

**NORMAN PLANNING COMMISSION
REGULAR SESSION MINUTES**

FEBRUARY 14, 2019

The Planning Commission of the City of Norman, Cleveland County, State of Oklahoma, met in Regular Session in the Council Chambers of the Norman Municipal Building, 201 West Gray Street, on the 14th day of February, 2019. Notice and agenda of the meeting were posted at the Norman Municipal Building and online at <http://www.normanok.gov/content/boards-commissions> at least twenty-four hours prior to the beginning of the meeting.

Vice Chair Tom Knotts called the meeting to order at 6:33 p.m.

* * *

Item No. 1, being:

ROLL CALL

MEMBERS PRESENT

Sandy Bahan
Nouman Jan
Chris Lewis
Tom Knotts
Steven McDaniel

MEMBERS ABSENT

Neil Robinson
Lark Zink
Dave Boeck
Erin Williford

A quorum was present.

STAFF MEMBERS PRESENT

Jane Hudson, Interim Director, Planning &
Community Development
Anais Starr, Planner II
Roné Tromble, Recording Secretary
David Riesland, Traffic Engineer
Ken Danner, Subdivision Development
Manager
Terry Floyd, Development Coordinator
Beth Muckala, Asst. City Attorney
Bryce Holland, Multimedia Specialist

* * *

Item No. 8, being:

O-1819-30 – CRAIG BLANKENSHIP REQUESTS REZONING FROM CENTER CITY FORM BASED CODE-URBAN GENERAL TO CENTER CITY PLANNED UNIT DEVELOPMENT (CCPUD) FOR PROPERTY LOCATED AT 421 WEST GRAY STREET.

ITEMS SUBMITTED FOR THE RECORD:

1. Location Map
2. Staff Report
3. CCPUD Narrative with Exhibits

PRESENTATION BY STAFF:

1. Anais Starr reviewed the staff report, a copy of which is filed with the minutes. Staff recommends approval of Ordinance No. O-1819-30.

PRESENTATION BY THE APPLICANT:

1. Craig Blankenship, 441 Heritage Boulevard, Edmond, the applicant, was available to respond to any questions.

2. Mr. McDaniel – Could you explain a little bit about the filtration system, and how that's going to control?

Mr. Blankenship – Certainly. You're not going to exhaust any odor outdoors. What we do is – I currently have a grow at a 13,000 square foot facility on the south side of the city. It's in my energy services business. I have people in that business working right beside in the other bay, separated by a cinder block wall, a 4,500 square foot grow right now. The pictures that I sent in the packet are from one of those rooms. You have separate rooms. You have a vegetation room, a flower room, a curing room, cloning room. In each of those rooms we have what's called a carbon filter. You can get an 8", 10" – whatever size you want, and it sucks air in, flows it through a big carbon cylinder, and there are various sizes. In large warehouses, which at some point you'll have somebody presenting it to you, they're as big as this podium right here. They just look like a huge plenum, and it's lined with carbon. Sucks it in; spits it out. What they want to do is filter the entire room about once every two to three minutes. So the misconception about cannabis is the odor. The odor is during the flowering stage. Your vegetation stage or cloning, you're not going to smell anything. When it hits the flowering stage, you will smell it. If you have a carbon filter in there, you won't smell it. Now, if you don't have a carbon filter and you're just sucking it and throwing it outside, people outside could smell it. How far away? I don't know. That's not a practice I use. The filtration system, as far as AC and all that, is entirely closed. It's a closed loop, so it's all contained within.

AUDIENCE PARTICIPATION:

1. Ali Ghaniabadi, 13001 Rohan Court, Oklahoma City – Thank you for letting me speak tonight, and thank you for being here on such a special night; you all should be with your loved one at dinner somewhere, but thank you for being here and hearing us. I have a shopping center on 555 West Gray and also the empty parking lot west of this proposed site – I own that as well. The cultivation of marijuana, on a dispensary level – it's almost – the smell of it can only go probably about 50' on either side, and you can prevent that smell by sealing the space that is selling it, or using a carbon filtration to get the smell out so you won't go either side. But when they grow it, as the gentleman spoke, during the flowering the smell escape because it is like greenhouses. The smell is so disturbing that, if it is windy, you would smell it for a mile away. It is just like smoking it outside. We have Sprouts grocery store. We have Copelin's that a whole bunch of teachers coming in shopping. We have a lot of offices. We have a lot of residential around the area. I don't believe the use of the building for cultivation of marijuana is a good idea for the middle of the city – right in the center of it. Maybe outside on Chautauqua way down there where – trash disposal goes over there. There are buildings over there. Maybe over there in that area, but not in the center of the city. It would be almost disturbing to a whole bunch of residents. That's my concern about the cultivation plan and rezoning it for that purpose.

DISCUSSION AND ACTION BY THE PLANNING COMMISSION:

1. Mr. Lewis – Let's just be clear. As long as in the area that you want to consume, bake, smoke – whatever you want to do with it, I have no objection whatsoever to marijuana use – at all. So let's be clear about that. But when Mr. Ghaniabadi brought up the issue of the odor, I got to thinking about that. Growing up with a mom as a psychiatrist and dad as an attorney, kind of the Montessori School made me think of this. He sat me down as a child and he asked me specifically about a case he was working on, because we had to go back to kindergarten. He wanted an unabashed view and I got to thinking, you know, when I was in kindergarten was I trying to put a round peg into a square hole? So I got to doing some research and looked at a few – [microphones cut off briefly] – and in actuality, odor is a huge concern. I visited with staff to find out if the City of Norman or the State had any guidelines or regulations in regards to the things that have to occur if you're planning on growing, cultivating, researching, processing marijuana within the City of Norman, Oklahoma. And in the City of Norman – correct me if I'm wrong – there are no guidelines, or very limited.

Ms. Hudson – Well, there are building code requirements. As far as odor is concerned, we have no guidelines within the zoning ordinance.

Mr. Lewis – So with that kept in mind, I'll take us to Clackamas County in Oregon. Oregon was one of the first areas that legalized pot, along with Colorado and California, and there was a 5,000 square foot barn facility in the hills of Oregon, surrounded by trees that we all know make the air much better. This is rolling hills in a sparse green space and the odor was so bad that homeowners several miles away sued the individual that owned this barn, who had charcoal filters in place – and that is supposedly the best thing that you can do – and the homeowners went up through the Court of Appeals for the 10th Circuit, because they felt like their property values had been diminished, so they had damages. The judge in the 10th Circuit ruled that, not only did they have damages, but because on a federal level marijuana is not a legalized status, he said that the homeowners would have damages and could sue for in excess of three times of damages because it is not a legally recognized entity of smoking marijuana and he termed it under the racketeering statutes of the United States. Why do I bring that up? Is because the 10th Circuit you would think we're very liberal in some areas. Growing up in California, maybe there's a few more open-minded people than, say, in very conservative parts of the U.S. But the 10th Circuit actually is Norman, Oklahoma – we're in the western district of the 10th Circuit. So are we opening a Pandora's box that, if Mr. Ghaniabadi decides his property values have been diminished, that now we're in federal court over something that we're sailing through? Again, I go back to when I looked at – well, are we really talking about a small smell, a big smell – what kind of smell are we talking about? I'll liken it to this – it was likened to skunk dipped in turpentine and gym socks. It was likened to the pig farms of the Midwest. I'm sure we've all driven out west of Amarillo and we've all smelled the wonderful cattle that are being produced there. It reminded me that, when we're driving, sometimes somebody with me will say, "Smell the money." I prefer to use something a little later in the alphabet in the S range, because it's all in interpretation. I know we've all been into the panhandle of Oklahoma where some of the pig farms are, and the stench is unbearable. When I did the research on what is the latest development – can you control that odor – the best thing that people can do, or what the applicant is doing, and that is using charcoal filters. They have to be replaced quite often. The air has to be moved at a very slow rate, not 1 to 2 times in 2 to 3 minutes for the entire building. Unless the drying or cultivating and processing of the marijuana is occurring in a vacuum, that smell is going somewhere. Take us forward. If that were in an industrial area where we might have paint odors or other items that you would anticipate in an industrial area, I might be more agreeable to this. But when it's in the downtown City Center of Norman, we have a school less than 2 blocks away – a high school – 18 year old young people are in that high school. We have Sprouts grocery store that's going to be affected, a Walgreens, a CVS, a dentist's office. Again, are we trying to put a round peg into a square hole? I'll be quite frank, if this were just a dispensary, I would have no qualms with this whatsoever. I think as long as I've sat on this Commission, people know that I'm absolutely for retail development in the City of Norman. But

because it is a cultivation, growing, processing and research in addition, this is the wrong place, the wrong round peg trying to fit into a square hole.

2. Mr. Knotts – Can I ask a question of the applicant? I'd like to ask you if your other facility has been cited with any odor problems, and what the environs around it are like.

Mr. Blankenship – There's actually no problems. I've got a million dollars cash invested in this. You can't borrow money in these projects. So I know what I'm talking about, and I'm not speaking anecdotally. I do know that you turn your air over every 2 minutes; you don't turn it over slowly. You're turning the same air over in the room. I'm doing this – I've got my life into it. The way I got into this – because I listened to the Montessori presentation she put on. I've got an 8 year old that's autistic. I hadn't smoked pot since 1980 in Norman, Oklahoma. My kids were born here. I lived on Boyd Street in the 70s. My 8 year old is very brilliant, but he's non-communicative and he does all kinds of weird stuff, like throw his clothes off and take off to the neighbor's house. It was getting to be a really bad problem, and my daughter-in-law was taking him to New York and they were doing experimental stuff on him. Then he started going to Denver, Colorado and somehow the Sundance Film Channel heard about him – I don't know how – and for two years they've been doing a documentary on them and three other families, and following everywhere they go. Anyway, it's improved his life. When this is going to come up for a vote, I told my son, who is also my business partner in our energy services business – I said it'll never pass in Oklahoma. He said, well, let's see – and it did. So then when it did, that's when I decided, you know what? I'm going to try to – in other words, I don't have goofy names on products and stuff like that. I'm doing it to try to help.

Mr. Knotts – Let me dig a little deeper. How long has your facility in Oklahoma City been open and operating?

Mr. Blankenship – We've been operating since it became legal and we got our license, which was last August. We've got about 4,000 square foot. But I do have the carbon filters going, don't have an odor problem. But my contention is this, one person says well it smells like a skunk; another person may say it smells like a rose. A vegan can drive down Main Street and say that Whataburger is about to make me throw up.

Mr. Knotts – Okay. Let's don't get in that kind of conversation. What I'm trying to elicit from you is you have a facility now – what is surrounding your facility?

Mr. Blankenship – Five acres.

Mr. Knotts – You have five acres. Nothing else?

Mr. Blankenship – I have five acres that's fenced and secured. There's a body building place next door, but they're a couple of hundred feet away.

Mr. Knotts – Is there any THC is the odor from the flowering part? Do you know?

Mr. Blankenship – No. You don't have THC in the odor. You have to release the THC – that's why we have to process it. If you took it and just ate it, it wouldn't make you high. By smoking it is what.

Mr. Knotts – So you currently have a facility that you've not been cited for odor.

Mr. Blankenship – No. That's correct.

Mr. Knotts – And the people that are also working the same building are not complaining about it?

Mr. Blankenship – Not at all. No.

Mr. Knotts – I think that's the end of my question. Thank you.

Mr. Blankenship – Thank you. I apologize if I seem upset. It's just that I do this.

3. Mr. Lewis – I will address Mr. Blankenship directly. Again, when I set out with my statements, I have no qualms and I do see the benefit in medical marijuana, absolutely. It is phenomenal. We should have more of it, but I don't control that; the voters control that, and in Oklahoma we have approved that. My concern goes back to – and, again, it's not anecdotal – it's five acres versus five feet. There is an odor. It is well-recognized. For that, I will not be supporting the item.

4. Scott Ulrich, Symmetry Medical, Branson, Missouri – I'm a consultant for building laboratories and equipment. My background has been mostly aesthetic medicine and imaging, but I've also worked with the FBI and the DEA. I'm a friend of Mr. Blankenship's and an associate of his. He has hired me to assist him in building him a proper facility. I won't go on and on about the benefits of medical cannabis. I don't use it myself. I do know that they have done wonderful research that showed signs for Alzheimers and weight loss, which I'm hoping to get in line for some day. But to speak to the gentleman's objection about odors – I see the people rendering opinions and, as a scientist, I live in a world of data and facts. The data and facts about odors with cannabis are, as Mr. Blankenship stated, during the flowering portion of it. I think, perhaps, when Mr. Blankenship submitted his proposal to change the zoning, it was perhaps not clearly communicated that this is not Mr. Blankenship's grow facility. The growing portion is covered under the license for dispensary, which no one is objecting to. A dispensary in Oklahoma is allowed to sell small vegetation – non-flowering plants – just as they can sell cannabis or an accessory to such. So there's already going to be a small amount of live plants in a dispensary because it's a retail item. So there's already a growing live plant covered under Mr. Blankenship's license. Mr. Blankenship is vertically integrated – he is seed to table and the transparency that goes with it. So he has a grow facility in another area. The growing at 421 Gray would consist of a few plants that are for retail, and some plants for the lab – the science side that I'm building. These are just a few plants that are in various states of growth so that we can do scientific research and so that we can take the 371 chemical compounds found in cannabis and we can pull them apart and look at them under a microscope, and put them in a vacuum sealed oven – this type of thing. He is not building a grow farm that would permeate the air with odor. When you give a license for a pizza place, it's going to smell like pizza. That's just part of it.

5. Mr. Lewis – I do have a question for staff. Jane, with that comment being made, if we rezone this with that specification in place, is there anything that would prohibit the growing and cultivation occurring in that area? How does the ordinance read?

Ms. Hudson – Can you restate that question?

Mr. Lewis – If we approve it with the – let me find out what the exact wording is.

Ms. Hudson – Cultivation, processing, researching and dispensing medical marijuana.

Mr. Lewis – Then even though they're not planning on using it as a mass garden, is there anything that would prevent that from occurring? I mean, they said it would be a few plants, but it could end up, if there's that loophole there, being 300 plants.

Ms. Hudson – I'm going to let Legal respond to this, but I believe that if they have that written in their PUD document, then they would be restricted to those number of plants. Is that correct?

Ms. Muckala – I didn't understand, Commissioner Lewis, that you were asking about the number of plants. Is that the question? There's a certain number?

Mr. Lewis – The protest comes from is the odor. The odor, we know, is in certain stages of the process of the plant flowering. My misinterpretation was that this would be a grow facility that would be growing multiple plants, anywhere from the 10s to the 100s to who knows how many. I'm now advised – and I have to take under consideration – that's not the intent as being presented; it's only a few for research, but they have to cultivate and grow and process those in order to do that research. With us making the change to the rezoning, and it specifically saying they can cultivate, grow, process and research – does that change to the zoning have a specificity of you can only have the 2 or 3 plants they're planning on, or in a building this size in a warehouse that we saw in the picture – I mean, there's plenty of room to make that a very large operation.

Ms. Muckala – Yes, thank you, I understand the question now. Looking at the permitted uses that is set out in the PUD document and, as Ms. Hudson said, the PUD document would control. It would replace zoning. So this PUD document references commerce, marijuana cultivation, processing, research and dispensing. Our marijuana ordinance mirrors definition in the current State law. Now, that State law could change, but for right now these categories are

defined, and I believe the last commenter was referencing the fact that, with a dispensary, which is already allowed in this particular zoning they already have, they would be allowed to have live plants. I think they were making a comparison between that and having an actual grow facility. It's true; dispensaries can keep live plants. But growers are defined differently and, no, there isn't anything in this PUD document that would limit the number. That would need to be added in, and that certainly is something that could be added to a PUD document to make it more specific in that regard.

Mr. Lewis – Okay, so a current dispensary can have live plants, just not flowering plants. So is that the reason we're putting this in here for cultivation, growing, processing?

Ms. Muckala – Cultivation would refer to the growing. Processing is, of course, a different process, including extraction. Commerce – I'm not certain what that refers to – probably goes along with dispensing of medical marijuana. But those are all the separate categories under State law. I see all of the uses currently allowed by State law covered in this use, and that was my understanding of the intent of this document. I will rely on Ms. Hudson to confirm that, though.

Ms. Hudson – Well, within the Center City Form Based Code, under the Urban General, you cannot grow, process, research – so that's why we were moving forward with the PUD document, because you can dispense right now with the existing zoning.

Ms. Muckala – Right.

Mr. Lewis – But currently the PUD document does not specify one or two plants as presented, which would open it – it could be one or two or it could be a thousand or three thousand.

Ms. Muckala – Correct. I don't see any quantity limitations.

Mr. Lewis – Then the City's view is now that if we do approve it, we're just opening a Pandora's box. The PUD would really need to be more clarifying?

Ms. Muckala – The Commission has the option of approving it with a condition or recommendation that limitations be added, if that's something that you feel would be necessary in order to insure your approval going forward, and that's certainly an option.

Mr. Lewis – So if we see value here, and the concern is the odor by multiple plants as opposed to the 1, 2 or 3 presented, then we could move to Council with stipulation?

Ms. Hudson – We could do that. Can I ask the applicant a question?

6. Ms. Hudson – Sir, can I ask you a question, please? As your associate was saying, you will have plants there for research. Could you guess how many plants you would have there for that research?

Mr. Blankenship – This is why I asked to speak for a second. With a dispensary, there is no limit on how many plants you can keep for sale to medicinal patients who are allowed to buy plants. Here's the key. They are only allowed to be in vegetative state in the store, so you would keep them in the back, small and under T5 lights – they'd never flower. That's important. So, for research – on the research end, I'm not a scientist. To be honest with you, I don't even see myself doing any research. I just thought at some point we may – as soon as the federal government approves this and lets the states do their own control, there's going to be lots of research. Right now, it's just not available because of the federal level. Can I make this just real easy for everybody? Scratch the grow. I don't have to do it here. I already have a place. To me, it's not worth fighting over. I spent \$430,000 cash out of my pocket for that building; 3600 square foot of it is sprinkled warehouse. Used to be a paint store; they mixed explosive paints back there. To be honest with you, my recommendation would be just scratch the cultivation part and move on.

7. Mr. Lewis – Question for staff again. If, at the applicant's comment, at this point scrapping the cultivation, growing, processing because he can do that elsewhere – there's going to be research here. Do we need to take action on a rezoning, if what would be allowed – maybe this is for Legal again – what would be allowed that he has described would fall under the City Center Form Based Code, Urban General and not Planned Unit Development? I'm

trying to find a way to get to an approval on this, and that's why I'm asking the very specific questions.

Ms. Bahan – It can only be a dispensary currently. So we would still have to make a change.

Mr. Lewis – Right. But he can have a dispensary with live plants.

Ms. Muckala – Yes.

Mr. Lewis – My understanding from the applicant is the live plants is what would produce what they can do the research on, not the flowering plant. I don't have that answer. So if we already fall under the current guideline of a dispensary, then the question is why do we need to add the addition if he's growing somewhere else, the cultivation, growing and processing, if that's not going to be occurring?

Ms. Hudson – Because the Urban General only allows for dispensing. Processing and research is not included in the Urban General, so those two – processing and research – are why we would need to move forward with the CCPUD.

Ms. Muckala – I can elaborate on that. This is another thing about how our ordinance was organized. The definitions of the federal licenses match our City licenses, but they also match our zoning uses. So, as Ms. Hudson stated, only the dispensary use, as defined by the State law, which was referenced in our ordinance, is allowed. So, yes, in order to do research, even though they would be allowed to technically possess the plant that they may use for that research, it's not the same as the actual use for research. If they come with a – I said federal – I'm sorry, State – if they come with a State license allowing them to research or to process, then they would need this zoning to match that in order to get their license here with the City and actually commence their business.

Mr. Lewis – So, again, if live plants are allowed in a dispensary, the processing and research would be allowed City Center Planned Unit Development ...

Ms. Muckala – Not as currently drafted, because those are separately defined.

Mr. Lewis – If we rezoned it to Planned Unit Development under the PUD, and there's no plan of them growing and cultivating, which could be stricken from the PUD, then there would be no odor or concern.

Ms. Muckala – Yes, and the applicant or Ms. Hudson may want to weigh in on this, but I think the permitted use on page 8-8 is probably what we would want to look at, and it seems like part III.A.1.a, right after the word "commerce", the words "Marijuana Cultivation" being stricken – that would be the recommendation I'm hearing – to remove cultivation. I'm not certain if it would be set out in any other place that would imply it's a permitted use, so that's probably the only deletion that's required.

Mr. Lewis – Thank you so much.

8. Mr. Jan – I have a concern. Does PUD define the proximity of such dispensaries from schools or high schools at this moment?

Ms. Hudson – The State has a requirement for distance from schools. It's 1000 feet.

Mr. Lewis – 1000 feet. There's 5,280 feet in a mile. Twelve blocks in a mile.

Ms. Bahan – This is at least four blocks from the school.

Mr. Lewis – You're one block from Flood, and you're one more block to the high school property.

Ms. Bahan – There's another street in there. Lahoma. It's more than 1000 feet.

Tom Knotts moved to recommend adoption of Ordinance No. O-1718-30 to City Council, with the CCPUD modified to remove cultivation.

9. Mr. Lewis – Clarification, Tom. On just the cultivation, not the processing?

Mr. Knotts – Yes.

Mr. Lewis – Help me out to understand – would you think the processing falls under the research arm of it?

Mr. Knotts – Yes.

Mr. Lewis – And that's preventing the actual growing and blooming in the building?
Mr. Knotts – Yes.

Chris Lewis seconded the motion.

There being no further discussion, a vote on the motion was taken with the following result:

YEAS	Sandy Bahan, Chris Lewis, Tom Knotts, Steven McDaniel
NAYES	Nouman Jan
MEMBERS ABSENT	Neil Robinson, Lark Zink, Dave Boeck, Erin Williford

Ms. Tromble announced that the motion, to recommend adoption of Ordinance No. O-1819-30 to City Council with the PUD amended to remove cultivation, passed by a vote of 4-1.

* * *