DEPARTMENT OF COMMUNITY SERVICES
LAND USE PLANNING DIVISION
MULTNOMAH COUNTY PLANNING COMMISSION

MINUTES OF FEBRUARY 8, 2016

I. Call to Order: Chair John Ingle called the meeting to order at 6:30 p.m. on Monday, February 8, 2016 at the Multnomah Building, Room 101, located at 501 SE Hawthorne Blvd., Portland, OR.

II. Roll Call: Present - Ingle, Vice-Chair Jim Kessinger, Katharina Lorenz, Chris Foster, Susan Silodor, Alicia Denney, Jeremy Sievert, Timothy Wood
Absent – Bill Kabeiseman

III.. Opportunity to Comment on Non-Agenda Items:
None.

V. Continued Public Hearing: Marijuana Land Use Regulation in Unincorporated Multnomah County (PC-2015-4551)
Ingle read into the record the Legislative Hearing Process for the Planning Commission for a public hearing. The Commissioners disclosed no actual or potential financial or other interests which would lead to a member's partiality. There were no objections to the Planning Commission hearing the matter. It was noted that public testimony was heard at the February 1, 2016 meeting and written testimony closed on February 5, 2016 at 4:00pm.

Adam Barber, Multnomah County Senior Planner, introduced Mike Cerbone, Planning Director and Rithy Khut, Planner. Barber gave a brief overview of the project to date and noted that since public testimony was closed, tonight was focused on deliberations. The Planning Commissioners will then present their recommendation to the Board of County Commissioners, who will hold a public hearing on the matter at a later date. Barber told the Commissioners that he compiled a Frequently Asked Questions (FAQ) document, along with a Summary of Public Testimony that addressed some concerns that had been raised to date. It was recommended that the Commissioners use the Summary of Public Testimony as a guide to go through their deliberations.

Ingle asked for clarification on the wording on the 1,000 foot setback from schools. He said State law requires retail and dispensary operations to be at least 1,000 feet from a school, and we have taken the additional step of including other components of marijuana businesses, such as processing, wholesaling, etc. I wanted to be clear about that because, in terms of flexibility or latitude, aside from retail and dispensary operations, we could elect not to do the 1,000 feet from a school. Barber agreed and said that is the main policy choice to be made on that standard. Another policy choice is whether 1,000 feet is right for retail and dispensing, or if it should be increased. Kessinger wanted to clarify that currently, as it's written, there is no setback for the EFU. Barber said that is correct.

Barber addressed the issue of sound, which Commissioner Foster brought up at the February 1st meeting. He noted that sound is regulated through the Multnomah County Sheriff's office, and is not a land use regulation. Foster said that home occupations do regulate sound; it specifically states that no noise is to be detectable at the property line. Kessinger asked if there was any merit to adding it into the land use code for clarity, or if it is better to leave it separate. Barber said if we were to add this standard into County code, there could be confusion about who enforces it. We don't have a sound meter to measure dba; we don't have the training or the staff, but the County

Sheriff's office has the tools and the training. We could add a reference back to this section as a reminder, if you like. Kessinger said he thought a reference would be worthwhile, making it clear that the standard is controlled and enforced by another entity. Cerbone said he thought that was probably why the home occupation code was written the way it was, because it doesn't necessarily require a dba monitor. It just enables you to stand at the property line and determine whether you discern sound or not. That is probably why that was drafted differently, because the home occupation is ours to enforce.

Ingle asked for a motion and a second for the purposes of deliberation. Wood made the motion and Silodor seconded. He called for a vote and it was unanimous to proceed to deliberation.

Foster said let's start with an easy one; the Gorge is off the table as far as I'm concerned; I don't think anybody has any issues with the legal opinion on that, so let's put that one aside. Everyone agreed with that assessment.

Moving on, Foster said we should have a discussion about the Clackamas County move to regulate in the EFU zone. Not only did their ordinance pass muster with the DLCD, but it's been adopted, and I believe it's passed its appeal period, so it's unchallenged. We also heard some testimony that Clackamas County had contact with Ken Helm, who was on the House Committee that wrote 3400. Ken Helm is also a land use attorney, and apparently it was his opinion that it was okay to regulate EFU. I know that flies in the face of the way that it looks when I've read it. We have Section 33 that says that you can regulate, but then you go on to Section 34 that says, granted you can regulate it, but here's the exception and then they go into farm use in EFU zones and take definitions straight from the right to farm statute. So I guess I'd like County Counsel to give us the latest on the Clackamas County situation.

Jed Tomkins, Assistant Multnomah County Attorney, told Commissioner Foster that he just gave the latest update. The law says what you just said in summary on this point, and we don't know what the legislature intended. And although Clackamas County made a call, it is still susceptible to challenge. Just because it's been acknowledged, and the period for appeal has run out, it does not mean somebody cannot say that provision of code violates state law. Foster asked when that window was up. Tomkins said the window won't close, it will be there every time somebody files a land use application. They're not going to lose the opportunity to challenge that. Some of these are matters of statewide concern and I would expect them to get resolved eventually at that level. We're just trying to get something on the books right now that keep neighbors happy with each other, and wherever that balance is on these particular standards is what you're trying to strike.

Lorenz said the fact that the State has already acknowledged that this is not a normal agricultural use, doesn't that open the window for us to treat it differently as well?

Tomkins said I think that if Clackamas County were to get challenged on their ordinance, they would definitely raise that as part of their contextual argument. There are other pieces like that, such as the fact that in Section 33, it says you can do it, yet in Section 34, it seems to say you can't. One point of clarification I want to make; when we're talking about the 100 foot setback in this proposal and the buffer, which is the 1,000 foot, we're only talking about production in the EFU. Just that particular marijuana business. We can apply those setbacks and buffers to the others.

Kessinger asked if the 1,000 foot setback is measured from the edge of the property of the school to the actual production facility or to the land that the production facility sits on. Cerbone said it is

measured from property line to property line, so it's the closest point of the property to the closest point of the property.

Foster thought they should thrash out the issue of whether they are going to take the chance that Clackamas County did. He noted that Mr. Helms has been a hearings officer, he worked at LUBA, was an attorney for Metro, and thought that his opinion had a certain amount of credence since he was on the committee. Yet, the bulk of the legal committee appears to be on the other side, which is the position we've taken. We certainly heard plenty about EFU setbacks and the need for them, so I guess we need to first decide whether we're going to take that risk or not.

Sievert said the Green Mile is already happening and we haven't even gotten started yet. What I see is a vicious cycle of property values going down and people wanting to get away from it because there's no regulation. They try to sell their property but nobody wants it except another marijuana grower, then we have a saturation issue. I think there has to be some type of setback regulation more than 100 feet.

Ingle said this is a tough question, but I tend to side with County Counsel, primarily because I think the information we got was at the 11th hour and we haven't had a chance to fully understand it. I'm not opposed to flushing out the detail, but my concern with the proposal is in some of these areas, I could grow onions or some other noxious smelling agricultural crop that would create the same kind of problem that the marijuana business would. I think there is some responsibility that when you move into a rural area, there are farm practices that not everybody agrees with that can create offensive odors and lighting and noise issues. I think going the next step with setbacks and buffers complicates it. But I could go either way.

Silodor said I could go either way, but I agree with you. I think it's really tricky with any kind of new business, especially one that has such a hot button, but I think that longer vision has to prevail. There is no way to stop it, it's legal, it's happening, and I think we need to mitigate the difficulties as best we can. I don't think that, in the long run, extra setback regulations are going to make the difference. That's not what's going to make a community feel okay. I think what's going to make it okay, what would make me feel okay, is to follow the rules that we have, which we know are legal, safe and sound, and try to work together; talk to one another and understand what's happening. That sounds idealistic, but I do think that's the way to do it.

Ingle said I agree because I think a lot of the issues are going to be complaint driven. If there's noise, if there's an odor, if there's extreme lighting, someone is going to contact the planning department. I also think the marijuana business operators have to work with the community, or they will have issues. Silodor said I live on Sauvie Island and one of the biggest complaints I've heard over time is "all those farm machines are on the road". Well, it's a farm community. This is similar.

Sievert said this is not a situation where people are buying houses next to the airport and complaining about airplanes. It's the inverse. These families have been in these neighborhoods and on these properties for decades and something else is coming in there that's disrupting their quality of life as they knew it. So it's a completely different animal in my opinion. Because it's newfound territory, having less regulation; how do you un-ring the bell if things start to spin out of control? That's my concern.

Lorenz said I'm aligned with Commissioner Sievert. Because this is new and it is such a hot button issue for the community, I would prefer to start with more restrictions, so I'm in favor of putting in

buffers in the EFU. I've also seen that Clackamas County had 1,000 foot buffers between licensees. So from grower to grower, or producer to producer. So there are ways you could restrict the number of growers together as well. I lean on the side of putting in the restrictions now, we can always relax them later. But once it's in, you can't get rid of it.

Kessinger said I'm conflicted. I like to encourage farming, but at the same time I put myself in the shoes of people living there, and I think having such a big change would really change the nature of the area. So I'm in favor of the setbacks in the EFU, but I think it should maybe be 50. The number could be talked about. And with the 1,000 foot buffer; there are a lot of parents that want to see some distance between drug operations. I don't think I support the 1,000 foot that Commissioner Lorenz mentioned between two growers, but if we can keep it away from schools, I think it will make a lot of people feel better. I don't think that is an unreasonable request.

Foster said I'm willing to go down the road of some setbacks in the EFU. If we get enough that want to go down that road, then we can talk about numbers. As far as schools, for producers, because they have to be enclosed, either inside of a building or inside of a fence; maybe 1,000 feet is a little harsh for that situation. But first we need to see if we have the numbers to even enter into the conversation of whether or not we want to take the risk of adopting some standards that apply to the EFU.

Ingle called for a straw vote regarding setbacks in the EFU. Six were in favor, two opposed.

Foster said we opened with 50 feet in the EFU as a setback for the facilities we're going to allow. Ingle said to staff, with regard to the 100 ft. setback and the 1,000 feet from schools, we're pretty consistent. We don't differentiate for different uses, and there must be a reason for that. What danger do we have with dicing this thing up without substantial evidence that 1,000 applies, 50 applies? Cerbone said the 1,000 foot setback came straight out of state law, and that seems to be the default that a lot other jurisdictions have used. The 100 foot setback came out of Adam's research basically looking to see what other states and cities did for regulating marijuana production. Most of those fell in 100 feet, but some of them were greater than that.

Barber said we also looked at Multnomah County setbacks and the type of setbacks that apply in different situations. I spoke to folks in the industry who grow about how far odor can travel and if the wind isn't blowing, 100 foot is a reasonable setback for an indoor or outdoor grow operation to minimize odors for neighbors. When the wind is blowing, you're not going to regulate your way out of it if you don't have indoor air control. So, we felt like 100 feet was a good starting point, based on what we were seeing around the country and how other similar setbacks for different types of impacts were measured in Multnomah County. I think 50 feet is a possible reasonable discussion point as well. I worry a little bit about, like Commissioner Lorenz mentioned, that if we don't get it right at 50 feet, we will have operations established. 100 feet was to provide a little bit of a buffer based on the limited information we have. Until we get some more experience, it's hard to tell what number is best. I do know that working as a current planner at the front counter, the more variations you have, the easier it is to make a mistake. Our code is very thick and can be difficult to implement under pressure, so I would recommend one setback across the board. I would also mention in the EFU, it's an 80 acre minimum. The last time we checked in EFU zoning, 25.8 acres was the average parcel size, and that's a lot of acreage to work with, so I'm not sure that 100 foot would be a burden for a typical EFU farmer.

Ingle said that's exactly what I needed, the background information. Foster said Jim mentioned 50 and that's a compromise, with the notion that farmers need flexibility, but Adam made some good

points on the logic of 100 feet. Lorenz & Ingle agreed that keeping the code simple and consistent would be best.

Foster said I made an argument that in the case of EFU zones when we're talking about production and processing facilities that are enclosed, maybe we don't need to have the same standard as a retail store. Maybe there's a sound argument that it could be less. In the spirit of compromise, and not trying to be too strict, perhaps it need not be a full 1,000 feet; maybe 500. The state has made a similar distinction in that they're only regulating retail and processing and not production on the 1,000 feet. We have the option to apply 1,000 feet and I'm wondering whether we need to go the full distance.

Ingle said I think we're skipping around a bit here. Foster said I'm just trying to get through this setback issue. Ingle asked if there were any more thoughts about flexibility. Lorenz said splitting indoor and outdoor in the EFU, is that what you're talking about? Foster said proposing that we apply that setback to other than retail, as the state mandates, do we need to do that when a facility is not open to the public and is either fenced or totally contained within a building? We heard testimony from people objecting to those setbacks for producers, they thought 1,000 foot setback for a production facility was onerous.

Lorenz said I could see compromising with indoor 1,000 foot setback from the building to the school property line. Silodor said it feels like we're now going down a slippery slope, and I am getting confused. I think if there is a concern about having stricter regulations that can be relaxed, we should stick with what we have, which we know will work and will keep our code sound and simple and straightforward. Which is a good way to start because this whole thing is daunting. Ingle agreed.

Foster said I'm not hearing from anybody that wants to change it from what is proposed, so we're going to stick with the 1,000 foot setbacks from schools that apply to production. There seemed to be agreement with that. Are we going to use that in the EFU too? Kessinger said I thought we were only talking about EFU. Sievert said it doesn't seem as burdensome in the EFU, with the average acreage size being 25. Kessinger said since we're going property line to property line, it could be 2,000 by 2,000 and still not meet the 1,000 foot setback. So you need 1,000 by 1,000 feet between you and the school. It's kind of a harsh thing going property line to property line, but that's what we're talking here. Ingle said, so too restrictive? Kessinger said if the average is 25 acres, it could easily be a couple of properties before you could have a grow, so it's fairly restrictive.

There was some discussion about the EFU land surrounding schools. Silodor said we heard a lot of testimony about the restrictions not being enough in terms of protecting children. So, we have those concerns versus the concerns of parcels that are too small and may be unable to utilize their land fully. There's a trade-off.

Foster said that's why I threw out a number of a compromise, maybe 500 feet. Given the understanding that we're talking about production facilities that are required to have an 8-foot tall fence around it, or a totally enclosed building. Maybe treating them the same as retail facilities is a little harsh. Kessinger said I like that idea of going to 500 in the EFU as a compromise. It provides some separation, yet it doesn't block out nearly as big of an area for production.

Ingle asked if staff had some additional insight. Cerbone said one option is the concept of measuring from the canopy, from the actual grow site to the school boundary. That's a potential,

although it does open up another can of worms, because how do you measure that. Likely the applicant would have to get a surveyor to certify that so there were no arguments. We also talked about non-conforming uses.

Silodor said if you're measuring the canopy to the school property line, what kind of difference would that make. Kessinger said quite a bit. Cerbone thought that would address some of Commissioner Kessinger's concerns. Ingle asked what the definition of canopy was. Cerbone said canopy would be the actual extent of the area where they are growing the marijuana. For the outdoor grows it would be 40,000 s.f., the indoor grows would be 10,000 s.f. That's how large the canopy can be. It was thought that would be the better approach. As to whether it should be 500 or 1,000 feet, Silodor said why don't we stick with the 1,000 feet because we're proposing a different way to measure. Ingle said so it would be 1,000 feet from the school based on the distance between the canopy of the operation and the school boundary.

Barber said to be clear, on the 1,000 foot setback, we will make amendments to include the EFU, and will strike the reference to EFU being excluded. So, all zones will be subject to the 1,000 foot setback to schools. However, we're going to change the measurement to include the distance between the school property boundary and the closest portion of a building or structure used in conjunction with the marijuana operation, or the closest extent of the outdoor canopy. Also, the 100 foot setback to a property line should apply to the EFU, so the reference to excluding EFU would be removed. Cerbone said one clarification is we're going to keep retail and dispensaries at 1,000 foot like the state measures it, from property line to property line.

Ingle then guided the Commissioners to Table 2 of the Summary of Public Testimony that Barber compiled for the meeting. They began by going through each issue individually. The first was grouping medical and recreational marijuana together under one set of rules. Foster noted that Clackamas County did make measures to reduce some of the burden on medical. Sievert said I am in favor of that as there is still a compelling difference between recreational and medical. Also, the medical industry has been established and operating for quite some time.

Tomkins said staff is trying to help diffuse conflicts by keeping them grouped together. Because people won't know if it's being grown for medical or recreational, this simplifies it. Barber said that by combining the two into one definition of a marijuana business, we are being as flexible as possible to the medical marijuana industry by considering medical marijuana a farm crop. If we didn't do that, it's likely we may not be able to allow production in a lot of the zoning districts where we are currently proposing that medical marijuana be allowed. As we were preparing code, the industry advocated for keeping it together, keeping it simple and regulating it the same way, so we are trying to do that in a way that provides the most options to the industry without impacting the community. So we thought quite a bit about that.

Lorenz said in looking at the Clackamas summary, they specify that restrictions do not apply to medical marijuana as licensed from OLCC, so a single cardholder can grow up to six plants. We're following the same tact, right? That is already allowed and this wouldn't restrict that, would it? Barber said I'm not sure, I'm not familiar with the Clackamas County provision, so I'm not entirely sure what they've put into place and why. Cerbone said the one thing that threw me for a loop with what you said is "OLCC" and "medical". OHA is actually the one that governs medical and OLCC governs recreational. If you're concerned about lawfully established medical production sites, if they were lawfully established at the time our ordinance is put into place, even if these new provisions apply, they would be considered non-conforming, and would be allowed to stay. The other question is, what if you're lawfully established under OHA as medical and then you want to

convert that to recreation. The way we've written the code, by having it the same business, I believe that would allow it to transfer from the OHA to the OLCC and it would still be okay. It wouldn't be a change of use.

It was agreed to keep them grouped.

The next category is Licenses are limited to one of each type of marijuana business per lot of record. The idea is to help preserve the rural character of the area. It was agreed to leave this as stated.

Foster said in talking about reducing the 100 foot setback when we use air filtration, Clackamas County and the City of Portland said in all instances we want odor control. I wonder if maybe we should take that same approach. Since odor was a big issue, I wonder if, in the non-farm zones, we ought to mandate odor control for everything. I just have concerns that letting them forgo the odor aspect at 100 feet is going to create some problems. Another thing that Clackamas County did in those same zones is they have a residency requirement that somebody has to actually live there, which made some sense to me.

Cerbone said the intent of the air filtration system was essentially to allow that setback to be reduced. The whole point was to be detectable at the property line. Also, if you require residency, that could actually take some properties that can't support a house and make it so they couldn't be utilized.

Kessinger said if the 50 or 100 feet is all about odor control, then the setbacks are the wrong solution for odor. Barber said I will add that the 100 foot setback is not only measured to buildings and structures used for growing, but also outdoor canopies. So keep that in mind as you're talking about odor because air filtration system isn't applicable in an open air situation. Also keep in mind that every household can have four plants, so there is marijuana odor in the community, which would not be associated with commercial businesses. This is something we think about when we're trying to respond to a complaint, where the smell is coming from. And it's difficult.

Ingle said I think it's a laudable objective, but I don't think it's a winnable solution. We have industrial areas now that are heavily regulated and there are still issues that crop up. It could be light pollution, it could be smells, it could be water pollution. I empathize, but I don't think it's a winnable solution. You could regulate the heck out of it and I think you're still going to have problems, you're going to have odor problems. Outdoor operations, how do you regulate that?

Foster said, we're not. The point is that the first two jurisdictions to adopt regulations said, in all cases, buildings will have air filtration. And we're saying, only in certain circumstances. I'm questioning the wisdom of not doing what Clackamas County or the City of Portland has done. I'm concerned that we're not doing the best we can. I don't know that it's a huge burden on the grower community, when you consider the kind of investment people are making in these buildings. Is it really a big deal to have odor control?

Ingle said so lead me back to the 100 foot setback and property lines and air filtration systems and buildings and odor control. What do we want to do here? Silodor said my only concern about doing that is when the complaints come in, that it's not enough and we haven't done enough. And I think that will balance out. I think that's something to consider, but I'm on the fence. Wood said I worry about enforcement, I don't know how feasible that is. But I think I'm on the fence about this as well.

Barber said, so the Commission is talking about ways to potentially further regulate marijuana growing in buildings, but what about outdoor grows? Sievert said, to Commissioner Foster's point, two counties already have some regulation, and the biggest complaint in the testimony we received last Monday was about odor. That's compelling.

Foster said I think we should be showing the community that we're making our best effort to control odor. Lorenz said I would support indoors being required to have odor control in all circumstances. Kessinger said as far as setback, it doesn't appear that Clackamas gave a relief to the setback for that. Foster said their setbacks are lower than ours, they're 50 ft. with air filtration systems.

Ingle took a straw vote on the filtration systems in buildings for all indoor production. The majority was in agreement. Barber said therefore, the 100 foot setback would only apply to outdoor production, correct? Foster asked what is the bare minimum setback on buildings? Barber said typically 10 feet in a residential type setting. There are some smaller setbacks in some urban residential zones, but I don't believe we're allowing indoor production in that scenario. Foster said we could give them some relief on the 100 feet, but I don't think 10 feet is adequate. Fifty maybe. We were willing to drop it to basically 10 feet with air filtration. Cerbone said that is essentially the way staff has written it, if they were doing air filtration, we would go down to whatever the setbacks are. Another thing to think about is if you have a setback that is higher than what is established for existing structures, then the ability to adaptively reuse existing structures for this type of business would be limited. They may have something that meets the actual setbacks for a llama barn or whatever it may be, but if you want to convert that to a marijuana production business, you may not be able to use that structure.

Silodor said why would we change the 100 foot setback? Foster said because in all cases they're going to be filtered now. Silodor said I understand that, but doesn't that still leave us with the problem that people don't want those buildings close to their children. So why don't we just leave it at 100 feet. Foster said that's fine, the cautious approach is always better because we can relax it later. There appeared to be agreement to keep it at 100 ft.

Someone from the audience asked if there was going to be public testimony and Chair Ingle informed her that public testimony was closed at the last hearing and tonight was slated for deliberation. Barber noted that there will be an opportunity for public testimony at the Board of County Commissioners, which will be the next step in the process. Cerbone said this board will make a formal recommendation to the Board of County Commissioners who actually have the authority to pass the ordinance. Foster said we're here to make a recommendation, we don't pass laws here.

Barber wanted to clarify that the 100 foot setback will still apply to buildings and structures used in conjunction with production and processing, and air filtration is required for indoor production in all circumstances. There will no ability to reduce that 100 foot setback, which will apply to outdoor grows and to any buildings associated with production or processing. So now we no longer have flexibility to reduce that 100 foot setback. The flexibility was built in through the air filtration system option, and I wonder about an existing building that is closer than 100 feet to a property line that now cannot be repurposed for an indoor grow. Is there no flexibility to use a structure that is closer than 100 feet to a property line? Cerbone said that is the effect of the provision they've discussed. Barber said that gives me a little pause because, especially in the context of Rural Residential, MUA-20 and even some of these other zones where, my experience

has been, people try to typically put a structure closer to the property line to maximize the rest of property. And might we be excluding existing buildings and encouraging construction of new buildings when there are other buildings that could be used for a use. Without that flexibility, I don't know how that's going to play out on the ground.

Ingle said that is a good point. Foster said there might be some options to still allow reductions. Cerbone said only if you recommend them and they're approved as part of the ordinance, because our hands are pretty tied in terms of State law. So, if you don't build that flexibility in now, we can't just add it in. Wood asked could you provide flexibility specifically in the case of pre-existing buildings? Cerbone said that could be something you could add as part of your recommendation. Something like, existing buildings that are at least 20 feet off the property line, or whatever you think that distance should be. You could decide to add that into the recommendation, but if it's not added in there, we do not have a lot of relief valves built into the code. We have a variance provision, which would probably apply. Typically, variances are not approved if they are self-imposed hardships, so if they built the building where they did, it may be a difficult test for them to be able to meet. But aside from that, I'm looking at my councilors for any input. Tomkins said right now, the proposal talks about not allowing a variance in this instance, so some flexibility would have to be added there as well. Cerbone said so that would be out, and that's one of the few options we have to reduce a dimensional standard.

Wood said I would be open to that, it sounds reasonable. Foster said in using existing buildings, if you had language in there that the building would have had to have been lawfully established before such and such a date. Cerbone said I would strongly lobby for that provision, that it had been lawfully established prior to enactment of our ordinance. So, new buildings would have to meet that 100 foot setback and the air filtration. Retrofitting an existing building or adaptively reusing an existing building, as long as it was lawfully established, which means it met the setbacks at the time, had a building permit, etc., it could be used. Or if it was an exempt dwelling per EFU requirements, that would essentially be lawfully established.

Foster asked whether they thought requiring residency is a good one or not. Ingle said on the face of it, it is, but… Sievert said I like the idea, but I don't know how realistic it is. Ingle said I think it's an enforcement issue as well. Silodor said I think it's a great idea, but I don't see it working. And what if you're in a zone where you can't put a house? Lorenz said I don't think it's feasible. The majority felt it was not feasible and agreed to move on.

Kessinger said what if you have an existing 3,000 s.f. footprint building and you want to use it, should you be allowed to partition it to get it down to the 2,500? Foster said yes. Kessinger said I think so too. Foster said we didn't go into that kind of detail, but maybe we need to. He said if you have a larger building that you want to re-purpose, that's fine if you want to partition off the square footage that you're allowed. Barber said that's how we handle it in other zoning districts that have thresholds for other reasons. Kessinger said so we don't need language for that? Barber said I'm not sure how I would craft language for that scenario at this point. But we have had success working around those kinds of situations for oversized buildings. Kessinger said, so there's precedence for that. Cerbone said and you've established legislative intent by talking about it, and that being your intent, we could probably handle it through a Director's interpretation.

Barber said he had a quick question on the 100 foot setback before we leave the setback conversation. As it is currently drafted, there is no variance adjustment or deviation or modification to that 100 foot allowed, except for the air filtration system, and we've gone in a slightly different direction. Should there be some flexibility to that 100 foot setback? We talked

about flexibility existing in the form of a lawful existing building prior to the ordinance date, but what if there is some situation; a cliff or a wetland for instance, and the only place to site a new building would be closer to the property line. Should there be the flexibility to run that through the County processes that evaluate flexibility with the intent being whether the purpose can equally be met through some other measures? And depending on the situation, there could be other mitigation required as well. But should we have language prohibiting variance adjustment, deviation, or any other kind of modification, or should we allow that 100 foot be reduced depending on the situation, if they can meet the basic purpose of the standard? Because right now, there is no avenue to reduce for new buildings.

Wood said I think as long as it's reviewed on a case by case basis and there's sense to be made from the conclusion, I would be amenable to that. Cerbone said it would be reviewed and available for public comment and participation. Also, the way that the ordinance is currently drafted, it says the indoor production only and the total combined footprint of all buildings and structures used in support of marijuana production shall not exceed 2,500 s.f. So, I think if you wanted to provide the flexibility to allow the 3,000 s.f. foot printed structure to be used for growing, we would have to change that to the footprint of the marijuana business.

Ingle asked if there was any opposition to that. There appeared to be none.

Foster said there is one other related issue here, and it's something we did not discuss yet. Clackamas County chose to say there is a certain lot size that is just too small; I believe they drew the line at two acres. I don't have any strong feelings, I like to be flexible, but is there a point where it's just too small? Ingle said the minimum lot size for any particular component? Foster said for production for the 2,500 s.f. building, is there a lot size that we want to rule out? Kessinger said I think the setbacks come into play on a small property. An acre is about 230 by 230, roughly, so a setback of 100 feet gives you a pretty small space. There was no interest in pursuing that avenue.

Ingle asked Barber if they had adequately addressed his point about variances. Barber said I was hearing a desire to provide for a variance or adjustment if it can meet those standards through the County code. That would require a land use review and assure that we are not going to have impacts to the neighbors, and would be on a case by case basis. I will remove the reference that no variance adjustment, deviation, or modification is allowed, and it will say there is a 100 foot setback in this kind of a scenario. I will make the other adjustments as we talked about, and we'll have another section in code that will provide some other flexibility for new buildings. Everyone was in agreement with that.

They moved on to outdoor only production in CFU zones. Ingle said there was some discussion about the use of non-rigid structures for outdoor operations and whether or not that definition would cause confusion. Foster said I'm fine with not putting these industrial type buildings in the forest zone, because the legacy of those buildings in that zone is not a good one. Ingle asked what about the rigid structures, do you see that being problematic? Foster said I'll leave that to staff to work that out, maybe be a little bit more specific about what we mean. Barber said the term "rigid" came from State law. We heard testimony that it's problematic, and it's complicated because any kind of structure that will have employees coming and going for indoor grows is going to need to meet building codes. That will necessitate a rigid structure for snow load and wind loads and those kinds of things. I don't know how much we can do at the internal stage if we have a term that is being used in statute a specific way.

Ingle said so right now, outdoor only production in CFU zones is what we've got. The Commissioners agreed to leave this as is.

Next was the 2,500 s.f. footprint cap in residential zones. Foster asked what the average lot size was in rural residential. Barber said 3.1 acres the last time it was measured. Foster said since that's pretty small, I'm not inclined to raise the limit. Barber said 2,500 s.f. came from when we amended our accessory structures standards and studied the average size of accessory structures in Multnomah County. The majority of them were less that 2,000 s.f. and the Commission at that time bumped it up to 2,500 s.f. to provide flexibility. So, if a combined footprint of all the accessory structures on a property is less than 2,500 s.f., we can sign off over the counter. If it's over that, we go through a discretionary land use review to confirm that it is going to be used in conjunction and fits in with the neighborhood. We felt confident this was the right cap for the Rural Residential and the Orient Residential. It also fits well with the code and how we implement structures for size, and adds flexibility by not limiting it to one story. Foster said it also keeps in character of the neighborhood and considers the future of these zones, so I'm pretty confident we got this right. Everyone agreed.

The next issue is the ability to treat marijuana differently than other agricultural crops. Cerbone said in the EFU, you've elected to apply setbacks to EFU properties. Barber said this isn't as much of a policy choice as a justification for what we're talking about in response to the testimony that marijuana should not be treated like other agricultural products. And we disagree because there are different impacts.

On to the last issue, processing allowed in rural areas. Barber said this is a similar kind of thing.

Cerbone said there was one other item that Commissioner Foster brought up, which was sound. Barber said what I recall is that we should reference the County Sheriff code as a reminder that there is a standard in place. That standard would apply to all marijuana businesses, and if we have a noise concern, we contact the sheriff's office. Foster said the only issue is the double standard of 60 in the daytime and 50 at night and whether that's okay for the type of equipment that runs continually. There was thought that it should be uniformly 50db, but Kessinger reminded them that if we use a standard other than the sheriff's, who would enforce that? So, why don't we stick with their standard.

Lorenz questioned why we wouldn't hold these businesses to the home occupation standard of no detectable sound at the property line. Cerbone said a home occupation is typically in a residential zone that is intended for primarily residential use. The MUA-20 is a mix that tolerates more farming practices, and the EFU and CFU is intended to tolerate noise associated with farm and forest practices. Foster said maybe we should just have the home occupation standard apply to rural residential and the sheriff's standard on the larger properties. Cerbone said we would just apply a standard to the RR and the OR, which are the smaller residential properties. We wouldn't put a standard in because this already exists for the rest of the properties.

Barber said we're saying there will be some sort of a standard borrowed from the home occupation language that says no detectable sound that would be applied to the Rural Residential district, and I'm assuming any other districts that are of equal lot size or smaller. Are we just concerned with residential zones? Foster said just residential, where people are sleeping. Cerbone said and where the intent is primarily a residential use, so this would essentially be a secondary use.

Kessinger said I'm not sure we've talked about lighting adequately. Have we covered a situation where you have an outdoor greenhouse and it has lights? Lorenz said I believe it's already written in. Barber said it's in the standards. There didn't seem to be much testimony around that issue, but we do have a dark sky standard so you don't have a glowing greenhouse at night.

Ingle said now we need a motion and a second to pass PC-2015-4551 with the revisions that we discussed this evening. At this point, counsel and staff conferred amongst themselves to clarify some points.

Silodor recommend accepting the proposal as amended here today. Lorenz seconded. Motion passed unanimously.

VI. Director's Comments:

Cerbone gave a brief update on the Comp Plan. He said our goal is to present it to the public in March. We plan to have two open houses to solicit public comment, one in East County and one in West County, then have a work session with this body in April where we will provide an overview of the process and answer questions. We hope to hold a public hearing in May and possibly June, depending on public turnout. This project is consolidating the four different Comprehensive Plans that we have into one document. Three to four months following that timeline, we should have consolidated code. Our intent was not to re-write the Comprehensive Plan, but to consolidate it into one document, address some issues that have occurred since the document was passed, and integrate some concepts from the Climate Action Plan and the Equity Lens from the County.

Adam has been working on the Dark Sky ordinance, as well as Accessory Structures, so those are two topics you'll probably be seeing in the near future.

Barber outlined the timing of the marijuana land use regulations. He said it typically takes about a month to go before the Board of County Commissioners. When we go to the Board, we may ask for emergency adoption on this set of regulations so they will be effective immediately, rather than thirty days after the hearing concludes. We are trying to get these rules in place as soon as possible so we don't have businesses established without rules in place. Foster asked to go on record to encourage that, and the rest of the Commissioners agreed.

Barber said I should have a better handle on the timelines probably next week, and we will advertise that on our webpage. Foster reminded the audience members that the Board hearing will be open for oral and written testimony for those who want to contribute.

Meeting adjourned at 9:00 p.m.

The next Planning Commission meeting is tentatively scheduled for March 7, 2016.

Recording Secretary,

Kathy Fisher