

**WHITMAN COUNTY  
PLANNING COMMISSION  
Meeting  
March 6, 2019**

**MEMBERS:**

Chad Whetzel- Chairman  
Keith Paulson  
Dave Gibney

Guy Williams  
Matt Sutherland  
Brian Davies

**Staff:** Alan Thomson, Whitman County Planner; Katrin Kunz, Whitman County Assistant Planner; Elinor Huber, Clerk.

**Audience:** Shelly Chambers, League of Women Voters; Paul Mihalyov.

**7:27 p.m.** – Chad Whetzel opened the meeting.

**MOTION** by Matt Sutherland and seconded by Brian Davies to approve the minutes from February 6, 2019. Motion passed.

**Reports:**

Alan Thomson- Board of Adjustment, forthcoming hearings. We do have an application now from PNW for a conditional use at the Dusty location. We have a full application but we still don't have a hearing examiner worked out yet. They have requested a hearing examiner instead of the Board of Adjustment.

So we are working on a contract right now with them, with the hearing examiner and hopefully we will get that done in the next few days and then we will be looking for setting a date for that public hearing. We do have a complete application from PNW for a conditional use.

Chad Whetzel – So, there will be a public hearing?

Alan Thomson – Yes, it is a conditional use hearing which automatically involves a public hearing.

Dave Gibney – It will be decided over by a hearing examiner.

Chad Whetzel – But it will be a public hearing and the public is invited.

Alan Thomson – Absolutely. The public will probably show up.

Keith Paulson – This will be in the paper so we will be notified or do you send out a letter?

Alan Thomson – We have to put in a public notice in the Gazette and we have to notify everybody within 300 feet of the location of PNW's land. That is all the code requires us to do.

Keith Paulson – Wouldn't it be a common courtesy to send a letter to the ones that responded to the first meeting?

Alan Thomson- There is a little bit of an issue with that. If we do that we set a precedent and basically have busted up the code. What if we missed someone?

Dave Gibney – As much as I would like to send to the people I think the 300 feet is too small. You should stay at the letter of the law so nobody can sue you either side.

Matt Sutherland – Have you considered, and this is going to sound really millennial with me, using social media in some ways to also create accessible notifications?

Alan Thomson – We can put information on our website and we do put information on our website. But we have to stick with what the code says. If we could add things to the code that would be a possibility but the problem with deviating with what is in the actual ordinance is that we would be held to, that standard. We've changed things up and our attorneys are always telling us not to do that. Stick to the letter of the law especially in a situation like this when they have an attorney and they are looking for any kind of problems with the application.

Matt Sutherland – So, if we had like some sort of Facebook page that would just not be. Attorneys would be upset with that? Is that what you are saying?

Dave Gibney – No, if the planning commission had a Facebook page it would be perfectly legitimate to put it there but at this time we don't have such a page.

Alan Thomson – I would suggest that we put language in the particular ordinance that states that we can get information out through whatever other outlets.

Dave Gibney – The other issue that is there is the public records and record retention. Once a government entity starts a Facebook page it is subject to the public records acts. It is subject to you have to hang on to and retain that data for the various times. It is not as simple as an individual. It is fairly complex to have a government entity set up a social media page.

Chad Whetzel - You can't even find things you saw ten minutes ago.

Dave Gibney – It becomes a responsibility of the entities' IT department to ensure that that happens.

Alan Thomson – In this case, now that we have an application we will probably be going to get a public records request from their attorney and, of course, they will get all the information that we have and then that information will get disseminated to the interested parties. I don't think there will be any issue with people not knowing about this.

Dave Gibney – In reality this is no longer in our hands.

Alan Thomson – This is not our responsibility. This is not planning commission. This is a conditional use permit which you guys don't deal with. It is either with the BOA or the hearings examiner which is an independent attorney that does this as part of his job to oversee these types of applications.

Forthcoming administrative use permits. The Weis Towers is still on the books but they have gone AWOL. I have not heard anything from them. Maybe I should give their attorney a call and find out what they intend on doing. It is still an open case.

Keith Paulson – Is there a time limit on that?

Alan Thomson – There is no time limit written into the law.

Dave Gibney – Is there a tower there that we don't know about?

Alan Thomson – Who has been around Bald Butte recently?

Dave Gibney – Has anybody made an application to do the observatory?

Alan Thomson – No, and we were waiting on Weis Towers to get that one resolved before the observatory comes on deck. I did notify the observatory people that they needed a conditional use. But I wanted to get this thing out of the way. I don't know what is happening with the tower. With my discussion with the botanist there is not a lot of space up there that doesn't involve Palouse Prairie.

Dave Gibney – We are still waiting on spring.

Alan Thomson – The botanists have been out there and he said there is no place to put a tower without disturbing the Palouse Prairie. I think the applicant knows that now because they have to report to them.

Forthcoming variances, none. Update on previous conditional use permits, none. Update on previous admin use permits, none.

BOCC action. As you know, Selway Holdings, LLC, withdrew their application for a zone change. That meeting did occur with the BOCC on March 4<sup>th</sup> but the application was not on the agenda. People did show up but they have pulled their application. It is no longer.

Keith Paulson – So are they getting a lawyer and going around everything, too?

Alan Thomson – We don't know. We haven't heard anything about that yet. I will talk about this further when we get into new business. It segues into what happened this past Monday with the moratorium. I'll address that at that point.

Update on previous BOCC action, none. Shoreline of the State Substantial Development Permits, none. Planning Commission forthcoming hearings, none.

We don't have any unfinished business to deal with. That is it for reports.

Chad Whetzel – Spring is right around the corner. We have new business.

Alan Thomson – You guys are going to be busy. It is wind turbines all over again, Guy. We will have a lot of meetings together.

Dave Gibney – Just to be quite clear. The legislation establishing this moratorium is on our plate.

Alan Thomson – This past Monday the BOCC agreed to put a moratorium on any new business, any new cannabis business in WC. We are going to be having an executive meeting on Monday to discuss the

fine points about this moratorium, about who it captures and who it doesn't capture. But the thought right now is everybody who is operating a business at this moment and has been operating before the moratorium will be grandfathered non-conforming. They will be allowed to continue on with their business.

They will not be allowed to expand their business. That will be a part of the moratorium. They can still carry on as they are with the moratorium but they can't expand. It will probably be a six-month moratorium and the thought right now is the BOCC want the planning commission and staff to put an ordinance together for cannabis.

Dave Gibney – Who is going to hold the required public hearing at 60 days?

Alan Thomson – The BOCC.

Matt Sutherland – So, we are going to come together in the next 4 months to decide.

Alan Thomson – Six months. The BOCC by law has to hold a public hearing on the decision for the moratorium.

Matt Sutherland – I was under the impression they already made that decision.

Alan Thomson – They did but the state law says they have to have a public hearing associated with that.

Dave Gibney – The moratorium is an emergency type action and within 60 days of establishing a moratorium they have to do a public hearing. I believe they can extend it another six months if need be.

Matt Sutherland – So, we are going to put together a potential ordinance that we will have a public hearing on and then the BOCC?

Alan Thomson – Yes. There will only be one public hearing, but we are going to have to have multiple meetings. The first step is we are going to have a workshop with the BOCC. The planning commission and the BOCC so they can direct us on what we are trying to accomplish. There are a number of questions in my mind of what we are to do.

Chad Whetzel – What is the scope?

Alan Thomson – What are we supposed to do? We don't know that yet.

Keith Paulson – Didn't we okay the facts and codes to go on to them? Why is it coming back around? What did we do wrong?

Dave Gibney – There are no regulations in WC about cannabis and the BOCC have established a moratorium for six months to give the process and opportunity to make such regulations.

Alan Thomson – The applicant made a strategic decision. It wasn't the BOCC that pulled the plug on this. It was the applicant's decision and they chose to not go forward with the zone change application. That was their choice. So, now we are faced with, because of that first meeting a week ago Monday, we had a tremendous amount of people who showed up for what everybody thought was going to be a decision by the BOCC on the application. That gave everybody pause that we have a lot of opposition and they are not happy. So the BOCC decided not to make a decision that day.

Keith Paulson – So, it probably would have been passed if nobody had showed up to complain about it?

Alan Thomson – Might have. Because what you did was correct. You made your decision according to the codes and to the law.

Guy Williams – But it definitely did show that we overlooked an important part of protecting our existing culture or lifestyle in WC.

Dave Gibney – That is a matter of opinion.

Chad Whetzel – According to the legal end of things and the quasi-judicial we have to go by what the code says and so we did that portion of it. We did exactly what it says but it is also true that there are a number of people in the County that are unhappy with the way the code stands, which there isn't one. They would like a code on marijuana growing and selling.

Matt Sutherland – Alan, can you clarify because this makes me have questions, if now the planning commission is going to be talking about this ordinance does this also fall under the exparte communications?

Alan Thomson – No. This is going to be a wide open process. We are going to want to get information from everybody on all angles. So, you can use that information to make your best judgments about how to put an ordinance together. It is exactly what we went through with the wind farm ordinance which took probably a year and a half and we got input from everybody. All angles and then you guys had to figure out what to do.

Keith Paulson – So, we can use our own decision on how we feel on this?

Brian Davies – For the planning commission to get into something that can have so many more facets than zoning than what we normally deal with. Are we going outside the scope of what we are supposed to be dealing with?

Alan Thomson – No.

Dave Gibney – That is the other function of the planning commission is to write that law. Not pass it but to write it.

Alan Thomson – I'll bring you back to the wind farm. The wind farm produced tremendous amount of opposition and a tremendous amount of written material that seemed very scientific against wind farms. Noise in particular

When you googled wind farms, turbines and noise the whole, page after page of the sky is falling. It was like what are we doing here? We should not allow this to happen. Then we had to sift through all this stuff.

Brian Davies – What is misinformation and what is perception?

Alan Thomson – What is scientific and what is peer reviewed?

Chad Whetzel – Hold on, in the audience, do you have a question?

Paul Mihalyov – I just have a comment. I just wanted to say something that might help you is looking at what some of the other counties around the state.

Alan Thomson – We will.

Paul Mihalyov – There are several counties in 2014 that go in front of us and they had a series of rules so there is a lot of precedence around the state for these types of ordinances.

Matt Sutherland – I'd love to actually go back in the records and see how WC voted on that measure specifically.

Alan Thomson – That information came out on Monday. I believe the number was 51.99%.

Dave Gibney – It passed stronger in Pullman but it passed county-wide. I suppose, I'm not really suggesting that we do this, it would be inappropriate to modify the agricultural code to allow cannabis processing as a conditional use.

Alan Thomson – That is one of the options that I would recommend because I am looking at Chelan County and anything to do with cannabis is a conditional use.

Dave Gibney – The whole reason this shifted is they needed to rezone to industrial to do the processing and then they were conditional use back to be able to grow it. If processing was a conditional use but in the Ag district, then we wouldn't be here.

Alan Thomson – It was brought to everyone's attention that somebody suggested in 2014 that we should put an ordinance in place but got overruled on that one.

Brian Davies – That was brought up at the meeting the other day?

Alan Thomson – No, it was never brought up in the meetings. It was brought up in a letter we received from an attorney who was looking into this matter. So, I think an ordinance is exactly appropriate. There are all kinds of options to consider.

We will pull the ordinances and code from other jurisdictions in the state and possibly from other states. Maybe from Colorado so you can get a good background on how other jurisdictions are dealing with this and scientific papers from our friends in the audience. If you have any avenues or clues to point us in that direction, we'd like to see that.

Chad Whetzel – The reality of it is we could range anywhere from prohibiting it entirely to condition uses or strict ordinances on where. Right now everyone says we are going to do something to allow it but the reality of it is in the interest of open mindedness. Obviously, the County has said they want it but in theory that we could completely prohibit it to anything in all the possibilities.

Dave Gibney – The BOCC could come to us and say to us write an ordinance that prohibits it.

Alan Thomson – The BOCC will give us the boundaries. That is the importance of the workshop we will have. They need to give us our marching orders. I talked with Art and told him he needs to be very specific as to what they want us to do.

Dave Gibney – Is there any current action in the State legislative session?

Alan Thomson – Not that I am aware of. It is on the books.

Dave Gibney - Well, I-502 is on the books but the legislature meshed the recreation on the medical last session.

Brian Davies – I think we had enough people show up to oppose something that those gentlemen felt like we need to do something.

Alan Thomson – The opponents have a good point. We don't have any real boundaries here and it just kind of happens willy-nilly and a lot of claims have been made. They need to be fleshed out.

Brian Davies – Claims have been made but no evidence.

Alan Thomson – Is it really harmful to smell the odor from a marijuana plant?

Dave Gibney – Is it any less harmful to smell that than it is from a pig farm or a dairy farm?

Keith Paulson – The WSU dairy farm got involved in it too, but those cows eat the grass anyway, so what?

Dave Gibney – They have ag spraying going on in that area with Roundup, etc.

Chad Whetzel – One thing is it will set some definitions. We don't have a lot of great definitions that we can add in but I think we could get there.

Alan Thomson – It is really advantageous to the public of WC to go through this process, because no matter of what side of the fence you are on, we are going to have this whole big public process, big debate and thinking about how to put things together. Nobody at the end of this is going to complain that we didn't do our due diligence. They might not like the outcome but we've done our due diligence.

Chad Whetzel – The outcome will be up to the BOCC. But hopefully, we can dispel a lot of bad information with data.

Dave Gibney – In the end, the wind farms were up to the courts.

Alan Thomson – Yes.

Chad Whetzel – On one of this, someone brought this to my attention that apparently the state law is written on cannabis facilities in general, and no one under 21 is allowed in for any reason. What happens if it is on fire? A lot of these rural departments have a lot of people under 21. Do we have to ID them before they go in to put a fire out and, on top of that, I have worked in marijuana fields that were burning? Do we have any provision in this County?

When I was down in California we got a letter from the Secretary to the Department of Agriculture and the incident commander that said something to the effect that we were working in an area with known marijuana that was burning, and if we get picked for random drug test or pre-employment drug test, we could not be fired or not hired based on a positive test for marijuana. So, these are some things that we need to look at.

Alan Thomson – Is that something that is within the purview of the BOCC? That seems like a State law.

Chad Whetzel – That is something that maybe our BOCC can be forward thinking and tell the state that yes, we understand that if you are buying it you have to be over 21, but it's no different than if the liquor store is on fire, I'm going to send my eighteen year old fire fighter with the crew if he is experienced.

Alan Thomson – You would have to treat it in the same way.

Paul Mihalyov – I could probably answer that. If a minor comes on the premises of the marijuana property that would be a violation on our part for letting a minor on the property. If there was an emergency such as a fire it is likely that all sorts of other things would be damaged such as security equipment and all sorts of other violations because there is a fire and it would fall on us. The fire department is completely allowed to come on site.

Chad Whetzel – It is just one of those things that has been kicked around in the fire world and maybe we need to go to the legislature and say that no one should be in trouble for emergency of any type or if somebody has a heart attack and the EMT happens to be 20 years old.

Dave Gibney –The Samaritan laws, I am sure that no one is going to arrest one of your 20- year old minor fire fighters for being on the grounds of a cannabis business.

Alan Thomson – That will be a question for Denis Tracy. Good questions and we will have an opportunity to ask and get an answer to all of these questions. I perceive that we might be meeting more than normal over the next six months. Guy, are you going to be home?

Guy Williams – I am still working down at Cannon Beach.

Alan Thomson – We will need your expertise.

Guy Williams – It will be interesting to see the parameters that the BOCC will request and how we approach that. It is obvious that there were enough influential people that were excited about this. They took the avenue that they have.

Alan Thomson – I think they made the right decision and we need to put an ordinance in place. It will become clearer after we get past Monday and that is a tricky one to figure out who gets caught in the net and who doesn't.

Guy Williams – We will put together the best language we can on the data we have to sift through and in the end the BOCC can still pass what they want. We are going to do the ground work.

Alan Thomson – So, that's the latest and greatest for us. We will have a long journey in trying to figure this one out.

Guy Williams – Are you going to go to two meetings a month?

Alan Thomson – Possibly. I'm going to wait and see what the BOCC wants to do, after we have the workshop with them and then just size up the task. How long do we think this is going to last? We have to make a decision on the time of the workshop. We are still at the moratorium at the moment. Then on Monday I'll ask them when. We can meet twice a month.

Keith Paulson – We won't start this until they get all their ducks in a row.

Alan Thomson – Right.

Guy Williams – So, we'll get twice as much pay! On a total different subject. Do you know anything about Hawkins?

Alan Thomson – You know that Hawkins doesn't own the property anymore.

Guy Williams – No, I didn't know that.

Alan Thomson – I thought you were a local guy! The Druffel's own that property. Essentially, that application from the Hawkins Group has gone away. There is still the question of the money that was put aside for that and that has not been totally figured out yet.

Dave Gibney – It is a substantial chunk of .09 dollars sitting there.

Alan Thomson – The BOCC at the time allotted \$9.1 million for infrastructure that was tagged onto the agreement and then then there was another \$5 million that, that one went away, but the original one is still there.

Guy Williams – But that isn't tied to Hawkins?

Alan Thomson – As a lay person I think it is tied to Hawkins but this is in the hands of all the attorneys now and I haven't heard a legal opinion yet.

Chad Whetzel – We might be able to afford gravel for the roads yet this year.

Dave Gibney – That .09 money is limited to what it can be used for if it is freed up from the Hawkins but you still have it for the purposes of economic development.

Alan Thomson – The Druffel's own that property now and they are searching for a plan. They don't have one yet. At least nothing concrete.

Guy Williams – What was the price breaker on record?

Alan Thomson – I didn't look at that. I don't know. I didn't look at that. They probably got a decent price and they got the water rights with the land. That was a point that needed to be clarified. When Roy Druffel came in over a year ago and told me about this, and was asking me what he could do with it, I told him that one of the first things is he needed to get his attorney on the water rights and make sure that he has the water. Then probably a couple of months ago, that was included and they do have the water.

Brian Davies – So, what happened with the water rights trading that went on. Did that go back to?

Alan Thomson – No, that stayed with the property but the question that I raised to Roy Druffel was to make sure that when you bought that property that that water right comes with it. They had to go and investigate that and it took time for the attorneys to work it out with Ecology.

Keith Paulson – You need the water if you are going to develop it into something. If you are going to farm it why do you need the water?

Alan Thomson – The Druffels are not intending on wanting to farm it.

Guy Williams – Cannabis.

Alan Thomson – They haven't come up with any plans yet but they have all kinds of thoughts and ideas which might involve a code change.

Dave Gibney – You mean and not to incorporate the town of East Moscow?

Alan Thomson – A special district perhaps.

Guy Williams – Hey, how about a super mall? The biggest issues is what are they going to do about sanitation? They have water but still have to do the other half.

Chad Whetzel – That will be another set of settling ponds within the County that we will have to deal with later on, too.

Alan Thomson – So, that is up to speed on what I know right now. I just wanted to introduce what I know and what you are going to be tasked with putting an ordinance together. When I know more, I will let you know.

Chad Whetzel – Anything else then?

**MOTION** by Guy Williams and seconded by Matt Sutherland to adjourn. Motion passed.

The next meeting will be **April 17, 2019**, because Alan Thomson will be in Scotland the first week of April. The possibility of meeting on April 3<sup>rd</sup> is still on the table. Will discuss on March 20.

**8:00 p.m. – Adjourned.**