



# City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

*Coast Guard City, USA*

## Planning and Community Development Department

Date: May 5, 2016

To: Planning Commission

From: Michael Scarcelli, Senior Planner

Re: CU 16-14 Marijuana Cultivation at 4614 Halibut Point Road

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### GENERAL INFORMATION

Applicant: Aaron Bean

Property Address: 4614 Halibut Point Road

Property Owner: Connor and Valorie Nelson

Legal Description: Lot 3 Carlson Resubdivision

Parcel ID Number: 25875003

Size of Existing Lot: 14,372 sq. ft.

Zoning: General Commercial Mobile Home (C-2)

Existing Land Use: Commercial and Residential

Utilities: Full city services

Access: Off of HPR

Surrounding Land Use: Residential, Commercial, & Industrial

### ATTACHMENTS

Attachment A: Application

Attachment B: Vicinity Map

Attachment C: Aerial Vicinity Map

Attachment D: Pictures

Attachment E: Zoning Map

Attachment F: Subdivision Plat

Attachment G: Site Plan

Attachment H: Floor Plan

Attachment I: Narrative

Attachment J: AMCO Application

Attachment K: Emails and other Supporting Documents

### MEETING FLOW

- Report from Staff
- Applicant comes forward
- Applicant identifies him/herself – provides comments
- Commissioners ask applicant questions
- Staff asks applicant any questions
- Floor opened up for Public Comment
- Applicant has opportunity to clarify or provide additional information
- Comment period closed - brought back to the board
- Findings
- Motion of Recommendation

Attachment L: Buffer Map – 500 feet  
Attachment M: Mailing List – 300 feet

## **BACKGROUND/PROJECT DESCRIPTION**

The proposal is for a marijuana cultivation facility<sup>1</sup> in a General Commercial Mobile Home zoning district (C-2) located at 4614 Halibut Point Road. Therefore, the proposed use is subject to receiving a conditional use permit to be able to operate subject to section 22.24.026.

The grow operation is located on two floors: one the ground level are two grow rooms, a storage room, and a secure room; on the upper floor, there is another grow room, storage, office, and work rooms for cultivation processes. Each floor is approximately 984 gross square feet (minus build out that reduces that).

## **ANALYSIS**

### **1. CRITERIA TO BE USED IN DETERMINING THE IMPACT OF CONDITIONAL USES.<sup>2</sup>**

#### **a. Amount of vehicular traffic to be generated and impacts of the traffic on nearby land uses:**

First, our Department does not have traffic engineering software to calculate traffic impacts, nor does it have the equipment to conduct or own objective traffic studies. However, I was able to glean information from other objective traffic studies. Using a study from Boulder, Colorado, Marijuana Cultivation was studied with actual traffic and parking observations and also compared and contrasted to similar light industrial, manufacturing and pharmacy businesses to calculate a range of traffic and parking impacts. Using observation and modeling, the average trip rate for cultivation was about 6.97 trips per 1,000 square feet per day. Average peak parking was about 6 spaces in the highest hour and day. There was correlation between square footage and trip rates for cultivation. There was not a correlation between retail size and impacts, instead that seemed to be determined by market variables (such as supply, demand, density of similar uses in area).

Staff disagrees with the applicant's assertion there is no traffic. However, staff believes the traffic that will be generated will be able to be handled by the existing road ways, access, and property layout. In addition, Cultivation does not appear to create high traffic peak demand per hour nor per day that exceeds the existing road system and layout.

#### **b. Amount of noise to be generated and its impacts on surrounding land use:**

There is no objective analysis regarding noise. Subjectively, cultivation use would not appear to create any noise impacts to a General Commercial Area any more so than other commercial uses. In reviewing other planning analysis of such marijuana cultivation uses, I found no concerns about noise impacts in commercial zones.

#### **c. Odors to be generated by the use and their impacts: Odors are a concern.**

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<sup>1</sup> § 22.08.587 C

<sup>2</sup> § 22.24.010.E

Staff disagrees with the applicant's assertion there will be no noxious odors. If you have ever smelled certain hydroponic plant amendments, fertilizers, and other additives, then you know there are a few that would make you clear a room. In addition, some may be offended by pungent plant odors associated with marijuana.

There is difficulty ascertaining the quantitative, objective impact of marijuana odor. Subjectively, some may like the odor – whether as an odor alone or compared to other noxious odors that may be found in commercial and industrial areas. State regulations identify under section 3 AAC 306.420 (F) Odor Control under the operating plan that each applicant must submit to the state Alcohol and Marijuana Control Office (AMCO). In addition, Section 3 AAC 306.430 (C)(2) states, “Does not emit an odor that is detectable by the public from outside the marijuana cultivation facility **except as allowed by a local government conditional use permit process**.”[Staff has highlighted for emphasis].

Therefore, odor is a concern, and while it may appear, from code, that no odor can be detected, it also reads that a local government can address odor as it sees fit for the location. Taking both of these into account, it appears prudent to condition a high level of odor control, but recognize absolute elimination may not be feasible, practical, or necessary depending upon surrounding land use.

The applicant has provided an odor control operating plan. However, it does not provide enough specific detail of what type of air filtration units it will use. Not all odor control is the same. Staff suggests at a minimum, numerous charcoal air filters. In addition, some use ozone or masking agents. Please be aware about the potential harms of ozone for human health.

**d. Hours of operation:** The business hours as provided indicate 10 am to 7 pm year-round except for holidays. However, staff views a grow operation as a 24 hour non-stop operation. Plants and their respective grow systems do not stop operating when people leave the building. Monitoring systems continue to run, plants grow, pumps and fans operate, etc.

**e. Location along a major or collector street:** Located along state highway, Halibut Point Road adequate for the proposed use.

**f. Potential for users or clients to access the site through residential areas or substandard street creating a cut through traffic scenario:** Proposed use is in an existing building. The use itself will not create or alter any access.

**g. Effects on vehicular and pedestrian safety:** None anticipated or identified.

**h. Ability of the police, fire, and EMS personnel to respond to emergency calls on the site:** Part of the operating plan will include emergency access. Due to operating plan and regulations, emergency access may be better than average use. Positive impact only.

**i. Logic of the internal traffic layout:** Property has proper layout; however, there is concern about parking. To do proper parking analysis, staff needs a parking plan, showing all uses and square footages of existing uses, proposed uses, parking, access driveways, and loading zones. (Site and floor plan with dimensions).

**j. Effects of signage on nearby uses:** None anticipated.

**k. Presence of existing or proposed buffers on the site or immediately adjacent the site:** Existing lot orientation is proper. In terms of state buffer, there is residential use on site and within the vicinity that could be impacted by odor or other impacts of commercial cultivation.

**1. Relationship if the proposed conditional use is in a specific location to the goals, policies, and objectives of the comprehensive plan:** There are many goals, policies, and objectives that this proposal could fall under, these include but are not limited to: 2.1.2 economic growth, 2.1.3 foster quality family life (condition to protect these), 2.1.10 diverse and vital local job base, 2.1.13 diversified industry and utilizing Sitka's resources for best return on investment (renewable electricity), 2.2.1 economic base, 2.2.3 produce high quality goods, 2.2.5 protect health and welfare of community (through conditions), 2.2.10 respect social and community values (70% support recreational marijuana), 2.3.6 focus on waste water and watershed protection (though conditions and operating plan), 2.4.1 orderly use, 2.4.4 resolve conflicts of use through public process, and 2.6.2 commercial development without substantial negative impacts (through conditions and regulations). Overall, the conditional approval with appropriate conditions and default state regulations appears to offer the best economic development by providing jobs, tax revenue, utilizations of electricity that has extra supply, comports with existing community values, and creates harmony of use for the area.

Some of the positive impacts include increasing jobs directly and indirectly through on-site employees, contractors for building and business design, sale tax revenue, tourism incentives, and sale of electricity. Potential negative impacts are adequately mitigated through stringent state regulations incorporated into the municipal conditional use permit via security protocols, tracking system, diversion protocols, camera and security features, odor control, other means.

m. Other criteria that surface through public comments or planning commission review

**1. Any impact or criteria that surfaces through public comment, planning staff review, or planning commission review.<sup>3</sup>**

**Safety:** Building Safety is being reviewed by the Building Department and shall be governed by Conditions of Approval:

1. All licensed facilities shall comply with all life and safety regulations as promulgated by the municipal Building Official.
2. All licensed manufacturing and cultivation uses shall provide a fire safety plan, material handling plan, and comply with all fire safety regulations that satisfies the Fire Marshal or their designee and the Building Official.

In addition, all public, health and safety has been adequately addressed with the operating plan and proposed conditions regarding parking compliance and odor control. Emergency access, security, and diversion programs have all addressed any other potential safety concerns.

**Parking:** Per section 22.20.100, the applicant shall provide parking in compliance with code. Staff has analyzed the use and parking studies done in Boulder, Colorado using industry standard traffic engineering calculations, observations, and models and concluded that peak parking demand would not exceed 6 spaces within an hour. Staff has applied Section 22.20.100(G)(13) for industrial and manufacturing uses, which staff believes is most similar to cultivation. This section has a formula and options. Due to the nature of the establishment, staff will apply the portion of subsection (G)(13) that requires one parking space per 3 employees. The applicant has provided a parking plan that shows a total of 6 spaces for two business (the cultivation use, and a prospective future retail use – staff will incorporate a holistic analysis). The cultivation

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<sup>3</sup> §22.24.026(D)(2)

would require up to 2 spaces for up to 6 employees, and 3 spaces for the retail<sup>4</sup>, plus one loading space. Therefore there is adequate parking for this, and the associated retail location.

Parking for the whole building, applying subsection 22.20.100(G)(13) to three units, (G)(15) to one unit, (G)(18) to one unit, and residential requirements to the apartment, the total required parking for the site is 17 spaces (this allots 984 gross square feet to each unit based on site plan). It is noted that the applicant has provided specific parking for his proposed use; however, parking is required per building and property and is analyzed holistically per planning industry standards.<sup>5</sup> Though applicant can meet parking requirements, a condition will require the applicant to provide a striped parking plan.

### **Marijuana 500 Foot Buffers**

The state requires a 500 foot buffer from sensitive uses that include educational facilities, recreational centers, youth centers, churches, or correctional facilities. This is measured in different ways. Educational, recreation center, and youth center type uses are measured from the public entrance of the marijuana establishment to the outer boundary of the sensitive use by the shortest pedestrian route (determined by State AMCO Board); or 2) from the public entrance of the marijuana establishment to the main public entrance of the religious or correctional facility measured by the shortest pedestrian route (determined by State AMCO Board). There are no state regulated sensitive uses that staff is aware of per site visit. However, this is conditioned to comply with state buffers and burden is upon applicant.

### **C. Required Findings for Conditional Use Permits. The planning commission shall not recommend approval of a proposed development unless it first makes the following findings and conclusions:<sup>6</sup>**

1. The city may use design standards and other elements in this code to modify the proposal. A conditional use permit may be approved only if all of the following findings can be made regarding the proposal and are supported by the record that the granting of the proposed conditional use permit will not:
  - a. Be detrimental to the public health, safety, and general welfare;
  - b. Adversely affect the established character of the surrounding vicinity; nor
  - c. Be injurious to the uses, property, or improvements adjacent to, and in the vicinity of, the site upon which the proposed use is to be located.
2. The granting of the proposed conditional use permit is consistent and compatible with the intent of the goals, objectives, and policies of the comprehensive plan and any implementing regulation.
3. All conditions necessary to lessen any impacts of the proposed use are conditions that can be monitored and enforced.
4. The proposed use will not introduce hazardous conditions at the site that cannot be mitigated to protect adjacent properties, the vicinity, and the public health, safety, and welfare of the community from such hazard.
5. The conditional use will be supported by, and not adversely affect, adequate public facilities and services; or that conditions can be imposed to lessen any adverse impacts on such facilities and services.
6. Burden of Proof. The applicant has the burden of proving that the proposed conditional use meets all of the criteria in subsection B of this section.

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<sup>4</sup> Note: Retail requires 1 space per 300 g.s.f. per code section 22.20.100(G)(15).

<sup>5</sup> Industrial/Mfg use is most similar to cultivation, retail to retail, residential to residential, and food establishment use for the vacant bay as a place holder since it is in the middle of potential requirements.

<sup>6</sup> § 22.30.160.C – Required Findings for Conditional Use Permits

The city may approve, approve with conditions, modify, modify with conditions, or deny the conditional use permit. The city may reduce or modify bulk requirements, off-street parking requirements, and use design standards to lessen impacts, as a condition of the granting of the conditional use permit. In considering the granting of a conditional use, the assembly and planning commission shall satisfy themselves that the general criteria set forth for uses specified in this chapter will be met. The city may consider any or all criteria listed and may base conditions or safeguards upon them. The assembly and planning commission may require the applicant to submit whatever reasonable evidence may be needed to protect the public interest. The general approval criteria are as follows:

1. Site topography, slope and soil stability, geophysical hazards such as flooding, surface and subsurface drainage and water quality, and the possible or probable effects of the proposed conditional use upon these factors;
2. Utilities and service requirements of the proposed use, including sewers, storm drainage, water, fire protection, access and electrical power; the assembly and planning commission may enlist the aid of the relevant public utility officials with specialized knowledge in evaluating the probable effects of the proposed use and may consider the costs of enlarging, upgrading or extending public utilities in establishing conditions under which the conditional use may be permitted;
3. Lot or tract characteristics, including lot size, yard requirements, lot coverage and height of structures;
4. Use characteristics of the proposed conditional use that affect adjacent uses and districts, including hours of operation, number of persons, traffic volumes, off-street parking and loading characteristics, trash and litter removal, exterior lighting, noise, vibration, dust, smoke, heat and humidity, recreation and open space requirements;
5. Community appearance such as landscaping, fencing and screening, dependent upon the specific use and its visual impacts.

### **Specific Guidance from 22.24 on Findings for Marijuana Uses<sup>7</sup>**

Findings of Fact: Upon review and considerations of the required criteria, the Planning Commission shall determine whether the proposed use(s) at the proposed project location are found to not present a negative impact to the public's health, safety, and welfare.

1. If such a finding can be made, then the proposed use shall be approved with standard regulations, dimensions, and setbacks.
2. In the alternative, where the Planning Commission finds negative impacts are present, the Planning Commission shall only approve conditional use permits where the negative impacts can be adequately mitigated by conditions of approval that preserve the public's health, safety, and welfare. ***These conditions of approval shall be case by case specific and in addition to the standard regulations.***
3. If negative impacts to the public's health, safety, and welfare cannot be mitigated through conditions of approval than the Planning Commission shall so find and deny the proposed conditional use permit.

### **RECOMMENDATION**

It is recommended that the Planning Commission adopt the Senior Planner's analysis and required findings as found in the staff report.

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<sup>7</sup> §22.24.026(E)

**Recommended Motions:** (two motions - read and voted upon separately)

1) I move to find (two options):

- a. That there are no negative impacts present that have not been adequately mitigated by the attached conditions of approval (supports approval)
- b. That there are negative impacts, such as \_\_\_\_\_, that cannot be adequately mitigated and therefore poses a substantial negative impacts to the public's health, safety, and welfare. (supports denial)

2) I move to approve the conditional use permit request filed by Aaron Bean for marijuana cultivation at 4614 Halibut Point Road, in the C-2 General Commercial and Mobile Home zone. The property is also known as Lot 3 of Carlson Resubdivision. The owners of record are Connor K. Nelson and Valorie L. Nelson.

**Required Standard Conditions of Approval:**<sup>8</sup>

1. Owners, operators, and staff of conditional uses shall comply with all state and municipal licensing regulations.
2. All licensed facilities shall comply with all life and safety regulations as promulgated by the municipal Building Official.
3. All licensed manufacturing and cultivation uses shall provide a fire safety plan, material handling plan, and comply with all fire safety regulations that satisfies the Fire Marshal or their designee and the Building Official.
4. All licensed facilities and/or uses shall provide screening from public view of any marijuana related commercial, retail, cultivation, or manufacturing use.
5. All licensed facilities and/or uses shall establish an active sales account and business registration with the Municipality and shall comply with all standard & required accounting practices.
6. It shall be a standard regulation that all conditional uses comply with all applicable state regulations and licensing laws or it shall be deemed to abandon and extinguish and associated municipal license or conditional use permit.
7. All approved Conditional use permits shall comply with all Sitka General Code or shall be deemed to abandon and extinguish any associated municipal license or conditional use permit

**Additional Recommended Conditions**

8. Applicant shall provide a Parking Plan that complies with Section 22.20.100 for all uses present and proposed at the current property including striped parking spaces where practical.
9. Odor Control shall include charcoal filters and other best means to limit and mitigate odor impacts to surrounding uses. Should a meritorious odor complaint be received the Planning Commission may require additional odor control measures to mitigate any actual negative impacts.
10. The proposed cultivation site shall not be located within 500 feet of any school grounds, recreation or youth center, religious service building, or correctional facility that was legally established prior to approval of this conditional use permit as intended by licensing restriction and regulations of the state in 3 AAC Chapter 306.

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<sup>8</sup> §22.24.026(C)