



**MINUTES OF THE
PLANNING COMMISSION
JANUARY 20, 2016**

***Council Chambers, City Hall
833 S. Spruce Street, Burlington, WA***

MEMBERS: Marianne Manville-Ailles-Chair, Ken Frye, Jana Vater, Brian Hanson, Rock White, Sally Straathof and Jeff Anderson.

STAFF: Bryan Harrison, Kim O'Hara

Motion by *Frye/White* to approve the minutes of December 16, 2015 Planning Commission. Motion carried.

TEMPORARY USE PERMIT

360 S. BURLINGTON BOULEVARD

ALBERTO TAPIA OF LAS REINAS, APPLICANT

Proposed one year Temporary Use Permit for a mobile food vendor subject to BMC Chapter 5.30, Mobile Food Vendors. This was previously the site of Judy's Lunch Box. Access is off of S. Burlington Boulevard and the parking lot is large enough for vehicles to park and eat without creating ingress/egress hazards.

Food is prepared offsite at a commissary and dirty water is dumped at Lion's Park. Hours of operation will be 11:00 a.m. – 8:00 p.m. with later hours in the summer months. The Technical Review Committee met with the applicant on January 6, 2016 and had the following comments:

Sewer: will inspect and authorize the mobile food van for grease trap or disposal method. Garbage will be disposed of in a dumpster. Public Works: no concerns. Fire Marshal: mobile food truck shall comply with IFC 2012 Section 906 Portable Fire Extinguishers outside the unit and a K-extinguisher inside the unit. Also no portable heaters shall be used under tents.

The Skagit County Health Department has approved the mobile food establishment and they have permission to use restrooms and handwashing facilities at the adjacent business (Custom Sound).

Staff recommends approval of a one year temporary use permit subject to the following conditions:

RECOMMENDATION: Approve a one year temporary use permit subject to:

1. Complying with Burlington Municipal Code 5.30 Mobile Vendors
2. Pick up all trash and garbage on the site and keep it clean and tidy
3. All equipment, carts, vehicles must be removed from the site at the end of each day.
4. Comply with Technical Review Committee recommendations.

No public comments received.

Motion by *White/Frye* to approve the one year temporary use permit subject to the recommendations as outlined above. Motion carried.

**PUBLIC HEARING
PROPOSED CODE AMENDMENT
TO M-1 INDUSTRIAL AND B-P BUSINESS PARK ZONING DISTRICTS**

Public hearing on a proposed code amendment relating to the setback requirements for marijuana uses in the M-1 Industrial and B-P Business Park zoning districts.

Manville-Ailles noted that the following public hearing on a proposed code amendment is a legislative issue with two different zoning areas. The Planning Commission will break these into two separate hearings with two separate motions (one for the B-P zone and one for the M-1 zone).

Harrison gave an overview of the code amendment. It is a legislative review resulting in a recommendation to City Council for amendment of the zoning code relating to I-502 uses, as regulated by the State. The City Council adopted ordinance 1788 to allow marijuana retail, producing, processing with a set of restrictions within certain zoning categories, primarily in M-1 with enhanced setback requirements (1,000 feet from residential zones, schools, parks, playgrounds, transit center, library, child care center, game arcades that allow minors (under 21) as well as 1,000 foot separation from any other I-502 use). The State has since revised the setback regulations to 100 feet, except for schools and public playgrounds will remain at 1000 feet. **Manville-Ailles** noted that the State does not have a setback requirement from residential zoned areas.

**PUBLIC HEARING (1 of 2)
PROPOSED CODE AMENDMENT TO I-502 USES
IN THE B-P BUSINESS PARK ZONING DISTRICT**

Manville-Ailles stated the options discussed previously were to reduce the setbacks to the state minimums and as an alternative a setback from residential areas to 100 feet. **White** asked for clarification that we are talking about changing the language in the code, not dealing individual requests. **Manville-Ailles** stated we do not have individual requests. The original individual requests would have been spot zoning which is illegal, so our option is moving from individual requests to making legislative changes to the code.

Harrison stated it is confusing as we had two separate individual requests for a legislative action and change. Typically individual requests ask for a specific permit and there is no permit application for the Planning Commission to review, but there is a request from individuals for you to consider a change of zoning, but it is an amendment to the code, it a policy change rather than site specific.

Manville-Ailles the first public hearing will be discussing changes to setback regulations on I-502 uses in the B-P Business Park zoning district in the Burlington Hill Business Park. Proposed code changes are as follows:

- Amend the 1,000 foot setback to 100 foot setback from any recreation center facility, child care center, public park, public transit center, and library or game arcades that allow minors (under 21). The 1,000 foot setback will remain in place for elementary and secondary schools and public playgrounds.

Public hearing opened.

Dennis Ruschmann, 15238 N Wall Street, Mount Vernon – is hoping to open a marijuana processing facility in the Burlington Hill Business Park and stated I-502 uses provide good, year-round paying jobs with medical benefits, , no smoking on the premises. He noted the State has strict guidelines, all employees go through intensive training with the state, and no odors are emitted from the facility. His facility will be oil extraction of

the plant, no flammable product, and they will be using 99% of the plant. Their goal is to get to a pharmaceutical level product.

Edward Hogan, 3610 N. Baltimore Street, Tacoma WA 98407 – operates an I-502 processing business. He stated the residual effect of the business is the trickledown effect to other services such as gas, groceries, and other auto services. He is in support of the code change.

Robert Londo, 600 Fisher Lane, Burlington WA – is in favor of changing setbacks in the B-P zone so I-502 uses are not hindered and can open a business and operate within the law; if the state is reducing setbacks the city should also.

Public hearing closed.

Planning Commission discussion. **Anderson** is in favor of the code amendment to reduce the setbacks to match the state minimums (as listed above) which do not include any setback to residential areas. **White** stated that because of background as a school superintendent he would like the setbacks to remain at 1,000 feet from residential areas, child care centers, and public parks. **Vater** noted that Burlington was one of the first jurisdictions to set a 1000 setback and feels it is quite drastic to go from 1,000 feet to 100 or zero, and is not in favor of zero setbacks to residential zoned areas. **Manville-Ailles** is in favor of reducing the residential setbacks to zero and follow the state minimums for setbacks. **Hanson** is in favor of the I-502 uses in the B-P zone with a 100-150 foot setback from residential zoned area along with the state minimums for other setbacks. **Straathof** is in favor of changing setbacks to the state minimums. **Frye** is in favor of setbacks to match the state minimum requirements plus a 100 foot setback from residential areas.

Motion by **Anderson** to recommend a zoning code amendment to reduce setbacks in the B-P Business Park zoning district for I-502 uses to 100 feet from any recreation center facility, child care center, public park, public transit center, library or game arcades that allow minors (under 21); and to remove the setback requirement from residential zoned areas and the separation between I-502 uses. The 1,000 foot setback will remain in place for elementary and secondary schools and public playgrounds. Motion died for lack of a second.

Motion by **Frye/Hanson** to recommend a zoning code amendment to reduce setbacks in the B-P Business Park zoning district for I-502 uses to 100 feet from any recreation center facility, child care center, public park, public transit center, library or game arcades that allow minors (under 21), and any residential zoned area. 1,000 foot setback will remain in place for separation between I-502 uses, elementary and secondary schools and public playgrounds. Voting in favor: **Frye** and **Hanson**. Voting against: **Anderson, White, Vater and Manville-Ailles**. Motion failed.

Motion by **Anderson/Frye** to amend the above recommendation to recommend a zoning code amendment to reduce setbacks in the B-P Business Park zoning district for I-502 uses to 100 feet from any recreation center facility, child care center, public park, public transit center, library or game arcades that allow minors (under 21), and residential zoned area and to remove the setback (zero setback) requirement for separation between I-502 uses. The 1,000 foot setback will remain in place for elementary and secondary schools and public playgrounds. Motion carried with **White** and **Vater** opposing.

PUBLIC HEARING (2 of 2)
I-502 PROPOSED CODE AMENDMENT TO I-502 USES
IN THE M-1 INDUSTRIAL ZONING DISTRICT

Manville-Ailles stated discussion will focus on whether or not to keep or remove I-502 uses in the M-1 Industrial zoning district. If we don't take the I-502 uses out of M-1 then we will have a discussion on setbacks. The M-1 is in the same position as the business park zone. With the current setbacks in place there have been no parcels available for I-502 uses. If we were to reduce the setbacks there may be other options available in the M-1 zone. The alternative would be to reduce it the setbacks.

Harrison noted the current M-1 code language allows that some I-502 uses in the B-P zone. The B-P code language states uses allowed in M-1 are also allowed in B-P. So as a technicality, one of your options would be to take the language out of the M-1 code and move that language to the B-P zone. **Manville-Ailles** stated they are recommending moving the I-502 uses as a stand-alone to B-P zone.

White asked for clarification on the C-2 area west of I-5. Is the code amendment to the entire C-2 area west of I-5, or just one parcel? **Manville-Ailles**, we will be discussing all the C-2 zoning area west of I-5 which is the next agenda item. Originally it was an individual request for one parcel, and it was determined it would be a spot zone, which is illegal and we are now looking at the entire C-2 zone west of I-5.

White suggesting changing the C-2 west of I-5 to M-1 to allow I-502 uses. **Manville-Ailles** explained we can't change to M-1, as the existing businesses are not M-1 uses, they are uses allowed in C-2 (auto dealers). Changing to M-1 would make them nonconforming, but by changing the name of the zone to C-2M would allow all C-2 uses as well as retail marijuana uses.

Public hearing opened.

Manville-Ailles explained this hearing is to discuss I-502 uses in the M-1 zone with the following options: 1) to keep or remove I-502 uses; 2) amend the setback regulations the same as the amended B-P zoning district in the prior hearing; 3) other discussion as it pertains to I-502 uses in the M-1 zone.

Robert Londo, 600 Fisher Lane – stated if you make a zoning code amendment to the Business Park zone it should also be made to the M-1 Industrial zone to keep it consistent whether it is for production or retail.

Bart Borusinski, appraiser, La Conner – stated it does not make sense to take I-502 uses out of M-1 zone and put into another zone. It is difficult to find areas for processing and producing marijuana and 1,000 foot setbacks are prohibiting them from finding a location. 100 to 150 foot setbacks makes sense. Also if rivers, railroads and ponds should be considered as not part of the setback.

James William Steven, 4028 Sharpe Road, Anacortes – owns medical marijuana facilities and asked the Planning Commission to keep in mind the patients and their accessibility. He noted that Skagit and Cowlitz counties received a 100% increase in marijuana licenses because of the large medical population.

Public hearing closed.

White asked for clarification of proposed changes to the M-1 zone to make sure we are not changing the M-1 zoning designation. **Manville-Ailles** explained we are only discussing our options for M-1, no change to the designation; I-502 uses (retail, processing, producing) are already allowed in M-1. The Planning Commission

options include: 1) removing I-502 uses out of M-1 Industrial; 2) leave M-1 as it is; 3) reduce setbacks similar to changes just (public hearing #1 of 2) made to the B-P zone.

Planning Commission discussion on definition of public playgrounds and public park. Staff explained that the State Liquor & Cannabis Board do not have a definition of play ground or public park. Because Skagit River Park is second largest soccer complex in the United States and has major tournaments with thousands of children at one time it should be considered a playground. **Manville-Ailles** agrees that Skagit River Park meets the definition of playground and should be included in the 1,000 foot setback from I-502 uses. A definition of playground needs to be added to the code. Walnut Pond Park does not meet the definition of playground as it is passive recreation and has no play area for children.

Vater thought the idea was to limit marijuana uses to the C-2 zoning areas west of I-5. **Manville-Ailles** explained that I-502 uses are already allowed in the M-1 zone; the options are: **1)** if we were to remove retail marijuana uses out of M-1 and add it to the C-2M zone west of I-5, then yes, retail marijuana would be allowed on the west side of I-5. **2)** if we reduce the setbacks in M-1 similar to what was just approved for B-P (prior hearing), and then decide not to have a C-2M zone, then marijuana uses would be limited to the east side of I-5 (both M-1 and B-P zone). **3)** If no changes are made to the existing M-1 code and we don't allow retail marijuana uses in C-2M then we would be limiting retail marijuana uses only in the B-P zone. **4)** If we don't make any changes to the M-1 code and allow retail marijuana uses in C-2M retail marijuana would be allowed in both the C-2M and B-P zone.

White commented that if the Planning Commission recommends the same setback changes to the M-1 zone we just recommended for the B-P zone, it will open up a larger area for I-502 uses. There are some areas in M-1 that are within 1000 feet of Skagit River Park and I-502 uses would not be allowed.

Hanson stated production of medical oils and creams are so different from retail marijuana, and have concerns with retail marijuana near residential areas. Hanson does not like the idea of retail marijuana in M-1, would prefer to it in the C-2 zone south of Gages Slough, west of I-5. **Manville-Ailles** noted that Hanson has presented another option to consider which is to uncouple retail and manufacturing marijuana and strip retail out of the M-1 zone and add to C-2M zone.

Motion by **Anderson/Frye** to recommend a zoning code amendment to reduce setbacks in the M-1 Industrial zoning district for I-502 uses to 100 feet from any recreation center facility, child care center, public park, public transit center, library or game arcades that allow minors (under 21), and residential zoned areas and to remove the setback (zero setback) requirement for separation between I-502 uses. The 1,000 foot setback will remain in place for elementary and secondary schools and public playgrounds. Public playgrounds in M-1 Industrial zoning district shall include the Skagit River Park, but not Walnut Pond. Motion carried with **White, Vater** and **Hanson** opposing.

PUBLIC HEARING

PROPOSED CODE AMENDMENT TO ALLOW

RETAIL I-502 USES IN THE C-2 HEAVY COMMERCIAL ZONING DISTRICT

IN AREAS WEST OF INTERSTATE 5

Manville-Ailles state this public hearing will be discussing the C-2 zoning district west of I-5 for to add marijuana retail. If approved, the new zoning designation will be C2-M for clarity as compared to other C-2 zones. The history of this request came about as an individual request to locate retail marijuana in the C-2 zone west of I-5 as they could not find anything in the M-1 zone. The Planning Commission could not look at a specific property as it would be spot zoning which is illegal, and the Planning Commission broadened the area to include the C-2 zoning district west of I-5. This area will have all the same uses allowed in the C-2 zone as well as retail marijuana. This

is a legislative action and no longer an individual request. All property owners in the C-2 zone west of I-5 to Skagit River have been sent public notice of the meeting. Options for Planning Commission to consider are: **1)** if the C-2 area west of I-5 is larger than we want the C2-M zone we can redraw the boundaries to a smaller area, as long as it is reasonable, and not a single property. **2)** mirror the setbacks that were recommended tonight in the M-1 and B-P zones along with retail use. **3)** amend the setbacks from M-1 and BP, or if someone comes up with a different alternative during our discussion. **4)** no action.

Harrison explained his current dual roles as City Administrator and temporary Planning Director, and beginning in February 2016 the new Senior Planner will be on staff. The Planning Commission recommendations move forward to the City Council and his job is to provide advice to City Council on those policy issues and wants the Planning Commission to understand the perspective he has on the C-2 Heavy Commercial and C2-M Heavy Commercial/Retail Marijuana as City Administrator before anyone testifies. As City Administrator I need to be aware of the impact of policy issues on the fiscal health of the city; specifically revenue. Burlington, over the last five years has received the highest amount of sales tax per capita of all 281 cities in the state. But that also makes us most vulnerable for maintaining infrastructure, city services, etc. on sales tax revenue. It's been about 8 years since the City Council has raised property taxes and utility taxes in Burlington as a result of the sales tax generation. The C-2 zoned areas have the most potential of all the city zones to generate additional sales tax; it is where car dealers are located. If you look at all 1100 licensed businesses in the state, the car dealers generate most of the sales tax. Police, fire, parks are dependent upon the sales tax more than any other city in the state. The C-2 zoned areas, developed or undeveloped, generates the bulk of the sales tax revenue, and you displace those potential sales tax revenue generating businesses with businesses that generate no sales tax such as marijuana uses for which there is no sales tax. There is a 37% tax on marijuana, 100% goes to the state and the state has chosen, just this last legislative session, to give a very small portion of that amount to the cities, it is not in state law. **Harrison** wants to make it clear to Planning Commission and audience that he will be making the same presentation with additional research and information to the City Council regarding the vulnerability of the C-2 zone for sales tax generation if we change the law and allow non-sales tax generating businesses the result would be raising taxes and reducing services (police/fire). **Harrison** noted that since the Planning Commission just approved amending the setbacks in the M-1 and B-P zone for marijuana uses it just opened up acres of available space and thousands of square feet of vacant building space. Question to be posed to City Council: How much more do you need for this industry when it threatens the very revenue and livelihood and functionality of your city future?

Hanson asked if there was a maximum limit to the number of retail licensing issued by the state. **Harrison** stated the City received a letter from the State Liquor & Cannabis Board that they removed any limit to the number of operations within the City of Burlington.

Public hearing opened.

David Svaren, 12699 Markwood Road, Burlington – stated Markwood Road runs adjacent to the C-2 zone in the UGA with about 56 residential lots within the 1000 foot setback radius, and urges Planning Commission to keep the 1,000 foot setback from residential if retail marijuana is added to C-2 zone. Mr. Svaren argued that marijuana retail should not be allowed in the C-2 zone as the intent of the C-2 zoning code is for outdoor businesses, outdoor displays and so forth, with a limited amount of retail. The type of zoning consistent with retail marijuana sales are C-1 General Commercial and B-1 Business. The Planning Commission is required to look at various review standards such as Comprehensive Plan and development plans. Retail marijuana is not consistent with the C-2 zoning standards and is not consistent with the comprehensive plan. The Planning Commission amendments approved tonight to reduce setbacks made tonight for M-1 and B-P allows retail marijuana and reducing the setbacks opens up more property in those zones for marijuana uses, there is no reason to add retail marijuana to the C-2 zone.

James Sweeney, 650 W. McCorquedale Road, Burlington – agrees with keeping the 1,000 foot setback from residential areas and sales tax issues. Since more properties have opened up in the M-1 and B zones for marijuana uses there is no need to change and rename the C-2 zone. Leave C-2 as is, no action.

Jason Kitzman, 20654 Prairie Road, Sedro Woolley – clarified they do pay sales tax on their marijuana sales in Anacortes. **Kitzman** stated they pay a 37% cannabis tax and a 9% sales tax; does Anacortes not receive any sales tax? **Harrison** stated the legislature allocates a very small portion, but it is not sales tax revenue. **Kitzman** stated marijuana retail is a commercial business and the state has lifted the limit on the number of marijuana stores allowed. **Kitzman** is in favor of the changes the Planning Commission is recommending to the M-1 zone for setbacks for marijuana uses. He noted that patients need access to medical marijuana stores and that is why the state increased the number of licenses in Skagit County. **Kitzman** stated if the Planning Commission chooses to keep the 1,000 foot setback in the C-2 zone it will eliminate the property he is interested in, but he supports the setbacks in C-2, as other areas in other zones (M-1 and B-P) have opened up.

James Stevens, 4028 Sharpe Road, Anacortes – stated he has done researched and retail marijuana in the C-2 zone will create income not just in sales tax, but from Canadians and travelers along I-5. This is a way to make money for Burlington. We need to be careful where we are limiting patients.

Robert Londo, 600 Fisher Lane – is adamantly opposed to allowing retail marijuana in the C-2 Heavy Commercial area west of Interstate 5. Marijuana uses should be left in the M-1 Industrial and B-P Business Park zones east of I-5 to keep it a consistent community. Businesses should stay where they are; we should not mix the uses. Taking a portion of C-2 and making it just for marijuana sales is spot zoning. **Manville-Ailles** clarified that we are not taking any part of C-2 for just retail marijuana. **Londo** stated you are talking about changing the name of the zone to C-2M Heavy Commercial/Marijuana.

Bart Borusinski, La Conner – stated that Seattle and Bellevue have found solutions to locate marijuana uses in downtown and residential areas. Why are we different? Goldenrod Road is parallel to I-5; the frontage of Goldenrod is approximately 1,300 feet from residential properties and a marijuana retail building would be approximately 2-3,000 square feet. There is not going to be ten stores; may be one, and with setbacks everyone will be happy.

Public hearing closed.

Vater stated that Skagit and Pierce counties have the second highest number of marijuana businesses in the state. Recently State Liquor & Cannabis Control Board increased the amount of stores allowed in Skagit County. The number allowed before was 10-12 now the state is doubling the number of licenses. Accessibility to medical marijuana is not an issue in Skagit County, there is several medical marijuana businesses throughout the county.

White indicated since the Planning Commission recommended lowering the setbacks in M-1 and B-P and retail, producing and growing are allowed in both zones a lot more area is now available for marijuana uses, there is no need to change the C-2 zone. **Anderson** stated there should be no restrictions to zoning for marijuana uses; it could be on Burlington Boulevard, but is in favor of setbacks from residential areas. On other hand we opened a lot of area in M-1 and B-P, and could vote either way on this one. **Frye** and **Straathof** concur with Anderson. **Hanson** agrees with White. **Manville-Ailles** has mixed feelings. The neighbors in this area have concerns; if we approve retail marijuana in the C-2M a residential setback should be larger than the 100 feet, maybe 500 feet. Also need to take into consideration the affect it may have on tax revenues and comments made by Mr. Harrison. The recommendations on code amendments approved tonight opens a considerable amount of space in the B-P and M-1 for marijuana uses; maybe C-2 is not where we want to have retail marijuana, maybe the Boulevard. **Manville-Ailles** would like to send the zoning code amendments on the M-1 and B-P to the City Council and wait and see what happens before we look at another area for these uses.

Manville-Ailles reiterated the options for C-2 zone west of I-5 for retail marijuana: 1) no action 2) mirror the setbacks in the M-1 and B-P (retail only); 3) increase setbacks from residential zones; or 4) make the area smaller in C-2.

Motion by **White/Hanson** to take no action on the zoning code amendment to allow marijuana retail in the C-2 Heavy Commercial zoning district west of Interstate 5. Motion carried with **Straathof** opposing.

DISCUSSION COMPREHENSIVE PLAN & ZONING CODE UPDATE

Harrison stated the city hired a new Senior Planner, Brad Johnson who begins working on February 8. We will come up with a timeline and plan. Updates to the Comprehensive Plan will be coming soon.

Meeting adjourned.