

**Skagit County Planning Commission
Deliberations: Permanent Regulations for Marijuana Facilities
April 21, 2015**

Commissioners: **Josh Axthelm, Chair**
 Keith Greenwood, Vice Chair
 Robert Temples
 Kevin Meenaghan
 Tammy Candler
 Kathy Mitchell
 Annie Lohman
 Amy Hughes
 Matt Mahaffie (absent)

Staff: **Dale Pernula, Planning Director**
 Ryan Walters, Civil Deputy Prosecuting Attorney

Public Remarks
Commenters: **Carol Ehlers**

Chair Josh Axthelm: Today is Tuesday, April the 21st, at 6 p.m. and it's our Planning Commission meeting. And note that Annie Lohman and Matt Mahaffie aren't here today. Oh, and I call this meeting to order (gavel). I should have done that a lot earlier, I guess!

So first on our agenda – or just to review the agenda, we have Public Remarks, followed by Deliberations for the Permanent Regulations for Marijuana Facilities, and then a Department Update, and Planning Commissioner Comments.

So first on the agenda is our Public Remarks – or, no, excuse me. Do we have any changes to the agenda from the Planning Commission?

(silence)

Chair Axthelm: Okay, seeing none, we'll move on to the second item on the agenda, the Public Remarks.

Carol Ehlers: Carol Ehlers, west Fidalgo Island. I brought this up to Dale. You have a hearing process and deliberations tonight on marijuana. There's another hearing in May before the County Commissioners on marijuana, and I asked Dale if he would please explain to you and the rest of the world how these two sets of processes interrelate so that we aren't any more confused than we need to be, and how it relates to the medical marijuana.

Dale Pernula: I'll cover that in just a couple minutes.

Chair Axthelm: Anybody else from the public? Okay. Perhaps it's a good time then to address that, or just –

Mr. Pernula: Okay. That'll just take a second. A public hearing was scheduled before the Board of County Commissioners on May 4 and the issue is the current interim ordinance that we're operating under right now. It's not this final ordinance that you're working on, even though they are pretty much the same thing. What the statute requires is that if you adopt an interim ordinance you have to hold a hearing on it within 60 days, and on about that time in May the 60 days will be up. We could have pushed this ordinance ahead faster and perhaps eliminate the need for that ordinance, but – or for that hearing – but rather than do that we wanted to make sure you have plenty of time to deal with this ordinance, and if they need to schedule another hearing for changes you may suggest, they can hold that later. But the interim ordinance will require that hearing in May.

Chair Axthelm: Okay. All right, thank you. So if there's no other public comments, the next item, the Deliberations for the Permanent Regulations for Marijuana Facilities. Do you have anything introduction-wise you want to –

Mr. Pernula: Just a few things, and I think Ryan was going to go into some detail about the state statute that was changed. I think on the Supplemental Staff Report you have there's a lot of information. I think the most important things are included on pages 10, 11, and 12. Page 10 includes a number of items that are suggested are key issues for the Planning Commission to consider during deliberations. I can go over each of those. Page 11 talks about the state law changes since release of the proposal, and on page 12 includes recommended changes to the proposal based on that legislation.

So let me go back to the key issues for the Planning Commission deliberations. The first question is: Should outdoor growing of marijuana be prohibited countywide? And it's pointed out in the memo that outdoor growing is unlikely to be desirable for serious producers and introduces additional security and odor concerns.

The second key issue is: Should the County allow only those marijuana facilities that are licensed by the Liquor Control Board? And the point that's made after that is medical marijuana facilities, which are illegal under existing law, are likely to be rolled up into the recreational system during the current legislative session.

The third issue is: Should the County prohibit the use of flammable or combustible liquids or gases for marijuana extraction in the Ag-NRL zone? Butane and propane extraction processes have potential for explosions. Non-flammable CO₂ systems are available alternatives. The special rule for Ag-NRL would limit the impact on those Ag-NRL areas that are characterized by significant residential development. In other zones where processing is allowed, only closed-loop processing systems would be allowed.

Issue number 4: Should all marijuana production or processing facilities be required to employ ventilation systems such that no odors from the production or processing are detectable off the premises? This has been a frequently cited neighborhood concern.

Issue number 5: Should any Liquor Control Board-required security cameras be required to be aimed so as to view only the facility property, not public rights-of-way or neighboring properties? This is another major point that was brought up by neighbors during the development of these regulations.

Number 6: What impacts on surrounding properties should Special Use Permits address? We have a number of those that are listed, including appropriate distance from residences, schools,

day care facilities, public parks or other public facilities, and other marijuana facilities, and includes appropriate controls over odor, screening, and other requirements. Also protections against the security cameras infringing on privacy.

Going on, the 7th key issue: What zones, by type, should I-502 facilities be allowed in? We have a table which provides where retail uses, where production and processing in opaque structures are permitted, and where production and processing are permitted in a transparent structure. And you can take a look at those and make your comments and recommendations as appropriate.

And there's some additional information about state law changes since release of the proposal. And I know that Ryan was asked to verbally update the Planning Commission on those changes, so I'll turn it over to Ryan.

Ryan Walters: And just before we get to that, on that table that you see right above the state law changes, we did have some questions from the public about, How does that table compare to what's in the code proposal? The code proposal looks like County code so you can't see it all in one nice table at a glance. The table in the staff report is the same substantively as the code proposal but you can see it all in one place. So when we're talking about where it is we're going to allow it, in what zones, and what Special Use Permit or outright allowed level it's, I think, easiest to just look at the table and quickly see it all – all of them at one time.

Last Tuesday the legislature adopted a bill that has been moving ever so slowly through the legislature since the beginning of the session. We have known that it was coming because the Department of Justice – the U.S. federal Department of Justice – has said that the medical marijuana system that sort of exists here in the state is not consistent with what they want to see from a federal perspective in terms of regulation of marijuana. They at the federal level are okay, to some extent, with our recreational system of regulating marijuana but our medical system is basically completely unregulated, so they wanted to see that eliminated. And what the legislation does is basically that. It takes the medical marijuana collective gardens that are currently written into the statute and eliminates them as of July next year. It creates a different regulatory system for very small medical marijuana grow operations at home and rolls everything else into the recreational system. So recreational retailers will be able to get an endorsement on their license to also sell medical marijuana and there won't be separate medical marijuana sales facilities. And we could get into at length how those medical marijuana facilities are not really legal anyway, but they are written into the statute to some extent, and this would wipe them out.

So here are the details on what this new legislation does and it hasn't been signed by the governor yet so it's not law yet, but we fully expect that that will happen. And we hope to know that that will happen with greater certainty before the Board of County Commissioners finally approves the final ordinance.

So, first of all, it renames the Liquor Control Board the Liquor and Cannabis Board. And as you saw in the code proposal, we wrote in "the Liquor Control Board or its successor," because we expected for it to be renamed.

It also creates a database of medical marijuana patients that would be operational by the time the collective gardens go away in July of next year. The database of patients was something that was supposed to be created the first time the legislature created the marijuana collective gardens, but it was vetoed by Governor Gregoire because the feds at that time said that it might

lead to prosecution of state officials that were creating the registry. So the feds' position has changed significantly since then, which leads us to a different place where we can – where we, as a state – can expect to regulate it a little differently.

Patients who are in the database and hold a medical marijuana authorization card issued by a doctor will be allowed to possess three times as much marijuana as is allowed under the recreational laws. So anyone can possess one ounce, but if you're a patient with a card and you're on the registry, you get three ounces. And then there are different numbers for marijuana-infused solids and liquids and concentrates, but they're each three times what the recreational system allows.

Patients without an authorization card have the same limit as recreational users but will be allowed to grow up to six plants and possess up to six ounces from those plants. Alternatively, a patient can designate a provider to grow for them.

As I said, it eliminates collective gardens but it creates a new thing, a wholly new construct which is called a "marijuana cooperative" of up to four patients. Previously collective gardens were ostensibly up to ten patients, but there was no limit on your ability to swap a patient off the list, so collective gardens were effectively operating with an unlimited number of patients and they were effectively operating like a for-profit dispensary, because although you weren't allowed to sell marijuana they were accepting donations in exchange for free marijuana. So the collective garden situation was widely recognized as undesirable, and we expected first that it would be addressed last year. That didn't happen because of a dispute with the counties and cities over who was going to share in the revenue. That has been pushed aside to a separate bill this year which is still making its way through the legislature and revenue decisions are – and taxing decisions – are yet to be figured out.

But we have dealt now with the medical marijuana system by creating this separate, much more regulated cooperative system. These will have to be registered with the Liquor Control Board. They won't be regulated to the same extent as recreational, but they'll at least have to be registered. They're limited to four patients instead of ten or an infinite number. The statute will require a 60-day waiting period before swapping out a patient, so you won't be able to have a rolling ten that effectively has no limit. They have to provide labor to participate in the cooperative. Monetary assistance is not permitted. So we feel – and I guess the legislature feels – that this new construct solves almost all of the identified problems with the collective garden systems. It reduces down the size. It's required to be in a residence, so it's in somebody's home. It's not in a storefront. So all of those restrictions help bifurcate the medical marijuana collective grows – cooperative grows – from the retail system.

Retail facilities, as I said, can get a medical marijuana endorsement, so you don't have to grow it at home. You can go to a retail facility and get your medical marijuana there, so long as they have the endorsement. The grow-at-home operations will have to be at least – I think it's a – I think it might be a mile – I don't remember exactly the distance – from a retail operation. And the Liquor Control Board will reopen the retail licensing period to allow for an additional number of retail facilities to service additional people now that medical marijuana patients will also be getting their goods there.

And then the other significant change that they add to the legislation is that extractions – the marijuana processing that involves extracting the active ingredients from the marijuana – any of those extractions that involve butane or explosive gases are prohibited by anyone who doesn't have a Liquor Control Board license. So that's something new. And it requires the Liquor

Control Board to adopt rules on non-combustible methods of extraction because there are some methods that don't involve any combustible chemicals that qualifying patients could use.

So that is a summary of the changes in the legislation. What we think that the County should adopt are some changes to the proposal that would allow for growing of medical marijuana at home. Because the way the proposal is currently written, it says basically all medical marijuana growing has to occur in a Liquor Control Board-licensed facility and it can't occur anywhere else. What we're suggesting to you is that you make the recommendation that you would allow it at home, but only when within the confines the statute how it allows a patient to grow it for himself at home or these four-person cooperatives to grow it in those limited circumstances, as well.

So there are a number of changes – I think eight changes – in the Supplemental Staff Report that address that. And then we also added a ninth change – a recommended change – that would require the County Fire Marshal to notify a local fire district or the relevant fire authority whenever the Department approves a permit for a marijuana production or processing facility. Processing, as I mentioned, does have the potential to have these flammable, combustible chemicals, and if those are onsite we want fire departments to know about it. Also if there's a grow facility we want fire departments to know where the grow facility is because fighting a fire in a grow facility might get sort of heady. So just that notification piece seems reasonable and it's an obligation on the Department, not on a facility operator.

So that's the list of recommended changes based on the statute. I know at least Commissioner Temples did not receive the Supplemental Staff Report, so we could go over, you know, questions, and even if you did receive it you might have additional questions. I think now might be a good time to answer any questions about the retail system or anything else.

Mr. Pernula: Let me bring up one thing. Commissioner Temples also asked a question about revenues, and the added revenues the County would get would just be increases – any increases in property taxes that we would get by the developments, plus sales taxes. We would not get license fees and we would not get the marijuana excise tax revenues. But I think you mentioned that there's another bill before the legislature that would change that?

Mr. Walters: The counties and cities have been lobbying hard for some share of the excise tax revenue, and so that bill would share some of the excise tax revenue. There is a three-part excise tax on the processing, the production, and the retail sales. And I think that that bill also, as currently constructed, would condense that into one tax to be levied just at the point of sale to the retail consumer. Because right now you can consolidate your producer/processor facilities to avoid part of that three-tiered tax. So that is all still up in the air. The cities and counties definitely want that money but, like any land use, you are getting property tax and sales tax from construction and operation of a business, so the County is getting *some* revenue. It's just not getting *extra* revenue.

Robert Temples: Well, Ryan, just as we spoke before the meeting and I'll just say publicly: The one concern I have is unfortunately with the county not receiving any other revenue through this state licensing program, I'm appreciating to hear that they're at least considering it. The services the County provides, whether it's fire or police activity, nothing is paying right now for those services. And, you know, property taxes are part of it, but still there should be some other ways of covering public services that might be needed and required to take care of some of these facilities.

Mr. Walters: And even if that legislation passes and cities and counties do get a share of the excise tax revenue, cities would benefit for providing – for receiving that revenue because they would receive that revenue and could spend it on their fire departments. But if the County receives that revenue the County is not going to give it to any fire districts, so the fire districts won't really be benefitted even if the County receives the revenue.

Mr. Temples: That's too bad.

Mr. Walters: Yeah.

Kevin Meenaghan: Ryan, my impression with 5052 is that it actually helps us at the county level. I think it puts some – finally the state is putting some policies/restrictions in place that actually help us formulate more what we're going to do at this level. That's my impression.

Mr. Walters: I would concur, especially with collective gardens, because law enforcement pretty much throughout the state has taken a hands-off approach to collective gardens for the interim because they – we do have case law establishing that collective gardens are really not allowed under state law, despite the fact that they are described there. They rely on having this patient registry that was vetoed. And even where they were allowed before the veto, it's an affirmative defense to prosecution. It's not explicitly legalization. But law enforcement has really been waiting for a resolution of this issue because we've understood it's been coming for at least two years, and now that we have it – or at least we will have it very soon when the Governor signs it – we will be in a much clearer position. I assume that we'll see the shut-down of some collective gardens, even though the statute would sort of allow them to continue to July 2016. I think that because of the certainty that is provided by the legislation in all other respects, we know that they are going to go away. We could see them shut down sooner than that because we have an interim ordinance that prohibits them. If the proposal gets adopted by the Board, the permanent regs would prohibit them, and if they exceed the number of plants they have no defense, not even an argument of a defense. So, yeah, we see that as really quite a bit better – much more certainty over what the regulatory scheme is for this thing.

Mr. Meenaghan: Yeah, exactly. That's good.

Mr. Walters: There were a lot of Planning Commission questions about how the I-502 regulatory scheme works, so we addressed a lot of those in the Supplemental Staff Report.

Chair Axthelm: So ____ start. Lots of different angles. I think a great place to start would be the key issues for the Planning Commission deliberations, page 10.

Mr. Walters: We also provided you a draft recorded motion, and that draft recorded motion includes Findings of Fact that line up with those key issues. So Finding of Fact 1 corresponds to the key issue. So as you go through those we could edit the Findings of Fact as well. If you agree or disagree we could make that change in that Finding of Fact and keep the numbers sort of lined up and then structure it that way.

Chair Axthelm: Okay, now where is that?

Tammy Candler: Before we do that, I have a general question.

Chair Axthelm: Where's the draft at?

Mr. Walters: It should be on your desk.

Chair Axthelm: Oh, okay. Thank you.

Mr. Pernula: We can put it on the screen, too.

Kathy Mitchell: Could we, please?

Ms. Candler: I have a question for you, Ryan. It might be something that's beyond the scope of this discussion, but there's a – I think it was in the staff report. It talks about this registry that the state law's going to be requiring. Do you know how that doesn't violate HIPPA? Or why that is possible, and who's going to have access to it? Are we going to – is the Planning Department going to have access to that list?

Mr. Walters: I seem to recall reading a line in the 85 pages of the new legislation that came out Tuesday that that was going to be exempt from public disclosure.

Ms. Candler: Exempt?

Mr. Walters: And, no, I don't think the Planning Department would have access to the patient registry.

Ms. Candler: Okay. Thank you.

Mr. Walters: And I think that it will probably – and I'm sort of guessing because I haven't researched this point, but I think that it will likely work by the fact that people – qualifying patients will have a card that they can maintain on their person. And the way the statute is structured is it's a defense to prosecution – it's an affirmative defense, or at least it was. I think it might be also – it also might be structured as a way to prevent arrest. But, yeah, I would have to get into that a little bit more to give you a firm answer.

Ms. Candler: I don't think it really affects any of our findings this evening. Thank you.

Mr. Walters: I'll magnify this as much as possible.

Mr. Pernula: Can you send it to the printer from there?

Mr. Walters: No.

Mr. Pernula: Okay.

Mr. Walters: This is a draft. At the end of the meeting there will be a final document. So these line up with those issues. Do you want to take us through those?

Chair Axthelm: The Finding –

Mr. Walters: The key issues.

Chair Axthelm: Yeah. Let's just – if that's okay with the Commission – start with the key issues. I think it's a good start and then we can go from there if we add anything to it or take it away.

Keith Greenwood: Ryan, did you say that the key issues on page 10 line up with the Findings of Fact and Reasons for Action?

Mr. Walters: Yes.

Mr. Greenwood: Because they are a little bit different as far as their explanation depth.

Chair Axthelm: Okay. And before we discuss the Findings of Fact, do we need to do anything as far as a motion or anything that way, or is that – we can just discuss that?

Mr. Walters: I think you can just discuss it and make a motion at the end based on what gets constructed on the screen.

Chair Axthelm: Okay.

Mr. Walters: Unless you need to have votes on individual findings.

Chair Axthelm: Okay. Please note Annie Lohman is now at our meeting. Okay.

Mr. Greenwood: Maybe we should just go down each Planning Commissioner and see if there's something that isn't in that list that is still an outstanding question and remains on people's minds. What do you think?

Chair Axthelm: I think I'd like to just kind of go down through the list – just go through the body.

Mr. Greenwood: Okay.

Ms. Candler: Do you want to start with everything that's in 1 through 10 of our Findings, or do you want to start with 1?

Chair Axthelm: I was talking key issues. Just start with 1. And it can go quickly or not.

Ms. Candler: Okay, so we'll do one at a time.

Chair Axthelm: Yep, that sounds good.

Ms. Candler: Okay, I don't have any questions or issues about number 1.

Chair Axthelm: And for the public, number 1 is – you don't have that listed up there? Okay, you have the Finding of Facts, but the key issue states: "Should outdoor growing of marijuana be prohibited countywide? Outdoor growing is unlikely to be desirable for serious producers, and introduces additional security and odor concerns."

Ms. Candler: And I don't have anything so I'll pass to Kathy.

Ms. Mitchell: What I'm going to say now really just is to reiterate for the record. In so much of the public comment from what the Board of County Commissioners heard and also came from the public Planning – the Planning Commission. An awful lot of people had asked for setbacks and also certain size lots, and I just wanted to state again that that had been asked repeatedly and I do understand that the County has its reasoning for setbacks versus not setbacks. Could

you state briefly why it's untenable for doing setbacks as a blanket for folks so they understand now?

Mr. Walters: Well, the Department wrote setbacks and lot size minimums into the initial interim ordinance last December, and what happened quickly is that applicants for marijuana facilities came into the Department and they said, What's happened? You've adopted an interim ordinance. We're in the middle of nowhere. We're not affecting anyone. We have no neighboring properties that are likely to be affected. The Department looked at those facilities, agreed with their summary of their likely impacts based on their locations, and decided that those setbacks were unlikely to really be workable, or the lot size minimums were unlikely to really be workable. So as an example, I think the first interim ordinance had a 250-foot setback, and if you want facilities to locate in existing buildings – which especially in Ag-NRL the Department wanted to have happen because they didn't want construction of new buildings in ag land – there are no buildings – speaking broadly – there are no buildings that are set back that far because we don't want them set back that far in any other circumstance; we want them closer to the road and we want the fields to be preserved as fields. So that created a conflict between our general policy of preserving ag land. And in any other zone as well, you're usually not set back that far. You're not set back 250 feet. You're set back the required 35 feet or whatever it is but not 250 because you want to be up near the road, you want to preserve open space otherwise. So that's why the setbacks did not seem to work as well as initially conceived. Also, in the first interim ordinance the setbacks were from other residences or existing residences, which was problematic because a neighboring property might be empty – not have a residence on it – but has the right to build a residence, and why should that residence be constrained on where it can reasonably place itself based on some other property's location of a marijuana facility? So that was problematic.

And the minimum lot size that was in, I think, the second interim ordinance of a minimum five acres, we received comments that it was not rationally related to the purpose that we were trying to achieve, that – say you had five acres. If you had five acres, or if you had four-and-a-half acres you could buy a parcel next door and then you have five acres and then you've achieved five acres, well, what's the difference? If you had a ten-acre parcel and located on it next to a residence on the neighboring parcel, what have you achieved with your five-acre minimum? It seemed like the setback was actually a much better relationship to avoiding the impact than the minimum lot size. The minimum lot size didn't really seem to be related to avoidance of impacts, and it prohibited other facilities that, again, we identified as really not likely to have any impacts on neighboring properties. So the Board of County Commissioners really felt like marijuana facility applicants who had invested time and money in pursuing their facility and were unlikely to have impacts on neighboring properties should be allowed to proceed.

So the current interim ordinance and the proposal before you does away with the setbacks and minimum lot size in favor of requiring a Special Use Permit in those cases where it's more likely that they will have impacts on neighboring properties. And one of those cases is in Ag-NRL, and the reason for that – if you think of Ag-NRL you think of 40-acre minimums in this pastoral setting and no residences, but, in fact, there are some areas of the county where there are quite a few residences on smaller lots, even though it's zoned Agricultural-Natural Resource Land. And in those areas, which may or may not be improperly zoned – I mean, that's a question for later – but in those areas you could locate a facility and have impacts on the neighbors. So if you require a Special Use Permit, you're not imposing some somewhat arbitrary number on setbacks or a minimum lot size. You're leaving it up to a public hearing and the Hearing Examiner to determine, based on the list of possible impacts that's included in the proposal,

whether it can locate there at all or, if it does locate there, how it can address those impacts, mitigate those impacts. For instance, if you're locating next to some neighboring use and you're concerned about lighting, well, you can mitigate lighting. If you're concerned about odor, you can mitigate odor. Some things you won't be able to mitigate, and if those are significant enough maybe they don't get to locate there at all. The Special Use Permit might be denied. But, otherwise, those impacts can be addressed through screening or odor controls – those types of things. So that's sort of the idea behind using the Special Use Permit process instead of defined numeric values.

When we initially started this two years ago – when we initially started conceiving of how it is this might be regulated – we were fairly nervous about creating a system where Special Use Permits would be part of the mechanism for permitting these places, because part of the legislation for collective gardens was vetoed because the feds were saying that local government/state government officials could be prosecuted under the Uniform Controlled Substances Act for facilitating marijuana. We are now not really very concerned about that. So now we feel much more comfortable, especially with all the other local governments in the state that are processing Special Use Permits that are in some sense facilitating marijuana, but as part of a state regulatory scheme that the feds have at least tacitly endorsed.

Ms. Mitchell: That's helpful. Thank you. I've got another point that goes under this topic.

Mr. Greenwood: Is this about the outdoor growing?

Ms. Mitchell: Yep, it is. It is – directly, actually. With outdoor growing marijuana, there are concerns about water usage. You know, water usage right now is huge. You just heard that even Skagit County's been declared drought by the DOE this past week, too. And water, with the instream flow rules, has always been an issue. But let me read this to you. My concern, just so you – I wrote this down so you guys can understand what I'm thinking – water usage associated with marijuana production and processing, Skagit County's struggling already with property owners' access to their own private water for domestic use, and domestic use is supposed to be around 360 gallons per day for domestic water use for just households and homes. And I understand marijuana production and processing can use enormous amounts of water – much more than what homeowners would do. And so you understand why there's concern with water usage anyway, and we've got more places that are going to be probably producing and using. That's one of the reasons I –

Chair Axthelm: Kathy?

Ms. Mitchell: Yeah?

Chair Axthelm: How does it relate to outdoor?

Ms. Mitchell: Well, with the outdoor stuff, one of the things I just want to make sure is that the outdoor is prohibited and where people can understand the reasons for why we wouldn't want outdoor marijuana production to be allowed. And I don't know how that would wrap in with home use for medical stuff. That's a whole other question. But because that is a concern and the outdoor – I mean, let's face it. For a lot of folks maybe doing it in their gardens hopefully would be something else – but that's one of the reason's I'd be concerned with making sure that the language does support this where the outdoor is not done.

Mr. Pernula: So would you suggest that Finding number 1 include that it's not just creating substantial impacts on neighboring properties but also that it has a substantial impact on water?

Ms. Mitchell: Yes.

Mr. Temples: Water demand.

Ms. Mitchell: Absolutely – water demand. And it's a very real concern. So I do not know what the solution is to that, but I do realize that that needs to be factored into the recommendations.

Mr. Temples: Well, the only thing I would probably say is I think we're talking kind of apples and bananas here. Most outdoor growing operations are not as substantial and large as the indoor growing operations who really consume a lot of water.

Ms. Mitchell: That's true, but then again we do – there's a lot of industrial places where they have allowances to do that. There's permitting to do that. And, for instance, Anacortes, I understand, has a large allotment for water. Is that true?

Mr. Temples: Well, unless I'm mistaken, I believe that if they're going to have a state license – and, Ryan, you could maybe add information to this – they have to have a secured operation building.

Mr. Walters: Well, and that's one of the reasons that the Department included this prohibition on outdoor growing. Because if you have outdoor growing, you're going to have an eight-foot required security fence – not just a cyclone fence, but a sight-obscuring fence – and you're going to have to have the security cameras, and you may have much more difficulty controlling odor. And so in the Supplemental Staff Report we did compare – include a comparison of other local jurisdictions and they all prohibit outdoor growing. It's also not very lucrative in western Washington.

Ms. Mitchell: Right. So to finalize what you were asking, Josh, is if others are amenable I'd like to ask that that be put in with our Recommendations – is the water concern, the water usage for outdoor section.

Mr. Greenwood: Okay –

Mr. Temples: Josh?

Mr. Greenwood: I'm sorry. I thought we were going in order.

Chair Axthelm: Go on in order. If we could just stay in order.

Mr. Temples: That's fine.

Mr. Greenwood: Okay. I think you just helped out quite a bit, Ryan, in describing what makes it different than other outdoor crops and what makes it not your typical agricultural crop – is that it's a controlled substance. So it's not – you know, the only thing I could think of that's similar is that you can have a coffee shop that sells coffee just like all the other coffee shops, and then you could have other stuff going on that creates this problem to the neighborhood, whether it's advertisement methodology. Alcohol is different than other types of things that we manufacture. So being that it's a controlled substance has required these types of barriers and cameras and

things that make it to where it doesn't really fit. I mean, if we could just grow 100 acres out there and just plant it in a row (and) be done with it, we'd have enough – probably enough – marijuana for everybody and too many people probably, but being that it's a controlled substance everybody's not supposed to have it or have it available to them. And we've limited ages and exposure and there's smells and all kinds of things associated with it. So be that as it is described, I would agree that it is a – has potential for substantial impacts on neighboring properties, and therefore I am in agreement that it shouldn't be allowed in the outdoor growing condition. That's where most of the problems I'm seeing come about – where we try and make an outdoor situation fit into even a commercial setting. You've got a house with a chain link fence with black plastic with cameras with barbed wire, and it's just not really fitting very well. It looks outdoor but it's not really. It's just exposed to the sun. So that's it for me on that one.

Chair Axthelm: Kevin?

Mr. Meenaghan: I have nothing. Everything's fine.

Chair Axthelm: Annie?

Annie Lohman: I think on that particular one, I think it's fine the way it is. I think "substantial impacts," though, is kind of – a little quiet on really what we're talking about. I think it has a lot more unintended consequences to the neighborhood or to a particular location that we don't know about 100%. We're kind of in a little bit of uncharted territory here and I would rather err that we are abundantly cautious. And if in the future we could maybe dial back or – but it's awfully hard to put the thing back at the box if you don't start out a little bit firm. But I think "substantial impacts," that's kind of almost – it's a little bit soft in a way.

Chair Axthelm: Amy?

Amy Hughes: I'm okay with it.

Chair Axthelm: Robert?

Mr. Temples: I agree with it completely. I think it's about as clear as you can get. And I almost think if we're going to bring up the water issue, which I think is a good issue – I was reading through here. I have not really kind of seen that as anything – unless I'm missing it – identified, and it came up several times in our public hearing. I don't know if that's another item that should be added in here. Don't know. I'm just raising the question.

Ms. Lohman: Mr. Chair?

Chair Axthelm: Yes?

Ms. Lohman: You know, this is just – this list is just a starting point, because it's our prerogative if we want to add more.

Chair Axthelm: Yeah, and this – I figured if we start with this starting point and then if you want to add anything more to it. Yeah?

Mr. Pernula: I just want to address that a little bit. And I believe a lot of those questions – they came from other places, but a lot of them came from people from Guemes Island and it's not

going to be permitted there except for an extremely small portion of the island. So I think it's addressed in –

Mr. Walters: Actually not even that portion.

Mr. Pernula: Pardon?

Mr. Walters: Even that portion has an exclusion in the table.

Mr. Pernula: So I think we've addressed it in that manner by not allowing it in Guemes Island.

Mr. Greenwood: At all?

Mr. Walters: Yeah, there are three or four zones on Guemes. Rural Intermediate and Rural Reserve are not zones where it's proposed to be allowed at all anywhere in the county. There's a Rural Resource zone on Guemes Island but the table indicates that it would be allowed in Rural Resource *except* on Guemes Island. That's the small zone that Dale was referring to. So it would effectively be prohibited everywhere on Guemes.

Ms. Lohman: And there's no Ag on Guemes, right?

Mr. Walters: No, I don't think so.

Chair Axthelm: Okay. So the first Finding – just a question. It's regarding *outdoor* growing of marijuana, and this is also for recreational or – how would you say that? – commercial operation. So you could still have a home – somebody could still grow it in their home. You could still have a cooperative like you were talking about, right?

Mr. Walters: Yeah. If you read this in isolation – if you read some of these Findings in isolation it wouldn't allow the growing in your home, but the last one, I think, addresses the growing in your home. But under the new state law that was passed by the legislature Tuesday, you have to grow it inside your domicile, inside your house in order to qualify for the medical marijuana exception. So outdoor growing still is not allowed.

Chair Axthelm: So if your garage is attached to your house, you could do that. If it isn't attached to your house –

Mr. Walters: I think assumedly in the garage, but not outside.

Chair Axthelm: Okay. Okay, so this is just out, open air growing?

Mr. Walters: Yeah.

Chair Axthelm: That's what it's referring to. In a greenhouse?

Mr. Walters: A greenhouse, a formal greenhouse is not outside.

Chair Axthelm: Okay, so this is just anything uncovered, open to the air?

Mr. Walters: Yeah.

Chair Axthelm: Okay. The concern I have with putting significant water use in there is that, you know, we're not growers or people that – I don't know; who is? But –

Mr. Walters: Well, we provided you in the Supplemental Staff Report the Ecology fact sheet on growing outdoors and they indicate that water needs for outdoor grow operations where you can't control the environmental conditions are likely much higher than their other estimates. And their estimate for Tier 3 growing is 3,900 gallons per day. That's less than the 6,000 gallons, I think, that was estimated by one of the public comments, but still significant.

Ms. Mitchell: But still significant, yeah.

Chair Axthelm: Okay, so that'd be outdoor growing versus indoor. I've written here "versus indoor growing."

Mr. Walters: So are you suggesting –

Chair Axthelm: So – no, I wrote in here – it says "Outdoor growing versus indoor growing of marijuana creates substantial impacts." So basically the indoor growing takes less water. The outdoor growing takes more water. But I don't know.

Mr. Walters: So do you want to add that?

Chair Axthelm: That's the thing because I don't know. That's why I'm saying having the water in there, we don't know which one. We're talking about specifically outdoor water. So if indoor or outdoor, we don't know the difference if one takes more water or the other, the statement about the water...

Ms. Mitchell: I would leave it just outdoor.

Mr. Pernula: Well, the information we got was that it just says "Water needs for outdoor grow operations where environmental conditions cannot be controlled are likely much higher."

Chair Axthelm: Yeah, I understand that but we're talking outdoor growing. We're not only talking about water usage. We're talking about odor. We're talking about chemicals. So as soon as you open the can of worms adding in the statement about water usage then you open – you have to almost put everything else in there for further reason. Where if we leave it out, that's understood.

Mr. Walters: So whatever you want to do then.

Chair Axthelm: That's just my opinion.

Mr. Walters: You could address water in a separate sentence.

Mr. Temples: Well, I guess the reason I brought up the water issue besides – you know, Kathy brought it up too – to me it's like something that it's – that's why I want to say it may need to be added as a separate line item, not related at all to outdoor growing or indoor growing. It's just an item that needs to maybe be added in there. And it might just give you another tool where, you know, if they can't meet the water requirements that they need in the location they're at then that gives you folks some tools to say, I'm sorry, we can't approve your permit because...

Ms. Mitchell: Is what he's writing in better?

Mr. Walters: Would you like to substitute that line for the water usage in the first one?

Chair Axthelm: Did you get what I'm saying about that first statement is that we have one reason for outdoor growing. Do we want to have the rest of the reasons for outdoor growing in there?

Ms. Candler: I agree with you – what you're saying as far as opening that up to one reason, maybe we should list them all. But the information we have in front of us today says that outdoor uses more than indoor. So I don't think it's a problem putting that we have a concern about water usage in there, first of all.

Mr. Walters: Here?

Ms. Candler: Whether or not we might want to also include some other things, I don't know.

Chair Axthelm: That's what my question is. I think – this is Finding of Fact and Reason for Action, so what reason is the outdoor growing of marijuana not – or shouldn't be allowed?

Ms. Candler: I don't think we should just put that we're doing it *only* because of impacts on neighboring properties. We are considering other things, as well. So we could just make a blanket "substantial impacts on neighboring properties as well as other considerations," or something like that. But it's certainly not *just* the impact on neighboring properties that we're considering.

Mr. Walters: And delete the water usage phrase?

Ms. Candler: Or use it as an example. Say "e.g., water usage"?

Ms. Mitchell: As an example's not a problem, right?

Ms. Lohman: But even security. Security is a big deal outside.

Ms. Mitchell: Mm-hmm.

Ms. Lohman: Because even if you do have the fence, they're like ladders. People can climb fences.

Chair Axthelm: And security we are addressing a little bit later on.

Ms. Lohman: But you're talking about outdoor. I mean, if you have a five-acre field, it's pretty hard to – I mean, are you going to build a compound?

Mr. Walters: You are limited at the maximum tier to 30,000 square feet of canopy area. Most of the time indoors, I think, they're doing maybe multiple levels.

Ms. Mitchell: Right, but I think Annie's point was pretty good about saying that it's another example on why the security cameras and everything else were needed. It's differently outdoors than they were indoors, and the same thing with water consumption or anything else. So I'd be okay with leaving this as an example.

Chair Axthelm: Anything to add to this list – odor?

Ms. Lohman: But a lot of things smell.

Chair Axthelm: So what are the main issues? To finish this statement, what are the main issues for outdoor growing in marijuana facilities that we need to put in there?

Ms. Lohman: I think there's stuff we don't know.

Chair Axthelm: No, I'm – what I'm talking about is what the public has mentioned or what has come up in the hearing. What are some of those main concerns?

Mr. Temples: Josh, my only comment about number 1 as it's written right now: Since we've already added a number 2 discussing the water issues, I think it's redundant up in 1 to have additional water usage in that location as well.

Ms. Candler: Can I address that? I think the reason it's not redundant is because we're specifically talking in number 1 about outdoor growing and our information specifically says outdoor growing has a different water usage than indoor growing or likely.

Mr. Greenwood: And we're talking about prohibiting something so I think we have to be pretty clear on why we're prohibiting it. We can't be too vague, I don't think.

Chair Axthelm: Well, on the key issues, the key issue sheet itself mentions the security, odor concerns. It doesn't say water usage, but obviously that's an issue as well.

Mr. Walters: Especially on this one where everyone seems to agree and it's not very controversial, I think you may be spending too much time on it. It is important as a general matter to capture why it is you are acting, but it might be more important on the others where it's more controversial or a closer call.

Chair Axthelm: Okay.

Mr. Walters: And number 2 there, "Marijuana growing requires significant water," I just typed that. I don't know if you really all want that on there.

Chair Axthelm: Can we put it on the end for now so we can still go through this? Then we won't have to renumber these things!

Mr. Walters: Right.

Chair Axthelm: Okay. So are we okay with that statement? This one? Okay, everybody appears to be okay. Let's move on to the next one. Robert, why don't you go ahead and start with number 2?

Mr. Temples: Actually I kind of – when I reviewed it, I kind of – honestly I felt that they pretty much covered a lot of this pretty well, from my perspective. So that's my only comment.

Chair Axthelm: Oh, sorry. Amy?

Ms. Hughes: Oh, I'm reading. Just a minute.

Chair Axthelm: Okay.

Ms. Mitchell: Would you want to update the name to what the new name would be of the Board? Or is that premature?

Mr. Walters: I think it's understood. We could do "LCB." They maintain the acronym.

Chair Axthelm: Amy, we can come back to you if you'd like.

Ms. Hughes: No comment.

Chair Axthelm: Oh, no comment. I'm sorry. Oh, okay. Annie?

Ms. Lohman: No comment.

Mr. Greenwood: No, I'm good.

Chair Axthelm: Okay. Kathy?

Ms. Mitchell: I'm fine with this.

Ms. Candler: Are we on –

Several Commissioners: 2

Ms. Candler: I see 2 up there on the – we switched pages, I feel like, because we were on the issues for the Planning deliberations. Now we're on Findings of Fact and I'm fine with that but we did switch over.

Chair Axthelm: Yes.

Ms. Candler: I'm fine with – these are actual Findings. Why don't we deliberate on those? I think that's fine. Okay.

Mr. Walters: They correspond to the numbers.

Ms. Candler: What you have – okay. So I think this – I would support this and I don't have any questions or issues about it – this language.

Chair Axthelm: Okay. So then number 3. Are we okay with switching – that was understood that we're switching to the – instead of going over the key issues we're actually – what the Finding of Fact. Probably should have started that way. Okay.

Ms. Candler: So 3 says "Marijuana processing or extraction involving flammable or combustible liquids or gasses should not be allowed in areas where residences may be nearby." I have no question or issue about that and I would support it.

Ms. Mitchell: I'm fine with number 3, too.

Mr. Greenwood: The one thing I'd like to perhaps add to it would be – and I don't know the wording yet – but it would be a significant fire risk. You have an explosion, you know, we're concerned about explosions along railroad tracks. Well, I'm a little concerned about explosions in the forest setting. You know, I don't like fires, I don't like people playing with fire next to Industrial Forest land or Secondary Forest land or the national forest or any of that kind of stuff. That's often been a problem in the previous method of growing marijuana in the woods. It started fires.

Ms. Candler: Would you like to add that language?

Mr. Greenwood: Yeah. I'm trying to think of – or but who's going to determine whether it's near a high risk fire area?

Mr. Walters: Well, and this sentence is phrased just as your reason. The *rule* is contained in the proposal, unless you recommend modifying that rule. So the rule in the proposal is it would be prohibited in Ag-NRL because those are the areas that are likely to have – or they're the areas that have residences in them significantly. But elsewhere you would be able to use flammable or combustible liquids or gasses to do the extractions. In all cases it would have to be in a closed-loop system. That would be required by our development regs. It is also required by the Liquor Control Board. And in no case would you be allowed to do it unless you had a Liquor Control Board license. That's part of the new legislation.

Mr. Greenwood: So this just deals with use or non-use of that process in a particular zone. Is that correct on item 3?

Mr. Walters: Yeah. Your Finding of Fact just articulates the reason why to have the prohibition, but the prohibition in the proposal is just that one particular zone.

Ms. Candler: And – Chairman, may I ask a question? If I'm reading this right, that's only going to be – those aren't going to be permitted in the future in any Ag-NRL.

Mr. Walters: What's that?

Ms. Candler: This is only for existing structures on –

Mr. Walters: Existing structures – not existing marijuana facilities, but existing structures. And the idea there is to limit the creation of new structures in Ag-NRL for a use that is not really ag.

Ms. Candler: I see.

Mr. Greenwood: I just think – I don't think it should be near any residence. I don't care what zone it's in. I don't want to just prohibit the use of explosive processes in Ag-NRL. I think if you're in some of these other zones that we're permitting, I don't think it should be allowed there either.

Chair Axthelm: And it isn't, by that statement, is it? "In areas where residences may be nearby."

Mr. Walters: Well, that's your reason. Maybe –

Mr. Greenwood: Well, that's our reasoning but in fact the code sounds like it's just addressing Ag-NRL.

Mr. Walters: Well, when you get to your recommendations, you might articulate a different rule.

Mr. Greenwood: Okay.

Mr. Walters: For instance, instead of Ag-NRL, maybe you say “within 1000 feet of a residence” – any residence or any residential zone or something like that.

Mr. Greenwood: All right. That was my concern.

Chair Axthelm: Kevin?

Mr. Meenaghan: No.

Ms. Lohman: Nothing at this time.

Chair Axthelm: Amy?

Ms. Hughes: I have a question about the licensing to be able to use this kind of chemicals. What are the licensing requirements?

Mr. Walters: Under the Liquor Control Board rules, you have to have a system – an extraction system. It has to be closed-loop. It has to be recommended by the manufacturer for that use. There're a number of little provisos in the Liquor Control Board rules about using one of these hazardous chemical systems. And then there's also the CO₂ extraction system, which obviously doesn't use hazardous chemicals. But we heard from marijuana processors that they would prefer to have the flexibility to use the hazardous chemical systems where appropriate because it enables them to produce additional kinds of extracts that they can't produce with the CO₂. I don't have independent verification that that's true but that's what we heard from marijuana processors.

Ms. Hughes: Where my thought is on this is is there training for this when you get a license? Is it just an application to get a license so you can it, or is there training, is there follow-up training? How are we as a community protected that there's all kinds of training behind the use of this?

Mr. Walters: I don't think that there's any Liquor Control Board rule addressing that, and you're not getting a license for the hazardous chemical system. You're getting a license for your marijuana processing facility and the hazardous chemical system is – the conditions on what kinds of systems you can get is a requirement of their rules. But you're not necessarily getting training and you're not necessarily getting any specific license for the hazardous chemical system.

Ms. Hughes: So I have a problem where residences – just excluding residences on this one? And where I'm taking this is to use chemicals on a farm as far as spraying you need to be licensed, you need to go in periodically, take more classes, more hours. You have all these requirements and I'm not seeing requirements to use this type of stuff, and whether you're next to a house or you're next to a business or you're next to an industrial building it's still an explosion, and it's contained by the loop system but could it get bigger than that?

Mr. Walters: And the way these systems work is that the closed-loop ensures that gasses don't escape. If there's a problem with the closed-loop and gasses do escape, they're colorless and odorless so you're not going to know they're there until they explode.

Mr. Greenwood: I feel better.

(laughter)

Ms. Hughes: Okay. Well, that's my thoughts right now. Don't know where we're going to go with this, but that's my thoughts right now.

Mr. Walters: We don't have the ability to require training through the land use code. Our abilities through the land use code are basically to exclude it from certain areas or to regulate the type of system that might be used. But those affirmative, ongoing requirements like training is not something that we can accomplish through the land use code.

Mr. Meenaghan: That's part of the licensing by the state, by the Liquor Control Board.

Mr. Walters: The state has much more ability to do those kinds of things, but I don't know that they have requirements for training for it.

Chair Axthelm: Robert?

Mr. Temples: Well, I'm sure that there's not a fire marshal or a head of a police department who wouldn't love to see this one put into the law somehow, but I bet it's really addressing more the concern of the 95+% of illegal processes that are exploding and we see in Seattle and everywhere else across the state. So I completely support this 100%, and the only thing – I kind of agree with Amy – the only thing that concerned me a little is the issue about residences. We had a neighbor up our road last year that he had a shed a ways from his house, but when his – well, it exploded. The house wasn't hurt but the shed was totally gone. So they're dangerous, whatever type of building you put them into – a barn or a shed or in your house. It's a dangerous process. And I think it's only going to be time will tell is just whether the protection of these oils and things extracted and whatever method is done, whether it's done legally, that's going to be a whole other question. But I think at least putting it in here is a very important issue and I support it.

Mr. Walters: And what the Fire Marshal has seen is those types of cases where some building was present and now no longer is but you can see pieces of it around. And that's usually associated with sort of a more amateur system. I don't think we've seen one with a marijuana processor but then we don't really have very many marijuana processors operating right now. But the incident – there was an incident in Mount Vernon – the apartment complex that's noted in the staff report – and those aren't licensed facilities. Those aren't facilities that are employing closed-loops. Most of the time they are just releasing it on a burner, and if you don't –

Chair Axthelm: Illegal facilities.

Mr. Walters: If you don't combust it all, you build it up and then you get an explosion.

Chair Axthelm: I'm okay with the statement. I think your larger facilities will be caught, you know, by regulated beyond by building code and having the hazardous materials or hazardous quantities.

Ms. Lohman: Mr. Chair? I have a question. But you allow it in Rural Village Commercial? You allow marijuana production and processing as long as it's in an opaque structure and it's an Administrative Special Use. And I'm thinking of the Rural Villages in my neck of the woods and they're highly residential. I don't know how in the world you're going to walk that language there.

Mr. Walters: Well, and not all processing involves the extraction. There's a different line that addresses the extraction in Ag-NRL.

Ms. Lohman: Yeah, but this is – I'm referring to Rural Village.

Mr. Walters: Yes, so if you wanted, you could also recommend that it be prohibited in Rural Village Commercial or some of the other zones, in addition to Ag-NRL.

Ms. Lohman: Because our – at least the Rural Villages I can imagine when I think about our county, there're very tight circles drawn around those places, and when you say "Rural Village Commercial," I think it's more retail or restaurant or fairly – it's not industrial in a Rural Village as we know Rural Villages in Skagit County. So I almost think that we maybe need to – I would want some stronger language that you don't allow this type of activity in our Rural Villages because I can just see burning down the whole town.

Ms. Candler: Annie? Josh, can I have the floor? Would you like to have it say "should not be allowed in areas where residences or businesses may be nearby"? Would that address your concern?

Ms. Lohman: What if we just said we don't want it in Rural Villages?

Mr. Walters: I suggest you –

Ms. Candler: We don't want it in downtown either.

Mr. Walters: – you put that Rural Village thing in the Recommendations part and here in the Findings you say something more general, like "dense areas" or something like that – denser?

Ms. Lohman: Because when you just say in "areas where residences may be nearby," there's an awful lot of other elements that – especially when you look at the list. I went back to the April 7th meeting where we had the chapter a little bit more condensed so you could refer back to it. And marijuana production and processing, it's an Administrative Special Use in Rural Village. And so if you're going to allow extraction someplace as long as it's an opaque building I can see a densely packed Rural Village as being problematic.

Mr. Pernula: I would suggest that maybe what you're finding is an inconsistency between what's said here and the table where it's allowed as an Administrative Special Use Permit.

Ms. Lohman: Yeah.

Mr. Pernula: Maybe we can correct that.

Ms. Lohman: Mm-hmm.

Chair Axthelm: And these are just Finding of Fact at this point – it doesn't address all the regulations which then we'll specify.

Ms. Lohman: Right, but our Findings of Fact should tie in to the Recommendations somewhere.

Ms. Mitchell: Perhaps – Chair? Chairman?

Chair Axthelm: Yeah, Kathy.

Ms. Mitchell: Maybe this is like we did before. If you did an example, would it be okay to say here, for example, in this Finding of Fact, "example – Rural Villages"? Would that key in the mind or the thought?

Ms. Lohman: But it isn't just residences.

Ms. Candler: Exactly. We want to add language.

Mr. Walters: Maybe – maybe –

Chair Axthelm: But this is our reasons in finding facts, so what – do we want to add the reasons in? It makes it a little longer, but there are reasons why we come – why we're finding the fact.

Ms. Lohman: Well, it's places where people hang out. You know, high – you know, like –

Mr. Walters: What about that? Does that address it? You would then hit the Rural Villages in your Recommendations.

Ms. Hughes: And businesses.

Chair Axthelm: Explosions and – I'd say gas leaks but it's not the – it's the – not just explosions, but the chemicals that go along with it. Right?

Mr. Walters: Explosions, I think, are definitely the main concern.

Chair Axthelm: Okay.

Mr. Walters: Do you want –

Ms. Lohman: Potential.

Mr. Greenwood: I like that better.

Ms. Mitchell: That's better.

Mr. Walters: So that tries to capture –

Chair Axthelm: Yeah, because before the explosions happen you have issues there, too.

Mr. Walters: Yeah. That tries to capture your reason –

Ms. Lohman: There you go.

Mr. Walters: And then your rule will go into your Recommendation.

Mr. Greenwood: Right.

Chair Axthelm: Because you have a propane leak and it goes – and you have basements and stuff next door, where does the gas go? It slowly builds up in different locations. Okay.

So, next one. Robert, can you start with this one – number 4? Before we start, I was trying to find some way to generate discussion and I'm worried about this being – it's pretty hard to ___ at this point. Should we start somewhere else? Are we doing this right? There're a lot of things to discuss. Is the Commission okay with what we're doing here?

Ms. Mitchell: It's working for me so far.

Chair Axthelm: Okay. Okay. I know a lot of these things tie together and it's hard to discuss one item and not discuss all the other things that go along with it that we might have in here later. So I just – I want to make sure everybody's comfortable.

Mr. Temples: Well, the only thing I'd suggest, Josh, is perhaps – we've got ten of these to go through.

Chair Axthelm: Yeah.

Mr. Temples: So –

Chair Axthelm: And if we go over and if we have lots more to discuss then we can push it to another meeting because this is important.

Mr. Temples: I'm not sure how that fits with the Commissioners' timetable, but... I'll just be real quick here.

Chair Axthelm: Well, and actually additionally, too – sorry, one more thing – is that – I saw you circle it, Kevin! – was that on the top of it it says "Capital Facilities Plan" at the top.

Mr. Walters: I fixed that in the version on the screen up there.

Chair Axthelm: Okay.

Mr. Meenaghan: You know, you're asking about input – how this is working. I think it's important for us to remember these are Findings of *Fact*. They should be fact-based. They should not be opinion.

Mr. Greenwood: Right.

Mr. Meenaghan: Because the fact has to support our Recommendation. So I think we should, as we make these statements, be sticking to what the facts are.

Ms. Candler: But also Reasons for Action.

Mr. Meenaghan: Yeah, and we need to just make sure we clarify that. You know, they're separate.

Chair Axthelm: Good point. Thank you. So with that –

Mr. Temples: Number 4, I have no comments. I think it's a good addition.

Ms. Hughes: No comment.

Chair Axthelm: Okay.

Ms. Lohman: No comment.

Chair Axthelm: "No comment" meaning – are you okay with that statement? Is that –

Ms. Lohman: I'm not sure.

Chair Axthelm: Okay. So if you're okay with the statement, let's state we're okay with the statement, or if no comment that's fine. If you don't want to comment on it, that's all right.

Ms. Lohman: Well, I'm an aggie and some of the stuff we do smells. So there you go.

Chair Axthelm: No, that's a good point. That's definitely a good point. Okay. So how do we address it then?

Ms. Lohman: I don't know.

Mr. Walters: I would note that in most of the zones where the proposal would allow it, they aren't Ag zones. So the normal Ag rules would not seem to apply.

Ms. Lohman: I mean, I don't want to smell marijuana in the Ag zone either. But, I mean, just me personally, that's my opinion.

Chair Axthelm: So in the Agricultural zone – just to clarify – the Agricultural zone you have like a dairy down the road and that dairy, the other residences really can't complain about it because that dairy is allowed to smell. That's just the nature of it.

Mr. Walters: And we have rules that back that up, as well.

Chair Axthelm: And the mint farm or whatever it happens to be that's down the road.

Ms. Lohman: Or the rotting cabbage.

Chair Axthelm: The cabbage, yeah – whatever it happens to be. In other zones it wouldn't be allowed to cause a smell. Is that correct?

Mr. Walters: Marijuana?

Chair Axthelm: No.

Mr. Walters: Agriculture?

Chair Axthelm: I see what she's concerned with – agriculture or other products. So like in a commercial zone, if you have a smell you have to regulate that or control that.

Mr. Walters: Oh, yes. Yeah, I think our land use code regularly addresses odors. There's a performance standards section. I'm not sure if odors are addressed in that section or not. I don't recall. But, yes, we would regulate odors in any – if we thought that they were likely – in any other area to avoid impacts on the neighbors.

Ms. Lohman: I thought the Pollution Control Board has something to say on odor.

Mr. Walters: The Northwest Clean Air Agency?

Ms. Lohman: There you go.

Mr. Walters: Yeah. I am not sure if they regulate just odors, but definitely air pollution – smoke. I mean, they regulate smoke from your chimney all the way up to Tesoro and Shell. I'm not sure if –

Ms. Lohman: There was a fish processor – was that in our county? – that had an odor issue. I want to say they were in Burlington – weren't they? My point is is there's other things that, yes, they are regulated but – I want to make sure that we write it right.

Chair Axthelm: So this is specific to marijuana growing should not be allowed to produce odors. So it wouldn't prohibit other –

Mr. Walters: Oh, no. It would not affect other agriculture at all.

Chair Axthelm: Is that fine, Annie?

Ms. Lohman: Yeah, as long as we...

Chair Axthelm: Okay. Kevin?

Mr. Meenaghan: So I guess my only comment about this is, you know, what – when the wind blows the wrong way and I smell oil from the refinery – you know, Shell or Tesoro – are we – is the City or County regulating that? And so how does that apply to something like this? I mean, sometimes that is a natural byproduct of an industry in Industrial-zoned land. So my question is, you know, Where is the reasonableness?

Mr. Walters: We found that this was a requirement in most other jurisdictions' rules, and it was a frequent complaint from the people who testified at the Board of County Commissioners' public hearing and your public hearing. Most other jurisdictions, I understand, have found that because you're growing indoors you can regulate the air exchange and you can use carbon filters to prevent the release of the odors.

Mr. Meenaghan: Okay.

Chair Axthelm: So this is specific – again, specific to marijuana growing. Keith? Are you –

Mr. Meenaghan: I'm good. Yeah, it's fine.

Chair Axthelm: Keith?

Mr. Greenwood: Yeah, I'm sensitive – I think as Annie is – in that, like I said earlier, if this were just a regular type of agricultural product we wouldn't be concerned about it. If it was – didn't have some of the peripheral effects and baggage that goes with it. I mean, there's slaughter houses. I look at the requirements pertaining to, say, the Hamilton Industrial zone. It permits things like fertilizer manufacturing, livestock auction facilities. I think of all the stinky places that I've driven by. There's a lot of them out there. And we are making some specific constraints early on, I think, for this particular activity, because it's unique. And I think like Annie's –

Mr. Meenaghan: Like controlled.

Mr. Greenwood: Yes. And if it's something that, you know, you've got to – I really think, like Annie said, you really need to tighten it up first and you can let loose with time, but if you let it loose at the beginning we end up with what I frankly think we have now, which is we have some operations that are in place because we initially thought, Let's let the rules work. It's agriculture. Let's do agriculture. Oh, it's not quite like agriculture. It's commercial-industrial. Ooh, it's not quite like that. So it doesn't belong in some of our traditional zones without some additional constraints and I think this is just one of them.

Mr. Meenaghan: Good point.

Ms. Mitchell: Okay, I agree with what is written here. I just do have a question because – sort of like what you were asking before about some of the permitting for processing. With the odor detection, what does the County have at its resources for being able – like you do with noise detention – to know what the levels are, what (is) acceptable, what isn't working, and what the teeth are? For instance, what are the standards of measurements for detecting odors, distances, that kind of thing? It's all nice and fine to say that we will – we don't allow this, but what do we do when there is a problem or if there's a problem?

Mr. Walters: Well, and that's why there's no metric here. We got this line from somebody else's code where there's just an absolute prohibition. If you're standing on the property line you shouldn't be able to smell it, and if you can smell it then you're doing something wrong and you need to correct it. So we would do code enforcement just like anything else if there was a violation, but we don't have any special equipment for that. The Hearing Examiner could make a visit to the site to smell.

Ms. Mitchell: Okay. Thank you.

Chair Axthelm: Tammy?

Ms. Candler: Okay. Ryan, I have a question. That was one question I had, but I'm also wondering how much information do we have as far as technical information about how well the ventilation systems work? And sort of with what Annie was talking about, How reasonable is this requirement? Do we have enough information about that to know that there are ventilation systems that can actually eliminate that odor?

Mr. Walters: I don't think that we've seen information about that, other than the similar requirement in other jurisdictions' codes. So I don't think we have information about how effective those systems are, at least none that I've seen.

Ms. Candler: I do have – I don't know if anyone's going to like this language better, but I do have a thought about proposing some language that would say instead: "Marijuana growing or processing should be regulated to require minimization of being detectable off the premises." So that we could say we're going to require these ventilation systems, but we're not having a blanket requirement that they can't ever have any odor. Does that – does anybody like that language?

(silence)

Ms. Candler: Originally I was fine with that language but I see Annie's point.

Chair Axthelm: You speak up if you'd like.

Mr. Meenaghan: So I like – I think that applies some reasonableness to it, and then I come back to the other side of that that I was coming back to Keith's point about being stricter and tighter now because this is new, and then relaxing as we figure this whole thing out later. So I'm torn between reasonableness and strictness.

Ms. Candler: And I still have Kathy's question: Who decides if it's detectable?

Chair Axthelm: _____ the regulation itself. Understand, this is still just the Finding of Facts so –

Ms. Candler: Right, but we're going to actually say that they're not allowed to produce odors that are detectable off the premises. I don't know if we have enough information to say that that's possible.

Chair Axthelm: I don't think we're – we're not saying that entirely because in the regulation it will determine exactly what has to happen. But this doesn't. This is just our Finding of Fact. So what I'm saying is what is the degree of – or what is detectable and what isn't and what is considered the limitation? You know, you may have some odor, but this is our Finding of Fact.

Ms. Candler: But are we finding – I mean, I don't know if that's reasonable.

Chair Axthelm: Yeah.

Ms. Candler: I don't think I have enough information about whether or not that's reasonable.

Ms. Mitchell: Mr. Chair?

Chair Axthelm: Yes?

Ms. Mitchell: Maybe I can add something. I don't know where the odor experience to determine – some people may or may not have – I have smelled that – been hiking off in the forest and run across something you're not supposed to run across and you want to run the other way, and the smell is really bad, you know, when it gets to that time in the season – and to my nose, which I think is an average nose, the smell is very skunk-like. It's very noticeable. It's very strong. Just like when you're driving down the highway (and) you go over a used skunk, that smell sticks with you for a while. So from that standpoint, I can understand why there were so many complaints having such, and because this is very industry-specific just for the marijuana grow

operations and that's such a pervasive issue. That's one of the reasons I would like to see it stay in the Findings of Fact.

Ms. Candler: I agree it would probably be horrible. I mean, I have a lot of sympathy if you're next door to that. But are we regulating them out of business? Because if it's possible or not to make that – if it's that bad and that strong, is it going to ever go away entirely?

Chair Axthelm: Different sensitivities. Keith brought up the – not to jump into the regulations, but to go to the new regulations on page 4. It says the new section 14.16.855, item 4, so "The marijuana production and processing facility must employ ventilation systems such that no odors from the production or processing are detectable off the premises," which means some odors may make it off premises but detectability. So there's a limitation there. Does that –

Mr. Pernula: That's part of it. What I was going to say is this is really a reason for an action, and I don't know that we have to be real specific about it. But if you say something like "Marijuana growing or processing should not be allowed to produce unreasonable levels of odors that are detectable off the premises," something like that would be, to me, appropriate here. Then in the regulations we might have this one covering ventilation of those enclosed systems. And for other kinds of structures we have other processes including Special Use Permits where that's also looked at. We have different requirements addressing it. This isn't really a regulation where if you smell it offsite or whatever we would enforce it, but we enforce it through a specific requirement elsewhere in the code. So that's what I would suggest, is just instead of saying, you know, that you're not going to produce any odors offsite, I would add "unreasonable levels of odors" and then address it however you can elsewhere in the code.

Mr. Greenwood: I like that.

Mr. Walters: The other thing I would say about that is that we've repeatedly heard from Commissioner Wesen especially that he has a focus on having us articulate rules that are enforceable. So when we get to the rules side of this – you know, given that we're talking Findings and Reasons right now – but when we get to the rules side a binary rule where you smell it or you don't is much more enforceable than, Is it reasonable or not?

(sounds of assent from several Commissioners)

Mr. Walters: And based on what we have heard from other – we have *not* heard – I guess what we have *not* heard from other jurisdictions is that they are having trouble with this aspect of their rules. We haven't heard that it's not working, that there isn't technology that can address it. I know I'm not super-confident that we would have heard, but all I can say is that we're not hearing from other jurisdictions that technology isn't able to handle this.

Chair Axthelm: Okay. Are we in understanding with that one? Didn't we put at the end "reasonable levels"?

Ms. Candler: I think that's helpful.

Chair Axthelm: At least in the Finding of Fact.

Ms. Candler: Isn't that the opposite of what you're saying, Ryan?

Ms. Lohman: Mm-hmm.

Chair Axthelm: Well, no. This is the Finding of Fact. This is not the regulation. What you're talking is the regulation, is the enforcement.

Mr. Walters: I'm especially talking the regulation but the Finding, you know, is supposed to be its corollary.

Ms. Candler: But you're proposing to leave it as it is, aren't you?

Mr. Walters: I am.

Ms. Candler: Okay. I'm fine with that.

Chair Axthelm: Thinking about that, I know with air quality you have a parts per million kind of thing – a certain percentage that's allowable without stating that it's actually there. So in the situation it's like odors – produce odors. Well, there's always an allowable amount to some extent.

Mr. Walters: Yes. This is a detectable amount, I guess, as currently phrased in the rules. We don't have equipment to detect parts per million, nor are we concerned about the pollution aspect of it or the buildup of the parts per million. We're mainly concerned about the nuisance aspect of it.

Chair Axthelm: Yeah.

Ms. Candler: Well, I had initially proposed some alternate language but I will accept that language.

Chair Axthelm: All right. So the next item is – now I would like to jump back real quick to the key issues and just read this one statement here on number 5. It says "Should any LCB" requiring "security cameras be required to" aim "so as to view only the facility property, not public" right "-of-ways or neighboring properties? This has been a" frequent "cited neighborhood concern." Now that's the key issues that we were asked to discuss. And then the Finding of Fact in line with that is "Although security cameras are a reasonable requirement by the Liquor Control Board to ensure security of marijuana facilities, neighboring properties have the right not to be observed by such cameras."

Mr. Walters: I would say first off that anyone can go get a security camera and put it up on their property right now and aim it wherever they want, and we don't have any rules on that. But this was a frequently-cited concern by neighbors of these facilities so that's why it's proposed as a *special* rule for marijuana facilities. And we know that some of these facilities are going to be *required* to have security cameras.

Chair Axthelm: So by law you can point a security camera to your neighbor's property and they have no say against it? You can put a camera up in a hole and shine it right towards your neighbor's property and –

Mr. Walters: Well, there may be some constraints on that. But you can look out your window all day long at your neighbor's property, so you can set up a security camera. And this is not to be considered legal advice.

(laughter)

Ms. Lohman: Mr. Chairman? I was under the impression that the rule was the Liquor Control Board said that you have to – the camera has to be able to look 20 feet around your perimeter.

Mr. Walters: Not your property line but around _____ your security perimeter.

Ms. Lohman: Right – around the perimeter of your security fence. So would it then be reasonable then you could set back your security fence from your neighboring property line so that that 20-foot perimeter in the camera is on their property?

Chair Axthelm: It's a point of order. I guess that's the way to say it because if we have no control over security cameras and us as the Planning Commission can't determine – if you can set up a security camera on your neighbor's property by law and there's nothing you can do about it, why are we making a statement like it is here?

Mr. Walters: I guess what I'm saying is current –

Chair Axthelm: I mean, we don't like if somebody is shining their camera on us, but –

Mr. Walters: Yeah, I guess what I'm saying (is) *currently* that is the case. I can't immediately think of a reason that there couldn't be a land use rule prohibiting security cameras. What I'm saying is that currently there's no other rule regarding security cameras for any other land use.

Chair Axthelm: Okay.

Ms. Mitchell: This is a special case.

Mr. Walters: This is a special case like many of the other rules for these marijuana facilities that are included here.

Ms. Candler: I have a question about that, Josh. I have the same concern actually.

Chair Axthelm: Let's go ahead forward. You go ahead and start.

Ms. Candler: So that was exactly my question about this. How do we vest a right upon a neighbor? I don't – they don't have otherwise that right, as you pointed out. I don't –

Mr. Walters: And the language here is sort of loose because it's in the Findings. In the regulation, it doesn't give anyone rights.

Ms. Candler: Yes, but we're saying they have a right and I agree it would be not a good situation to have cameras pointed at them, but I don't think we can tell them it's a right. I think we should say we have a concern.

Mr. Walters: It might say "should not have to be observed by such cameras" –

Ms. Candler: Something else other than a right.

Mr. Walters: – something – maybe you'd want to stay away from the word.

Chair Axthelm: But, again, nothing? Without pushing down what she said, Kevin said it's a Finding of Fact. This is Finding of Fact, so is that still in line with our Finding of Fact?

Ms. Candler: I don't think we say that they have a right as a Fact.

Mr. Walters: It's certainly not in the –

Ms. Lohman: I think you could rewrite it to make it – take the word “right” and use some other artful terms that are getting to the same issue.

Ms. Candler: I like that better. Thank you.

Ms. Lohman: There you go.

Ms. Candler: Yep, that was my – and my other question was what is it – is there anything in our Recommendation that specifically addresses number 5?

Mr. Walters: There's nothing in the Recommendations. It's in the proposal.

Ms. Candler: Okay. All right, I like that language better. Thank you. And that's the only comment I had about that number. Kathy?

Ms. Mitchell: Josh, I'm okay with that language.

Chair Axthelm: Okay. Why don't you go ahead? If you bring that up that's ____.

Mr. Greenwood: Yeah, I was just going to read the added section pertaining to marijuana production, processing, and retail facilities. So the prohibition says in number 5 –

Ms. Lohman: Where are you?

Mr. Greenwood: I'm in the proposed draft language on page 4. I'll just read it so you can –

Ms. Lohman: From March 12th, 2015. Okay.

Mr. Greenwood: It says “A marijuana facility that employs security cameras must aim those cameras so as to view only the facility property, not public rights-of-way or neighboring properties.” And I don't have a problem with trying for that one and just identifying the Findings of Fact that may change that language so that identifies that we're protecting neighboring property rights by the use of such cameras. And then whatever those rights are, they get them protected. So those things get pointed in a whole bunch of different way. I saw on the news the other night where somebody was hijacking somebody's baby monitor, you know, and looking inside the house. So people can do a lot of funny things with cameras and how you're going to regulate that I'm not quite sure. But if you're pointing it this way and you're supposed to protect your property this way, there's something wrong. I'm fine with the language.

Chair Axthelm: Kevin?

Mr. Meenaghan: I agree. I like the language. The only suggestion I might make is say “Neighboring properties should not be observed,” and just get rid of the “have to.”

Mr. Walters: Fewer words is better.

Ms. Lohman: I agree.

Ms. Hughes: I agree.

Chair Axthelm: So take out “by such cameras”?

Ms. Candler: No.

Ms. Lohman: Nope.

Chair Axthelm: I thought you were saying that. Okay.

Ms. Hughes: I agree with this one.

Chair Axthelm: Okay.

Mr. Temples: Well, I agree with it but I have concerns. I would highly suggest to you, Ryan and also Dale, I realize this is a Finding of Fact so we now document a Finding a Fact. But when you actually get into the teeth of writing what you have to write on this, my biggest concern and I think the reality is that these grow operations go out and they find a security outfit and they set up all their cameras per their own requirements and they focus on wherever they want to focus on. And if Mrs. Brown has a lovely daughter she may be in view. And I’m just afraid who actually is going to monitor these things or even follow up on them. They could point these things anywhere they want.

Mr. Greenwood: Mrs. Brown’s *husband* will take care of that.

Mr. Temples: Oh, you think so?

Mr. Greenwood: Yeah!

Mr. Walters: I would say there are two considerations there: One, if it’s a PTZ camera – a camera that can be – a pan-tilt zoom camera that can be maneuvered remotely – there’s not much you can do about it. But those are somewhat more expensive than fixed cameras, and if you have a fixed camera you’re going to be able to tell to some extent where it’s pointing. And on the margins it might be difficult to tell if it’s examining the neighbors, but if it’s direct on the neighbor’s property or the right-of-way – because that’s how the code proposal is phrased – then that might be easy enough to tell to enforce.

Mr. Temples: Like I said, my only concern is we could write this in but you’ve got to give it some teeth somewhere along the line that say, you know – I don’t know how you’re going to do it. Like you say, it’s private property. Just think about it. That’s all I have to say.

Chair Axthelm: Okay, so the sixth one. The key issues: “What impact on surrounding properties should Special Use Permits address? The proposal includes, but is not limited to, the appropriate distance of the facility from residences, schools,” daycares, “public parks, other public facilities, and other marijuana facilities, and” including “appropriate controls on” odors; screening or other requirements to avoid lighting impacts; protections against security cameras infringing on neighbors’ privacy; controls on hazardous processing methods; and mitigation of

other impacts. The Special Use Permit process provides the ability to review projects on a case-by-case basis.”

And so the Finding of Fact we have is “Special Use Permits are a reasonable way to regulate land uses when the uses are expected to have impacts on neighboring properties because the uses are not uniform” – if I could read right – “are not uniform or the zone is not developed uniformly. For example, where many residential uses are present in a nonresidential zoning.”

Ms. Candler: Where do you want to start?

Chair Axthelm: Robert, do you want to start with that one?

Mr. Temples: I think it seems quite appropriate under the circumstance and it needs to be a Special Use Permit without any question. Period.

Ms. Hughes: I don’t have a comment at this time on this.

Ms. Lohman: I have a question. Aren’t the Special Use Permits kind of a – there’s levels of Special Use Permit, so how do you decide what the level is?

Mr. Pernula: It’s provided in this table you have.

Ms. Lohman: Okay, back to that.

Mr. Pernula: And there’s two different levels. One’s the Administrative – or it’s listed as an AD – or an HE is a Hearing Examiner. The Hearing Examiner is a higher level.

Mr. Greenwood: Can you describe the differences? That was a question that –

Mr. Pernula: Administrative is done by staff.

Mr. Greenwood: In this Department?

Mr. Pernula: Yes.

Mr. Greenwood: And Hearing Examiner would go before the –

Mr. Pernula: Yes.

Mr. Greenwood: Are they reviewing under the same criteria – or do you know?

Mr. Pernula: No, they’re slightly different. The Hearing Examiner has a formal public hearing and everybody’s able to make their case. The Hearing Examiner makes a decision on it –

Mr. Greenwood: Okay.

Mr. Pernula: – in view of open court.

Mr. Walters: In both cases the property is posted for a land use change. In the Admin case there’s a written comment period and in the Hearing Examiner case there’s written comment

and the public hearing. Oh, and there's a mailing to property owners within 300 feet in both cases.

Mr. Greenwood: For both? For both.

Ms. Lohman: But it's only – I heard you, but I thought of it first, Carol – there's only one and it's for Rural Village.

Mr. Walters: There are three.

Ms. Lohman: Where's the other ones?

Mr. Walters: Ag-NRL for transparent; Bayview Ridge within 1000 feet of a residential zone for transparent; Urban Reserve Commercial-Industrial for transparent. And then Administrative Use for Rural Village Commercial for opaque and Rural Resource for transparent.

Mr. Pernula: And I would also suggest if you believe that some of these others that are listed as either permitted or an AD, if you want to recommend a different process you may.

Mr. Walters: But right now we're just talking about the rationale for having them at all.

Ms. Lohman: Okay, okay. All right.

Chair Axthelm: Okay.

Mr. Walters: And then when you get to your Recommendations, you might recommend changes to this table.

Ms. Lohman: To the table. All right. Okay.

Mr. Walters: And I did make a copy of the word "table" so if we want to make changes we can paste the table in and edit it – just anticipating.

Chair Axthelm: Okay. Kevin?

Mr. Meenaghan: I don't have anything. I'm fine with it.

Chair Axthelm: Okay.

Mr. Greenwood: Well, I'm not going to help this process here, I know, but unless we add – just, again, keeping it tight to start with – unless we add in a process that I feel can confidently address all the potential impacts, through an Administrative process or a Hearing Examiner process, and apply it to all of them, I'm going to advocate the notion that the Special Use Permits are not enough for me as far as addressing the potential impacts. And I am promoting the idea that perhaps some setback thresholds would allow us to trigger whether it's – and the term "variance" came to mind. So if we have a setback that we set – from a residence, in particular; it could be any zone – whatever it happens to be. If it's 250 feet or 1000 feet like it is at Bayview Ridge – if we have a setback that requires a variance then it's a trigger every time you're close. And I think that should – I'm looking for a way to a trigger, a pretty stringent process that says, You don't get to do it in these cases unless you can prove that you're not going to have an impact. Whereas the way I saw the table, I see a lot of permitted activities, and

then you have to have a special case for now-we'll-talk-about-it. And in most cases when you have a project proposed there's mitigating circumstances. You can say I'm going to do this and I'm going to do that, and maybe some of those will work but I'm just not as comfortable with either an Administrative or a Hearing Examiner evaluation of a project proposal that doesn't have enough triggers to it that says, you know, I'm really concerned about the proximity to residences and I'm concerned about the proximity even to other commercial businesses. So just because it's zoned that doesn't mean it needs to be there. So I'm going to advocate for maybe some setbacks in addition to for triggers on variances. I know you've tried it, but if it – you know, if it doesn't fit on a five-acre parcel, I'm having a hard time with that. Tell me why it should be on a half-acre parcel. Tell me why we should allow someone to be within 200 feet of a residence. I want to know why someone should be allowed to put – have a 35-foot setback from a house with a commercial activity.

Chair Axthelm: Dale?

Mr. Pernula: My response to that would be that that's really getting into the regulation before we're there. We can address it when we get – take a closer look at this table.

Mr. Greenwood: Right. I understand that.

Mr. Pernula: Maybe some of these where we have it listed as a permitted use we could change it to an X which would say that it's not permitted. Rather than saying someone has to get a variance if they're closer than a certain distance, I would rather take the route that it shows for Bayview Ridge Light Industrial where if that use is within 1000 feet of a residential use, it requires a Hearing Examiner Special Use Permit. Because a variance is really something where you should only get it if you have some sort of a hardship case, whereas if it has a Hearing Examiner Special Use Permit there's a list of criteria that you're going through to make sure that those issues are addressed properly. I think it's a better tool.

Mr. Greenwood: Okay. If it accomplishes the same thing, I kind of like it. I read what our code says pertaining to variances and I read about the section pertaining to setback requirements, and I think they *should* prove some sort of hardship or non-effect before they go ahead and do it. I'll stop there.

Chair Axthelm: Kathy?

Ms. Mitchell: I agree with Keith, but if this language in this section is okay, is a Finding of Fact for Reason and we can tighten up the stuff in the other section I'm fine with that.

Chair Axthelm: Okay. Tammy?

Ms. Candler: I like this language and I respectfully disagree with both Keith and Kathy because of the comments made by Ryan earlier and some of the stuff I read in the materials. Setbacks cause – if you go specific on setbacks and acreage requirements you're going to be inconsistent with other land use policies potentially and I think in reality a lot. I think that you're going to have these not large enough properties to be where we really want these things – in an industrial zone, for example maybe. So I'm not in favor of setting really specific setbacks. I'm in favor of Special Use Permits, though.

Chair Axthelm: And I like the idea of a Special Use Permit. It gives you the ability to regulate that specifically versus more general. Okay, so the next one, number 7. "What" – so the key

issues: “What zone, by type, should I-502 facilities be allowed in? Zones not listed would not allow any I-502 facilities. Zones within municipal UGAs where municipalities’ development regulations apply” A-UD and MV-UD, for example, “would continue to apply the municipalities’ regulations.”

So the number 7, add a paragraph – oh, I’m sorry. “Marijuana production and processing facilities are most similar in their impacts to industrial uses and should primarily be allowed in zones where other industrial uses are allowed.”

Mr. Walters: And I’d suggest that number 8 is the corollary to that so you should take those up simultaneously.

Chair Axthelm: “Marijuana retail facilities are most similar in their impacts to other retail uses and should be allowed in zones where similar uses are allowed.” So both of those statements. Tammy?

Ms. Candler: As to both 7 and 8, I absolutely agree and don’t have any other comments about that.

Ms. Mitchell: Go ahead.

Mr. Greenwood: You’re fine?

Ms. Mitchell: Mm-hmm.

Chair Axthelm: Keith?

Mr. Greenwood: I guess I’m not quite as sold on the notion that production and processing are the same. I know that they get permitted together, licensed together, get done together. I tend to think of production as more similar to ag and can happen in more of an ag environment. The outdoor grow just kind of makes it all kind of bad, but a greenhouse in an environment that is more agricultural fits better than a greenhouse next to an industrial complex next to a residential. And just by driving by some of those, when I see a greenhouse with poinsettias or tulips or something in it that’s one thing, but when you start to have these other types of things that are associated with it where you get the cameras and the security and all that then it starts to get out of place. So if we’re going to – as we’ve decided to – incorporate or join production and processing together because we don’t think it’s likely that people are going to find it profitable to do these other things and separate them, then those facilities need to take place in some industrial zone that can handle it – or commercial zone that can handle it. Not all commercial zones are the same. I just want to make that clear. When I look at the Comp Zone Map, I see some commercial in the middle of a Rural Village and I’m going, Whoa, I’m nervous about this. This doesn’t fit there. So I’ll let that one ride for now.

Chair Axthelm: Kevin?

Mr. Meenaghan: One of the questions that I had that was addressed in the April 9th – sorry, the April 16th staff memo had to do with why marijuana facilities are classified as industrial and not agricultural. And I think it was very well addressed in the staff memo on page 7, and I think as part of our Finding of Fact and to support – in support of your Finding of Fact number 7 and 8 there, I think it might be useful to pull some language out of that – those paragraphs and put it in there, especially the related definitions of agriculture as it applies to the soil dependency.

Because I think that helps classify why we use the term “industrial” versus “agriculture.” I think that also addresses one of the – by saying that it, also addresses some of the public comments that were submitted as well, with those same type of questions. So I would recommend adding some language about why – you know, what is ag, what is industrial, and why we’re going with industrial to that.

Ms. Mitchell: Educationally, you mean?

Mr. Meenaghan: Yeah, basically as a fact.

Chair Axthelm: Okay. So add language in there? It’s not over because we’re going to have a chance to go – we’ll go back through these, hopefully not this extensive but...

Amy – or Annie?

Ms. Lohman: I think I would on number 8 I would change the second word “similar” and write “retail.” There’s nothing similar to a marijuana retail.

Mr. Greenwood: Can you read that in context? The word you want to change there?

Mr. Walters: I made the edit on the screen.

Mr. Greenwood: Oh, you did?

Mr. Temples: Yeah, it kind of tightens us up.

Ms. Lohman: Because otherwise, what’s similar?

Ms. Candler: Bars, taverns – right?

Mr. Walters: That makes it more parallel with 7.

(several sounds of assent)

Mr. Walters: I will grab some sentences out of the staff report for 7, maybe during your *snack* break.

(laughter)

Mr. Greenwood: I’m waiting for the explanation of this thing here.

Mr. Pernula: Don’t speak anything about munchies.

Mr. Greenwood: Oh, is that right? Because we’re going till midnight or what?

Ms. Hughes: I’m good with it.

Chair Axthelm: Robert?

Mr. Temples: So I guess my question's more to Ryan at this point. So I'm just verifying what I'm reading here. So number 7 is really kind of saying that we're identifying these as an industrial use to be somehow closely involved with an industrial area. Am I wrong?

Mr. Walters: 7 and 8 articulate a general basis for why the zoning table is the way it is, where they're not allowed in residential areas but they are allowed in commercial-industrial or retail areas.

Mr. Temples: So it's kind of specifically saying keep it away from residential areas where possible – as a Finding of Fact.

Mr. Walters: By extension.

Mr. Temples: I'm okay with it.

Chair Axthelm: Okay. I do disagree with striking out "similar," because you take your liquor facilities and there're specific regulations on where those liquor sales can be done – close to schools, close to churches. There's regulations for that, right?

Mr. Walters: I actually – I don't know about ___.

Chair Axthelm: So this would be similar, in effect, to that, right?

Ms. Lohman: But that's not what it says.

Mr. Temples: It's retail.

Ms. Lohman: They're talking in the generic retail. I read number 8 to be a generic retail use, like a mom and pop store or whatever.

Mr. Walters: A Subway, snack shop, taco.

Chair Axthelm: Okay. It's still in what you term "similar." I guess that's all based on the definition then.

Ms. Lohman: If you leave "similar" in there there's nothing comparable to a marijuana retail facility, is how I read it. But maybe I'm just nutty on words.

Mr. Greenwood: When I think other Cities have taken that similar tact where they have not said you're going to – they want them in all the retail areas. I mean, do you want that to be, Welcome to Anacortes and here's our marijuana shop on the front street? Maybe – they've confined it to commercial zones, right?

Ms. Lohman: Then we need to rewrite it entirely if that's your intention.

Mr. Temples: I think you're talking about Finding of Fact, not –

Ms. Lohman: Right.

Mr. Temples: It's like Seattle's got a retail marijuana establishment next to a church. I mean, give me a break.

Mr. Walters: A lot of the facilities in Seattle are kind of not really legal, even under their own rules.

Chair Axthelm: Okay. Well, if that's what you guys think. All right. I just think "similar" seems to be more empowering than taking it out.

Ms. Candler: I see your point.

Mr. Greenwood: I think we stick with Annie on this one.

Chair Axthelm: Okay. Okay, fine.

Mr. Temples: Well, unless you want to –

Ms. Lohman: Well, they're talking about – sorry.

Mr. Temples: Well, I just – I'm thinking why not just take the strikeout of similar and just say "where similar retail uses are allowed"? That gives you both –

Mr. Walters: I really think you've hit it with retail *instead* of similar, unless you want to go in a completely different direction and not allow it where retail uses are allowed.

Chair Axthelm: Yeah.

Mr. Walters: For instance, in your table on page 5 of the Supplemental Staff Report, it does identify what other jurisdictions in Skagit County have done, and a couple of them have allowed it in commercial areas and a couple of them have allowed it only in industrial areas. We're talking the retail use. Anacortes and Burlington have only allowed them in industrial areas. Mount Vernon and Sedro-Woolley have allowed them in commercial areas. So it depends on which direction you want to recommend here. But if you want to recommend them in retail areas of which there are really not very many in the county anyway, then I think that this captures it. If you want to go the other direction you need to rewrite it.

Mr. Temples: I think "similar."

Ms. Candler: I think the Cities – can I just say something? – I think Cities are different than the County in that sense, and we don't have the same maybe concerns like that you're going to be taking your kid to get her clothes right next door maybe, or whatever.

Mr. Greenwood: Maybe.

Ms. Lohman: But we allow it in a Rural Village. You might be going to the art gallery and right next door.... I mean, so you could use that argument for the County equivalent. Maybe I read this number 8 differently than other people, but I read it to be the impacts that I was thinking of – parking – you know, the UPS truck and the deliveries and all of things that go along when you have a retail establishment besides the pedestrian in-and-out traffic. It's the other stuff that supports that retail, and that's what I read is to be similar impacts. Was that what you intended?

Mr. Walters: That is the idea. That's the idea articulated by the original guidance memo as well, that their impacts are similar to other retail uses.

Chair Axthelm: Amy?

Ms. Hughes: But to kind of put this in order, when I look on page number 8 – which packet is this?

Mr. Temples: Staff report.

Ms. Hughes: Staff report. It shows the facilities that have been permitted, and the only facility that I see in the county that's been permitted is the 221 and that's a retail, and that's in our Rural Village of Conway. But what separates it from the residences is a railroad track, and the east side of the railroad tracks are retails. On the west side are the residences. And that community seems to be working okay with having 221 as a retail in their retail section.

Chair Axthelm: I've seen them around, you know, Skagit County and Snohomish County. You see them in retail areas sometimes. So the fit seems to fit right it.

Mr. Temples: Well, Mr. Chair, I think really the question right now sounds like before us is, Do we go back to "similar" or do we stay with "retail" or "similar retail" or what? I can see where Ryan's talking about the idea of similar, and if it shows up in this table as only retail, well, that's about as similar as you can get.

Chair Axthelm: Well, it's limiting to retail versus limiting it – allowing it to be in other areas. Is that what we want to convey?

Mr. Meenaghan: You know, the first part of that sentence is a Fact. "Marijuana retail facilities are most similar in their impacts to other retail uses," period.

Mr. Greenwood: Period.

Mr. Meenaghan: The second part is a – is really a Reason. You know, it's our opinion that's going to inform the Recommendation. And so maybe the second sentence should be "Marijuana retail facilities should be allowed in zones where retail uses are allowed," because that's the next step. So, I mean, it's a Fact and then it's a Reason so I think it's okay.

Chair Axthelm: Are you okay with that separated?

Mr. Meenaghan: Makes sense.

Chair Axthelm: Okay. They want to separate it out so restate that, please.

Mr. Walters: You want two sentences? Is that what you want?

Mr. Meenaghan: It doesn't necessarily need to be two sentences. I just think we need to understand that it is – the first part there is a Fact and the second part is a Reason for our Action.

Mr. Walters: And I think that's analogous to 7, or it's the same structure.

Mr. Meenaghan: Yep.

Chair Axthelm: Okay. Is that stating something differently? Are we understanding it differently when we do that? Or is that okay?

Ms. Lohman: You know, we could change these as we go through the regulation, too, and say, You know what? I really don't like what we've said there.

Chair Axthelm: Yeah. Well, in hindsight we'd probably feel better for sure if we go through the regulations! My intention was going through that based on the key issues. So that's what I was really trying to get to was the key issues. Okay.

Mr. Walters: So Finding of Fact 9 is not one of the key issues, but it is one of – I guess I would say – one of the County's motivations for the approach it has taken in the last couple months, which is to adopt interim ordinances which facilitate the siting of marijuana facilities that we recently expect are not going to have impacts on neighbors while preventing problems with ones that are. It's the reason for the fast track for this whole thing which was not originally on the Department's work plan. So this might be a Finding that the Board of County Commissioners might articulate. It might not be one of your Findings. It might not mesh with what you think. But if it is, then it's written there and you can use it.

Chair Axthelm: Do you want to address this one? Tammy?

Ms. Candler: I have the same question as we had earlier on something else, is that how do we – how is "no impact" determined? Does it mean no complaints? Does it mean – what does it mean?

Mr. Walters: Well, and maybe it should say "minimal impact" or –

Mr. Pernula: Insignificant.

Mr. Walters: Insignificant or –

Mr. Greenwood: I was going to say if you put in "minimal" then how do you determine minimal? "No" is easier to define.

Mr. Walters: And you don't have to determine because it's just a Finding. It's not the rule. It just needs to explain what you think. If you don't think this, then you don't want to include it.

Mr. Greenwood: "Not significant" is a legal – has a legal definition, though, doesn't it? I mean, it's often questioned and _____ determination on it.

Mr. Walters: Yeah. It doesn't matter for the purposes of a Finding, though, because it's just a Finding.

Mr. Meenaghan: So it seems to me that that paragraph really applies to any business. Any business should have the – you know, can realize a reasonable return. So why are we specifying that for marijuana facilities?

Mr. Greenwood: Because this is legal. There're some activities that aren't legal, right?

Mr. Meenaghan: But I'm not talking about illegal anything. I'm talking about any business has the ability to realize a return, and so should a marijuana facility business.

Chair Axthelm: So strike that portion of it?

Ms. Lohman: I would strike the whole thing.

Mr. Meenaghan: Strike the whole thing.

Ms. Lohman: I'd strike 9 ____.

Chair Axthelm: Then we don't want to use that as a Finding of Fact?

Ms. Lohman: No. It's not relevant to the proposal.

Ms. Candler: Strike it.

Mr. Greenwood: I think you're right.

Ms. Mitchell: It doesn't matter to us, does it?

Chair Axthelm: Okay. We can always change it later. I mean, this is just a –

Ms. Lohman: Who are the investors? Wouldn't anybody be ____?

Chair Axthelm: Did we already go down through here?

Several Commissioners: Yes.

Chair Axthelm: Annie, you okay with striking it?

Ms. Lohman: Yeah.

Chair Axthelm: Amy?

Ms. Hughes: When I read this, my concern on the no impact goes back to the combustible situation. And if we have a business that's already working – and I don't know at this point if we've got a processor working – and if they go into the combustible that adds a whole new element of the effect on the community. And so I'm concerned about existing businesses that might try to go into this combustible issue that has not been defined by the Liquor Control Board to my – I'm not fully comfortable with that issue yet to have it in my neighbor's area, whether it's business or residential.

Chair Axthelm: So strike it?

Ms. Mitchell: So you're happy with striking?

Ms. Hughes: I guess this kind of has to do with maybe grandfathering a bit, but this one issue of the combustibles is still out there and if there's an existing business that's already working that's going to go into this without a better definition by the state about what's required, I wouldn't be in support of any grandfathering.

Mr. Walters: And it sounds like you want to generally strike it, so maybe we don't really need to talk more about it. But the intent was not to address grandfathering specifically – although I can totally see how you could read that, and maybe it's poorly written. But the intent was – Dale, can you articulate this better?

Mr. Pernula: Well, I think the intent was a lot of people have ponied up a lot of money, started investing in some businesses around here, and if they're developing something that has an insignificant impact on our community and are providing jobs or whatever, why not allow them to get a reasonable return on that investment? That's all.

Mr. Walters: But if everyone wants to strike it we can move on.

Mr. Pernula: That's fine.

Chair Axthelm: Robert?

Mr. Temples: Well, I completely support the concept of striking it from here, but what bothers me is the line of having no impact on neighboring properties. And from all the testimony we heard weeks ago, trust me, there are going to be impacts of some nature. If your neighbor's putting up an eight-foot fence with security and nighttime lighting and everything else, that's an impact. I don't care which way you look at it. But I don't agree with this number 9 at all.

Chair Axthelm: Okay. All right. Any further comments?

(silence)

Chair Axthelm: So number 10 of the ordinance: "Should address recent legislation approved by legislature and expected to be approved by the Governor allowing medical marijuana to be grown at home by qualified patients." Robert?

Mr. Temples: I think number 10 is – or 9 or whatever it's going to be – is absolutely correct. There was even some news recently on CNN talking about how some – one lady they were interviewing she was in a hospital – I can't remember where it was at – and they were giving her medical marijuana for her condition – in a hospital. So if a hospital can deem it beneficial then I think it's only fair that qualified patients get some aid and assistance. So I support it.

Chair Axthelm: Amy?

Ms. Hughes: I would support this one.

Ms. Lohman: Me, too.

Chair Axthelm: Kevin?

Mr. Meenaghan: I am supportive. I have one question. Does it help – when we send this forward to the Board – does it help if we were to cut and paste from – again – from your staff memo all that information about what that new legislation does and put that in our Finding of Fact?

Mr. Walters: I don't think you need to include the summary. I think you need to include what motivates you.

Mr. Meenaghan: And the motivation is simply the 5052.

Ms. Mitchell: If, in fact, it's signed.

Chair Axthelm: Which is _____ the legislature?

Mr. Meenaghan: Okay. All right.

Chair Axthelm: Keith?

Mr. Greenwood: I'm fine.

Ms. Mitchell: Okay.

Chair Axthelm: Tammy?

Ms. Candler: I'm fine with it. If anything that motivates us I think it's just state law, but I think leave it in there. So I'm fine with that.

Chair Axthelm: State law – I'm fine too. Okay, so –

Mr. Walters: This is the one that was – this number 10 here is from before that we moved down to the end.

Chair Axthelm: Oh, okay.

Mr. Greenwood: How are we going to address those in code language, though?

Ms. Mitchell: That's maybe up to the attorney.

Mr. Walters: And maybe instead of "addressed" it should say "considered."

Chair Axthelm: I know I'm kind of out of turn but I – something I'd like to throw in there is you have it requires significant water, which is an impact to the environment, but what about that water and after they're done using it? How do they dispose of it and where does it go? Is that of a concern to you? You have water usage but if they're going through that much usage, sure, the plants suck up some of the water but some of it doesn't get sucked up by the plants, doesn't get used by the plants. Some of it they have to dispose of.

Mr. Walters: And a facility that is properly permitted would need to address that in their septic review.

Chair Axthelm: Okay, so I guess it wouldn't necessarily go with your talking about our usage here.

Mr. Walters: Well, obviously it's related. But the septic review should be handled by our existing regs.

Chair Axthelm: Okay.

Mr. Walters: The problems have been when facilities don't get permits.

Chair Axthelm: So, Tammy, start with you.

Ms. Candler: Okay, so now I have a question about that. Are they addressed in the permitting process? Or where are we addressing them?

Mr. Walters: The proposal addresses water use through the restriction on locating any of these facilities on Guemes.

Ms. Candler: Well, yes, and I support that completely, but I think Kathy pointed out that they're not the only people who might have water issues. So is this going to be addressed in the permitting process or do we really need to say "consider"? I don't know. I like the language. I don't want to not have it in there. I'm just not sure if it needs to be tweaked. That's all.

Chair Axthelm: Kathy?

Ms. Mitchell: I'd like to have the language in there. I don't know what the recommendation would be as far as if we need any qualifiers or not. I do think that it needs to be addressed because there's plenty of areas where it's not Guemes.

Chair Axthelm: Keith?

Mr. Greenwood: I would just want to incorporate the "requires significant water, and the impacts of its use and processing should be addressed or considered," because the handling of it – you know, what you do with it – we should probably address.

Ms. Mitchell: How about considered *and* addressed?

Mr. Greenwood: Well, that might point us more towards the permitting process for more of these locations' installations.

Chair Axthelm: Marijuana growing requires significant water. Period. That's a fact. Right?

Ms. Mitchell: Yes.

Chair Axthelm: So then our opinion or our – not our opinion –

Mr. Temples: Recommendation?

Chair Axthelm: No, it's not recommendation at this point. Our reason – thank you – our reason is that the impact – why we state that is because the impacts – how did you put that?

Mr. Greenwood: The impacts of water use and handling should be addressed.

Ms. Mitchell: Considered *and* addressed.

Mr. Walters: Processing?

Mr. Greenwood: Processing – sure.

Mr. Walters: Addressed? Considered? Considered and/or addressed? Considered, addressed, or both?

Mr. Greenwood: Leave it that way for now, I guess.

Chair Axthelm: We'll come back and double-check it as we go through the regulations.

Mr. Temples: Addressed when you've got to do it; considered _____.

(several people speaking at the same time)

Chair Axthelm: Go ahead, Annie.

Ms. Lohman: The thing that pops into my brain on this one is we talked briefly about using Special Use Permits and I think this would be an element that would come up in a Special Use Permit, except that if you're in an opaque structure, for example, in the Ag-NRL it's just blanketly permitted so it *isn't* addressed. So that's why we need to look at the regulations that are proposed. So I think this is an excellent thing that should come up either in Hearing Examiner or the other Special Use.

Mr. Pernula: Administrative.

Ms. Lohman: Administrative.

Chair Axthelm: Well, and this would be outside of that, wouldn't it? That's not specific to Special Use Permits. That's –

Ms. Lohman: I know, but that – so you can't help but not look at the code because there's several places where it's conceivable they might be on PUD water of some sort. But then, you know, there's an awful lot of Ag-NRL that is not. So I'm having trouble with a lot of the regulation and doing the Findings of Fact before we touch the regulations, so I'm almost feeling a little bit cart-before-the-horse because we haven't dug into the regulation to see if it's what we want.

Mr. Greenwood: Well, can't we make the regulation fit what our Findings are?

Ms. Lohman: Well, you said you wanted to stick to the Findings of Fact and so I'm struggling with that dynamic here. Because really the thing that we're talking about is the zoning code, and we've all found a whole bunch of holes in the zoning code that we're having trouble with, so you're trying to write something – so I'm just saying let's keep the zoning – our Findings of Fact to this point as a placeholder, because I'm suggesting that we might be adding more or changing.

Chair Axthelm: I'm not saying to finish the Findings of Fact. What my – when I started, it was that I wanted the key issues for planning so that we can get some of our questions answered, and then after that go on to the regulations, because until we had some of those questions answered, we'd be jumping all over the place on the regulations. So I think we kind of went to the Findings of Fact prematurely, but it was more intending on just generating discussion. So we aren't done with this so we'll finish with it.

Mr. Temples: To me, the Finding of the Facts is just like building a foundation, and if it happens to be on a sloppy hill you don't – you've got to get it level. So I just think we're jumping the gun

here a little bit. Yes, the Findings of Fact are important but then what they generate and come back to us with – that's even more important yet.

Chair Axthelm: Then we'll come back to the Findings of Fact, I think.

Mr. Temples: No, not tonight.

Chair Axthelm: So leave that. What do you want to do with that one right now?

Ms. Hughes: At this point, leave it.

Chair Axthelm: Leave it. Okay. Annie?

Ms. Lohman: Leave it.

Chair Axthelm: Robert?

Mr. Temples: Yep.

Chair Axthelm: Okay. So –

Mr. Greenwood: Next time let's move Amy from Annie so that I don't get confused when you're talking to them.

(several unintelligible comments about Mr. Greenwood's comment)

Chair Axthelm: Do we want to move to the regulations, the actual regulations?

Ms. Lohman: I move we move to the regulations.

(several sounds of assent)

Mr. Walters: So all of the Recommendations that are drafted in your draft recorded motion pertain to the new legislation and adjusting the proposal for the new legislation. And what I heard is that you may not really have a whole lot of discussion about that but what you may be concerned about mostly is the zoning code table. So maybe before you get into the pre-drafted things you should be looking at the zoning code table and seeing where you have recommendations that are different from the proposal. The zoning code table is in a variety of places. It's in the initial Staff Report, the Supplemental Staff Report on page 11.

Chair Axthelm: And that's just basically a summary of this regulation.

Mr. Walters: Right.

Chair Axthelm: Although we still have to go through this.

Mr. Walters: No. No. You don't have to go through the regulations because it summarizes it. You just have to tell us what you want.

Chair Axthelm: Okay.

Mr. Walters: Yeah. The regulations are what's proposed to go into the code, but the summary table is the same substantively, and that's what you probably want to focus in on to be able to see it more easily.

Chair Axthelm: Okay. So looking at the table –

Ms. Hughes: Which table are we looking at?

Chair Axthelm: On page 11, where it has the Zone, the Retail, Opaque, and Transparent.

Ms. Lohman: Can I ask a general question about the table? Why is there a – can you explain the difference between the opaque – I mean, I know what an opaque structure, I know what a transparent structure, but what's the rationale on having those two columns?

Mr. Pernula: Because remember: If you either have an outdoor grow or a transparent structure, you have to have that eight-foot security fence and the security cameras around it. Once you're in an opaque structure, you don't have to have those, plus you have a better control of the odors.

Mr. Walters: And the lighting.

Mr. Pernula: And lighting, yes.

Chair Axthelm: So would a greenhouse be considered an opaque structure?

Mr. Pernula: No. A greenhouse requires an eight-foot fence around it and it requires the security cameras, and it's usually lighted.

Mr. Walters: And we didn't use the term "greenhouse" because that's defined in the code and used in other contexts and bound up with other rules. So we used "transparent structure" as our proxy.

Ms. Lohman: So an opaque structure requires no security fence, no –

Mr. Pernula: That's correct.

Chair Axthelm: Would a temporary building like these covers – they're opaque, you can't see through them – would they be considered a – the opaque structure?

Mr. Pernula: Oh, I think you'd have to take a look at it really carefully whether or not it's – it just depends on what exactly it is. If it's something that is solid and – I don't know. Maybe you would have to talk to the state to see what they would be regulating it as, if they would be requiring it to have the security cameras and the fence and so on. Because those are the impacts that we're hearing about.

Chair Axthelm: Doesn't the state requirement say something about hard-wall? Rigid or hard – yeah.

Mr. Walters: What type of a structure are you thinking of?

Chair Axthelm: Well, for example, a metal building or a wood frame structure versus a temporary – I guess name brand would be Cover-All or whatever those fabric structures would be.

Ms. Lohman: I'm not sure you want to use the word "transparent." I want to say that "transparent" means you can see through it. And I have a greenhouse. It is not transparent. It's translucent.

Chair Axthelm: That's what I'm getting at with that because you have a transparent structure versus an opaque –

Ms. Mitchell: And there's something in between.

Mr. Walters: In the code proposal, specifically we said "translucent structure" and we defined it to mean "as applies to marijuana facilities, any structure with sides that largely allow light to pass through them." So we did get into that in a little bit – in more detail in the code text. And we defined "opaque structure as the opposite of that: "as applies to marijuana facilities, any structure with sides that largely prevent the passage of light through them."

Chair Axthelm: How does the state regulate it?

Mr. Walters: Well, the state doesn't regulate it precisely analogous, but I think that the lighting was a major concern of neighbors and that's why we focused in on that. But it's also related to the fencing and security cameras issue. I think it's also quite possible that you could have a situation where you have opaque buildings but the Liquor Control Board might still require a fence and security cameras if you have multiple buildings and they're not secure in some way. It's quite possible, I think, that the Liquor Control Board might impose some special requirements for the license.

Chair Axthelm: So with a hard-wall they may not look – a hard-wall meaning a metal building or wood-frame is more secure so they not require all the cameras and the extra stuff, where if you have a temporary structure or a greenhouse or something that is easy to get into –

Mr. Walters: Correct.

Chair Axthelm: – then they would require those. But that's outside of what we're dealing with.

Mr. Walters: And they want it for security and they want it to be a sight-obscuring fence.

Ms. Lohman: Well, can we make the table then "translucent" because in your definitions it's "translucent."

Mr. Walters: Yes.

Chair Axthelm: So meaning light-transmittant, right? It lets the light go in and out so you could have a semi-transparent structure. It would be regulated because it's translucent, right?

Ms. Candler: So you are saying "translucent" is okay?

Mr. Walters: Yeah. Well, that's what it is in the code proposal – just the summary uses a different word.

Mr. Pernula: It's just an inconsistency.

Mr. Walters: So I'm anticipating here that you're going to recommend a bunch of little changes to the table, so I think I should paste it into the recorded motion.

Ms. Hughes: Okay.

Ms. Candler: That's a good idea.

Chair Axthelm: So changing "transparent" to "translucent."

Ms. Mitchell: Yeah.

Chair Axthelm: Any other general comments?

Ms. Candler: About the table?

Chair Axthelm: Yep.

Mr. Greenwood: Specifics or general?

Chair Axthelm: General comments or general questions as far as definitions – what each thing means or the headings so then we can dive into the content. Are we clear with X and P and HE and all that means?

Mr. Greenwood: Maybe one general question would be, Does that mean that any other zone within the county that does not have one of these labels it is not permitted? Is that correct?

Mr. Walters: Correct.

Mr. Greenwood: Okay. So these were narrowed – we've narrowed it down to just the places where it will be, according to the table. These are the limitations. Everything else is a no.

Mr. Pernula: Yep.

Mr. Greenwood: Is that right? Okay.

Chair Axthelm: So the other zones, would they then have a statement that says "not permitted" in the code?

Mr. Walters: No. Some zoning codes have sections listing prohibited uses in every zone but our code does not. We just have a general statement that if it's not listed it's not allowed.

Chair Axthelm: Okay. So we're covered. Okay.

Mr. Greenwood: Then one more question that I don't expect an answer for except as we get a little bit, you know, individual responses would be. There was a comment about permitting it in the places where it belongs, and I'd like to know where it really belongs. If we could boil it down to where a marijuana production and processing really fits and at least identify one of those and then expand from those, rather than – I was having a hard time because I looked specifically at

each one of these and I'm looking at that zone thinking I don't want it there; oop, I don't want it over there; and I don't want it over here either. So maybe there're some places where we really want it. Like I said, I don't expect everybody to answer that but at some point we have to.

Ms. Candler: Amy's got one.

Ms. Hughes: Go ahead.

Mr. Meenaghan: As I say, part of our – we have defined marijuana facilities as industrial, and therefore doesn't it make sense that they should be permitted in industrial?

Mr. Greenwood: All industrial?

Mr. Meenaghan: That's kind of our starting point.

Mr. Greenwood: Okay. Okay.

Mr. Meenaghan: And then, yeah, if you have clarifications to those – because you say “all industrial” (and) I go well, maybe I'm missing something here. So I guess I would say, Like what?

Mr. Greenwood: She has it right there on the map.

Ms. Candler: Well, I'm trying to find it on the map but I can't find all of them.

Ms. Mitchell: Well, Bayview Ridge Light Industrial and Bayview Ridge Heavy Industrial come up very easily. Past that – Dale, didn't you say something earlier that there is another area?

Ms. Lohman: Hamilton.

Ms. Candler: Hamilton.

Ms. Mitchell: It's Hamilton?

Mr. Greenwood: Natural Resource Industrial.

Ms. Lohman: But I – can I – Natural Resource Industrial right now, isn't that – for example, Wilbur Ellis – and there again it's a very tight circle.

Mr. Pernula: Pretty tiny place.

Ms. Lohman: I mean that's the ag – that's ag. When you say Natural Resource Industrial you're including the ag ones too?

Mr. Pernula: I think that's correct. I'd have to –

Ms. Lohman: I would like to suggest that we do not do that because we have drawn an extremely tight perimeter around those existing uses back when those maps were created. It's almost impossible for them to expand out of their zone when they want to add on to the fertilizer plant. We already saw that just recently. So I'm suggesting that there isn't any – I don't think it's

a good use. They're few and far between and we should preserve them for the Natural Resource Industrial use it's intended for.

Ms. Candler: I don't know where that is. Annie, where is that?

Chair Axthelm: Let's go through the general stuff. Amy?

Ms. Hughes: Did you want to go around?

Chair Axthelm: Well, we kind of have been actually. It's Amy and Robert at this point.

Ms. Hughes: Oh, you're going this way. When I wrestled this issue of where are we going to locate these places, I went back to Skagit County is real – every property is unique and I think finding the properties that work is a – it's not a one-size-fits-all issue and I think that that's why the setbacks didn't really work. There might be a smaller parcel that would work amongst something else. So where I wanted to go with this possibly is some kind of a public hearing process so neighbors know what's going on, and find out where those appropriate parcels are through feedback from the public. And I'm thinking of possibly one that I just read about. It might be a good spot for a facility but I think the neighbors have a right to know that that might be put there. And so to me that's how it kind of protects 'Is this a good spot or not?' I think you're going to hear by public input whether it would be a good spot. But that was a very simple way of looking at this.

Chair Axthelm: Robert?

Mr. Temples: I was listening to Annie and the only question – and I just would ask her directly here: Are you sort of proposing under Natural Resources Industrial that, in essence, the X, so to speak, would be applied to every one of these?

Ms. Lohman: How many are there in the county?

Mr. Pernula: Natural Industrial – Natural Resource Industrials?

Ms. Lohman: I think there are very few.

Mr. Pernula: I would assume there's very few. I don't know how many there are.

Mr. Walters: They're very difficult to see.

Ms. Lohman: That means they're very tiny!

Mr. Greenwood: They're the same color as some other zoning.

Mr. Walters: Yeah. We don't really have a zone search function.

Mr. Temples: I mean, I personally don't have any issue with how this table is set up, with maybe the exception of the Natural Resource Industrial. That's the only one that I –

Mr. Pernula: Wilbur Ellis would be right about – just right about where you're at. Up – no, no, right there. There it is – north side of Highway 20.

Mr. Walters: So, see, all of these are all the same color?

Mr. Temples: Well, that's that little triangle that we –

Ms. Lohman: No, that's not down.

Mr. Walters: See, this is NRI. This is Rural Business.

Ms. Lohman: There you go. But I'm fairly certain that it's very few properties.

Mr. Greenwood: Well, I thought enough to make me think I didn't necessarily like them there. I know that they're there now. You have one – maybe it's medical. I don't know which one is there on a –

Mr. Meenaghan: Highway 20.

Ms. Lohman: Yep.

Mr. Meenaghan: That's a retail.

Ms. Lohman: Which one is that in the list? Is it in the list that you gave us?

Mr. Pernula: I don't think so.

Mr. Meenaghan: It's not. It's a retail.

Mr. Pernula: I think that's a medical marijuana.

Mr. Temples: Mercantile, they call it?

Ms. Lohman: But you prohibit it already in NRI for retail.

Mr. Walters: There's your other major NRI. It's at Avon Allen and 20.

Ms. Lohman: That's what we were talking.

Ms. Mitchell: Which corner? Or all corners?

Ms. Lohman: It's Skagit Farmer's Supply Cargill.

Mr. Walters: And an existing medical dispensary right here.

Ms. Lohman: It used to be Martin Oil there.

Mr. Temples: I don't know. If I had to make a recommendation, I would think that all of those should be prohibited. There's so little to be gained.

Mr. Pernula: Both in retail and production?

Ms. Lohman: Mm-hmm.

Mr. Temples: Mm-hmm. I mean, these parcels seem to be so small it's like –

Ms. Lohman: Well, and like that one, isn't there a railroad spur right there?

Mr. Greenwood: I don't know if there's a spur. I know that the railroad lines –

Ms. Lohman: I'm just saying that we don't have very many of them. Let's not give them away.

Mr. Walters: I would just also point out that the County as a whole is largely agricultural, forestry, and residential. There's very little industrial, very little commercial property or zoning. So there aren't many areas to begin with that these large categories that these fit into. Second, Hearing Examiner Special Use Permits cost \$6,000 and take – six months?

Mr. Pernula: Four to six months.

Ms. Lohman: But you don't have that on there, Ryan. You have "P," Permitted.

Mr. Walters: I'm saying in general as we talk about that.

Mr. Greenwood: Well, how do you want to handle the table, Josh?

Chair Axthelm: Let's run down through it. I mean, I don't know how else to do it because if we – it's either that or we can make a – each person can make a statement in general or we can just run down through each item.

Mr. Temples: Or try to find out just any particular item that has got an issue.

Chair Axthelm: Okay.

Mr. Temples: I would say most of these are fine.

Ms. Lohman: Well –

Mr. Greenwood: And I'd say most of them aren't.

Chair Axthelm: So what does the council – or not the council! – Commission –

Ms. Lohman: I think he was the "I" and just – whoever wrote the tab just automatically said "I" for Industrial and didn't look at what kind of industrial. I think there's different types of industrial.

Mr. Pernula: I would suggest that you begin with Retail and just go right down the list and go to Production, go right down the list.

Chair Axthelm: Sound good?

Ms. Candler: Yeah.

Mr. Pernula: And so on.

Chair Axthelm: Let's try that. So Agricultural – or sorry, Retail. Are we okay with retail in all those? Robert?

Mr. Temples: Yes?

Chair Axthelm: If you have something you want to change, just say it and then we'll look at those items.

Mr. Temples: Nope.

Ms. Mitchell: Are we at the top, first of all?

Mr. Greenwood: Retail.

Chair Axthelm: Just right down Retail and take the whole column.

Ms. Mitchell: Thank you.

Chair Axthelm: Dale, what's Rural Resource-Natural Resource Lands? I'm not familiar with that one, unfortunately. So what's an example of lands like that?

Mr. Greenwood: Rrc?

Mr. Pernula: Rrc – I'm trying to think of where some are.

Mr. Walters: There's one small area on Guemes Island sort of in the middle.

Ms. Candler: So all this yellow basically borders between the green and the cities.

Mr. Pernula: I'm trying to think – I believe some of the gravel pits, those kinds of places.

Mr. Walters: Yes.

Chair Axthelm: Okay, so it's not a retail type.

Mr. Pernula: For example, up north of Burlington along Highway 99 on the east side, I believe there's a Rural Resource-Natural –

Chair Axthelm: That answers my question. That's –

Mr. Walters: I can – as you go through each zone that you have a question about, I can read you the purpose statement of the zone from the code –

Mr. Greenwood: That would be helpful.

Mr. Walters: – which might help explain. Do you want that for Rural Resource?

Mr. Greenwood: I would.

Mr. Walters: “The purpose of the Rural Resource-Natural Resource Lands district is to recognize and encourage the conservation of those lands which have the characteristics of both long-term commercially significant agriculture and forestry, either onsite or on adjacent sites. These are lands generally not managed as industrial resource lands because of less productive

soils, parcel size and/or geographic location, but are managed on a smaller scale and provide support for the industrial natural resource land base. It is the intent of this district to restrict incompatible non-resource-related uses and to retain a long-term, commercially significant natural resource land base.” And then some of the permitted uses in those areas are maybe not completely consistent with the purpose but include agriculture, agriculture processing, accessory aquaculture, primitive campgrounds, commercial uses that support resource uses, individual or multiple farm composting, cultivation and harvest of forest projects, detached single-family residential, extraction of gravel and rock, family day care provider, farm-based business, historic sites, home-based business, scaling stations, saw mills, chippers. Really it’s sort of a catchall zone, as far as I can tell from reading the list of uses. Seasonal roadside stands, water diversion structures, net metering systems, drainage maintenance, bed and breakfasts, as an administrative special use. So really you’re going to find everything in this zone.

Chair Axthelm: What is the commercial use it supports?

Mr. Walters: What are the commercial uses?

Chair Axthelm: Commercial uses that support.

Mr. Walters: Commercial uses supporting resource uses, such as packing, first stage processing, and processing that provides added value to resource products as long as there’s no permanent conversion of forest land where there is forest land.

Ms. Lohman: It’s support for the NRL basically.

Chair Axthelm: No, I understand, but it doesn’t really say like a minimarket in a strip mall. That’s what I was getting at because you had – commercial support businesses is very limited to certain _____.

Mr. Walters: Oh, no. Rural Resource is most definitely not a *retail* commercial zone.

Chair Axthelm: Okay.

Mr. Walters: And it’s assumedly I would think not where you would want to put a retail use because there will be almost no other retail uses near it. Although some may be allowed, like a – you know, this allows a lot of stuff in it but there just aren’t ____.

(several people speaking at the same time)

Chair Axthelm: Any other changes on Retail?

Mr. Greenwood: Well, I would like the Urban Reserve Commercial-Industrial was one, and then the Rural Village Commercial to require a – at least an administrative review process. Some of those are in these Rural Villages. So you might have just a few stores in and amongst a lot of houses. Maybe it’s just a minimart or something like that. And I want that community to be able to decide whether they want a marijuana – if they don’t mind driving to Burlington to get their marijuana, let’s leave Alger alone, I guess is what I was thinking of. You know, I don’t want to put a marijuana facility in there just because somebody *can*. So I’d like it to go through an administrative review process. That’s one of those cases where you’ve got a lot of houses close by – if we’re not going to do setbacks, especially.

Chair Axthelm: Could you read for clarification the Rural Village Commercial and the Urban Reserve Commercial? Not necessarily all the permitted uses, but just the main statement.

Mr. Walters: The purpose? The purpose: "The Rural Village Commercial districts are located within each Rural Village identified in the Comp Plan. This zoning district provides an activity center where rural residents and others can gather, work, shop, entertain and reside. The district is intended to provide for a range of commercial uses and services to meet the everyday needs of rural residents, and natural resource industries to provide employment opportunities for residents of the rural area, and to provide goods, services, and lodging for travelers and tourists to the area. Requirements specific to individual community plans may be incorporated into this section."

One thing I want to caution you about Special Use Permits is that if residents, neighboring property owners, et cetera write in to either the Department for an Admin Special Use or to the Hearing Examiner for a Hearing Examiner Special Use and simply say, We don't want it near us, it's unlikely to be turned down. They are going to have to articulate impacts that the use will have that make it incompatible with the neighborhood, with the area.

Mr. Greenwood: That's why I had a problem with this Finding of Fact that Special Use Permits are going to solve our problems.

Ms. Lohman: Mm-hmm.

Mr. Greenwood: If they're not going to address incompatibility, then it's not an effective process.

Mr. Walters: They will address incompatibility. They will not address letters that simply say, We don't want it because we don't like marijuana. That's the distinction I want to draw.

Chair Axthelm: You did make a statement in there that I think puts a key to it. It says requirements for individual community plans, meaning the individual community can object to it with good reason, can object to it in their community plans.

Mr. Walters: I don't think that's what that means. The Comp Plan makes provision for community plans – for instance, Alger, South Fidalgo, Guemes Island, et cetera. Not all those communities have adopted or have drafted community plans. We haven't adopted necessarily all of those. But the provision in the zoning code, it's sort of a throwaway line. It's just *mentioning* that those community plans could provide restrictions. Now later on in that chapter for this section of the zoning code – for Rural Village Commercial – it does include restrictions for Alger because Alger is one of the communities that has adopted a community plan. So under permitted uses it says – one of the last items is "in the Rural Village Commercial zone in Alger the permitted uses are limited to the following." And then it lists the ones that are allowed in Alger. So there's a subset. There's almost a special Rural Village Commercial zone for Alger that is separate from the regular Rural Village Commercial zone. But in no case –

Mr. Greenwood: Well, I was using it as an example, though. I mean, I don't mean that that's the only one. If that is the only one then maybe it's covered specifically, but I just think those tend to be similar to the places that we're having problems with, where you've got residential mixed with small retail or small commercial and allowing too much.

Ms. Lohman: Question on – can I ask you a question?

Chair Axthelm: As long as it relates to the Retail portion up there.

Ms. Lohman: Well, it relates to administrative uses. Dale, what is the notification for the neighbors if they go through an Administrative Special Use?

Mr. Pernula: 300 feet.

Ms. Lohman: And that's it?

Mr. Pernula: Mm-hmm. Plus it's posted on the site.

Ms. Lohman: So that isn't very far.

Mr. Walters: That's the standard, though.

Ms. Lohman: So can we have a different notification process if you use an Administrative Use?

Mr. Walters: For marijuana facilities?

Ms. Lohman: Yes.

Mr. Walters: We could. I would not recommend it because it's a separate, special process.

Ms. Lohman: Because you said that the – if you went to the Hearing Examiner level it's like \$6,000.

Mr. Walters: Yes.

Ms. Lohman: But the other one, you don't tell anybody.

Mr. Walters: No, the Admin – in both processes there's notification; in both processes there's the opportunity for comment. The Hearing Examiner is a different decision-making body. It's the Hearing Examiner versus staff. And there's a public hearing with the Hearing Examiner. But in both cases there's notification and opportunity for comment.

Mr. Pernula: Just to let you know, we have processed two marijuana producing facilities as Administrative Special Use Permits already.

Ms. Lohman: But unless you – I mean I'm thinking – I live out in the country and there's signs all the time _____. Maybe you don't see it or you don't expect that it's going to be who-knows-what, and unless you pull over right up to it you're not going to see it. And 300 feet out in the country is nothing.

Chair Axthelm: But we're talking a retail facility.

Ms. Lohman: Yeah. But in general you're asking if you want it allowed, and, you know, the difference between allowing it or having administrative use or not. I just wanted clarification on what those two – it's either permit or you go through a special use of some sort.

Mr. Pernula: Or not permit it.

Ms. Lohman: Or not – not allow it. So we need to know, Okay, what are the ramifications if you pick whichever path? It's a little more than just yes/no.

Chair Axthelm: Okay, so we're talking the last two, right? Rural Village Commercial and Urban Reserve. Is that the two you're having issue with?

Mr. Greenwood: Yes, I am.

Chair Axthelm: So outside of those, is everybody else okay with all the rest of them?

Ms. Lohman: No.

Mr. Temples: We're just discussing Retail, aren't we?

Chair Axthelm: Yes, that's what I'm talking about.

Mr. Temples: Well, that's where you need to find out how many want to either support it as it is or make changes per Keith's recommendations.

Ms. Lohman: What about Rural Center?

Ms. Hughes: So what would Bow be?

Mr. Greenwood: Which one?

Ms. Hughes: Bow. Where would Bow be? Bow, Washington. I'm pretty sure it's Rural Village.

Mr. Pernula: Ryan, could you zone in on Bow – the zoning map?

Mr. Greenwood: How about Rrc-NRL, the one that we talked about before?

Ms. Candler: There's some green. Do you see those little green dots along that road? Those are all the areas we're talking about.

Chair Axthelm: But that's not permitted there.

Mr. Greenwood: It's not?

Chair Axthelm: No – X. Or prohibited, I guess would be the word for it.

Ms. Lohman: Bow is at the bottom of Bow Hill.

Mr. Walters: We're looking mainly Ag-NRL in this whole area here. These are the only pockets of anything different, it seems.

Ms. Candler: And can you tell, Ryan, from that: Are we talking about – okay, so I see letters now. The Rural Center on one side of the road, Rural Business on the other, right? Am I reading that right?

Mr. Walters: What's that?

Ms. Candler: Or it's Rural Center on both sides?

Mr. Pernula: RC.

Ms. Lohman: I don't think it should be any different than your Rural Village.

Ms. Mitchell: Not in that instance it's not.

Ms. Lohman: No.

Ms. Mitchell: Those are definitely Rural Village.

Ms. Lohman: Well, you've got to look at the picture.

Ms. Mitchell: Mm-hmm.

Ms. Lohman: Because what is Allen there at Chuckanut and Avon Allen West?

Chair Axthelm: So it would be permitted in the green areas, right?

Mr. Walters: Well, I'm just trying to get it to pop up the letters. It takes it a second.

Ms. Mitchell: Chairman, I don't want to be a wet blanket here but I did want to point out that we may have let time get away from us.

Chair Axthelm: How long do we want to go with this?

Mr. Walters: There you go.

Ms. Hughes: Is there a different way to educate ourselves about this than the way we're doing it? Is there a more efficient way to –

Mr. Pernula: One more efficient way is to give staff instruction if you want us to take a look at some certain zones or areas. We can blow up some maps and send them to you or bring them back at the next meeting and then you can make decisions off of that.

Mr. Greenwood: And we might make suggestions of places to look. I think we can do that.

Mr. Pernula: Sure.

Mr. Greenwood: Because I – it took me hours online looking at all these little ones, because you really have to blow them up and you have to see how big the parcel is that's next to it and –

Mr. Pernula: It's a big county with lots of zones.

Mr. Greenwood:flip to the aerial photo and then you go back.

Chair Axthelm: Let's pick a community for an example – just one right now so that when we look on an NRL _____ same solutions.

Ms. Lohman: Blanchard's NRL.

Chair Axthelm: So what's a good example?

Ms. Lohman: Allen.

Chair Axthelm: Allen. Okay, so go to Allen.

Ms. Lohman: That's Rural Center. That's the one we were on.

Chair Axthelm: And that's where you're at right now?

Mr. Walters: Yeah.

Chair Axthelm: Okay, so –

Ms. Lohman: Rural Center and Rural Business.

Chair Axthelm: – looking at this, based on this where would be the allowed uses?

Ms. Hughes: The little green arrows.

Ms. Lohman: The green.

Chair Axthelm: All the green would be allowed. Rural Center?

Mr. Walters: This green here is Rural Business. These are Rural Center. I don't know what this little bit is.

Mr. Pernula: There are some state restrictions as to distance from schools and parks.

Ms. Lohman: Oh, there's a park right across the road.

Mr. Walters: 1000-foot setback required.

Mr. Temples: Mr. Chair?

Chair Axthelm: Okay?

Mr. Temples: In light of it's getting late, why don't we have staff review this, revise it, and if the Commissioners would like to e-mail Dale with any suggestions or recommendations then let staff come back to us and perhaps have this revised.

Mr. Walters: Well, we can't revise it without additional input.

Mr. Greenwood: Yeah, because they're fine with it.

Chair Axthelm: I think we need to come up with the additional input on this – on what we recommend if we want it changed.

Mr. Walters: At least general input.

Ms. Mitchell: Chair, may I ask just a general question just to throw out to the group? Are there any shortages of retail space all over the county otherwise? Are there?

Mr. Pernula: Shortages of retail space?

Ms. Mitchell: Yeah. There's really not, are there?

Mr. Temples: There's a lot of big box buildings.

Mr. Walters: The other important detail that just occurred to me is not in any of the reports – staff reports – is that there are four licenses allocated to unincorporated Skagit County.

Mr. Pernula: For retail.

Mr. Walters: For retail. There's no limit on the others, but there are four –

Ms. Mitchell: So out of the 334, is what you're saying, we get four? Is that – or whatever it was the state allowed – is that right?

Mr. Pernula: I don't recall what the number is but we got four, Burlington got one or two, Mount Vernon got –

Mr. Walters: I think we actually – I can look it up real quick – I think we actually only got one plus at-large. I could look it up really quickly, but there was an allocation, then there was at-large and the at-large could go into the towns. The other cities that – like Anacortes got one, I think. I'll look it up and get you the exact numbers. But my point is that there's limited impact for retail because there are so few possible; however –

Ms. Hughes: But what ___ medical marijuana?

Mr. Walters: That's right.

Ms. Hughes: Okay.

Mr. Walters: Yeah. They are going to open it back up to allow some additional number.

Ms. Mitchell: So that remains an unknown.

Mr. Walters: Yes.

Chair Axthelm: So really we need to get them the answer to this table on if we don't agree with it or if we want something changed.

Ms. Lohman: Do we want to leave it unfinished or do we want to go to a certain time, certain – because it is five, six or seven minutes after nine.

Chair Axthelm: What is the will of the Commission? Tammy?

Ms. Candler: Well, we still have a little bit. We have Department – is there Department Updates tonight?

Mr. Pernula: Not a lot. I was mainly going to be going over our schedule again which is ever getting tighter in the future.

Ms. Candler: I don't see us getting very far in ___, but I don't mind sitting here.

Mr. Pernula: If additional information will help you, give us some direction and we'll find either the locations of certain zones or provide blown-up maps of certain areas, or whatever else you would like to have and help you make your decision. We'll get it to you in advance of the meeting.

Ms. Candler: I get the sense that people want to look at these maps, but maybe I'm wrong.

Ms. Lohman: Well, I think it's real beneficial to have – even if we had a really large Comp Plan map that we could *all* pore over even. We don't have to have nine or ten of them. Because unless you zero in on some community that you know of or some area that you know of, it's very laborious to go through this.

Mr. Pernula: And it's very hard to look – this is a county zoning map and it's really hard to ____.

Ms. Lohman: Because it isn't big enough scale-wise.

Ms. Candler: You can kind of see the general areas we're talking about but – and maybe that's not the issue. Maybe I'm misreading it. Maybe the issue is just that we don't want them anywhere and no one wants to say it? I'm not sure!

Ms. Hughes: Well, I think ___ an appropriate spot and I think the spots are unique, and it's hard to put them in a box. Marijuana industry is unique. We haven't been able to put it in a box yet. We've been trying for months. I just think a one-size-fits-all is not a workable solution.

Mr. Greenwood: But then in the flip side, there are places we don't want it, I would think. I mean, there're some places where – and maybe it's just my personal preference, but I've heard enough complaints from people of some of the places where they've been put. That tells me: Don't put it there.

Ms. Hughes: And we didn't know that until we heard from them.

Mr. Greenwood: Well, I don't know. I think that's – we could have foreseen that. You know, I don't have a crystal ball but if there's a residential and you're sticking one of those right there it never did belong there in the first place.

Ms. Hughes: But this doesn't show you that, you know. Someone thought that sounded – you know, that was a box, but the box didn't work.

Mr. Temples: I thought the question before us was whether we were going to continue the meeting or adjourn it. And I, for one, have an early meeting tomorrow so I know what my position is.

Chair Axthelm: Okay.

Mr. Greenwood: Well, I'd like to leave with at least one of the previously identified Findings of Fact from the previous ordinances, and it says "Marijuana production and processing facilities are incompatible with the rural landscape and rural residential communities." And I've heard that from people and it's been stated before, and this was in ordinance 510001 (*sic*). I don't remember what the date is – it should be on there – March 3rd. So there's an incompatibility that's recognized and we need to recognize it enough to identify where to put it where it won't cause that problem. Whenever it has an impact on residential, it has an impact on our rural lifestyle, it has an impact on farming, and we don't want to let it do that.

Ms. Mitchell: Well, unless I'm mistaken, I think there's one place that looks like it would probably work and that's Rural Freeway Service – so far.

Chair Axthelm: Robert – I probably shouldn't –

Mr. Greenwood: Yeah.

Chair Axthelm: – put that off. He did make a motion to – not necessarily –

Mr. Temples: No, I wasn't making a motion to adjourn. I just said that – I was just putting it before you because you raised the question and so...

Chair Axthelm: So in order – we need to give the County something to go off of. Either we need to give them something to change or something to give us next time so that we're ready then to take care of this. So I guess going down through the Commissioners, is there anything that you have you would like to see specifically from the County so that we can move on?

Ms. Candler: No. I think I can, between this map and the online version I can figure it out.

Chair Axthelm: Kathy?

Ms. Mitchell: I can, too.

Chair Axthelm: Keith?

Mr. Greenwood: I'm good with that.

Chair Axthelm: Kevin?

Mr. Meenaghan: I'm good with that and I'd want to clarify that what we're recommending to the Board when we get to this point is the draft from March 12th, which was Attachment 1, modified with the recommendations that we're going to put in our Recommendation. Is that ___?

Mr. Walters: That's correct.

Mr. Meenaghan: Okay. Got it.

Ms. Lohman: Yes, I agree with what Kevin said.

Chair Axthelm: Amy, anything else?

Ms. Hughes: No.

Chair Axthelm: Okay.

Mr. Walters: So do I hear that you're going to study it and we're going to talk about it again at the next meeting?

Chair Axthelm: Yeah. I think the information – to me personally – the information talking about these questions in the beginning has helped me to understand what we're looking at here, because it was really – we could read it, but until we dug a little deeper and got some of those questions answered it was just hanging out there and didn't quite ___ at all. I think I could make a more educated answer at this point. Is everybody in line with that?

Mr. Walters: Okay, now I think we should talk about when that's going to be.

Mr. Meenaghan: Yep, I was going to pick originally –

Chair Axthelm: Should we properly make a motion then? Or, I guess there's a consensus so it's really –

Mr. Walters: Yeah, if there's a consensus you don't really need a motion.

Chair Axthelm: There's no motion needed. Okay.

Ms. Mitchell: Do we need to call an early meeting because of the timeframe?

Mr. Walters: Well, I don't know what Dale wants to say about that. I think your next scheduled meeting is a Comp Plan workshop. Is that right?

Mr. Greenwood: Do you have more of these for the next one?

Mr. Pernula: No, no, no. The next scheduled meeting is May 5th and we were going to have what's called Part II of the Shoreline Master Program. We were going to have it later tonight but we bumped it to the May 5th meeting because we knew that this was going to take more than a couple hours. But May 19th is the workshop on Rural Character, so we have the next two meetings kind of already programmed. We could do some bumping. I don't think we can bump that Rural Character public workshop, and it's going to be hard to bump the Shoreline Master Program very much because we're going to have to hold a hearing on it before long.

Mr. Walters: So our original thinking is we had to have a public hearing scheduled for May 4th or 5th, or whenever it's scheduled for – Monday – so that we would have one within the 60 days. And we were thinking that if you had a recommendation tonight we would publish that recommendation as possibly what the County might take action on, and then we could also get comments on that at the same time. But if you don't have a recommendation tonight we won't be able to do that. So that – you know, that's not a fatal problem. It just means that there will need to be some additional opportunity for public comment later, probably a written comment period after you finally make your recommendation. So –

Chair Axthelm: And that would go through the Commissioners –

Mr. Walters: Right. Right.

Chair Axthelm: – at that point, which is probably good anyway.

Mr. Walters: Yeah. So I think that's – I'm just thinking this through sort of out loud here – that's fine. Because we scheduled the May 4th hearing, we're not under a time crunch there. So I think that'll work.

Ms. Candler: Can I ask a question? Is the Rural Character – we can't do it the same night? It's going to take the entire meeting?

Mr. Pernula: Rural Character'll probably take – just like the other workshops – three or four hours.

Mr. Walters: If you are very well-prepared and focused, you may be able to do it with the Shoreline stuff.

Chair Axthelm: And then the Rural Character is May – when was that one at?

Mr. Pernula: 19.

Chair Axthelm: Okay. I would propose we have this again on the 5th. Do you think we'll take the whole time? I don't think we'll take the whole time to go through it. I think we understand a lot now.

Mr. Walters: We also currently only have two pieces for Part II of Shoreline, and Part II is just our nomenclature for the three-part additional review before the next part. So we have the Public Access section and the –

Mr. Pernula: Vegetation Conservation – maybe Jurisdiction.

Mr. Walters: Yeah, so just those three pieces for the next Shoreline review.

Mr. Pernula: If you guys – any of you individuals have information you would like us to research, if you get it to us real soon – within the next – within a week – we'll try to get it back to you before the meeting.

Ms. Lohman: Just a – in the packet you had these producers listed. There is no way I can – if I didn't know 221 was Conway I would not have known. We need a little more where-in-the-heck-is-it because then you can imagine the setting a little bit. Because I know of a couple in my neck of the woods that I'm not sure if they're on this list because I don't recognize the name. But I know where it is.

Mr. Walters: Yeah, we can get you a list of addresses.

Chair Axthelm: Would you send that to all of us?

Mr. Pernula: Maybe retail we can provide some information on those, too. There's at least one in the county that I know of – Conway.

Chair Axthelm: Okay. And the setbacks from residential in the state requirements – is that pretty obvious?

Mr. Pernula: From schools and parks? We can get that information for you.

Chair Axthelm: Okay. As far as the distances, and then when we look at the maps we can say okay, well, obviously – let's say Allen – you can't have a facility there because it's too close, no matter what, for instance. I just – yeah.

Mr. Greenwood: Are we just talking about retail at that point?

Chair Axthelm: Yep. Well, retail specific –

Mr. Walters: No. The state setback is for all of the facilities.

Mr. Greenwood: Oh, including processing. So there is already a state setback?

Mr. Walters: There's a state setback from the facilities.

Mr. Greenwood: What is it?

Mr. Walters: It's 1000 feet.

Chair Axthelm: So a lot of these issues that are out in the country – or like Allen or Bow – might be an issue anyway.

Mr. Greenwood: Hey, if there's a 1000-foot setback, I think that solves a lot of issues. I thought we said one side doesn't fit all.

Chair Axthelm: If you could clarify that, I think that'll help us to make that decision a lot faster.

Mr. Greenwood: What are the state setbacks? Maybe I should look that up.

Chair Axthelm: So I think if we got that information we could get through that pretty quickly.

Mr. Greenwood: You're optimistic.

Chair Axthelm: But I'm being optimistic, yeah.

Mr. Pernula: This is hard code.

Ms. Candler: Yeah.

Chair Axthelm: Anything else?

(silence)

Chair Axthelm: Okay. With that we'll postpone deliberations. Dale, the date – did you put it on the agenda?

Mr. Pernula: Pardon?

Chair Axthelm: Put it on the agenda for the 5th?

Mr. Pernula: I'll put it on the agenda. As things get tighter and tighter, we may have to have a third meeting in either June or July, and right now we don't have any meetings scheduled for August. Would that be a problem for anybody to have a meeting in August?

Ms. Lohman: For me it's a problem. Just me.

Mr. Greenwood: Annie, traditionally August has been the fair.

Ms. Lohman: The fair, and the fair is a problem for me personally because I'm a dairy superintendent out at the fair.

Chair Axthelm: And same here. I'm involved with my kids.

Mr. Pernula: And that's – what? – late August, is it?

Chair Axthelm: No.

Ms. Lohman: The week of the 12th.

Mr. Pernula: Oh, middle of August.

Ms. Lohman: I thought it was the 12th.

Chair Axthelm: Oh, no – it *is* later this year. Yeah, that's right.

Mr. Pernula: We might have to have one so I'll poll you as we get closer to it to see if we can find a date for it.

Chair Axthelm: After the fair.

Mr. Pernula: After the fair.

Mr. Meenaghan: Is there anything that says we can't do three meetings in a row? Three weeks in a row?

Mr. Pernula: You can.

Mr. Meenaghan: So rather than pile it in August, I would suggest that we consider doing three meetings in June, back to back. Well, you know, three consecutive Tuesdays.

Mr. Walters: I have that buffer distance, if you want it right now.

Mr. Greenwood: Yes, I'd like it.

Ms. Mitchell: Yes.

Mr. Walters: The WAC provides that the Liquor Control Board may not issue a new marijuana license for any licensed – proposed licensed business that is within 1000 feet of the perimeter of the grounds of any of the following entities – and that's measured of the shortest straight line

distance – elementary or secondary school; playground; recreation center or facility; childcare center; public park; public transit center; library; or game arcade.

Ms. Mitchell: And that's for retail or processing?

Mr. Walters: That's for any marijuana – licensed marijuana facility.

Chair Axthelm: And where is that listed at?

Mr. Walters: That's in the Liquor Control Board rules.

Chair Axthelm: Can you cite a page or a –

Mr. Walters: It's WAC 314-55-050.

Chair Axthelm: Okay.

Mr. Greenwood: 314-54 –

Chair Axthelm: 314-55-050.

Mr. Walters: And the same rules apply to advertising – not within 1000 feet.

Mr. Pernula: Okay. I got all I needed on that.

Mr. Greenwood: Did they have a Finding of Fact as to why they set that 1000-foot?

Mr. Walters: The feds. The feds require it.

Chair Axthelm: I'm still optimistic for next time.

Mr. Greenwood: Oh, you are? Okay. I'd like to cite that Finding of Fact on the next page.

Mr. Walters: Oh, and on your screen is the number of retail outlets allocated to the county as a region. You'll see that the four cities each have one except for Mount Vernon, which has three. And then there are four at-large, which doesn't necessarily mean unincorporated Skagit County because the towns could get one of those at-large.

Ms. Candler: So we don't have any?

Mr. Pernula: We have those four that were listed there.

(many people talking at the same time)

Mr. Pernula: Those four are considered ours, but of those four they could go to some smaller towns like ____.

Chair Axthelm: Dale, any Department Update – more?

Mr. Pernula: That's all I had is just trying to set up a schedule.

Chair Axthelm: Okay, so with Department Update done, so Planning Commission Comments and Announcements. Any?

(silence)

Chair Axthelm: Okay. So –

Mr. Greenwood: Now can I –

Chair Axthelm: Now you can motion.

Mr. Greenwood: Okay, I'd like to move that we adjourn for the night.

Mr. Temples: Second.

Mr. Greenwood: Thank you, Robert. We're on the same page.

Chair Axthelm: This Commission meeting is adjourned (gavel).