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MEMORANDUM

TO: Marion County Hearings Officer
FROM: Marion County Planning Division/Thompson
DATE: August 1, 2019
SUBJECT: Conditional Use 19-024/Jupiter Pharma, Inc.

The Marion County Planning Division has reviewed the above-named case and offers the following comments:

FACTS:

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding EFU (Exclusive Farm Use) zone is to promote the continuation of commercial agricultural and forestry operations.
2. The property is located on the east side of Parrish Gap Road SE in the 8,700 block and contains an existing dwelling, farm structures, and well. The property was described by deed on May 25, 1977 (Reel 223, Page 050) and is, therefore, considered a legal parcel for land use purposes.
3. Properties to the north, east and south are zoned EFU and in farm use. Properties to the west are zoned SA and also in farm use.
4. The applicant is proposing to establish a hemp processing facility as a commercial activity in conjunction with farm use. The processing facility will be located in a 12,000 square foot building. The applicant will also construct the following buildings: (1) 6,000 square foot administrative building; (2) 50,000 square foot storage building; (3) 4,800 square foot motor pool building; and (4) 15,000 square foot building for drying hemp. The processing facility will also offer third-party drying services to farmers in the state of Oregon who grow hemp, but cannot afford the cost of drying equipment. For this service, the applicant will dry the farmers' hemp and return it to them without processing. This service is permitted outright as farm use.
5. Marion County Public Works Land Development and Engineering Permits (LDEP) requested that the following conditions be included in the land use case:

“Condition A – Prior to building permit issuance, Applicant shall provide evidence of a recorded 30-foot right-of-way half-width dedication along the Parrish Gap Road frontage to meet the Minor Collector standard per the Marion County Transportation System Plan.

Nexus for the above Condition is the anticipated increase in traffic brought about by the proposed commercial development. The requested Condition is in general accordance with Marion County Code 17.110.780(A) of the Rural Zone Code of Marion County, wherein all street rights-of-ways, pavement widths, shoulder widths and other design features shall meet Marion County Engineering Standards, and aligns with Section 17.119.060 that authorizes imposition of reasonable and necessary conditions for Conditional Uses.

Condition B – At the time of application for building permits, Applicant will be required to apply for and obtain an Access Permit. Under the Access Permit the access to be used for the commercial activity shall be paved a minimum of 50 feet back from edge of asphalt, and there may be some requisite gravel shoulder work obliged in the vicinity of the access. The fencing and gate at the northern access shall also be removed from the public right-of-way. Vegetation trimming may be necessary to achieve adequate sight distance.

Access is typically an Engineering Requirement but has been elevated to a Condition as a matter of timing. In accordance with Marion County Driveway Code 11.10, driveway permits will be required for any new access or change in use of the existing access to the public right-of-way. Driveways must meet sight distance, design, spacing, and safety standards.”

LDEP notes the development will be subject to the following engineering requirements and advisories:

“C. A civil site plan is required for 0.5-acres or more of proposed development. This should be submitted in advance of application for building permits to allow adequate time for review. A traffic circulation and parking plan needs to be included.

D. The County requires any development having 0.5 acre or more of impervious (hard) surface to provide storm water detention. As such, the applicant may need to provide storm-water detention systems that detain enough of the storm-water runoff on site so that there is no net rate increase in storm-water flow from the subject property. Such a system shall be sized and modified so that it will detain the difference between a 5-year frequency storm with pre-development conditions and a 10-year frequency storm under development conditions. Acceptable drainage and detention systems must be designed and approved prior to issuance of a building permit. Any such system, as required, must be constructed and approved by Public Works prior to final building inspection.

E. Evidence of a DEQ National Pollutant Discharge Elimination System (NPDES) 1200-C permit is required for all construction activities that disturb one-acre or more. Please be advised that USDA does not govern ground disturbing activities for this type of commercial use.

F. The subject property is within the unincorporated area of Marion County and will be assessed Transportation System Development Charges (SDCs) upon application for building permits, per Marion County Ordinance #00-10R.

G. Per County GIS records, an unnamed natural drainageway passes through the middle of the property from southwest to northeast. Construction of improvements on the property should not block historical or naturally occurring runoff from adjacent properties. Furthermore, site grading should not impact surrounding properties, roads, or drainage ways in a negative manner.

H. It is the responsibility of the Applicant to preserve and protect the current Pavement Condition Index (or PCI) rating and the structural integrity of adjacent county roads to the satisfaction of Marion County Public Works during transport of materials and construction activities. Failure to preserve and protect the road may result in the applicant being responsible for replacing or reconstructing the damaged road at his/her own expense.”

Marion County Building Inspection commented that building permits would be required for new construction.

Marion County Building Inspection Onsite Wastewater Specialist commented that site evaluation would be required to establish septic system(s).

Turner Fire Department commented on construction, access and water supply requirements.

All other commenting agencies stated no objection to the proposal.

STAFF FINDINGS AND ANALYSIS:

6. In order to approve a commercial activity in conjunction with farm use, the applicant must demonstrate compliance with the specific criteria listed in Chapter 17.136.060(D) of the Marion County Code (MCC). These include:
 - A. *The commercial activity must be primarily a customer or supplier of farm uses.*
 - B. *The commercial activity must enhance the farming enterprises of the local agricultural community to which the land hosting that commercial activity relates.*
 - C. *The agricultural and commercial activities must occur together in the local community to satisfy the statute..*
 - D. *The products and services provided must be essential to the practice of agriculture.*
7. Hemp was approved to be grown as an agricultural crop by H.R. 525 during the 113th U.S. Congress in 2013. H.R. 525 defines "industrial hemp" to mean the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-nine tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. The Oregon Department of Agriculture regulates the growing of industrial hemp and handling of hemp seed in the state of Oregon and requires registration of businesses that grow and/or process industrial hemp as well as periodic testing of the crop to ensure that THC levels do not exceed 0.3%.

The applicant is proposing to process industrial hemp for its oil. The hemp processed at the facility will be grown in Marion County and the state of Oregon. The proposal is for processing an agricultural crop grown in the state of Oregon, which is considered to be the local area and is essential to the practice of agriculture. The commercial activity meets the criteria for operating in conjunction with farm use.

8. In addition to the specific criteria above, the proposal must also satisfy the conditional use criteria in Marion County Code (MCC) 17.136.060(A). Those requirements are:
 - A. *The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.*
 - B. *Adequate fire protection and other rural services are, or will be, available when the use is established.*

- C. *The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.*
- D. *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*
- E. *The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.*

Since the use has been determined to be in conjunction with farm use, it is not expected to have a negative impact on nearby lands devoted to farm use. The proposal meets the criterion in #9(a). The Turner Fire District serves the parcel and all other needed services are currently available to the site. The proposal satisfies the criterion in #9(b). The property is not within a wildlife habitat area or geologically hazardous area. The property is located within a Sensitive Groundwater Overlay (SGO). However, water usage at the processing facility will be limited to employee use of restrooms and cleaning of machinery and equipment. For these reasons, water usage on the subject property is not expected to have a significant adverse impact on watersheds. The processing facility will utilize air filters while drying the hemp. For this reason, the processing facility is not expected to have a significant adverse impact on air quality. The processing facility will not store any hazardous materials or farm chemicals, other than those used in conjunction with farming of crops. For this reason, the processing facility is not expected to have a significant adverse impact on water quality. Noise generated by the proposed activity should be comparable to agricultural activities. For these reasons, the proposal meets the criteria in #9(c) and (d). There are no potential water impoundments, identified wetlands, or significant mineral and aggregate sites identified by the Comprehensive Plan in the area. The criterion in #9(e) is met.

9. If approved Planning staff suggests the following conditions of approval be applied:

- A. The applicant shall obtain approval for all required permits from the Marion County Building Inspection Division.
- B. Public Works Land Development Engineering and Permits (LDEP) will not approve the use until the following conditions have been satisfied:

Condition A – Prior to building permit issuance, Applicant shall provide evidence of a recorded 30-foot right-of-way half-width dedication along the Parrish Gap Road frontage to meet the Minor Collector standard per the Marion County Transportation System Plan.

Condition B – At the time of application for building permits, Applicant will be required to apply for and obtain an Access Permit. Under the Access Permit the access to be used for the commercial activity shall be paved a minimum of 50 feet back from edge of asphalt, and there may be some requisite gravel shoulder work obliged in the vicinity of the access. The fencing and gate at the northern access shall also be removed from the public right-of-way. Vegetation trimming may be necessary to achieve adequate sight distance.

- C. The development shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval of the Planning Director.
- D. The industrial hemp processed at the facility must be grown in the state of Oregon.
- E. The applicant should contact the Turner Fire District to obtain a copy of the District’s Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.