

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, February 12, 2014

9:00 a.m.

Commissioners' Board Room
1115 Commercial Street NE
Salem, OR 97301

PRESENT: Commissioner Sam Brentano, Commissioner Patti Milne, and Commissioner Janet Carlson. Also present were Gloria Roy as county counsel and Kim Hulett as recorder.

PUBLIC COMMENT

Summary of background information provided by county counsel:

- Proposed ordinance is to ban and possibly regulated medical marijuana dispensaries in unincorporated areas of Marion County:
 - Not appropriate to have storefront operation on farm and forest lands; and
 - State law is in conflict with its own laws and history of protecting agricultural lands and land use planning.
- Medical marijuana dispensaries may apply for ban exemption permit in industrial, commercial and certain mix use zones:
- Board, sheriff and district attorney have concerns regarding sufficiency of state permitting process though Oregon Health Authority(OHA):
 - County is looking at pharmacy model rather than social club operation.
- Medical marijuana dispensaries are not operating like a business due to OHA confidentiality regulations; and
- Proposed ordinance would not regulate marijuana growers or cardholders.

Chris Oss, 3795 Croisan Creek Road, Salem

- Made comments on behalf of Salem Cannabis Industry Association;
- Ban not fair to the people who have been in compliance with House Bill (HB) 3460;
- Local oversight and city/county fees to open a dispensary is better option for patients than black market;
- Senate Bill 1531 would kill jobs and critically ill patients;
- UCLA Luskin School of Public Affairs and Journal of Studies of Alcohol and Drugs study/article state certain security measures such as camera and having a door man outside may be effective at reducing crime within the immediate vicinity of medical marijuana dispensaries;
- Attorney General Ellen Rosenblum elected by the medical marijuana community; and
- Association has ability to put efforts behind recall of public officials not fair and just in their public service obligations.

Amy Zimmerman, 5150 Norma Avenue S., Salem

- Read public comments (Attachment A).

Jeremy Bruce, Salem

- Patient/producer of medical cannabis;
- Marijuana is not a gateway drug;
- Implementing dispensary program will help public safety:
 - Reduce demand from black market; and
 - Alleviate concerns about cannabis being accessible to non-patients.
- Mandatory registration would alleviate concerns about lack of control and enforcement capacity;
- Excise tax would pay for enforcement; and
- Listed some of the cannabinoid compounds found in cannabis.

Jessica Bell, 4058 River Road S., Salem

- Uses marijuana for medical conditions;
- No longer has to use prescription drugs; and
- Patients need safe access to medical marijuana.

Jaykobi Pacey-Krause, 4058 Liberty Road S.

- Tried medical marijuana after sustaining injuries in an accident;
- Found medical marijuana to be very medicinal; and
- Requested board not take away safe access to medical marijuana.

Charlotte Kaul, 3854 Bartlett Drive

- Prescription medicine did not relieve pain of medical conditions;
- Her life and family's life better because she medicates with cannabis;
- Patients are not trying to get high; and
- Requested that Marion County work with Salem Cannabis Industry Association on issue.

Kimberly Strand, Keizer

- City councilors did not discuss issue with dispensary owners;
- Security measures in place at her medical marijuana dispensary (PGN Lodge);
- Ban unfair to patients that do not drive;
- Most patients do not want recreational marijuana legalized;
- PGN Lodge not a negative eliminate in community;
- Supports community and pays property taxes;
- Monitoring patient's medicine could be a Health Insurance Portability and Accountability Act (HIPAA) violation; and
- Parents need to take responsibility for their children.

Loren Kruesi, Salem

- Operates medical clinic that assists patients with completing Oregon Medical Marijuana Program (OMMP) application form;
- State of Oregon employee for 20 years:
 - Child Welfare;

- Helped form Oregon Youth Authority in 1997; and
- Seniors and People with Disabilities.
- Statistic of 47,000 grow sites in Oregon inaccurate;
- 3,152 registered medical marijuana cardholders in Marion County. Number will continue to grow;
- Advocates to influence elections;
- Cannabis medically beneficial;
- Working to ensure people can medicate throughout the day without impacting themselves or people around them in unsafe manner; and
- Industry will influence politics for a long time to come.

Commissioner Brentano said there will be another opportunity for comments on February 19, 2014, when the board deliberates on an ordinance regulating medical marijuana dispensary facilities in the unincorporated area of Marion County.

CONSENT

Video Time (00:54:22)

BOARD OF COMMISSIONERS

OLCC Renewals

Approve an order recommending renewal of Oregon Liquor Control Commission License renewals.

Approve an order recommending denial of Oregon Liquor Control Commission License renewals.

Approve an order reappointing John Caruso to the North Santiam Watershed Council to a term ending December 31, 2015.

BUSINESS SERVICES

Notification of bid award for \$885,295 to McDonald & Wetle, Inc. for the jail roof replacement project.

FINANCE

Approve a quitclaim deed to convey real property identified as Tax ID #R74423.

LEGAL COUNSEL

Approve an order reappointing Jonathan A. Clark as justice of the peace pro tem at East Marion Justice Court effective March 4, 2014, through June 30, 2014.

PUBLIC WORKS – ENVIRONMENTAL SERVICES

Schedule a public hearing for March 5, 2014, to consider changes to the Solid Waste Ordinance (MC Code Chapter 8.05), adding service area standards.

TREASURER

Approve a resolution increasing the change fund for Public Works Buena Vista Ferry from \$75.00 to \$200.00.

Approve an order distributing revenues from ORS Chapter 530 timberlands.

MOTION: Commissioner Milne moved approval of the consent calendar. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

Commissioner Milne and Commissioner Carlson commented on the revised Oregon Liquor Control Commission (OLCC) renewal recommendation process that was streamlined to ensure recommended approvals or denials reach OLCC by the agency's deadline.

Commissioner Brentano requested that the OLCC approval lists be posted on the county's website.

ACTION

Video Time (00:58:18)

BOARD OF COMMISSIONERS

1. Consider approval of an intergovernmental agreement for a short-term loan of up to \$60,000 to the Marion County Housing Authority. – John Lattimer

Summary of presentation:

- Provides bridge financing until Marion County Housing Authority receives Department of Housing and Urban Development (HUD) dollars;
- Covers payroll during interim,
- Loan authorized under Housing Authorities Law; and
- Intergovernmental agreement describes repayment terms/conditions.

Board discussion:

- Board of Commissioners serves as Board of Directors for Marion County Housing Authority;
- Marion County Housing Authority budget presented yesterday to; and
- Repayment terms included in agreement.

MOTION: Commissioner Carlson moved to approve the intergovernmental agreement for a short-term loan of up to \$60,000 to the Marion County Housing Authority. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

Video Time (01:00:34)

PUBLIC WORKS

2. Consider approval of the following items for the Brown Road NE improvement project:

- a) Amendment #1 to receive \$778,563 additional federal funding from Oregon Department of Transportation.
- b) Amendment #1 to receive \$874,000 from the City of Salem to add construction and right-of-way services for the City's portion of the project.
- c) Intergovernmental agreement for Oregon Department of Transportation to provide right-of-way services for \$5,000 and approve resolution authorizing acquisition and condemnation of property required for the project. – Cindy Schmitt

Summary of presentation:

- Brown Road Project PowerPoint presentation (Attachment B).

Board discussion:

- County match approximately \$141,000:
 - Oregon Department of Transportation (ODOT) consultant services; and
 - County engineering staff time. County will be reimbursed for portion of engineering time.
- County's ODOT Local Agency Certification allows county to develop/construct federal-aid projects jointly with partners;
- No permanent right-of-way easements needed;
- County needs to acquire temporary construction easements;
- Eminent domain resolution for condemnation would apply if unable to obtain temporary construction easements;
- Property restoration/beautification included in project;
- Two-year project, begins summer 2015;
- One public meeting held;
- County sends project notices to keep property owners informed; and
- 18 temporary construction easement properties.

MOTION: Commissioner Milne moved approval of the following items for the Brown Road NE improvement project: a) Amendment #1 to receive \$778,563 additional federal funding from Oregon Department of Transportation; b) Amendment #1 to receive \$874,000 from the City of Salem to add construction and right-of-way services for the City's portion of the project; and, c) Intergovernmental agreement for Oregon Department of Transportation to provide right-of-way services for \$5,000 and approve resolution authorizing acquisition and condemnation of property required for the project. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

PUBLIC HEARING

9:30 A.M.

Video Time (01:13:55)

PUBLIC WORKS - PLANNING

A. Public hearing to consider amendments to the Marion County Code, Title 16 Urban Zone Code and Title 17 Rural Zone Code. – Joe Fennimore

Summary of presentation:

- Reviewed Public Works rural zone code update memorandum dated January 28, 2014 (Attachment C);
- Options for board consideration:
 - Continuing public hearing;
 - Close hearing and leave record open; or
 - Close hearing and approve, deny, or modify proposed amendments.

Board discussion:

- "[...]is in violation of local, state or federal law," added to MCC 16.35.060 (urban zone code);
- Requirement of federal law added to MCC 17.110.680 (rural zone code) to keep codes consistent;
- Proposed ordinance language does not conflict with MCC revisions;

- MCC revisions allow county to determine where marijuana dispensaries are appropriate:
 - Confirms ban provision in agricultural and forest land; and
 - Does not apply to exemption county would allow under ordinance in industrial, commercial and mixed use areas.
- MCC revisions and ordinance are to resolve conflicts between county land use laws under medical marijuana program laws and other state and federal requirements county is obligated to comply with.

TESTIMONY:

Video Time (01:22:50)

Against:

Bradley Steinman, 5521 SE Ogden, Portland, Oregon

- Attorney representing Salem Cannabis Industry Association;
- State law requires a medical marijuana facility be located in an area that is zoned by the local governing agency for commercial, industrial or mix use or as agricultural land;
- Local law should not penalize or require further regulation inconsistent with the state regulation;
- State law adequately regulates security and public safety;
- On behalf of client, requested board not use local zoning authority and land use planning powers to amend MCC 16.35.060 (urban zone code) and MCC 17.110.680 (rural zone code) to directly or indirectly ban/prohibit medical marijuana facilities;
- Medical marijuana community asking to be treated like other lawful regulated industry; and
- Medical marijuana community pay taxes, complies with all laws, and will benefit community.

Commissioner Brentano requested clarification that, in Mr. Steinman’s opinion, Marion County cannot legally make this decision.

- Client opposes proposed MCC amendments. Proposed MCC amendments are illegal and unconstitutional; and
- State law would preempt local law that sought to regulate conduct in excess of what state law requires.

Commissioner Carlson explained that local government has the authority to regulate the details of land use laws passed by the legislature. There is a conflict when the medical marijuana industry states it is willing to be regulated, but only under state law and will not allow Marion County to put into its code the implementation provisions to exercise local regulation.

- Federal government has not sought to preempt states that have passed outright marijuana legalization laws for adult use;
- State considering whether to grant local governments the authority to pass outright bans;
- Requested commissioners delay passing MCC amendments until state legislature acts or issue is worked out; and
- Asked where else medical marijuana dispensaries could locate if not able to locate in agricultural zoned areas.

There was discussion regarding Deputy Attorney General James M. Cole's Guidance Regarding Marijuana Enforcement dated August 29, 2013.

Ms. Roy explained that the language in the proposed MCC amendments is not unconstitutional or outside the board's scope of authority and if there is a conflict it will come as an applied challenge. The proposed ordinance does allow a permit process for commercial, industrial or mix use zoned lands for medical marijuana dispensary facility.

Amy Zimmerman, 5150 Norma Avenue S., Salem, Oregon

- Read Salem Cannabis Industry Association, LLC's draft mission statement, vision statement and initial objectives;
- Association's agenda based on Board of Commissioners' statements;
- Association wants to create strong message that association wants to follow law; and
- Requested that local law not trump state law.

Commissioner Milne requested that the vote to consider amendments to the Marion County Code, Title 16 Urban Zone Code and Title 17 Rural Zone Code be postponed to receive clarification from county counsel on a couple of issues.

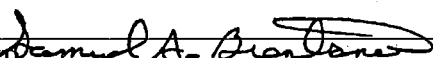
Commissioner Brentano clarified that the MCC amendments are not just a medical marijuana issue, but a consistency issue among all business.

MOTION: Commissioner Carlson moved to close the public hearing, leave the record open for written comments until Tuesday, February 18, 2014 at 4:00 p.m. to consider amendments to the Marion County Code, Title 16 Urban Zone Code and Title 17 Rural Zone Code, and place it on the action portion of the agenda for Wednesday, February 19, 2014. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

Commissioner Brentano read the calendar.

Commissioner Brentano adjourned the meeting at 10:55 a.m.

Attachments: (A) Amy Zimmerman public comments
(B) Brown Road Project PowerPoint presentation
(C) Public Works rural zone code update memorandum

CHAIR 


COMMISSIONER

Board Sessions can be viewed on-line at <http://www.cctvsalem.org/streaming.php> under Marion County Board of Commissioners.

Attachment A

I would like to introduce myself and answer a few of your questions I have heard over the past few meetings as we get to know each other. I have lived in this community growing up here since 1980. I come from a conservative, Christian upbringing. My father is a retired Air Force captain. As a former GIRLSCOUT founder and leader in this community I strive to maintain safety and strong family values and believe strongly in giving back to my community. I have 3 children and a stepson, I have a Bachelor of Science degree from OSU majoring in Sociology along with a Masters Degree from PSU in Public Administration. I could go on more personally but lets not rush our relationship.

I own a medical marijuana facility in South Salem and have an ongoing can drive for a non-profit in town along with I have done a coat drive and toy drive along with Sleep Country. We also had a giving tree for some of our patients. Our neighbors love us and are glad we are here see enclosed note. We opened in August 2013 and at a different location we are at now as we were proactive realizing we were initially too close to a school you may have seen us on channel 12.

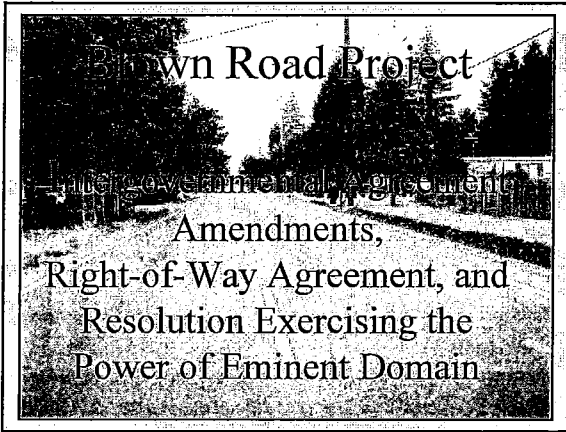
Prior to my understanding of medical marijuana I actually put my son into a rehab facility. Doctors wanted to prescribe him a variety of prescription synthetic drugs and after listening to his fact based argument with educational sources I realized I was in the wrong which teenagers love to hear. I will let him tell you his story if you will hear. My fear is with unregulated marijuana our community patients will revert back to buying from streets, store parking lots, and high schools.

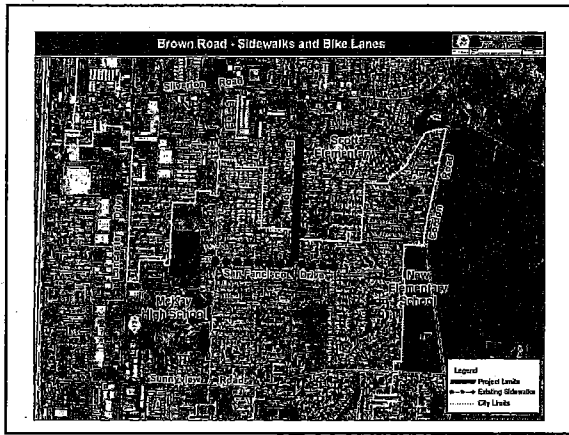
In response to Marion County Commissioners meeting, public safety coordinating council, and statements made by presenting attendees there are a few points I would like to share about medical marijuana, OMMP, and public health in our community in general.

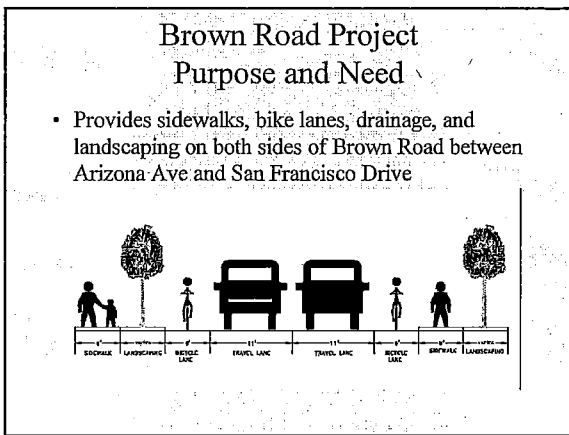
With OMMP children are not involved unless they are a patient recommended by a doctor. It really upset me as a community member to hear our county district attorney Walt Beglau refer to our Governor who is an MD as a "fly by night doctor".

Marijuana should be viewed as an herbal remedy per pharmacopeia. The American medical association has recently revised its stance on marijuana as has the national cancer institute which I printed a copy for your review. I don't have funding to print them all and I did send you each emails without response other than a confirmation from DA Beglau that he received it.

I am very sad that I have opened every form of communication with you and have not received a response to any of my statements. I agree recreational legalization should not be rushed, however the OMMP is a great opportunity and in the city of Salem has not caused any negative issues to the extent many people do not know we even exist.



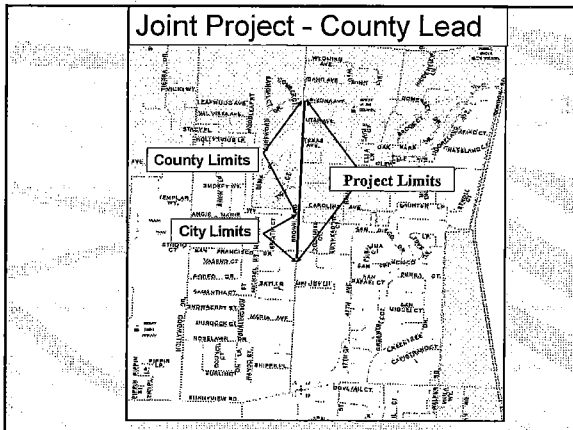




SKATS and TAP-Flex Funding Updates

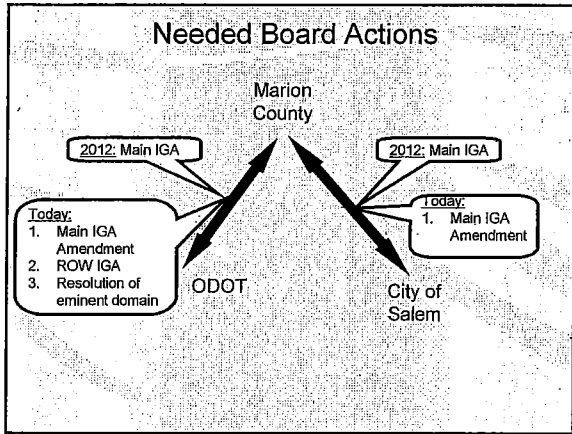
- In 2012 Marion County and City of Salem received funding to complete the design of the project and construct only between Arizona Ave and Carolina Ave.
- Recently City of Salem received additional funds to finish the construction of the remaining piece: Carolina Ave to San Francisco Ave.

Joint Project - County Lead



Roles and Responsibilities

- County will design, acquire right-of-way and construct both sections.
- City will perform any condemnations, if needed, within the City section.
- County will be reimbursed for all costs associated with the design, right-of-way and construction of the City section



Brown Road Project Funding

County	
Flex Funds	\$1,229,000
County Match	\$ 141,000
City	
STP-U & TAP-Flex Funds	\$ 884,000
Flex Funds	\$ 6,000
City Match	\$ 102,000
Total Project Cost	\$2,370,000

- ### Project Schedule
- Design – Complete Fall 2014

 - Right-of-Way Acquisition – Spring and Summer 2014
Temporary easements required

 - Construction – Summer 2015
Completion by 12/31/2015

Brown Road Project

Action Requested:

Sign the Intergovernmental Agreement Amendment between the City of Salem and Marion County

Sign the Intergovernmental Agreement Amendment between ODOT and Marion County

Sign the Right-of-Way Intergovernmental Agreement between ODOT and Marion County

Adopt a Resolution Exercising the Power of Eminent Domain for the County portion of the Project

Questions?





Marion County OREGON

PUBLIC WORKS

MEMORANDUM

January 28, 2014

BOARD OF COMMISSIONERS
Sam Brentano
Janet Carlson
Patti Milne

INTERIM DIRECTOR
Alan Haley

ADMINISTRATION

BUILDING INSPECTION

EMERGENCY MANAGEMENT

ENGINEERING

ENVIRONMENTAL SERVICES

OPERATIONS

PARKS

PLANNING

SURVEY

TO: Marion County Board of Commissioners
FROM: Public Works/Planning
SUBJECT: Rural Zone Code Update

ISSUE:

On January 8, 2014, the Board of Commissioners adopted Resolution #14R-1 initiating revisions to the Marion County Code (MCC) Title 16 (Urban Zone Code) and Title 17 (Rural Zone Code). The purpose of the revisions is to clarify provisions in the code related to uses that may be in violation of state or federal law.

BACKGROUND:

The rural and urban zone codes each contain separate provisions that do not allow issuance of a permit on a property if it is being used in violation of MCC, unless the permit will correct the violation. In addition, the provision in the rural code does not allow issuance of a permit if the property is being used in violation of state or federal law. Although the code does not allow issuance of a permit, it does not specifically prohibit uses that are in violation of these laws.

In order to make it clear that uses in violation of state and federal laws are not allowed, and to standardize the language between the rural and urban code, revisions are needed.

ANALYSIS:

The provisions that need to be revised are found at MCC 16.35.060 in the urban code and MCC 17.110.680 in the rural code. Planning staff worked with Legal Counsel to develop language for the Board to consider for each of these sections as outlined below. ~~Deletions are in strikeout~~ and **additions in bold and underlined.**

"16.35.060 CONFORMANCE REQUIREMENT. *The zoning administrator or designee shall prior to issuing any permit pertaining to the use of land or structures, or the erection or alteration of any structure, ascertain that the proposed use or construction shall in all ways conform to the requirements set forth in this title.*

*No permit for the use of land or structures or for the alteration or construction of any structure shall be issued and no land use approval shall be granted if the land for which the permit or approval is sought is being used in violation of any condition of approval of any land use action, **is in violation of local, state or federal law,** or is*

Memo to Marion County Board of Commissioners
From Public Works / Planning
RE: Rural Zone Code Update
January 28, 2014

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being used or has been divided in violation of the provisions of this title unless issuance of the a permit or land use approval would correct the violation.

All land uses shall be conducted in full compliance with any other county ordinance, code and or requirement of state and federal laws. Failure to conform to other applicable laws shall may be grounds for revocation of the any permits and enforcement action, including but not limited to a citation, in accordance with Chapter 1.25 of the Marion County Code."

***"17.110.680 ADMINISTRATION OF THE TITLE.** This title shall be jointly administered by the county building official and by the director or designee. The building official and the director or other designated officer, prior to issuing any permit pertaining to the use of land or structures, or the erection or alteration of any structure, shall ascertain that the proposed use or construction shall in all ways conform to the requirements set forth in this title.*

No permit for the use of land or structures or for the alteration or construction of any structure shall be issued and no land use approval shall be granted if the land for which the permit or approval is sought is being used in violation of any condition of approval of any land use action, is in violation of local, state or federal law, or is being used or has been divided in violation of the provisions of this title unless issuance of the a permit or land use approval would correct the violation.

The director shall handle all matters pertaining to zone changes, variances, land divisions, and conditional uses, and other administrative matters as prescribed by this title; and such other matters as directed by the planning commission, hearings officer, or board.

Any provision in any plat requiring that the board or the planning commission approve any future land uses or divisions shall be satisfied if the proposed land use or division is reviewed and approved by the hearings officer, planning director or designee in accordance with the other provisions of this title.

The director or the hearings office may deny any land use application if it is determined that the application includes any false or misleading information. Before a decision granting an application becomes final, any land use permit granted pursuant to this title may be reconsidered by the director or hearings officer and may be denied if it is determined that the application included any false or misleading information.

Any land use permit granted pursuant to this title shall be subject to revocation by the director if the director determines that the application for the permit included any false or misleading information, if the conditions of approval have not been complied with or are not being maintained, or if the land use is not being conducted in full compliance with the requirements of local, state and federal laws.

The director's decision revoking a land use permit may be appealed to the hearings officer, who shall hold a public hearing in order for the permit holder to show cause why the permit should not be revoked. No hearing may be held without a minimum 12 days' notice to the permit holder.

If the hearings officer finds that the conditions of permit approval have not been complied with or are not being maintained, or that the land use is not being conducted in compliance with applicable laws, the hearings officer may grant a reasonable time for compliance. If corrections are not made within that time, the permit shall be revoked effective immediately upon expiration of the time specified. The hearings officer's decision may be appealed to the board as provided in MCC 17.122.120.

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From Public Works / Planning
RE: Rural Zone Code Update
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All land uses shall be conducted in full compliance with any other county ordinance, code and or requirement of state and federal law. Failure to conform to other applicable laws shall be grounds for revocation of the any permits and enforcement action, including but not limited to a citation, in accordance with Chapter 1.25 of the Marion County Code.

The director or designee shall determine whether dwellings, structures or uses are a permitted use subject to standards and the limited use provisions in the applicable zone. The administrative review procedures, as provided in Chapter 17.115 MCC, shall be followed in making these decisions. The same process shall be used for other administrative reviews under this title.”