

BOARD ORDERS AND MINUTES

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY (“the Board”) sat for the transaction of county business in formal session on January 9, 2020, at 10:00 a.m. in Room 32 of the courthouse, Commissioners Casey Kulla, Mary Starrett and Richard L. “Rick” Olson being present.

Also present were Ken Huffer, County Administrator; Justin Hogue, Business Services Director; Christian Boenisch, County Counsel; Todd Sadlo, Senior Assistant County Counsel; Nohely Barajas-Montalvo, Legal Assistant; Ken Friday, Planning Director Lance Woods, Associate Planner; Desiree Lundeen, Assistant Planner; Mikalie Moreno, Risk Manager; Nicole Montesano, News-Register and others as listed on the sign-in sheet.

Welcome! Thank you for attending today's meeting. Public participation is encouraged. If you wish to address the Commissioners on any item not on the agenda you may do so as part of the public comment period at the beginning of the meeting. If you desire to speak on any agenda item please raise your hand to be recognized after the Chair announces the agenda item. Please fill out a public comment card to indicate your intent to speak.

A. CALL TO ORDER

Commissioner Kulla called the meeting to order at 10:01 a.m.

B. FLAG SALUTE

C. PUBLIC COMMENT: This time period is reserved for public comment on any topic other than: 1) agenda items, 2) A quasi-judicial land use matter, or 3) a topic scheduled for public hearing. The Chair may limit the length of individual comments.

There was no public comment.

D. CONSENT AGENDA: Commissioner Starrett moved approval of items D1 through D7 except for item D4 which was moved to other business. The motion passed, Commissioners Kulla, Starrett and Olson voting aye.

1. Minutes

- a. B.O. 20-06 - December 3, 2019, Informal Session;
- b. B.O. 20-07 - December 5, 2019, Formal Session;
- c. B.O. 20-08 - December 10, 2019, Informal Session;
- d. B.O. 20-09 - December 12, 2019, Formal Session;
- e. B.O. 20-10 - December 17, 2019, Informal Session; and,

- f. **B.O. 20-11** - December 19, 2019, Formal Session.

Contracts & Grants

2. **B.O. 20-12** - Approval of Amendment #6 to Agreement #159184 between Yamhill County and the Oregon Health Authority (B.O. 19-228) for the financing of Community Mental Health, Addition Treatment, Recovery & Prevention and Problem Gambling Services, retroactive from July 1, 2019 through December 31, 2020.

3. **B.O. 20-13** - Approval of a request to apply for the 2020 Homeland Security Grant Program (HSGP) grants.

4. Approval to purchase Help Desk ticketing software from SysAid in the amount of \$13,140 annual subscription cost with a 5-year commitment. *[Moved to Other Business]*.

Personnel

5. **B.O. 20-14** - Approval to authorize twenty (20) hours of leave without pay per week for HHS Adult Behavioral Health employee #4053, effective December 18, 2019 with an anticipated end date of March 31, 2020.

6. **B.O. 20-15** - Approval to add a 1.0 FTE Utility Worker position to the Public Works Department.

Committees

7. **B.O. 20-16** - Approve the appointment of Jessica Payne to the 2020 Board of Property Tax Appeals (BoPTA) for both the County Governing body and Non-office holder pools with a term expiring June 30, 2020.

E. **OLD BUSINESS:** None.

F. **OTHER BUSINESS** (Add-ons and non-consent items):

1. **B.O. 20-17** - Consideration of approval of the 2020 Yamhill County Board of Commissioners Areas of Liaison and Responsibilities.

Commissioner Olson moved approval of item F1. The motion passed, Commissioners Kulla, Starrett and Olson voting aye.

2. **B.O. 20-18** - Consideration of approval of a contract employee agreement between Yamhill County and Silas Halloran-Steiner at the rate of \$85.46/hr, effective February 9, 2020 through June 30, 2020.

Commissioner Starrett moved approval of item F2. The motion passed, Commissioners Kulla, Starrett and Olson voting aye.

3. **B.O. 20-19** - Approval to purchase Help Desk ticketing software from SysAid in the amount of \$13,140 annual subscription cost with a 5-year commitment subject to final review and approval by county counsel.

Commissioner Olson moved approval of item F3 as amended. The motion passed, Commissioners Kulla, Starrett and Olson voting aye.

G. PUBLIC HEARINGS:

1. Docket #SDR-28-19: An appeal of the Planning Commissioner's approval of a site design review for a recreational marijuana and industrial hemp processing facility. Applicant: OreTex Farms, LLC., JCB Farms, LLC. and Christopher Bryan (as agent for the owner, WAG Holding, LLC.). Location: 18505 NE Jaquith Rd., Newberg. Appellants: Laura Cochran and Jill Anderson.

Commissioner Kulla called the public hearing to order at 10:07 a.m. There were no abstentions or objections to jurisdiction. Commissioners Olson and Starrett reported no ex-parte contact or site visits. Commissioner Starrett commented that although Board members were contacted by several interested parties, she refrained from responding as the commissioners are not allowed to participate in ex-parte contact. She thanked Mr. Woods and Mr. Friday for their work in preparation for the hearing. Commissioner Kulla disclosed he was approached by three opponents who expressed their opposition to cannabis production on the site, and to processing. Commissioner Kulla stated that he is impartial and fair and is not set on a pre-determined outcome. He intends to consider the collected testimony of this matter from an unbiased position. Mr. Sadlo read statements required under ORS 197.763(5) regarding land use public hearings.

The appellant's attorney, Jeff Kleinman, raised a procedural issue at the request of his client Laura Cochran, asking Commissioner Kulla to recuse himself from the proceedings because he is a cannabis producer/processor. Commissioner Kulla responded by reconfirming his earlier statements and stating that Mr. Kleinman can trust him to be unbiased. Mr. Sadlo commented on the obligations of county commissioners to be involved in community issues regardless of personal interests and to proceed in the spirit of upholding state laws and applicable zoning standards.

Staff Report: Mr. Woods presented the staff report stating the property is EFU zoned with some current standing structures which will be used as a residence and for the indoor growing and processing of marijuana. The applicant plans to add a new building in 2021 to accommodate processing and other agricultures uses. Mr. Woods addressed condition #17 related to building a wall to mitigate HVAC noise, requested by the applicant which will require further discussion. Mr. Friday clarified a misconception regarding the legality of processing marijuana as a commercial activity in conjunction with farm use. He noted that it is permitted if at least twenty five percent of one's own crops are grown onsite and the facility is less than ten thousand square feet. He also said any change to state law prohibiting processing in the rural areas would have to be done by the state legislature and is not within the authority of the county.

Applicant: Corinne Celko, applicant representative, stated the application should be upheld as it has met all site design review standards. She asked to clarify misconceptions of the Planning Commissioner's decision. Commercial activities in conjunction with growing marijuana are not allowed. She stated the applicant proposes to processing hemp/marijuana, which is a crop that can be produced and processed on EFU land subject to state permitting and county site design review. She stated the crops will require little to no water, will be limited to 5,000 square feet of processing space. The odor and noise reports analyze the cumulative effects of both production and processing. She addressed traffic and parking and stated the reports reflect adequate capacity of the surrounding roads. The applicant is willing to clear vegetation to comply with and improve site distance as recommended by the county engineer. Ms. Celko said the applicant is not opposed to building a wall that would mitigate noise but cannot completely enclose the HVAC units due to interference with the circulation. The applicant has applied for ground water use and a permit to purchase water from the City of McMinnville. Ms. Celko stressed there were no other criteria to be used as grounds to accept or deny the application other than what is required by the state and the Land Use Board of Appeals (LUBA).

Christopher Bryan commented on his education history and civic participation. He addressed his personal goals of seeking financial stability and becoming a successful small business owner in alignment with state zoning laws and regulations. He expressed frustration with the misinformation and challenges presented by opposing citizens but looks forward to becoming a member of the local business community.

Merritt Kain provided a positive reference towards Mr. Bryan's character and supported his efforts.

Roger Whitaker submitted written testimony in support of the applicant.

Appellant: Jeff Kleinman, attorney for appellant Cochran, addressed the underlying issue of unlawfully sited structures which were on the property prior to the new owners. He stated if the application is denied it would not be because of the building itself, but because unlawful building sites or expansions do not comply. He addressed noise issues which effect the appellant's son and noted the doors would have to remain closed during business hours to reduce noise which creates a very hot environment. Mr. Kleinman said the applicant did not do the analysis for surrounding impacts, which he stated, was brought to the attention of the owner and planning experts by the surrounding community. Industrial hemp and marijuana are separately regulated by the state and is not a standard crop by its processing requirements. He said the impact studies provided by the applicant's experts only provide hypothetical circumstances and do not reflect actual impacts. Mr. Kleinman commented that condition #5 should be modified to show staff the permits. The applicant never met the application's burden of proof and the county should not approve the application.

Laura Cochran is the closest neighbor to the facility. Her son is ambulatory but is mentally at age 1. She said this is the third marijuana business to operate at the Jaquith Road

site. Her son has endured smells, criminal activity, bullying, all hour traffic and noise. She stated she and her family were confined to their house due to the ongoing business activities. The onsite recycling adds to the noise and smells. She spoke about the decibel levels at the points between her son's bedroom and the processing facility. Ms. Cochran stated some of the applicant's experts submitted false testimony which was given to the planning commission.

Commissioner Kulla called for a recess at 11:46 a.m. and reconvened at 11:56 a.m.

Second Appellant - Jill Anderson lives across the street from the facility and expressed concern about the chemical impacts. She said hemp processing requires chemical stripping of the plant fibers which present fire hazards. She said that the remodel is for the processing of industrial hemp and expressed concern regarding risk of explosion due to hemp oil extractions. Ms. Anderson said the growth belongs on the valley floor where there is more water available and the industrial site should be in an industrial location and not on agricultural lands. She asked the Board to deny the application for industrial use until the applicant can remove and dismantle the chemical processing facility in its current location.

Shirley Morgan, representing Citizens for Public Safety, Quality of Life and Property Values, commented in opposition. She provided statistics regarding PNW facilities and citizen complaints of odors, burglaries and illegal sales related to marijuana processing sites.

Brody Anderson stated opposition based on a violation of the Yamhill County comprehensive plan.

Rich Thompson commented on traffic safety on Hwy 219 and the lack of available water on Chehalem Mountain. He expressed concerns about the amount of water the applicant will need to utilize for manufacturing and that trucking water on Hwy 219 will result in accidents and traffic issues.

Rick Noss – Not available, written comments stating opposition submitted into record.

Carrie Carlson commented on marijuana wastewater expressing concern the applicant has no plan for processing wastewater. She is also concerned about noise pollution.

Carol Vega – Declined to speak, written comments stating opposition submitted into record.

Eric Hamacher commented that Oregon does not have a fully comprehensive plan on marijuana/hemp industrial farming impacts.

Lindsay Hollway commented on the risk of road accidents on Hwy 219. She stated the site is ill suited for the community.

David Hollway read a personal statement into the record on behalf of a neighbor (Carrie Sullivan). The letter contained opposition to the application and commented on noise, light pollution and the inappropriateness of the processing plant in a rural residential area.

Debi Lorence provided comments regarding a marijuana facility in Hillsboro near her home. She spoke of a building on her property which is unrentable due to the smell from the processing facility. She noted runoff from the plant goes directly into a stream which wildlife utilizes and the effects of the facility lighting which are on 24/7.

Elizabeth Adams is a tree farmer and opposes the facility design. Her comments concurred with other previous comments given in opposition.

Rebecca Russell, attorney for Laura Cochran, stated that the continued operation of this facility will have a negative effect on Ms. Cochran's son. Ms. Cochran's home is 37 feet away from the facility boundary. She noted that the growing of marijuana is illegal under federal law and its proximity to a protected person, residences and schools. She asked the Board to deny the application.

Jamie Nibler declined to speak, written comments stating opposition submitted into record. Commissioner Kulla read Ms. Nibler's written testimony with her permission.

Elaine Harris declined to speak, written comments stating opposition submitted into record.

John Abrahamson commented on the viability of setting up an industrial and agricultural business on the top of Chehalem Mountain due to lack of water, road access and fire risk.

Jim Backstrand - Not available, written comments stating opposition submitted into record.

Amy Larson shared her experience of living near a hemp field. The negative impacts experienced by her family and neighbors included her kids not being able to go outside, headaches and nausea. She suggested the county consider requiring a 2000-foot setback for any future marijuana facilities, from any residential areas to mitigate public health issues.

Erich Brandstetter provided photos to the Board and discussed water needs. He said the HVAC system proposed is meant for alcohol, not ethanol and that the application does not have any plan for fire response, stating the new buildings do not have interior permits (water, electricity, plumbing).

Commissioner Kulla called for a recess at 2:01 p.m. and reconvened at 2:15 p.m.

Brian Doyle commented that the proposed site is an industrial facility which is incompatible with EFU zoning. He stated the processing used to extract THC and CBD are not typical farm practices considered as agricultural and should be inside city limits and not on rural land.

Michael Wert declined to speak, written comments stating opposition submitted into record.

Peter Jacoby stated concerns of the placement of the facility. He addressed the lack of inquiry into the LLC.

Karen Groenweghe declined to speak, written comments stating opposition submitted into record.

Bud (Norman) Clapper provided written testimony in opposition.

John Rehm submitted written testimony. He is a hydrogeological expert hired by the appellants. He addressed item #14 of December 6th's permit approval which was appealed stating the applicants did not provide adequate proof to support their application. He identified the approximate water right for this site and said it could be in excess of 19,000 gallons of water per day. The well water supply would affect surrounding wells by lowering the levels and would devalue the surrounding properties as well as the tax base.

Public Agency: Mr. Woods reviewed the list of public agency reports which included comments from the Public Works director, the water resources department and the county sanitarian.

Applicant Rebuttal: Ms. Celko introduced Todd Mobley of Lancaster Engineering to review traffic related comments which were submitted into the November 2019 Planning Commission testimony.

Ms. Celko recognized the amount of comments received and that the application raises concerns for the surrounding residents. She addressed the applicant's interest to use the existing buildings. She asked the Board to not hold the applicant accountable for prior property owners/tenants and the unlawful practices that took place.

Engineer Roger Whittaker addressed a concrete wall that could enclose the HVAC units helping to mitigate noise; odor would be controlled with carbon filter systems and ionization.

Ms. Celko addressed complaints of noise and odor from the prior owners' illegal grow and acknowledged that they likely ignored appropriate measures to mitigate these problems. There was discussion related to restrictions of farming methods and water usage. In her appeal to the Board to approve the site design application and deny the appeals, Ms. Celko recapped her client's diligence to comply with zoning laws, conditions, attaining appropriate permits and collaboration with neighbors. She reiterated that the focus of the public hearing was to decide on the site design.

After discussion, Commissioner Kulla asked if the applicant would be willing to extend the 150 days for an additional 7 days to allow the Board to consider additional testimony received. Ms. Celko and Mr. Bryan agreed and will submit their approval in writing to the Planning Department. Commissioner Olson moved approval of a 7-day continuance until Thursday, January 16, 2020, at 10:00 a.m. in Room 32 of the courthouse, resuming at the point of staff recommendation with no additional testimony. The motion passed, Commissioners Kulla, Starrett and Olson voting aye.

Commissioner Kulla closed the public hearing at 3:41 p.m.

H. ANNOUNCEMENTS:

1. For information on county advisory committee vacancies, please refer to the county's website, <https://www.co.yamhill.or.us/content/board-commissioners-committees>, or call the Board of Commissioners' office at 503-434-7501 or 503-554-7801 (toll-free from Newberg).
2. For questions regarding accessibility or to request an accommodation contact the Board of Commissioners' office at (503)-434-7501 or (503)-554-7801 (toll-free from Newberg) or email at bocinfo@co.yamhill.or.us
3. Electronic versions of all meeting agendas and meeting information packets can be found at the county's website: <https://www.co.yamhill.or.us/meetings>

Following Commissioner announcements, the meeting adjourned at 3:42 p.m.

Carolina Rook
Secretary

YAMHILL COUNTY BOARD OF COMMISSIONERS

Chair  CASEY KULLA

Commissioner  MARY STARRETT

Commissioner  RICHARD L. "RICK" OLSON

Accepted by Yamhill County
Board of Commissioners on
3/5/2020 by Board Order
20-71