and Maysara Winery is located, exceeds all other areas combined in vine acres planted and number of wineries. There is evidence that Momtazi Vineyard and Maysara Winery jointly contribute almost \$1.5 million dollars, annually, to the local economy through payroll, taxes, vender payment, contract labor, farm supplies, winery supplies, equipment, machinery and all other purchases. They employ more than 25 people to operate their 500 plus acre farm, and winery.

According to the appellants, a processing facility at this site would pose an economic harm to the Maysara Winery and Momtazi Vineyard. Momtazi Vineyard sells a majority of its grapes to other wine makers and gets a premium on his grape sales because of their Demeter Certified Biodynamic

farming methods. One customer reportedly already cancelled an order, due to the concern about the grapes being tainted. The concept of “taint” is a recognition that grapes can take on the characteristics of things that are around them. The whole concept of “terroir” is recognition of the grapes taking on the characteristics of the soil that they are grown in. Pinot Noir, the champion grape of the Northern Willamette Valley, is a delicate and temperamental grape to make wine with.

In hardier climates, and varieties, both smoke taint from forest fires, and eucalyptol taint from eucalyptus orchards, has been expressed in fermented wines in the U.S. and in Australia. Scientist, Dr. Joyce Harts-Hurley, with degrees in genetics, medical molecular genetics, and neurology, confirmed that there is a strong likelihood that the marijuana monoterpene would negatively impact the Momtazi Vineyard and the Mahesh Vineyard. The prized marijuana smells, as expressed by the applicant’s Instagram page, of “sour skunky grapefruit” and “rotten fruit, gas, and notes of tobacco”, would be very bad smells and flavors in fermented wine. The purchaser of grapes from Momtazi Vineyard reportedly withdrew their order for this growing season, because of the fear of the monoterpenes from the marijuana processing transferring through the air, as the eucalyptus oil or smoke particles had, and landing on the grapes and getting expressed through the fermented wine process.

The Demeter Certified Biodynamic farm designation takes over three years of farming consistent with the required practices to become certified. There are just as rigorous requirements for continuing the qualification process, which requires a regular review of the farming processes. In the past, Momtazi lost certification for a period of three years, when a neighbor inadvertently caused 2-4-D drift onto the property. The Demeter Organization disqualified that segment of the vineyard from certification, and as a result, Maysara was unable to use the grapes from that area. According to the appellants, the discharge of monoterpenes through the processing of the marijuana on this site has a potential for decertifying the Momtazi Vineyard and causing significant economic harm.

### **Traffic safety, internal circulation and parking.**

Regarding factor (3), the applicant failed to provide an internal circulation plan, and/or parking plan. The drawing shows an area for “future parking”, but no information is provided about current parking and/or circulation. It is probable that the applicant will need significant space for delivery trucks to deliver things, such as water to process the marijuana, packaging for end products, the delivery of up to over 25,000 pounds of marijuana to process, delivery of the processing equipment, the supplies and employees to process at this site. The applicant failed to provide any parking, load docks, or circulation planning for these impacts.

The subject property is accessed by Dusty Drive, a private roadway. Neighbors testified that Dusty Drive is an inadequate road, in the best of circumstances, and the applicant failed to rebut that testimony, or to otherwise carry his burden of demonstrating that the access road is adequate for the proposed use. Dusty Drive would not be approved as constructed in today’s regulatory environment. It has 70+ degree corners that are on steep downhill terrain. It is a single-lane gravel road that is 7/10 of a mile long. It has over a 400-foot elevation change in that 7/10 of a mile distance. It is wholly inadequate to handle additional transportation, particularly things such as water trucks, equipment delivery, and multiple employees. The applicant provided no plan for how to make Dusty Drive adequate to accommodate the additional traffic associated with the

processing facility.

**Provisions for adequate noise and/or visual buffering from noncompatible uses.**

Regarding factor (4), the applicant failed to meet his burden in providing a plan for buffering. The processing facility will require venting, and if utilized at the maximum level, there will be significant trucking of materials, supplies, and water to the site and byproducts from the site. The only indication of any buffering is that the applicant states that he will meet his obligations, under the OLCC, to place fencing at the site. There is no evidence that the fencing will do anything to visually screen any of the activities, as the fencing could be chain link fence. Nor is there any evidence it will reduce the noise from trucks and/or the venting of the processing. The applicant failed to provide any information as to what type of ventilation system he will use, causing the Board to be unable to assess whether there will be adequate sight and noise buffering.

**Retention of existing natural features on site.**

Regarding factor (5), the applicant is not proposing to change any of the existing natural features on site. The opponents contend that the proposal will mar the existing natural features on the site, with new buildings, tall fencing, a water tank, a cistern, and a security system that will recording outside the bounds of the property. The natural features of the area will go from their current rural condition to something that, the neighbors testified, would not be suitable for the area.

**Problems that may arise due to development within potential hazard areas.**

Regarding factor (6), the applicant's failure to provide a plan of how to handle improving Dusty Drive, would likely lead to problems. The single lane road leaves very few areas where vehicles can pass each other. On the sharp turns, which are on inclines, it would be impossible for a vehicle to pass a large water truck or other delivery type vehicle.

The location of the processing plant is contraindicated for fire and life safety. There is no infrastructure readily at hand to handle an explosion or other problem in the processing. It will take fifteen to twenty minutes for a fire truck to reach the location, and by that time, any of the problems could be over, or grown out of control.

The construction of three water storage facilities at this location, which are at about 600 feet above sea level, raises problems. Any kind of natural event, such as an earthquake, would cause a cascading flood of water down to the Momtazi Vineyard and Maysara Winery. The applicant has not proposed any safety mechanisms to verify that the construction will be sufficient to avoid such event, or propose other buffering mechanisms in the terrain.

The applicant has failed to provide information as to how he will handle the disposal of byproduct. The applicant could process up to 33,000 pounds of marijuana on site. The byproducts from this processing include the plant material, contaminated water, or contaminated oil. None of those materials can be disposed of in the septic system, yet the applicant has not proposed a plan for how he will dispose of any of the byproducts. It is likely that the only way to dispose of them will be through trucking off site on a road that is dangerous. This is another reason that this processing

facility ought to be located in more of an industrialized zone where the type of infrastructure is readily available.

**Comments and/or recommendations of adjacent and vicinity property owners whose interests may be affected by the proposed use.**

Regarding factor (7), the county received numerous comments and recommendations from adjacent and vicinity property owners whose interests may be affected by the proposed use, indicating that even with conditions, the request cannot be made consistent with the standards of Section 402.02(E) or the site design review standards of Section 1101.

**Conclusion**

For all of the reasons stated in these findings, the county has concluded that the applicant failed to submit materials sufficient for the County to approve the request and, therefore, the application is denied.