

The Linking Letter

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By Anne Scheck

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MARIJUANA SITE HEARING: Packed Planning Commission

A standing-room-only, three-hour public hearing by the Independence Planning Commission on a proposed marijuana processing and grow facility on Stryker Road ended Monday night after commissioners voted to require the applicant to install an odor-containment system of carbon filtration instead of one that emits a neutralizing mist.

However, the fight may be far from over. Several residents have said they hope the commissioners’ decision will be appealed to the City Council, citing disappointment with the way the hearing was handled. Three commissioners — Natascha Cronin, Trevor Scheck* and Eric Smith — expressed concern about being asked to render a decision so shortly after receiving so much information. Commissioner Scheck noted that he had received the 181-page meeting packet only a few days before, which he felt was a “rush to judgment.” As a result, he abstained from the vote.

The commissioners passed a “condition of approval” for the carbon-filter technology after neither the city staff — nor the applicant — was able to identify the specific chemical aimed at controlling odor through a spray. Commission members also queried city staff about noise control, citing a network of fans that will be used in production. A “nuisance standard” in the city code covers noise, and it will apply to the operation, explained Joey Shearer, the planning consultant for the city. The commissioners then voted to mandate that the proposed development shall “remain in substantial conformance” with the application as submitted, which includes compliance with

city codes. That "touches on noise," Mr. Shearer later explained.

The applicant, Organic Investments LLC, was represented by Mark Jennings PhD, who said he was "open" to "working further" with neighbors. "I'd be more than happy to do so," he said in his public testimony.

However, one of those who addressed commissioners during public comments said that Dr. Jennings had misled a similar crowd during a meeting more than a year ago at the Independence airpark, where Dr. Jennings unveiled plans — plans that didn't include greenhouses to grow plants. But the project was in the discussion phase, Dr. Jennings explained. "I did not explicitly (intentionally) lie to anyone," he said.

The hearing drew scores of residents from streets near the proposed site. The first to speak was Carole Bova-Rice, who represented a small cul-de-sac on Kbel Yliniemi, which abuts the development property. Fumes emitted from the site, if there are any, could jeopardize her parents' health — both have "pulmonary issues," Ms. Bova-Rice said. Also, several neighbors are state employees and "worried about false-positive results on random tests" if there is airborne exposure, she added.

Early in the hearing, Bruce Patton, a retired civil engineer who lives in the airpark, criticized the standards for odor and noise, which have been called vague and ambiguous by citizens at past City Council sessions. Speakers were limited to three minutes, and Mr. Patton's critique exceeded his time. Asked to cease, Mr. Patton wondered aloud if there was anyone who would relinquish his or her own time so that he could finish. Hands flew up around the room, as many volunteered to forfeit their three minutes.

Mr. Patton was then allowed to proceed. In one of the lighter moments of his presentation, he pointed out the staff report defined odor as "offensive to the community" when it is found to be so by "an average reasonable person of ordinary sensibilities." Smiles broke out among one group of attendees, who debated in whispers the possible identity of a person with the right nose for that job.

The hearing was held after two appeals were filed following the city's approval of the site plan — one from airpark homeowners, represented by Gary Van Horn; the other by Mike and Melinda Short, who also live there. Better safeguards to protect the surrounding neighborhood were repeatedly requested. However, in what was perhaps the most significant exchange during public testimony, Mike Keane, the attorney for the airpark, declared

that the hearing process had violated the city's own code, by following rules for a "Type 1" meeting when, procedurally, the hearing required guidelines for a "Type 2" hearing.

The city's consulting attorney, Lauren Sommers, didn't disagree. However, she observed that the appeal process included all the characteristics of a "Type 2" hearing. "We feel that, for lack of a better word, this is sort of a 'No harm, no foul,' " she said. In fact, the Oregon Land Use Board of Appeals (LUBA) generally seems to overlook procedural errors if a city's mistakes haven't put one side or the other at a substantial disadvantage, according to a LUBA overview published by the state.

Like LUBA, the Independence Planning Commission was acting as a "quasi-judicial" panel during the hearing on the marijuana operation. In quasi-judicial proceedings, both the validity of the evidence and the way the process is conducted have to meet a more stringent standard, compared with other kinds of municipal decision-making.

Two years ago, legislators seem to have tightened these procedures even more (ORS 197.763). And, last May, LUBA issued its final opinion on a years-long, closely-watched case that literally involved a "dust-up." LUBA sided with vintners in Jackson County who said the county should have adequately addressed their arguments that a nearby mining operation would blow too much dust into the air near the vineyard. Neither the county nor the mining operation provided adequate proof that it would not, even when evidence purporting to show the problem was submitted by the wine-makers, according to LUBA (*Del Rio Vineyards LLC v Jackson County*).

- *Trevor Scheck is the son of the editor-publisher of **The Linking Letter & The Independent** [FURTHER DISCLOSURE: The author of the above article resides on Stryker Road, only a few blocks from the proposed site]*

STATE GRANT MATCH: \$350,000 LIKELY FROM CITY FOR PARK

An application for a state grant of a half million dollars that will — if obtained — likely mean a \$350,000 match by the city was approved by the City Council Tuesday, after councilors heard a conceptual plan for a new park at *Independence Landing*.

The grant request is due by the end of April and precedes a final design of the park, which would include a shoreline area of the river, explained Shawn Irvine, Independence economic development director. The city probably will request an amount "in the neighborhood of \$500,000," which, if approved, will mean a matching sum from the city of \$350,000, Mr. Irvine said.

Councilor Ken Day asked how the matching money is to be paid. The money for the match won't be necessary until next year's budget, and "this is intended to come from system-development charges that we expect from all the development next year," said City Manager David Clyne. The park grant-match would be "priority one" of the use of those funds, he added.

COUNCIL WORK SESSION: Councilors Share City Hopes

In identifying their dreams for the future of Independence, city councilors listed a range of specific hopes, from resolving the fate of *Independence Station* to preserving the small-town charm of the historic downtown.

At a work session on the second Saturday in March, the city council was asked to voice in their own words — and from their own experience — what they wanted to see happen in the near future for Independence. Councilor Diana Lindskog said she hoped that "one day we will take care of *Independence Station*," the large, unfinished downtown building begun more than a dozen years ago. "I get asked about it all the time," she said. Councilor Marilyn Morton said she has been hoping for a hotel in the city for many years, "almost from day one." Her "personal goal" is to have both cities — Monmouth and Independence — truly become one community, she added. Councilor Tom Takacs said he "wanted to see the downtown fill up those empty shops." And, "I want to see them stay there for more than six months," he said. "I (fore)see restaurants and shops and people walking downtown," agreed Councilor Kathy Martin-Willis. "I think it is important that we hang on to our historic past but keep moving forward," she said.

Echoing that sentiment, Mayor John McArdle said he wants to see a "repeat" of some of the past efforts. "Look at the success we've had over the years," he said. Councilor Ken Day said he also "wants to see (the city) grow dynamically." But when he looks into the future, "I want to see it be financially responsible, too," Mr. Day said. Councilor Michael Hicks said he hopes the town can "carve out a niche" as a special place that preserves its "small-town esthetic," which will attract people for years to come.

PIN REPORT: Library Fundraiser Praised; New Police Officer

Public Interest News

Betty Plude, a longtime volunteer and fundraiser for the Independence Library, received public recognition from Mayor John McArdle at Monday night's annual charitable event for the library, a movie that proved to be a tear-jerker in more ways than one. Both Ms. Plude's announcement that this was her final year organizing the event and the film itself, "The Quiet Man,"

concluded in much the same way — with very few dry eyes in the house and deep audience appreciation right up to the end, and applause.

Eric Solberg, a 10-year reserve-officer volunteer, officially became an Independence police officer at the last City Council meeting as he took the oath of office — and congratulations — from Mayor John McArdle Tuesday.

Date-to-Note: City Council meeting: Tuesday, March 28, 7:30 am