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August 1, 2019

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Ms. Ann Gasser, Hearings Officer
Marion County Planning Division
5155 Silverton Rd. NE
Salem, Oregon 97305

RE: Marion County Conditional Use Case No. 19-024; Applicant's Supplemental Letter

Dear Ms. Gasser:

This office represents the Applicant. This letter supplements Applicant's application (the "Application"), which Applicant submitted on July 15, 2019. This letter is timely filed prior to the public hearing scheduled for August 14, 2019 at 4:00 p.m.

This letter (1) addresses Marion County Rural Zone Code ("MCC") provisions contained in Chapter 17.119 and (2) responds to written comments submitted to the Marion County Planning Division through 5:00 p.m. on July 29, 2019.

1. MCC 17.119, Conditional Uses.

Based on conversations with planners from the Marion County Planning Division, it is Applicant's understanding that responses to the approval criteria in MCC Chapter 17.119 are not required to be included in the Application. However, in the event that the Hearings Officer determines that Applicant must address these approval criteria in the Application, we have provided Applicant's responses below.

MCC Chapter 17.119.010 states as follows:

> **"A conditional use is an activity which is basically similar to other uses permitted in the zone, but due to some of the characteristics of the conditional use, which are not entirely compatible with the zone, such use could not otherwise be permitted in the zone. Review of the proposed conditional use by the director, planning commission or hearings officer will ensure that the use will be in consonance with the purpose and intent of the zone."**

RESPONSE: Hemp processing facilities exist elsewhere in Marion County's Exclusive Farm Use ("EFU") zone. Applicant's hemp processing facility as a commercial activity in conjunction with a farm use is a conditional use permitted pursuant to MCC Chapter 17.136.050(D)(2). "Industrial hemp" was approved to be grown as a farm crop by H.R. 525 during the 113th U.S.

Congress in 2013. Marion County considers the processing of farm crops a "commercial activity." For these reasons, the Hearings Officer can find that this criterion is satisfied.

MCC Chapter 17.119.020(A) states as follows:

> **"An application for a conditional use may be filed by the following only:**
>
> **A. The owner of the property that is the subject of the application;"**

RESPONSE: The owner of the property, Rosemary G. Bell as surviving Trustee of the Ron and Rosemary Bell Trust, dated February 9, has signed the Application. For this reason, the Hearings Officer can find that this criterion is satisfied.

MCC Chapter 17.119.025(A)(1) states as follows:

> **"A. Applications shall include the following signatures:**
>
> **1. Signatures of all owners of the subject property;"**

RESPONSE: Ronald W. Bell is deceased, leaving Rosemary G. Bell as the sole owner of the property. Because Ms. Bell, acting as Trustee, signed the Application, the Hearings Officer can find that this criterion is satisfied.

MCC Chapter 17.119.070 states as follows:

> **"Before granting a conditional use, the director, planning commission or hearings officer shall determine:**
>
> **A. That it has the power to grant the conditional use;**
>
> **B. That such conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone;**
>
> **C. That any condition imposed is necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood."**

RESPONSE: First, the Hearings Officer has the power to grant the conditional use pursuant to MCC Chapter 17.119.030. Second, a hemp processing facility as a commercial activity in conjunction with a farm use is in harmony with the purpose of the EFU zone. MCC Chapter 17.136.010 states that the purpose of the EFU zone is to "provide areas for continued practice of commercial agriculture." It follows that the commercial processing of "industrial hemp," which Congress approved to be grown as a farm crop, is a use in harmony with the purpose of the EFU zone. Lastly, the Applicant understands that the Hearings Officer may impose conditions that

are necessary for the "public health, safety or welfare" of the community. For these reasons, the Hearings Officer can find that the criteria in MCC Chapter 17.119.070 are satisfied.

MCC Chapter 17.119.110 states as follows:

> **"The director shall decide whether to approve or deny the conditional use based on the Marion County Comprehensive Plan and applicable criteria in this title. The decision should be made and notice thereof sent within 30 days of an application being determined to be complete. This administrative decision shall be final unless an appeal is taken as provided below."**

RESPONSE: The Hearings Notice for Conditional Use 19-024 (the "Hearings Notice") states that the relevant approval criteria applicable to the Application are MCC Chapters 17.110.680, 17.119, and 17.136. The Application, together with this letter, demonstrate that Applicant has satisfied the relevant approval criteria. Thus, the Hearings Officer may approve the conditional use.

2. Responses to written comments received by the Marion County Planning Division through 5:00 p.m. on July 29, 2019.

The written comments submitted to the Marion County Planning Division contain more than 90 pages from surrounding property owners, lawyers, and other interested parties. For convenience, I have summarized their comments below.

COMMENT #1: The processing facility will decrease home/property values.

APPLICANT'S RESPONSE: This comment is irrelevant to the Application because it does not address relevant approval criteria.

COMMENT #2: The processing facility will create noxious odors.

APPLICANT'S RESPONSE: The processing facility will not omit toxic or noxious matter. Any odor from hemp is not considered "noxious" and will be mitigated by measures common to other hemp processing facilities in similar areas.

COMMENT #3: The only reason the property owner is not withdrawing the application is fear of a lawsuit.

APPLICANT'S RESPONSE: This comment is irrelevant to the Application because it does not address relevant approval criteria.

COMMENT #4: The processing facility will affect neighboring property owners' views.

APPLICANT'S RESPONSE: This comment is irrelevant to the Application because it does not address relevant approval criteria.

COMMENT #5: Trucks serving the processing facility will create dangerous traffic conditions for motorists and cyclists.

APPLICANT'S RESPONSE: This comment is only relevant insofar as it applies to nearby farm operations. Applicant has hired an engineer to address site distance standards and to determine whether the processing facility will have have a significant impact on the surrounding farm uses by summarizing the expected number of passenger vehicles and heavy vehicle trips. Applicant intends to provide the Hearings Officer with the engineer's report prior to the hearing.

COMMENT #6: Neighbors do not want to see traditional farmland turned into commercial/industrial land.

APPLICANT'S RESPONSE: This comment is irrelevant to the Application because it does not address relevant approval criteria.

COMMENT #7: The processing facility will be located only one mile from the school, and will pose hazards to school buses.

APPLICANT'S RESPONSE: This comment will be addressed more fully by the engineer's report, but the processing facility's proximity to the school is irrelevant to the Application because it does not address relevant approval criteria.

COMMENT #8: Flooding at the site will cause toxic wastewater from the processing facility to pollute the surrounding area.

APPLICANT'S RESPONSE: This comment is only relevant insofar as it applies to farm operations. Applicant will process wastewater from the site in accordance with applicable Department of Environmental Quality ("DEQ") standards.

COMMENT #9: Not enough electrical power exists to serve the subject property.

APPLICANT'S RESPONSE: This comment is irrelevant to the Application because it does not address relevant approval criteria.

COMMENT #10: Local civil services available to the property are inadequate.

APPLICANT'S RESPONSE: This comment is irrelevant to the Application because it does not address relevant approval criteria.

COMMENT #11: The property is located in sensitive ground water area #5 and the corresponding approval criteria are not listed on the Hearings Notice. An attorney, Mr. Lien, asserts that MCC Chapter 17.110.830 should apply.

APPLICANT'S RESPONSE: The Hearings Notice states that the relevant approval criteria applicable to the Application are set forth in MCC Chapters 17.110.680, 17.119, and 17.136. Accordingly, MCC Chapter 17.110.830 is inapplicable to the Application.

COMMENT #12: No evidence exists of a sale between Jupiter and the Trust.

APPLICANT'S RESPONSE: This comment is irrelevant to the Application because it does not address relevant approval criteria.

COMMENT #13: The processing facility belongs in an industrial zone because of the size and intensity of the use.

APPLICANT'S RESPONSE: This comment is irrelevant to the Application because it does not address relevant approval criteria.

COMMENT #14: The noise generated will adversely impact surrounding farm uses.

APPLICANT'S RESPONSE: The processing facility will be located in a building that will mitigate noise created by the processing operations. The noise generated by the facility will not be perceptible beyond what is common for other farming uses in the surrounding area.

COMMENT #15: The processing facility will not enhance the farming operations of the nearby farming community.

APPLICANT'S RESPONSE: This comment is irrelevant to the Application because it does not address relevant approval criteria.

COMMENT #16: The processing facility will force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest uses.

RESPONSE: As stated in the Application, the surrounding properties in all directions are zoned EFU and in farm use. Because the use will be in conjunction with a farm use, the use will not have a negative impact on nearby lands devoted to farm use. The site will be maintained to ensure the highest quality of hemp products. An air filter will block anything larger than a 10 micron particle from entering the air, and the processing facility will not emit pollen. The processed material will be filtered, collected, and bagged in a clean and workmanlike matter. Apart from drying activities, no open storage of hemp is proposed outside of the processing facility. No outside activities that would produce heat or glare are proposed on the site. Additionally, lighting on the main processing facility building will be directed away from adjacent properties. Any security lighting will be that which is typically used for rural farm operations. For these reasons, the processing facility will not force a significant change in, or significantly increase the cost of, nearby farm or forest operations.

3. Conclusion

The Application, together with this letter, demonstrates that the Applicant has satisfied the relevant approval criteria in MCC Chapters 17.119 and 17.196. The vast majority of the written testimony submitted through July 29, 2019 does not address the relevant approval criteria.

Argument, no matter how substantial and credible, is irrelevant if it does not address relevant approval criteria. For these reasons, the record supports a finding by the Hearings Officer that the Applicant has met its burden of proof. The Applicant respectfully requests that the Hearings Officer approve the Application.

Regards,

K.C. Safley

KCS:jmhi

cc: Seth Thompson (*via email*)
Mike Robinson (*via email*)
Michael Winter (*via email*)
Lee Seward (*via email*)

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