

**WHITMAN COUNTY
PLANNING COMMITTEE**

**Workshop
July 17, 2019**

MEMBERS:

Chad Whetzel, Chair

Brian Davies

Matt Sutherland (via conference call)

Dave Gibney

Keith Paulson

Staff: Alan Thomson, Whitman County Planner; Katrin Kunz, Whitman County Assistant Planner; Ginny Rumiser, Clerk.

Audience: Ken Duft; Paul Mihalyov; Julie Mohr; Kathleen Lloyd; Aaron Fosback; David Gang; Carla Burton Kiefer; James Burton.

7:13 p.m. – Chad Whetzel opened the workshop. Discussion on the cannabis ordinance.

Alan Thomson – I changed it to marijuana instead of cannabis. Everything seems to be kind of, for instance, the definitions of the producers and processors Tiers 1, 2, and 3 all calls it marijuana. I had a mixture of cannabis and marijuana and I think to be consistent to land on one or the other and my proposal is to use the word “marijuana,” if that is okay with you guys.

Chad Whetzel – I don’t have a problem with it.

Alan Thomson – So, I changed it back to marijuana. I sent you the latest and greatest of this ordinance and there have been a number of changes since the last time. I will hand it back to you for discussion. You see what is proposed now so maybe we can go down through the pages and have a discussion about things.

Chad Whetzel – That works for me.

Matt Sutherland - I have a quick question. Alan, you sent an email with Commissioner Kinzer’s clarification to change the secondary education definition. The specific request was to add, “*or any higher education institution that offers a running start program to secondary school students where secondary school credits are earned by the students.*”

In the previous minutes I think it seems to have a conclusion on the conversation on higher educational institutions with learning start programs, and on your current version you did not include that. Is that because you are waiting for us to discuss it or because you didn’t feel it should be included for a specific reason?

Alan Thomson – That is because I just got that email today and it is something that we will discuss right now, since you approached the subject. Everybody received that email from Mr. Kinzer?

Dave Gibney – Yes.

Alan Thomson – So, he wants to add something to the definition of secondary schools.

Dave Gibney – It seemed reasonable to me.

Matt Sutherland – I didn't see any problems with it and I agree with Dave. It makes a lot of sense.

Chad Whetzel – I've read it and I don't remember exactly what it was. I can't pull it up.

Matt Sutherland – He was suggesting adding the definition of Secondary School to include, *“or any higher education institution that offers a running start program to secondary school students where secondary school credits are earned by the students.”* Basically, anywhere like under 18, so it would be expected to attend the school.

Chad Whetzel – I suppose. I don't have a problem with it. Does anybody else?

Brian Davies – Not at all.

Alan Thomson – This potentially could cause a conflict in interpretation of secondary schools and LCB's regulations about 1,000 feet away from a school. I have not seen any deviation from the definition of secondary school in anybody else's ordinance in the State of Washington.

Dave Gibney – The dairy is WSU and if you say WSU is a secondary school because it has running start they are affecting all campuses in the State of Washington or is there something about, I don't know if there are any classrooms out at the dairy.

Chad Whetzel – Yes, there are. So, maybe I am incorrect in what I thought but they have their permit under the old rules. So how would this currently affect them? It can't, right?

Alan Thomson – It wouldn't, no, but it raises the question as to LCB and their regulations and issuance of their permits.

Chad Whetzel – Okay, that is where it would affect them.

Alan Thomson – Potentially.

Dave Gibney – Commissioner Kinzer was kind of explicit in his, let's try this and see what the litigation comes.

Chad Whetzel – I guess my opinion is they were grandfathered in under old rules and I don't see the sense in penalizing them after the fact. They did everything correct and I don't want to see them penalized. Not just them, anybody.

Dave Gibney – Aren't they covered under your last section of the pre-existing,

Chad Whetzel – That's what I thought too.

Dave Gibney – So, whatever we do in here isn't going to make any existing plans non-conforming off the bat, is it?

Alan Thomson – I don't know. Which is why I throw that out.

Matt Sutherland – I have a clarifying question. In Item J. where it says, "*Licensed marijuana producers, processors, and retailers must be located no nearer than 1,000 feet from elementary or secondary schools....*" If we do alter the definition at the commissioner's request, how does that affect future research opportunity for the university if they do have those type of running start programs? It means that because it would be technically school property so that kind of puts you in a sort of a paradoxical situation where you have to build 1,000 feet away from your property. I'm just curious if that is a problem to come?

Alan Thomson – I am looking at the definition of secondary school. Is there a conflict here? What I am hearing is that a University or a dairy associated with a university is now going to be called a secondary school. Was that approved by the Washington State Superintendent of Public Instruction which is a part of the definition of secondary school and primary? So I'm just throwing that out there.

Dave Gibney – So, what you are saying is that you took this definition from the examples and existing other jurisdictions ordinances in the LCB?

Alan Thomson – Right. So, does the Washington State Superintendent of Public Instruction recognize a WSU Dairy as a secondary school?

Matt Sutherland – I would say that is a fair point. The superintendent has a couple like we have a definition of these things, I wouldn't want our ordinance to interfere with the definitions that are expected. I think if that were the case, maybe just brought it down and then change the definition that conflicts with something with the State of Washington in general understanding.

Dave Gibney – I am beginning to understand Alan's conflict and it definitely is putting an addition into our ordinance that would presumably affect the ability of landowners adjacent to WSU anywhere in Whitman County. Because it lets you do something to further clarify that, it is where those running start students are expected to be and that would be classrooms. Then if

there are also classrooms at some of these research or dairy or whatever. It is not just the dairy. It is the farms and everybody else.

On the other side of that is that it is an explicit request from one of the commissioners and so if the intent is to keep these types of businesses away from where under-aged individuals and students are likely to be, then it is on the face of it reasonable. Again, if it could be further clarified to,

Matt Sutherland – My concern would be not necessarily be that it interferes in the business aspect, but generally like where WSU property is, isn't always the campus centrally located in the city, but at property in different areas. How do we determine which parts of those properties are secondary schools, then you can't have marijuana related research projects around. I think that would be quite a hindrance.

Dave Gibney - On the face of Commissioner Kinzer's explicit first draft of language it would be WSU anywhere.

Chad Whetzel – But the one thing you said, Matt, was the research. Which this is not an ordinance about research. This is about the growing and producing, so I think as far as what WSU does in research that is a whole different thing,

Matt Sutherland – In research, I did not think that their research is in that growing different strains or whatever ends up happening in the future of WC that could be a potential. That's where I am thinking.

Dave Gibney – It would prohibit a private research or other entities research from encouraging next to WSU.

Chad Whetzel – Typically with most, not all, WSU does have its own wheat farms and those such things, but a lot of research is done wherever it is being grown. So, it wouldn't preclude them from going to the other businesses and working with them in partnership. It just couldn't be adjacent to those chunks of ground.

Alan Thomson – Are we going to ID these chunks of ground so that when an application comes in we know where they are?

Dave Gibney – Again, as the language that is currently proposed is WSU property because WSU definitely does do running start. Therefore, any piece of property owned by WSU within WC you could not be whatever you are 1,000 feet adjacent to.

Keith Paulson – So does that mean that somebody that wills their land to WSU that's then WSU property?

Dave Gibney – Sounds like it.

Keith Paulson – So, a farm out in the country that somebody wills,

Dave Gibney – As long as they will it.

Keith Paulson – They own a lot of ground that we don't know about.

Chad Whetzel – One of my questions for Commissioner Dean would be, I understand the retail selling of marijuana if you don't want to be next to a school but if we adopt these pretty much as they are, what is the problem? I guess because mostly it is going to be indoor, there will be no smell theoretically, all these things. You're not going to have kids coming in. They are pretty secure facilities. What is the thought behind prohibiting that?

Alan Thomson – In the LCB language it says that none of above can be within 1,000 feet of all of these areas, like elementary or secondary schools, playgrounds, churches, childcare centers. Essentially, they don't want marijuana near kids and I think that is the intention.

Dave Gibney – We are adding other facilities over and above the LCB.

Alan Thomson – Right, and we can do that. I don't think there is any question about doing it but I'm just having difficulty with WSU as a secondary school.

Dave Gibney - Can we just table, as we said it sounds like a good idea. Let's get some more input from the BOCC?

Chad Whetzel – Maybe we need the opinion from Denis, too.

Alan Thomson – I already asked him and haven't heard back yet.

Dave Gibney – Well, you just got this today.

Alan Thomson – Yes, right.

Brian Davies – Well, get on it, Alan.

Alan Thomson – Sure.

Chad Whetzel – So, we will get to Matt's questions in a little bit too. Let's just start at the beginning and move through this and see if we have any issues with any of the changes. Let's start at the top and the very first one with Section 19.64.010 - Purpose and Intent.

Alan Thomson - After your comment last time, Chad, I tidied that up a little bit and eliminated "*recreational and medical marijuana*." So, if you read that sentence now, does that sound okay to you?

Chad Whetzel – Yes, that is okay with me. Does anybody else have any? No changes in the Applicability. Does anybody have comments or anything that they discovered in that? Okay, we will move down to the definitions.

We will go through these one by one. The definition of *Agricultural Activity*.

Dave Gibney – Is there a portion of the County code where you do define agricultural activity that you might reference as in “*not considered an agricultural activity*,” governed under citation of the code on agricultural activity?

Chad Whetzel – Anything else on Agricultural Activity? Let’s move on to *Child Care Center*.

Matt Sutherland – That definition is tied into another definition from Chapter 170-295 WAC.

Chad Whetzel – Yes, me too. Okay, *Elementary School*.

Matt Sutherland – The same thing. It is tied into another definition of the Washington State Superintendent of Public Instruction.

Dave Gibney – These three tiers of marijuana producer, those come from LCB?

Chad Whetzel – No need to spend time on those unless someone sees an error.

Keith Paulson – The question I have is it says, elementary schools and it is for the first four to eight years. So secondary school is grades seven to twelve. Is that an overrun or am I reading that wrong?

Dave Gibney – I think that different districts make that split at different levels.

Matt Sutherland – Right, Junior high or middle school for secondary education. Right?

Chad Whetzel – I assume that definition came from the Superintendent of Public Instruction, or whatever they define it as.

Alan Thomson – It came from another ordinance.

Keith Paulson – I’m just saying that elementary school up to eight years and the secondary it says grade seven.

Dave Gibney – It looks like it should start at nine, is what you are saying?

Keith Paulson – Yes.

Dave Gibney - Some schools don’t make that split. Today we are not talking of having a difference between one or the other on how this law is applied.

Chad Whetzel – We just want to make sure our definitions are correct. It is a little odd.

Brian Davies – We should footnote that and see if we can come up with a better definition.

Dave Gibney – Or point it out to the LCB and have them explain it to you.

Chad Whetzel – There may be some reasoning behind it that is perfectly sound.

Alan Thomson – I will check into it a little bit more.

Chad Whetzel – So we have the tiers of marijuana producers, 1-3, marijuana, is this all,

Alan Thomson – It comes from the RCW's. There is another RCW that is not mentioned here so it all was taken straight out of the RCW's.

Chad Whetzel – Just the way that I am reading this it looks like the citation with the RCW at the bottom is just for that (2)?

Alan Thomson – Just for industrial hemp.

Chad Whetzel – So if we should want to cite any RCW's for that definition, it should be up there with the main body. I don't know if we need to cite RCW's for every one of these or not.

Alan Thomson – It is a choice to say yes, or no. Typically, you don't have to. A definition is a definition. If we agree to it that is what it becomes. That is coming from a bunch of other ordinances as well, as a consistency there.

Chad Whetzel – Are there any questions about the definitions of marijuana? Okay, *Marijuana processor*.

Dave Gibney – I assume these came from LCB language. Unless there is something that is really odd that we should stick and be consistent with.

Alan Thomson – Yes.

Chad Whetzel – How about the producer retailer?

Brian Davies – If they are known definitions that are out there in use.

Chad Whetzel – We will move down to the *Playground*.

Keith Paulson – Pretty straight forward.

Chad Whetzel – Okay, *Public Park*.

Keith Paulson – Or can you call them playgrounds, too?

Chad Whetzel – The only thing that I'm wondering on the public park, would that also, recreation can be pretty widely defined. Anything along the Snake River is recreation. Of course we have other rules and regulations there but any of the DNR ground where you can hunt on would be considered recreation.

Alan Thomson – I think the key there is public. Public park. The meaning of "public."

Dave Gibney – Well, DNR lands that you can hunt on would be deemed public.

Brian Davies – But they are not maintained for that purpose of recreation.

Dave Gibney – That is not the purpose for which the DNR maintains that land.

Bria Davies – Like Boyer Park is maintained as a park. Municipalities have parks that are maintained as parks and therefore budgets are attributed to maintain those pieces of land that are set aside for that purpose. I don't think you can confuse public land out there like DNR or BLM or etc.

Chad Whetzel – *Secondary school*. That one we have to put a question mark by and do more research. Is that what we agreed on?

Brian Davies – Why we need to amend the definition to include that language. I guess now I am wondering what is the intent of adding that language?

Dave Gibney – Commissioner Kinzer's intent is clear to make WSU something that is not going to have the marijuana, retailer, and producer within 1,000 feet of it. But whether the implications of that are fully thought out.

Chad Whetzel – So, we need to concur with more people about that definition. We'll move on to Section 19.64.040 – Marijuana Production and Processing permitted Zoning Districts

Dave Gibney – That is the way we said to split it up during our last discussion. Looks good to me. Okay, so what about that funky little highway whatever type, that, are all of the zoning districts of WC mentioned somewhere in here or should, I remember what we tried to be done with the Harms Road piece.

Alan Thomson – Highways and byways.

Dave Gibney – Would you want to put that in Item C. or exclude it from,

Alan Thomson – Probably do that, add that in. I can't see that happening but you never know. You know how difficult it is to change a zone in WC.

Dave Gibney – I’m asking more the completeness question. Are there WC zones that are not referenced in any one of these sections?

Alan Thomson – Just the highways and byways one so that can be added in.

Keith Paulson – What about unincorporated towns?

Alan Thomson – That is addressed further down.

Chad Whetzel – So now we are on Section 19.64.050 – Development Standards. It looks like there were no changes until we get down to Item E. Basically that is defining our indoor marijuana production.

Keith Paulson – So, it says, “...enclosed by a physical barrier...” Is there any regulation on that and is it 4’ or 6’ high?

Chad Whetzel – It is further on down. I do have one question on the, “*non-ridged greenhouses, other structures...*” How do they define “non-ridged?” What are you thinking of? Because it has been a long time since I’ve been out there, but the Airport Road facility has poly carbonate, I believe, roofing on that allows the sunlight through. They also make a very similar building company named, I can’t remember it. Basically, it has steel walls with a fabric roof and I can see some of these companies using something like that.

Dave Gibney – I would say the Airport Road function is an actually entirely enclosed building. It just happens to have transparent roof.

Chad Whetzel – All of these buildings are entirely enclosed but it says “rigid,” so I am trying to figure out,

Dave Gibney – So, they don’t constitute outdoor growing so they don’t fall into this on-rigid.

Alan Thomson – Does it really matter, because all the indoor production has to be a completely enclosed building with filtration systems in there.

Chad Whetzel – You’re right, I see what you are saying.

Dave Gibney – Isn’t non-rigid something like a bunch of plastic hoops that they put sheeting over?

Chad Whetzel – Right, someday when we talk about outdoor, you may do something like that over and it would be considered outdoor still.

Brian Davies – Are we taking questions? There is a hand up in the audience.

Dave Gibney – Can we run through all these corrections and then take the questions? I'm not going to say that is the way it has to be, but somebody's got to get the microphone to her.

Chad Whetzel – Can you hold your thought for just a minute?

Kathleen Lloyd – A couple of things, actually, I'll just try to do this one right now. But in Item B. outdoor marijuana you want production and processing together in an agricultural district. If I remember correctly everybody has those in separate, they don't have processing in an ag district. You always have to change it to light industrial because there is a different level there, chemical use. Is there not chemical use? It's not an agricultural,

Chad Whetzel – Can you speak a little louder, please?

Kathleen Lloyd – Okay, processing is not an agricultural activity. There's machines and chemicals and things like that and it usually is in a light industrial area. I don't think it is ever in an ag district anywhere that I am aware of. So, that was over in Item B., outdoor marijuana.

Dave Gibney – The question would be is there outdoor marijuana processing?

Kathleen Lloyd – Is it lumped together in other places too? Because indoor did the same thing in Item A.

Chad Whetzel – So, we are talking about indoor marijuana production and processing in all districts. So, any zone where those are allowed must be enclosed.

Dave Gibney – Yes, right now we are saying that in those districts in the commercial and the ag district processing would be permitted. I think that is good.

Kathleen Lloyd – So, you would allow processing in an ag district? That is a change from what most people do.

Alan Thomson – No, I think we need to clarify something here. The agricultural district as it is called in Whitman County, you have to think about just Whitman County and not other places. We allow agricultural and industrial type of business activities in what we term the agricultural district. It is just not agriculture only. There are a number of permitted uses and a number of conditional uses.

So this would fit in, all processing and producing would be fitted in to a conditional use which would be allowed in the agricultural district. We don't need to change it to a light industrial district. That is one possibility. But we are not going to do that. We are going label it as an agricultural type of business although it is not defined as agriculture. It fits in with the agricultural district and it will go through the conditional use just like a number of other things that don't appear to be like agricultural. As far as I am concerned it fits in perfectly with that.

Dave Gibney – The second question under Item B. is and processing. Is there outdoor processing, period?

Keith Paulson – That is what I was wondering. If you're on machines, etc.

Dave Gibney – Nobody has their pot out there in the field condensing resins out of the buds. That is all indoor, so that “...~~and processing~~...” should be stricken from that.

Alan Thomson – Yes, I agree. Processing is not going to happen outdoors. It will happen indoors. That is Item B. under Section 19.64.040. I keep looking at Item B. down below.

Chad Whetzel – Yes, so do I. I was confused. Okay, so moving along.

Dave Gibney – We were down on Item B. on Section 19.64.050 – Development Standards.

Chad Whetzel – Yes, okay. Kathleen, do you have any questions or comments?

Kathleen Lloyd – I think the one comment I had when you were talking about secondary schools instead of trying to, there was a concern that we didn't want to change the state definition of a secondary school. I think my suggestion would be just adding its own section where we could say, “facilities where running start classes and secondary students are attending on a regular basis,” could be included in that. That would satisfy that we are not changing a state definition. We are just adding its own section of definition. That would be my suggestion on that one.

Chad Whetzel – We will get some more input and then we will take that into consideration, too. So, now we are up to Item F.

Dave Gibney – The only question I have here, I remember one of the Spokane people talking about solution is not,

Alan Thomson – That was a WSU professor.

Dave Gibney – Right, and just pumping it up higher up just moves the problem somewhere else. I don't know if that is a valid odor control, “...*use of vertical exhaust vents or stacks...*,” as to whether or not that is useful to be there. I don't know.

Alan Thomson – That is from Spokane County's ordinance so, you choose.

Chad Whetzel – They are talking about using some media to absorb the smell as it is discharged through those places.

Dave Gibney – No, that is the first, “...*use of carbon absorption media or other controls at all exhaust air discharge points...*” is a separate thing from “...*use of vertical exhaust vents or*”

stacks and/or...." The comma separates each of the clauses and I'm, if we were talking about flooring or smoke, just popping it 60 feet in the air doesn't solve the problem.

Chad Whetzel – Okay, you're right.

Matthew Sutherland – Are these similar expectations to other agricultural productions that have others or are these about the same, just a little bit of a burden with the relationship?

Dave Gibney – There is absolutely nothing relating this between what this is expected here and what is expected from other agricultural activities. That first bit is explicit in saying this isn't agriculture.

Chad Whetzel – Right.

Brian Davies – We have to stick with that, don't we? We are going to state that in our definitions, this is not an ag activity.

Dave Gibney – I know that's where we are going and I don't think it is the right, the Linden Tree right outside of French Ad is in full bloom right now. Lots of people love that smell. I don't.

Alan Thomson – The problem is if you go with that then it is an outright permitted use in the ag district and we are sitting here wasting our time. That's the other side of the coin. So we've been told we should put an ordinance together.

Dave Gibney – I know. That is why I make comment and I make it again but I am going to help write a defensible law, or try to.

Alan Thomson – I just wanted to point out on that dilution is the solution part. Professor Jobson was not joking by the way. He believes that and another professor who is in the audience doesn't believe that. So, "he said, she said," I don't know which is correct but there are two opposing opinions here. He wrote me an email after that and he,

Dave Gibney – It seems that no matter what, I'm not saying take it, I'm saying I don't think it is going to be effective but I'm not going to fight for it to be taken out, In the end, if this ever comes to litigation, the clause that will get litigated is "*....unreasonably infringe....*"

Alan Thomson – We can take that out, and you're talking about the vertical exhaust vents or stacks, and we can strike it. We've got a lot of other things covered there.

Brian Davies – Can't we always add it back if we need it?

Alan Thomson – Yes, if we so choose but right now it seems like maybe we should strike it.

Chad Whetzel – If you have to have the absorption media control to all points of discharge that would include, then if you decide you wanted to do a stack to try to eliminate that you still have to have the odor control as it goes out it.

Brian Davies – The points of discharge, that’s the crux right there.

Alan Thomson – The idea here is to not allow venting from indoor these buildings. So the exhaust stack seems to suggest you can vent it out into the atmosphere. We are trying to prevent that. We don’t want that to happen.

Dave Gibney – There is a “*may include,*” so it doesn’t say that everything is going to have carbon filters. What we are really saying is that I just don’t think the vertical exhaust is going to do, when I think about it, it probably will be quite effective in moving it away from the nearby neighbors.

Alan Thomson – We don’t want to have any exhaust.

Chad Whetzel – So, just strike the “*vents or stacks*” and I think we are good there. So, Item G. is pretty much the same as everything else, but I have a question. We say everything has to be full cut-off, does that include facilities that like to fly an American flag at night? Put that away for future thought but technically the way it is written, even the Fairgrounds can’t run that flag at night with the light on it. It has to have a light on it if you are going to have it at night.

Dave Gibney – The light could come from above.

Chad Whetzel – It is called the sun.

Dave Gibney – You could put a spotlight above the flag,

Chad Whetzel – You could and it would be shining down.

Keith Paulson – That’s a can of worms.

Chad Whetzel – We can discuss that later on. We will move on to Item H. now. “*The Board of Adjustment or Hearing Examiner...*”

Dave Gibney – Basically, what you’ve done is added *prevailing wind direction* and increased from 100 to 500.

Alan Thomson – That is still, the distance is kind of a place marker. You guys can suggest whatever you want here.

Chad Whetzel – Maybe its fine but we say at one point that it shall be no less than 500 feet and then further on it says it could be reduced by 50%. Shouldn't we put the minimum that it can be reduced to first and then say, but everything else should be at the desired?

Dave Gibney – I think you should know what you are cutting in half before you start cutting it in half.

Chad Whetzel – It just seems odd that it says “*shall be no less than,*” and then it says but you can cut it in half.

Ginny Rumiser – That is the way the building code reads.

Alan Thomson – And variances as well.

Chad Whetzel – If that's the way everything else is written, I'm okay with it. We have a couple of questions from the audience.

Alan Thomson – That would be up to the BOA to make that determination.

David Gang – I'm from WSU. I've got a letter that I was going to give you later. I was asked last time to find a statement from the university. I brought something where we talk about research that we are currently performing to address this question. Do you want me to do that at the end?

Chad Whetzel – Okay, thank you. Just give us a couple of minutes. We'll come back to this.

Dave Gibney – I think as a placeholder that is a reasonable thing and my question is when you get down here later to your sizes those are all feasible. If you've got a 2-acre parcel and there is some land that is within 500 feet of that doesn't fully cover the whole area of 2 acres.

Alan Thomson – So, there is a minimum of 2-acres and that 2-acres is standard for the Department of Health and a creation of a parcel for whatever reason.

Dave Gibney – Okay, if I have 2-acres and then I take the 500 feet off of all the edges, how many acres, how much square footage do I have left for the function?

Keith Paulson – You can cut that by 50%.

Alan Thomson – The 500 may be a question mark right now.

Dave Gibney - When we come to this, our setback, we should adjust the minimum size such that we are not actually saying that you can't actually have that on minimum size. The minimum size should be big enough for what the setback allows.

Alan Thomson – So, the original number there was 100 feet, and that again was Spokane County.

Dave Gibney – I’m not saying do any changes or mess with it right now. I’m just saying there should be consistency between the minimum size and the parcel size.

Alan Thomson – Okay. That ties into the next one. Item I. Because we are talking about minimum. So, this is just outdoor growing. So, what should the size of the parcel be?

Dave Gibney – I don’t care right now. I’m just saying that Item H. and Item I. in their final form should not conflict. You should not do a setback such that something of your minimum size is too small so the setbacks could never be accomplished.

Alan Thomson – Okay, then have them partitioning off for indoor grow and outdoor grow. So, indoor grow will be different because everything supposedly is going to be contained, if we are working this properly. Therefore, the parcel size can be smaller and the setbacks can be smaller.

Dave Gibney – Right now you are not doing that.

Alan Thomson – Right, what I am suggesting is to do that. Then the outdoor grow is probably the one we will have potential difficulties, so larger acreage and bigger setbacks.

Dave Gibney – You could probably do that in Item H.

Alan Thomson – Separate indoor and outdoor. So, going along with that thought, so indoor if the minimum parcel size is 2-acres, it can be more than 2-acres, obviously, but so we have to calculate setbacks. So, maybe 100-foot setback for indoor grow would be okay.

Keith Paulson – What do we have for houses?

Alan Thomson – It depends. If it is next to ag land, a house is 200-feet. A residence to ag land, 200-feet or 100 feet with a waiver from the ag landowners.

Keith Paulson – So, can you do the same thing with that?

Dave Gibney – Yes, and what if I want to build a gas station or a store or something not a house?

Alan Thomson – That 200 only refers to residences. So, any outbuildings or accessory buildings is 20-feet.

Dave Gibney – In a commercial zone it,

Alan Thomson – Commercial zones have different setbacks. I’m talking about the ag district.

Dave Gibney – I know, but if I want to plan a retail storefront in a north-south commercial district, I don’t know of any good reason to restrict that any more than I want to put in a gas station or a bookstore.

Alan Thomson – Anything that is non-residential is 20-foot side and rear depending on the road. Front major highways such as SR 270 would be a 35-foot setback. On non-major roads is a 20-foot setback to the front.

Matt Sutherland – I have to go and I’ll catch up on the rest of the discussion with the minutes, particularly on Item M. But thank you guys for letting me call in today. I appreciate it.

Chad Whetzel – Okay, you’re welcome.

Alan Thomson – So, indoor.

Dave Gibney – I think the indoor stuff should be very similar to any other building in the zone that is being discussed.

Alan Thomson – We do have a statement saying the underlying zoning has to be considered. You have to take that into consideration. That would mean either a 35-foot or a 20-foot setback to the front, depending on what road you are fronting, and only 20-feet on the sides for an indoor grow operation.

Dave Gibney – We are already trying to make sure you can’t smell the thing no matter where it is.

Alan Thomson – I’m going to suggest maybe you should push that further. Because this is an independent ordinance and it is essential for escapes.

Dave Gibney – I would have no problem with repeating the setback language from those zones in this ordinance, if that is what you are saying.

Alan Thomson – Okay, so a minimum, and here is the out. It is up to the BOA, depending on a case-by-case basis, what is next to this location. If it is a residence, maybe it needs to be pushed backwards and that would be up to the BOA who would have the latitude to do that depending on the circumstances.

Brian Davies – The residence in an ag zone is only an accessory use, right?

Alan Thomson – No, a residence is a residence in the ag zone,

Brian Davies – It can’t be called residential, can it?

Alan Thomson – It is not called the residential district but it is a house. You want to keep things further away from houses.

Dave Gibney – How often does the BOA get to say, normally it would be 500-feet but we are going to hold you to 1,000? Where normally it would be 20 and we will hold you to 100?

Alan Thomson – We don't have anything like that right now. This is entirely new.

Keith Paulson – So, what if I want to put it on my heavy industrial lot. Is the setback like 10 feet on that?

Alan Thomson – Yes,

Keith Paulson – So, it could be 20-feet from the neighbor.

Alan Thomson- Yes.

Dave Gibney – I'm trying to find in my mind any good reason to make a retail or a processing of marijuana building any more or less restrictive than any other retail or processing building in the zone.

Alan Thomson – That's one option. But we are dealing with something that might be considered different than anything typical. What if we do get escaped odors? Accidently or faulty equipment or whatever.

Dave Gibney – Then they are in violation of the order. Would it matter how far away the 10 or the 20-feet is if the odor control isn't working?

Alan Thomson – A hundred feet might make a difference. We can do this differently. That is the purpose of this ordinance. It is specific to this subject matter. Think of wind turbines. We are not going to have a 20-foot setback from a 450' wind turbine to adjacent landowner. So, we craft it according to what we are dealing with.

Dave Gibney – My building shouldn't be able to fall on my neighbor. I've made my point.

Chad Whetzel – I do agree with Dave, we have to get the setbacks in alignment with whatever the minimum acreage is, because if you have a 500-foot setback on all sides, two acres isn't going to cut it.

Alan Thomson – I think we have already solved that one because we are going to create an indoor setback and outdoor setback. I'll get that done for next time.

Dave Gibney – It is clear that the indoor setback is going to be smaller than the outdoor setback.

Alan Thomson – Now it is just a question of what it is.

Keith Paulson – We could be lazy and just make it to whatever zone it is in. But I'm not sure that is a great idea.

Alan Thomson – You could do that. That's why we are here, so you guys can figure it out.

Dave Gibney – I think we could be lazy and set it at whatever the current zones are repeated in this ordinance and let the changes happen later.

Alan Thomson – So, no resolution on the distances here? We will save that for another time.

Dave Gibney – Well, leave it at 500.

Chad Whetzel – So, we will move down to Item J.

Alan Thomson – Well, are you okay with the 10-acres for outdoor production? We are talking about creating a different parcel and the minimum size is going to be 10-acres as it is written down here.

Keith Paulson – I agree with the 10-acres.

Chad Whetzel – I don't have a problem with that as long as the setbacks work out fine.

Alan Thomson – The idea there is to have a larger lot so that maybe you can concentrate in the middle away from your property lines so it puts it further away from adjacent property lines.

Chad Whetzel – It will depend on the particular ten acres.

Dave Gibney – This is the only thing you can do on this parcel. Is that unique to this ordinance?

Alan Thomson – It is unique to this ordinance. Mark Storey brought up a good point. So, that language comes from another ordinance but we can change that. How about if you've have 10 acres why can't you farm it, the rest of it? I didn't think of that, so what do you think?

Chad Whetzel – Oh, so if you were growing marijuana on say an acre in the middle of the 10 acres, you could grow buck wheat around the outside if you want to or whatever?

Alan Thomson – Otherwise, you will have nine acres of weeds.

Dave Gibney – Actually even CRP wouldn't count.

Keith Paulson – It is their land and they should be able to grow what they want. Whether it be wheat or alfalfa.

Chad Whetzel – Is there any conflict? I can't think of a conflict with the zoning.

Alan Thomson – Somebody might want to put hops on there.

Chad Whetzel – You can't. The LCB says you,

Alan Thomson – What if you've have ten acres,

Dave Gibney – What if you have ten acres and I put my house in this corner and 500 feet from all the edges over there and I've got,

Chad Whetzel – If I remember correctly, the LCB says absolutely no dwellings.

Alan Thomson – Wait a minute, it says, *“No marijuana producers, processors retails shall be permitted within a dwelling unit.”*

Dave Gibney – It doesn't say you can't have a separate growing unit on the parcel. For that matter, if it is the same owner, why would you not want to allow that?

Paul Mihalyov - My understanding is that you put a fence around the licensed area and outside of that fence is not considered under the LCB's jurisdiction because you are not growing that. So, if you happen to own the land outside that fence, I don't think they really care what you do with it.

Chad Whetzel – We need to put more research into this, Alan.

Alan Thomson – I've got, I will play devil's advocate. Property can change hands so what if some other party buys that house later on down the road and they don't like it and all of a sudden they start complaining.

Dave Gibney – Can they buy the house without splitting the parcel?

Alan Thomson – They may be able to split the parcel.

Dave Gibney – Then you can't grow marijuana on there anymore and you selling it has voluntarily changed the conditions and you don't get protected by grandfather laws.

Alan Thomson – It just seems safer if you allow ag activity and nothing else, whether or not they wanted to have a business there. I think there is a good reason why that language is in there but ag activities seems fine. You can crop it. Why not?

Dave Gibney – I think you would want to be able to crop it. You don't want ten acres minus the marijuana plot to be weeds.

Alan Thomson – So, just add in there, farming, you can farm it. Stand-alone legal parcel. No other uses other than agriculture.

Chad Whetzel – Okay, Item J. *“Licensed marijuana producers....”* Any questions or comments on that?

Dave Gibney – Are you going to add community centers or some of these others into the definitions? You did the ones that are in black.

Alan Thomson – Those were Art's suggestions.

Chad Whetzel – Where are we defining a community center? In previous discussions he mentioned things like the McGregor head office but I don't necessarily see if we are going to do something like that we need to come up with a generic terminology. I don't want to single out individual places. Are you going to include the Grange Halls in that, etc.?

Dave Gibney – These things should be defined somewhere the new ones that have been added by Art.

Alan Thomson – Do you want definitions of those?

Dave Gibney – We didn't have definition of elementary before and now we do.

Chad Whetzel – Yes.

Alan Thomson – This is where Art suggested, and I didn't put it in, public recreation lands, BLM, DNR, WDFW, and all the good gathering areas. Fairgrounds, I think the Fairgrounds is a good idea.

Brian Davies – Yes, but all the other public lands?

Keith Paulson – I'm not sure we can regulate it because it is the State's.

Alan Thomson – We are regulating in the sense we don't want something close to those lands.

Chad Whetzel – What if they come back and decide to change their minds again like the Army Corps has done so many times and they want to take more ground and now you have a facility near that that wasn't before.

Brian Davies – I think geographically we are going to be limited if we are talking about that kind of property.

Dave Gibney – I think it is really a stretch to try and include generic public BLM, and DNR.

Brian Davies- Nobody is going to site a facility down between the Port of Wilma and Wawawai Canyon. There really is no public land. The Corps have taken it all.

Chad Whetzel – Theoretically, there is the mobile home park down there for sale. That is going to be bumping up against,

Alan Thomson – There are no houses on that parcel.

Chad Whetzel – No, I know.

Alan Thomson – It was zoned to a residential area. That fell through. That is an RCR District group community residential so we are making a setback to rural communities.

Dave Gibney – Let's get some definitions.

Alan Thomson – Okay, but do you want to add anything else to that list?

Dave Gibney – What was the other one that Art had besides the Fairgrounds?

Alan Thomson – Yes, the Fairgrounds I think that should be in there.

Dave Gibney – What was the other one that he had besides the land?

Alan Thomson – Business facilities like McGregor's. So they have a facility out by the Fairgrounds where they have meetings.

Dave Gibney – Unless it falls under the community center.

Kathleen Lloyd – What about a place like the Chipman Trail? It is like a park that is maintained by the city or the county I'm not sure, but that should be part of the discussion.

Alan Thomson – That is a good point.

Chad Whetzel – It happens to go right through the north-south corridor.

Alan Thomson – That is in the PMC Zone and it is run by the BOCC to oversee the Chipman Trail but it is run by the WC Parks Department. Would it be considered a public park?

Dave Gibney – I would probably consider it a public park.

Alan Thomson – Then maybe we should add that in there to clarify that it includes the Chipman Trail.

Dave Gibney – I don't know that it should be specific to the Chipman Trail.

Chad Whetzel – Public trails. There are discussion in other communities about some of those. Between Colton and Uniontown is up for discussion.

Alan Thomson – Public trails.

Dave Gibney – And they want to get one from Colfax to Pullman.

Brian Davies – If you want to make people mad,

Dave Gibney – There are folks who want to extend the John Wayne trail from there all the way across the country side.

Alan Thomson – We got public trails.

Chad Whetzel – So we can get those definitions and discuss it again. Shall we move on to Item K.? There aren't any changes. Does anybody see anything this time?

Jim Burton – I passed some paper up for you people to consider. It is in reference to Item K. and I was going on what I had on hand, not what I got here at the present. With the changes I think you need to suggest is on waste generation. You say. *"...the waste generator shall bear the responsibility for waste characterization and disposal pursuant to the rules of the Washington State Department of Ecology..."*

The paper I sent up to you mentions that nursery rhymes, basically, that I learned in kindergarten, Columbus sailing the ocean blue on 1492, 500 years ago. He did a good job but he took and took to his queen various items to help what he thought was the right way to do it. I referred to the local natives that he encountered, the way he did. They were savages and uncouth animals.

We are those people now. We are 500 years later. We don't ignore the wastes that are created. We should not anyway. So I propose that you people write into your code a third party. Don't depend on the producer of waste to be honest. They are honest but to a point. Have a third party come in and decide what he said or I said. I hope that makes sense.

Chad Whetzel – So, if I understand correctly, your concern is how they characterize the waste what they call it and how then the disposal of it? I see what you are saying.

Jim Burton – Yes.

Dave Gibney – I would ask what kind of enforcement the DOE does in other facilities where this is all, there is not a lot of difference between marijuana waste and a potato farm waste, or processor waste.

Jim Burton – There is a big difference. When you treat material for containment, does Ecology tell you what to use?

Dave Gibney – I believe so. Waste is waste.

Alan Thomson – We've gone over this multiple times. The WAC's cover this. We found out from our visit to the marijuana farm on the Orville Boyd Road, Airport Road, that numerous times they had been visited by the State, Ecology, Department of Health, and the Department of Agriculture come visiting several times. This is the way the waste is regulated in the State of Washington. It is the responsibility of the Department of Ecology, not the responsibility of Whitman County.

If somebody breaks the rules, just like anything else if you get caught, you can potentially lose your license. The LCB has a list of chemicals you can use and the list that you cannot use. It is overkill for the County to put something else in here. We've got at least two or three agencies that oversee wastes in the State of Washington. In my opinion we have this one well covered.

Chad Whetzel – Any other comments or questions on that?

Dave Gibney – I do appreciate Mr. Burton's concerns and comments.

Chad Whetzel – Yes, thank you. I think that the next one here has been a topic of discussion, too, in the past. Item L., fertilizers, and chemicals, nothing can go in the on-site septic system.

Dave Gibney – Why add that extra used, so if I have some hazardous material in my place but I'm not actually using it to do the growing, I'm free to dump it into the septic system?

Alan Thomson – No.

Dave Gibney – Why have what you have added in red in there at all?

Alan Thomson – Think about what waste potentially goes down the toilet in anybody's house or anybody's business. You use chemicals. There are chemicals that go down into the septic system so I'm separating the growing of marijuana from normal bathroom, toilet, and sink activities.

Chad Whetzel – Drano is toxic. But you're not going to use it in growing marijuana.

Alan Thomson – We are not regulating toilet activities here. We are only regulating marijuana activities.

Dave Gibney – So that is new?

Alan Thomson – That is new. I've got another suggestion that the last part, "*...nor being released into the atmosphere...*" that seems redundant. We should not be having anything released into the atmosphere. It seems like it shouldn't be in there.

Chad Whetzel – So, where that comma is before nor, put a period and strike the rest?

Dave Gibney – I'm going to argue you convince me that I should be allowed to put in Drano and perhaps I be allowed to spray bugs.

Alan Thomson – Put Drano in where?

Dave Gibney – Into my septic system or in the atmosphere. Maybe I should be allowed to spray some wasp spray around or something like that. Which is releasing the hazardous material into the atmosphere.

Alan Thomson – Then we shouldn't have that there. That would be predominately outdoor grow. They are going to be allowed some chemical on there. The LCB has a list of approved chemicals for that type of activity. So you are right, Dave. It could potentially could get released so that's why I'm saying.

Dave Gibney - I'm agreeing with you. I don't know why I was thinking I didn't but I do. It's getting late in the night.

Chad Whetzel – No problem. Anything else on Item L.? What about Item M.?

Julie Mohr – For Alan, just curious, as to why are materials involved in processing marijuana not included in that?

Dave Gibney – She is asking hypothetically why processing plants could dump into this septic system, the alcohol they used to extract. I think that comes down to it is not already allowed.

Brian Davies – It is covered in the WAC already.

Dave Gibney – That is a waste disposal.

Alan Thomson – So is that statement okay or not?

Dave Gibney – I mis-clarified what she is asking. I don't see why it would hurt you to say, used in the growing or processing of marijuana.

Alan Thomson – Oh, add processing?

Dave Gibney – Yes, I don't see how that would hurt the ordinance at all.

Chad Whetzel – I don't see a problem with it, thank you.

Alan Thomson – So, this is a question. How far away should it be from city limits?

Dave Gibney – I think it is a conditional use. If somebody wants to put it right up against the city and the city doesn't object and the residents don't object at the CU hearing, or the people in the unincorporated towns.

Brian Davies – A thousand feet. That's what I think.

Keith Paulson – Depends on the zone.

Chad Whetzel -Tell them no, it will depend maybe the people in Malden want it next to them.

Brian Davies – Occasionally, towns grow and they add subdivisions and then they annex those into the corporate limits of the town. So potentially, if you had a site outside of town it could potentially all of a sudden become very close to town if another development took place and bridged the gap in between.

Dave Gibney – It could shortly after that become in town.

Keith Paulson – But if it was okay before that grew, then it is okay.

Brian Davies – That's true and we have the BOA and/or the hearing examiner that would have to cover a lot of those kinds of questions.

Dave Gibney – A thousand feet adjustable by the BOA or the hearing examiner.

Brian Davies – That's where I was going.

Chad Whetzel – Yes, because some towns may not ever over take or they may disappear.

Brian Davies – Right, so if you go 1,000 feet then that seems like a long way. The hearing examiner could reduce that if need be.

Dave Gibney – Planting one outside Malden would be a bunch of jobs for the people that live in Malden.

Chad Whetzel – But then if someone decides they want to put one in Chambers which I think legally is an unincorporated town.

Alan Thomson – Where? It's not on our list of unincorporated towns.

Chad Whetzel – But the BOA could have some room to move, is what I am saying.

Alan Thomson – I think that is a good idea. We need to have language in here for the BOA saying they have the ability to lessen that depending on the circumstances.

Chad Whetzel – Did we put that in the definition earlier? Do we have a definition of the BOA weighing in on the CU permit?

Alan Thomson - No, we had in the development standards.

Dave Gibney – We’ve got them talking about being able to change the setbacks.

Alan Thomson – Yes, under Item H. Okay, so 1,000 feet would be the mark and then,

Aaron Fosback – Just curious if there is anything that regulates the landfill in terms of its proximity to a town. If we were going to add another landfill, would we talk about putting that within 1,000 feet of city limits as it is another malodorous type of facility?

Alan Thomson – The landfill would be allowed with a CU in the ag district. As far as setbacks are concerned, I’m not recollecting if we have any specific setbacks for it. But that is something that the BOA could rule on.

Dave Gibney – But in the direct answer to his question, if someone was foolish to want to put a landfill right up against the city limits of Pullman, the county code would allow it.

Alan Thomson – The County code allows for landfills. It would not be a smart idea to do that.

Dave Gibney – The State would probably weigh in on that.

Brian Davies – We ship our waste to Kittitas County, right?

Dave Gibney – No, we ship to Klickitat.

Alan Thomson – I have to look into that one a little bit more. I can’t think of any setbacks for that. I don’t think the BOCC would be very happy being that close to Pullman.

Dave Gibney – I don’t think it is going to happen but I don’t think there is any regulation at the WC code that would prevent it from happening.

Aaron Fosback – It is really more of a comment but I think there is a reason why we have the transfer station five miles away from the city limits of Pullman.

Kathleen Lloyd – I was going to ask if you would consider adding cluster housing to the boundaries of incorporated towns and unincorporated communities within WC? There are several different communities that are considered cluster housing that we could also have that setback apply to.

Chad Whetzel – So, basically, if we were to do that we have prohibited within the cluster development,

Dave Gibney – Between 1,000 feet of the cluster development zone.

Chad Whetzel – Within 1,000 feet of the cluster development opportunity zone.

Brian Davies – Sure why not? Those are considered residential in nature and primary use would be residential?

Alan Thomson – Yes,

Chad Whetzel – Okay, so we have to be well away from there.

Dave Gibney – I think if you are going to do the unincorporated towns, yes, that is a valid,

Chad Whetzel – Yes thank you.

Alan Thomson – The boundary of the cluster opportunity zone,

Dave Gibney – I'm not saying the cluster opportunity zone, I'm saying those things that have been rezoned for cluster residential.

Alan Thomson – The cluster opportunity zone that is not built on is still the ag district. It hasn't been changed to CRD.

Chad Whetzel – So, my question would be let's say, you put something that is within the cluster opportunity zone, you put a grow facility, then can no one build a cluster within, as long as the protections are if that is what we are worried about.

Alan Thomson – Yes.

Dave Gibney – I would think if somebody comes in later with a new cluster again they are knowingly putting themselves close to a marijuana facility and sure they get to sign the same waiver.

David Gang – A couple of comments on this. Maybe you want to break it into parts like you did on the other ones, for outdoor versus indoor. Maybe you don't want the distances to be the same? Maybe you could allow things closer if they are indoor than if they are outdoor? I'll address that later when I talk about the letter I have.

The other thing is that I've got a friend from Meridian, Idaho and there was a dairy that was put in place 100 years ago and then people did what was exactly just mentioned. The developers came in and put houses all around it and then all the people that bought those houses

complained about the dairy and they wanted it out. Because they had their house there and there shouldn't be dairy nearby. So, thinking that people can be smart and not do that, is not thinking what human nature is like. Developers are going to take advantage of what they can do.

Dave Gibney – That's why the cluster residential thing has an explicit you're secondary to the ag activities next door.

Chad Whetzel – But marijuana isn't considered an ag activity, so if we are going to do that we have to protect both parties. It can't be a one way street. We have one more question.

Dave Gibney – I think we will be protecting both parties by saying that the cluster development can occur but they don't get to whine about the marijuana business or whatever that is happening nearby where they want to do their cluster.

Keith Paulson – They still are going to whine.

Dave Gibney – Then the waiver thing needs to be adjusted to account for that. Otherwise, you are restricting the people who want to develop the cluster. That is an undue infringement of their land. I think you have to protect what happened first but you can't say no, you could become a cluster but these people out here put in a grow operation and now you can't become a cluster and now if you decide you can't economically ag use it either you're stuck.

Alan Thomson – I don't really have much to say about that. That is a difficult one.

Dave Gibney – It does sound reasonable to me if we are going to do a, can't be near town or near the unincorporated towns you should also not be near the existing higher density residential areas. That is all the same thing. It is the corresponding consequence later on that Chad is talking about that I think should not happen.

Alan Thomson – We already have in a previous section here the setbacks to other property lines, which includes residential property lines. Do we need to differentiate CRD's, their private property lines where there are houses and we've got a setback to them?

Keith Paulson - If you are going to put 1,000 feet on some of these things and these are 500?

Alan Thomson – Yes, right now it is 500.

Keith Paulson – So, they should all be 1,000 feet.

Alan Thomson – I think we have it covered. The cluster residential districts are residential property lines. So that is covered under Item H. in Section 19.64.050. I don't think we need to call it out any more than that.

Dave Gibney – Then drop the no facility located within to 500 feet, subject to,

Alan Thomson – So are we going with 500 feet or 1,000 feet? Dave is pushing for 500.

Dave Gibney – I'm pushing for consistency.

Keith Paulson – That's what I was saying. I was reading Item H. and it is 500 feet and then we were saying 1,000 feet. So let's be consistent on what we are doing.

Alan Thomson – To city limits, 500 feet?

Keith Paulson – I don't care if it is 1,000 or 500, I'm just saying it should be consistent.

Dave Gibney – I can see reasons for it to be different.

Alan Thomson – I think that Professor Gang has a good point about indoor and outdoor. You could allow indoors closer because they will be self-contained.

Dave Gibney – I agree completely.

Alan Thomson – Outdoor needs to be further away.

Chad Whetzel – Then we are back to the BOA.

Alan Thomson - We will give them a minimum. Then they can adjust it if they feel there is a reason to do so.

Dave Gibney – Fifteen inches.

Keith Paulson – I wish we had more people here on the board tonight.

Chad Whetzel – Yes, and we are not going to make any decisions tonight so.

Alan Thomson – So are we going with 1,000?

Chad Whetzel – Let's throw that in and when we have a full Board we can discuss it more.

Alan Thomson – What about indoor grow to municipalities? What is the setback?

Dave Gibney – I'm going to go back to the same as the underline zone.

Alan Thomson – Twenty feet? For indoor.

Dave Gibney – The classic one is somebody who wants to sell it. Why would you want to say that you have to be further from the City of Pullman if you are going to open in the county a

retail outlet if you are permitted? You wouldn't, you want to be closer to the customers because they are not supposed to be driving with it.

Alan Thomson – We can't have any more retail, anyway.

Dave Gibney – Today. Everybody says they're probably not going to increase the number of licenses but that's,

Alan Thomson – That is what the LCB web page says. They're not handing out any more licenses.

Dave Gibney – And nobody can dictate to a future body what they can do.

Keith Paulson – They can change it.

Dave Gibney – I am okay with Item N. and the fences.

Chad Whetzel – Is everybody okay with Item N.? Okay, anything about the pre-existing? I assume that someplace we will keep the WCC 19.54?

Alan Thomson – What are you referring to, 19.54? Oh, that is non-conforming, so that is what that is tying into. That is the existing code that talks about legally established, if it goes away for six months, it is no longer legally established, blah, blah, blah. It ties into that ordinance.

Chad Whetzel –When you said it goes away, is it like the operating business? What I am thinking of is if you have an outdoor grow, it could sit for six months easily before you replant it, I would think. You have to have temperatures so that,

Alan Thomson – It mainly was about structures but uses as well. So if the use is still technically in use and you still have a license, I would consider that to be in use. If the license goes away and the six months elapses, you're done.

Dave Gibney –Crop land left fallow is considered still in use.

Chad Whetzel – But we're not considered agriculture.

Keith Paulson – When that happens.

Chad Whetzel – I quit, and go home.

Dave Gibney – The Fairgrounds is not in use for most of the year for a Fair but it is still being used.

Ken Duft – I didn't wish to impede on the progress of the commission so I have a couple of questions and held them to the end. I would call your attention to Item I, the first sentence there in, it basically says in WC, *"No outdoor marijuana production shall be allowed on lots or parcels less than 10 acres."*

I would like to create a hypothetical worst case scenario if I might. Let's assume I have a hypothetical neighbor living on a couple of acres in rural WC. Let's further assume he has a medical prescription for the consumption of marijuana and wishes to put in a 20' x 20' garden in his back yard to produce marijuana. Is it correct then, that I can send Alan out there to tear up his 20 plants?

Alan Thomson – No, I see that differently, Ken. Medical marijuana is in its own little compartment. You can regulate it differently than recreation. So, I think the distinction is medical versus recreational.

Ken Duft – Okay, thank you. So, let's go back to very first under definitions of agricultural activity. It indicates that, *"the production, processing, and sale of any controlled substances, including marijuana, cannabis, and its derivatives is not considered an agricultural activity."*

Why do we have to include this *"any controlled substances,"* reference? By doing so, by including it, it suggests to me that we cannot produce wine grapes, for purposes for processing and controlled substance, wine. We cannot produce malting barley, we cannot produce tobacco, and we cannot produce marijuana. Are we attempting there to include all of those possibilities as not being an agricultural activity?

Would it not be just as clear to leave that out and say that production processing and sale of marijuana, cannabis and its derivatives is not considered an ag activity? What is gained by the reference to all controlled substances?

Alan Thomson – What do you think controlled substances means?

Ken Duft – A good question. I assumed it was all things controlled by the state.

Alan Thomson – No. Controlled substances are essentially illegal substances. It is drugs that are illegal. So, schedule 1, for instance, which marijuana still is on schedule 1, federal level. That is a controlled substance, it is illegal.

Dave Gibney – Basically, you are saying if the State of Washington were to legalize the growing of opium poppies they would then fall under the regulations of this ordinance.

Alan Thomson – So, that is the definition of controlled substances, drugs.

Ken Duft – Okay, thank you.

Dave Gibney – On the question of the garden plot of medical marijuana because I have a prescription for a card, it is not clear to me that that isn't included in your definition of marijuana here.

Chad Whetzel – But I think if you read the *Purpose and Intent* of the chapter at the very start, its talking about,

Dave Gibney – That's true, by removing the recreational, well, no, actually by striking that recreational and medical marijuana, you have eliminated any distinction of medical marijuana.

Alan Thomson – For the record, Paul Mihalyov states that Chapter 314-55 WAC refers to recreational marijuana which clarifies it.

Brian Davies – So, my guess here, if we wanted to talk about the medical if someone has a 20' x 20' garden in their own home in their own property and they have a medical card, they are allowed under state law to grow a certain quantity?

Alan Thomson – Yes.

Brian Davies – Okay, and we don't have anything to say about that.

Alan Thomson – We are not regulating medical marijuana.

Kathleen Lloyd – I wanted to mention about the controlled substances. They are actually listed by the State and they, if I remember correctly, it is something about being highly addictive and possibly abused, and marijuana is listed there, but it is actually a list the state has put in the state law. So, that isn't something like wine or beer or anything like that.

I have a question I want to make sure I understand the last section. *“Legally established marijuana operations in existence prior to the adoption date of this ordinance are considered legal preexisting....”* Does that mean if they currently have a license none of these ordinances apply to them, because over on Item B. is says, *“Only currently licensed marijuana producers or those with pending applications validly issuedshall be allowed.”*

I don't understand. Are those in conflict with each other or does that mean that, I don't understand? Is it consistent or not consistent? I just want to make sure that is clear. Do these apply to people who currently have licenses? I would hope that these regulations do apply to people that are already here.

Alan Thomson – So, what that means is legally established. It is not just the LCB license. We are talking about zoning codes, and building codes. An example of something that would be legally established and vested is a business. I'm just going to go general, a business that has applied for whatever permits required by the County, we received a building permit, a building application, a conditional use permit, for instance, and issued the building permit. Those people

are vested under the State of Washington's vesting laws. That means whenever our code changes further down the line, that code does not apply to them. It is the code at the time they were established and vested. That is what that means. The LCB license has to be a part of that. Obviously, they have to have that license but we are talking about zoning here alone. Zoning use and building permits.

Kathleen Lloyd – So, then what you are saying if they are currently operating then they don't have to follow these rules.

Alan Thomson – They are vested under the current rules or the rules at the time that they actually got their permits.

Kathleen Lloyd – So, then, if they don't have to follow these rules, but we're not allowing any new people into the County why do these rules matter?

Alan Thomson – At the moment we are not allowing, you are referring to the moratorium,

Kathleen Lloyd – No, Item B., Section 19.64.050. – Development Standards

Dave Gibney – That is only currently licensed at the time in the future when they apply to do a new place. It doesn't refer to currently as in today.

Kathleen Lloyd – It says, "*Only currently licensed producers...*" I'm assuming you meant to say in Whitman County.

Dave Gibney – It means that you have to have a license before you start going down the rest of the road to get the permits and the CU and everything.

Alan Thomson – And to comply with all the local development regulations.

Dave Gibney – In the future.

Kathleen Lloyd – So, if you were licensed in the State of Washington somewhere then you can transfer your license into WC and follow these rules.

Alan Thomson – So, the LCB allows that, not the County. The LCB does do that but the applicant would have to comply with local codes.

David Gang – I think the question that Mrs. Lloyd has is that the word, "currently," as is written there suggests that when this law goes into effect only those that currently at that time may be allowed. That is the way it is written right now. Maybe you want to use a different word than "currently."

Dave Gibney – You are talking about Item B.

David Gang – Maybe “properly licensed,” or officially licensed or something else is the right word. Because the way it is written now it suggests that when this law is passed only the people that are here are ever going to be the people allowed here. That is how someone could interpret that. Is that your question?

Dave Gibney – Actually just striking, “currently,” only licensed marijuana producers.

Kathleen Lloyd – Then it brings it back to why this conversation began is a very large portion of people do not want more marijuana producers coming into the county. That is why the BOCC put this discussion on board because a lot of people do not want it. What a lot of people have been asking is that we don’t have more people in the County and the people that are currently here stay, fine, but they have some regulations that can protect people.

I think the regulations are great. I think that everyone should follow them that are here but I don’t think it benefits the county, and I know some people that feel differently but a lot of people are not happy with the idea of a lot of people coming here and inundating our county with marijuana producers. So, backing up, please consider not allowing more people into WC that are not currently operating. Please apply this to current applications.

Just a couple of other comments. There is nothing about an enforcement section and I would suggest that is a good thing to consider when we are continuing to have a conversation and the way to finance any kind of inspection plan. Because the County doesn’t have a lot of money and if we have even the people that are here or we have more, it is expensive to make sure all of these things are actually followed. There needs to be a financial plan to make sure these things actually take place.

Dave Gibney – Is there not any enforcement clauses in other sections of the zoning code?

Alan Thomson – Yes. The enforcement is put into the conditional use permit. The BOA will give the authority to the County Planner to enforce whatever conditions are put upon any of these applications. If we hear any complaints, we will visit them. There is not a problem with that at all. We have the manpower to do it. I do it all the time. As soon as we get a complaint, we go and investigate.

Dave Gibney – It would be redundant to additional enforcement language in here.

Alan Thomson – Absolutely. We do have enforcement language written in the ag district codes and it gives the authority to the County Planner to do so and we do that. It is already in the zoning codes. It is part of my job and if somebody is non-compliant we can bring them right back to the BOA who could take their permit from them. There is your enforcement.

Kathleen Lloyd – It does require people continually complaining and I know that sometimes that can be problematic when people are also trying to be good neighbors or have long term other consequences. Enforcement should include some kind of inspection to make sure people are

complying and not rely on somebody else telling you there is a problem for it to be true enforcement. That is my suggestion based on other things I have dealt with that have nothing to do with marijuana.

Alan Thomson – You could probably pitch the BOCC to hire an enforcement officer and then we would be okay with that.

Kathleen Lloyd – As I said there needs to be a financial way to make something like that happen. I believe that is important but it costs money so there needs to be some kind of financial fee associated with people who are currently operating to help finance that kind of thing. Something to consider. I think other counties have done it.

Dave Gibney – I would think that that argument could be extended to enforcement of any and all parts of the zoning code and if such a need were to be seen that it would be appropriate to add that into the enforcement portions of the code. There are, a CU permit is not free.

Alan Thomson – It is already written in as far as CU is concerned. That language is already in the code.

Chad Whetzel – Okay, thank you. Go ahead.

Aaron Fosback – A short bit ago, Mr. Gibney mentioned that we need to protect what happened first. In the case of some of these cluster residential areas, there have been homes that have been in existence far longer than the marijuana grow facilities that have come since. So again, I would echo what Kathleen Lloyd said about making the ordinance applicable to all marijuana grow and processing operators.

Alan Thomson – That would be against state law.

Aaron Fosback – I think that was done in Chelan County and possibly in,

Alan Thomson – I know what happened in Chelan County. I talked with their planner. The fact that that happened was hinged upon building permits that were never finalized. That was the hitch that the Chelan County had there. There were several operations going on that had never finalized their permitting and you can take that from them because they were unfinished. They had been in operation for a while and there were several probably a few illegal operations as well in Chelan County.

So, that is the legal way that Chelan County shut down those operations. They hadn't finished their permitting and then they were forced into having to comply with the current regulation that Chelan County put in place. That meant they had to go through a CU permit. Some of them opted not to do it. That was why they were able to stop those operations. But the State vesting doctrine is very clear in my mind and there is going to be a ruling shortly here from Denis Tracy. It means that somebody who is vested, someone who has gone through the

building permit application and complied with code at the time, you cannot put a new regulation and enforce that on them. It is not going to happen.

Dave Gibney – The similar thing is I cannot come to somebody who has legally built a house on a parcel of land in a zone smaller than we now permit and tell them they have to tear their house down.

Alan Thomson – Exactly.

Kathleen Lloyd – I know that other counties that are small like ours like Yakima and Walla Walla, actually have had people close down. When I talked to Chelan, they painted a little bit of a different picture. I would suggest these are really important conversations to have and if we are going to quote them we shouldn't be doing it through a third party. We should invite them here so we can hear first-hand what they have to say so that we get a complete understanding of what happened there.

I think there is more to this story than what we have so far. I think it is a bigger picture. I know that in other counties they absolutely have shut them down as for existing so I do not believe that that is against State law. In fact, the attorney general, the assistant attorney general letter actually states that counties can do that. It is not a right. It is something that the counties are able to allow if they choose to. So, I am 100% certain that if it is pre-existing you can go ahead and either choose to shut them down or place more regulations.

You do have the choice to do that. I would suggest inviting them here to have those conversations to hear from them how they did that and how they made those choices. Not just Spokane which is a much larger county that has other infrastructure in place but counties that are more like us, smaller in size and have similar issues to us that have actually placed regulation which could include shutting them down. How they did it and why they got to that point. Before we make these decisions. Please, let's invite them if we are going to do that.

Alan Thomson – I'm done.

Chad Whetzel – We will take that under advisement.

Dave Gibney – So, you said the County Prosecutor is working on an opinion on the vesting of our moratorium and other current laws. So, I would be definitely interested in having that brought before us to add to our deliberations.

Alan Thomson – Yes, hopefully, sometime very soon we will have an opinion from our Prosecuting Attorney Tracy on the vesting option.

Chad Whetzel – One more. Okay.

David Gang – I mentioned earlier that I had a letter to hand out. I have enough to hand out to everyone. Just a couple of points I want to highlight. We still have continued concerns about the impact of volatile compounds may have on the dairy and on the milk. I highlight that on the first page. We are working with members of Dewey scientific to address those concerns. We think that the efforts that they have put in place for the indoor grow operations and their filtration systems have alleviated any concerns we have in that regard. We've talked to them about efforts that we are interested in pursuing regarding monitoring any outdoor operations they may happen.

One of the things that I pointed out starts at the bottom of the first page. I don't know if you have heard about smoke taint and wine. Are you familiar with that? It is becoming a growing concern here in the State of Washington because of all the wildfires. Basically what happens is that the smoke in the air contains a large amount of volatile compounds. Those actually infiltrate the growing grape berry.

You can't wash it off, you can't taste it, and you don't know it's there until you process and ferment the wine. At which point if you let it sit for years and you open it up the vintage is ruined. It is a big problem. It is becoming a disaster for a lot of the smaller wineries in the state. The same thing could happen with our cheese. We are concerned about that. The reason I'm pointing that out is our concerns with the dairy are not an isolated situation. This is something that is actually quite common in nature.

The other thing I wanted to point out is that we have started some investigations. We pointed out that we were interested in the moratorium so that we could start research to look into this question. We have started that. We are working with some growers over by Prosser where they have 40-acre farm with a number of fields where they are growing CBD producing hemp, which is very similar to what we call marijuana. It just doesn't have the THC.

Then we will produce volatiles. We will be measuring and monitoring the air emissions, volatile emissions in and around and distances from those fields. It will be the first time that at least data that we are aware of or somebody has done that, and, I think at that point we will have a better idea of how far away you need to be before the emissions no longer become a significant problem.

The question about setback and distances from communities, right now everybody is basing their comments on nothing. Guessing. Nobody has a clue. Nobody has ever researched that so we are pursuing that right now. We suggest that you find out what the results are before you make a concrete rules about what those setbacks should be. We may find that 300 feet is far enough or 500 feet is far enough or a mile and a half is what you need. We don't know yet.

So, until those research experiments are performed and the results are obtained nobody actually knows what those numbers should be. It is not the same thing as any other type of business. It was interesting the comment was made about how ridiculous it would be to put the dump, as we used to call it, the landfill right next to the city. We laugh at that as a stupid

idea but we think that maybe hemp fields next to the city might be okay, when it is going to be producing a higher level of odorous compounds.

So, this is something to think about. We are also going to suggest that you not only think about marijuana but hemp, and what impact hemp is going to have on the County. We think we want to promote it as an ag activity but we also want to protect the citizens in the county. So, that is something that you should be, maybe you could write that into the law now, I don't know. If not, you really need to be thinking what will be happening in the next year or two in that area. There are more details in the letter and I encourage you to read it.

Chad Whetzel – What is the estimated completion date of this first study?

David Gang – We are going to be performing, the plants are growing right now. I was out there a week and a half ago and they are about less than a foot tall. They will probably be harvested about the normal time, which would be late August through September. So, we are going to be collecting air samples and stuff starting in August through the final end of the harvest season. Then it will take a little while. Tom Jobson is going to be doing those measurements. It will take a few weeks for him to process everything. We figure probably by October, November he should have results. Hopefully, October but it may be November. It is outlined in my letter.

Chad Whetzel - Thank you. Any other questions on the subject matter so far, tonight?

Dave Gibney – I would like to note for the record that Mr. Duft sent Alan a letter that was forwarded to all of us, discussing the actual number of people who voted for or against the legalization of marijuana. The fact it has been stated that a large number of people are opposed to any part of this and that the facts of the total number of people in WC don't bear that out.

Chad Whetzel – When is your next meeting?

(Comment from the audience, no microphone.)

Dave Gibney – I'm sorry, there was a letter sent to us, I'm sure it is part of the record basically discussed the percentage of people inside and outside of the areas that didn't vote for the I-502 and it points out that the total number of people who are asking for these regulations is not a large number when looked at by the whole county population.

Kathleen Lloyd – I just wanted to comment that I think there is a big difference between voting for the legalization of marijuana, which a lot of people I talked to voted for that and believe people have the choice to do that and they are comfortable with that choice. However, it is very different to have a controlled substance grown near their home and those are completely separate issues. If we are curious about this then we should make it very clear what it is and put a vote to the people. But you can't take one set of results and assume it means something else.

I know that Stephanie Fosback has said that she voted for it. I still think that if people want that choice I am comfortable with that, but I don't want it next to my house and I should be able to have that choice as well. So, these are different issues.

Chad Whetzel – Okay, so on that note we will close this section of unfinished business. Is there any new business?

Alan Thomson – No.

Chad Whetzel – What about the next meeting? In August?

Alan Thomson – We can continue on but can we get a quorum?

Chad Whetzel – I don't know. It's going to be questionable until a couple hours before.

Alan Thomson – The first Wednesday is August 7th.

Dave Gibney – We haven't had a quorum and we aren't making any decisions.

Chad Whetzel – So, the next Wednesday is August 7th.

Dave Gibney – I intend to be around.

Brian Davies – I am available.

Keith Paulson – I assume I am.

Alan Thomson – Okay, we will shoot for August 7th.

Dave Gibney – I'm good, I guess that Rusty will be in the midst of harvesting by then.

Alan Thomson – So, I guess the next task would be to try and finalize some things that we didn't tonight. If you have any suggestions, let me know.

Dave Gibney – When I walked in here and was looking at this, I thought we were reasonably close to having something we could forward. I've learned a lot more tonight. I know the BOCC have already anticipated extending the moratorium for another six months, so I don't see a need to rush this process and try and get something done before the end of the first moratorium.

Brian Davies – Especially if there is going to be some data coming from Dr. Gang in November.

Alan Thomson – In the case of the dairy and the potential marijuana business there that would be a fully contained business. There should be no odors escaping and no VOC's escaping. Just something for you to think about.

Keith Paulson – It's the whole package. We have to decide both indoor and outdoor.

Alan Thomson – Professor Gang's and WSU's concerns are that particular location.

Dave Gibney – I would ask him, there was the discussion about whether or not we should designate WSU as a secondary school and therefore prohibit this within whatever currently 1,000 feet of WSU, WC wide.

David Gang – That is a really good question. I think there was a suggestion that maybe wording should be different, say things like, running start. I know that any students that are part of that could enroll in any class at the University, which means that they could be involved in the meat science or dairy science, or agronomy classes. They could be out working in the field or the horticulture field, anywhere we have any activities that the WSU is involved with. That is an underage student. That potentially that could happen, yes.

Chad Whetzel – That also includes all the 4-H programs they hold out there.

Dave Gang – Absolutely. Every summer we have hundreds and hundreds of 4-H kids that come on campus for a week and they are all over the place. That is definitely true. We don't think it would affect the University's research in any way because everything we do has to be federally legal. Not just within the states. We have to have a permit from the FDA to do anything and your rules as I read them are for the production, processing and retail sale of marijuana products. WSU will never be involved in selling marijuana. So, I don't think that we fit with it. We are not going to be affected in that regard, I don't think.

But the other question that is a potential concern is to where the students can be. I think there are some places where we have a random field, it is very unlikely that is where students will be and if they are it will be an individual working on a project. It's just like they could be wandering throughout the County.

Chad Whetzel – So, out in Lind or somewhere.

Dave Gang – Exactly. So, I think you might want to have different wording though so you just say where those types of activities happen, and don't put the University as a secondary education because we are higher education.

Dave Gibney – Maybe underage student activities such as running start in the definition of secondary.

David Gang – Where those are likely to happen, that is going to be hard to define and that could change from year to year. That is hard to know. I don't know what to recommend on that. I really don't.

Chad Whetzel – We'll see what you come up with and we will make,

Alan Thomson – Are you putting out an email?

Dave Gibney – No, we put that back onto Commissioner Kinzer.

Chad Whetzel – We will make him regret with whatever he comes up with. Okay, so August 7th?

Alan Thomson – We don't really have much more to process. We might not have that meeting, but let me cogitate on that one and get in touch with you.

MOTION by Keith Paulson and seconded by Brian Davies to adjourn. Motion passed.

Adjourned – 9:34 p.m.