

REVIEWED  
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LEGAL COUNSEL

For Recording Stamp Only

**BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON  
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**FILE NUMBERS:** 247-23-000125-DR

**SUBJECT PROPERTY/**

**OWNER:** Mailing Name: WATSON, JOHN SHELBY JR  
Map and Taxlot: 1714260001000  
Account: 131856  
Situs Address: 26295 WILLARD RD, BEND, OR 97701

**APPLICANT:** John Watson

**APPLICANT'S  
ATTORNEY:** Michael R. Hughes, Hughes Law

**STAFF PLANNER:** Avery Johnson, Assistant Planner

**REQUEST:** Declaratory Ruling to determine whether the marijuana production facility approved under file no. 247-17-000907-AD has been initiated.

**I. SUMMARY OF DECISION**

In this decision, the County Board of Commissioners ("Board") considers the July 26, 2023, Hearings Officer's Decision in land use file no. 247-23-000125-DR ("Hearings Officer's Decision"). The Board exercised its discretion under Deschutes County Code ("DCC") 22.23.050 to initiate review of the Hearings Body's decision. The Board received one Agenda Request & Staff Report ("Staff Report") on the review of the Hearings Officer's Decision from Assistant Planner Avery Johnson and Principal Planner Anthony Raguine. The Staff Report summarized the approval criteria related to initiation of use, the rationale relied upon by the Hearings Officer

in her decision, and staff's concerns. The Board's Decision will refer to and incorporate the Hearings Officer's Decision, unless otherwise noted.

On August 23, 2023, following deliberation, the Board voted 2-1 finding the applicant initiated the marijuana production facility, and moved to revise the Hearings Officer's Decision approving the Declaratory Ruling application on the subject property.

## **II. BASIC FINDINGS OF FACT:**

The Board adopts and incorporates by reference the code interpretations, findings of fact, and conclusions of law in the Hearings Officer's Decision as set forth in Section I, Applicable Standards and Criteria, and Section II, Background and Procedural Findings. The Hearings Officer's Decision is attached as Exhibit A to the Board's Decision. The following additions are made to the basic findings in the Hearings Officer Decision.

- A. Procedural History:** On July 26, 2023, the Board voted 2-0, one abstained, to initiate review of the Hearings Officer's Decision pursuant to DCC 22.23.050. On the same day, the Board signed Order No. 2023-032 to initiate review of the Hearings Officer's Decision. On July 27, 2023, a Notice of Public Hearing was mailed to all parties with the Board Order as an attachment. On August 9, 2023, the Board conducted a public hearing with testimony provided by the property owner, John Watson, and the owner's representative Michael Hughes. On August 23, 2023, the Board deliberated and voted 2-1 to revise the Hearings Officer's Decision, as detailed below, and approve the Declaratory Ruling application.

## **III. FINDINGS**

Initiation of use is governed by 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 Hearings Officer's 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. The Board 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.

While the Board ultimately finds the owner initiated the marijuana production use, the Board differs from the Hearings Officer in our rationale. Typically, if an approved use is not initiated within the stated duration of approval, a property owner has the ability to reapply for that same use. That is not the case here. The Board finds this situation is unusual in that marijuana production is no longer a use allowed in the underlying Exclusive Farm Use Zone. For this reason, the Board finds it appropriate to consider expenditures made prior to the land use permit becoming final. Considering the record, the Board finds that the expenditures totaling 90-95% of the costs necessary to establish the marijuana production facility constitute substantial construction toward completion of the marijuana production facility. Therefore, the Board finds that the marijuana production use has been initiated.

The Board takes this opportunity to emphasize that under normal circumstances it is not appropriate to begin development prior to securing the necessary approvals – building, on-site wastewater, planning. Initiating development prior to securing the necessary approvals could result in adverse consequences, including, but not limited to, depriving the public and public agencies of the opportunity to participate in the land use process; an increase in code enforcement cases; and property owners initiating development prior to securing the necessary approvals only for the project to be denied. As detailed above, the Board finds this Declaratory Ruling application presents a unique circumstance which warrants special consideration.

**IV. DECISION:**

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board of County Commissioners hereby **APPROVES** the Applicant's application for a Declaratory Ruling demonstrating the marijuana production facility approved under land use file no. 247-17-000907-AD has been initiated and is subject to the following condition of approval:

1. The conditions of approval associated with land use approval 247-17-000907-AD remain in effect.

Dated this 13<sup>th</sup> day of September 2023

BOARD OF COUNTY COMMISSIONERS  
FOR DESCHUTES COUNTY

\_\_\_\_\_  
Anthony DeBone, Chair

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Patti Adair, Vice Chair

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Phil Chang, Commissioner

**THIS DECISION BECOMES FINAL WHEN SIGNED. PARTIES MAY APPEAL THIS DECISION TO THE LAND USE BOARD OF APPEALS WITHIN 21 DAYS OF THE DATE ON WHICH THIS DECISION IS FINAL.**

**EXHIBIT**

- A. Hearings Officer's Decision dated July 26, 2023