

OREGON GOVERNMENT ETHICS COMMISSION

INVESTIGATION

CASE NO: 18-155EHW

DATE: 1/16/2019

RESPONDENT: LINDSEY, John, County Commissioner, Linn County

COMPLAINANT: TEMPLETON, William

RECOMMENDED ACTION: Make a Preliminary Finding of one (1) Violation of ORS 244.040(1) & three (3) Violations of ORS 244.120(2)

1 **SYNOPSIS:** John Lindsey was a County Commissioner for Linn County when the events
2 relevant to this investigation occurred. The focus of this investigation was to determine if
3 there is a preponderance of evidence to indicate that John Lindsey committed violations
4 of the conflict of interest and use of office provisions of ORS Chapter 244.

5
6 John Lindsey, while acting in his capacity as Linn County Commissioner, became actively
7 involved in a complaint that was made to the County regarding a possible, illegal
8 marijuana grow operation in his neighborhood. These individuals were building a
9 greenhouse in which to grow what they claim to be medical marijuana. The neighbor who
10 filed the complaint with the County initially made a call to Mr. Lindsey's home, on which
11 basis he immediately went to the property to investigate. Then, via his County email
12 account, he reported his findings and concerns to County staff requesting they follow up,
13 and he continued to remain directly involved in County staff's email correspondence from
14 that point on. Mr. Lindsey also met with the property owner and his son-in-law (the
15 complainant) at the County office building at some point during the period relevant to this
16 investigation. After the County's complaint was closed, and the property owners received

1 the permits needed to build the greenhouse, Mr. Lindsey and nine (9) other individuals
2 who are also neighbors subsequently filed for civil damages in a federal lawsuit alleging
3 RICO and nuisance claims. Note that a number of conflicting statements and other
4 discrepancies are present in this report.

5
6 There appears to be a preponderance of evidence to indicate that Mr. Lindsey attempted
7 to use his position as County commissioner to avoid financial detriment related to his
8 property and the neighboring marijuana grow, and that Mr. Lindsey failed to publicly
9 announce three (3) conflicts of interest prior to taking official action.

10
11 **RELEVANT STATUTES:** The following Oregon Revised Statutes are applicable to the
12 issues addressed herein:

13
14 **244.020 Definitions.** As used in this chapter, unless the context requires
15 otherwise:

16
17 (1) "Actual conflict of interest" means any action or any decision or
18 recommendation by a person acting in a capacity as a public official, the effect of
19 which would be to the private pecuniary benefit or detriment of the person or the
20 person's relative or any business with which the person or a relative of the person
21 is associated unless the pecuniary benefit or detriment arises out of circumstances
22 described in subsection (13) of this section.

23
24 (13) "Potential conflict of interest" means any action or any decision or
25 recommendation by a person acting in a capacity as a public official, the effect of
26 which could be to the private pecuniary benefit or detriment of the person or the
27 person's relative, or a business with which the person or the person's relative is
28 associated * * *.

29
30 (15) "Public official" means the First Partner and any person who, when an alleged
31 violation of this chapter occurs, is serving the State of Oregon or any of its political

1 subdivisions or any other public body as defined in ORS 174.109 as an elected
2 official, appointed official, employee or agent, irrespective of whether the person is
3 compensated for the services.
4

5 **244.040 Prohibited use of official position or office; exceptions; other**
6 **prohibited actions.** (1) Except as provided in subsection (2) of this section, a
7 public official may not use or attempt to use official position or office to obtain
8 financial gain or avoidance of financial detriment for the public official, a relative or
9 member of the household of the public official, or any business with which the
10 public official or a relative or member of the household of the public official is
11 associated, if the financial gain or avoidance of financial detriment would not
12 otherwise be available but for the public official's holding of the official position or
13 office.
14

15 (4) A public official may not attempt to further or further the personal gain of the
16 public official through the use of confidential information gained in the course of or
17 by reason of holding position as a public official or activities of the public official.
18

19 (7) The provisions of this section apply regardless of whether actual conflicts of
20 interest or potential conflicts of interest are announced or disclosed under ORS
21 244.120.
22

23 **244.120 Methods of handling conflicts; Legislative Assembly; judges;**
24 **appointed officials; other elected officials or members of boards.** (2) An
25 elected public official, other than a member of the Legislative Assembly, or an
26 appointed public official serving on a board or commission, shall: (a) When met
27 with a potential conflict of interest, announce publicly the nature of the potential
28 conflict prior to taking any action thereon in the capacity of a public official; or (b)
29 When met with an actual conflict of interest, announce publicly the nature of the
30 actual conflict and:
31

//

1 (A) Except as provided in subparagraph (B) of this paragraph, refrain from
2 participating as a public official in any discussion or debate on the issue out
3 of which the actual conflict arises or from voting on the issue.

4 (B) If any public official's vote is necessary to meet a requirement of a
5 minimum number of votes to take official action, be eligible to vote, but not
6 to participate as a public official in any discussion or debate on the issue
7 out of which the actual conflict arises.

8
9 **INVESTIGATION:** The Oregon Government Ethics Commission (Commission) initiated
10 a preliminary review based on information in a signed complaint from William Templeton
11 on June 19, 2018 (#PR1). A copy of the complaint was provided to the respondent. In the
12 complaint, Mr. Templeton alleged that John Lindsey, a Linn County Commissioner, may
13 have violated Oregon Government Ethics law. The Commission found cause to
14 investigate on August 10, 2018, after considering the information developed in preliminary
15 review. The focus of the investigation was to determine if there is sufficient evidence to
16 indicate that John Lindsey failed to comply with Oregon Government Ethics law by: (1)
17 using or attempting to use his official position to obtain a prohibited financial benefit, (2)
18 using confidential information obtained in connection with his official position to obtain a
19 personal gain, and (3) failing to comply with the conflict of interest provisions. John
20 Lindsey and William Templeton have been notified of the Commission action in this
21 matter. Both have been invited to provide any information that would assist the
22 Commission in conducting this investigation.

23 24 BACKGROUND

25 Based on the information provided, it appears that the circumstances surrounding this
26 complaint stem from plans to build a greenhouse to grow marijuana at 36340 Hillside Ln,
27 Lebanon, Oregon ("Hillside property"). The Hillside property is a residence located in a
28 neighborhood zoned for residential rural use in Linn County. According to information
29 submitted, Mark Owenby (the complainant's father-in-law) and Michelle Page purchased

1 the property on December 1, 2016, and began making plans and taking actions to grow
2 marijuana and build the greenhouse shortly thereafter. (#PR1; #INV5)

3
4 Linn County Commissioner, John Lindsey, resides in the same neighborhood. Mr.
5 Lindsey and several other neighbors believe that the marijuana grow operation is illegal.
6 Mr. Lindsey sent an email to fellow County commissioners and County staff on August
7 28, 2017, indicating that he and other neighbors might become personally involved in
8 litigation on the matter. Mr. Lindsey submitted a "Notice of Intent to Sue" letter (which is
9 undated, but requests reply by September 11, 2017). Mr. Lindsey, his wife and eight (8)
10 other neighbors then filed a federal RICO and nuisance lawsuit naming the complainant
11 (William Templeton), the property owners (Mr. Owenby and Ms. Page) and several others
12 as defendants. (#PR1; #INV1)

13 14 COMPLAINT

15 William Templeton filed the complaint with the assistance of his attorney, Jay Flint. The
16 complaint is excerpted below:

17
18 "One day in the spring of 2017, Lindsey came up to the property with a hostile tone
19 and began the conversation by presenting his County Commissioner business
20 card * * * and began grilling them about the nature of the operations. He said things
21 to Mr. Templeton like 'what you're doing is illegal' and that 'you picked the wrong
22 neighborhood.' Mr. Templeton didn't take kindly to those accusations... and asked
23 the Commissioner to leave * * *.

24
25 After that * * * [h]e began to harass the Hillside property owners in a variety of ways
26 * * *. We believe in doing so, Lindsey violated the Oregon Ethics laws * * *.

27
28 [H]e used his power as a county commissioner to inquire with every department
29 within the county to see if he could find anything at fault with their operations at the
30 Hillside property in an effort to find any reason to get the medical grow shut down.
31 He falsely reported to the Sheriff's [Office] that there were illegal activities going
32 on at the Property. The [S]heriff's [Office] followed up and found no violations* * *.

1 Mr. Templeton and Mr. Owenby attempted to reconcile this matter by meeting with
2 Commissioner Lindsey in his office* * *. Lindsey stated that the greenhouse was
3 'illegal' and that Mr. Templeton and Mr. Owenby were 'pieces of sh*t' and accusing
4 them of being 'liars' and 'tax evaders' * * *.

5
6 Lindsey then approached Robert Wheeldon, Director of the Linn County [Planning
7 and Building] Department ("Department") and demanded copies of everything
8 regarding the building of the greenhouse on the Property. Wheeldon and staff
9 provided all of the public record building permits... and more [(ellipses original)].
10 During the permitting process * * * Mr. Templeton * * * brought in to the Department
11 the medical marijuana OMMP cards for four cardholders * * *. Those four cards got
12 copied into the Department records along with the building permits for the
13 greenhouse.

14
15 * * * Lindsey went to the Department and demanded all the records * * * on
16 Owenby/Page and the greenhouse. * * * In doing so, Lindsey found out that
17 Templeton had submitted the OMMP cards to the Department. Lindsey asked for
18 copies of those cards, too, even though they are non-public records * * *. He saw
19 the medical OMMP cards, which are not available to the general public, and made
20 copies of them, along with the permits * * *. Mr. Templeton asked Director
21 Wheeldon why he gave Lindsey copies of those OMMP cards and Wheeldon
22 replied that he's my boss and he couldn't refuse * * *.

23
24 Commissioner Lindsey is not in charge of the [Planning and Building] Department,
25 that * * * falls under Commission Will Tucker's oversight authority, so Lindsey had
26 no greater privilege to the greenhouse's permit file than any ordinary citizen.

27
28 * * * Via the OMMP cards, he gained access to the four individuals who were listed
29 on them and used that information against them by harassing them * * * to force
30 them to shut down * * *.

31
32 On March 30th, 2018, [Mr. Templeton's attorney] Mr. Flint went to the * * *
33 Department and requested all of the documents associated with the greenhouse.
34 The staff person then gave Mr. Flint * * * copies of * * * the building permits, the
35 engineering designs and the final approvals of the project. Mr. Flint then asked the
36 staff person if there were any more documents in the file. She said "no" and then
37 showed him her computer screen * * *. Mr. Flint did not see any OMMP cards on
38 file for the greenhouse, nor did the staff person mention them * * *. Therefore,
39 Lindsey used his power to gain access to sensitive, non-public, [HIPAA] medical

1 information which he wouldn't have had access to, but for * * * his official position
2 * * *
3

4 (Mr. Templeton's attorney, Jay Flint, corroborated this information in a telephone
5 conversation with the Commission investigator. (#INV10))
6

7 The motivation behind Commissioner Lindsey's fervent pursuit to shut down this
8 medical grow is the reason why his abuse of power actions fall within Oregon
9 Ethics Commission's scope * * *. He wants it shut down because he fears that the
10 grow is causing house prices in the neighborhood to drop, including his own. This
11 is not a hidden motive, as Lindsey even says as much in both his 'Notice of [Intent]
12 to Sue' * * * as well as the RICO lawsuit he filed * * *." (#PR1)
13

14 LINDSEY'S NOTICE OF INTENT TO SUE & FEDERAL RICO/NUISANCE COMPLAINT

15 A copy of John Lindsey's "Notice of Intent to Sue" Mr. Owenby, Ms. Page, Mr. Templeton
16 and their associates was submitted as an attachment to the complaint. Portions of Mr.
17 Lindsey's "Notice of Intent to Sue" are excerpted below:
18

19 *"Note: John Lindsey a neighborhood resident to the subject property also serves
20 the citizens of Linn County Oregon as an elected County Commissioner. It is
21 typical for commissioners to intervene on behalf of citizens in issues of code and
22 land use violations. [(emphasis original)]*
23

24 In early June 2017, a construction site was begun on the property without any
25 apparent permits or land use. John Lindsey in his capacity as a county
26 commissioner visited the property * * * walked around the house with permission
27 and noted the smell emanating from the shop building and the ventilation system
28 that was cut into the building. Mr. Lindsey then informed county staff about the
29 issue. This is a typical process for county officials regarding land use violations * *
30 *.
31

32 Mr. Owenby and Mr. Templeton were informed that a private greenhouse is
33 allowed * * * only if it met county * * * regulation * * * but marijuana is not. Mr.
34 Owenby was then handed a copy of [relevant] Linn County Code * * *, * * *
35

36 The Oregon Department of Forestry fire defense reported to the property to
37 extinguish [a 'marijuana burn pile'] fire. The property is located within a forest

1 defense zone * * *. When illegal fires are responded to in this area it can affect the
2 homeowner insurance policies of the whole area * * *.

3 The continuation of the criminal enterprise and the odor it produces has greatly
4 reduced the ability of homeowners to enjoy the use of their property.
5 Neighborhoods that have increased long term drug use and criminal activity also
6 see diminished values through the loss of desirability for families to live there.
7 Residents have had to install security equipment and form ad hoc neighborhood
8 watches.” (#PR1)
9

10 The “Introduction” of Mr. Lindsey’s federal court filing, a copy of which was included with
11 the complaint, alleges that “the plaintiffs have been damaged by a criminal enterprise”
12 and also “seek[s] damages for private nuisance.” Page 16 of the legal filing states that
13 Mr. Owenby’s marijuana greenhouse “has a material adverse impact on the market value
14 of [neighbors’] properties....” Page 29 asserts injury to Mr. Lindsey’s property as a result
15 of “diminishing its market value and making it more difficult to sell.” (#PR1)
16

17 LINDSEY’S TESTIMONY & DOCUMENTATION PROVIDED IN EXECUTIVE SESSION

18 When this Commission met in executive session on August 10, 2018, to consider the
19 preliminary review report and vote to move this complaint to investigation, Commissioner
20 Lindsey attended in-person to provide documents relevant to the complaint and oral
21 testimony to the Commission. Copies of the documents Mr. Lindsey brought with him are
22 provided to the Commission in full along with this investigative report. The August 10,
23 2018, meeting record was reviewed by Commission staff and is excerpted in part below:
24

25 **John Lindsey:** *[W]hen I act in the capacity as a public official with the County,*
26 *generally what I do is I generate a piece of paper to describe what took place and*
27 *what I did at that time * * *.*
28

29 [Mr. Lindsey then points to the email document he brought with him, which he labeled
30 item “#1”. It was sent from John Lindsey to fellow County Commissioners, County
31 Counsel, the County CAO and County Planning and Building Department Director, Robert
32 Wheeldon on June 5, 2017. It provides a detailed account of Mr. Lindsey’s recollection of
33 what transpired when he visited the Hillside property on June 4, 2017. The email is
34 excerpted in part below and is provided to the Commission in full with this report:

1 "I got a complaint (my wife did) about the issue of a pot grow [at the Hillside
2 property] yesterday. To get the straight scoop I drove to the residence. * * *

3
4 I met a guy in the driveway who told me he worked for the owner. * * * I told him
5 who I was and that there were rumors * * * that someone was building a marijuana
6 grow facility * * *. I told him that I hoped that wasn't true and that zoning for the
7 area does not allow that. * * * * *

8
9 We walked back around to the front and I gave him my card * * *. * * *

10
11 I * * * checked with you[r] staff today and no permits had been taken out for a
12 construction project at that location. Here are my concerns[:]

13 (1) There appears to be no cut and fill permit * * *.

14 (2) The gentleman told me this was a large green house * * * being constructed.
15 * * * The state water master has no record of a water right application.

16 (3) There are no permits applied for on record with Linn County.

17 (4) There is no land use application on file for a commercial greenhouse * * *.

18
19 Robert, our enforcement system is complaint driven. Please consider this letter a
20 complaint. * * *

21
22 (#INV1; #INV5)

23
24 **Lindsey:** *Note, this is June 5 [2017]. I didn't know anybody at that time.*

25
26 [Mr. Lindsey then refers to the email chain document he brought and labeled item "#2". A
27 copy is provided to the Commission along with this report (#INV1).]

28
29 **Lindsey:** *[T]here's an email correspondence between myself and the Linn County*
30 *Building Director [Mr. Wheeldon] in regard to what the issue is all about. The issue*
31 *is about a zoning ordinance, on whether or not you can conduct the type of*
32 *business that Mr. Templeton and Mr. Owenby were engaged in. That email [chain]*
33 *ends June 27 [2017].* * **

34
35 [This email chain originated from Cindy Frink, the resident who had filed a complaint with
36 the County Planning and Building Department about possible illegal marijuana growing
37 at the Hillside property. The emails described above in which Mr. Lindsey directly
38 participated are excerpted here below. Again, a full copy of the email chain is provided to

1 the Commission with this report.

2

3 June 26, 2017, email from Ms. Frink to Mr. Wheeldon (Mr. Lindsey's County email and
4 several members of County staff are CCed):

5

6 "[C]an you direct me to the Building Code chapter that states that commercial
7 greenhouses are not allowed in rural residential, regardless of what is being grown
8 due to the water rights issue?"

9

10 Same day, Mr. Wheeldon emails Ms. Frink a response (Mr. Lindsey's County email and
11 several members of County staff are CCed):

12

13 "I am not aware of any provision that would prohibit a commercial greenhouse that
14 is in building code or that is related to water rights. * * *"

15

16 June 27, 2017, email from Mr. Lindsey's County email address to Mr. Wheeldon (no
17 others were included in the email):

18

19 "* * * I think this lady is referring to zoning ? in a rural residential area.
20 ??????"

21

22 Same day response from Mr. Wheeldon to Mr. Lindsey's County email (County staff and
23 County Commissioner, Will Tucker, were included):

24

25 "* * * We are trying to establish what exactly Ms. Frink's neighbors are doing * * * .
26 This is the first step in enforcing * * * . As for building codes, I'm not aware of any
27 that would prohibit any of it. There are as you know water rights requirements * * *
28 that are in state law. * * *"

29

30 Same day, Mr. Lindsey sends a final email response to Mr. Wheeldon, also from his
31 County email (no others were included in the email):

32

33 "* * * * * In the [State] medical MJ growers license/registration it requires a water
34 statement. This is OLCC's requirement, not ours. They limit sqft of grow operation
35 by # of registered cards. I tried telling her that our issue is with zoning."

36

37 (#INV1; #INV5)]

1 **Lindsey:** *Mr. Templeton has never been in my office. * * * [V]ery few people are*
2 *even allowed into my office. It's just something I do. * * * Generally what happens*
3 *if an individual comes in to our office and complains, there is a counter space.*
4 *Everything is done publicly and in full view * * *. * * **

5
6 *I had never met Mr. Templeton in my life. I had never met Mr. Owenby * * *. They*
7 *came in to my office and yelled at my staff and were very rude * * *. I told them this*
8 *is still under review by Planning and Building or something to that effect, and he*
9 *was very agitated and left. * * **

10
11 *As shown in the emails, Mr. Owenby and Ms. Page were never authorized to grow*
12 *marijuana on this property. It's against zoning ordinance. * * **

13
14 [Next, Mr. Lindsey refers to the document that he labeled item #3 and brought with him
15 to the meeting. The document appears to be a spreadsheet logging violations or
16 complaints against residents in the County. One entry (VF17-0057) names Mr. Owenby
17 and Ms. Page and lists the "Summary of Complaint" as "unauthorized marijuana grow."
18 The document also highlights the next entry, (VF17-0058) which names the same kind of
19 complaint ("unauthorized marijuana grow") against other property owners. A copy of this
20 document is provided to the Commission with this investigative report.]

21
22 **Lindsey:** *[T]his is a page taken out of the County code violations, and as you can*
23 *see, Mr. Owenby and Ms. Page have been cited by Linn County for unauthorized*
24 *growth of marijuana on this particular property. We never singled anybody out * **
25 ** another unauthorized marijuana grow is listed there * * *. * * **

26
27 [In response to the complaint regarding his access to medical marijuana patient cards,
28 Mr. Lindsey refers to the copy of ORS 475B.810 he brought and labeled as item "#4".]

29
30 **Lindsey:** *As you can see right here, if you are running a medical marijuana*
31 *operation * * * the grower has to post his license in conspicuous view on the area*
32 ** * *. There is no expectation that those are not public, but that is besides the point,*
33 *because on Mr. Owenby's first visit to my office, he handed me copies of the*
34 *medical cards, so I don't know what this is all about. * * **

35
36 [This part of the dialogue refers to the copy of the August 29, 2017, email that Mr. Lindsey
37 brought labeled as item "#5". A copy is provided to the Commission in full with this report.]

1 **Lindsey:** *It was later on * * * because of an incident that had taken place at my*
2 *residence, I had realized that this case was going to escalate. * * * On August 29,*
3 *2017, this is the email that was generated by myself to my fellow County*
4 *Commissioners, County Administrator * * * County Counsel and Robert Wheeldon.*
5 *What I note in here is that I'd had a conversation a couple days prior with County*
6 *Counsel about the direction I think I was going in this because of my personal*
7 *safety and that this would probably result in some sort of legal action in the future.*
8 *This very strictly outlines what will happen * * *. [N]obody in Linn County—staff or*
9 *anybody—is to talk to me about this building permit or any of this stuff, because*
10 *this will become a conflict of interest at some point. This was dated on August 29,*
11 *2017. The [RICO] case was filed on December 1 [2017], a little over 3 months later.*
12 *As far as I'm concerned, you can't have much more than that. That was discussed*
13 *with the lawyer to make sure. * * **

14
15 *[F]rom what [the preliminary review report is] * * * saying * * * I never made a*
16 *declaration of a potential conflict of interest. Now I've provided you with the actual*
17 *documents that went to the attorney and other fellow elected officials and*
18 *department heads that they were never to speak to me again about this issue, at*
19 *the end of August of last year, because I was likely going to be involved in a*
20 *litigation suit against them as a person. * * * * **

21
22 [The August 29, 2017, email was sent from Mr. Lindsey to fellow County commissioners,
23 County counsel and Mr. Wheeldon from his County email address. Again a full copy is
24 provided to the Commission with this report, but the email reads in part as follows:

25
26 ** * * At various times this year I have had a problem with a neighbor violating land*
27 *use, Oregon marijuana laws and county ordinance. * * * * **

28
29 *At the end of last week, myself and several neighbors have initiated a federal legal*
30 *action against those individuals who are at the heart of the matter[.]*

31
32 ** * * These actions are being taken by me and my neighbors and not Linn County.*
33 ** * * I am in no way representing Linn County * * *. This action does not involve*
34 *any Linn County staff.*

35
36 *At no time shall Linn County legal staff advise or discuss this case with me. * * **
37 *(#INV1)].*

38
39 **Comm. Shugar:** *Is your property * * * adjacent to or in the neighborhood of any of*
40 *the property at issue * * *?*

1 **Lindsey:** Yes. * * * * Not immediately adjacent.

2
3 **Comm. Kean:** But it's in the neighborhood.

4
5 **Lindsey:** Right.

6
7 **Shugar:** Is the allegation made that you have concern of the diminishment of the
8 value of your property a fair allegation?

9
10 **Lindsey:** I think when you look at the federal complaint. I think mine is less about
11 diminished value. Mine is more about intimidation and racketeering.

12
13 **Shugar:** * * * Do you believe—it's a question about timing * * *. At the time that the
14 confrontation occurred at the counter at the County building * * * did that occur
15 before or after you were aware that the property at issue was next to yours?

16
17 **Lindsey:** Oh, I've always known all along that the property was there, because I
18 got sent the address, and I go 'I know where that address is at.'

19
20 **Shugar:** Okay, so you were already aware of who these people were.

21
22 **Lindsey:** I didn't know what they were doing.

23
24 **Shugar:** But you were aware they had a connection to that property and that there
25 was some effort to manufacture marijuana at that property.

26
27 **Lindsey:** Those were the allegations. I don't know this stuff. Generally what we do
28 is if someone has a complaint, generally it's easier for a Commissioner from that
29 part of the County to be the liaison to the problem. That's not abnormal at all. But
30 when I realized this was going way beyond just the little zoning issue and this was
31 becoming a little bit different, I started realizing that this was gonna go beyond
32 what the County issue is, and that's when I discussed it with County Counsel. * * *
33 * *

34
35 **Comm. Sosa:** I just have two (2) questions. There is an allegation here that * * *
36 "[o]ne day in the spring of 2017 Lindsey came to property with a hostile tone and
37 began a conversation by presenting his county commissioner business card * * *."
38 Did that actually occur?

39
40 **Lindsey:** Dust and fairies. I've never been there before, no. I need to correct

1 myself though. That particular property—I'm a long-time resident of these areas—
2 my best friend grew up actually on that property when I was a child. So yeah, I've
3 been to that property before, so, but I've never visited that property in years.
4

5 **Sosa:** So this wasn't you walking up there with your card saying I'm a county
6 commissioner...
7

8 **Lindsey:** No, no, no.
9

10 **Sosa:** Secondly * * * there is an allegation in here that you used your position to
11 review the O MMP cards * * * and that you obtained them but those are not available
12 to the general public and that you made copies of them. You testified earlier that
13 they actually presented the cards to you.
14

15 **Lindsey:** Yes. What I typically do is if someone comes in and is complaining about
16 a staff member, which this was, and they were complaining about Mr. Wheeldon.
17 I generally take their notes * * *. I copy everything that comes in front of me so I'm
18 always on the same page as anybody else. He handed me the medical marijuana
19 cards and said that no one is paying attention to these. That's just generally what
20 I do. * * * * *
21

22 **Shugar:** If we proceed with an investigation, I would encourage you to provide any
23 additional documents or records that you think that Ms. Weedn or the Commission
24 should consider. I appreciate that you brought these five (5) documents in, but if
25 there are additional documents, email or records, I think it's really important that
26 we have the full picture.
27

28 **Lindsey:** Okay, I had a discussion with the attorney. What I've provided for you,
29 and what will be part of the operations of the County will be available for you. The
30 other parts that I cannot discuss that took place during August [are] part of that
31 suit, and I don't have permission from the other nine parties to disclose. * * * * *
32

33 **Kean:** Please provide Ms. Weedn with anything you are able to * * * anything in
34 addition." (#INV1).
35

36 LINDSEY'S RESPONSE TO COMMISSION INVESTIGATOR INQUIRY

37 During the Commission investigation, Mr. Lindsey retained Kenneth Montoya, an attorney
38 with Gerald L. Warren and Assoc., as counsel in this matter. Together, Mr. Lindsey and

1 Mr. Montoya sent a letter in response to the Commission investigator's questions that
2 was received on January 15, 2019. A full copy is also provided with this report (#INV12)
3 In the letter, Mr. Lindsey upheld his prior statements regarding how he obtained copies
4 of the OMMP cards, adding that he never contacted any of the patients. (#INV12)

5
6 As for how many times he had engaged in the matter of possible illegal marijuana growing
7 at the Hillside property while acting in an official capacity, Mr. Lindsey responded that he
8 had done so "approximately 18" times prior to the August 29, 2017, email he sent to fellow
9 commissioners, County counsel and two (2) members of staff indicating his contemplation
10 of private legal action. He added that "while I visited the property many times growing up
11 * * * the June [4], 2017, visit is the only time I have gone * * * regarding the marijuana
12 grow." His attorney added that "this is not the only complaint of illegal marijuana grows
13 that [he] has personally received and investigated. His constituents bring these
14 complaints to him * * * with the expectation that he will respond * * *." (#INV12)

15
16 In response to questioning about conflicts of interest, Mr. Lindsey stated that he "did not
17 become aware that [he] may have a potential conflict of interest until [he] met with legal
18 counsel," and that he sent the August 29, 2017 email to fellow commissioners, Mr.
19 Wheeldon, the County CAO and legal staff shortly thereafter.

20
21 With regard to conflicts of interest, his attorney, Mr. Montoya, added reference to *Caragol*
22 *v. OGE*, 98 Or App 593, 598 (1989). Mr. Caragol was a Woodburn city councilor, as well
23 as 50% owner of a company called Estates Realty. Woodburn Construction Company
24 owned the other 50% stake in Estates Realty. Apart from its ownership interest in Estates
25 Realty, Woodburn Construction Company contracted with a developer to build a
26 retirement care facility in Woodburn. The financial institution backing the project withdrew,
27 and Woodburn Construction Company sued the developer for materials and labor. The
28 developers tried to persuade the City to establish a Hospital Bond Authority (HBA) to pay
29 for the project, and Mr. Caragol stated creating the HBA as one of his reasons for running
30 for city council. After he was elected, Mr. Caragol voted to expedite the city's creation of
31 the HBA without disclosing a potential conflict of interest. The Commission made a

1 preliminary finding that Mr. Caragol violated ORS 244.120 (conflicts of interest),
2 reasoning that Mr. Cargol “hoped and expected that, if [the project] was built, he would
3 earn commissions on sales * * * of homes [nearby and] there was the possibility that he
4 might earn commission from the sale of [adjacent property].”

5
6 The Oregon Court of Appeals reversed the Commission’s finding, stating:

7
8 “there may be situations where a connection can be said to exist, to a substantial
9 probability, between an action taken by an official and a financial benefit to the
10 official, [but to allow such a finding based on these facts] would require an official
11 to declare a potential conflict of interest any time that the official makes a choice
12 to support any project that conceivably could bring personal financial gain, no
13 matter how remote * * *.” (#INV12; #INV13)

14
15 Mr. Lindsey’s attorney, Mr. Montoya, also pointed out the opinion’s finding that to
16 determine whether a conflict of interest exists:

17
18 “requires an evaluation of the closeness or the remoteness of the potential benefit
19 to the action taken. There has to be a point at which, irrespective of an official’s
20 hopes, an action cannot, as a matter of law, be said to have resulted in a benefit
21 or even a reasonable expectation of one. * * *” (#INV12; #INV13)

22
23 On Mr. Lindsey’s behalf, his attorney contends that:

24
25 “[E]ven a “potential” pecuniary benefit or detriment to [Mr.] Lindsey * * * is far more
26 remote than the Court of Appeals found insufficient to create a potential conflict of
27 interest in *Caragol*. [Mr.] Lindsey did not vote or deliberate on any matter involving
28 the complainants but, went to the property after receiving a complaint * * *. There
29 simply isn’t any connection, to a substantial probability or otherwise, between any
30 action he has taken and a financial benefit/detriment to him or his family. * * *
31 [W]hile he received and acted on the initial complaint of an illegal grow site, there
32 is nothing in the record to establish that he did anything that affected the
33 complainant’s ability to get the building permit they sought. * * * [A]s in *Caragol*,
34 additional actions by others needed to occur in order for Commissioner Lindsey to
35 avoid financial detriment. Linn County Building and Planning officials would need
36 to weigh complainant’s application and, any appeal of a permit denial would need
37 to be considered.” (#INV12)

38 //

1 INFORMATION FROM LINN COUNTY COMMISSIONERS TUCKER & NYQUIST

2 Linn County Commissioner Will Tucker answered several questions posed by the
3 Commission investigator in a telephone conversation on January 1, 2019 (#INV2).
4 County Commission Chair, Roger Nyquist responded to questions separately via email
5 (#INV11).

6
7 As to the question of whether this matter has been raised at any Linn County Commission
8 meetings, Mr. Tucker responded "no" and that the Linn County Commission, as a board
9 has not heard a case or deliberated on any complaints regarding this matter or the
10 property, because no one has requested official action. (#INV2) Mr. Nyquist after
11 checking the County's meeting minutes, responded that based on both his "memory and
12 a check of the meeting minutes, it has not been discussed* * *." (#INV11).

13
14 When asked whether Linn County had initiated investigation into, or found the Hillside
15 property or its residents or its owners, in violation of any County codes, regulations, or
16 policies, in relation to this matter, Mr. Tucker initially responded that he did not know for
17 sure. When the Commission investigator described the entry labeled VF17-0057 in the
18 County log that Mr. Lindsey provided (This spreadsheet is part of #INV1; a copy is
19 provided to the Commission along with this report.), Mr. Tucker identified the document
20 as what the County Planning and Building Department uses to track formal complaints
21 and said it means a formal complaint was filed on the property. He also stated that
22 complaints are confidential until closed. (#INV2)

23
24 Based on Mr. Templeton's allegation that Will Tucker is the County Commissioner
25 responsible for the County Planning and Building Department (as opposed to Mr.
26 Lindsey), the Commission investigator asked whether that was true. Mr. Tucker confirmed
27 that he is the Commissioner whose responsibility it is to serve as a liaison to Planning
28 and Building, but that occasionally Commissioner Lindsey will "stick his nose into my
29 responsibilities." When asked to expound, Mr. Tucker was unable to identify a particular
30 reason why Mr. Lindsey does this, or whether it is limited to any specific types of
31 circumstances, but that about once a year someone comes in and makes a complaint of

1 violation and Commissioner Lindsey inserts himself. Mr. Tucker gave an example of a
2 resident who threatened to sue the County because Mr. Lindsey intervened in a property
3 line issue by personally drawing the resident's property line by eye and insisting that it
4 was correct despite protest. (#INV2)

5
6 In response to the Commission investigator's inquiry into the County's complaints
7 process, Mr. Tucker explained that complaints to the Planning and Building Department
8 are supposed to be independently led and resolved by staff—that staff receives the
9 complaint and investigates it. Mr. Tucker stated that staff only involves him in complaints
10 if there is an issue where a Commissioner might be able to assist with investigation or
11 resolution. Mr. Tucker stated that County staff has independently handled marijuana
12 complaints well in the past. (#INV2)

13
14 Mr. Tucker also indicated that he feels County Commissioners should not become
15 personally engaged in County complaints in general out of concern for having ex parte
16 contacts on issues that may come before the County Commission. Mr. Tucker feels that
17 proper practice would have been to "direct the neighbors to fill out the complaint form and
18 have * * * staff look into it." (#INV2)

19
20 When the Commission investigator asked Mr. Nyquist the same question (about the
21 County's process for handling complaints of code violations), Mr. Nyquist corroborated
22 that the Planning and Building Department is generally responsible, but also said with
23 regard to marijuana specifically, that he is "reluctant to call any of the complaints or how
24 they [have been] handled typical or customary" since its legalization. (#INV11)

25
26 When asked whether Mr. Lindsey has publicly announced any conflicts of interest with
27 regard to this matter, both Mr. Tucker and Mr. Nyquist responded that to their knowledge
28 he has not. (#INV11)

29
30 In closing the conversation with Mr. Tucker, he asked if the Commission is aware of a
31 confrontation between Mr. Lindsey and the Mayor of Albany that occurred at the Council

1 of Government (COG) offices in Albany last fall. The Commission investigator confirmed
2 that the complainant had forwarded a news article published by the Democrat Herald in
3 October 2018. (The article indicates that the complainant, Mr. Templeton, placed
4 approximately 120 yard signs around the City of Lebanon generally calling Mr. Lindsey
5 “unethical” and a “liar”. According to the article, Mr. Lindsey, unaware of the source of the
6 yard signs, showed up at an Albany City Council meeting and verbally confronted
7 Albany’s Mayor, because he believed the candidate running for Linn County Commission
8 that the Mayor supported (and who was running against him in the election) was
9 responsible for the signs. (#INV3)) Mr. Tucker stated that Mr. Lindsey is no longer
10 permitted inside the COG building, because some members of staff and other officials
11 now feel uncomfortable. (#INV2)

12
13 Mr. Tucker iterated several times that he thinks Mr. Lindsey is a “good conservative man”
14 and that Mr. Lindsey votes and advocates for matters in the way the people of Linn County
15 who elect him want him to. He feels that while Mr. Lindsey’s intentions are good, his
16 reactions are sometimes “angry” and that he sometimes behaves in ways that make him
17 difficult to get along with. He gave a positive example of working in collaboration with
18 Lindsey and closed in saying “so sometimes I just wish he’d calm down in situations like
19 this and with the mayor of Albany.” (#INV2)

20
21 INFORMATION FROM PLANNING & BUILDING DIRECTOR WHEELDON
22 In a series of emails exchanged between Director Wheeldon and the Commission
23 investigator, Mr. Wheeldon stated that he recalled explaining to Mr. Lindsey “the
24 existence of the [OMMP] cards” and “that the property owners provided [them] to confirm
25 they had authority to produce medical marijuana on the property for their own use.” Mr.
26 Wheeldon “perceived that the conversation was in Commissioner Lindsey’s official
27 capacity in that he was responding to complaints by neighbors regarding construction and
28 marijuana production on the property.” (#INV4)

29
30 Mr. Wheeldon indicated that he does “not recall providing copies of the OMMP cards [to
31 Mr. Lindsey]” or have any “knowledge of other staff providing copies of the OMMP cards

1 [to Mr. Lindsey].” Mr. Wheeldon also indicated that he does not recall telling Mr.
2 Templeton that he “gave Lindsey copies of the OMMP cards.” He also did “not recall”
3 saying he couldn’t refuse Mr. Lindsey access to the OMMP cards because he’s his boss
4 “or anything similar,” as Mr. Templeton alleges. (#INV4)

5
6 As to the question of whether these OMMP cards are, or have been, available via public
7 records request, Mr. Wheeldon explained that due to “the sensitive nature of the OMMP
8 cards, they were not included in the complaint file and to my knowledge have not been
9 made available via a public records request.” (#INV4)

10
11 On request by the Commission investigator, Mr. Wheeldon also submitted copies of the
12 Department’s “unauthorized marijuana grow” complaint file on Mr. Owenby and Ms. Page,
13 as well as its file on the permit documents for the Hillside property greenhouse. Mr.
14 Wheeldon said the complaint was confidential while under review, but the complaint is
15 now closed, and the file is now public record (#INV4; #INV5; #INV7)

16
17 COUNTY’S “UNAUTHORIZED MARIJUANA GROW” COMPLAINT FILE

18 The County’s complaint investigation file (VF17-0057) is 54-pages long. The complaint
19 names Ms. Page and Mr. Owenby and describes the nature of the complaint as an
20 “unauthorized marijuana grow” at the Hillside property. Records included in the file
21 indicate that the complaint was filed by Linn County resident, Cindy Frink, and that the
22 complaint was opened by Department staff on June 16, 2017.

23
24 The staff log in the file dated June 15, 2017 (one day before the file was opened),
25 indicates that a member of County staff drove by the property and was unable to gain
26 access, but spoke with Mr. Templeton who confirmed that they intended to grow
27 marijuana on the Hillside property for four (4) OMMP card holders. (#INV5)

28 //

29 An email from Mr. Wheeldon responding to Ms. Frink (who filed the complaint) dated June
30 16, 2017, states:

1 "[Department staff] visited the property yesterday and spoke to [Mr. Templeton]
2 regarding needed permits and potential land use issues regarding medical
3 marijuana production for multiple card holders * * *. He came in to the office this
4 morning to apply for * * * permits. * * * I met with staff and the Deputy County
5 Attorney this afternoon regarding state and county regulations * * *. We will submit
6 a letter next week to the property owners explaining Linn County's regulations * *
7 * and requesting information to determine whether they are in compliance * * *."
8 (#INV1; #INV5)

9
10 The next staff log, indicates that the Department sent the letter certified regular mail to
11 Mr. Owenby and Ms. Page on June 23, 2017, a copy of which was included in the file and
12 is excerpted below:

13
14 "Mr. Templeton came into the Department on June 16, 2017 and provided copies
15 of three OMMP cards issued by the Oregon Health Authority (OHA), and stated
16 that a fourth card to be assigned to the property was still being reviewed by the
17 OHA. * * *

18
19 Pursuant to ORS 475B.500, Linn County may adopt ordinances that impose
20 reasonable regulations on the operation of medical marijuana uses. This includes
21 regulations on the time, place, and manner in which medical marijuana uses are
22 established and operated. * * * On December 14, 2016, the Linn County Board of
23 Commissioners adopted Ordinance 2016-370 * * * consistent with ORS 475B.500.

24
25 The RR-5 zoning district [where the property is located] only allows for the growing
26 of medical marijuana by a cardholder at the cardholder's residence. Growing
27 medical marijuana at an address other than * * * where the cardholder resides is
28 not permitted * * *. Based on information provided to the Department, it appears
29 that medical marijuana will be grown for two additional cardholders at the * * *
30 residence.

31
32 Establishment of a new OMMP grow site on the property for cardholders other than
33 persons who reside on the property is a violation of Linn County Code. However,
34 if the site was established prior to * * * December 14, 2016 * * * the site may be
35 classified as a non-confirming use, pursuant to Linn County Code Chapter 936. *
36 * *

1 To bring the subject property into compliance with County Code you must:

2
3 (1) Demonstrate that the property was registered and used as a medical
4 marijuana grow site prior to December 14, 2016 for OMMP cardholders not
5 residing on the property; or

6
7 (2) * * * [T]he medical marijuana grow site must be removed or brought into
8 compliance with Linn County Code Chapter 940.

9
10 Please contact the Department within 10 days to correct the noted violation. * * *"
11 (#INV5)

12
13 The next staff note entered in the file indicates that on June 28, 2017, Mr. Owenby came
14 to the Department office and told Director Wheeldon that he and his wife would be living
15 on the property and growing only for themselves in order to comply with County code, to
16 which Director Wheeldon requested that they provide the information in writing. A letter
17 dated the following day, June 29, 2017, sent to Mr. Wheeldon from Mr. Owenby and Ms.
18 Page documents the information in writing. (#INV5)

19
20 The other various documents in the filed include:

- 21
- 22 • Copies of the three (3) OMMP cards that Mr. Templeton submitted to the
Department (with identifying information redacted);
 - 23 • An email dated July 20, 2017, from resident, Cindy Sekiguchi, complaining about
24 the marijuana grow on the property;
 - 25 • All of the emails between Cindy Frink and Wheeldon that were submitted by Mr.
26 Lindsey (copies of which were provided to the Commission with this report), plus
27 an additional email of the same nature from Frick to Wheeldon dated June 28,
28 2017;
 - 29 • All of the emails between Wheeldon and Lindsey that were submitted by Mr.
30 Lindsey (copies of which were provided to the Commission with this report);
 - 31 • A letter dated July 11, 2017, to OLCC Director, Steven Marks, from neighbors of
32 the Hillside property, voicing opposition to any possible commercial marijuana
33 grow occurring on the property (not signed by Lindsey);
 - 34 • Several photos, as well as several planning or zoning maps of the property;
 - 35 • Mr. Owenby and Ms. Page's Hillside property deed dated December 1, 2016;

- 1 • A property tax document naming Mr. Owenby and Ms. Page as property owners;
- 2 • Multiple duplicates, and five (5) pages of documents that appear to be related to
- 3 Department complaints about other properties (not Mr. Owenby and Ms. Page)
- 4 which appear to have been mistakenly misfiled. (#INV5)

5
6 Records in the County complaint file do not indicate a specific resolution of the matter
7 (other than the June 29, 2017, letter to the Department by Mr. Owenby and Ms. Page).
8 However, during telephone calls with Mr. Tucker and Mr. Wheeldon, both indicated that
9 the complaint was closed without any further action. (#INV2; #INV4)

10
11 During this Commission's investigation, Mr. Templeton submitted a copy of a
12 corroborating email dated July 10, 2017, which was sent from Mr. Wheeldon to Mr.
13 Owenby. For an unknown reason, this email was *not* included in the records submitted
14 by the Department. The email states:

15
16 "Thank you for providing a written response regarding your plans for growing
17 medical marijuana for personal use on your Hillside Road property. Your letter
18 indicates you will comply with Linn County regulations by limiting marijuana
19 cultivation to personal use by residents of the property. I appreciate your
20 cooperation with Linn County regarding marijuana cultivation regulations in the
21 Rural Residential zone. I will let you know if we need any other information."
22 (#INV6)

23 24 COUNTY'S BUILDING PERMIT FILE FOR THE GREENHOUSE

25 The County's permit file is 32-pages long. Records included indicate that Mr. Owenby
26 filed his application to build a 30 X 196 sq ft greenhouse on June 19, 2017. The permit
27 was approved on July 5, 2017, for "personal use and limited farm use as defined in [Linn
28 County Code] 920.100(B)(17[7]) only." Documentation shows that the permit to build the
29 greenhouse was then issued on July 28, 2017. (#INV7)

30
31 The documents in the file include: Mr. Owenby's application; a Department staff checklist
32 worksheet; proof of issuance of the permit; a property map; several pages of engineering

1 specifications; documentation of pole footing for the building's foundation; and inspection
2 reports. (#INV7)

3
4 ADDITIONAL INFORMATION OBTAINED FROM COMPLAINANT

5 During a telephone call on January 3, 2019, the Commission investigator informed Mr.
6 Templeton of Mr. Wheeldon's response to the statements that he allegedly made as
7 presented in the complaint (that he denied giving Mr. Lindsey access to the OMMP cards
8 and saying he had to because he's his boss). Mr. Templeton restated his allegation that
9 Mr. Wheeldon did say that he could not prevent Mr. Lindsey from accessing the OMMP
10 cards, because he is his boss. (#INV8)

11
12 Mr. Templeton also indicated that he actually believes Mr. Lindsey took the OMMP cards
13 from the County offices himself. He stated that in a news article, which he previously
14 submitted to the Commission, Mr. Lindsey admits to taking copies of the OMMP cards
15 and claims that they are public record. (#INV8)

16
17 On the Commission investigator's review of information submitted by Mr. Templeton, he
18 appears to have been referring to a news article published by The New Era ("As election
19 nears, commissioner finds himself embroiled in ongoing dispute") dated October 10,
20 2018, which reads in part as follows:

21
22 "The county issued a permit based on false information,' Lindsey said. 'The
23 county's code prohibits growing marijuana except for personal use, but this one
24 is being used to grow more.' * * *

25
26 'The medical marijuana permits are public information and are supposed to be
27 displayed at the grow site,' he said, but he copied the four cards along with
28 other materials in front of Templeton when he visited Lindsey at the
29 courthouse.

30
31 'You don't mind if I copy this,' Lindsey said he asked, and then copied the
32 material Templeton had brought with him." (#INV9)

33 //

34 //

1 The Commissioner investigator made a verbal request and an email request for Mr.
2 Templeton to provide the identity of the cardholders for the purpose of this investigation,
3 but no information was provided. (#INV8)

4
5 According to Mr. Templeton, Linn County Sheriff's Deputy Boshart was briefly involved in
6 determining the legality of the marijuana grow operation, because Mr. Lindsey or other
7 neighbors reported to the Sheriff's Office that the operation was illegal. Mr. Templeton
8 says, the Sheriff's Office called OHA to verify their legality, and as a result of OHA's
9 response, the Sheriff's Office never took any action. (#INV8)

10
11 (Deputy Boshart did not respond to the Commission investigator's request for information.
12 However, the New Era news article submitted by Mr. Templeton cites Linn County Sheriff
13 Jim Yon as confirming Mr. Templeton's claim that the Sheriff's Office did respond and
14 found no violations. (#INV9))

15
16 To the question of whether the property has ever been found in violation of any laws,
17 Templeton said "no" but admitted that Mr. Owenby and Ms. Page did not initially have
18 proper permits. He also said that the County passed a new ordinance at the end of the
19 year preceding the build (referring to County Ordinance 2016-370, passed December 14,
20 2016, which is cited in the County's letter regarding the "unauthorized marijuana grow"
21 complaint that is excerpted above), which they were unaware of when they began
22 greenhouse construction. He said that once the ordinance was brought to their attention,
23 they provided proof of compliance, and that there is no longer an issue. (#INV8)

24
25 **CONCLUSIONS:** John Lindsey was a County Commissioner for Linn County during the
26 period relevant to this case. As such, Mr. Lindsey was a "public official" (as defined in
27 ORS 244.020(15)) and therefore subject to ORS Chapter 244 Oregon Government Ethics
28 law.

29 //
30 //
31 //

1 PROHIBITED USE OF OFFICE

2 Regardless of whether a public official complies with the conflict of interest provisions,
3 they may still violate prohibited use of office (ORS 244.040(7)).

4
5 ORS 244.040(1)

6 ORS 244.040(1) prohibits public officials from using or attempting to use their official
7 positions to obtain a personal financial benefit or avoid a personal financial detriment, that
8 would not have been available but for holding a public position.

9
10 The complaint alleges that Mr. Lindsey attempted to use his position to harass residents
11 and owners of the Hillside property, to inquire with County staff to see if he could find
12 anything at fault with the Hillside property, and to contact the Sheriff's Office and other
13 State agencies, in an effort to get the medical grow shut down.

14
15 As for Mr. Lindsey's contacts with the Sheriff's Office and State agencies, other than the
16 allegations made in the complaint, none of the other information gathered during
17 investigation indicated that Mr. Lindsey used his position, or that he would have obtained
18 any financial benefit "but for" his official position.

19
20 However, Mr. Lindsey's simultaneous personal and official involvement in the matter
21 through his actions with the County Planning and Building Department, combined with his
22 visit to the property, indicate that he attempted to use his position to shut down the
23 marijuana grow operation in violation of ORS 244.040(1).

24
25 With regard to the question of financial detriment, Mr. Lindsey stated in his testimony to
26 the Commission during the August 10, 2018, meeting that his personal concerns are more
27 about intimidation and racketeering than diminished value. However, Mr. Lindsey
28 nonetheless states specific financial considerations as part of the motivation behind his
29 ultimate pursuit of litigation, and he was aware of the possible nature of the operation at
30 the Hillside property at all times relevant to the subject of this case. Written statements in
31 Mr. Lindsey's "Notice of Intent to Sue" (signed by Mr. Lindsey alone), as well as his federal

1 RICO and nuisance claims (where he is one of ten (10) plaintiffs), allege that the activities
2 at the marijuana greenhouse have a financial impact on surrounding property owners,
3 including Mr. Lindsey, by causing diminished market value of their properties, by making
4 their properties more difficult to sell, by causing them to incur costs related to installing
5 security equipment, and by possibly affecting their homeowner's insurance policies.

6
7 Whether Mr. Lindsey's conduct followed the County's usual practice in handling these
8 sorts of situations is a matter of debate. Mr. Lindsey has made several statements saying
9 that his actions were typical of a County commissioner, and that he has been involved in
10 other marijuana-related complaints. According to Commissioner Tucker, however, he is
11 the County commissioner responsible for responding to Planning and Building
12 Department issues (not Mr. Lindsey), and the proper process for handling complaints of
13 County code violations is to report it to Department staff, who resolves complaints
14 independently unless a member of staff requests otherwise. Mr. Nyquist corroborated Mr.
15 Tucker's statement that Planning and Building Department staff are supposed to handle
16 zoning, building and land use complaints in general, but he also seemed to indicate that
17 the County has not necessarily been following this (or any) procedure regarding
18 complaints about marijuana since it has been legalized.

19
20 While the question of whether Mr. Lindsey followed general protocol is a consideration in
21 determining whether ORS 244.040(1) was violated, it is not necessarily dispositive.
22 Regardless of whether Mr. Lindsey adhered to any County procedures, any other actions
23 taken in an attempt to use his position as County commissioner to stop the Hillside
24 property marijuana grow in avoidance of financial detriment would still violate ORS
25 244.040(1).

26
27 In this case, Mr. Lindsey took the complaint at home on June 4, 2017, and knowing the
28 location of the property (in his neighborhood) and the nature of the allegations (a possible
29 marijuana growing operation), he then went to the site to investigate in his official capacity.

30
31 According to the complainant, during Mr. Lindsey's initial visit to the Hillside property on

1 June 4, 2017, he made accusatory statements (such as “what you’re doing is illegal”, “you
2 picked the wrong neighborhood”, “liars”, “tax evaders”) after identifying himself and
3 presenting his County business card. Mr. Lindsey’s retelling of the events in five (5) written
4 statements (his June 5, 2017, email to Mr. Wheeldon, “Notice of Intent to Sue,”
5 RICO/nuisance filings and response to the Commission’s investigation) corroborate that
6 Mr. Lindsey visited the Hillside property on June 4 and presented his County business
7 card. But, contrary to his own written statements, in response to direct questioning, Mr.
8 Lindsey told the Commission at its August 10, 2018 meeting, that he did not present his
9 business card or identify himself as a County commissioner at the property, and that he
10 has not visited the property since childhood. Moreover, Mr. Tucker’s statements as to Mr.
11 Lindsey’s conduct, as well as the Democrat Herald article’s depiction of the events
12 surrounding Mr. Lindsey’s confrontation of Albany’s mayor, appear to lend credibility to
13 the complainant’s allegations about Mr. Lindsey’s demeanor during his visit.

14
15 According to Mr. Lindsey, he was involved in the matter approximately 18 times, including
16 the June 4 visit to the property and the emails sent from Mr. Lindsey’s official County
17 email account on June 5 and June 27 that prompt Department staff to act and to provide
18 information in furtherance of determining the legality of the Hillside property marijuana
19 grow operation. Whether Mr. Lindsey’s conduct actually affected Department staff’s
20 response or the ultimate outcome of the complaint is irrelevant as to whether the conduct
21 was a prohibited use of office.

22
23 The information appears to indicate that a preponderance of evidence exists to show that
24 John Lindsey violated ORS 244.040(1) by using the influence of his position in an attempt
25 to stop the marijuana grow in his neighborhood and thereby avoid diminished market
26 value and other property-related costs.

27

28

ORS 244.040(4)

29 ORS 244.040(4) prohibits a public official from attempting to further his own personal gain
30 through the use of confidential information gained as a result of holding a public position.

31 //

1 The complaint alleged that Mr. Lindsey obtained copies of the OMMP medical marijuana
2 cards belonging to the patients that the Hillside property greenhouse was intended to
3 produce marijuana for, and that he used the information to harass the cardholders in an
4 effort to shut the operation down. During investigation, the Commission investigator
5 requested twice that Mr. Templeton provide contact information enabling the investigator
6 to speak with OMMP cardholders, but no information was provided.

7
8 The information gathered during the investigation provided many conflicting facts:

- 9 • The complainant alleges that Planning and Building Director Wheeldon said that
10 he could not refuse Mr. Lindsey access to the files, because Mr. Lindsey is his
11 boss; however, Mr. Wheeldon denies making any such statement.
- 12 • Regarding the manner in which Mr. Lindsey obtained copies of the OMMP cards:
13 the complaint states that Planning and Building Department staff provided access;
14 the complainant later said he believes Mr. Lindsey took the OMMP cards from the
15 file personally; Director Wheeldon said he did not give Mr. Lindsey copies of the
16 cards and doesn't know who did; and Mr. Lindsey has made statements to the
17 Commission and a newspaper indicating that Mr. Owenby or Templeton gave them
18 to him while acting in his official capacity and that he never used them to contact
19 the card holders.
- 20 • Both Mr. Templeton and Mr. Lindsey both stated that there were four (4) OMMP
21 cards, but multiple County records indicate that there were only three (3).
- 22 • Mr. Lindsey claims that the personal information on the OMMP cards is not
23 confidential (it is unclear whether ORS 475B.810(5) applies in the manner Mr.
24 Lindsey has interpreted); Mr. Templeton and Director Wheeldon claim that the
25 OMMP cards are confidential. The card holder's names are also redacted on the
26 copies of the OMMP cards that the County provided in response to this
27 investigation, which further indicates that the County considers the information to
28 be confidential. OAR 199-005-0035(5) defines "confidential information" to include
29 "any information obtained in the course of or by reason of holding a position as a
30 public official that is not publicly disclosed."

31
32 Regardless of the conflicting facts, the OMMP cards would appear to be considered
33 "confidential information" per the Commission's definition (in OAR 199-005-0035(5)). That
34 Mr. Owenby may have handed Mr. Lindsey the OMMP cards at the County building while
35 he was responding in his official capacity would not have revoked their confidentiality.

1 However, other than the allegations made in the complaint, no other information gathered
2 during investigation corroborates that Mr. Lindsey contacted the cardholders or harassed
3 them for a personal financial gain as a result of obtaining access to their OMMP cards.
4 Nor does there appear to be a preponderance of the evidence that he used the cards in
5 an attempt to influence a decision on the property. Because a preponderance of evidence
6 does not exist to indicate that Mr. Lindsey used the information for his personal gain, there
7 is insufficient information to indicate that ORS 244.040(4) was violated.

8 9 CONFLICT OF INTEREST

10 ORS 244.020(1) defines an actual conflict of interest and ORS 244.020(13) defines a
11 potential conflict of interest. A public official is met with either an actual or potential conflict
12 of interest when participating in an official capacity, in any action, decision or
13 recommendation, if the effect of would or could be to the private pecuniary benefit or
14 detriment of the public official, the public official's relative, or any business with which
15 either are associated. An actual conflict occurs when a public official participates in an
16 official action that would have a direct and specific financial impact. A potential conflict
17 arises when a public official takes an action that could have a financial impact.

18
19 When met with a conflict of interest, elected officials such as John Lindsey are required
20 to publicly announce the nature of their conflict of interest, *before taking any action*, each
21 time the matter giving rise to the conflict is present. If the conflict is actual, the public
22 official must also refrain from participating in any discussion, debate or vote on the issue.
23 If the conflict is potential, the official may continue to participate after the public disclosure
24 (ORS 244.120(2)).

25
26 At the time the Court of Appeals decided the case cited by Mr. Lindsey's attorney,
27 *Caragol*, Oregon Government Ethics law ORS Chapter 244 only recognized one kind of
28 conflict of interest, a "potential conflict of interest." However, that definition is the precursor
29 to what the law defines today as an "actual conflict of interest." The only definition of
30 conflict of interest at the time *Caragol* was decided read as follows:

31 //

1 “[A]ny transaction where a person acting in a capacity as a public official takes any
2 action or makes any decision or recommendation, the effect of which would be to
3 the private pecuniary benefit or detriment of the person or a member of the
4 person’s household.”

5
6 *Caragol* was decided in 1989, and in 1993, the legislature amended the conflict of interest
7 laws to their contemporary form—changing the term for official action that would have a
8 financial affect (as was the requirement when *Caragol* was decided) to be an “actual
9 conflict of interest.” For a public official to have a “potential conflict of interest” today, it is
10 enough that the result of his action “could” financially affect him. Therefore, the test and
11 standard applied by the Court of Appeals in *Caragol* appears to have been superseded
12 by statutory amendment and no longer applies to determining whether a “potential conflict
13 of interest” exists.

14
15 Nonetheless, applying an objective standard and the test in *Caragol* to the definition of
16 “potential conflict of interest” that applies today, there is a “substantial probability,” or at
17 least “a reasonable expectation that” a marijuana grow operation could have some
18 economic effect on properties or property owners in the same neighborhood. In this case,
19 the reasonableness of the probability of such a financial affect is specifically evidenced
20 by Mr. Lindsey’s ability to obtain an attorney to file federal legal action on such bases, as
21 well as the fact that nine (9) other people have joined in the suit.

22
23 As noted above in the Use of Office analysis, written statements in Mr. Lindsey’s “Notice
24 of Intent to Sue” and RICO/nuisance complaint, specifically allege that the activities at the
25 marijuana greenhouse have had a financial impact on surrounding property owners,
26 including Mr. Lindsey, by causing diminished market value of their properties, by making
27 their properties more difficult to sell, by causing them to incur costs related to installing
28 security equipment, and possibly affecting their homeowner’s insurance policies. As a
29 result, it appears that Mr. Lindsey’s official actions during this period could have resulted
30 in a direct financial impact to himself, and therefore he had a potential conflict of interest
31 that he was required to publicly disclose prior to each official action he took.

32 //

1 Mr. Lindsey said he was involved in the matter subject to this case approximately 18 times
2 while acting in his official capacity. Records document four (4) of those occasions:

3
4 (1) Went to the Hillside property on June 4, 2017, presented his County Commissioner
5 business card, observed the construction in order to determine its nature, and
6 spoke with the person who was present about possible legal issues.

7 (2) Emailed Planning and Building Director Wheeldon on from his County email
8 account on June 5, 2017, describing his visit to the property, stating his legal
9 concerns, and requesting that Mr. Wheeldon open a complaint file for staff to
10 investigate.

11 (3) Met with Mr. Templeton and Mr. Owenby in a County building sometime between
12 mid-June and July 2017 (to hear complaints about himself or Mr. Wheeldon).

13 (4) Emailed Mr. Wheeldon twice on June 27, 2017, regarding water laws or zoning
14 ordinances relevant to the greenhouse (Mr. Lindsey initiated the email exchange
15 in response to an email directed at Mr. Wheeldon by Ms. Frink (who filed the
16 complaint with the County); it was also one of the specific legal concerns stated in
17 Mr. Lindsey's original June 5 email to Mr. Wheeldon).

18
19 The email sent by Mr. Lindsey to his fellow County commissioners, County counsel, and
20 Mr. Wheeldon on August 29, 2017, serves as the first and only announcement of his
21 conflict in the matter.

22
23 Public officials are required to disclose their conflicts of interest, *before taking action*, on
24 each occasion that the issue giving rise to the conflict occurs (ORS 244.120(3)).

25
26 Available information indicates that Mr. Lindsey was met with a potential conflict of
27 interest when acting in his official capacity to respond to the possible illegal marijuana
28 grow at Mr. Owenby's property. Records indicate that Mr. Lindsey was aware of the
29 location of and activity occurring at Mr. Owenby's Hillside Property as early as June 4,
30 2017, and that he took at least four (4) actions in his official capacity prior to providing
31 notice of the conflict on August 29, 2017.

32
33 As a result of the conflicting statements surrounding Mr. Templeton and Mr. Owenby's
34 encounter with Mr. Lindsey at the County office building, the nature of the interaction

1 (whether Mr. Lindsey was hearing complaints about himself or Mr. Wheeldon) on that day
2 is unclear. As a result, it is unclear whether that action constituted a conflict of interest for
3 Mr. Lindsey. However, on the other on three (3) occasions, it is clear that he is responding
4 directly to questions of legality regarding the marijuana grow.

5
6 Also, the notice of conflict that Mr. Lindsey provided on August 29, 2017, is likely
7 insufficient to meet the requirements under ORS 244.120(2), because it did not indicate
8 the specific property or individuals with which his conflict exists (does not clearly state the
9 nature of the conflict), it does not specifically state that he has a conflict of interest, and
10 the announcement was not made in advance of any specific action, decision or
11 recommendation to be made by Mr. Lindsey (it was made after). Rather, it only stated
12 that "legal staff" will not discuss or advise him on the case. Moreover, Commission staff
13 generally encourage elected officials serving on governing bodies to "publicly announce"
14 (per ORS 244.120(2)) their conflict in an open public meeting or other forum in which
15 members of the public are likely to become aware. In this case, Mr. Lindsey's email was
16 only shared with five (5) people.

17
18 It appears that a preponderance of evidence exists to show that John Lindsey violated
19 ORS 244.120(2) three (3) times in relation to the subject of this investigation when he
20 failed to public announce a potential conflict of interest prior to taking acting in his official
21 capacity on June 4, 5, and 27, 2017.

22
23 **RECOMMENDATIONS:** The Commission should make preliminary finding that John
24 Lindsey committed one (1) violation of ORS 244.040(1) and three (3) violations of ORS
25 244.120(2) [Motion 10].

26
27 **ASSOCIATED DOCUMENTS:**


28 #PR1 Complaint and additional materials from William Templeton, received 6/19/18.

29 #INV1 Oral testimony and materials provided by John Lindsey during OGEC executive
30 session meeting on 8/10/18.

31 //

- 1 #INV2 Memo summarizing contact with Linn County Commissioner, Will Tucker, on
2 1/4/19.
- 3 #INV3 Editorial, "Voters need to hear answers from Lindsey," The Democrat Herald
4 (Albany newspaper), published and received from William Templeton on 10/23/18.
- 5 #INV4 Memo summary and email chain re contacts with Linn County Planning and
6 Building Department Director, Robert Wheeldon.
- 7 #INV5 Linn County Planning and Building Department "Unauthorized Marijuana Grow"
8 complaint file, received from Robert Wheeldon on 1/4/19.
- 9 #INV6 Email from Robert Wheeldon to Mark Owenby dated 7/10/17, forwarded by William
10 Templeton on 10/8/18.
- 11 #INV7 Linn County Planning and Building Department greenhouse building permit file,
12 received from Robert Wheeldon on 1/4/19.
- 13 #INV8 Memo summary and email re contact with William Templeton on 1/3/19.
- 14 #INV9 News article, "As election nears, commissioner finds himself embroiled in ongoing
15 dispute," The New Era (Sweet Home newspaper) published and received from
16 William Templeton on 10/10/18.
- 17 #INV10 Memo summarizing contact with Jay Flint on 1/2/19.
- 18 #INV11 Email from Linn County Commission Chair, Roger Nyquist, received 1/15/19.
- 19 #INV12 Letter from John Lindsey and his attorney, Kenneth Montoya, in response to
20 Commission investigator inquiry, received 1/15/19.
- 21 INV#13 *Caragol v. OGEC*, 98 Or App 593, 598 (1989).

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