

## PLANNING COMMISSION MINUTES

City Hall Council Chambers

February 22, 2018

7:00 p.m.

The regularly scheduled meeting of the Pendleton Planning Commission was held February 22, 2018, at 7:00 p.m. in the City Hall Council Chambers with Commissioners Brian Currin, Ryan DeGrofft, Sunny Harmeson, and Joseph Hull present. Commissioners Maureen McCormach, Terry Clarke and Vincent Papol were absent. Staff members present were City Planner George Cress, and Planning Aide Julie Chase. Commissioner DeGrofft acted as Chairman at this meeting.

*Reminder: The Commission should speak up or speak into the microphones so that the audience can hear the Commission.*

### CALL TO ORDER:

**COMMUNITY DISCUSSION:** None.

**CONSENT AGENDA:** Minutes of February 8, 2018, meeting were approved.

### PUBLIC HEARINGS:

- a. **AMD17-09(EO Investment, LLC):** Zoning Map Amendment to rezone approximately 5,000 square feet of land at 421 SE 4<sup>th</sup> Street currently in the CMU, Central Mixed Use, zone. The proposed zone change is M-1, Light Industrial. Uses will change from commercial, light fabrication, and auto repair in nature to industrial, contractor, and wholesale-type marijuana. The property abuts both CMU, Central Mixed Use, to the north, south, and west; and M-1, Light Industrial, to the east and can be specifically identified on Assessor Map 2N3211BB Tax Lot 12602, Umatilla County. **No development, including land division, is proposed as part of this request.**

**Conflicts of Interest/Exparte Contact:** None.

**Staff report:** The applicant/property owner requests an amendment to the City of Pendleton Zoning Map. The proposed amendment would rezone approximately 5,000 square feet of land currently in the CMU, Central Mixed Use, zone to M-1, Light Industrial. Uses will change from commercial, light fabrication, and auto repair in nature to industrial, contractor, and wholesale-type marijuana. The property abuts both CMU, Central Mixed Use, to the north, south, and west; and M-1, Light Industrial, to the east. SE 4<sup>th</sup> Street separates this property from the M-1, Light Industrial zone. (A photo of the area was placed on the projector screen.) Two letters were submitted by members of the Commission that voted against recommending approval at the November 30<sup>th</sup> hearing. These letters are made part of the staff report.

### Questions to Staff:

**Applicant Testimony:** Tyrell E (EO Investments PO Box 63, Ontario, OR 97914). He introduced his partner, Bruce. He does not desire to hide anything from the Commission. It is his intent to rezone the property from CMU to M-1 to utilize the trend of marijuana in Pendleton. If the zone change is granted, the applicants will apply for some type of marijuana use in the area. He believes that they have done their due diligence with the application submitted in July. He has spoken with the City, County, the State, and the neighbors with exception of the laundromat owner. He believes this request meets the criteria. Some of the neighbors had concerns, but the biggest concern was that the building has sat vacant since 2013. City Water Billing Clerk verified that the water has been off since 2013. The neighbors like the idea of an occupied building that may bring people to the area. He would like to take advantage of the marijuana business venture. He will be occupying the empty structure, which has a vacancy history of 5 years because no renters were interested in the building. The marijuana industry is doing well. He would like to provide a local grow supply for the local retailers in Pendleton. The previous owner thought the area was industrial, as did the neighbors. Central Mixed Use, CMU, allows restaurants, bars, places where a large number of people meet. This area exhibits a lack of parking, a lack of pedestrian amenities because of the two railroad spurs, and low traffic counts. There are two railroad spurs in the area serving the flour mill just east of this location. The property to the east is industrial. An interstate ramp is nearby. It is outside both the Central Parking District and Historic District. He believes this lot has had ample opportunity to be utilized with a Central Mixed Use. A change to Light Industrial, M-1, would put the building in use and perhaps increase area business.

**Applicants Answer to Commission Questions:** Prior to purchase, the applicant did know it was zoned Central Mixed Use. He researched the area. The tax assessor report shows the zone as Light Industrial. He contacted city staff who clarified city zoning has the area listed as Central Mixed Use, CMU. The previous planner, George Clough, felt it would be a good area for a zone change to industrial. The previous owner and neighbors indicated that no one was interested in using the property. He was well aware that the rental history or use of the building was not favorable. Applicant understands that Pendleton has a buffer zone around their more utilized commercial district. He understands that industrial uses cause impacts to commercial areas. He feels that the area as designed with railroad spurs and a one-way T-intersection causes an impact into the commercial area. Tyrell asked what kind of buffer the City would rather see around the commercial district. He is proposing to use a building that has remained unoccupied for years. He does not feel his proposed use, if the rezone is approved, would have an impact.

**Commission Response:** The City has placed the use of marijuana outside of the zone for Pendleton's key commercial area. This application will set a precedent to bring that use into the central commercial area. In 2015, when Pendleton voted in marijuana, the citizens most likely did not consider the impact this business would have in the community.

Tyrell replied that Pendleton is one of a few cities that allow marijuana within the eastern part of the state. The limitation of the industrial zone puts a small area in which marijuana can be operated within the city. Much of the industrial land is already occupied. The Airport has federal restrictions that preclude marijuana in that area.

**Commission Response:** The City has 20-50 year supply of industrial property.

Tyrell said he has contacted real estate agents for industrial property available in the City for marijuana use. Real estate agents showed that there was a space at the Airport and another, but it was connected to an apartment rental. According to the City website, a report written in 2007 said that the City was shy of industrial land, somewhere around 500 acres. The City urban growth indicates large parcels of industrial land in the east of the City. This area is without infrastructure and utilities.

**Commission Response:** What about the potential for odor within the City's core commercial area?

Tyrell feels that this parcel works okay as an industrial use. Marijuana flowers for about two months, which is when the odor becomes noticeable. This area would be a small operation and carbon filtration could mitigate the odor. To the west is a lab with formaldehyde.

**Chairman Reminder:** Chairman DeGrofft reminded the Commission that the decision before the Commission is for a zone change and the use is not part of the consideration.

Tyrell would like the Commission to know his full intent for the future use of the property. Medical marijuana grows have been legal since 1996. The State of Oregon is very meticulous of the regulation of marijuana. His intended use would produce low traffic counts. The Commission has two options – keep the zone but not see the building used or rezone and use the building.

**Proponents:** None.

**Opponents:** Bonnie Bischke, 3137 SW Hailey Avenue, Pendleton. She discussed why reasons to change a zone for the marijuana industry are not a benefit to the community. Deschutes County indicates that there are problems with regulation of marijuana. She did a site visit. She said that the buildings are within 4 feet or less of each other. The laundromat would be disrupted by an industrial use next door. This lot is not surrounded by industrial uses. Industrial activities allow uses and practices that are disruptive to commercial uses. The flour mill had a discharge; industrial activities emit discharges that are disruptive.

**Other:** Mike Ledbetter, 351 SE Frazer Avenue, Pendleton. He is an adjacent owner. He is not for or against the testified use. He participated in a replat of the area so that the previous owner could sell the business as the building was over Mr. Ledbetter's property line. The lab in the area uses slides; it is not a chemical laboratory. The previous owner has been using the building for personal storage and car repair for the past 5 years. It has not been vacant. The neighborhood is quiet. The previous owner used to sell merchandise out of this building. He has

been using the property for several years. Mr. Ledbetter commented that he had not received a notice on this matter. He is positive that the previous owner knew it was zoned Central Mixed Use. He objects to the zone change. He bought the neighboring building in the CMU zone and with the knowledge that the area would remain restricted to Central Mixed Uses. Discharges from the flour mill has caused damage to his buildings. He does not want additional possibilities to exist if this zone change is approved, given that the distance from his structure to the subject structure is four feet.

**Staff Comment:** Mr. Ledbetter's mail about this application was returned to the City. The mailing address listed at the County Assessor's Office is incorrect and advised Mr. Ledbetter to call the County.

**Rebuttal:** Tony Moreno, the previous owner, thought the zone of the area was M-1. The applicant did their due diligence to research the zone and knew it was Central Mixed Use at the time of purchase of the building. The City Water Department told him that the water has been off for years. Moreno had a gun shop operating in this building. Otherwise it was Moreno's storage unit. The applicant reiterated that City Planner Clough did not promise an approved zone change. They reviewed the maps of the area. City Planner Clough said he believed this lot had the potential for a zone change. Mr. Clough referred to the railroad spurs, the neighborhood, and the structure itself as appearing industrial in character.

The public hearing was closed.

**Deliberation:** The applicant discussed a 2007 report and the report was designed around industrial land availability. It is applicable to Article 4 & 5 of the Unified Development Code. The 2007 report discussing industrial property includes a reference to a prohibition of commercial and residential development on industrial sites. The definition of CMU in the Unified Development Code is "To . . . occur the greatest concentration of retail, business, government and residential activity." Mr. Currin would conclude that the 2007 Industrial Report referred to earlier would be opposed to the idea of taking Central Mixed Use property in the downtown corridor and making it industrial. The 2007 Report is being used towards the applicability of the Unified Development Code. Staff interjected that the 2007 Industrial Report was written at the same time the City was looking to expand the industrial area at the Airport in specific. In Pendleton's Comprehensive Plan it does talk about commercial and industrial businesses in the Economic Development component. The Comp Plan is fairly generalized in topic; whereas, the Unified Development Code, where it defines the purpose of each zone, is more specific and more designed to call out uses in that particular zone. Therefore, staff said Mr. Currin's comment on the Industrial Report and the purpose of the zones as having merit. Mr. Currin read his statement in regard to the November 30<sup>th</sup> hearing, "As shown on the maps and stated in the question before the commission, the property is bordered by CMU zoned property on three sides and lies on the zoning boundary of the industrial property across the city street to the east. The decision was to respect the boundary between the CMU and M-1 zones previously established in the downtown corridor. On the referenced map on the projector, the Commission can see the industrial boundary on the east side of SE 4<sup>th</sup> Street. So this would create a 'peninsula' of industrial property into the CMU property boundaries. The Central Mixed Use purpose stated in the Unified Development Code is to 'provide for land areas and uses that preserve and enhance the City's core area... within which will occur the greatest concentration of retail, business, government, and residential activity.' Allowing potential industrial uses into the City's core area in my opinion was opposed to the stated purpose of the original zoning decision made. At the previous hearing, it was noted by City Planner Clough that Pendleton had potentially 20-50 years supply of industrial property. So the 2007 Industrial Report, as reviewed by Mr. Currin, did focus on the Airport area. The land focus was on the larger sized parcels, 20-200 acre parcels. Mr. Currin continued, 'In an effort to encourage the revitalization of the historic downtown core of the City, Pendleton will work with light industrial businesses to find more suitable locations on designated industrial land.'

These findings, as stated by Mr. Currin, would be considered new findings different from the staff report findings and the Commission needs a motion both accepting and making these findings. Mr. Currin asked the Commission that if it is shown in Section 4.01.1 the purpose of the CMU zone, how did staff find that this request met the Comprehensive Plan. Mr. Hull commented that the question is not about the request degrading the CMU zone, but that the change of the zone entirely, challenges the question of degrading that zone beyond the purpose. The word "degrade" was meant to mean preservation of the purpose of the CMU zone.

**Motions:** Commissioner Currin motioned that he finds that the rezoning as stated in AMD17-09 from Central Mixed Use to Light Industrial is against the spirit of the Unified Development Code as established by Pendleton,

specifically Section 4.01.1. Commissioner Harmeson seconded. The vote was 3-1 to accept the new findings.

Mr. Hull proposed a recommendation to City Council, as a Planning Commissioner, he wants to strongly encourage businesses coming to Pendleton in every possible way while finding a careful balance between our zone protecting the heart of our town and our industrial areas, to seek that balance. He further recommends the City Council designate resources to assist businesses coming into Pendleton finding that proper location for that specific business.

Commissioner Currin moved that the Commission adopt the findings and conclusions made by the Commission at this hearing, specifically showing that the proposal set forth in action AMD17-09 does not meet the criteria of Section 4.01.1 of the UDC. Commissioner Harmeson seconded. The vote was 3-1 to find and conclude that the request does not meet applicable criteria.

Commissioner Currin moved that the request for a Zone Map Amendment from CMU, Central Mixed Use, to M-1, Light Industrial, at 421 SE 4<sup>th</sup> Street, as set forth in action AMD17-09 be DENIED, based on the information, findings and conclusions made by the Commission at this hearing. Commissioner Harmeson seconded the motion. The vote was 3-1 to recommend denial of the zone change to the City Council.

**UNFINISHED BUSINESS:** None.

**NEW BUSINESS:** None.

### **REPORT OF THE CITY PLANNER**

- a. Marijuana Education: Staff submitted an excerpt on the Secretary of State's response to legalization of marijuana in Oregon. Also EO article that "Pendleton pot shops pass OLCC test". Staff has scheduled speakers to talk about marijuana within the community. Police Chief Roberts will speak at a workshop. Staff is also interested in scheduling a tour hosted by the police of an existing local retailer. Staff is looking at a review of the ordinance including new standards.
- b. River Quarter: Staff informed the Planning Commission of the schedules for speakers regarding topics of alterations of the standards for the River Quarter area.  
Schedule:

**March 8<sup>th</sup>**

River Quarter Review Discussion:

1. Feasibility of Current Code: Paul Chalmers, County Assessor
2. Corps of Engineers & Department of Fish & Wildlife – Restrictions and Requirements: Bob Patterson, Public Works Director
3. Utilities – Limitations on Construction: Tim Simons, City Engineer & Bob Patterson, Public Works Director

**March 22<sup>nd</sup>**

River Quarter Review Discussion:

1. Historic Character – Kate Dimon, Historian

**April**

River Quarter Review Discussion:

1. Code & Goal Review – Staff
2. Investors – Feedback

The meeting adjourned at 8:22 p.m.

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Chairman Maureen McCormach

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Date Approved