

The LINKING LETTER

April 14, 2017

By Anne Scheck

(1) Marijuana at both City Council and at (2) Planning Commission Meeting; (3) PIN REPORT: Longevity and Service Awards, Polk County Fire District; (4) Date to Note: MONDAY City Council, special meeting.

MARIJUANA DECISION: Yes Vote But New Demand for City Staff

A marijuana grow-and-processing operation along Stryker Road was unanimously approved by the City Council earlier this month but a majority of councilors told city staff a better approach is needed for future projects. They received some of those recommendations this week, in preparation for a special meeting Monday night.

The consulting planner for the city, Joey Shearer, submitted a memo to the City Council suggesting steps that the city can take to reduce potential miscommunication and procedural errors in the future, as developers locate in Independence. "Review of this application shed light on decision criteria that are outdated, excessively subjective and/or ambiguous and that may not reflect the long-term development goals of the City and community," he wrote in the April 10 report. Recommendations for improvement include careful assessment of whether applicants "adequately address all decision criteria," and include a requirement for a "written narrative response" in order to provide answers for the possible wide "range of issues" prior to a site application.

The grow-and-processing facility, by *Organic Investments*, is across from the north end of the Independence airpark community. It drew scores of neighbors from that subdivision to meetings on the issue. One common criticism was that the year-long process of approval, which was met by formal appeals, allowed for only limited input from residents -- and that whatever interaction occurred was largely initiated by the homeowners' litigation.

Last month, the city's consulting attorney, Lauren Sommers, said that public hearings over the proposed marijuana operation met the obligations of the city to residents, even though both of the

scheduled hearings directly resulted from the appeal filings. Ms. Sommers, who provided this view during a response to questions at the Planning Commission earlier this year, was absent from subsequent meetings. She reportedly is no longer with the law firm contracted by the city.

Several councilors at the last session appeared sympathetic to concerns that the process went awry, at least in terms of public sentiment. The city staff "didn't do us any favors," asserted Councilor Ken Day. With Councilor Diana Lindskog concurring, he said the steps in the application for the Stryker Road parcel could have been "a better process."

The reasons for "distrust" are understandable, observed Councilor Tom Takacs, particularly in light of enforcement issues, which have been identified as challenging by City Manager David Clyne. Councilor Marilyn Morton noted that she agreed in part with Councilor Day "on this," and she repeated a request she had earlier made for an audit on the procedural steps. The audit is "on its way," said Mr. Clyne. "We are, essentially, looking at ways we can avoid these (problems) in the future," he said.

The final decision, which grants approval for the operation to begin, was passed after the applicant's law firm, Day Law & Associates, pledged by letter that noise levels would be monitored twice annually after taking baseline measures, despite the fact that agricultural use is considered exempt from such restrictions. The noise level was a "hot topic" for opponents and some councilors, the letter said. In an analysis of that letter, Mr. Shearer, the city's consulting planner, noted that this condition "sunset" -- drops off as a requirement -- after five consecutive reports showing noise levels not exceeding the baseline ambient noise by 10 decibels.

The lawyer for *Organic Investments*, Ross Day, who signed the letter, observed in it that, on the issue of odor, "many of the opponents of the application offered nothing more than speculation concerning the odor emanating from the proposed grow operation." Mr. Day concluded his discussion on this topic by noting that the system will be sufficient to control odor "to just about any standard,

let alone the general standards of the IDC (Independence Development Code).”

The standard upon which the City of Independence has chosen to rely is whether the odor from the operation would be offensive to a “reasonable person with ordinary sensibilities.” For odor control, the Independence Planning Commission approved carbon filters – rather than the applicant’s chemical-mist system – for the operation. Should overwhelming odor develop from growth or harvest of the plants, carbon filtration doesn’t preclude the addition of an odor-neutralizing spray if more control is needed, according to outside expert opinions on both systems.

MARIJUANA BUFFERS: Changes Under Consideration by PC

For the second time in as many months, the Independence Planning Commission sent city staff back to the drawing board to come up with new options on marijuana-business planning – asking to expand “zero” buffer maps to 100 feet in areas near neighborhoods.

The Planning Commission took no formal action, continuing deliberations on the matter till their meeting early next month. However, a majority of the commissioners expressed the desire to see maps showing a distance between the recommended zero buffering around marijuana businesses -- which would yield the highest number of prospective sites -- and 250-foot buffering, which would all but eliminate such businesses in the industrial zone. Other buffers established for schools, libraries, parks and certain other public places weren't a point of contention among commissioners.

The industrial zone of the city was the center of discussion – largely the open land along Stryker and Hoffman Roads -- that's flanked by single houses, a small cul-de-sac neighborhood and the airpark. The need for a buffer zone between the businesses and the residents has been a source of debate between the city and some of its citizens.

The lack of any substantial buffering is advisable, contended attorney Lauren Sommers, who no longer serves as the city's counsel. She cautioned against any buffers in industrial zones, which she said could invite lawsuits from marijuana businesses -- they could cite state law allowing only "reasonable" restrictions on sites for sales and production involving this new plant product.

The attorney who replaced her at the Planning Commission meeting, Carrie Connelly, did not make that argument, except to explain that it originally came from Ms. Sommers, who "is no longer with the firm."

Conceptually, zero buffers were affirmed by the City Council, according to David Clyne, who told planning commissioners that city staff was following that directive. However, the City Council appeared to be divided on the issue this past November. At that meeting, Mayor John McArdle stated it was "his inclination" to be the least restrictive possible due to potentially expensive litigation. But, in an email this past week, he pointed out that "Commissions and Council are free to make changes to those recommendations as they see fit."

"Staff make professional recommendations to boards and commissions, including the planning commission and city council -- for those groups to consider in their deliberations," the mayor explained in response to an inquiry about the outcome. "For myself, I have made no decisions on the zoning issues," he continued. "I will wait to hear from, and review the material, citizen comments, and decision from the planning commission, as well as the conversation and deliberation that the council will have prior to any final decision."

Planning Commissioner Trevor Scheck, who said he recently had listened to the audio recording of a City Council meeting on the issue, observed that City Councilor Tom Takacs had requested a "hybrid" plan, which would provide some buffering without being so restrictive that it precludes marijuana locations in industrial areas. Commissioner Scheck requested a more detailed 100-foot buffer map; So did other commissioners.

Please note: Commissioner Trevor Scheck is the son of the author of The Linking Letter.

Disclosure: The author of this article was a participant in some of the early "setback" meetings for the industrial zone -- so there will be no reporting of setback proposals in The Linking Letter. This issue was discussed at the last joint commission-council work session.

PIN REPORT: Honors for Personnel at Polk County Fire District No. 1!

Public Interest News

- 5 years of service: **Lieutenant Jim Burke**
- -- 10 years of service: **Firefighter Mike Hasson**
- -- Resident of the Year: **Wyatt Crofts**
- -- Rookie of the Year: **Firefighter TJ Greenhill**
- -- Support Person of the Year: **Kimber Townsend**
- -- Chief's Award: Deputy State **Fire Marshal Shannon Miller**
- -- IAFF 4196 Award: **Fire Chief Ben Stange**
- -- Instructor of the Year: **Captain Mike Kissell**
- -- Employee of the Year: **Captain Mike Kissell**
- -- Officer of the Year: **Lieutenant Brian Yost**
- -- EMT of the Year: **Lieutenant Brenden Shellito**
- -- Firefighter of the Year: **Firefighter Matt Connery**

DATE-T0-NOTE: This Monday, April 17, the Independence City Council will meet in a special session at 6:15 pm at the Civic Center. The city staff will unveil councilors' additions to the strategic plan, as well as a report with suggestions for better processing of development applications in the future.

MORE IN-DEPTH MARIJUANA COVERAGE is in APRIL issue of *The Independent*. Pick up a copy at Ovenbird Bakery, The Golden Horse Restaurant, Elite Cleaners (all downtown). The Starduster at the airport.