Minutes
Aurora Planning Commission Meeting
Tuesday, July 5, 2016, at 7:00 P.M.
City Council Chambers, Aurora City Hall
21420 Main Street NE, Aurora, OR 97002

STAFF PRESENT Kelly Richardson, City Recorder
Renata Wakeley, City Planner

STAFF ABSENT:

VISITORS PRESENT: Tom Heitmanek, Aurora
J Guy, Aurora
Max Miller
Marilyn Weik, Aurora
Mathew Anderson, Aurora
Rick Schaefer, Aurora
Nathan Ellitot, Milwaukie
John Smets, Aurora
Larry Fritzie
Mary Hellake, Aurora

---

1. **CALL TO ORDER OF THE CITY COUNCIL MEETING**

   Meeting was called to order by Chairman Schaefer at 7:01 pm

2. **CITY RECORDER DOES ROLL CALL**
   Chair Joseph Schaefer - Present
   Commissioner Craig McNamara- Absent
   Commissioner Bud Fawcett - Present
   Commissioner Jonathan Gibson - Present
   Commissioner Mercedes Rhoden-Feely - Present
   Commissioner Tara Weidman - Absent
   Commissioner Open

3. **CONSENT AGENDA**
   a) Planning Commission Minutes – June, 2016
   b) City Council Meeting Minutes – May, 2016
   c) Historic Review Board Minutes – May, 2016

   Motion to approve the consent agenda as presented was made by Commissioner Gibson and is seconded by Commissioner Fawcett. Motion approved by all.

4. **CORRESPONDENCE –**

a) NA

5. **VISITORS**

Anyone wishing to address the Aurora Planning Commission concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the Aurora Planning Commission could look into the matter and provide some response in the future.

No one Speaks at this time.

6. **PUBLIC HEARING, Opens at 7:06 PM**

a) Discussion and or Action on CUP-2016-01 Building B 14643 Ottaway Rd. No ex-parte contact is declared by any of the Commissioners.

CITY OF AURORA
PLANNING COMMISSION

STAFF REPORT:	Conditional Use Permit 2016-01 [CUP-16-01]
DATE:	June 28, 2016 (for the July 5th Planning Commission meeting)

APPLICANT:	Fortune Farms, Inc., c/o Todd Boren 220 NW 8th Ave. 1st Floor, Portland OR 97209
OWNER:	Stems Property LLC, c/o Bob Smets P.O. Box 560, Aurora OR 97002
REQUEST:	Conditional Use Permit approval for a marijuana grow site and processing site on the subject property for 'Building B' only, measuring approx. 6,000 square feet in size.
SITE LOCATION:	Map 041.W.13B Tax Lot 1700, commonly known as 14633 Ottaway Road NE, Aurora, OR 97002
SITE SIZE:	72,310 square feet, or approx. 1.66 acres
DESIGNATION:	Zoning: Industrial (I)
CRITERIA:	Aurora Municipal Code (AMC) Chapters 16.16 Industrial and 16.60 Conditional Uses
ENCLOSURES:	Exhibit A: Assessor Map Exhibit B: Applicant's Variance Application Exhibit C: Request for Comments Responses Exhibit D: Structural permit approval for storage facility only

I. REQUEST

Conditional Use Permit approval for a marijuana grow site and processing site on the subject property for 'Building B' only, measuring approx. 6,000 square feet in size.

II. PROCEDURE

Conditional Uses are processed as Quasi-Judicial Decisions. Quasi-Judicial Decisions are conducted as stated in Chapter 16.76 of the AMC. Section 16.60 provides the criteria for processing Conditional Uses.

The application was received and fees paid on March 31, 2016. The application was initially determined incomplete by staff but the applicant submitted the additional information required on May 11, 2016 and the application was determined complete. Notice was mailed to property owners within 200 feet of the subject property on June 8, 2016. Notice of the Planning Commission hearing was published in the Canby Herald on June 15, 2016 (at least 10 days prior) in compliance with AMC 16.76. The City has until **September 8, 2016**, or 120 days from acceptance of the application to approve, modify and approve, or deny this proposal.

III. APPEAL

Appeals are governed by AMC 16.76.260. An appeal of the Commission's decision shall be made, in writing, to the City Council within 15 days of the Planning Commission's final written decision.

IV. CRITERIA AND FINDINGS

The applicable review criteria for Conditional Use Permits are found in AMC Chapter 16.60-Conditional Uses.

16.60 Conditional Uses

A. The planning commission may approve a conditional use permit only when the applicant has shown that all of the following conditions exist:

1. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography and natural features;

FINDING: The subject property is a flat site measuring approx. 72,310 square feet. The site has an existing flag pole connection to Ottaway Road NE on the southern property line. The subject property is zoned Industrial with Industrial zoned property to the north and west and a mix of Industrial and Commercially zoned property to the south and east. The site includes three storage buildings (see Exhibit D) which were approved for use as storage facilities related to the property/business to the west under the same ownership. No other structural, electrical, or plumbing permits have been approved or issued by the City of Aurora for the storage buildings. Staff finds the site meets the size, shape, and topography for Industrial uses as zoned in the AMC.

2. All required public facilities have adequate capacity to serve the proposal and are improved to the standards in Chapter 16.34;

FINDING: Request for Comments were submitted to and are included under Exhibit C. AMC section 16.34 addresses the following criteria:

Where public improvements are required, all public works facilities shall be designed to the City of Aurora Public Works Construction Standards (PWCS) plus the requirements of the Aurora Municipal Code (AMC). Where the PWCS are silent, the Marion County Public Works Standards shall apply, followed by the Oregon APWA/ODOT Standards.

Streets (16.34.030-060)

The subject property fronts/accesses Ottaway Rd NE via the southern property line and has 49 feet of frontage along Ottaway. According to the applicant, vehicular access to "Building B' will be via Lot 1702 of Map 041W13B. There is currently no access easement recorded across Lot 1702 to benefit Lot 1700. The existing access on Lot 1702 is not constructed to city standards and must be redeveloped to those standards prior to approval of future development or occupancy permits for the subject 'Building B'. The applicant shall show a recorded reciprocal access and maintenance easement from Lot 1702 to benefit Lot 1700 prior to any future development permit or occupancy permit approvals for 'Building B'. Prior to recording, the easement shall be reviewed and approved by the City of Aurora. These access requirements are included as recommended conditions of approval.

Ottaway Road has a right-of-way width of 60 feet along the frontage of the subject property. According to the Aurora TSP (2009), Ottaway is designated as a Collector Street west of Highway 99E. Collector Streets require 65 feet of right-of-way, 6 foot sidewalks on both sides of the street, 7.5 feet planter strips, and 36 feet of pavement width. Staff has determined that the proposed change of use/conditional use permit is subject to a Site Development Review (SDR) application and this is included as a condition of approval. Frontage improvements will be reviewed as part of the SDR application. The applicant requested that the Conditional Use Permit application and Site Development Review application be processed as separate applications. An SDR application has yet to be submitted to the City.

The Aurora TSP also identifies a new Collector Street to be located between Lots 1700 and 1702 of Map 041W13B traveling to the north and back east toward highway 99E (see Aurora TSP, Figure 3). At the time of future development or division of these lands, additional right-of-way dedication may be required, or the applicant shall obtain approval for an amendment to the Aurora Transportation System Plan to eliminate the planned new street.

As the subject conditional use permit application applies to a new development/change of use and occupancy of 'Building B', staff has determined that the proposed use is subject to Site Development Review approval in compliance with AMC 16.58. This is included as a condition of approval. Strcutural permit applications shall not be accepted until the requirements of the Site Development Review application and approval and the requirements of AMC 16.58 are met for the subject property- such as additional right-of-way dedication, frontage improvements, etc. Based upon Site Development Review criteria, the applicant will likely be required to improve the Ottaway Road frontage and right-of-way to city standards prior to future development permit application or approval.

Sewer (16.34.080)

According to the Aurora Public Works, the sewer line is not correctly placed (see Exhibit C). Engineered drawings for the connection/provision of sewer service to 'Building B' from existing mains in accordance with the provisions set forth by the City's public works design standards shall be submitted for review and approval by the City. In accordance with 16.34.080.B., the applicant shall submit to the City an engineered sanitary sewer plan conforming to the public works design standards prior to issuance of development permits.

Storm Water (16.34.090)

The Aurora Public Works has concerns with the lack of pervious surface. However, the applicant has shown that landscaping will be installed on site in their application which meets the minimum landscaping requirement for the zone. Landscaping shall be installed prior to occupancy permit approvals in order to bring the subject property into compliance with the zone and the conditional use permit. Public Works also expressed concern regarding maintaining storm water from flowing off site. In compliance with AMC section 16.34.090.A., the Planning Director, City Engineer and Public Works Director shall issue permits only where adequate provisions for storm water and floodwater runoff have been made. Prior to approval of any future development permits related to "Building B', applicant shall submit to City for review and approval a storm water management and drainage study.

Water (16.34.100)

According to the Aurora Public Works, new water line connections from Ottaway Road and each building will need to have their own water meters (see Exhibit C). The City Engineer notes that City utility mapping indicate an 8" water line runs through the property and a public water easement for the water main and hydrant are required, if not already in place. This will be reviewed as part of the SDR application.

Prior to any future development permit approvals related to 'Building B', the applicant shall submit for Public Works Director and City Engineer review and approval engineered plans for water extension/connections in compliance with the public works design standards. As part of SDR, the applicant will be required to provide the City with a site utility map that reflects all existing utilities on site and needed system improvements. Prior to structural permit approvals, applicant shall submit to City for review and approval engineer water system plans conforming to public works design standards, as well as backflow prevention devices in compliance with Oregon Health Authority- Drinking Water Program (OHA-DWP) requirements.

3. The requirements of the zoning district are met;

FINDING: The property is zoned Industrial (I). Medical marijuana grow sites and processing sites are listed as a permitted use under AMC 16.16.030.F, contingent upon conditional use permit approval. Conditional use permit approval is contingent upon the Planning Commission determining the following zone code criteria are met:

AMC 16.16.040 Development standards.

A. There is no minimum size for lots or parcels served by municipal sewer. Minimum sizes for lots or parcels without municipal sewer shall be as determined by the county sanitarian.

B. There is no minimum lot width or depth.

C. Unless otherwise specified, the minimum setback requirements are as follows:

1. There is no minimum front yard setback except as required for buffering of off street parking in accordance with Section 16.38.050.

2. On corner lots, the minimum setback for the side facing the street shall be ten (10) feet.

3. No additional side or rear yard setback shall be required except fifty (50) feet screened and buffered in accordance with Chapter 16.38 shall be required where abutting a residential zoning district.

D. No building shall exceed fifty (50) feet in height. Within one hundred (100) feet of a residential zone, no building shall exceed thirty-five (35) feet in height. All buildings greater than thirty-five (35) feet in height are subject to Chapter 16.24.

E. Landscaping shall be in accordance with Chapter 16.38. All outside storage areas require buffering and screening as defined in Chapter 16.38.

F. Parking shall be in accordance with Chapter 16.42.

AMC 16.16.030.F.

1. Buffers which shall only be measured at the initial land use application and not subsequent annual renewals:

a. Elementary, middle or high school, public or private: 1000 feet

b. Day care: 1000 feet

c. Other marijuana businesses: 1000 feet

d. May not be adjacent to a residential zone, a public park, or a church.

2. The use must be located within a permanent, enclosed structure.

3. The use may not be allowed as a home occupation.

4. Applicant and all employees must pass a criminal background check.

5. The term of a conditional use approval may not exceed one year.

6. Waste materials containing any amount of marijuana or by products must be locked in a secure container on-site.

7. Hours of operation are limited to 10 am to 5 pm.

8. Drive through windows are prohibited.

FINDING: The use is proposed to be within a permanent enclosed structure. However, previous structural permit approvals for the structure were for an ST-2 type (storage) building based upon previous information submitted by the applicant/property owner (see Exhibit D). City of Aurora structural permit reviews for the proposed change of use shall be required after all site plan approval conditions are satisfied and prior to occupancy permit approval. This is included as a recommended condition of approval.

Staff finds the application meets the minimum lot size, width of depth of the zone. No minimum front, side or rear yard setbacks apply as the subject property does not abut a residential zone and staff finds setback requirements are met. Landscaping and parking requirements are addressed in criteria 16.60.A.5 and 16.60.A.6 below. The existing structure is less than 50 feet in height and staff finds this criterion is met.

If approved, conditional use permit approval shall start the one-year timeline from the date of mailing of final decision of the conditional use permit approval. Suggested conditions of approval include limitations on hours of operation in conformance with zone code requirements and submission of background check approvals at the time of business license application for all on-site employees are included below.

The applicant has stated that the proposed site and use meet all criteria under 16.16.030.F. Staff finds the application/subject property meet the buffering requirements outlined under 16.16.030.F.1 for schools; daycares; residential zones, parks or churches; or any known/other marijuana businesses approved/licensed by the City of Aurora.

Evidence of applicant and employee background checks shall be submitted to the City of Aurora at the time of business license application.

Hours of operation shall be limited to 10 am to 5 pm and drive through windows are prohibited. The applicant confirmed in their application that hours of operation shall be limited to between 10 am and 5 pm. Retail sales of marijuana and marijuana products are prohibited in the Industrial zone.

Staff finds this criteria can be met, with conditions.

4. The use is compatible with surrounding properties or will be made compatible by imposing conditions;

FINDING: Property to the north and east are zoned Industrial. Properties to the south and west are a mix of Industrial and Commercial. Staff finds the proposed use is compatible with surrounding property zones and uses, pending conditional use permit approval and the recommended conditions of approval.

5. All parking and loading areas are designed and improved in accordance with the requirements set forth in Chapter 16.42;

FINDING: The application shows ten (10) parking spaces along the northern structural wall of 'Building B', one of which is an ADA parking space. For 'Building B', measuring 6,000 square feet (120' x 50'), In compliance with AMC 16.42.030.D, one (1) space per employee on two largest shifts is required for industrial manufacturing and warehousing. According to the applicant, page SP1.1, 1 shift with a maximum of ten (10) employees is proposed. Loading areas for industrial uses less than 25,000 square feet in size are not required. Staff finds this criteria is met.

16.42.050 requires all parking to have a durable hard surface, with bumper rails or curbing at least four (4) inches in height. The applicant has provided measurements and curbing on page A.1.1 of the application. These shall be installed prior to occupancy permit approval. Any exterior lighting shall conform to AMC 16.42 and shall be submitted to the City for review and approval.

6. All landscaping is designed and improved in accordance with the requirements set forth in Chapter 16.38;

FINDING: AMC 16.38.020.C.2, requires properties larger than twenty thousand (20,000) square feet to have at least ten (10) percent of the total area landscaped. The applicant shows 30% landscaping on site on application page SP1.1. Landscaping shall be installed prior to occupancy permit approvals. Additional buffering or screening is not required as the property does not abut residential zones. The applicant proposes a 5' chain link fence along the east property line. Staff finds chain link fencing up to 6' in height is permitted on Industrial zoned properties. Staff finds this criteria is met.

7. All public improvements are designed and constructed in accordance with the requirements set forth in Chapter 16.34;

FINDING: This criterion is addressed under section 16.60.AS.2, above.

8. All facilities for the handicapped are designed in accordance with the requirements set forth in the ADA requirements;

FINDING: The applicant shows the provision of one (1) ADA parking space on page A1.1 of the application. Structural permit review and approval by the City of Aurora shall be required prior to occupancy of "Building B'. This is included as a recommended condition of approval. Staff finds this criterion can be met, with conditions.

9. The provisions of all applicable chapters of this title are satisfied; and

FINDING: The applicant is able to meet the setback requirements of the base zone as submitted. The criteria for 16.13-Accessory Buildings are discussed below.

10. Properties located in the historic commercial or historic residential overlay comply with the requirements set forth in Title 17 of the Aurora Municipal Code. A certificate of appropriateness approved by the historic review board shall satisfy this requirement.

FINDING: The subject property is not located within the historic commercial or historic residential overlay zone. Staff finds this criterion does not apply.

B. In reviewing an application for a conditional use, the commission shall consider the most appropriate use of the land and the general welfare of the people residing or working in the neighborhood. In addition to the general requirements of this title, the commission may impose any other reasonable conditions deemed necessary. Such conditions may include, but are not limited to:

1. Limiting the manner in which the use is to be conducted, including restrictions on the hours of operation;

2. Establishing additional setbacks or open areas;

3. Designating the size, number, location and nature of vehicle access points;

4. Limiting or otherwise designating the number, size, location, height and lighting of signs;

5. Requiring fences, sight-obscuring hedges or other screening and landscaping to protect adjacent properties;

6. Protecting and preserving existing soils, vegetation, wildlife habitat or other natural resources.

FINDING: As included in the subject application, hours of operation shall be limited to between the hours of 10 am and 5 pm. In addition, the applicant has stated a limitation of ten (10) employees on site at any one time.

A business license application and fee shall be required prior to approval of occupancy permits. In addition, there are a number of documented structural and plumbing permit violations that have not been

resolved on site at the time of processing of this application. Due to the documented violations on site, Staff recommends the Planning Commission condition approval of the conditional use permit as follows:

Occupancy permit cannot be issued until the business license fees and approval have been issued.

A certificate of occupancy cannot be issued until structural, electric, mechanical and plumbing permit applications, fees, inspections and final approvals have been issued for 'Building B'.

Structural permit applications cannot be accepted for review or issued until review and approval of a Site Development Review application for 'Building B', and/or the entire Lot 1700 of Map 041W13B, in compliance with AMC 16.58, and satisfaction of all conditions of approval for same.

V. CONCLUSIONS AND RECOMMENDATIONS

Based on the findings in the staff report, staff recommends that the Planning Commission **approve** the application for a Conditional Use Permit (file no. CUP-16-01) based upon the following:

1) Develop the subject property in accordance with plans approved by the city.

2) Comply with all City of Aurora and State of Oregon development, building and fire codes. Where public improvements are required, all public works facilities shall be designed to the City of Aurora Public Works Construction Standards (PWCS) plus the requirements of the Aurora Municipal Code (AMC). Where the PWCS are silent, the Marion County Public Works Standards shall apply, followed by the Oregon APWA/ODOT Standards.

3) In compliance with AMC 16.16.030.F., all uses must be located within a permanent, enclosed structure; applicant and all employees must pass a criminal background check; waste materials containing any amount of marijuana or by products must be locked in a secure container on-site; hours of operation are limited to 10 am to 5 pm; and drive through windows are prohibited.

   Evidence of applicant and employee background checks shall be submitted to the City with the application for a business license. Retail sales are prohibited in the Industrial zone.

   As the subject conditional use permit application applies to a new development/change of use and occupancy of 'Building B', staff has determined that the proposed use is subject to Site Development Review approval in compliance with AMC 16.58. Structural permit or other development permit applications shall not be accepted until the requirements of the Site Development Review application and approval and the requirements of AMC 16.58 are met for the subject property, including satisfaction of all conditions of approval.

4) Parking as shown in the application and in compliance with AMC 16.42.050 shall be installed prior to acceptance of structural permit applications. Any exterior lighting shall conform to AMC 16.42 and shall be submitted to the City for review and approval.

5) The applicant shall improve the existing drive access to City standards and show a recorded reciprocal access and maintenance easement from Lot 1702 to benefit Lot 1700 prior to any future development permit or occupancy permit approvals for 'Building B'. Prior to recording, the easement shall be reviewed and approved by the City of Aurora.

6) Engineered drawings for the connection/provision of sewer service to 'Building B' from existing sewer mains in accordance with the provisions set forth by the City's public works design standards shall be submitted for review and approval by the City. In accordance with 16.34.080.B., the applicant shall submit to the City an engineered sanitary sewer plan conforming to the public works design standards prior to issuance of development permits.

7) Prior to approval of any future development permits related to 'Building B', applicant shall submit to City for review and approval a storm water management and drainage study. Landscaping shall be installed prior to occupancy permit approvals in order to bring the subject property into compliance with the zone and the conditional use permit.

8) Prior to any future development permit approvals related to 'Building B', the applicant shall submit for City review and approval engineered plans for water extension/connection in compliance with the City public works design standards. Prior to structural permit approvals, applicant shall submit to City for review and approval engineer water system plans conforming to public works design standards, as well as backflow prevention devices in compliance with Oregon Health Authority- Drinking Water Program (OHA-DWP) requirements.

9) In compliance with 16.16.030.F. and 16.76.360 for expirations, the term of a conditional use approval may not exceed one year. The expiration of the CUP-2016-01 shall be one year from the date of mailing of the final decision (if approved). The applicant should apply for renewal of the conditional use approval at least 90 days prior to expiration of the one year period in order to allow for notification requirements for hearings.

VI. PLANNING COMMISSION ACTION

A. Approve the conditional use permit for a marijuana grow site and marijuana processing site on the subject property (CUP-2016-01):

1. As recommended by staff, or

2. As determined by the Planning Commission stating how the application satisfies all the required criteria, and any revisions to the recommended conditions of approval, or

B. Deny the request for a conditional use permit for a marijuana grow site and processing site on the subject property (CUP-2016-01) stating how the application does not meet the applicable approval criteria.

C. Continue the hearing to a time certain or indefinitely (considering the 120-day limit on applications).

Applicant, Jay Guy General Manager with Fortune Farms, states that they had purchased an existing marijuana business. We are currently licensed through the state. We realize now that the existing business was not permitted properly and so we are now trying to get everything correctly permitted with the City. Since plants grow 24/7 our hours of operation are continual we are not proposing drive through or retail.

Larry Fritzie, Architect we are currently working with Fortune Farms to get everything corrected and in compliance with the City code.

Max Miller, Council for the applicant as stated in exhibit B 1-12 it is stated that SDR was not applicable and or needed however as the applicant now states we will not contest it either.

NO one spoke in favor at this time and no one opposed either.
Rick Schaefer 14653 Ottaway Rd, I have concerns regarding the odor and security cameras. Applicant states we are strictly regulated and have to meet Federal and State guidelines. We don't want to speak to security directly as it will appear in a public document but just know it will be very secure.
Marilyn White 14603 Ottaway Rd thanked everyone for their efforts in this endeavor. Also had a concern that a stop sign would be needed with added site visits. City Planner Wakeley said that would be addressed in the SDR.

No more people spoke at this time, hearing no questions from the Commission Chair Schaefer closed the public hearing at 8:16 pm.

Commissioner Fawcett confirms that that this is in the industrial zone.
Commissioner Gibson comments that this is going to be difficult since the existing business was not allowed and in violation of the zone how do we approve this? Chair Schaefer very carefully.
Commissioner Feely had no comment at this time.

City Planner Wakeley states that this is an application just like any other that we need to look at as a separate matter from the property owner's violations and issues with the city. We can condition it to reflect some of those issues.

Chair Schaefer makes motion to adopt findings in the staff report and approve the CUP application as recommended by staff with the following amendments:

a) Amend findings on page 5 of staff report and reference to Aurora Municipal Code (AMC) section 16.16.030.F(1)(7) for hours of operation and remove limitation on hours of operation from 10 am to 5 pm from condition of approval #3 as hours of operation should not apply to a grow operation in the industrial zone, and
b) Planning Commission concurs with staff and finds that a Site Development Review land use application is necessary for the site, and
c) Planning Commission finds and the applicant and the applicants attorney have agreed to waive AMC section 16.58.020(G) and not to assert that approval of a Conditional Use Permit exempts an applicant from a Site Development Review application, and
d) Planning Commission finds that, in the absence of the completion of a SDR land use application and review, CUP criteria 1, 2, and 3 could not be found to be satisfied and therefore the CUP could not be approved.

Motion is seconded by Fawcett. All passed.

7. **NEW BUSINESS**
None

8. OLD BUSINESS

a) Discussion Regarding additional information from FEMA Notice of Federal Land Use Change for Biological Opinion. Chair Schaefer circulated a memo from the Attorney General and would like to get everyone's opinion at the August meeting. There are varied opinions on whether FEMA have the authority of what you can do to be in compliance or not towards the Endangered Species Act and until a Judge renders a decision nobody knows.

9. COMMISSION/DISCUSSION

a) City Planning Activity (in your packets) Status of Development Projects within the City.

10. ADJOURN

Chair Schaefer adjourned the July 5, 2016 Aurora Planning Commission Meeting at 8:45 P.M.

Chair Schaefer

ATTEST:

Kelly Richardson, CMC
City Recorder