

**City of Benton City
Planning Commission Board Meeting Minutes
March 25th, 2015**

CALL TO ORDER – (80/3/530*Audio recording begins) Commission Chair Allen called the March 25th, 2015 Planning Commission Board Meeting to order at 6:00 p.m.

ROLL CALL – (82/4/361*)**Commissioners Present:**

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

Commissioners Absent:

Commissioner Ivan Howard (Resignation Accepted)

City Professionals Present:

**Stephanie Haug, Clerk of Board
Paula Kauer, General Clerk**

Other Professionals Present:

Eric Ferguson, City Attorney, Kerr Law Group

Ms. Haug – We just received Commissioner Howard’s resignation, would anyone like to move to accept his resignation?

Commission Chair Allen: I move to accept his resignation, all in favor?

Commissioner Robins: Second.

MOTION #1 – Commission Chair D. Allen moved and Commissioner G. Robins seconded to accept Commissioner Ivan Howard’s resignation from the Planning Commission Board.

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

PLEDGE OF ALLEGIANCE TO THE FLAG/U.S. – Commissioner Robins lead the Board and audience in the Pledge of Allegiance - (97/3/814*)

APPROVAL OF MINUTES FOR FEBRUARY 25th, 2015 PLANNING COMMISSION BOARD MEETING
(111/2/279*)

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

Commissioner Zetz: I’ll second.

MOTION #2 - Commissioner G. Robins moved and Commissioner S. Zeta seconded to approve the Minutes of the February 25th, 2015 Planning Commission Board Meeting as presented.

VOICE VOTE #2 –C. D. Allen, C. G. Robins, C. S. Zetz
ALL YEAS. Motion carried.

ZONING TEXT AMENDMENT – MARIJUANA ESTABLISHMENT REGULATIONS - (125/2/464*)

A. STAFF REPORT

Mr. Ferguson – U.R.A. – Urban Residential Agriculture – We don’t have that zone - Should be struck from our ordinance – Look at maps – Recommend to Council with changes – No updates as far as case law – Lots of bills – Still several days in session – Ban or not

Commission Chair Allen – Other states and cities considering – Have you discussed that?

Mr. Ferguson – Other cities are holding off to watch as well as states – Won’t know until June whether Supreme Court will accept the Fife case – Hope for clarification from legislature

Commission Chair Allen: Like to move on here for now with a Public Hearing, and if any of you would like to speak, we’re more than willing to listen to you. Please give your name and where you live and

you'll have the floor. Say what you need to say, what you want to say. No problem. We'd like to hear from you and with that, once it's done and everybody has said what they need to say, it will be closed and no other comments will be allowed so please understand that. So if anybody would like to come up here and state your name and address, please do so...

B. PUBLIC HEARING

**** Public Hearing opened at 6:06 p.m. ****

Peggy Higham, 717 12th Street – Spoke last time - Have a lot of the same comments – Copy of ordinance – Best interest of citizens – Can't find anything positive – Encourage more use in homes – No police force – Use the tax money – Will be spending money to deal with problem – More money spent of law enforcement and education – Why are we doing this now? Why not wait until settled? No city liability – Officers – Doesn't cover the lawsuits from citizens – You've endangered us – Federal law conflict – Doesn't matter what state says – Still against Federal law - Confusion in community – A lot here is negative – We struggle with reputation – School in the news – Don't think it is positive at all – Thought there were several ideas – This is not good for our public - General health, safety and welfare

**** Public Hearing closed at 6:12 p.m. ****

C. FINDINGS OF FACT

Commission Chair Allen – Understand your concerns – We make recommendations to City Council – Don't pass anything – We move forward – There are certain things we must do – Can't sit back and do nothing with this - Important to voice your concerns – City Council meetings – Two weeks – Encourage you and your friends to come - City attorney explain

Mr. Ferguson – Evaluate the situation at Planning Commission level – One step closer – Planning Commission take in information – Be the Fact Finder - Then make recommendation – In this situation – Have three options – Ban outright – Continue with Moratorium – Pass regulations – Planning Commission developing regulations for Council's consideration – Planning Commission to give them a "good" option to adopt if City Council decides to regulate – Not advocacy role – Fact finding role – Gathering information and presenting – Well thought out and well done

Commissioner Robins – Moratorium explanation – We've got to do something

Mr. Ferguson – Work plan – Need to go through this process legally – This helps with a moratorium – Not just passing de facto ban - No rolling ban – Hopefully withstand legal challenge - Gives government time to develop items – Could be problematic down the road – Sooner or later decision will need to be made - Best legal defensible location

Commission Chair Allen – Different maps – We could recommend any one of these – Maps – Very few places to set up shop – Would be very difficult - Zoned R-1, R-2, R-3 – 1,000 or 500 ft. buffer – Or no buffer – City Council need to hear – Not sit and do anything – Can't sweep it under rug and hope it goes away – Won't go away - Still discussing

Commissioner Robins – State 502 – Mandatory one is Map 1 – Do we want to make recommendation to Council to add the R-1, 2 and 3 – To keep more of buffer?

Commissioner Zetz – State regulations block out a lot of area – The 502 area seems sufficient – Map 1 is the I-502 – Map 2 is 1,000 ft. buffer from all the R zones

Commission Chair Allen – Map 3 is 500 ft. with the R-1, 2 and 3 – Map 4 has no R-1, R-2 and R-3 from what I've read

Ms. Haug – But with churches – Churches are the difference between Map 4 and Map 1

Mr. Ferguson – Churches are not included in I-502

Commissioner Zetz – Map 2 covers churches as well as R zones

Commissioner Robins – Looking at Map 2 - Virtually only area not in question is other side of freeway – Map 2 basically blocks out City

Commissioner Zetz – Restrictive above and beyond – Looking at I-502 – Restricts all Commercial zones that would apply anyway – If somebody raised challenge that Map 2 was too restrictive - Map 1 still covers all Commercial zones

Mr. Ferguson – Only Supreme Court issue - Adult Entertainment example – You can regulate but no de facto ban – Can't make it so hard to have any location in City – Essentially same as ban - Even most restrictive of these maps still allow across the freeway – One thing that could be used to determine if we were creating ban is how much town do you have and how much did you allow this in – Pretty big chunk – Other side of tracks? Not the rule – Don't see how you could say that - Marijuana is not a constitutionally protected activity – Even if tried to come back and say that – Two things would have to happen - Court decision or legislature would have to pass law saying local government can't ban – Would then have to prove our regulation was just a slow ban – Tough to do - Any of maps along way for challenges

Commissioner Robins – Map 1 vs. Map 4 – Churches – Map 4 adds onto 502 – More leeway for churches – Hearing that wouldn't really fly either

Mr. Ferguson – To add churches? In order to override – Would take a significant commercial interest to challenge

Commissioner Zetz – State issuing no more licenses – What's issued is it for now

Commission Robins – Map 2 thru 4 – Great visual as we ask for

Commission Chair Allen – Do show effect on R zones as we asked

Mr. Ferguson – Is the biggest difference the yellow portion in middle of Map 1

Ms. Haug – On maps – Yellow is all the properties either Light Industrial or Commercial within City limits that could potentially have a retail or other location – Map 1 is strictly 1,000 ft. buffer as regulated in state law not including churches – Skip to Map 4 – City regulations – Same things as 502 but adding churches – 1,000 ft. there – Map 2 includes churches as well as 1,000 ft. buffer from all Residential zones

Mr. Ferguson – Map 2 is the one – The only place that could be in Benton City limits would be across the freeway

Ms. Haug – Most restrictive

Mr. Zetz – Looking at underlying zoning – Didn't really see anything that would be allowed even without that 1,000 ft. buffer to R-1 – Except for small sliver to north – Looks like larger portion of City is shaded in Map 2 – Even in remove restriction on 1,000 ft. buffer – Person still couldn't operate because they would need to find a Commercial Zone

Commissioner Chair Allen – Very restrictive

Commissioner Zetz – Did a little research – Misconceptions on both sides of issue – Moral issue – Not so much Land Use – DEA website – Schedule I drugs – Defined as no current acceptable medical use - High potential for abuse – Most dangerous drugs – Potential severe psychological or physical dependence – Examples include Heroin, LSD and Marijuana – Schedule II drugs – Defined as drugs with high potential for abuse – Less abuse potential than Schedule I drugs – Use potentially leading the severe psychological or physical dependence – Also considered dangerous – Marijuana is a Schedule I – Argued as a gateway drug - Examples of Schedule II drugs include Cocaine, Methamphetamine, Methadone – Marijuana is a gateway drug to Methamphetamine – Which is not as bad for you according to the schedule of drugs - Confused by scheduling logic – Rumors about Nixon and events before my time – Pro-side argument - Millions are arrested for marijuana – People caught while committing crime while in possession – Other side – Roughly 200,000 to 300,000 trips to ER –

Marijuana involved – Doesn't mean marijuana is what drove them to the ER – Use of marijuana was recorded use - Reported use within 48 hours – No clear statistics – Can argue both ways – Uses since 1980's – Same percent of population use today – 35 years percentage hasn't change - No evidence regarding states that approve have had increase – Concerns - Roads – Drunk driving – Article from Washington Post – National Highway Traffic Safety Administration finds those who use marijuana less likely to crash than alcohol – Doesn't make it okay to use – Taking too much cough syrup – Probably shouldn't get behind wheel - Simply focusing on Land Use – Council to make moral decision – Hear from both sides of discussion – Prosser example – Lots of predictions – Not a single issue – Still too early to know – Not enough data out there – Not been done before - Maps – Most restrictive okay – Argument against most restrictive would not change I-502 – Why not create that buffer?

Commission Chair Allen – Thank everyone for being here – Important for you to do that – Recommend you and friends go to City Council for concerns – We will make recommendation to them - Hard to know what direction it will go – So new – Going to be challenged by State and Federal on both sides – We're in middle of it like every other city – Lot will happen between now and then - Doesn't mean we are for or against – Have to come up with something – Issue is there - Council can do what they want with it – Many challenges – Work together

Commissioner Zetz – City Council can go with a ban if they want – Regardless of our recommendations - Regulations – Here they are

Mr. Ferguson – Includes not only zoning map - Conditional Use process – If Council passes recommendation - Not an automatic issuance of license – Could be denied

Commission Chair Allen – Might not pass Conditional Use – Council could say doesn't meet criteria – Challenges – How much do they want to push it – Challenges for City and Planning Commission to deal with

Commissioner Zetz – Has there been any lawsuits using Federal pre-emption?

Mr. Ferguson – Fife case used as back up argument – Court ruled in their favor on initial argument – Never had to address – Fife's argument – Initiative did not waive our right to ban – We hold that until something explicitly says we don't have it anymore – But if you find Initiative did prevent us from banning – Against Federal law anyway – You can't make up make our employees violate Federal law – Ruled on first issue – Never had to decide second issue – Did say from bench – Made comment didn't think this was a Federal pre-emption issue – Implied he didn't think so – To decide in favor of Federal pre-emption – Has to mean Federal government the field – No allowance for States to regulate – Example – Interstate highways – Traffics rules – Feds can say we only allow for commercial vehicles – Area where States can't pass certain things – Feds have taken over – States have no say so anymore – Tough argument to make that Federal Governments hasn't completely regulated field in drug arena to say States can do their own thing Feds

Commissioner Zetz – Would change course of 502 - Council's decision to open coffers for cost of that – Go with safer route – City's insurance does not cover these lawsuits

Commission Chair Allen – **Anything else to discuss?** Recommendation?

D. RECOMMENDATION OF PLANNING COMMISSION

Commissioner Zetz: I believe the draft ordinance is most restrictive in its draft form, and so, which would be Map 2, and so I would make the motion that the recommendation to the Council is for the ordinance as drafted to, insuring that it complies with Map 2 as being the most restrictive.

Commissioner Robins: I'll second that.

Commission Chair Allen: Map 2? It's been seconded to accept Map 2 and an ordinance with he City, City Council recommendation from us...

Mr. Ferguson: Just so you know, the things that would be changed in the ordinance, alright, there would be a new "Whereas" that would be added reflecting this meeting, so right after where it says "Whereas" February 17th, we held a Public Hearing and Planning commission, I would want to add a new "Whereas" that says we held this meeting and so we add that in to it so that would just be another "Whereas" and it will drop the U.R.A. portion but everything else I think is...

Commissioner Zetz: So I amend my motion to include those changes just mentioned by the City attorney.

Commissioner Robins: And I'll second those, yeah, I agree with that.

MOTION #3 - Commissioner S. Zetz moved and Commissioner G. Robins moved to recommend the City Council of the City of Benton City adopt an ordinance regarding "Marijuana Businesses" along in conjunction with Map 2, as amended.

**VOICE VOTE #3 -C. D. Allen, C. G. Robins, C. S. Zetz
ALL YEAS. Motion carried.**

Ms. Haug - Announcement - At some point Planning Commission will need to have training session on open public meetings - Requirement for all boards and commissions of City - Schedule month from now - Month from April - Or wait until we get new members?

Commissioner Robins - Time restriction?

Ms. Haug - Within four years of when law passed last July - Each new member supposed to do it within ninety days of taking office - Implementation

Commissioner Zetz - Using 2014 as base year

Ms. Haug - Beneficial training for everyone - Going to nominate City attorney to provide training for us - Or special presentation from Attorney General - Schedule for end of April - Hopefully have more members by then? Regular meeting - April 29th

***** Next Planning Commission Board Meeting - April 29th, 2015 - 6 p.m. - P.R.A. Training *****

ADJOURNMENT (1566/2/347*)

Commission Chair Allen: I make a motion that we adjourn.

Commissioner Robins: I second.

MOTION #1 - Commission Chair D. Allen moved and Commissioner G. Robins moved to adjourn the March 25th, 2015 Planning Commission Board Meeting at 6:50 p.m.

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

Planning Commission Meeting ends at 6:50 p.m. (1568/3/178*Audio recording ends)


Stephanie Haug
Clerk of the Board


Don Allen, Commission Chair
Planning Commission Board

Date: 4/29/15