

**City of Benton City  
Planning Commission Board Meeting Minutes  
January 28<sup>th</sup>, 2015**

**CALL TO ORDER** – (371/3/425\*Audio recording begins) Commissioner Allen called the January 28<sup>th</sup>, 2014 Planning Commission Board Meeting to order at 6:00 p.m.

**ROLL CALL** – (374/3/720\*)**Commissioners Present:**

**Commissioner Gary Robins  
Commissioner Steve Zetz  
Commissioner Don Allen  
Board Vacancy**

**Commissioners Absent:**

**Commissioner Ivan Howard (Unexcused)**

**City Professionals Present:**

**Stephanie Haug, Clerk of Board**

**Other Professionals Present:**

**Lee Kerr, City Attorney, Kerr Law Group**

**PLEDGE OF ALLEGIANCE TO THE FLAG/U.S.** – Commissioner Allen lead the Board and audience in the Pledge of Allegiance - (382/4/916\*)

**APPROVAL OF MINUTES FOR AUGUST 27<sup>TH</sup>, 2014 PLANNING COMMISSION BOARD MEETING**  
(395/4/928\*)

**Commissioner Robins:** I'd like to approve the Minutes from the last meeting.

**Commissioner Zetz:** Second.

**MOTION #1** - Commissioner G. Robins moved and Commissioner S. Zeta seconded to approve the Minutes of the August 27<sup>th</sup>, 2014 Planning Commission Board Meeting as presented.

**VOICE VOTE #1** –C. D. Allen, C. G. Robins, C. S. Zetz  
**ALL YEAS.** Motion carried.

**ELECT PLANNING COMMISSION CHAIR** - (416/4/759\*)

**Ms. Haug** – Explanation of process

**Commissioner Robins:** I'd like to nominate Mr. Allen for staying as things are. I make a motion that we have Mr. Allen as our permanent Chairperson for the year.

**Commissioner Zetz:** Second.

**MOTION #1** - Commissioner G. Robins moved and Commissioner S. Zetz seconded to elect Commissioner Don Allen as Planning Commission Chair.

**VOICE VOTE #1** –C. D. Allen, C. G. Robins, C. S. Zetz  
**ALL YEAS.** Motion carried.

**DISCUSSION – DRAFT MARIJUANA REGULATIONS** - (461/2/361\*)

**Commissioner Robins** - Council feelings?

**Ms. Haug** – Some discussion in Council – Split – Different ideas

**Commissioner Robins** - Four proposals - #3 – Renew moratorium – Seems like best option – Attorney's opinion – What should we do – Legally – Keep doing what we're doing?

**Commissioner Zetz** – Doesn't rolling moratorium eventually become de facto ban?

**Mr. Kerr** – Yes - Case law – Safer to defend ban than moratorium – Moratorium requires something done every six months – Have to have hearing to keep going - Requires work plan – Each point provides opportunity for attack against City - Probably be to advantage – Temporary or long term - No regulations adopted – Then put in ban – Either way subjected to Regulation – In awkward spot – Have calendar problem – Renewed Moratorium for six months – Have until end of April to put together a Work Plan and have a determination whether to continue moratorium - Either regulate or ban – If regulated Then Planning Commission puts a plan – Two issues to address - Land use – Where can be done – Regulating business licensing – See what Legislature does – Nothing done last year – Long session of legislature – Hot Item - Twenty-one bills dropped – Two liquor board supported – 1,000 buffer zone – Ban entirely – Unless determined to be emergency - Won't take effect until July – Either have plan – Plan to ban – Or continue moratorium – Develop regulations – Prepare regulations for Council Review – Land use portion – Planning Commission role – Walla Walla is one – Learned from their experience – Site Plan with Conditional Use – What activity will be allowed - Product/Processing/Retail

**Commissioner Zetz** – Looking at map – If decision was to not ban - Not a lot of land left within City available – Look in defense of ban – Fife first City to defend their ban – Spent about \$100,000 to defend – Winning but costing money – Not covered by insurance

**Mr. Kerr** – No – not covered – Kennewick just had two – Also – Cost a lot – Fife had trial – Kennewick summary judgment motions – Able to avoid cost of trial – Cheaper than Fife's experience – Fife came out okay – Five jurisdictions now it was decided ban was within city's authority

**Commissioner Zetz** – No questions cities can ban – Question is what cost to ban if challenged

**Mr. Kerr** – Now point to Fife, Kent, Kennewick, etc. – Significant cost – Even if win

**Commissioner Zetz** – Should consider the cost to defend when making recommendation to Council

**Commission Chair Allen** – Since we do have April deadline – Hold off and schedule another meeting around April – Need to prepare a recommendation next meeting

**Commissioner Zetz** – By April wouldn't we need to be kicking something up to Council - Give direction to Steph to bring back something to tweak – Send up to Council – Time to hold hearings – Beat April deadline

**Ms. Haug** – Idea for meeting to get idea of how Planning Commission would like to move forward – As part of Work Plan – Planning Commission is supposed to meet and discuss – Looking for direction

**Commissioner Zetz** – Start with option - No #4 – Do nothing - Not an option – Cross off - #3 – Renew moratorium - Possible option – Ext. #2 – Ban – Going to cost money

**Commissioner Robins** – How is Council leaning on this?

**Commission Chair Allen** – Recreational vs. Medical – Legislature doesn't want to give up funding to cities and counties – No taxes on Medical – Recreational taxed – Big issue - Wondering how it's going to pan out – Kennewick legislator has proposed ban on legislature – Mentioned DWI for alcoholism have gone down but DUIs for marijuana has gone up - What's going to happen with the City – Oregon and Alaska thinking of joining in the Washington and Colorado - Things could change quick

**Commissioner Zetz** – Haven't seen any facts regarding DUI – Banned in Tri-Cities – Attribute that to Legal vs. black market – Real stretch - Medical marijuana not entirely legal at this point due to gutting by Gregoire's vetoes – Liquor Control Board's attempts to bring medical marijuana into fold will make Feds happy - Prosser's language – First sentence - "Must have a state license"

**Mr. Kerr** – Court said in case – Statute permits it – So garbled by vetoes – No licensing – Licensing prerequisite for medical marijuana – Functionally impossible – Many jurisdictions winking at it – Allowing it to happen – Seattle take laissez-faire approach – Just another drug store – Not sure how that's working out

**Commissioner Zetz** – Governor’s plan want to kick back money to jurisdictions who have allowed it – Several bills from other agencies that have banned it – Want a share of the pie – Took stance “We don’t want anything to do with it” – Now saying “But we’ll take the money for it” – Other jurisdictions doing work – Kind of like the Little Red Hen story - Sheer amount of everything already prohibited by I-502 – If bill approved which is not likely – Having exemptions for buffer – Doubt that would necessarily fly - Solidified in B.C.M.C. – Add additional restrictions – At least something has been crafted – Not banned but it would be highly unlikely to occur – Driving in County seeing what marijuana farms look like – Hideous - Small house next to huge walls - Cameras and razor wires and dogs – The smell – Requiring any grow operation be grown inside a building – Grower unlikely to come into City – Most likely go into County

**Mr. Kerr** – Unlikely that grower – Likely retail

**Commissioner Zetz** – Grow process at same location is more cost efficient – My thoughts – Direct Steph to craft very tight restrictions – 502 and more – Send to Council to have conversation about banning or not banning – Avoid the rolling moratorium – More risky than banning

**Mr. Kerr** – Textual change for zoning codes – Condition for Council’s consideration – It has to be considered by Planning Commission – May have role in there anyway - Regulations with Public Hearing – Take whole package to Council – Thought thru Regulations – Here they are – Thought thru bans – Here it is – Take your choice – Hope they wouldn’t bounce it back to you to make textual amendment to code – Miles ahead to have proposal to take to Council

**Commission Chair Allen** – Another part - Get going – When billing sent out – Notify public of meeting – Need to be involved – Need their input – Quite the deal - Feds removed from Schedule I list – Probably not until legitimate medical uses are identified – Can of worms

**Mr. Kerr** – Conflict with Federal Law – Still under Controlled Substance Act - Congress defunded enforcement of marijuana – Present administration to putting resources into enforcing this particular area of law – As long as certain restrictions in place - May not be position of next administration – Illegality makes it very difficult to study – Using it as means of seizure control in youth – Still need to make case it has a meaningful use in medical treatment – Continue to be illegal

**Commissioner Zetz** – Sent back to FDA for review – Could take years and years and years

**Mr. Kerr** – May be way to administrative way of changing schedule – Just one of many – Has to be done by Congress - Still needs to be amended

**Commissioner Zetz** – Public Hearing – Will hear from both sides – People with cancer – People say “No” – Public Hearing would be interesting

**Commission Chair Allen** – Would you recommend we schedule a Public Hearing?

**Commissioner Zetz** – Baseline draft regulations to include with hearing – Public have something to address

**Commission Chair Allen** – Questionnaire for public?

**Mr. Kerr** – Have a plan as basis for people to comments – Closer to final product

**Commissioner Zetz** – May I make a couple of suggestions as what should be included in draft plan – Process and grow inside building – No 8’ fences - Retail must comply with zone – Keep in Commercial Zone – Industrial not good fit for retail

**Commission Chair Allen** – All in compliance with code – Information from other jurisdictions

**Mr. Kerr** – Prosser has most hands on experience – Union Gap

**Commissioner Zetz** – Union Gap approach was a little too loose – Three stores – Didn’t see final product – Restrictions on growers/processors - Design guidelines?

**Mr. Kerr** – Campaigning for Conditional Use Permit within zone

**Commissioner Zetz** – Rather than listing marijuana retail facility as allowed use – List it as an additional use that would require a Conditional Use Permit – Would allow additional public comment

**Mr. Kerr** – Can ban one or more of processes – Not going to allow growing or processing – But will allow retail – If going to allow either growing or processing – Probably ought to be in Industrial zone as opposed to Commercial

**Commissioner Zetz** – Just requiring building thing keeps us away from any costs associated with challenge to the ban – Can go to County – Pick up land dirt cheap – Do it out there for little or now cost – Benton City unlikely to face - Would be a big building to build – If we banned growers and processors – Would that still open us up to a challenge

**Mr. Kerr** – It could – Could identify production considered “Ag” – No longer have Ag zone – Took out due to Urban Growth Management - GMA rural vs. urban use

**Commissioner Zetz** – Should be noted retail can’t be combined use – If person was willing to do a site specific comp plan change and rezone – Would they have an argument via that route for a grow?

**Mr. Kerr** – Tough to do – No longer have Ag inside the City – Incompatible with growth management - Ag Suburban for suburban use as opposed to Agriculture use – Easy to defend – Hard to overcome –

**Commissioner Zetz** – Comfortable banning growing within City limits -

**Commissioner Robins** – Either ban all or recommend these regulations – Guidelines - Do we have to have a Public Hearing? Full court here - Not getting anything done with so many comments –

**Mr. Kerr** – Anyway you shake it – Going to come to you

**Commission Chair Allen** – See where it could get a little violent with people one way or the other

**Commissioner Zetz** – We make recommendations to Council – Should have Public Hearing with draft – We make changes to it – Make vote – Send off to Council – Next Public Hearing will be for Council to handle

**Commissioner Allen** – Can Mr. Kerr come up with draft for that beforehand?

**Ms. Haug** – My recommendation – If we have our meeting at end of February – Last Wednesday of February – Put advertisement out stating draft regulations will be available on our website and at City Hall – Maybe week before meeting – By the 18<sup>th</sup> – Draft would be available – Go out in packets for Planning Commission – Available to public to review – Have Public Hearing to get comments at meeting on 25<sup>th</sup> – Would advertise the meeting – Plan will be available by 18<sup>th</sup>

**Commissioner Zetz** – Should have good turnout – Passionate people on both sides

**Mr. Kerr** – If you really want to shake things up – Can give you two ordinances – One for ban or regulations which would address it – Can hand both to Council

**Commissioner Zetz** – If they picked regulations – Would it come back Planning Commission for Public Hearing or would this Public Hearing count?

**Mr. Kerr** – Would like to find a way this Public Hearing would count – Don’t get stuck in spin cycle on textual amendment

**Commissioner Zetz** – Even if we sent them regulations – Council would still have option to ban it – Don’t need a recommendation from Planning Commission to ban – Ultimately their decision

**Mr. Kerr** – True – With textual amendment – Supposed to go to Planning Commission to for hearing and consideration – Recommendation back to Council when they adopt it

**Commissioner Zetz** – If they decide ban – Comes back to Planning Commission?

**Mr. Kerr** – Yes – Be in your chapter under zoning

**Ms. Haug** – If we did our hearing the last week of February – Goes to Council in March – If they decide they don't want to approve regulations – Council would either have to have Public Hearing to extend moratorium – Or they would need to request a Ban Ordinance go before Planning Commission – If done beginning of March – Could have meeting with Notice at end of March

**Mr. Kerr** – If we short circuit that – Textual amendments come from Planning Commission – Commission on its own can begin process by having Public Hearing – That would be Public Hearing we would be working for on perhaps both ordinances – Once completed – Satisfied textual amendment requirement – Goes to Council – Make their determination – Legislative – Council could have its own legislative hearing on it should they desire – Don't think it would require to come back to you – Already had Public Hearing on it – You originated it – You had Public Hearing – You sent recommendation with Public Hearing onto Council for their action

**Ms. Haug** – Couldn't Council technically if ordinance went forward with regulations – Couldn't they just amend – Make the changes to that Ordinance – “No, we don't want this” – “We want to change it to say ban” – That same ordinance would continue thru same process – Come back as amended ordinance?

**Commissioner Robins** – We're giving choice ban unconditionally or – You're saying make recommendation on “or” part of it

**Ms. Haug** – If Planning Commission heard both ordinances – They would recommend one approval and one not approved – How could you say we recommend banning and we recommend regulations

**Commissioner Robins** – Have to one way or other – Consequences after – Change wording

**Commissioner Zetz** – If gave them regulation – They change that regulation to ban – Does that pass the smell test?

**Mr. Kerr** – Be in different places in Zoning Code – Ban probably be in general portion – Started by Pasco and others – Not going to permit anything violating state, federal or local laws – Specifically means marijuana – General section – Get to Commercial-1 – Identify conditional uses – One will be retail marijuana – Then identify conditions of Conditional Use would be – Two different spots – Could be two different ordinances – Could listen to both and fine tune – Send to Council – Or recommend one but present both – Hearings on both – Same issue – Ban or regulate and regulate how

**Ms. Haug** – Code now ban marijuana – Essentially that ordinance is in place – The only thing Council would consider is either approving the recommended regulations – Essentially takes that away and replace it with those regulations – Or just leave it as is

**Mr. Kerr** – Couldn't remember if adopted or not – Should be in General Section

**Commission Chair Allen** – Could also renew the moratorium – Also option

**Ms. Haug** – Don't have to do a motion – Just recommendations

**Commissioner Zetz** – I would draft regulations – Let's get public in here – Well attended – Passionate people on both sides – Anyway to have deputy attend?

**Ms. Haug** – I can contact the Sheriff – I will also provide rules of the meeting – Don't know if Planning Commission wants to set a time limit for each person to speak

**Commissioner Zetz** – You as chair could establish that at beginning of meeting based on crowd

**Commission Chair Allen** – Once everyone communicates what they want to say to us – Closes – Goes not further – Hope that'll stop it – Have to just do that

**Mr. Kerr** – Hard part – Once close out Public Hearing - Deliberations begin – You are up here talking - Everyone who has something to say – Jump into process – Stop it – Public Hearing closed – We're in process of deliberation

**Commission Chair Allen** – In order to maintain order – Will have to stop that – Anything else?

**Mr. Kerr** – Will get draft regulations to you – Know which way your going – Circulate – Areas missed or need amplified – We can do that on circulation basis – Basis for hearing

**Ms. Haug** – Next meeting will be on 2/25 at 6:00 p.m.

**Commissioner Zetz** – Don't need to attend – Can submit comments in writing – Part of record

**Commission Chair Allen** – Anything else? Make a motion that we adjourn – All is favor?

**ADJOURNMENT (1950/2/695\*)**

**Commission Chair Allen adjourned the January 28<sup>th</sup>, 2015 Planning Commission Board Meeting at 6:53 p.m.**

Planning Commission Meeting ended at 6:53 p.m. (1954/4/579\*Audio recording ends)



Don Allen, Commission Chair  
Planning Commission Board



Stephanie Haug  
Clerk of the Board

Date: 2/25/15