

Lewis County Planning Commission
Public Meeting

Lewis County Courthouse
Commissioners' Hearing Room – 2nd Floor
351 NW North St – Chehalis, WA

December 9, 2014 - Meeting Notes

Planning Commissioners Present: Mike Mahoney, Russ Prior, Bob Guenther, Sue Rosbach

Planning Commissioners Excused: Richard Tausch, Arny Davis

Staff Present: Lee Napier, Patrick Babineau, Glenn Carter, Pat Anderson

Others Present: Please see sign in sheet

Handouts/Materials Used:

- Agenda
- Meeting Notes from November 25, 2014
- Marijuana Retail Sales Alternatives Summary
- Draft Zoning Code Amendments for I-502

1. Call to Order

Chair Mahoney called the meeting to order at 6:02 p.m. The Commissioners introduced themselves.

2. Approval of Agenda

There were no changes to the agenda and so approved.

3. Approval of Meeting Notes from November 25, 2014

There were no changes or corrections to the meeting notes. A motion was made by Commissioner Guenther to approve; seconded by Commissioner Rosbach. The motion carried.

4. Old Business

A. 6th Workshop on Marijuana Land Use

Ms. Napier, Community Development Director, updated the Commissioners on the marijuana moratorium. The Board of County Commissioners (BOCC) renewed the moratorium with Ordinance 1256 on December 1, 2014. There will be a 6-month moratorium upon establishments or other developments of facilities or other uses involved in the production, processing and retail sales of marijuana and related products. What this means to the Planning Commission is that there is a timeline to try to get a recommendation to the BOCC so they may take conduct a public hearing and take action prior to the June deadline. Ms. Napier asked if there were questions.

Chair Mahoney stated that according to the newspaper there have been three Superior Courts across Washington State that have found that counties and cities may ban marijuana licenses in their jurisdiction. He understands that that is heading to the State Supreme Court. He asked if that was Mr. Carter's understanding as well.

Mr. Carter stated there are four Superior Court judges that have ruled that way. He felt it was on its way to Supreme Court but he did not know the status of that.

Chair Mahoney stated there would not likely be a decision by June. Mr. Carter stated it would be about a year. Chair Mahoney stated the Planning Commission would like to forward its recommendation to the BOCC so they could make a decision by June.

Commissioner Prior stated he understood that the moratorium did not have to be six-months in duration. Mr. Carter stated he hoped action would be taken faster than six months. There is no need to wait for six months; it can be done within that time.

Ms. Napier stated the moratorium is extended for six-month increments; it can be lifted at any time. Once an item comes out of the Planning Commission it is presented to the BOCC in the form of a request to set a hearing date. To set the hearing date takes 10 to 15 days; the BOCC sets a hearing date, advertises, hosts and conducts the hearing. That is another 10 to 15 days. It is easily a two-month period to allow for all of the noticing and for the hearing to occur.

Chair Mahoney stated if the Planning Commission makes a recommendation towards the end of January it will be around the first of April before the BOCC has its hearing.

Chair Mahoney stated at the last meeting a lot of time was spent discussing production and processing and Mr. Kliem sent out a packet. Ms. Napier stated Mr. Kliem took what he heard from the Planning Commission and at Commission Prior's request Mr. Kliem put those ideas into an ordinance format. The reason for the meeting tonight is because retail facilities have not been discussed.

Chairman Mahoney asked the Planning Commissioners if they had had a chance to read the materials and if there were any concerns with the language in Mr. Kliem's draft ordinance. He wanted to finish that before moving into the retail discussion. Ms. Napier stated Mr. Kliem had some retail recommendations that are reflected in the draft document since he anticipated that he had fulfilled the request made by the Planning Commission.

Commissioner Rosbach stated she did not think the Forest Resource Land (FRL) should be included in the production and processing of marijuana.

Chairman Mahoney stated when the County went through the Agricultural Resource Land (ARL) designations, one thing that came out of that was in the 5000-acre forest resource lands there are existing farms. Agricultural activities were included as a primary use within the FRL. That's why FRL was included. This is to allow legal growing operations in a farming situation. Forestry is also allowed in ARL. Forest Resource Land in Lewis County has to be in blocks of 5000 contiguous acres; but interspersed in that there are farming areas. FRL and ARL are almost inter-changeable in Lewis County except that FRL are in minimum 5000-acre blocks, and residences are one in 80 acres rather than 1 in 20 as in ARL.

Commissioner Guenther stated they are interchangeable but he still believes there will be extra tax dollars to police marijuana farms all over the County. If we do agree to have marijuana farms in the County we need to look at what our police force is today and what it will be later. It will be substantially larger based on what Sheriff-elect Snaza had to say. There will be an extra cost to have marijuana farms

and those people do deserve to be protected by the law. That was his reason for wanting to keep the farms more concentrated.

Chair Mahoney asked Ms. Napier to describe to the Commissioners what a special use permit entails for someone who wants to apply for one.

Ms. Napier stated with respect to Forest Resource Land, staff would be adding a new category: special use permit. That would refer you to another section of code for the process so you will not see the special use process defined in the Forest Resource Land. A special use permit goes before the Hearing Examiner. An applicant will talk to the senior project planner at Community Development who will ask the applicant to complete an application packet which is circulated internally through the departments. There will be a SEPA determination; a public notice will be sent out to the adjoining property owners. The applicant's property will be posted so the neighbors are aware of what is occurring. There will be other considerations that are described in another part of the code under the special use criteria. The land use planner will be asking to make findings not only related to the special use criteria but some other criteria that must be established related to this industry. All of that goes before a Hearing Examiner who hears from staff and the applicant, and the public will also have an opportunity to comment on the proposal.

Commissioner Prior asked if the decision as to whether or not it will be accepted is the sole decision of the Hearing Examiner. Ms. Napier stated it is at the discretion of the Hearing Examiner. He relies on County Code to make a decision, as well as comments from the public while the application is out for SEPA comments, while the application is out for general public comments, or they may attend the meeting and submit comments. There are at least three opportunities for public comment.

Commissioner Prior stated he worried because everything is going to require a special use permit, and ultimately one individual is going to make a decision on whether or not someone can grow their marijuana and he did not think that was appropriate.

Ms. Napier stated the Hearing Examiner considers a variety of land use proposals. They are either reviewed by staff or by the Hearing Examiner. In most land use actions there is one person summarizing the report with the benefit of input from other people. It is the Hearing Examiner's job to listen to the facts and review it against the County's criteria and deliberate on his findings and conclusions to support his decision.

Commissioner Prior stated this is another harder step to get than an administrative permit. Ms. Napier stated it is another level of review. Commissioner Prior asked if the Hearing Examiner is in Lewis County. Ms. Napier stated the County has a Hearing Examiner on contract and he is an attorney. If he cannot review it there is an alternate Hearing Examiner.

Commissioner Prior felt that this issue is rife with political overtones and he was worried that someone's politics would get in the way of citizens' rights to use their property in a way that they see is beneficial for making money.

Mr. Carter stated there are going to be a couple hearings before the Hearing Examiner in January. He suggested the Commissioners attend those meetings to understand what the process is. The Hearing

Examiner is not like a judge who makes a decision regardless of what the law says. He has to hold very closely to what the criteria are that are stated in the legislation that the Planning Commission is putting together. It is more an application of those regulations and principles to a set of facts, the proposal, than is given the kind of room to maneuver that would be allowed in a courtroom. His decisions are appealable under the Land Use Petition Act (LUPA) straight to the Superior Court. Mr. Carter stated his experience is that Mr. Scheibmeir is very independent and doesn't always do what staff wants or always what the Board wants; he is full of intellectual integrity.

Chair Mahoney stated there had been a joint meeting of the Planning Commission and Hearing Examiner regarding Birchfield several years ago. He stated the process was done very objectively. Sometimes the law is ambiguous and the language that the Planning Commission recommends should be very specific. With politics involved, in his opinion, a special use permit is the best way to make sure that neighbors are protected.

Commissioner Prior stated the way he reads LLC 17.30.610, 17.30.620 and 17.30.630, which describes the special use permit, is that agricultural processing is already a required special use permit but it does not say anything about growing. Are we prepared to add "growing marijuana" specifically to the special use permit requirement?

Chairman Mahoney stated he wants to add it primarily because of the fencing and security requirements. They are intrusive and they have to be done correctly. If he wanted to put in a large dairy he would have to go through the same type of process and he did not see any reason to treat marijuana any easier than that.

Specific to growing and processing, Chair Mahoney asked if the Planning Commissioners were okay with what Mr. Kliem had drafted.

Commissioner Prior stated that he was. He stated that he thought Type 2 processing was to be limited to an industrial area. Ms. Napier stated that is what she and Mr. Babineau understood also but in reviewing the meeting notes it was unclear so it was left for the Planning Commissioners to decide and remove.

Commissioner Prior stated it was clear to him and that was the reason to go through the definitions of Type 1 and Type 2. Chair Mahoney stated Type 1 can stay at the production site but Type 2 should be in an industrial area. Ms. Napier stated Type 2 would be removed from the table.

Commissioner Prior stated based on his review of the code, he did not know what the "X" meant in Table 1. As it turns out they mean "prohibited." It was not his intent to exclude Small Town Mixed Use (STMU) for processing and production.

Chair Mahoney thought STMU was excluded because of the five acre minimum. Commissioner Prior thought he read STMU-4 which he figured was 4 acres but that's beside the point. If a parcel is too small then it is covered. He did not want to exclude that zoning. He felt the same about Crossroad Commercial (CC) and Freeway Commercial (FC). If it is going to be allowed in RDD, why would it not be allowed in those zones?

Chair Mahoney asked Commissioner Prior if he was speaking specifically to production and processing. He would like to save the retail discussion for a later. The FC and the CC areas are retail. He did not think that growing and processing are appropriate there because those are not industrial areas; they are commercial areas. Commissioner Prior stated someone may have a lot large enough.

Ms. Napier responded as to why the STR-4 was not included. Ms. Napier stated during the first conversation on this issue, staff listened to the Planning Commission's criteria. The code was consulted to learn the purpose of each zoning district, if the type of activity that the Commission was describing could fall within the purpose. If it did not fall within the purpose we could not develop criteria to meet that. Chair Mahoney did not see agriculture production taking place in STMU or CC areas.

Ms. Napier stated STMU-4 does not exist in County code. Commissioner Prior asked if STR-4 means four acres. Ms. Napier stated the 4 means 4 units per acre.

Chairman Mahoney did not see where a five-acre minimum was included in the tables. It might belong on page 5. Ms. Napier stated staff heard that the Commissioners wanted it as a standard so it was placed in zoning districts that had that as a minimum density. It is not clearly called out. Chair Mahoney stated that in some of the RDD-5, 10 or 20 there are already existing smaller parcels and those were to be excluded because of the lighting and security. A 5-acre parcel would meet the special use permit requirements. He does not see that that was written into this language.

Ms. Napier stated staff would explore language for a five-acre minimum lot size under 17.145.150 on page 5 under Development Standards for Marijuana Production and Processing, Tier 1.

Commissioner Prior referred to page 3. He asked why a Type 2 processor is not being allowed in Rural Area Industrial (RAI) when it is allowed in another industrial setting. He thought it should be. Chair Mahoney stated that the RAIs that he is familiar with have not been developed to the point of water, sewer, etc. They are pole yards or saw mills. He asked Ms. Napier if Trans Alta would be zoned RAI. Ms. Napier stated RAIs are areas of more intense development and they have been identified where industrial activities have been historically and are planned for future activities. These would be like the Curtis Industrial Park, Chehalis Industrial Park, and she thought Trans Alta would be part of that.

Commissioner Prior stated there is a RAI in Randle. There is a lot of vacant land in that area. He thought that was a reasonable location for processing [marijuana]. He did not want to exclude that. Commissioner Guenther did want to exclude it. He thought the more sophisticated processing for marijuana should be limited to an industrial park. Commissioner Rosbach agreed.

Commissioner Prior stated on page 5, the language in item 4 needed some re-working. He did not think the County should require security systems over and above what is already required by the Liquor Control Board. He assumed that even indoor grows would need to have security lighting but he did not think the State rules indicated that. He does not want to go beyond the State rules.

Chairman Mahoney stated the WAC states that lighting is permissible after dark in order for the cameras to work – motion sensor, etc. Lights are optional as long as the camera is effective.

Commissioner Prior stated item 7 on page 5 and item 3 on page 6 refers to the 1000 foot line separation. The draft states it has to be from the nearest property line to the nearest property line. What if someone has 100 acres.....

Chair Mahoney stated that is language right out of the WAC and that would not change.

There was discussion about whether or not hospitals and clinics should be added to the County list with day care centers, schools, etc. The WAC does not include those; however hospitals are mentioned in item 7, page 5 and item 3, page 6.

Commissioner Guenther did not want a marijuana grower or processor within 1000 feet of a hospital. Commissioner Prior respectfully disagreed but would not argue the point.

Commissioner Prior stated item 3 on page 6 states that the distance shall be measured.....from the property line of the marijuana production or processing facility. He thought that it should read "retail facility."

There were no other discussions regarding production or processing. Chair Mahoney stated he would like the Commissioners to have a discussion regarding where to place retail facilities.

Ms. Napier stated for purposes of discussion there was a handout and the points in it were also included in the draft document. Some of the questions relate to the definition and the definition of marijuana retailer is on page 1 [of the draft document]. It is as per the WAC with the addition of a valid business license issued by the County. All of the definitions come from the WAC with the exception of the underlined text.

Commissioner Guenther stated he had no problem with the Type 1 processor being located on a grow site. He would like to see a Type 2 processor in an industrial park.

Ms. Napier stated the next item related to retail stores appears on page 2. She asked which districts should allow retail to occur. The table is a replication of the table in Lewis County Code. All of the districts are shown because it is out of the code; the only zoning districts that the Planning Commission thought appropriate were STMU, STI, CC or FC.

Chair Mahoney stated in his opinion, for law enforcement and emergency response people, if we are concerned about armed hold-ups the retail outlet is the obvious choice, not the grow operation. He is concerned about Freeway Commercial (FC) locations which would allow someone to hold it up, jump in the car and be gone. The Rush Rd intersection, Winlock/Toledo intersection he thought might be particularly vulnerable.

Commissioner Guenther asked how many retail outlets are allowed in the County. Chair Mahoney stated four are allowed in the County, with Centralia allowed to have two and Chehalis allowed to have one. Commissioner Prior stated he could imagine a retailer in Packwood and his clients would be skiers. He did not want to exclude an entrepreneur from making money that way. According to the table a retailer would be allowed in Packwood (STMU).

Commissioner Prior stated the 1000 foot setbacks are appropriate, and there was discussion about 100' setbacks from property lines for grows and processors. A 100' setback cannot be done for retailers. How do we deal with that or do we need to?

Chair Mahoney stated the way the WAC is written, a retail store could go into a small strip mall as long as the walls between the different businesses were solid – no doors could adjoin them. It can also be a separate building. These retailers can only sell marijuana and related products.

Commissioner Rosbach asked if FC was not going to be allowed. Chair Mahoney stated he did not necessarily want to eliminate it but he wanted every Commissioner's input. Some things may need to be left in the draft and have the public hearing to get public input. Strictly from a security standpoint, if we are concerned about armed robberies, the FC area is the most risky.

Commissioner Prior asked if Lewis County prohibits the sale of alcohol at FC and was told no; he did not think that marijuana retail should be banned from those locations, either.

Commissioner Prior asked for an example of a Rural Residential Center (RRC). Commissioner Guenther stated the area around Mary's Corner is RRC. Ms. Napier clarified RRC. The permitted uses in those areas are more of a residential nature; no commercial is allowed in RRC. She cited Mayfield Lake as an example.

Ms. Napier stated she wanted to be clear about the zoning districts that the Commissioners discussed. She understood retail would be allowed in STMU and CC. Commissioner Prior thought FC should be allowed for retail since alcohol sales are allowed there.

Ms. Napier stated she was not sure Lewis County Code allowed a liquor store in FC. It may be associated with a convenience store. Commissioner Prior stated on one hand we are proposing that we are going to outlaw marijuana retailing as a separate entity in FC; but at the same time it is okay, and it already exists, to sell alcohol in FC. Ms. Napier stated Commissioner Prior is equating it to retail sales.

Chair Mahoney agreed that marijuana sales should be allowed in FC, CC and STMU. He also thought it should be allowed in STI if all of the requirements are met. There may not be a suitable STI but he did not think that zoning should be eliminated.

Ms. Napier thought STI was excluded because it was in conflict with the purpose statement.

Chair Mahoney stated the general outline worked and he thought a public hearing could be held.

Commissioner Rosbach confirmed that the five acre minimum was being added. Chair Mahoney stated he thought that was the only change to make. Commissioner Rosbach stated page 5 needs some word-smithing regarding the lighting. Ms. Napier stated she also heard that the Commissioners did not want the County standards to be greater than the State's standards.

Commissioner Prior stated if lighting is required by the State we want to go beyond and make sure that the lighting does not encroach on the neighbors. He does not want to require lighting if it is not required by the State.

Ms. Napier stated once there is a document from the Planning Commission, Mr. Babineau will be assembling County staff to review it to be certain that there is not a conflict with someone else's code. That review should be done by the next meeting.

There were no other comments. Chair Mahoney asked the Commissioners if they thought they were ready for a public hearing on January 13. Commissioner Rosbach asked if the draft ordinance would be available for review before the public hearing. Ms. Napier stated the draft document in the Commissioner's packets was very similar to the format of the final document. It will be revised based on what staff heard tonight. It should be familiar to the Commissioners and staff will highlight what has been added.

The Chair entertained a motion to hold a public hearing on recreational marijuana on January 13, 2015. Commissioner Guenther made the motion; Commissioner Prior seconded. The motion carried.

Chairman Mahoney reminded the public that the public hearing is where they get their views into the record. He asked that comments are in writing; speakers at the public hearing may be limited to two or three minutes, depending on how many people wish to speak. Comments are considered by the Planning Commission before a recommendation is made to the Board of County Commissioners.

5. New Business

There was no new business.

6. Calendar

The next meeting will be a public hearing on January 13, 2015 on recreational marijuana.

7. Good of the Order

Ms. Napier stated that the Board of County Commissioners did adopt on December 8 impact fees that are related to Birchfield, FCC. They are related to a service area. Mr. Babineau is getting up to speed on the Birchfield record and staff will be working with the developer to ensure that he has fulfilled the conditions of approval set by the Hearing Examiner and the Planning Commission.

Commissioner Guenther stated he hopes the County remains whole on what the costs are going to be for upgrading the roads to that site. He cited the connector road from Rush Rd to Jackson Hwy and how expensive it was for a mile-long road. The Middle Fork Road will look like that with turnouts, etc. in order to accommodate 6700 residents.

Ms. Napier stated the BOCC also took action on the Countywide Planning Policies, so that work is done for the year.

8. Adjourn

The meeting adjourned at 7:24 p.m.

