

MINUTES
CITY PLANNING COMMISSION

Minutes of the City Planning Commission meeting held July 30, 2020 in the City Council Auditorium, City Hall, 212 SW 9th Street, Lawton, Oklahoma.

The agenda for the meeting was posted on the bulletin board in City Hall in compliance with the Oklahoma Open Meeting Act.

The meeting was called to order at 1:30 p.m. by Chairman David Denham.

MEMBERS PRESENT: David Denham
 Ron Jarvis
 Paula Bowen
 Neil Springborn
 Deborah Jones
 Dave Davison
 John Jones

MEMBERS ABSENT: Darren Medders (excused)

ALSO PRESENT: Richard Rogalski, Secretary
 Greg Gibson, Assistant City Attorney
 Tammy Anderson, Recording Secretary
 John Mackey, Legal Counsel
 Charlotte Brown, Planning and Subdivision Administrator

CONSIDER APPROVING THE MINUTES OF THE JULY 16, 2020, MEETING.

MOTION by Davison, SECOND by Springborn, to approve the minutes of the July 16, 2020 meeting. AYES: Jarvis, J. Jones, D. Jones, Davison, Denham, Bowen, Springborn. NAYS: None. MOTION CARRIED 7 - 0.

HOLD A PUBLIC HEARING AND CONSIDER A REQUEST FOR A USE PERMITTED ON REVIEW FOR THE OPERATION OF A MEDICAL MARIJUANA PROCESSING FACILITY IN CONJUNCTION WITH A MEDICAL MARIJUANA DISPENSARY IN C-5 GENERAL COMMERCIAL DISTRICT ON PROPERTY LOCATED AT 1011 SW C AVENUE, SUITE 1.

On July 16, 2020, the City Planning Commission opened the public hearing on this request for a Use Permitted on Review and voted to continue it to July 30, 2020, in order for the applicant and adjoining neighbors to attend. The Commission also asked staff to research how many processing facilities are currently licensed in Lawton. According to OMMA website, as of July 15, 2020, there are currently 50 licensed dispensaries and 20 licensed processing facilities listed as being located in Lawton. Some of these may be

located outside city limits, but still have a Lawton address. The License and Permit Division of the City of Lawton has approved a Certificate of Compliance for four processing facilities and for 40 dispensaries as of July 22, 2020.

Commissioner J. Jones said he noticed the applicant is not the property owner. He asked if the City has any sort of requirement stating the property owner must pay for the application.

Brown said the property owner signed the application.

Commissioner Davison asked if all the 40 dispensaries with a Certificate of Occupancy came before the Planning Commission.

Brown said no because the majority of these 40 dispensaries are in areas where dispensaries are a permitted use.

Rogalski said what typically comes before the Planning Commission are applications for a Use Permitted on Review for medical marijuana processing or grow facilities in correlation with a dispensary.

Commissioner Davison asked if dispensary owners can apply for a license from the State without coming through the City.

Rogalski said typically a dispensary owner applies for a license with the State, and then the State sends the City a Certificate of Compliance to be verified. The Certificate of Compliance outlines requirements in areas such as zoning, building, fire, electrical, mechanical and plumbing. All requirements must be fulfilled before the Certificate of Occupancy can be issued.

Brown said the Lawton Fire Department has been in contact with OMMA regarding several dispensaries that were issued State licenses despite being non-compliant with City rules and regulations.

Commissioner J. Jones said he has a problem with placing medical marijuana grow facilities in strip centers. He doesn't, however, have a problem with these grow facilities being housed in free standing buildings.

Rogalski said this request is for a processing facility in association with a dispensary. He said a dispensary is allowed by right in a strip center. However, processing and/or grow facilities are only allowed as a Use Permitted on Review in conjunction with a dispensary in C-5 zoning districts. Rogalski said these requests for a Use Permitted on Review are brought before the Planning Commission so that the Commission may review the application and determine if the proposed facility is appropriate for the location.

Chairman Denham declared the public hearing open.

Matthew Setters, property owner of 1006 and 1008 SW C Avenue and managing broker for Cummins-Setters Commercial Partners, said he is opposed to the medical marijuana processing facility. Mr. Setters said his opposition has nothing to do with medical marijuana itself. He said any sort of industrial manufacturing does not belong in a commercial zoning district, but rather an industrial district. Mr. Setters said he is aware a UPOR for a medical marijuana grow facility was granted for the VanHoozer property at SW 2nd Street and Lee Boulevard. He said a grow facility seems more appropriate at that location because there is industrial zoning across the street. However, that is not the case for property located at 1011 SW C Avenue. Mr. Setters said a lot of tax dollars have been used to preserve Lawton's downtown area. Mr. Setters said he is also a proponent of preserving the downtown area. Mr. Setters said he fears the proposed medical marijuana processing facility would be a detriment to property value.

Chairman Denham asked Mr. Setters if he has visited a marijuana processing facility to investigate associated smells, etc. He said these facilities claim to take various odor mitigation measures.

Mr. Setters said he has visited several of these facilities and approximately 6-7 of them emit a strong odor of marijuana. Mr. Setters said his company recently changed uses for two facilities that were formerly occupied by medical marijuana processing or grow facilities and they had to spend a significant amount of time cleaning these facilities to rid them of lingering odor. Mr. Setters noted that these facilities were not routinely cleaned while occupied, so this may have exacerbated the issue.

Commissioner Springborn asked if the City requires medical marijuana facilities to have burglar alarms or any other type of security.

Rogalski said no, but fire alarms are required by the City. Rogalski said he's not sure if burglar alarms are a requirement of the OMMA. He said the City has authority over zoning and building permits.

Commissioner Springborn said burglar alarms should be required for medical marijuana facilities.

Mr. Setters said State Question 788 seems to have stripped municipalities of their power for fear of ending up in court. He said although Lawton is their primary market, his company has commercial operations in multiple cities, to include Duncan, Altus, Ardmore, Oklahoma City and Edmond. Mr. Setters said the one thing that seems to be common amongst all cities is their ability to preserve zoning specifications and requirements. He said the purpose of zoning specifications is to maintain property value and to keep like-kind property together. Mr. Setters said a medical marijuana processing facility is not realistic for the proposed location. He said there are plenty of other properties in Lawton's industrial zoning districts that allow for this type of facility.

Chairman Denham asked who made the decision to have medical marijuana growing and processing facilities within C-5 zoning districts go through the UPOR process.

Rogalski said the City Council made this decision.

Mackey asked Mr. Setters if he's spoken to other nearby property owners who are also opposed to the medical marijuana processing facility.

Mr. Setters said he's spoken with two nearby property owners who are also in opposition.

Commissioner J. Jones said he agrees with Mr. Setter's position. He said because the City Council opted to allow these facilities to be placed in C-5 zoning with a UPOR, it puts the Planning Commission in a position to be overruled if they recommend denial.

Commissioner D. Jones said the Planning Commission is a recommending body and she doesn't think the Commission needs to be in lockstep with the City Council. She said many issues are raised during public hearings at Planning Commission meetings and the Council may or may not agree with these issues. Commissioner D. Jones said she gets more information each time the Planning Commission has a public hearing. She believes these meetings serve a good purpose. Commissioner D. Jones said she'd like to think that she can vote any way she wants, and the elected Councilmen have the right to override it.

Rogalski agreed with Commissioner D. Jones.

Chairman Denham said the Commissioners should visit medical marijuana processing and grow facilities so they may gain first-hand knowledge of how they operate.

Jason Miller, UPOR applicant and owner of Bellavista and Big Chief Collective, said he has put a lot of effort into ensuring he adheres to City code. Mr. Miller said his proposed facility would not be a traditional processing facility. He said he currently owns two other processing facilities – one in Stephens County and one in Kiowa County. Mr. Miller said he does not have the option to pull a permit strictly for hand-infused edibles. He said his stores sell a lot of edibles and the proposed processing facility would be a good business move for his company. Mr. Miller said he chose this location because it's centrally located and close to his other two stores. He said no volatile extraction would be done at the proposed processing facility – this process is done at two of his other facilities. Mr. Miller said the processing facility would not generate a high volume of traffic. He said two rooms of the facility would be used as office spaces, and hand-infusing edibles would occur in the back of the building. Mr. Miller said hand infusing edibles is not a particularly messy job and it doesn't produce a terrible odor.

Commissioner Davison inquired about the process of hand infusing edibles.

Mr. Miller said OMMA requires them to have a three-compartment sink and to keep the facility clean at all times. He said they would take prebaked edibles such as brownies and infuse them using a syringe. Mr. Miller emphasized that he thinks there's a difference between medical marijuana processing and infusing edibles, but there simply isn't a

permit available strictly for hand-infusing edibles. Mr. Miller said the edibles would be distributed between his two Lawton dispensaries.

Chairman Denham asked Mr. Miller how many processing facilities he owns.

Mr. Miller said he has two volatile processing facilities and two grow facilities. Mr. Miller said his third store will soon be open in Duncan and he has plans to open stores in Altus and Devol.

Chairman Denham asked Mr. Miller if he will be supplying his stores with the product he grows and processes.

Mr. Miller said he tries not to supply his own dispensaries with his product because his stores attract a different market.

Chairman Denham asked for clarification on the average number of people that would be occupying the facility.

Mr. Miller said there would be 1-2 employees occupying the building at any given time. He said there would be no customer except for whomever they are delivering to. Mr. Miller said he does have a transporting license, so he is able to make these deliveries.

Chairman Denham asked if customers would be entering the facility to access the dispensary.

Mr. Miller said a very low volume of product would be sold at this dispensary.

Commissioner Bowen asked Mr. Miller what measures he would take to mitigate odor and keep the facility clean.

Mr. Miller said he will have a grease trap installed underneath the sink, which is a requirement of the processing license. Mr. Miller said he will place a catch can inside the grease trap and when that becomes full it will be taken to a waste disposal facility. With a large portion of the building being used as an office space, Mr. Miller said it will be rare to have a mess inside the building. He said he has also stressed the importance of cleanliness to his employees.

Commissioner Bowen asked if the edibles will be infused with oil.

Mr. Miller said that is correct. He said the oil comes in a syringe and it can be used to either infuse edibles or it can be used as a vapor.

Commissioner Bowen said she is concerned about waste from the catch can getting into the water system. She said she is also still concerned about potential odor and clean-up.

Commissioner D. Jones asked Mr. Miller if OMMA inspects the facility before it's open.

Mr. Miller said they do not.

Commissioner D. Jones asked if OMMA ever inspects the facility.

Mr. Miller said yes – they have been to his dispensaries twice.

Commissioner D. Jones asked how long those dispensaries have been open.

Mr. Miller said one has been open since January of this year and the other since March of 2019.

Commissioner D. Jones asked Mr. Miller if it's true that no one from the State inspects the filtration system for odor or stormwater discharge prior to the opening of the facility.

Mr. Miller said that is correct, but he emphasized that this facility would not put off an odor.

Commissioner D. Jones said she understands that. However, if a UPOR for a medical marijuana processing facility were to be granted for this property then processing could occur in the future.

Mackey inquired about the location of Mr. Miller's off-site waste disposal.

Mr. Miller said it's in Stephens County.

Chairman Denham said he agrees with Commissioner D. Jones in her concern that processing could occur at this site in the future. He asked Rogalski if that's correct.

Rogalski said a UPOR does require a binding site plan, but a site plan doesn't necessarily address some of the nuances of the use. He said staff could potentially place conditions on the site plan that would limit the amount of processing that could occur on site.

Commissioner D. Jones said the City may not have the jurisdiction to do that.

Chairman Denham asked if the UPOR could be approved specifically for the processing of distillates.

Rogalski said while it may be possible to place this sort of restriction, it may not be wise. He said the restriction could cause confusion in the future. Rogalski said in the past when staff has placed site restrictions it's been regarding a particular use as a whole. Rogalski said staff will have to research if they can approve some aspects of processing with denying other aspects.

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Commissioner D. Jones said she is concerned about Mr. Miller's plans for the dispensary associated with the proposed processing facility. She asked Mr. Miller to elaborate on how the dispensary will function.

Mr. Miller said he must have a dispensary license to pull a processing license.

Commissioner D. Jones asked Mr. Miller if he intends on operating a dispensary at 1011 SW C Avenue.

Mr. Miller said no.

Rogalski said a dispensary is allowed by right in C-5 commercial zoning districts. When City Council added medical marijuana processing and grow facilities as a UPOR, Rogalski said it was his understanding that City Council intended for the associated dispensary to be the primary focus. This is because the dispensary will generate tax dollars for the City. Rogalski said he appreciates Mr. Miller's honesty, but it sounds like the dispensary associated with the proposed processing facility would not be a focal point. Rogalski said the Commission can vote to deny this request if they feel like the dispensary is not the anchor of the business.

Commissioner D. Jones asked how this issue would be addressed with the State.

Rogalski said the City should answer the question of what defines a dispensary.

Mr. Miller said the other counties in which he operates did not require him to pull a dispensary license in order to pull a processing or growing license. Mr. Miller said he is willing to operate a fully stocked dispensary on site if that's what he needs to do. However, Mr. Miller said he is currently more focused on using this building for an office space.

Rogalski noted there are many other districts within the City that are industrially zoned and would permit a medical marijuana processing facility by right.

Mackey asked if staff received any letters or phone calls in response to this request.

Brown said Mr. Setters was the only person who contacted staff.

Chairman Denham declared the public hearing closed.

Commissioner J. Jones said he noticed the application doesn't specify "Suite 1".

Chairman Denham asked if Mr. Humberson owns the whole building.

Mr. Miller said he believes Mr. Humberson only owns Suite 1.

Rogalski said the UPOR would apply only to Suite 1.

Commissioner D. Jones thanked Mr. Miller for his candor and said she has learned much more about the medical marijuana business. However, Commissioner D. Jones said she is uncomfortable approving this request knowing that OMMA does not inspect facilities before issuing licenses.

Commissioner Davison said he doesn't understand why Mr. Miller can't infuse edibles at one of his other processing facilities.

Mr. Miller said his other facilities are not setup for this type of work.

MOTION by D. Jones, SECOND by Jarvis, to recommend to the City Council denial of a Use Permitted on Review for the operation of a medical marijuana processing facility in conjunction with a medical marijuana dispensary on property located at 1011 SW C Avenue, Suite 1. AYES: Jarvis, J. Jones, D. Jones, Davison, Bowen. NAYS: Denham. OBSTAIN: Springborn. MOTION CARRIED 5 – 1 – 1.

COMMISSIONERS' REPORTS OR COMMENTS

SECRETARY'S REPORT

Rogalski noted that the City Council will begin meeting at 2:00 P.M. starting August 25th.

AUDIENCE PARTICIPATION

None.

Meeting adjourned at 1:54 p.m.

David Denham, Chairman
City Planning Commission

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