

**WHITMAN COUNTY
PLANNING COMMISSION
January 16, 2019
Minutes**

MEMBERS:

Chad Whetzel – Chair
Guy Williams – Member
Dave Gibney – Member
Brian Davies – Member

Matt Sutherland – Vice-Chair
Keith Paulson – Member
Russell Jamison – Member

STAFF:

Alan Thomson – County Planner
Katrin Kunz – Assistant County Planner
Ginny Rumiser – Clerk

8:46 p.m. – Chad Whetzel –

IV. Approval of Minutes from December 5, 2018.

Motion by Keith Paulson and seconded by Matt Sutherland to approved the Minutes from December 5, 2018

Motion carried.

V. REPORTS:

- A. Board of Adjustment forthcoming hearings – Variance hearing for Kent Keller to reduce the side setback from 20 feet to 10 feet on a 1-acre residential parcel set for January 24, 2019. A Conditional Use hearing for Selway Holdings, LLC, to allow agricultural activity in a Limited Industrial District set for February 28, 2019.

Katrin – We have a Variance hearing with the Board of Adjustment coming up on January 24th, it's a setback reduction from 20-feet to 10-feet for Kent Keller. He has a very small parcel and has no other way to put his garage except to encroach into the setback.

Then we have the Conditional Use hearing for Selway Holdings, LLC to allow for the agricultural activity of the marijuana growing. And that is scheduled for February 28th.

- B. Forthcoming Administrative Use Permits – Weis Towers proposes a new cell tower on Bald Butte. Issuance of permit is still pending. No action will be taken on this application tonight.

Alan – Weis Towers is still on the docket, but no word from them, whatsoever. They have gone completely dark, I have not heard a word, so I don't know where we stand, but the application is still open.

- C. Forthcoming Variances – Kent Keller setback Variance hearing set for January 24, 2019.

Alan – Katrin already told you Kent Keller setback Variance is set for January 24th.

- D. Update on previous Conditional Use Permits and Variances – None
- E. Update on previous Administrative Use Permits – None
- F. Board of County Commissioners' action – None

Alan – None as yet, although tonight that will go forth to them and will be arranging a time frame for that in the next couple of days.

- G. Update on previous Board of County Commissioners' action – Code amendments to Chapter 19.05 – Administration and Enforcement held on December 17, 2018, were approved.

Alan – The Code changes, Code amendments that you approved on Chapter 19.05 – Administration and Enforcement was held on December 17th and was approved by the BOCC.

- H. Shoreline of the State Substantial Development Permits – None
- I. Planning Commission forthcoming hearings – The McCoy Land Co. Zone Change hearing south of Dusty has been postponed until February 6, 2019.

Alan – The McCoy Land Co. Zone Change hearing south of Dusty postponed until February 6th, they are going to withdraw that and I'm waiting on a letter from PNW to withdraw this zone change application. They will be going through with the conditional use permit application and as of yet, I have not received that application. But that could be any day now that that application comes in, but they have notified me that they will be withdrawing the zone change application.

Katrin – Actually we have another zone change hearing for February 6th lined up.

Dave – But, for that McCoy thing, we would need to re-open our continued public hearing, accept the withdrawal and close it, to get the formalities done.

Chad – Let's argue that we don't get that letter in time?

Alan – Well I've been assured that it will be in my hands this week.

Chad – Okay.

Dave – If we don't, we open and continue again to another specific date and close it back up.

Chad – I just don't like continuing something that we don't know. We can't count on anything, we've got to deal with what's in front of us and I don't want to keep kicking this can down the road forever. I think the people out there deserve an answer.

Alan – I don't perceive there being an issue here.

Dave – The other alternative would be to open it, deny it and close it.

Alan – They have made the decision to move ahead with the CUP and they want to withdraw this zone change. So that should be in my hands soon.

Katrin – So the other zone change is for AGRO Solutions and they have proposed a zone change to Heavy Commercial and it's at the intersection of SR 195 and Old Wawawai Rd. across the road from Hinrichs Trading Company. They propose to put in a storage building for the sale of agricultural chemicals to farmers.

Keith – Who is this?

Katrin – AGRO Solutions.

Chad – They've got a branch down in Lewiston, I believe.

Dave – Can I suggest that you be very careful about notifying the people on the other side of SR 195 from that particular area?

Chad – Can I also suggest we have Mark Storey here for that hearing?

Alan – For the road use?

Chad – For the highway. I know it's State, but he could probably answer a lot of questions.

Katrin – Well, Old Wawawai Rd. is a county road.

Chad – That would be the access, but the only reason why I say that is, because I'm a member of District 12 and that is a notoriously bad intersection.

Alan – We’re going to be having a conversation with WSDOT and we will get some reaction from them.

Chad – Okay, either Storey or one of them to answer questions, because I can foresee a lot of concerns.

Guy – I think they should make that a round-about.

Alan – I would be all for that.

Chad – I used to like you.

Dave – I think the City of Pullman made a mistake in not annexing Hinrichs when we did the rest of that road.

Alan – Yeah, but Mr. Hinrichs didn’t want to be annexed there.

Dave – No, the thing is he was okay with it at the Planning Commission level and he changed his mind by the time the Council was considering it.

Alan – Well, I’m fine with them still being in the County.

VI. UNFINISHED BUSINESS:

Continue discussions on update of County Critical Areas Ordinance required by June 30, 2020 and amendments to Chapter 19.10 regarding Rural Housing Certificates. Continue discussion on Planning Commission meeting procedures.

Alan – Let me give you an update on the Critical Areas Ordinance. That was the final draft that I sent you. I sent you all the finals and so what I’m asking now is, we need to take it to a public hearing. So, if you’re okay with it, and you got that email a few days ago, one more change that was made to the Wildlife Conservation Chapter, regarding Bald Eagles. That was required by the State, because Fish and Wildlife used to be responsible, the State Fish and Wildlife used to be responsible for regulating Bald Eagles. That changed to the United States Department of Fish and Wildlife. So, that language in the Code needed to change to reflect that and that is what is being done there. So that is the only other change I have made, you’ve seen everything else, so if you’re satisfied with the state of that ordinance, I would like to propose bringing it to you in a public hearing as soon as possible.

Chad – I can’t say as I’m satisfied, but I don’t think we have a choice.

Alan – We’ve gone over and over this. It’s not going to happen at the beginning of February, it’s too early, so probably March, the first Wednesday of March I would bring it to you for a public hearing.

Chad – That would be good.

Alan – And I'm going to prepare a version of it without any changes, with all the changes changed, so it will be a clean version and then you'll have the changes version as well, so that you've got two versions of it. Just so you can see what it would look like without all the changes in it, because there are a multitude of changes in that darn thing.

Chad – Okay.

Alan – If you're okay with that, then I will move forward on that one.

We had an additional change to Chapter 19.10 that came to our observation. So, last time we were talking about these changes to 19.10, and I'm going to hand this out to you, because there is another proposal that just came up recently that we want to swing by you. On page 6, so on the last page is the change, everything else you've gone through and you seem to be okay with, so if you're okay with the previous discussion on changes, then this one was on letter "E – Driveways". Any driveway that serves more than two residences shall be designed and constructed to ensure safe access for emergency vehicles. We referenced it to the Fire Code, before. It no longer is a part of the Fire Code. So, we had to change that to reflect that we're not referencing the Fire Code, but we do still need that driveway to be built in order to accommodate the largest of emergency vehicles. So, when the third residence comes on a driveway, it needs to be upgraded. And that would be taken care of by a professional Engineer. A professional Engineer needs to design that part of the driveway.

Chad – Just in the interest of public safety, shouldn't all driveways be constructed, I mean unless you want your house to burn, you should probably make it accessible.

Alan – That would have to be something you pitch to the County Commissioners.

Chad – It's their choice, but it just seems like...

Matt – This change makes sense then.

Rusty – I have a situation like this, where there is a driveway that is an easement that goes through a piece of property that I have, and they are in the process of constructing another home that would use this fairly lengthy road up to this other house. So, am I responsible to maintain that driveway or would it be the people that live there? How would that work?

Alan – So, you've given an easement to a third party to have a driveway through your property?

Rusty – Yeah.

Alan – That should be their responsibility. I would suggest to you that the easement should reflect that.

Rusty – Say they needed to widen the road?

Alan – That would be on their dime and the easement should state that.

Dave – And if the easement is not wide enough, they have to come to you and ask to make it wider.

Keith – So it's not on the one that owns the land?

Alan – It's on the language of the easement that you grant that third party. That is a legal document that states what their responsibilities are. If you don't have that document...

Rusty – I need to get it.

Alan – Yeah

Dave – It's not like you're benefitting from them using your land, it should be on them.

Rusty – But, if the fire truck got stuck or didn't make it up to the house and it was on my road, they might question me, "Well why wasn't your road maintained?"

Chad – Especially if there was a bridge or something, say it collapsed.

Dave – It's not your road, it's their driveway.

Alan – And then the only other thing I had was, the rules that we somewhat implemented tonight.

Matt – I like that and I'm sorry for having stepped on your toes a couple times, I did not realize that that is what we were doing, usually it's more of a free-for-all.

Chad – You came in after I had made the announcement earlier.

Matt – I know and I apologize. Listen, I am late for everything now, my life is back to back, so I apologize.

Dave – The comment I would make is that, we should go through the rotation rather than directing the question back to...

Chad – You're right and I made that mistake and I think I did a little better on that later on.

Matt – That is definitely more reminiscent of what I've seen in some of the Pullman Commissions and Board meetings and I liked it.

Katrin – Otherwise you lose track, because then in the end all of the opponents came on and the applicant didn't get the chance at the end to say a rebuttal.

Chad – And I felt bad, but I stated at the beginning how it was going to go.

Katrin – I know.

Dave – The ones out of Pullman do give the proponents the last word for any rebuttal of things said by anybody. The proponent gets the first and last word.

Chad – Okay.

Keith – With the opponents only getting one shot at saying anything?

Dave – No, it goes proponents, opponents, and rebuttal from the proponents, rebuttal from the opponents and final word by the proponents, with the neutrals...

Matt – I'll ask Pete Dickenson for a copy of what we use and I'll see if I can't forward that to you.

Alan – We've got that.

Dave – You've got the Pullman Planning Commission one.

Alan – So, we would need the Board of Adjustment one. Well the Board of Adjustment is a whole different beast altogether for us. They actually operate quite well. Rick Finch was in the audience tonight, he's on the Board of Adjustment and John Kramer over the years has done a great job of explaining things and it's not quite the way you guys do it in Pullman, but he's been very efficient. Now Jim Lemon is the Chair and Jim has been on the Board for a long time, so they run much more efficiently than the Planning Commission has in the past, I can certainly bring this to their attention and give them some food for thought.

Dave – Actually I thought I was hearing Matt offering to see if there was anything in Pullman's Board of Adjustment rules that might benefit us and I've not seen them myself.

Alan – Yeah, if you want to get us a copy Matt that would be great.

Ginny – Jim Lemon has been with the Whitman County Board of Adjustment now for almost 35 years and he's been with the City of Colfax's Board of Adjustment for just about the same amount of time. So, that man really knows what is going on.

Matt – I haven't even been alive that long.

Chad – Just so you all know, there are a few more things in these procedures that I did not go over tonight, but we really haven't adopted them.

Alan – I'm not sure that you really need to adopt them, but you just need to implement them. So, you might want to look them over and adjust them to what the Board is comfortable with.

Chad – There are some things in here, as a Board, one of the things I didn't talk about is the, and I don't know where it is, but it says stuff about if you have any issues, conflicting issues, I did not bring that up tonight, but do you think I should as a general rule from now on?

Matt – I think for the more controversial ones, probably.

Katrin – You could just read through it at the very beginning.

Chad – Right.

Dave – The reason that appearance of fairness stuff is in the Pullman Code or the procedures, which was before my time, but obviously somebody got sued and they lost by saying you did not give me a fair shake and they lost. If you would have asked that, I would have still said I could be fair, but I knew a few of the people. Dr. Fosback is my doctor and I know Rick Finch and Cris Kincaid.

Chad – And I knew way more of the opponents and I didn't know any of the proponents.

Alan – It might be a good thing to do.

Chad – But I wasn't prepared tonight without us having discussed it first, to go ahead with all of that.

Dave – I'm not going to say that we need to adopt them, but the Pullman Commission has adopted them and has edited them over time and adopted the edits.

Chad – Well, why don't we keep working with it and see how it works and give it a few more meetings and then we can adopt them.

Matt – This is like a first run and it was kind of bumpy for a little bit, but it was way better than when we didn't have anything, so I'm really happy we did this.

Alan – We can amend it to your liking.

Chad – We'll work with it, tweak it and if somebody doesn't like something, let me know and we'll fix it.

Dave – And a bunch of that does cover so that if legal actions happen, at least they're defensible.

Alan – One last piece of information regarding the PNW application and the conditional use. They are asking for a hearings examiner to take that case, rather than the Board of Adjustment. Our code allows for the applicant to ask for that under certain circumstances and the circumstance that applies here is that the project is worth more than \$ 5,000,000, which it is according to PNW. They would have to prove that as part of the record, so we're in the process of appointing a hearing examiner for this one case. And we've already got the same gentleman who did do the wind farm. Andrew Kottkamp out of Wenatchee has agreed to do it, and we're just trying to figure out the details right now to get him on board.

Brain – So we can pick a hearings examiner or we can recommend a hearings examiner?

Alan – No, it's not quite that simple. How we pick someone like that is, they have to be on a professional roster list and so as a government jurisdiction, we can't just willy-nilly pick people, we've several people on a roster.

Chad – Small works roster.

Alan – A small works roster, we have to send it out to them and they will give us a bid and then we choose. We only have one hearings examiner on the roster, so it was kind of easy to choose.

Keith – So, PNW is doing this because there was so much rebuttal from the people around there?

Alan – That was the main impetus there, they ran into a buzz-saw there and they hired their own attorney from the West side. The same attorney that represented Whitman County in the wind farm application.

Brian – Is their attorney?

Alan – Yes, their attorney, she is an experienced land use attorney from the West side and she helped us through the wind farm application and she did a stellar job.

Brian – Then the attorney from **Lucans** and **Annis**, that spoke at the hearing, there's another attorney that is going to take over.

Alan – From the attorney that was here that night?

Brian – Well, you said from the West side.

Alan – No, that attorney was with Dusty, she was representing Dusty.

Chad – She was with the opponents.

Alan – Yes. We're talking about the proponent now who has hired this attorney from the West side.

Brian – So we didn't meet any of their attorney's at the public hearing, we just met the attorney for the opponents?

Alan – Right.

Brian – So, they've hired a big gun attorney.

Alan – They're going to cover their bases entirely. Everything has to be above board and legal and this hearings examiner, if you've never experienced something being done by a hearing examiner, it's going to be a sight to see. Guy, did you go to that one?

Guy – No.

Alan – It was amazing. We the staff just sat there and twiddled our thumbs and the hearings examiner takes care of everything.

Keith – So this takes it out of our hands?

Alan – Well, it's a Conditional Use, so it doesn't go the Planning Commission, it goes to the Board of Adjustment and it doesn't go to the Board of County Commissioners either. It just goes to the Board of Adjustment, which is a quasi-judicial hearing, so it'll be the hearings examiner and this is a professional attorney who deals with things like these things, conditional uses; variances and zone changes.

Keith – So, we won't see this at all.

Alan – As a Board you will not, but you can show up to the hearing and it would be an education for all of us. It's great to watch these things, because it's done so professionally and so smooth.

Chad – So, you're saying that we not professional and smooth?

Alan – It's done differently Chad, it's done differently.

Brian – So this could even be more beneficial for the County in a way, all the way around.

Rusty – What an expense for PNW.

Dave – That is a question I've got, who's paying the hearings examiner?

Alan – PNW, it's written in the Code.

Chad – Whoever asks for the hearings examiner.

Alan – If you ask for a hearings examiner, you pay for it. There are only two ways you can get a hearings examiner, such as wind farms or energy projects like that or any other project that is worth more than \$5,000,000.

Chad – And at the price of concrete, that doesn't take long.

Dave – And probably given the opposition that was there, it well could be cheaper to do it this way than to litigate.

Alan – They have done a lot of studying, I mean the roads issue was a big one, they've done a traffic study, and they hired a company to do the traffic study. I haven't seen it, but I've heard that it's pretty well done. So, all of the points that were levelled at them at the zone change hearing, have been addressed by professional contractors.

Rusty – But, if they were to have stuck with this, I mean the road issue was really out of our control, because it's a state road. So, we would have had to, basically not discussed it...

Chad – I think as the risk of whatever else if coming down the road, we probably shouldn't discuss that too much further, because we still have an open meeting.

Alan – That's right.

Dave – Well, we're in an open public meeting, but you're right.

Chad – It is an open public meeting, but it's not advertised for that. I know where you're going Russell, just be careful.

Rusty – Well, I'm a member of that Co-Op and there is a lot of money being spent there. I might go to their meeting and have some questions, not concerning what we're discussing, but from a finance point of view.

Keith – I would like to know when their meeting is.

Alan – The CUP hearing, yeah as soon as I know, I will let all of you know.

Chad – Is there anything else?

Katrin – Can everyone make it for February 6th?

Chad – Yes.

Dave – Have Elinor send a text.

VII. NEW BUSINESS: None.

9:11 p.m. Adjourned