

Land Use from 1A

By assuming that marijuana is agriculture, it could fall under Dunes City Code 155.2.1.110(A)(5), which does define agriculture as the growing and raising of trees, vines, shrubs, berries, vegetables, nursery stock, hay, grains and similar food and fiber products.

LUBA did accept the presumption that marijuana was agriculture for the purpose of its opinion.

“For purposes of this opinion we also presume, without deciding, that that is the case (sic),” LUBA’s statement read.

The petition argued if that

was the case, 245 could act as a de facto amendment of Dunes City’s definition of agriculture, because it prohibits a particular plant, marijuana, from being grown in the R-1 zone. Therefore, it would fall under the jurisdiction of LUBA.

“A decision is a land use decision if it either applies, or should have applied, a land use regulation or a comprehensive plan provision,” LUBA wrote.

Even if 245 was not a land use decision, the petition argued, it would still have “significant impact” on present and future land uses — and therefore qualifies as a significant impact land use

decision, which would also fall under LUBA’s jurisdiction.

LUBA disagreed with a number of points the petition made.

First, the petition stated that 245 should have included consideration of criteria in the comprehensive plan, but the city is not beholden to that plan, LUBA argued. The city’s comprehensive plan does not establish standards for decision making.

“There is nothing in the broad grant of authority that suggests the (state) legislature meant to subject that grant of authority to compliance with local governments’ comprehensive plans,” LUBA wrote.

If the comprehensive plan specifically mentioned marijuana, it would still not be legally binding — comprehensive plans are recommendatory, not regulatory.

Even if 245 acted as a de facto amendment to Dunes City Code 155.2.1.110(a)(5) regarding agriculture, LUBA argued that 245 as a whole is not a land use issue.

“The only standards that apply to the city’s decision to adopt (245) are that standards set out in the [state marijuana statutes], which are not land use standards,” LUBA wrote. “Neither do we think that the exception in the ordinance for existing businesses is a de facto amendment of the city’s zoning code. ... The city’s prohibition on marijuana businesses operating anywhere in the city is not an exercise of the city’s planning and zoning responsibilities and is therefore not a de facto amendment [of the city’s code]. Rather, it is a valid exercise of the authority given the city by the legislature [to regulate marijuana].”

State law allows cities to regulate marijuana manufacturing and sales. This is the known as the “local option,” which gives governments the authority to adopt ordinances that “prohibit or allow the establishment of any one or more” marijuana businesses described in state law and refer those adopted ordinances to the electors of the city for

approval in a statewide general election.

Ordinance 245 did not ban agriculture, just marijuana businesses. Because of this, the argument that the ordinance is a de facto amendment to the city’s zoning code regarding agriculture is moot because “agriculture” remains a permitted use in the residential zoning district.

“We conclude that when a local government acts pursuant to the authority given it to prohibit some or all marijuana businesses within its jurisdictional boundaries, review of such a decision by a specialized land use decision review body like LUBA is not appropriate,” LUBA stated.

Currently, Caudle has 21 days to make a motion to appeal LUBA’s decision with the Oregon Court of Appeals. It is unclear if she will appeal, and all requests for comments from Caudle by the Siuslaw News have been referred to her attorney, Sean Malone, who has not responded to multiple requests for comment.

Even if the decision is

appealed and reversed, Dunes City has taken steps to regulate future marijuana businesses, should further entities be allowed to enter the city.

Throughout 2017 and 2018, the Dunes City Planning Commission and Citizen Advisory Commission has been drafting regulations regarding marijuana businesses, including how they should be regulated.

A final list of regulations was introduced to the city council on Feb. 14, 2018. Councilors voted to put the regulations through an approval process.

While the time frame for the process is unknown, Dunes City officials hope that the regulations will be approved soon.

If Caudle does not move to repeal LUBA’s decision, and no further legal action is taken against Ordinance 245, the issue will be decided in November by the Dunes City electorate, which is ultimately what city councilors hoped would occur.

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THIS WEEK ON THE COAST

A WEEKLY LISTING OF COMMUNITY EVENTS IN THE FLORENCE AREA

SUBMIT ALL EVENTS INFORMATION VIA EMAIL TO PRESSRELEASES@THESIUSLAWNEWS.COM

Now through March 15
Fundraiser for Senior Center
 Raffle for five-course prime rib dinner for 10
 Tickets \$10
 Drawing March 15 at noon
 541-997-8844

Tax Prep Assistance
 AARP Foundation Tax-Aide
 Mondays and Thursdays through April 14
 9 a.m. to 2 p.m.
 Siuslaw Public Library
 aarpfoundation.org/taxaide

March 10
2nd Saturday Gallery Tour
 3 to 5 p.m.
 Various locations around Florence
 2ndSaturdayGalleryTour.com

“Let the Games Begin!” Rotary Auction 2018
 5 p.m.
 Tickets required
 Florence Events Center

Audition for “A Nice Family

“Gathering”
 By Last Resort Players
 2 to 4 p.m.
 Open to public
 Florence Events Center
 Contact lastresortplayers2@gmail.com or 541-999-9392

March 11
Mapleton Lions Pancake Breakfast
 Pancakes, sausage, ham and eggs
 7:30 to 10:30 a.m.
 \$7 for adults; \$3 for age 12 and under
 Mapleton Lions Club
 88148 Riverview Dr.

Audition for “A Nice Family Gathering”
 By Last Resort Players
 2 to 4 p.m.
 Open to public
 Florence Events Center
 Contact Judy Kaplan at 541-999-9392, lastresortplayers2@gmail.com

March 12
SAPPSA Meeting to Plan Community Events
 3:30 p.m.
 Open to public

Siuslaw Public Library.
 Contact sapsa@oregonfast.net

March 13
Us TOO Florence Prostate Cancer Support Group
 With Dr. Bryan Mehlhaff
 5 to 7 p.m.
 Open to public
 Presbyterian Church of the Siuslaw
 541-999-4239

March 14
Deluxe Small Business Seminar
 8:30 a.m. to 3:30 p.m.
 Open to public — RSVP required
 Florence Events Center
 www.deluxe.com/myflorence

Alzheimer’s Association Programs
 11 a.m. to 12:30 p.m. — “The Basics: Memory Loss, Dementia, and Alzheimer’s Disease”
 1 to 2:30 p.m. — “Dementia Conversations”
 Open to public
 Siuslaw Public Library

March 15
Wine, Chowder & Dancing at

Shorewood
 Florence Area Chamber of Commerce
 Business After Hours
 5 to 7 p.m.
 Shorewood Senior Living

March 16
Leprechaun Bingo and Pie Auction
 6:30 p.m. — doors open
 7 p.m. — games begin
 Open to public
 Mapleton Lions Club

Last Resort Players present “Funny Money” — The Improvised Game Show
 7 p.m.
 Tickets required
 Florence Events Center

March 17
Fun with Yoga for Vitality
 10:30 a.m. to 3:15 p.m.
 A fundraiser for candidate Nora Kent
 Florence Unitarian Universalist Fellowship
 www.norakent.org

Gray Whales of Oregon
 Presentation by Marine Biologist

Carrie Newell
 3 to 4 p.m.
 Open to public
 City Lights Cinemas

March 19
The Commanders — Jazz Ensemble
 7 to 9 p.m.
 Free admission — tickets required
 Florence Events Center

Siuslaw Public Library Board Meeting
 1:30 to 3:30 p.m.
 Open to public
 Siuslaw Public Library

March 20
Us TOO Florence Prostate Cancer Support Group
 With Dr. Roger McKimmy
 Noon to 1 p.m.
 Open to public
 Ichiban Restaurant
 541-999-4239

Visit rivercal.org for more calendar events.

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