

**WHITMAN COUNTY
PLANNING COMMISSION
ZOOM MEETING
April 6, 2022**

MEMBERS:

Chad Whetzel, Chairman
Dave Gibney
Rusty Jamison

Brian Davies, Vice-Chairman
Weston Kane
David Tysz

Staff: Alan Thomson, WC Planner; Grace Di Biase, WC Assistant Planner; Brandon Johnson, Public Works; Elinor Huber, Clerk.

Others: Ken Duft; Shelly Chambers Fox

7:01 p.m. – Chad Whetzel opened the meeting. Introductions were held.

MOTION by Brian Davies and seconded by Weston Kane to approve the minutes from March 16, 2022. Motion passed.

Alan Thomson – Reports.

a. Board of Adjustment forthcoming hearings. We do have one for Kirk and Melissa Dugger. You remember an RV Park north of Pulman off the Palouse-Albion Road. They got a conditional use permit to operate that three years ago in 2019. Apparently, it has been very successful and they want to expand. They have applied for another conditional use because we didn't review the expansion area. They are going through another CUP and the hearing is set for April 14, 2022, with the Board of Adjustment.

They plan on expanding from eighty RVs up to one hundred. So, an additional twenty RVs and they now have a slightly different new area to the west of their house that they are going to open up for more spots. We will do that hearing next week.

b. Forthcoming Administrative Use Permits – None.

c. Forthcoming Variances – None.

d. Update on previous conditional use permits and variances – We had Panhandle Truck and Equipment Repair CUP and that was approved on March 24, 2022.

e. Update on previous administrative use permits – None.

f. Board of County Commissioner's action – We do have some action there. The Planning Commission finished their job with the Comprehensive Plan update, and we have sent it over to the BOCC. The informal transmittal went over the week after we had our last meeting with the Planning Commission. The formal transmittal was delivered on April 4, 2022, and the BOCC have made a time for their meeting/hearing on April 18, 2022.

At that time, they have a choice to accept what the Planning Commission sent over to them. They can send it back to the Planning Commission or have their own hearing if they want to change some things. I suspect that they are going to have their own hearing. They asked about the possible changes and, of course, this has to do with the rail line so they know about that and that is what I think is going to happen. So, on April 18th they will open up to the public for comment and then they will probably make a time frame for the next hearing so that they can change the Findings that you sent over to them. So, on April 18th you can tune in to that one online if you so want to.

- g. Update on previous Board of County Commissioner's action – None.
- h. Forthcoming Shoreline of the State Substantial Development Permits – None.
- i. Update on previous Shoreline of the State Substantial Development permits – None.
- j. Planning Commission forthcoming hearings – Nothing in the near future for the Planning Commission regarding hearings.

Adjourned – 7:06 p.m.

**WHITMAN COUNTY
PLANNING COMMISSION
ZOOM WORKSHOP
April 6, 2022**

MEMBERS:

Chad Whetzel, Chairman
Dave Gibney
Rusty Jamison

Brian Davies, Vice-Chairman
Weston Kane
David Tysz

Staff: Alan Thomson, WC Planner; Grace Di Biase, WC Assistant Planner; Brandon Johnson, Public Works; Elinor Huber, Clerk.

Others: Ken Duft; Shelly Chambers Fox

7:07 p.m. – Chad Whetzel opened up the workshop to unfinished business with the By-laws and Rules of Procedure for legislative and quasi-judicial hearings.

Brian Davies – I have a question for Alan. If the BOCC have a hearing and they want to change a bunch of stuff, does it come back to us?

Alan Thomson – No, it stays with them. If they have their own hearing the ball is in their court. On the 18th they technically could send it back to the Planning Commission for further review. I don't think that is going to happen. I think they are going to take it on themselves because we understand what they need to do.

Brian Davies – Is that going to be online?

Alan Thomson – Yes, and you just tune into the BOCC schedule and you'll see when it is coming up. On the 18th they will make their decision as to what they will do and my guess is they will make a time frame date for a further meeting/hearing. At that time, they can change the Findings.

Brian Davies – We can link into that meeting on the WC website?

Alan Thomson – Yes.

Brian Davies – Okay, thank you.

Chad Whetzel – Okay, is there anything else about the stuff we sent over to the BOCC?

Brian Davies – No, thanks, Chad.

Chad Whetzel – Okay, we will move on to our By-laws.

Alan Thomson – There is only one track change in here under Article V Meetings:

- A. *Regularly scheduled commission meetings are held on the first Wednesday of each month at 7:00 p.m. **The primary location shall be** in the auditorium of the Public Service Building in*

Colfax, Washington. An alternate location may be used with advanced notice in accordance with the Open Public Meetings Act. On-line/virtual meetings and hybrid on-line/in-person meetings are acceptable. When a regular meeting day falls on a legal holiday, the Commission will convene at the call of the Chair. Meetings may be canceled by the Chair, provided notice is given to Commission members.

Alan Thomson – This is the language you wanted so you can discuss this and change it or accept it the way it is.

Chad Whetzel – That looks like I remember it.

Brian Davies – Good to me.

Rusty Jamison – Hi, guys. Sorry I'm late. We couldn't get the sound.

Chad Whetzel – Does anybody else have any comments?

Brian Davies – It is good to have that language in there.

Chad Whetzel – It really needs to be in there in case somebody wants to file an objection because we didn't follow the By-Laws.

Alan Thomson – So if you adopt this tonight, we can change that date at the end.

MOTION by Weston Kane and seconded by Brian Davies to adopt the By-Laws as amended. Roll call vote and everyone voted unanimous. Motion passed.

Alan Thomson – I will make the changes and send it out tomorrow to everyone.

Chad Whetzel – The next one is the rules for the Legislative Public Hearings.

1. Each person who speaks at this hearing shall register **their his/her** name and address on the roster. ~~that is located at the speaker's table.~~

Chad Whetzel – Is everyone okay with #1? Okay, #2.

2. No person, including any Commission member, shall speak until **they he/she** have been recognized by the Chair and have identified **themselves. him/herself.**

Chad Whetzel – Okay, any objections to #2? Okay, #3.

3. No person shall address the Commission ~~except at the speaker's table and~~ without using the microphone.
4. The first time an individual speaks, **they he/she** shall identify **themselves him/herself** giving address and nature of their ~~his/her~~ interest in the matter. **Each additional time a speaker speaks they shall identify themselves.**

Grace Di Biase – On #4, where it says, “...shall identify themselves...” maybe it should say “**give** their address” instead of “giving address.”

Chad Whetzel – I think that is a good idea because that way you know where they are from.

Brian Davies – Provide an address?

Chad Whetzel – Yes, but you would also say,

Dave Gibney – How about “**stating their address** and nature.”

Chad Whetzel – There you go. “Stating,” I like that. So, that brings me to our last meeting. Maybe I’m wrong but it seemed like one of the gentlemen talking there actually leased land and owned land that was pertaining to some of what we were talking about. You have to be a WC resident, well, if you were an owner, you have to own land in WC to have a voice, correct?

Alan Thomson – No, not really.

Brian Davies – No, it’s about land use, isn’t it? if somebody is a lessee of land in WC, I would think we should at least have to hear them. Whoever they lease their land from is actually the person who should be speaking to us. But I guess if the lessee is passionate enough about it then we need to offer the time for them to speak.

Dave Gibney – If somebody from Vermont wants to speak publicly, we don’t necessarily have to pay a lot of attention, but we have an obligation to listen to them.

Alan Thomson – Dave is right. Just because somebody does not live in WC doesn’t mean they can’t speak. We will always let them speak. Whether they have standing is the legal question and if they don’t live here and can’t show how things are going to harm them, then we just listen and move on.

Chad Whetzel – Okay, #5.

5. *The Chair may impose time limits on each speaker, depending on the total number of individuals wishing to speak.*

6. *Anyone at the public hearing who has physical evidence of any kind (letters, photos, maps, etc.) shall submit that evidence to the Staff Advisor or Secretary to be entered into the record at the time it is presented to the Commission. **At least two copies of the document** Documents should be submitted ~~in-at-least-two-copies~~ suitable for copying and distribution. One copy will be for the staff, and the other copy will be for distribution to Commission members.*

Alan Thomson – There aren’t any changes that you wanted in #6. But read it anyway.

Brian Davies – So, it is just the ones in red.

Chad Whetzel – On #6 I think we might want to make an adjustment. Where it says, “Documents should be submitted in at least two copies...” I don’t think we need the word, “in.” Maybe it should be “with.”

Weston Kane – You could say, “At least two copies of documents...”

Alan Thomson – Chad what you said, “Documents should be submitted with at least two copies,” makes more sense.

Chad Whetzel – That makes it clearer.

Dave Gibney – I liked Weston’s suggestion. “**At least two copies of documents should be submitted.**” The general thing here is to have a copy to give to staff for the record and one to pass between the Commission presuming we are in-person.

Chad Whetzel – Okay, let’s go to #7.

Alan Thomson – There were no track changes in that one.

7. *Speakers are discouraged from reading verbatim any letters that are already in the public hearing record, although it is acceptable for speakers to summarize such letters during their comments.*

Dave Gibney – Basically, this is a time saver. If they have written us a letter, there is no point in reading it to us. But if you have more to say, then say them.

8. *The Chair, when appropriate, may take questions from Commission members or the audience regarding a speaker’s presentation. The individual with a question to ask shall wait until the speaker finishes, and then direct that question to the Chair.*

9. *Public hearings shall be continued to a later date at **10:00 p.m.** unless a majority of the quorum present accept an extension of a finite period of time.*

Alan Thomson – So, the discussion last time, you wanted 10:00 p.m. instead of 11:00 p.m.

Chad Whetzel – Does it have to say Pacific Standard or Daylight?

Alan Thomson – Let’s not worry about that.

10. *The hearing will open with a staff report.*

Chad Whetzel – No objections there? Is everybody satisfied with this?

MOTION by Dave Gibney and seconded by Weston Kane to approve the Legislative Procedure Rules and add a date at the bottom of the document. Roll call vote. Everyone voted yes. Motion passed.

Chad Whetzel – Let’s go on to the Rules of Procedure for Quasi-judicial Public Hearings. We will give you time to read through this and then discuss it.

Brian Davies – Alan, can you explain the difference between the quasi-judicial and legislative hearings?

Alan Thomson – An example of the Quasi-judicial would be a conditional use permit or a variance, something that affects an individual landowner. Legislative is typically the whole county so this is more like a legal case. You are dealing with an individual landowner that wants to change something on their property and we want to make sure that they are not being favored in any way. It goes through a sort of quasi-judicial process.

Brian Davies – So, that includes conditional use permits, administrative use permits and zone changes?

Alan Thomson – And variances, yes. Because that affects one property, not everybody else’s property in WC. That is basically the difference there is when you are changing something for an individual property or property owner that needs to be done fairly.

Brian Davies – The other is like what we did with the comp plan or cannabis ordinance and that was legislative.

Chad Whetzel – Okay, so are there any changes to the first section?

This public hearing is a “quasi-judicial” hearing because it involves the legal rights of specific parties and pertains to a particular geographical area. In these cases, the Commission acts like a judge by determining the legal rights, duties, and privileges of specific parties in the hearing (hence the term “quasi-judicial.”) The fundamental purpose of a quasi-judicial hearing is to provide the affected parties due process, which requires notice of the proceedings and an opportunity to be heard.

1. Each person who speaks at this hearing shall register **their** ~~his/her~~ name, address, and position (e.g., proponent, opponent, or **neutral**) on the roster. ~~that is located at the speaker’s table.~~

Chad Whetzel – There is one thing that we should change in there. When we say “proponent or opponent,” should we also include “neutral?”

Rusty Jamison – I don’t think you should do that because you’re going to get a lot of people talking there and you’re going to make a decision on what they are saying whether they are opposing. I was thinking of when we had the whole town of Dusty there for that other meeting.

Chad Whetzel – Most of the time we don’t have too many neutral people but every once in a while, we will have a couple of people who are just raising concerns one way or another and they don’t necessarily have an opinion on it. It doesn’t matter to me, one way or the other but I just thought maybe we should include neutral there.

Dave Gibney -You need to let people who are neutral have a say like everybody else. I think Chad is right. It is down below in #5. During the registration they need to make a choice.

Brian Davies – The bottom line is either yes or no. We don't really make neutral decisions. If someone is applying for a grain terminal outside of Dusty, and,

Dave Gibney – In a lot of ways, some of the neutrals prevailed in that there were enough questions that we continued it and it got taken out of our hands. Sometimes they say they aren't for or against it but have you thought of this and this?

Chad Whetzel – In particular, Ken Duft has not necessarily had an opinion one way or another but he has brought up some very good points for or against depending on the subject matter. You don't want to exclude somebody like that. That has made us think about the whole process with that particular thing.

Dave Tysz – I think if it was in there you would just cover your bases, even though there is somebody that is not neutral there, but your bases are covered.

Rusty Jamison – Well, I'll go along with the neutral then but I just feel that if someone is going to come to the meeting most of the time they are going to either be a proponent or an opponent and otherwise they are not going to come to the meeting if they really don't care.

Chad Whetzel – Sometimes it isn't that they are against or for something but they think that whatever is going on may be a violation of some law or another and they want to bring it to your attention.

Brian Davies – We could have a couple of different scenarios but like you had the public hearing about the grain terminal, I can just see somebody saying that I may not be for or against this but have you thought about the impact of the traffic, or the this or that.

Alan Thomson – Also, sometimes we have people speaking such as just informing us like DOT representatives or an engineer or somebody who wants to talk about the specifics of a case that doesn't have an opinion one way or another, is not an opponent or proponent, but is giving out information.

Chad Whetzel – Okay, I think we beat that one up pretty good.

2. *No person, including any Commission member, shall speak until **they** ~~he/she~~ have been recognized by the Chair and has identified **themselves**. ~~him/herself~~*
3. *No person shall address the Commission ~~except at the speaker's table and~~ **without** using the microphone.*

Alan Thomson – On the Legislative one we just said, “No person shall address the Commission without using the microphone.

Rusty Jamison – I think we should make it the same.

4. *The first time an individual speaks, **they** ~~he/she~~ shall identify **themselves** ~~him/herself~~, ~~giving stating their~~ address and nature of **their** ~~his/her~~ interest in the matter. **Each additional time a speaker speaks they shall identify themselves.***

Brian Davies – In the Legislative we just say they don't have to give all that the second time they talk, or however that is worded.

Weston Kane – Before we go too far, on #6, "*people may be allowed to speak for a second time.*" Do we want to put the identification there? Instead of in #4 where it says, "*each additional time a speaker speaks,*" do we want to move that down to line up with, "if they are allowed to speak, for a second time."

Chad Whetzel – I think there are two separate things going on here. I see what you are saying Weston, but I guess my argument is that #1-4 pertains mostly to people who are giving us information. It also does pertain to the proponents and opponents. But #5 gives the list of times and then #6 is referring back to those if you have more time and #1-4 is more generalized for everybody. I don't know if that makes sense.

Brian Davies – You said #1-4 are tailored to identify the speaker and then #5 on down are more procedural on how to speak.

Weston Kane – But one could say that #4 insinuates they are guaranteed a second time to speak, whereas down below they "*may be allowed to speak.*" I don't remember, does the Legislative have anything like #6?

Dave Gibney – No, the Legislative is more preformed. You don't have concerns about making sure you get equal time to opponents and proponents and things like that.

Alan Thomson – The Quasi-judicial one is more formal. It is more like a court. You are acting as a judge. This is how Robert's Rules puts it.

Weston Kane – Maybe if we changed it on #4 to say, "if a speaker speaks an additional time, they shall identify themselves."

Dave Gibney – I don't read that that that is a guarantee that they get to speak twice.

Chad Whetzel -Once you get down to #5 it is kind of, there are going to be some who speak twice if you follow that form exactly. Once you have replies and rebuttals and stuff like that. So some people are going to speak more than once.

Brian Davies – I think that is just laying out how it is supposed to be done.

Dave Gibney – If you have the typical situation with the developer and his contractor there and they will be the proponents and then the opponents may or may not speak and the same people are going to speak again in answer to what the opponents say so, it frequently is the same people speaking multiple times and generally we give them a lot of leeway unless the time is really constrained.

Chad Whetzel – Right, that is what we, under g) we put in the rest of that in case we want to do something different.

Weston Kane – Okay, let's move on then.

Chad Whetzel – Okay, #5.

5. *The order of speaking shall be as follows:*

- a) *Proponents of the proposal – no more than 30 minutes.*
- b) *Opponents of the proposal – no more than 30 minutes.*
- c) *Those who are neutral to the proposal – no more than 15 minutes.*
- d) *Reply by proponents to comments made in b) – no more than 15 minutes.*
- e) *Reply by opponents made in d) – no more than 15 minutes.*
- f) *Additional comments from neutral parties – no more than 5 minutes.*
- g) *Rebuttal by proponents to comments made in e) – no more than 5 minutes.*

~~**Or: the order of speaking will be as directed by the Chair and speaking times will be based on the Board's decision for timing.**~~

The Commission reserves the right to modify these time limits when numerous individuals express interest in speaking.

Dave Gibney – Is that last statement a replacement for #5, Alan?

Alan Thomson – No, this was what the planning commission recommended putting in here. I don't remember who asked for that.

Chad Whetzel – I think that was what I suggested because in the interest of having large groups we may need to vary that, we may need to cut some of the times down or if there aren't very many we can lengthen it a little bit.

Brian Davies – So, this gives us the option of calling an audible just based on whatever the current situation happens to be as far as who shows up and everything.

Alan Thomson – Is it a good idea to change the order of the speaker who is speaking? It seems like we should stick with the order right there.

Chad Whetzel – I think it is mostly intended for the times.

Dave Gibney – The following sentence gives the times. The line at the bottom loses the enforcement of the fairness and both sides get equal time. I'm not sure it should be accepted.

Alan Thomson – So, Chad, what do you think. I think it was your suggestion to put that in there.

Chad Whetzel – I think that one can go away. In the middle of a quasi-judicial meeting we don't need the Board to make a decision. It should be the Chair that states it and move on. I think that whole section can be deleted.

Alan Thomson – Chad, you have the ability to make an executive decision depending on how many people show up for a hearing. If this is a packed house, you don't want everybody speaking for 30 minutes. So, you can make that determination. You can limit it down to three minutes, etc.

Chad Whetzel – Exactly and that is what “a-g” says.

Dave Gibney – The 30 minutes isn’t each proponent. It is the total first presentation by the group.

Rusty Jamison – I noticed you have it set up so all those times together would equal about two hours. That is kind of where we have it set up so the meetings won’t go much past that.

Alan Thomson – So Dave, clarify something for me here. It is talking about the proponents of the proposal and opponents. So, the developer would be the proponent and then opponents could be anybody in the audience?

Dave Gibney – Yes, it is usually the neighbors against the re-zone.

Alan Thomson – So, if there is like 50 opponents, they have only a total of 30 minutes between them?

Dave Gibney – That is what is says. Again, you generally have some discretion. What this does give you is that, okay, there is 3-4 proponents, there’s 35 against it and after seven of them speak there is no new information, you can cut them off, or say, “Is there anybody out there that has something different and new to say to us?”

But in most cases in my experience, we don’t hold to the letter of this. I’ve done this in Pullman, I won’t do it again. But we usually, each individual gets the 5 minutes so if you’ve got in 30 minutes, that’s down in #6, in 30 minutes you’ve got six opponents, if you hold them to the 5 minutes.

Chad Whetzel – Part of it is it is kind of a pain because they are assuming that you have two groups that are well organized already and they,

Dave Gibney – Actually if I had my way in a lot of this, I’d give the unorganized opponents more time than the proponents who do it all the time because they know what they are doing.

Chad Whetzel – Which is typically what happens.

Dave Gibney – But you don’t want to go so far that way that when you turn the proponents down they have a good cause to say, “You only gave me 5 minutes to speak and the you listened to all those other people for three hours and you didn’t treat me fairly.”

Alan Thomson – In reality though, when you are conducting a hearing, the audience is not aware of these rules. They are not seeing these rules. Is that right?

Dave Gibney – In Pullman, we read these rules at the beginning of the hearing.

Alan Thomson – Okay, we’ve never done that, so I guess that is a good question. Is that something you want to do? Read them out?

Rusty Jamison – It could be at the discretion of the Chair if he wants to do that. He could.

Dave Gibney – When you get down to #12, that is for more formality.

Alan Thomson – How formal do you want to be? This is going to change the way we've done things. That is not necessarily a bad thing, but do you really want to go into that detail of reading out this at the beginning of every hearing?

Chad Whetzel - I don't think it is necessary. Usually we give everyone the rules, the short version of what we are going to go with that evening, based on the number of people who show up and the nature of whatever we are doing. Sometimes we don't even have opponents show up at all for some things. If it is posted on line and people can find them then, they can read them otherwise we can give them the short version. Cliff notes.

Dave Gibney – We haven't ever had, we have never done a quasi-judicial this way with this group. So, you can certainly change things up in between hearings. You don't want to change the rules in the middle of one. We can finish up what we have here tonight and see how it shakes out at the next zone change.

Alan Thomson – , what was the answer on reading this out before every hearing?

Dave Gibney – Let's not come to that conclusion right now because you are all of a third of the way through of what you would be reading. So, making such a decision after we finished looking at it would be far more appropriate timing.

Alan Thomson – Okay.

Chad Whetzel – So, we are down to #6.

6. *Each individual may speak for five minutes or less. In the event that no further speakers wish to speak in a given time period, people may be allowed to speak for a second time or for more than five minutes, but not to exceed the total time allotted per side per presentation.*

Chad Whetzel – I think we have a problem with #6. The second line, *“people may be allowed to speak for a second time or for more than 5 minutes.”*

Brian Davies – But not to exceed the total time. So, if we give them 30 minutes for the opponents and only one person talks, or two people then I guess they can trade off for 30 minutes, right?

Chad Whetzel – Right.

Dave Gibney – Unless there is a danger of going into the wee hours or a need to extend the hearing, it is generally better to let people speak a little longer.

Brian Davies – Let the baby cry itself out.

Rusty Jamison – I like Dave's idea. I think we should try and go with most of what we got and after we use it, if we feel the need to revisit it then that's when we should do that.

Dave Gibney – And to be clear from my point of view, these started with the rules that the Pullman Planning Commission has used for a number of years and I don't remember exactly, it has been a couple of years since I gave them to Alan. I don't remember exactly what hearings we were having at the time. It seemed to me to be going a bit out of control. That's why this discussion has continued.

Brian Davies – What we have changed tonight makes it more inclusive with regard to grammar like we did with the other one. Maybe we should, if something pops up these procedures can be changed at a meeting and we can all vote on it. So, let's move ahead.

Chad Whetzel – Let's go ahead. How about #7?

7. *Anyone at the public hearing who has physical evidence of any kind (letters, photos, maps, etc.) shall submit that evidence to the Staff Advisor or Secretary to be entered into the record at the time it is presented to the Commission. Written testimony, rebuttals, and findings of fact should be submitted in at least three copies suitable for copying and distribution. One copy will be for the staff, one copy given to the opposite side, and one copy for distribution to Commission members. Written testimony will be submitted during the order of speaking (a,) (b), or (c) above. Written replies, rebuttals and proposed findings of fact shall be submitted during the order of speaking (d), (e), or (g) above.*

Chad Whetzel – Everything okay there? Okay, #8. That one is pretty much like the one in the legislative. Okay, #9?

8. *Speakers are discouraged from reading verbatim any letters that are already in the public hearing record, although it is acceptable for speakers to summarize such letters during their testimony.*
9. *The Chair, when appropriate, may take questions from Commission members or the audience regarding a speaker's presentation. The individual with a question to ask shall wait until the speaker finishes, and then direct that question to the Chair.*

Dave Gibney – The #9 is generally been not subject to the time limits. If the Commission has asked someone questions, that doesn't get charged against their time.

Chad Whetzel – Correct. We try to have everything directed towards the Chair so there is no back and forth arguments between the groups. Okay, #10?

10. *Public hearing shall be continued to a later date at **10:00 p.m.** unless a majority of the quorum present accept an extension of a finite period of time.*

Alan Thomson – We change that one to be like the Legislative one at 10:00 p.m.

Chad Whetzel – How about #11?

11. *All members of the public speaking at the hearing must be administered an oath or affirmation. I will administer that now. [The Chair shall raise his/her right hand and say:]*

“Will each of you in the audience who expects to testify today, please raise your right hand? Do each of you swear or affirm to tell the truth in the testimony that you give? If so, please answer “I do.”

In the case of virtual testimony, members of the public will be asked to state they will tell the truth after their identification and residency statement. (Item 4)

Rusty Jamison – I like the idea. I just wondered if Denis has looked at that. Is that something that would, if someone did lie to us and deliberately did so after taking that oath and that caused this Commission to make a bad decision or make a recommendation that is a big one, is there any action that we can take? Otherwise, how would you know without any teeth in it, people would not be afraid to lie.

Alan Thomson – The teeth Rusty, is they get prosecuted and that is entirely up to Denis Tracy.

Rusty Jamison – Okay, I was wondering that by having them take an oath in all of this, he would be able to prosecute if the Commission’s decision was made on bad evidence or testimony.

Dave Gibney – Not being a lawyer, I think the oath makes the lie perjury.

Alan Thomson – Again, will the prosecutor prosecute. That is a question that we can’t answer.

Rusty Jamison – I understand that.

Chad Whetzel – It probably depends on how egregious it was. How much affect it had on other things.

Brian Davies – There’s no good Samaritan law here, guys.

Chad Whetzel – So, is that something we want to read out and do?

Alan Thomson – Good question.

Dave Gibney – In the Zoom world in Pullman we switched to asking the people when they first started to talk, to state that they would tell the truth. But in the room, we did it this way because the zoom world doesn’t lend itself to everybody raising their hand.

Brian Davies – Maybe if we have a Zoom public hearing we could have a sentence of sorts that the Chair reads prior to accepting testimony.

Chad Whetzel - In the case of an online meeting, that if you are speaking we will assume that you swear to tell the truth.

Dave Gibney – We really did say, at the point of saying, “I am so and so, and I live here and I will tell the truth.”

Chad Whetzel – Okay, so how do you want to word that and where do you want to put it?

Dave Gibney – I didn’t word it. I just did it as the Chair.

Alan Thomson – So, why don't you come up with the language that Dave just said and put that in there and that would be what Chad would say in a Zoom meeting?

Weston Kane – What if you just keep that line, you can put in something like, "in the case of a virtual meeting we will assume your speaking agrees with our oath."

Dave Gibney – I really don't like the words, "we will assume."

Weston Kane – In speaking at our meeting you agree to the oath.

Rusty Jamison – How about just stating the oath is in effect and the Chair states that they have to abide by that.

Brian Davies – I think you should change it from meeting to hearing.

Alan Thomson – How about a two-part one since we really are going to have two parts here. If we have an in-person meeting then the oath as it is written here. If you are having a virtual meeting, then a different statement.

Chad Whetzel – Okay, we are good there, then. Do you want to say hybrid meeting, virtual, etc.? Let's do it this way, if the Commission is in-person, not that won't work out either.

Dave Gibney – In the case of virtual testimony. How does this look?

Alan Thomson – So, that covers both in-person and virtual and hybrid.

Chad Whetzel – It doesn't take care of in-person, it is just,

Dave Gibney – The first part takes care of in-person.

Chad Whetzel – Right, because it says, "at the hearing." Undo, that Dave.

Dave Gibney – In the case of a virtual testimony,

Alan Thomson – So that covers in-person and hybrid.

Chad Whetzel – Because it says, after the hearing.

Grace Di Biase – Brandon has sent a message below. "Please read what you are typing in the statement for the secretary for the minutes."

Chad Whetzel – No!

Dave Gibney – No, we'll ship the document. What I was typing is under #11 as a new paragraph. It says:

"In the case of virtual testimony, members of the public will be asked to state they will tell the truth after their identification and residency statement. (Item 4)

Chad Whetzel – Okay, #12.

12. Prior to hearing the staff report, the Chair must ask each Commission member the following questions which touch upon the qualifications of the commission member's ability to fairly and impartially hear the matter before the Commission. The Chair shall also indicate his/her answers to these questions.

Dave Gibney – I am certain that about four lawyers ago in the City of Pullman there was something that got litigated or close to litigated and the attorney at the time said to start asking these questions to make sure there is no one on the committee making decisions unfairly. But I wasn't there then.

Alan Thomson – Typically, what we do with this Dave, is just one statement by the Chair, "Does anybody have any conflict of interest with our applicant? Instead of all these questions here.

Chad Whetzel – So, the one thing I guess, while we are reading through this, I'd like everyone to keep in mind like the last one, do these questions work well in a virtual meeting or hybrid and if not, do we need to do something different?

Dave Gibney – These are addressed to the individual members of the Commission. So, I can answer the question whether I am there virtually or physically.

Chad Whetzel – I am thinking as the Chair, do I go through Dave, and then a, b, c, d, e, f, g, h, and then I move on to Brian and ask him the same questions? Or can I ask them as a group in general? Whereas in person we can go through each one of these for the whole group easier.

Alan Thomson – I would say the whole group.

Brian Davies – The whole group because that is where the questions are addressing.

Dave Gibney – You ask the question and then do the roll. I've gotten used to this with the time in Pullman but there is a significant amount of covering the institutions' butt here.

Brian Davies – That sounds like the guy from the Association of Washington State Insurance company has been saying you guys need to put this in place.

Dave Gibney – That easily could be how they got there too, the city's insurance or AWC as you say. I wasn't there.

Brian Davies – It seems like a lot of words to me.

Dave Gibney – I do think that you could narrow it down to "g." and then give the audience a chance to, maybe you don't have the whole appearance of fairness stuff but you could probably do "g." and then ask if there is anyone in the audience who disagrees.

~~a. "Does any member of this Commission have knowledge of having conducted business with either the proponents of the opponents in this proceeding?"~~

- b. *"Has any member of this Commission communicated with any proponent or opponent regarding the proposal that is the subject of this proceeding?"*
- c. ~~*"Does any member of this Commission have either a financial or personal interest in the outcome of this proceeding?"*~~
- d. ~~*"Does any member of this Commission know whether or not his/her employer has a financial interest in this matter, or has an interest in the outcome of this proceeding?"*~~
- e. *"Does any member of this Commission live or own property within 300 feet of the area which is the subject of this proceeding?"*
- f. *"Does any member of this Commission have any special knowledge of the substance or merits of this proceeding which would or could cause the Commission member to prejudge the outcome of this proceeding?"*
- g. *"Is there a member of this Commission who believes that he or she cannot sit and hear this matter fairly and impartially, both as to the respective positions of the proponents and the opponents in this proceeding?"*
- h. ~~*"Is there any member of this audience who, because of the Appearance of Fairness Doctrine, wishes to disqualify any member of this Commission from hearing this matter? If so, please state the name of the Commission member and the reason or reasons you believe that member should be disqualified. because of the Appearance of Fairness Doctrine?"*~~

Rusty Jamison – I want to ask you, Chad, with regards to this. With our Commission today is we all get along really well and all have good ethics. But if you were working with a Commission that didn't get along and you as the Chair were questioning some of us that may or may not have ethics that you feel are good, is this something that you feel that you would need as a crutch or would it be any good? Because right now, with our group, I read this and I think do we really even need it? But I'm envisioning when you would. That's why I want your opinion on as the Chair.

Chad Whetzel – We could probably condense this down a little bit. In general, in the interest of the appearance of fairness at the very least, I think some of these questions need to be asked. Our area is a little bit tough because a lot of us know a lot of people and do business off and on even if it is buying parts from a parts house and the guy happens to own a chunk of land and the County wants to do something different with it. Some of it, I think is a little excessive but it is all there for a reason.

Dave Gibney – If somebody answers yes to "a. "I've done business with the proponent," you usually give them the opportunity to say what kind of business, and it is still not necessarily disqualifying if they believe they can still act fairly.

On the other hand, if it is somebody who wants to rezone the area just down the road from you and you have this belief they are going to destroy, drive in front of your yard every day, a person might still be inclined to believe they can sit and hear it impartially, but that might not really be true.

Alan Thomson – At a minimum, you have to have a statement asking the Commission if any of them have a conflict of interest with the subject that is before them. If so, give them a chance to say so. We have had people do this, saying that, I know this person or he is my neighbor, and you give them the opportunity to recuse themselves, but it is their personal opinion. If they can make a decision and be fair and not prejudice, they can still sit on the Board and make a decision. But you have to ask the question. Do you have a conflict of interest?

Dave Gibney – The number “e. if you own property within 300 feet of the proposed rezone,” I think it is almost automatic that you don’t hear it and recuse yourself.

Alan Thomson – There are times where you might then not have a quorum. It is only goes off because of that that, there has to be a out to allow them to sit.

Dave Gibney – It is actually not here, but in the appearance of fairness law where this comes from, there is a doctrine of necessity which says that if somebody is not, even when it is clear that somebody can’t be fair, if you can’t have a quorum without them and therefore you can’t conduct business, you are forced to accept them.

Alan Thomson – Also, it is up to the individual to recuse themselves. But is there anything written in Robert’s Rules that says the Planning Commission can force a recusal? I am not aware of it.

Dave Gibney – That’s not even here. A member of the Commission could move that Brian is not able to, should be disqualified because of this and this, and it goes to a vote of the Commission and they voted yea or nay.

Brian Davies – What if Schweitzer wanted to annex something into the City and put in something and I was still an employee-owner and blah, blah, blah, and I would probably want to recuse myself on that sort of thing, if I was.

Dave Gibney – But if you didn’t recuse yourself but we knew that was the case,

Chad Whetzel – If we are short a quorum and we need that opinion, if you think you can be fair about it then it should be allowed.

Rusty Jamison – I think we are all in agreement that the comments should be made, so my question is, do we want to condense this down to fit WC, based on what Pullman is using? Or just leave it and then tweak it after several times of use? How do we want to proceed with this one?

Dave Gibney – Can I ask Alan, do you have any grain elevators or zone changes coming up?

Alan Thomson – No, there is nothing on the horizon.

Chad Whetzel – My only concern with removing any of that is I don’t know where it came from and if we remove any of it does that cause us legal issues down the road?

Dave Gibney – We’ve never followed this before.

Alan Thomson – You can’t say one way or another that something is never going to cause a legal issue.

Chad Whetzel – You can sue anybody for anything.

Alan Thomson – Exactly. I don’t know that it is absolutely necessary and I think something happened with Pullman and the attorney told them to put all this in here.

Dave Gibney – That could easily have been 40 years ago.

Alan Thomson – We have never gone into this much detail. We have definitely had a general statement, “Is there any member of the Commission that thinks they have a conflict of interest with what we are hearing tonight?” Then the audience, “Is there anyone in the audience that sees that any Commission members have a conflict of interest?” Those two statements should definitely be in there. That general part, not in the detail that is in here.

Dave Gibney – Even when you were doing the wind farms, eventually that went to the Hearing Examiner, too, didn’t it?

Alan Thomson – Yes. We took that out of the BOA’s realm because we knew we would get challenged on it.

Rusty Jamison – Why don’t we go ahead and go with those statements like you said that we have been using, and then if there is a time where we feel uncomfortable on the Board then at that time we could pull this out again and renew. I’m thinking we should have at least two meetings where we would use what we agree on before we go back and renew it.

Chad Whetzel – So, we are basically talking about just keeping “g.” and “h.”

Alan Thomson – That is what I would think.

Chad Whetzel – Is there anyone who has a problem with removing “a.” through “f.?”

Dave Gibney – The only other one that is important is this one.

c. “Does any member of this Commission have any special knowledge of the substance or merits of this proceeding which would or could cause the Commission member to prejudge the outcome of this proceeding?”

Chad Whetzel – Because if it is during the meeting or between the meetings so if it lasts more than two meetings, we can’t meet with one side or the other. But if you meet somebody in town before this goes before you, there is no problem. Correct?

Alan Thomson – Correct. If you have not been engaged in this, if you don’t know about it then it is OK to talk about it. But as soon as we have an application and I tell the Planning Commission that we have an application and here is what it is, you need to remain silent now. You can’t talk with people about this.

Chad Whetzel – If I am talking to a friend and they are saying they want to rezone this ground. Cool. But if it goes more than two meetings and I talk to them in between that is a violation.

Dave Gibney – Or they say they submitted this application to the planner yesterday to rezone, you at that point would have to say, “that is nice, don’t talk to me about it.”

Alan Thomson – Don’t talk to me until the decision is made.

Rusty Jamison – If they slipped you \$100 that wouldn't be good.

Chad Whetzel – Okay, let's make this simple here. Does anybody feel we need to have "a." in there? Okay, let's delete that one. Okay, does anybody feel we need to keep "c.?" Okay, we can delete "c." I think it can be important but we have done none of this before so if we do some of it we are okay. How about "d.?" Okay, delete "d." Do we need to keep "e.?"

Dave Gibney – I do think that is almost, if somebody wants to rezone right next to where I live, I probably can't be fair.

Brian Davies – Anybody within 300 feet has to be notified. That is in the RCW.

Dave Gibney – If I am on this Commission and I have been notified of a rezone affecting me directly,

Chad Whetzel – Let's keep that for now and we can come back to it. How about "f.?"

Weston Kane – I think we should keep it because that special knowledge could be the financial ties that we get away with in "c."

Chad Whetzel – Then we already decided we are keeping "g." and "h." Do any of those that we are keeping seem to roll into those in any way or not?

Dave Gibney – I am going to suggest that we don't mention the "appearance of fairness doctrine." That just confuses the issue right now.

Chad Whetzel – Especially in this County where people have known each other for a long time. If you say, "is there any member who wishes to disqualify any member of this Commission from hearing this matter?" And I didn't get along with Joe since kindergarten and he disliked me and doesn't want me there,

Dave Gibney – The Commission doesn't have to accept the reasons given.

Chad Whetzel – Right, but it doesn't say that though that somebody may or may not be disqualified based on the Commission's desire.

Alan Thomson – The whole PC would have to vote on that if somebody brought up a question about one of the PC members and it would have to be a vote of all the members present.

Chad Whetzel – But it doesn't say that anywhere.

Dave Gibney – It doesn't say that an affirmative answer to any of these questions are automatic disqualifications. They just become part of the record. If he says he doesn't like you and doesn't want you submitting and the Commission doesn't accept the reasons then that's fine. On the other hand, if you get upset and tell Joe, "Let's take that outside," and you leave and recuse yourself right then and there that works, too.

You have to give the public and the opponents and the proponents an opportunity to raise an objection to any member of the Commission. You don't have to accept it but you have to give them the opportunity.

Chad Whetzel – I think right now, what we have looks good to everybody here.

Rusty Jamison – I think we should accept it the way you have it and give it a try and then if we have to, we can revisit it later. We can always get the original one back from Pullman.

Alan Thomson – I've got the original one.

Chad Whetzel – File that in a safe place so we can't ever find it again.

Alan Thomson – You've already got it in your emails.

Chad Whetzel – So, let's go ahead and go forward with what we have right now and move on and see if it works.

Weston Kane – Do we need to revisit that section up above on reading out the time and duration?

Dave Gibney – That was the reading of the whole rules, actually. There is this last bit that is the exclusive statement that once the quasi-judicial is going on, the decisions makers can't talk to people.

13. Now that Commission members have been qualified, please note:

The laws of the State of Washington provide that, "During the pendency of any quasi-judicial proceeding, no member of a decision-making body may engage in ex parte communications with opponents or proponents with respect to the proposal which is the subject of the proceeding. This prohibition does not preclude a member of a decision-making body from seeking in a public hearing specific information or data from such parties relative to the decision if both the request and the results are part of the record."

Chad Whetzel – So, now that we got down to #13, is "b." really necessary?

Dave Gibney – Yes, because somebody could have given Alan an application and before I know about it, they come and bend my ear about it. I may not have made a decision or maybe they have convinced me. But I should make it as part of the record that I add that communication.

There was one member of the Pullman Planning Commission who was reading the newspaper realized that it was about something that is going to be quasi-judicial before the Commission and stopped reading.

Chad Whetzel – That's why I don't read.

Alan Thomson – That statement could be read prior to the application being filed with the Planning Department. But it could have been before we get the application.

Dave Gibney – That may taint my ability to be fair and impartial even though it was prior to existence. Even before filing, somebody could have convinced me it was a good idea.

Alan Thomson – I think that is important to know. A good question to ask.

Brian Davies – So you are talking about that statement on #13?

Alan Thomson – That would be after we have had an application and you are aware of it and the action is pending.

Chad Whetzel – And then #14, that is the end with the correct date?

14. The hearing will open with a staff report.

Alan Thomson – Yes.

Chad Whetzel – So, if we go basically with what we have here, what do we need to read and what don't we need to read at the opening of a meeting?

Dave Gibney – You're not going to like my answer, but if you don't read it into the record, it is not part of the record. Or you could have printed copies available for everybody and you could make a motion to include the rules as part of the record. But then people that don't look at it or don't understand or when you catch them at the end of the time and say that your time is up, they could say, "well, I didn't really understand that." It is a pain to have to read it all. I have never liked doing it but, if it's the rules you are going to follow and you don't put it into the record, it's not part of the record.

Chad Whetzel – Agreed.

Brian Davies – Like what you guys made me do last month at the start of our public hearing.

Chad Whetzel – You are welcome.

Dave Gibney – In Pullman we make those part of the record by adopting the Staff report that contains them as Exhibit 1.

Brian Davies – But you still have to read them?

Dave Gibney – No, not the Findings. We usually make the motion to adopt them "1-whatever as prepared by Staff and then x-y is drafted tonight."

Alan Thomson – If you are going to adopt them, you have to read them at the beginning of each hearing.

Chad Whetzel – No, that's fine. I don't mind. We can do that. It is not a problem. I think the only one that we would vary would be #5, with the number of minutes allowed to speak, and that depends on the night. We don't have to read that word for word if that is not what we are following.

Dave Gibney – There are two things in #5. One is time limits and the other is the surety to make an effort that both sides get equal time.

Rusty Jamison – The way I see it, we need to get a couple of hearings so we can try this out.

Alan Thomson – I'll go out and pound the pavement, Rusty.

Brian Davies – Let's put in a nuclear-powered reactor on Rusty's land.

Alan Thomson – I can see my retirement is imminent now.

Brian Davies – Something bigger than a wind farm.

Chad Whetzel – We can put it in the middle of the high security golf course that already surrounds the nuclear reactor.

Brian Davies – You mean that little cobalt reactor that is up there at WSU? It's pretty small. I've been in it.

Chad Whetzel – Surrounded by a high security golf course.

MOTION by Brian Davies and seconded by Rusty to approve the Quasi-judicial proceedings with the amendments. Roll call vote. Everyone voted yes. Motion passed.

Chad Whetzel – Okay, we will try these out some day soon. I think that is everything we have for tonight. Is there any new business?

Alan Thomson – There is nothing immediate. We now have the funding for the Shoreline Master Program updates. That was just done today. Ecology, we have the money, so now we have hired a consultant out of Spokane to take us through this one. We have to get a contract with them first. Then we will get the budget set and then the fun begins. In the not-too-distant future it will come to the Planning Commission but not imminently. It will probably be a few months before anything comes your way.

Dave Gibney – Is that a joint communities?

Alan Thomson – Yes, the unincorporated area of WC, us and six communities that all have shorelines in WC. So, we bundled that all together and the County is in charge of the budget. Malden got a pass, so they don't have to update their Shoreline Master Program. So, we will be launching that one soon here.

Other than that, there is nothing else for the PC at this point. Other than, when the Comp Plan is approved by the BOCC there will have to be some changes to the Development regulations. So, I will bring that to you in the next month or two. There are a bunch of changes that I am working on right now that will come to you first and then to the BOCC. That's it.

MOTION by Brian Davies and seconded by Weston Kane to adjourn the meeting. Motion passed.

Alan Thomson – Let’s say thanks to our new member, David Tysz, for joining us.

Brian Davis – Yes, welcome David.

David Tysz – I may be in too deep.

Brian Davis – Not at all.

Alan Thomson – David, you might have some questions after witnessing this tonight. Call me at any time if you have questions about what the PC does.

David Tysz – Okay, will do.

Chad Whetzel – If not, just take it till you make it. That’s what the rest of us do. If it fails, blame it on Alan.

Alan Thomson – Thank you guys.

Adjourned - 8:49 p.m.