CITY OF BANKS, OREGON
Planning Commission Meeting
March 31, 2015
Banks City Hall, Banks, OR

Chair Gene Stout called the meeting to order at 6:35 PM. The proceedings were recorded in digital format.

ROLL CALL
Present were: Chairperson Gene Stout, Ray Deeth, Lisa McAllister, Rachel Nelson, and Rodney Jacobs. Michael Lyda and Sam Van Dyke were excused.

Attending: Jolynn Becker, City Manager; Dan Kearns, City Attorney;.

APPROVAL OF MINUTES

1. Approval of minutes from the February 24, 2015 meeting
   R. Jacobs moved to approve the Planning Commission minutes of February 24, 2015 as presented. L. McAllister seconded the motion, which passed unanimously.

CITY COUNCIL REPORT

2. Verbal Report. Chair Stout briefly reviewed the agenda items addressed at the March 10, 2015 City Council work session and regular meeting, which included a lot of discussion about smoking and public health.

   Chair Stout wanted to readdress the exchange of information between the Planning Commission and City Council, noting it would be nice if a Councilor give a report on Council meeting to the Commission. He wanted the Planning Commission to have a more comprehensive review of what happened at Council meetings because that information would aid in the Commission's deliberations. City Council meetings do not often include items germane to land use.

   Council and Staff discussed ideas to better facilitate the flow of information between Council and the Commission, including the City Manager presenting the report, which was aligned with that position's role of promoting intergovernmental communication between the different bodies, as well as obtaining copies of City Council's meeting minutes and the City Manager's report. The Planning Commission agreed that City Manager Becker would present the City Council report next month, and that the Council minutes and City Manager's report would be provided to the Commission as soon as they were available. A Planning Commission liaison would still attend City Council meetings to give Council the Planning Commission meeting report.

PUBLIC COMMENT – There was none.

WORK SESSION –

3. Marijuana Ordinance Review:
   City Attorney Kearns stated the marijuana ordinance was sent to the Planning Commission by City Council for consideration, action, and formulation of a recommendation. He understood it came with the direction that Council would like to see some pretty strict regulations that limit the ability to site marijuana outlets in the city. The Planning Commission's job was to consider the ordinance in the land use context, as city councils rarely get much hands-on experience with land use. Business regulations

were another way the City could regulate marijuana outlets because the City has a business license program.

- The Planning Commission's charge was to take policy direction from the Council and then make a recommendation as it saw fit after hearing testimony and discussion, even if the recommendation was a different approach. In developing regulations that seem best for the City of Banks, the Commissioners should keep in mind that the medical and recreational marijuana programs were adopted by the voters.
- He reviewed the anticipated timeline for Measure 91 to be fully implemented, noting laws regarding personal use and possession provisions would take effect July 1st. Based on the licensing process in Washington, he did not believe the Oregon Liquor Control Commission (OLCC) would issue licenses for recreational marijuana outlets until 2016 at the earliest.
    - Measure 91 came with certain buffers and authorizes reasonable time, place, and manner regulations for local governments to adopt. The interpretation in other contexts and other states was that the City could increase the size of the buffer, add to the list of things that are buffered, and tweak the list of uses of zones where retail outlets would or would not be allowed. As long as only reasonable time, place, and manner regulations were imposed.
    - The City has the authority to impose reasonable time, place, manner regulations regarding all things marijuana. There was no need to distinguish recreational from medical in that sense.
- Nothing in the medical program would prevent the Planning Commission from banning dispensaries in its jurisdiction, which some cities have done. Cave Junction did, and now a case was pending at the Court of Appeals challenging that. The trial court judge upheld the City of Cave Junction's ban on medical marijuana outlets.
    - Local governments have a lot of authority in Oregon under Home Rule Charter Authority, and Banks is a Home Rule Charter jurisdiction. Therefore, the City has a lot of authority to affect local affairs and regulations, unless expressly preempted by State law.
- On the recreational side, local jurisdictions could only ban recreational outlets by a vote of the people, basically, so the City was preempted from having the City Council adopt a ban, for example. He understood that the city council of at least one jurisdiction in the state voted to ban recreational outlets within the jurisdiction, and he assumed that had been challenged. It would be an interesting case to watch, but he recommended Banks not do that; he did not really want to be one of the test cases. He believed reasonable time, place, manner regulations were fair game for both medical and recreational marijuana.
- Special taxing provisions expressly stated that only the State could tax recreational marijuana sales, but nothing included about taxation of production or processing.

Discussion continued regarding the Marijuana Ordinance continued with these key comments:

- The production and processing of marijuana had a totally of a different nature and character than a retail outlet. Someone producing it in their facility was somewhat isolated, but a retail outlet, where people are gathering to purchase marijuana, would become part of the character of the town, especially a small town where every little venue contributes in a significant degree to the character of a town.
    - Production and processing was a business activity that probably would not have a lot of impact on how Banks developed from a community interactive, downtown revitalization standpoint. The city has industrial, commercial areas and even agricultural areas for that business activity; whereas a retail outlet would become

the city's anchor.
    - When drafting these ordinances, the Planning Commission would have to consider the differences between the normal business activities related to processing or growing facilities, which people would not be coming to, versus a storefront that would attract people, whoever those people might be. Considering where children tend to hang out was one factor, but even more difficult to define was how it would impact the character of a town.
- City Attorney Kearns agreed it was difficult to figure out or anticipate what these outlets were really going to be like. Washington's recreational program had been live for almost a year now, but recreational outlets had been banned in all the cities except the City of Vancouver, which had about half a dozen recreational marijuana outlets.
    - The Commission needed to think about what was being regulated and whether it should be regulated like a generic commercial use, such as a fast-food restaurant, dry cleaners, tavern, grocery store, etc., which generate customer trips. Did the retail outlet have that normal trip-generation profile? What were the production facilities like; was it light industrial? Was it like a distillery or a brewery, where there are no customer trips? Even the lumber mill had a rail access and heavy truck traffic.
    - One of his cities had been approached by an industrial producer from Canada, and the production facility would have rack upon rack of marijuana growing in a totally contained building, but no one would know it from the outside. It would be like a distillery.
    - When the retail outlets first went live in Vancouver, there was a very limited supply initially, and so the lines were long, and it was a big deal. Since then, the market has moderated; people come and go. It was not that big of a deal anymore.
- Some people had invested a lot of money into the businesses of paraphernalia and/or selling, manufacturing marijuana and were going bankrupt, because there was just not enough volume to support it in Washington right now.
    - City Attorney Kearns explained that when these facilities become legal, they would not be cheap, fly-by-night operations. To be economically viable, the facilities would to have to have a lot of financing. Much like when prohibition ended, the distilleries and breweries coming online were well-financed, even bank-financed, and run by smart business people, who were not about to jeopardize the investments of their investors.
    - Everyone was used to a black market for marijuana, which really has no infrastructure involved, so one could assume it would be different.
    - The federal tax in Washington is very aggressive, such that 30 to 40 percent of the purchase price for marijuana at the outlet is tax. This has skewed the market because medical marijuana is not subject to that tax. Buying marijuana from the medical outlets is much cheaper, and getting medical cards is easy. Recreational producers want the medical program to be regulated much more rigorously or the two programs merged, which he believed was more likely to happen eventually, both in Washington and Oregon.

Chair Stout cited the meeting materials, which stated that Staff sought direction on draft Code language for the ordinance and that City Council's direction to Staff was to severely limit marijuana facilities in the city limits.

City Attorney Kearns addressed comments from the Planning Commission about the requested recommendation, the Commission's role within the City's government and its

authority with regard to making and adopting City Code.

- He clarified that the Planning Commission served at the pleasure of the City Council. If the Commission disagreed with the policy direction given, then it should provide a recommendation to City Council that articulates the Commission's view of the Commission's recommendation for the city.
- He confirmed the Planning Commission could recommend banning medical and recreational facilities as long as the Commission explained its view. City Council could then do what it wanted, because the Council was ultimately answerable to the voters. As the legislative body of this city, the City Council could do what it wanted. The Planning Commission was merely an advisory body.

Chair Stout explained he was trying to understand the Commission's role and whether the Commissioners' personal opinions on marijuana were a consideration. The Commission could use this hammer called zoning to accomplish what the City Council wanted, perhaps to keep the City out of the legal jeopardy. However, if the Commission disagreed with Council's position, would the City Council care or would it make any difference?

- He was looking at this relationship, where the City was going and Banks' government. He was not pro or con on marijuana; he knows people who use marijuana because of health issues, and they're very fine people, but it was the only way they have to eliminate pain. He did not want to pass or recommend some ordinance that kept someone in need of the services from getting medication, and yet, the City approved a distillery right in town.
- He understood people in need would be able to get it in Forest Grove or Hillsboro, but that was not the point.
- He noted a couple City Councilors made some really good comments about regulating what they did not feel at all comfortable doing, and agreed the smoking in the parks discussion was very interesting. From that viewpoint, he was trying to understand how to help.

City Attorney Kearns explained the Commission's function was to do fact-finding, formulate a range of options, and then make a recommendation from among that range of options. Commissioners' personal opinions were immaterial to what the City Planning Commission decided to do. The Planning Commission's recommendation would reflect the majority, although there might even be a minority report.

- Fact-finding was important, because the Commission understood how zoning worked, perhaps better than Council and were more aware of how zoning affects people on the street, the urban landscape, the commercial, social, cultural fabric of the city, etc. Chair Stout touched on a couple of issues that should go into the Commission's fact finding.
- He did not believe anyone on City Council was a medical marijuana card holder. If the City was going to regulate medical marijuana, testimony should be obtained from people who are card carriers, who have worked with and understand how the program works and can share their experiences.
    - The Commission might want to talk to law enforcement as well. Police have told him that they never have a major drug bust without a couple people with medical marijuana cards. There was a lot of abuse in the system and how the cards were handed out, but, there are also a lot of people in the program who really need medical marijuana for medical purposes.
- The Commission should take into consideration that testimony, because like the City Council, the Commission had a very broad constituency. It was not about the Commissioners' personal opinions.

Chair Stout questioned whether the Planning Commission had time to do that fact-finding, because, typically, items presented to the Commission by City Council are wanted in time for the Council to address at its next meeting, so the Commission had tonight to draw all of these and put it all together. He did not want to be a hindrance to what the City was trying to do; at the same time, the Commission wanted to balance doing its job correctly.

R. Nelson recommended taking a quick poll. Perhaps the Commissioners would all agree to do something similar to what was outlined already in the drafts. The issue of Commissioner's personal opinions was a gray area. The Commission was to address land use issues, but that also regarded having a vision for how the land would be used in the city, which overlapped into the Commissioners' personal opinions about the direction Banks should go, including where development would occur, the character and nature of that development, and certainly, the character and nature of businesses that would be encouraged. The environment the Commission wanted to create in Banks overlapped with marijuana, which was divisive and any facility would be a controversial establishment regardless anyone's personal opinions.

- It was not as cut and dried as being land-use technocrats because there was also a measure that was trying to establish a vision for the city that goes beyond the letter of the law.

City Attorney Kearns agreed there was a lot of policy that went into these regulations, and a certain amount of scoping should go into the Commission's inquiry.

Discussion regarding the Marijuana Ordinance and the maps presented by Staff continued with the following key comments:

- Lawsuits were pending in many different cities that have banned marijuana businesses, and in Denver, CO, lawsuits were being filed by businesses that were suing the state, cities, and counties where the cannabis businesses were allowed because the facilities were damaging their businesses.
    - During a revitalization of downtown San Diego, many vice businesses were closed and then required to be in free-standing buildings versus shopping malls, where a number of other businesses could be negatively affected by either the cannabis signage or the crowd. Many people will not go to a shopping mall if pot was being sold there.
- The materials provided by Staff did not discuss having no outside seating, which should be applicable outside any recreational cannabis business, which the Commission could regulate because it did the same with outside seating for restaurants.
    - Although no consumption, either eating or smoking, was allowed on site, there would be a lot of people sitting around just chit-chatting, which would be loitering. However, if seating was available and the business did not complain, it would not be loitering, which was why there should be no outside seating outside a cannabis store.
- A cannabis store in Washington was practically unnoticeable except for the sign, of which every single inch had been maximized. The Cannabis Country Store sign had a white background with "cannabis" in huge font that looked like pot leaves and County Store in very small font.
    - It does change the face of a town, and would change who stopped in Banks because people driving through and whatever that want to buy pot recreationally.

The medical is already in place.
    - L. McAllister stated this was why she originally went on the record stating that the Commission should look into having medical marijuana sold from pharmacies only, or banning the facilities altogether. It was not like people would not be able to go somewhere else within reason to get their marijuana.
- The map titled, “Marijuana Heavy”, illustrated that no locations would be available in town for marijuana facilities. The Marijuana Light map indicated the only locations for marijuana facilities would be along Wilkesboro Road.
    - The Marijuana Light approach would not ban marijuana facilities, but they would be severely limited. Facilities would not be allowed where the City was trying to develop some sort of a main street, or even near the schools or Jim’s.
- Adopting either map would prohibit marijuana facilities from being located anywhere within the city proper, including the downtown area.
- The draft ordinance did not distinguish between recreational and medical facilities.
- The blue area shown on the map south of Highway 6 was the Wilkesboro area, which was already annexed into the city. Uses there would have to be commercial, industrial or mixed use.
- The City annexed the Wilkesboro area to have more commercial, but if a recreational pot facility located there, not many businesses would want to go in nearby.
- Banks was in an interesting spot right now; there was no master plan or vision set the city, the businesses the City wanted to develop here. The City was in a kind of tenable situation. R. Nelson suggested not banning marijuana facilities, but not allowing them until the Commission could revisit it.
    - Chair Stout clarified that was currently the situation.
- Only the State’s recreational law had mandated buffers. The legislature was currently in session, and a couple of bills were pending. One bill would amend the recreational law to allow city councils to ban recreational outlets, not leave it just to the vote of the people. Another bill regarded revenue-sharing because the recreational law had a revenue-sharing provision that changes over time.
- City Attorney Kearns advised the Commission against deciding today whether to ban recreational marijuana or not because not enough information was available yet. The Commission should decide whether to spend a couple of months looking at this, or if some reason existed to address this quickly and get it to City Council.
    - As stated, the legislature was in session, and the OLCC has not even started rule-making for recreational outlets. The City has already received an application for a medical marijuana outlet that stated, "We leave the option of converting to recreational when that becomes legal." People are doing their own mapping exercises realizing that when recreational goes live, there would be few sites available to put them, so they're applying for medical outlets now because that's legal, and then reserving the option. He recommended that if someone applied for a medical dispensary, the City should not allow conversion without it being subject to the regulations at the time they apply.
    - He clarified that Staff came up with the two options. All City Council said was it wanted this to be regulated as strictly as possible, and outlets are regulated so strictly that they really could not be sited anywhere in the city. He confirmed there was no reason the Commission had to have this done tonight.
- Perhaps City Council should just make the ordinance since they had that authority.
    - Chair Stout responded there should be things in place from the Commission's purview so that when the City Council did move on the ordinance, the Commission would not come back later saying, "I wish we had done this."
- L. McAllister stated for the record that she was totally against this and would send it

back to City Council. Obviously, the Council could make its own ordinance.

- State law limited retail outlets to industrial, commercial, or mixed use zones. In the proposed ordinance, retail outlets were only allowed it in two districts: C, for General Commercial, or I for Industrial, which were shown in the red and blue areas on the map. That was where Staff's recommendation was being more restrictive.
- If a retail outlet was allowed, for instance, in a commercial zone, and then the zone was later converted to multiuse, the retail outlet would not be in violation of the zone, but would be grandfathered in.
  - City Attorney Kearns clarified the difference between grandfathered uses and variances, which do not apply to uses. There was a list of what is and is not allowed as far as uses and no one could get a variance to that list.
    - In Washington, questions were raised about how buffers might affect whether a school would be allowed if a licensed facility was already established. His response was marijuana laws were not a set of regulations for schools or parks.
    - Grandfathered rights are kind of a common law notion, but the Commission could specify in its ordinance whether or not anyone would acquire a non-conforming use right if regulations subsequently change. The difference was that if the Commission adopted new regulations, they could be made applicable to existing uses. The question was whether those regulations would bring a legal challenge against the City as an unconstitutional taking of private property for a public purpose. He described how this area of law was pioneered and hotly litigated with regard to billboards.
  - If local governments want to make a prohibition applicable to an existing use, it had to provide some measure of compensation. If the City wanted to extinguish non-conforming use rights of a marijuana shop, the City would have to provide just compensation, which could take a couple of different forms.
  - As currently written, the ordinance stated that these types of facilities could only be placed into industrial or commercial zones, and would not allow any kind of a facility in the multiuse zone, shown in purple, which was surrounded by residential. Multiuse would not count, even though the State said that retail outlets could be in multiuse.
- City Manager Becker noted everything in parentheses could be adjusted. She would find out what the residential buffer distances were for the purple zone on Exhibit 3B, the Marijuana Light map.
  - City Attorney Kearns added the recreational law stated retail facilities could only be sited in commercial, industrial, or mixed use, and the City decided to further limit that.
- Chair Stout suggested taking a poll to see how each Commissioner feels about it, pros, cons, and otherwise.
- Do any pros exist for allowing a marijuana facility within the city? If not, then R. Nelson would definitely concur with City Council's direction to severely limit the facilities in the city.
  - City Attorney Kearns replied there was potential revenue on the recreational side. Initially, local governments get a share of the tax that is distributed per capita. After a few years, local governments only get tax revenue if one or more facilities existed within the jurisdiction. He could not see it making an economic impact in the city.
  - It would be rather short-sighted to think the City would get money from marijuana which was a detriment to surrounding businesses. Banks did not have enough population.

- A recreational marijuana pot manufacturer, distributor, and/or retailer would do test cases in cities where it was worth winning, not in Banks where there were only 1,360 people. The risk versus reward just did not make any sense, which might be why some smaller cities were being bold and not allowing retail outlets.
  - City Attorney Kearns stated Hillsboro was the only big city he knew that had really gone out on the limb and banned it. He discussed how Medford had originally banned marijuana, but was now reconsidering it because they realized that marijuana was going to be pretty pervasive, and the only kind of marijuana sales in Medford would be illegal. They wanted to have regulatory control over it in some measure.
    - One objective of Measure 91's sponsors was to eliminate, as much as possible, black market marijuana sales. In theory, the only black market marijuana sales would be those designed to just avoid the tax.
    - The Commission was specifically regulating retail outlets, and he would consider production and processing separately, because they would have different impacts on the urban landscape.
- One particular manufacturer rents an apartment near the retail establishment, and the apartment runs 24/7 with 20 people in the apartment doing all the trimming and preparing marijuana for the retail establishment. Certainly, the neighbors would not be happy about the 24-hour a day operation. Perhaps when their business gets bigger, they could buy an industrial site or something.
  - Although a violation to the City's current zoning, the City would not know if someone set up over there in the apartments on Jarvis Place with a 24-hour a day pot trimming business.
  - If retail outlets were allowed, then the City better consider that it would probably have a distribution or manufacturing somewhere nearby.
- There was concern about the federal law not being changed regarding Marijuana being a Schedule I controlled substance.
  - City Attorney Kearns responded that with when dealing with the legislature, the League of Oregon Cities, etc., the mantra was local control. Oregon is a home rule charter, local control city. Not implementing the measures approved by voters in Oregon due to fear of federal law ran counter to the idea that local government is about local control.
    - Although the use, possession and production of marijuana is illegal under federal law, the US Attorney officially stated it would not enforce that federal law in jurisdictions operating lawfully under the state program, whether it was a medical or recreational program, and so far, they have stuck to that.
    - The US Attorney would enforce when major grow operations exist in Oregon because recreational grow operations were not currently legal, and medical grow operations were not allowed to be ginormous. The US Attorney has said it will be hands-off and their priorities for enforcement have been established, which he reviewed. State programs must have real regulations associated with them, and that was being regulated rigorously by the State, so the City did not have to worry about it.
  - He described the permitting process used in Washington for grow operations, and concerns about city planners, building officials, or planning commissioners doing jail time. However, this was not a realistic threat; the US Attorney would not be enforcing local governments who administer lawfully adopted State programs.
    - An announcement would be made if a new attorney general decided to change their mind about enforcement of the law. This was not just informal advice, but the official written policy of the US Attorney, which was sent to

law enforcement two years ago.

- Measure 91 did not pass in this jurisdiction. There was only about a 20 vote difference in the approximately 1,200 ballots, so the opinion was about 50/50.
- Chair Stout stated that having sat through the many different City Council meetings leading up to this marijuana discussion, he knows what their feelings were and their directions were, though there were some different City Council members now. He did not have a problem, personally, with choosing the Marijuana Heavy option, because the Commission could always come back and readdress these things later if anything changes.
- Once retail outlets were approved, there were ways, but it was not easy to remove them. Going from stricter regulations to less strict regulations was easier than going from less strict to more strict.
- As a service to Council, the Commission ought to check how the buffer distances correspond to the City's map and highlight available areas, if any, that would exist for retail outlet locations. Each thing that need to be buffered could have a circle around it to indicate the buffer and the Commission could see what was left in the appropriate zone. The Commission could then vote on it and pass its decision along with the map or maps to City Council, enabling them to make an informed opinion.
    - City Manager Becker noted Cornelius had done something similar, putting a circle around different potential locations. City Planner Goldstein did go through that exercise, and she would see if Ms. Goldstein could create something similar.
- R. Deeth said he attended two meetings with the CEOs of the Chamber Executives and learned that Tualatin passed a 3,000-ft buffer. City Attorney Kearns replied Tualatin was aiming toward a ban as 3,000-ft was a very big buffer, which was akin to a ban.
- According to the ordinance, kids are allowed to go into medical marijuana dispensaries if they have a medical card and are accompanied by an adult. Medical marijuana does not have an age limit.
- The next stage of the legalization of marijuana was to make insurance companies pay for it, but that was a whole discussion for another day. Approximately half the states in the country have a medical program.
    - City Attorney Kearns believed the solution for the medical program was for the federal government to re-categorize marijuana as a Schedule II drug, so it could be dispensed at pharmacies, which would provide a secure way of distributing the drug, and insurance should pay for that if it was covered. Schedule II drugs are potentially dangerous, but have known medical benefits. Half the states in the United States have medical programs. Even under the State medical law, there has to be analysis to ensure marijuana is not contaminated, so it was a safe product under the medical program.
- PTH levels were not currently being limited. The marijuana out there today was extremely more potent than what used to be around.
- Was the private horse stable on Wilkesboro Road that operated the non-profit B.E.A.T. Program for the disadvantaged identified on the maps? Handicapped kids ride horses through the B.E.A.T. Program.
    - Properties north of Wilkesboro Road were currently all zoned industrial, although right now there are residential homes on the properties, as well as the stable that acts as a nonprofit for the kids. If Properties 1 through 4 were sold and developed as industrial, the stable would still remain outside the city limits and within the UGB area.
    - Perhaps, Chapter 151.085(B)13 in the ordinance draft would answer that question.

    - The stable property would eventually be zoned as industrial, but, right now, it was future development, future urban growth. The property would not be zoned until it was annexed into the city but would still retain the conditional use until it was developed as industrial. The actual market value would be based on the industrial rating, but tax payers would not see an increase in their taxes until any type of work was done to bring it in as an industrial piece. A house was associated with the stables, which would be a residential use, so there would still be a 100- ft residential buffer.
- One thing to consider was whether the buffer should be from a residential zoned property or a residential home. The school buffers would not really apply to the recreational program, but local governments do have the authority to adopt reasonable time, place, and manner regulations, so the Commission could flesh that out in its regulations.
    - The buffers were specifically spelled out on the medical side and City Attorney Kearns believed the City could augment that further by increasing the buffers or increasing the things that are buffered. [The list provided by the State law was not exclusive. The language included, "must not be located within 1,000 feet of real property comprising public or private elementary, secondary, or career school attended primarily by minors." So the big question regarded daycares, not a horse farm so much, because day cares are everywhere. He never believed that daycares fit in with this definition, but the Commission could put it in there to make it a more restricted, a reasonable time, place, and manner regulation.
    - The Commission also might consider not having retail outlets anywhere near bus stops because some bus stops would be dropping off and picking up children within that buffer zone.
- The City designated the property along Wilkesboro Road because the city had limited areas for business growth. With marijuana becoming legal in July, the first business there could be a medical or recreational marijuana facility, which might turn off a lot of people in putting businesses there.
    - City Attorney Kearns clarified the personal use and possession provisions become live in July. No recreational licenses would be issued by the State until 2016. City Manager Becker added before anything could happen, they would have to submit an application request to be annexed in
- If the first four properties were annexed into the city and the rest remained in the UGB expansion area zone, the buffer, which was measured from residentially zoned properties as currently written, would stop marijuana retail outlets right here. These properties were zoned future UGB area and were currently under County zoning. The City had a Comprehensive Plan designation for it, but did not have any jurisdiction until properties were annexed in by voter approval. Right now, the City had no regulation in the area along Wilkesboro Road. The County had jurisdiction, but would come to the City to see if a proposed use fit within the City's criteria, and the City would say, "Not at this point."
    - According to Chapter 151.085(B)13, if the marijuana facility was already there, the City could not retroact it.
- The industrial designation on the maps was for the future zoning of the various properties within the UGB area as established by City Council and the Planning Commission.
    - City Attorney Kearns clarified today's zoning, which was County zoning, would dictate whether something could be sited there today. If it was a residential zone, whether a County or City residential zone, the buffer in this proposal required retail outlets to be certain distance from residentially zoned property. The zoning

would determine whether the buffer precluded the retail outlet from being there.

- The stable was indirectly a school that taught the handicapped how to ride and handle horses. The B.E.A.T. program provided mental exercise for the handicapped.
  - City Attorney Kearns said it depended on how the Commission defined school, which it would have to be clear about.
- If somebody in that UGB expansion area, which is under the County's jurisdiction, wanted to open up some sort of marijuana facility right now, did the County have an application process for such things? Would the County's marijuana regulations apply?
  - City Attorney Kearns explained it depended on what was stated in the UGB agreement, which would govern these dual-interest areas. Usually, there was a provision that the County would not rezone the land unless it coordinated with the City. In fact, the counties never rezone these lands due to their diminishing interest in them because the land was eventually going to be incorporated.
  - Under the medical program, marijuana facilities could be sited on ag land, potentially. Counties have ag lands; cities do not.
  - In reality, there was nothing that could be done with this land, other than farm it if it was not brought within the city.
- Future industrial had to be annexed by a vote of the people. With the close vote on Measure 91, it would be extremely difficult to get that annexed because it was connected to this controversial marijuana issue.
  - City Attorney Kearns agreed if that were publically part of their plan, and it became part of the annexation ramp up with the election; then, the voters of Banks would get to decide whether they wanted a marijuana shop there.
- The City's business growth would be hindered if voters opposed annexation only because a pot shop was proposed there. However, if voters vote it in, it might not hinder business.
  - Banks did not have much of a business community right now, and the city was trying to grow its business community. The City did not want the anchor retail establishment to be a marijuana shop, and then have everything else prop up around that.
- Perhaps another condition could be added or the language rewritten so that no marijuana facilities could be on UGB lands annexed into the city.
  - City Attorney Kearns believed the Commission was jumping the gun by assuming that annexation of the land south of Wilkesboro Road was code for pot shop. Under the City's Euclidean zoning, there could not be special rules for land that came in afterwards. Industrial is industrial, and the regulations that apply to it, apply to it.
  - Chair Stout noted eliminating Chapter 151.085(B)13 might resolve the issue.
  - City Manager Becker reiterated she would have City Planner Goldstein create a map to show where the different buffers would be and why the first map would not allow for any type of marijuana shops in the UGB area because of Standards 1 through 8.
    - City Staff would also create a map that showed where the retail outlets would be allowed based on Plan A and Plan B, similar to that used in Cornelius. as City Planner Goldstein had already done that mapping exercise.
- Rewriting (B)13 was suggested so that marijuana shops would not be allowed on land in the UGB expansion area that got annexed in. Essentially, the City was saying, "build at your own risk." Anything in the City's UGB that would become annexed would fall under these rules, and nothing would be grandfathered in.

    - (B)13 almost needed to be removed so retail outlets were not protected given the buffers and the City's shortage of buildable land for industrial, manufacturing and commercial uses.
- City Attorney Kearns believed the Commissioners were misreading Chapter 151.085(B)13, which set up marijuana outlets as non-conforming uses. For example, if a marijuana shop legally sited within the city and then, subsequently, someone changed the zone of an adjacent parcel to residential, making the shop within the 1,000-ft buffer, (B)13 stated that the shop did not have to go away.
    - With regard to annexation lands, marijuana shops could not be sited yet. First, the land is not currently industrial, even though this map says it is. The zoning designation is usually applied during the annexation process, though sometimes it must go through a subsequent zoning process. In any event, noting could be sited and vested prior to the land being annexed.
        - Washington County was not in a position to give land use approval to a marijuana shop on that strip of land. It was not urban land, but farm land with something like a 20-acre minimum lot size on it. It likely had a holding zone which basically prevented any development from going on to those properties until they came within the city limit and be urbanized. And then, it would fall under the City's ordinances. No one would be jumping the gun to sneak in a marijuana shop on the outskirts of Banks as an ag use.
- The City had received an application for a medical marijuana dispensary at the corner of Depot St and Main St, which was within the State mandated 1,000-ft school buffer.
- Concern was expressed about the impacts on the City's image and economy of having a medical marijuana dispensary located near City Hall. The issue related to having a sense of decorum, appropriateness, and what blended well within an area.
- Federal case law addresses the location of uses like liquor stores, methadone, and marijuana, etc. next to city government buildings in that local governments could adopt such regulations if a legitimate governmental interest was involved. The City must be clear about the legitimate governmental interest in the regulation proposed.
    - For example, banning smoking in public parks was legitimized by the City's interest in protecting the health and safety of its citizens. Parks were public land established for a particular use, including recreation, children's sports, etc.
    - Additionally, the law is very clear about children and alcohol, cigarette, and marijuana because laws already require an age limit for use. No age limit exists for the use of medical marijuana, but children must be accompanied by an adult at the dispensary.
- The City was allowed to have reasonable time, place, and manner regulations.
- The market would also dictate siting decisions of medical marijuana dispensaries.
- Staff confirmed the 500-ft buffer was arbitrary.
    - Understanding the reasons for the buffer distances was important.
- Language on Page 2 of the ordinance was inconsistent regarding whether the right-of-way was included.
- Banks has a liquor store within 1,000 ft of a school, so restricting the location of marijuana dispensaries was a double standard.
    - This was a concern of one of the Councilors as well. Because medical marijuana was a new type of product that has not been dealt with and was sometimes not sociably accepted, Council was considering different situations where marijuana could be put into the city.
    - Now the City was being the moral police.
- Considering the secondary effects of these medical marijuana facilities was certainly

difficult to anticipate, but would be useful in the context of adult uses as well. These effects could be observed in downtown Portland and in Washington. Unlike alcohol consumed at bars and its related secondary affects, neither medicinal nor recreational marijuana would be consumed on site.

- Another consideration was whether to have special sign regulations for medical marijuana dispensaries.
  - Medical marijuana dispensaries have the green cross and not much else by way of advertising since not much is needed. Recreational outlets would have more marketing.
- Medical marijuana dispensaries are required to have a number of security measures. These facilities will be well-financed, sophisticated, professional operations.
- While banks providing services to a dispensary was no longer against federal law, banks have not responded yet.
- Consumption of marijuana in public is prohibited under either the medical or recreational law.
- Local police do not cite for possession of marijuana in minor amounts. People are cited only if there is a law enforcement reason to take them in or if a minor is in possession, which is a high enforcement priority.
  - Police do not typically respond if someone reports about a neighbor smoking pot if a person in the house has a medical marijuana card. While it is still illegal to use/possess marijuana, having a medical marijuana card, or qualifying for one, is an affirmative defense. This makes it easier for those with a medical need for marijuana to actual get it and use it.
- Some jurisdictions regulate odors of marijuana facilities. There is litigation in Denver pertaining to nearby businesses complaining about the pungent smell turning off their customers.

City Manager Becker said Staff would return to next month's meeting with a zoning map showing the buffers for both scenarios, Plan A and B, and then the Planning Commission could make further recommendations.

4. Adult Businesses Ordinance Review

City Attorney Kearns explained that the same buffer and zoning regulations used for marijuana could be applied here, but the City had to be careful not to regulate expressive conduct. He discussed some examples illustrating the importance of sign code enforcement. Some adult businesses have been forced out of small towns, not because of local government regulations, but the involvement of opposing citizens. Businesses want to locate where regulations are easiest and where they are able to draw enough customers to make the business viable. With the town's small size and struggling economy, the right regulations could make Banks one of the last choices for marijuana or adult stores.

Key comments and discussion topics regarding the Adult Businesses Ordinance was as follows: Reasonable time, place and manner regulations were fair game for adult businesses. One challenge with adult uses was the things jurisdictions were trying to regulate have particularly strong constitutional protection. Under Oregon Constitution, commercial speech is afforded the same protection as political speech. Any regulation of expressive conduct would receive strict scrutiny from the courts.

- Prohibiting advertising would run afoul of expressive conduct protections, but regulating the time, place and manner of advertising was acceptable
- Establishments would not be cheaply financed bars and strip clubs. The amount of drugs and money on site, make these businesses prime targets for crime, so high

security measures were expected.

- Most local governments expect adult establishments to be a huge drain on law enforcement resources in the community; however, no data exists to support that prediction.
- Chapter 151.085.A.(B).3 should be omitted.
  - Adult businesses should not be distributed throughout the community, but clustered in one area, which is generally done by local governments.
  - If the same marijuana buffer and zoning map applied to adult businesses, no location would be available within the city, so the other items would be moot.
- The 25 percent threshold would still enable convenience and grocery stores to be in the city, while being exempt from the buffer and zoning limitations. [?]
- Changing the fifth line of the first paragraph to state, "paraphernalia shops, as defined ~~below~~ ***in BMC 151.003***", was suggested for clarity."
  - Nothing was included about massage parlors, but that was dependent on the Code definition.
- Defining what the City was and was not regulating is an important first step in any regulation.
- The distance limitations between adult businesses and licensed daycare and permanent religious institutions needed to be included in the development standards listed under Chapter 151.085.A.(B).
  - The phrase, "not including right-of-way" was unclear. The ordinance should be more specific about how measurements are to occur and provide finite measuring points.
- Getting the Chamber of Commerce's input about the City regulating adult businesses would be interesting.
  - Vice businesses are allowed in Chambers of Commerce, which cannot discriminate against who joins their membership. Chambers in bigger cities are challenged with vice businesses networking to build their businesses.
- Once a city allows a vice business into their city, surrounding cities often decide to prohibit adult businesses, making the first city the hub for all vice businesses in the area.
  - As an example, the marijuana discussion might have been different if Hillsboro had allowed medical marijuana dispensaries, which would have taken the pressure off small cities in Washington County.
  - Forest Grove and Cornelius were passing marijuana ordinances that include a lot of buffers.
- City Attorney Kearns believed marijuana facilities would site near law enforcement as a protection measure.

City Manager Becker agreed to bring the adult businesses' definition to the next meeting, as well as a map showing the buffers, including corresponding buffer distances for licensed daycare and permanent religious institutions. More specific language would also be provided with regard to how buffer measurements are to occur.

5. Food Carts in the City of Banks

City Manager Becker explained that an individual was considering buying the old real estate office property at Depot St and Main St. The building would be used for wellness classes and hand acupuncture and during the day a food cart would sell products with a seating area in the courtyard. The individual currently has a food cart that has been really successful in Portland.

- Another individual wanted to bring a mobile food truck, similar to a taco truck, and

sell food at the Banks-Vernonia Trailhead in the parking lot across the street for a couple hours and then leave. However, the City does not currently have the ordinances or zoning codes to accommodate that use.

Discussion regarding food carts in Banks including the following key comments:

- Concern was expressed about food carts pulling up and competing with businesses that had gone through all the permitting and building hoops to get a legitimate business going.
  - There were a lot of factors to consider, such as no public restrooms exist in Banks, except those at the trailhead. Portland has a lot of public restrooms in odd areas. Banks Lumber Mill has a lot of workers, and the City has been dealing with that restroom situation.
  - More was involved with food carts in the city than adult business and the marijuana law and food carts would have a greater impact on the city as a whole.
- Most cities have regulations on food carts, which are very convenient; some were very cute and could bring in a lot of money.
- How do local businesses feel about food carts, especially those who just bought the restaurant and rely on traffic from the trail to get their business going?
- Ice cream trucks should not be in the City of Banks because the City did not have codes to allow them.
- The mayor is chairing business development, and as far as the growth and development of the city, mobile vehicles would siphon business from local businesses that have bought business licenses and spent money in the city and were trying to make a go of it in Banks.
- Mobile businesses would have a business license, could join the Chamber and could buy products for their carts from Jim's, for example. Food carts might help other businesses.
  - Would the ordinance state that food cart owners have to purchase locally?
- Food carts are best if kept in one section of town, like the pods seen in Portland. Because they compete with each other, the food carts are kept looking nicer and more attractive. Food carts spread throughout a community could tend to look a bit run down.
- Food carts are great. They lower the barrier of entry for those with food service type businesses. If successful, many go on to open actual restaurants. This was great in places like Portland, which has a high barrier of entry into the restaurant business. Food carts are more attractive economically as a means to enter the food and hospitality business.
  - The issue in Banks was the City wants to encourage businesses to make a commitment and set up shop. Currently, Banks has no anchor businesses to create a character for people to walk along and to attract other businesses. This is only achieved when businesses are established next to each other, rather than random, transient businesses like food carts.
  - Aesthetics was also a factor. Banks already had an issue with businesses scattered all over the place already.
- Pictures were displayed showing a cute food cart selling pretzels and a walk up kiosk. Such attractive structures, rather than taco truck type food carts, could be located in Greenville Park or near the trail to draw people, build character, and create economic activity as well as a community gathering place if tables and chairs were set out, which would not be a huge investment for a business.
- The Commission had to be very purposeful in figuring out incentives for helping businesses thrive in Banks to help build up the community; it was uncertain that food

carts were the way to go.

- Having food carts that stay open from 6 pm to 12 am would be supported because there was nowhere to get anything to eat after 6 pm in Banks other than the bar.
  - Perhaps local restaurants would stay open later if competing with food carts. Competition was a good thing.
- While very supportive of business and food carts if done well, without a master plan and vision for the city, then allowing food carts now would just open up a can of worms.
- Banks could not even support one business, so there would not be a food cart pod, but random people wanting to do random things, and likely looking very random, not cute or trying to meet a certain vision for Banks.
- Until Banks has a master plan to define the desired character of business development, downtown revitalization, etc., food carts would create more complexity and potentially be an eyesore.
- Being pro-business was about helping businesses grow and work within the theme of a city, but the City could not guarantee results or that every business that opened in Banks would thrive. If a food cart gets run down and ugly, no one would eat there and it would go out of businesses. That is capitalism.
- That was not true. Sprawl is everywhere and businesses that do not enhance the character of their town still stay afloat. Banks was trying to determine its character, where business development should be concentrated, what the look and feel of Banks should be, etc.
  - Tabling any ordinance to allow a certain type of mobile business would be good until a master plan was created that would include food carts as a component.
- Developing a master plan could take years. The City would not want to turn businesses away for 5 to 10 years while the City decides whether to allow food carts.
- The City could regulate signage, require that the food cart be maintained and be healthy for citizens, etc. The Commission's job to make an ordinance to make the city look good and serve a business idea. Rules and regulations would be created for making the food carts blend in well and prevent them from being an eyesore.
  - The ordinance could include regulations that define the character of the food cart, such as the food cart must reflect the product being sold, (i.e. a pretzel image on a pretzel cart), that the food cart be well maintained, etc.
  - The rest was up to the business owner to make it palatable to the community and the community to support the food cart. If successful, they fit in the city, make money, create competition and all would be well.
- Perhaps the Commission could work on a temporary ordinance for food carts with strict some strict regulations.
  - The pictures were helpful; the food carts need to look nice.
- Concern was expressed that food carts would result in existing restaurants closing. Sunset Park sells food, which was one way the park stayed in business.
  - The Commission had to be careful about too much protectionism; at the same time, businesses are protected now in other ways.
- While pro-business and not opposed to food carts, even in the best circumstances, food carts would just not fit in this small town.
  - No ordinances exist for trash, trash removal, sewage, etc. The health department only inspects once a year. Currently, the City did not have a good Code enforcement system; it was only driven by complaint. Without code, food cart owners could come in and do whatever they wanted.
- Food carts in Portland were moving to the outer areas. Perhaps the individual interested in having the food cart in Banks was expanding and bringing an additional

food cart here.
    - City Manager Becker noted the individual was planning to purchase property and establish a business in Banks as well.
- One concern with food carts was the hodgepodge of electrical cords, water hoses, etc. for which the City would have to set regulations, such as a commercial grade electric and a connector, a holding tank the grey water, etc.
    - No dump stations exist in Banks.
    - In Portland, food carts obtain a license from that city and partner with nearby businesses to use electricity and plumbing services and that agreement is on file at the city. A similar system might need to be allowed in Banks.
    - City Attorney Kearns clarified the Planning Commission's role regarded land use. Regulations related to electricity, sewer, propane bottles, etc. would be addressed by other State adopted Codes administered through the County.
- The Commission could look at what other cities' ordinances regarding food carts.
- Some have truck style food carts limited to one area and others, like those in the pictures, could be allowed in another area. The City would not want food carts obstructing sidewalks.
    - Item 2 on Page 2 of the memorandum included Portland's regulations for food trucks which seemed reasonable. Food truck travelling on public streets to commercial businesses could be good for the city, visiting construction sites, the lumber mill and the trailhead. These trucks would not cruise residential streets like an ice cream truck.
    - Some ordinances state that if food trucks were parked for extended periods of time, they must be in a designated area, perhaps during a certain time period. The food trucks would be grouped together, but would otherwise drive around to other sites. This might be a consideration rather than not having food carts at all.
    - If someone wanted to put a food cart on private property that fit all the other building codes of the city, who was the Commission to say no?
    - City Attorney Kearns suggested asking the individual interested in having the food cart at Depot St and Main St to come in and explain how the food cart worked and discuss his issues.
        - Unlike the marijuana ordinance, the Commission was looking to adopt a set of regulations to promote businesses in a regulatory environment that would allow food carts them to come in, but the Commission was not sure exactly how to define food carts at this point.
- City Manager Becker understood the prospective owner planned to do some interior and exterior remodeling. She did not know if he proposed putting a commercial kitchen inside the building.
    - Most mobile food carts have a commercial kitchen somewhere that did all the main prep work for the cart itself.
    - Would having a food cart on the courtyard be considered a food cart or a restaurant?
        - A restaurant typically included a seating area.
    - Excessive foot traffic on the sidewalk could result if the food cart was successful, which would be a good thing.
    - City Manager Becker said the prospective owner explained that the food cart would be backed up to the building with a couple tables out front for people to sit once they got their food.
        - Chair Stout stated that as long as it was on the Applicant's property, he had no issue with that.
        - The City just needed something in the Code to allow it.

    - R. Deeth commented after reading the memo, he was considering resurrecting his ice cream cart.
    - City Attorney Kearns encouraged the Commissioners to do their homework and see how food trucks, food carts and pods function in other cities. In Portland, some sidewalks were packed with people at lunch time.
        - He clarified that Portland did not have a food cart ordinance because that city did not really regulate them from a land use perspective. As long as the wheels remained on the food cart, no land use approval was required.
        - They did not necessarily need to have license plates, but the food carts must be capable of traveling on the road. Food service and handlers' licenses were regulated by the State and County.
    - Nuisance and/or secondary effects resulting as a function of a food cart should be regulated in some way. For example, the smoke the poured out over west bound traffic on Baseline Rd from the barbeque pit in Cornelius.
- It was important that this food cart not look tacky because it could set a precedent for potential food carts in the future.
- The Commission and Staff discussed the difficulty in trying to regulate tacky and the appropriate size of the food cart proposed for the courtyard. Economically, making food carts successful was not easy, and whether it was possible in Banks remained to be seen.
- The subject property was zoned commercial with residential directly adjacent.
- The Commission could regulate signage, lighting, setback, etc. with regard to the food cart.
- The customer base for food carts was generally office workers, so a high density residential area would be required to support a food cart or pod.
- It helped if people did not drive to the carts which could create traffic and parking issues.

City Manager Becker stated she would ask the prospective buyer to explain his operations at the next Planning Commission meeting, as well as why he was considering a food cart rather than an interior restaurant/food service. She would also request details about the foot cart he proposed to put on the courtyard along with pictures of his existing food cart, which could also be seen on his website.

- She would return with draft language to amend the zoning and land use codes to allow food carts within the city.

<u>ADOPTION OF FINDINGS OF FACT</u> – (None)

<u>BUILDING PERMIT REVIEWS</u> – INFORMATION ONLY

City Manager Becker updated the Commission on the status of Banks Lumber Mill's conditions, stating that the plants and arborvitae had been planted and the meter to monitor the water flow was installed this week.

- She reviewed the nuisance complaints received by the City, noting complaints were received about a property in foreclosure on Sunset Street, but it seemed that the bank had addressed the issues.
    - The City was currently addressing complaints about a lean-to built on Wilkes Street that was not configured with the setbacks; garbage in yards on Depot St; a person storing equipment in front of their house on Ashton Dr in Arbor Village, as well as the truck being over the sidewalk, blocking pedestrian/bicycle access.
- Nuisance complaints were to be submitted to her via email or the City's website through the "Contact Us" link and must include a picture of the violation in question.

Chair Stout noted West Hills had a lot that was not being mowed.

VERBAL STAFF REPORTS AND UPDATES– (None)

OTHER BUSINESS

6. Review Banks Bicycle Pedestrian Plan Website
   City Manager Becker noted the City's website provided a link to a website so the community could see where the status of City's Bicycle Pedestrian Plan and provided the latest news, meeting materials, documents being considered, and public outreach opportunities.
   - An interactive map of the city was also provided which identified specific areas with issues. Individuals could add their own comments about areas, including places that had not yet been addressed.
     - For example, Commerce Street had sight distance issues.
   - She encouraged the Commission to make any comments with regard to the Bicycle Pedestrian Plan.

ADJOURN: The Planning Commission meeting adjourned at approximately 9:30 pm.

Submitted by: _____.
Jolynn Becker, City Manager