



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 9, 2023

SUBJECT: Board review of a declaratory ruling to determine if the marijuana production facility approved under file no. 247-17-000907-AD has been initiated

BACKGROUND AND POLICY IMPLICATIONS:

On July 26, 2023, the Deschutes County Hearings Officer issued a decision ("Decision") on an initiation of use application associated with a marijuana production facility at 26295 Willard Road. Initiation of use is governed by Deschutes County Code ("DCC") 22.36.020, as detailed below.

22.36.020. Initiation of Use.

- A. For the purposes of DCC 22.36.020, development action undertaken under a land use approval described in DCC 22.36.010, has been "initiated" if it is determined that:
- ...
 - 2. Substantial construction toward completion of the land use approval has taken place;
 - or
 - ...
- B. For the purposes of DCC 22.36.020, "substantial construction" has occurred when the holder of a land use approval has physically altered the land or structure or changed the use thereof and such alteration or change is directed toward the completion and is sufficient in terms of time, labor or money spent to demonstrate a good faith effort to complete the development. (emphasis added)

As detailed in the Decision, there are three (3) elements for determining whether substantial construction has taken place are: (1) whether the holder of land use approval has physically altered or changed the use of the land; (2) whether the alteration or change was directed toward completion of the development; and (3) whether the expenditures of time, labor, or money demonstrate a good faith effort to complete the development. Staff notes that element number 1 includes the phrase "holder of the land use approval." The subject land use permit was approved in April of 2018. In this case, approximately 90-95% of what is needed to establish the use was completed prior to the property owner receiving land use approval. The Hearings Officer found it appropriate to consider these expenses because the property owner initiated discussions with the County on this use in early 2017; the

aforementioned expenses occurred between those early 2017 discussions and the issuance of the land use approval; and that all of the expenses were clearly directed toward completion of the use.

Staff believes this conclusion could give property owners the impression that it is permissible, and possibly advisable, to begin development of a project prior to land use approval. Staff believes perspective could then lead to a number of unintended consequences.

1. Development prior to land use approval would deprive the public and public agencies of the opportunity to participate in the land use process. One of the primary tenets of the land use system is public participation, as described under Statewide Planning Goal 1.
2. The County could see an increase in code violation cases.
3. Property owners could find themselves in the unwanted situation of having spent significant resources (time, effort, money) to establish a use prior to land use approval, only for the project to be denied.

For these reasons, staff believes it appropriate to interpret the phrase “the holder of the a land use approval” to mean the time period from the land use decision becoming final to the end of the duration approval, as amended by any extensions or applicable legal proceedings such as an appeal. Staff believes this interpretation would avoid the potentially negative consequences detailed above.

BUDGET IMPACTS:

None

ATTENDANCE:

Avery Johnson - Assistant Planner
Anthony Raguine – Principal Planner