

**WHITMAN COUNTY
PLANNING COMMISSION
Public Service Building Auditorium
Meeting
November 5, 2025
7:00 p.m.**

MEMBERS:

Dave Gibney- Chairman
Weston Kane
Bill Myers
Dean Kinzer

Brian Davies- Vice Chairman
Chris Melhus
David McKeirnan
Julian Matthews (Zoom)

Staff: Alan Thomson, WC Planning Director; Grace Di Biase, WC Assistant Planner; Mark Storey, WC Public Works Director; Brandon Johnson, Public Works; David Werner, Clerk.

Zoom: Sherry; Tom Handy; Shelly Chambers-Fox; Tony S; Carol Black; Ashley H; Jamie Anderson; N Fraiser; Shane Roche (Steelhead); Rick; Denis Tracy; Eli Bailey; JL; Tresa; Ben.

Audience: A complete list of those in attendance is available in the Planning Office.

7:01 p.m.- Dave Gibney opened the meeting.

Pledge of Allegiance

Introduction are held.

Dave Gibney- Are there any comments or whatever on the minutes from October 15th, which is the meeting before last. Or is it.

Alan Thomson- Yeah, we had one on the 29th.

Dave Gibney- Okay, any comment?

Motion by Brian Davies and Seconded by Weston Kane to approve the minutes from October 15, 2025. **Motion passed.**

Dave Gibney- Reports Alan

Reports:

- a. Board of Adjustment forthcoming hearing- None
- b. Forthcoming Administrative use Permits- None
- c. Update on previous conditional use permits and variances- We have an update on pervious conditional use permits and variances. A variance was granted to John R.

Howell to construct a residence within a viewshed. That was approved on October 30th.

- d. Update on previous administrative use permits- None
- e. Board of County Commissioners' action- None
- f. Update on previous Board of County Commissioners' action- None
- g. Forthcoming Shoreline of the State Substantial Development permits- None
- h. Update on previous Shoreline of the State Shoreline Substantial Development Permits- None
- i. Planning Commission forthcoming hearings- None.

Unfinished business: Continue conversation about creating a solar energy ordinance, a battery storage ordinance, and reviewing the County wind ordinance. Also Prosecuting Attorney Tracy will address the Planning Commission

New business: None

7:04 p.m.- Meeting adjourned

**WHITMAN COUNTY
PLANNING COMMISSION
Public Service Building Auditorium
Workshop
November 5, 2025
7:00 p.m.**

MEMBERS:

Dave Gibney- Chairman
Weston Kane
Bill Myers
Dean Kinzer

Julina Matthews
Chris Melhus
David McKeirnan
Julian Matthews (Zoom)

Staff: Alan Thomson, WC Planning Director; Grace Di Biase, WC Assistant Planner; Mark Storey, WC Public Works Director; Brandon Johnson, Public Works; David Werner, Clerk.

Zoom: Sherry, Tom Handy, Shelly Chambers-Fox, Tony S, Carol Black, Ashley H, Jamie Anderson, N Frasier, Shane Roche (Steelhead) Rick, Denis Tracy, Eli Bailey, JL, Tresa, Ben

Audience: A complete list of those in attendance is available in the Planning Office.

7:04 p.m.- Dave Gibney opened the **WORKSHOP**.

7:04 P.M. – So, we’re going to start out in our... with the workshop mode and some discussion up here and when we get to it, we will be a more formal amending of our code section. If there’s time at the end of the meeting, we’ll have a short public comment period.

So, as I said last time, and we’ve all seen it, we have some direction from the Board of County Commissioners. I don’t know what that is let it be quiet. Which is to prioritize the original reason that the code was opened for decommissioning and to possibly rework setbacks and protection of the landmarks. Last week after our... I guess it was just right after the last meeting. Anyway, I tried to look at a timeline to get that accomplished by the end of the expiration on January 6th, as they asked and Prosecuting Attorney Tracy and Alan found out that I was too generous and didn’t give enough time for the... the procedural SEPA review and so Denis has given us some additional guidance which he sent out this morning. Do you have anything more you want to tell us, Denis?

Denis Tracy- Well first I’ll say sorry, that it... that this proposed schedule went out to y’all today, and not yesterday, but yeah the Commissioners have indicated, as I understand it, they’ve indicated that they would like to have the work product on those topics that you just mentioned. The decommissioning, the setbacks, and the landmarks. They would like to have your work product to them, if you’re going to be recommending any changes or if you’re going to recommend no changes, whatever it may be, in time to take some kind of

action before the moratorium ends on January 6th. If you're going to do that, then it seems... and if you're going to, excuse me, if you're going to stick with just Wednesday meetings, seems to me you'll have to act extraordinarily quickly, at least as compared to how things have gone up till now. Up till now you've had an extraordinary amount of public input. The public still gets to have input when you hold your public hearing but anyway hopefully everyone has had a chance to see the email that I sent out with the schedule that would enable the work product to get the Board of County Commissioners in the timeframe they requested. But that would mean you would have to finish your consideration, your votes by either next Wednesday the 12th, which you may not have as a scheduled meeting yet anyway or by November 19th at the very latest. If you do it after that again, if you stick to Wednesdays, and if you do it after that, then you won't be complying with the request from the Board of Commissioners.

Dave Gibney- Can I ask one question of you and Alan that's occurred to me since I've seen this, I saw this. Does the work product that has to go through SEPA review include the findings of fact that we will be using at the public hearing or can we work on those at the meet... the regularly scheduled meeting of December the 3rd?

Denis Tracy- I have what I think is the answer. Shall I go first, Alan, or are you?

Alan Thomson- You can go ahead. If you are stuck I'll help you out.

Denis Tracy- If I mess it up, you let me know. I... my answer is no, you don't have to have the findings, that's the Planning Commission's reasoning behind all this, and... and...

Dave Gibney- So we have to have our draft code.

Alan Thomson- Yes.

Denis Tracy- But yeah.

Dave Gibney- Thank you, go ahead.

Denis Tracy- No that was it.

Dave Gibney- Do you have anything else, or did I interrupt you right before you were about to stop anyway?

Denis Tracy- No that... yep, that's.

Dave Gibney- Okay, okay, so just to reiterate that.

Denis Tracy- I'm sorry for interrupting, because I just thought of one other thing.

Dave Gibney- Go ahead.

Denis Tracy- If you can, you can only do what you can do but If you can wrap up your... your discussion and your votes regarding decommissioning tonight that would be helpful as well as far as getting the advice, the expert advice on the bonding and finance issues that may be included in this new decommissioning plan.

Dave Gibney- Well, I hope that that's a possibility, and that's... when we do our amendment talk later tonight, that's where we're going to focus, so. But first to hold a public hearing as Denis said on December 17th, which would be a special meeting, but a Wednesday in... it's the second Wednesday in December. The SEPA process requires us to have our draft code ready at the end of what would be our November 19th meeting, which would be our special meeting on the 2nd Thursday or second Wednesday of this month i.e. our next meeting. And it really does say that we really want to get the draft of the, at least the decommissioning ready tonight, so that we can spend the next meeting working on the landmark code.

Denis has suggested that we add yet another November 12th meeting. And frankly, I'm... I do have other plans that night. You know, we've been really busy. That will be like 4 or, what 5 meetings in a row? So, let's just... how do... how do we the Commission feel about trying to deliver something to the Board of County Commissioners. The other... the other thing that I've noticed in Denis's, at the very last is the suggestion that we may deliver more than one proposed amendment by the topic rather than a total package, which really just... we can hold the same here... we can hold the... do the same hearing. It's more of what are we asking the Commissioners to ask on... act on when we get there and maybe giving them some flexibility to... on what they actually adopt. What I understand is that if they accept our... any... our recommendation in whole, with no changes they can do that., you know, Monday before the moratorium expires on Tuesday. If they were to want to make any changes then they have to hold a... give notice and hold a public hearing on their own. And so we were... we would be pushing them past the moratorium if we... unless we do separate things such that they have pieces that they might be able to adopt and work on the others, so, Weston.

Weston Kane- I really don't have any comments at this time.

Dave Gibney- Brian, it's really... this is where we get to... we're going to decide are we going to try and do this accelerated pathway or are we going to say to the Commissioners, I'm sorry we just can't do that. Their moratorium's going to expire, and then, frankly, I'm going to suggest that we are no longer in any rush at all.

Brian Davies- More I... I guess I... from what I'm hearing is we could... if we could finish decommissioning tonight and then on the 19th, in two weeks finish landmarks and setbacks we could.

Dave Gibney- We're done with setbacks.

Brian Davies- We're done, well we could be ready to deliver a product for that December hearing, correct?

Dave Gibney- Correct, and we could work on findings in our first December, we don't... so.

Brian Davies- Well if we all agree that we should keep plowing ahead, let's try and get through decommissioning.

Dave Gibney- Okay.

Dave McKiernan- I would have to agree, and I'm not opposed to adding another day prior to going into the holidays, which would be next Wednesday, the 12th to try to do our due diligence. We've spent a lot of time listening to public testimony for and against, and I think it's time for us to get to work and I think it would be unfair to the citizens, everybody. We've given them their time we need to really focus on this, and... and take the fact that the Commissioners have extended the moratorium to give us this time that I would like to show that we're successful, and we've at least made progress on a majority of the topics. Now if they choose to extend it, and we want to get more in-depth, then that'd be great, but at least we have some fine-tuned decisions made on certain issues that I've heard over the last few months that are important to the people.

Dean Kinzer- I'm ready to go. Let's get her done. I'm also in favor of having two proposals, probably, for the decommissioning, because I've got one suggested proposal, and I know you brought one forth too, Dave, and so I'm ready to go. Let's plow forward as fast as we can.

Chris Melhous- I'm going to agree. I think we put enough time into this, and the citizens have put a lot of effort into it as well. It would be pretty disappointing to get into, not completing our job basically. So, I'm willing to add a meeting as well if we need to. We've just got to get through this.

Bill Myers- As I understand it, there is a possibility of one more moratorium. I'm just... I wonder what the... what the line in the sand is necessarily all about, is what is the motivation behind the January 6th.

Dave Gibney- There is a possibility of an indefinite number of more moratoriums, as long as the Commissioners are willing to do it and we show some progress that satisfies them, and perhaps Commission... or Prosecutor Tracy that we're making progress. But we also have an explicit request that the Commissioners gave us as of the end... as of their meeting last Monday that we do these three pieces beforehand, if we do send them something that they can act on before the expiration of the moratorium they could choose to extend the moratorium some more to give them time back if they need to. They could choose to just take everything that we send and adopt it and end the moratorium. We would need to give

them time to do whatever work they're going to do. In the meantime, we as the Planning Commission still have a... where we were before we went into wind of doing a solar energy ordinance with... and ... battery storage. And we as the Planning Commission also have the ability to... to ask to say, this is what we wish to work on and pick wind up again later. I believe we would have to give the Board of County Commissioners sufficient time to... to finish their part in this pass before we picked it up again, So yeah but, you know, there is... there is no way that we have any real idea what the three Commissioners will decide to do at the expiration of the moratorium. After yesterday, I think we have a pretty good idea that it will still be the three Commissioners that we have right now. But that's even... even the fact, you know Chad's re-election is or actual election isn't final until the vote's certified.

Dave McKiernan- I'd like to just comment back to Bill real quick and I understand what you're saying Bill, about, you know, they can extend and give us more moratoriums and give us more time. But I kind of feel like if... if we don't have a product, or we haven't shown that we're making progress you really don't want to give those... that person another chance to extend it and say are they going to drag it out? You know, if a guy was working for you and he's not doing the job, get the job done and so I would like to see us push hard before the holidays to try to get as much done as we can, so we have at least something to present to them, whether it's complete or not, as long as we can get through their... the main three topics that I really wanted to address, you know, if we can provide what they've requested they... and they decided to do another moratorium. They might give us another month or two to go into the fine tune details of this. But I just... I don't like sitting back counting that they're going to give us more time, because they've already given us, you know, two moratoriums to do this, so I'd like to show some progress.

Bill Myers- I agree with progress as well, It's, we want to... we want to give them good advice.

Dave McKiernan- Yes.

Bill Myers- And so, no I've as far as I'm all for going, you know, going hard on that. I've just, if, you know, if we run into a snag or something, it just seems like, we may need... they may need the extra time actually. I think we can deliver, you know, something... something usable, or at least, you know, give them some guidelines. But when this is all assembled it really is piling up pretty close to the 6th and, you know, they've... I suppose it'd be up to them to decide how much more time they need.

Brian Davies- Maybe if we got through deliverables. If we could give them decommissioning language and then ask for more time for the rest of it there would be something that we have given them. Maybe not all of it. But we would have given them one of the mayor requests that Commissioner Handy had.

Dave Gibney- I think, okay, I without talking... without pre-deciding what we may change on the decommissioning language that... and the motion that I have to get us started is taking,

and when we get there, is the language from solar that we did spend a great deal of time on. It's complicated, but I think that we can get through that this evening. Probably without a lot of effort. We can... we can talk a little bit about the landmarks, and if we can come to the language of what will be our draft recommended or not recommended ordinance then we do have the other meeting to fine-tune the rest of it. I do want to, at some point I want to talk a little bit about the logistics and what we will need for that public hearing which we will have a greater amount of time to do. And I think we can... I think that if we spend our next meeting, the 19th, on landmarks and then supporting findings of facts for the setbacks, and for the decommissioning we can be very close to having... being able to do this in the time that's allotted us and then, you know, we... we...we can come back around.

I do want to talk a little bit about what we're going to need to do at that public hearing whenever it happens to be, but hopefully on that date in December the 17th. What we need to send forward to the Planning, or to the Board of County Commissioners is a draft ordinance, with a vote to recommend or not or... or perhaps multiples, and I'm going to have to... I like the idea of being able to send the three separate topics as three separate actions for them, because well, just to be quite frank, I'm going to vote no against setbacks as we finished it and it takes a five of us to do each of those. I'm not saying it'll win but before we do that, at the public hearing, we're going to need to decide... populate a record for the public hearing and we're going to have to say that which pieces of what's come before us, you know, which documents that have been sent, submitted to us...

Brian Davies- Exhibit 1,2 and 3.

Dave Gibney- Exhibit 1,2,3 through N of, you know, one of those, you know, of what happened what we heard over the last 9 months. And which documents are we going to use to support the findings of fact, and then we have to and that's the first thing. We need to get that started. We may have more as we go through. Then we're going to need to enter into the record each of the findings of fact that we're going to use to support our eventual decision, you know, like, we held X number of meetings on these dates over the last year. The moratorium was established at such and such a date. We have this item I the record, which says that our landmarks deserve protection. We have this observation that the existing decommissioning language is inadequate and has no teeth and those sort of things. And we have to have those... and we can spend time... we can spend time developing these two pieces at our meeting in December. The first meeting in December. But then we're going to have to spend some time at the public hearing, you know, just populating that record. Then we're going to enter our draft ordinance. We're going to have our last bit of discussion and we're going to open it up to public hearing.

Brian Davies- On the 17th.

Dave Gibney- On the 17th. And again, we're going to be as generous as we can but we're still going to be limiting that to 3 to 5 minutes and... and we're not going, you know, we're going to want to finish this on that date, if our intent is to have something ready for Alan to send to

the SEPA on the day, or that the following day. Or the day after and then, you know, to get it published, you know, publish it in the Gazette that has to be to the Gazette on Tuesday. That's... That's one of the reasons that we can't do it as, you know, we can't ... we have to be ready on that time. So again, if everybody... I just wanted to let everybody know that, you know, it's still a tight time frame, and we still have work to do, and work to do outside of what we do here for those of us that are supporting the changes. Go ahead.

Dave McKiernan- So, are we going to right now as we're discussing this tight time frame and stuff are we going to discuss having a... adding a meeting next week or.

Dave Gibney- I was... I was about to get to that. Okay, but I'm... I'm still... I have... I guess I have everybody willing to... wanting to try and to follow a timeline that will get us a product for the Commissioners

Brian Davies- A hearing on the 17th.

Daved Gibney- A hearing, a hear... that we will be able to hold a hearing on the 17th.

Weston Kane- Okay, so we're aiming for a hearing on the 17th of November, of December.

Dave Gibney- December yeah.

Weston Kane- Okay, yeah i... I think we need to go for that.

Dave Gibney- Okay, I wasn't, you know, I had... you weren't for sure, or you didn't say anything.

Weston Kane- Yeah.

Dave Gibney- and okay, so, okay how... another meeting next week is going to be really tight on the staff especially on getting any minutes and everything done for us and I really want to be out of town next week. But... so it's like, how enamored are we of Wednesday's, could we do the Tuesday? And then any...

Brian Davies- I could do Tuesday I can't do Wednesday, because...

Dave Gibney- You can't do Wednesday anyway.

Brian Davies- No, because I'm an elected official, and I have to... another meeting I have to be at.

Dean Kinzer- I will do what it takes, which is... if everybody can go Tuesday, that's great.

Weston Kane- You're talking next Tuesday.

Dave Gibney- Yeah.

Weston Kane- That's Veterans Day.

Brian Davies- Oh, the 11th.

Weston Kane- Yeah.

Dave Gibney- No, okay we can't... that's out.

Brian Davies- Sorry, well.

Dave Gibney- Well, yeah, that's very much out.

Dave McKiernan- Weston, would you be present next Wednesday to run the meeting.

Weston Kane- Yeah, I got to sit here for my kid taking driver's ed, so I'll be in Colfax.

Dave McKiernan- If these two could not attend. Attended via zoom.

Weston Kane- I... I'm... I'd be fine with that.

Dave Gibney- Okay, I can... yeah.

Brian Davies- I could join possibly an hour late, like 8 o'clock or something like that. I don't know, I've got a budget meeting and a City Council meeting, so I could be tied up for a couple hours.

Chris Melhous- Should probably check with Julian as well, see what his availability is.

Dave Gibney- Where are you yeah, and, you know, we really do need... when we get... when we do these changes that we're going to propose we really helped to have the 5 votes that'll need to eventually pass to at least be a part of that meeting. Let me... let me check my... I could... I wanted to leave Sunday, but I could push and not leave until... until Thursday. And that still... that pushes, you know, we're still going to be meeting the 19th.

Brian Davies- Right.

Dave Gibney- to do the other work, so...

Brian Davies- which is a regular scheduled meeting. It's a workshop.

Dave Gibney- No, it's a special... our meeting, our regular meetings are on the first Wednesday of each month, so this 19th would be a special, but... so, we do we... do we shoot for the 12th, and y'all all want to meet the 12th? I don't, but I will. I'll try.

Julian Matthews- I'd rather meet on the 12th, because I'm a veteran too, and Veterans Day is kind of a...there's a lot of activities.

Dave Gibney- That, that, as soon as it was pointed out there's, there's absolutely no way that we're going to do this kind of business on Veterans Day. You know...

Julian Matthews- Okay.

Dave Gibney- Okay.

Brian Davies- I'll join when I can.

Dave Gibney- We're going to go, and... all right. Is that... someone else? Okay. That wasn't ours.

Alan Thomson- What's she gonna do with this?

Dave Gibney- This is a public meeting.

Brandon Johnson- Because you sent me that motion.

Dave Gibney- It's a pub...

Brandon Johnson- Do you want me to share that?

Dave Gibney- I'm not yet ready, Grace. I'm close. Leave it up.

Brandon Johnson- Oh, wait, Julian's hands raised.

Dave Gibney- Okay, what do you got to say, Julian?

Brian Davies- Hand up?

Julian Matthews: No, I just raised it before, but...

Dave Gibney- Okay.

Julian Matthews- Nothing.

Dave Gibney- Alright. So, as I've mentioned, what we're going to do tonight is take up the decommissioning language. I know that Dean has some, a proposed change, but I, I

wanna, I'm gonna start with the, with the motion, a motion to insert the language we developed from the Solar Commission, or the solar language. We put a lot of work into that. The only real question that is different from the solar to a wind is, is how deep into the ground do you make, do you insist that restoration happens? The wind energy, you know, wind is a lot deeper structure and so, what I have and what I've sent is that we require that all material as deep down as it would take for a Palouse Prairie root system to grow there, or the bedrock. So, I am going to move, the language that Grace had up there on the screen, it's a motion to, and I distributed it to everybody, and I think we had copies made for the people. Okay. So, it's a move to strike lines 5 through 34 on page 10 of the existing and replace it with these 7 pages. And the, so I can read the existing language and formally make this motion. Or I can ask for a second now, and then still read, and read the motion as it is. Or I can just ask us that we, you know, I start reading, and somebody says last line, and we get into our business. But first, I need a second.

Weston Kane- I'll second.

MOTION by **Dave Gibney** and seconded by **Weston Kane** to strike lines 5 through 34 and replace it with proposed language.

Dave Gibney- Okay. All right. So...

Briand Davies- We do.

Dave Gibney- Okay, and I, as the maker of the motion, I'm gonna start with my comments. The existing language, decommissioning language, in 19.61 is insufficient to have confidence that end-of-life decommissioning and restoration will actually occur and that there will be sufficient financial resources available at that time for the required work. We discussed the same issues and the same amount a great deal when we were working on the solar draft and this is the language that we had at the end of that process.

Alan Thomson- Hey Mark, excuse me, are you looking for more copies, paper copies? There's a bunch of them here, right here.

Dave Gibney- Okay.

Mark Storey- That's quick.

Alan Thomson- Anyone else, anyone?

Dave Gibney- You guys can have mine, too. I, okay this language requires the developer to develop a plan which includes getting a baseline description of the pre-development conditions that set the goal for the final restoration. It requires that sufficient funds be guaranteed before the development begins. The financial details, as I've looked at them, have 3 different methods to ensure sufficient funds are available when decommissioning

and restoration becomes necessary and that amount be adjusted as costs change over the life of the project. And that any successor or owner or operator of the project is required to maintain that required fundings. I'm not a financial expert. I don't think to the best of my knowledge, none of us are, perhaps none of us in this room. Denis, when we have the language, plans to have our, the language evaluated and potentially fine-tuned by qualified experts. Commissioner Handy and others worked hard to get what we have before us and I am suggesting that we leave the additional vetting to those experts. The responsibility for the actual decommissioning and restoration work lies first with the wind farm operator at the time. If the wind farm operator fails to do the required work, the next responsible party is the landowner, and in the event of neither of those completing the restoration work, the county is authorized to contract for the work. To reiterate, this section requires that sufficient funds be there for that work to happen, no matter who's doing it. It explicitly requires that there be sufficient funds such that the county can hire everybody that they need to do it, so they don't have to do it with their own personal equipment and there are, there's a limited provision for the landowner to say, you know, I'd like to keep those roads, or some parts of the, of the, improvements. So, I'm gonna let Alan have a shot at commenting first, and then we'll talk, and I'd like to let everybody have a little time to talk before anyone proposes amendments to this language and then we'll do that, so.

Alan Thomson- I really don't have anything to comment about right now. Just let it roll. See where it goes.

Dave Gibney- Okay, go ahead.

Bill Myers- I just have a, I had a number of questions, but the, overall, it looks pretty good. I, my major concern is the letter of credit, as opposed to, you know, just a good old solid bond. And I, I think the institutions have trouble, then that's something that I think we need to avoid as a county. There were some other things here. I'd like to give the commissioners a little more time, and instead of just 60 days, maybe give them 90, you know, to do their work. I have a question, there's a couple of times it says, talks about approval, which approval shall not be unreasonably withheld, I'd like to know just exact, you know, exactly why that even needs to be there.

Dave Gibney- Because there's some RCW and land use planning laws that say you can't just not approve something.

Bill Myers- No, it's some, it's a boilerplate that can't be avoided.

Dave Gibney- Pretty much, I think. Anyway...

Bill Myers- There's, there's more, but I've just, some, just a few things like that, but the, the main thing is the, the, the letter of credit is, I find it disturbing, so.

Dave Gibney- Okay, Chris?

Chris Melhus- I'll concur with Bill on both his points. I think 90 days would probably be a little bit more reasonable. Sometimes government doesn't work that quick, so that would be my concern. Then the letter of credit. Again, I'm not a financial guy, so I'm not sure how bulletproof that is compared to a bond, but, I'd share those concerns, just so we're not left holding a bag.

Dave Gibney- Okay. Dean?

Dean Kinzer- There were several things I was concerned about with it, but my main concern is it doesn't give the owner of the property enough skin in the game, and with all the, onerous letters of credit and bonding and so forth, I think there's, it ends up being too many holes in it, and there's nothing you can do when somebody eventually goes bankrupt, or the bonding agency says, hey, there's not enough, they're undercapitalized to be able to do this. We're not gonna bond them anymore. And so, when those things happen, I don't think you've got any repercussions and, so I, you know, that's the reason that I wanted to bring mine forth. There's a lot of good things in here that I do like. I think it could be an option, for the commissioners. I'd, I'd, to take a look at it, but I, I'm just not confident that the bonding and letters of credit and everything will cover all the bases in any way, shape, or form, and if we have another method for the decommissioning plan, where, where you have a, escrow fund that has to be funded by the owner of the property, I think that would cover all the bases and give the Commissioners the latitude to hold everybody's feet to the fire, and it doesn't end up being the counties thing that they have to decommission, because if you end up having to decommission 40 wind turbines, that will break the county. And so, I'm not confident that, that putting it all in, in the hands of, of, bonds and, letters of credit is where we need to go with this. Because in 40 years, so many things can happen that there's no guarantee, but if you have an escrow account sitting there, you know where the money's at, you know where it's gonna come from, and it gives the landowner skin in the game, it gives him some leverage. If things don't go right, he can call the contract and discontinue it and decommission that whole thing. So, but, as this is stated, he doesn't have that latitude.

Dave Gibney- Actually, I think this language does, in that there's review of the bonding and the sufficient funding, and if they can't get that, that's a violation of the conditional use permit that they're operating under, and they will be, at that point, determined it's time to start decommissioning with the money that's, that's in the expiring bond. So, I think, I think that's how this works, but I, I am not a financial, but that, that's my understanding from the discussion we had before.

Dave Gibney- Dave?

Dave McKerinan- Just with that, this question would be directed towards Alan, just for educational purposes. It talks about the decommissioning and site restoration plan. Is that the EIS? Is that, like, the environmental, or is that just what the County Commissioners

and the planner come up with. What, what is that? I'm sorry, I'm trying to catch up on all this here.

Alan Thomson- So that's a specific thing. It's not the EIS. It would be a part of the conditions. So, it's just the plan that we, the county requires the applicant to do in order to clean the place up. If it is decommissioned, this is what you need to do. That's all it is.

Brian Davies- And that's part of the conditional use permit?

Dave Gibney- Yeah, the, the, the applicant, the developer, or the wind commission, has to, in detail say this is the things we will do to return the site to the conditions to remediate that we've, and it says they will record what the sites are, the conditions are before they start, and then it's, these are the steps that they're going to have to take. In detail, because that's what the, that's what they use to determine, you know, how much money do we have to have set aside, and frankly, it's a lot of money. And I doubt that any landowner around here could fund an escrow account of that size, but, you know, that...

Dean Kinzer- We'll have it be a negotiation with the turbine company to fund that because, you, that doesn't, it ends up not being a concern of the county. It puts the onus on the landowner, and he has to figure out how to do it. And if the turbine companies doesn't want to help him get that funding set up, then, that's kind of a cue that things aren't going to go well.

Dave Gibney- But the turbine company isn't going to get their conditional use permit if they can't set that up. I don't know what, again, I'm not a financial expert, but I'm wondering what the difference is between the landowner having an escrow account and the turbine company having an escrow account, so. Brian.

Brian Davies- What does Brian think?

Dave Gibney- Yeah.

Brian Davies- Well, I think that, yeah, there's I mean, there's all kinds of financial instruments here that maybe only as good as the issuer at the time, or something, you know? I guess there's, I see a lot of question marks. But the question I want to ask is, what is the industry standard? What does everyone else require? Or is it all over the map as far as decommissioning, as far as bonding? Is it letters of credit? Is it a bond? Is it, I think we've probably seen most of that information. Yeah, I, I'm kind of lost but I'm not real comfortable with you know, a whole bunch of different options. I would like to see it nailed down to, you know, one or two options, and I'm not sure about having a landowner involved, if we can even do that. Or if that would just send the developer around to EFSEC anyway. So, a lot of these actions are going to send the developer right around to EFSEC anyway and I would like to stay away from that, if we could possibly craft something that wouldn't do that.

Julian Matthews: Yeah, I raised my hand. Julian here, what did the wind turbine, what's the agreement, or what's the decommissioning for the ones up by the rest area? And also, yeah, I think it's kind of, I don't know why you would even want the landowner to do the escrow if the escrow account is set up. It should be by the wind turbine company not the individual, because, you know, if you're gonna have an escrow account that's gonna be looking at, I don't know what the long-term, how long the, most of these are set to expire, or the, when they're decommissioned, like, the number of years, 20, 30 years, so what? Anyway, what did the ones by the rest area use for decommissioning?

Dave Gibney- Okay, I believe it's when it's no longer commercially producing electricity is when it is time for decommissioning is how that's defined here. And the, I'm not sure what the ones that the Palouse Wind has, but it's based on the existing ordinance, which is, been deemed inadequate by us on the previous Commission and the Commissioners and the staff, and is, is re... in reality, that's why we're here. Is that that clause was deemed needs work and that's why a moratorium occurred, and that's why the Planning Commission was asked to revise it. So, whatever Palouse Wind has, it's not what we're shooting for, so...

Julian Matthews- Right. So then...

Dave Gibney- Go ahead.

Julian Matthews: So, then this would just be for all future operations or development of wind turbines in Whitman County?

Dave Gibney- Correct.

Julian Matthews- Not current ones.

Dave Gibney- And...

Julian Matthews- But then, I don't know if that would create an issue of, I guess the attorney would know, like, say if, say the current, say someone like the one now says, hey, no, that's not, you can't do that, that's just, you know, unfair practice. Is that how it would come about? How's that work?

Dave Gibney- We don't get to change the conditions of something that's existing. And that...

Julian Matthews- Right. I know that.

Dave Gibney- And so it doesn't apply to, they don't have, they don't really have anything to say. We can't ask them to change how they, what they have for decommissioning.

Julian Matthews- I know that. I know that, Dave. What I'm getting at is, like, say with a new standard, like, say those people put in wind turbines under the old, the current commission, or whatever, so what about a new wind turbine project, whether it's this one or another one somewhere else? Then can they say anything about, well, that's unfair practice? Mr. Attorney on the call, when we're having a double standard for the same types of projects? Is that Mr. Tracy, I believe?

Dave Gibney- Zoning laws, zoning laws change with relative frequency and sometimes make existing uses non-conforming and, but I don't, I haven't heard of, I think it's fairly rare that the new, installation says it's not fair that you changed it from what they had. And the other thing is that this stuff does get reviewed with frequent, the actual amount of the money available does get reviewed, so. And Julian, and then it was Weston, and then I'll let Dennis comment a little bit on, fairness.

Denis Tracy- Julian, if I'm understanding right, you're, you're suggesting that the new developer might say, well, hey, the guys that put that, that first wind project in, they had it easier, they didn't have to provide as much bonding or whatever else it might be. And so it's not fair to us now with this new project, is that what you're suggesting?

Julian Matthews- Right.

Denis Tracy- Yeah, and that's a great question, but I think that that is, really gets to the heart of this whole process that you're all going through. It is allowed to do that, that the, you know, the Commissioners entered a moratorium to say, okay, hold it, developers rights to go ahead under a zoning code vest when they file an application. Right now, there is no current application with the county and essentially, all the developers are on notice that the zoning code is going to change, they're going to have to comply with the new zoning code, or, of course, they always have the opportunity just to go to EFSEC. And so the, the, new developer, the developer who wants to put in the new, new one, will just have to comply with the new code, and that's how the system works.

Julian Matthews- Okay. All right.

Dave Gibney- Weston.

Weston Kane- So, I think, if I remember right, we pretty much, when we were working on the solar code, it was, we were in this section as well.

Dave Gibney- This is, this is the result of that section.

Brian Davies- Right.

Dave Gibney- But then, aside from the greater depth for wind towers.

Weston Kane- Did we have that 100% done in the wind code on the, because I thought we were kind of hung up on, if I remember right, the very tail of this, with the line of credit and the grantee.

Dave Gibney- There were, you're correct.

Weston Kane- I thought that's, we're basically in the same concerns you had on that.

Dave Gibney- There were questions about the three, as I count them, ways of accomplishing that at that point, too, so that question is where we were at. And we can, we can continue to discuss that. Frankly, it still says that the County and the Hearing Examiner and the conditional use permit is to be granted based on, you know, evidence that whatever is chosen... whichever mechanism is chosen is viable, at least at the time of the issue and the permit. And there are several places, you know, several occasions, occasions of reviewing, is that still viable? And a requirement that if, you know, if so-and-so can't get bonding from the people that are doing it for them now, they find someone else. If they, again, if you can't find anybody that'll do it, they're in violation of the conditional use permit, and it's time to use the funds that they do have to take it down.

Dave Gibney- Alan?

Alan Thomson- Well, this funding mechanism has to be done up front before the CUP. That has to be already established and then it becomes a condition in the permit.

Dave Gibney- That it be maintained?

Alan Thomson- That it be maintained and maintained on a schedule. So, the debate on that one is, is it gonna be yearly, is it gonna be 2 yearly, is it going to be 5 yearly? We can do whatever you want. But right now, the Palouse Wind Project is on a 5-year schedule and they are on it, because I just went through this with them a couple of years ago to update their bond. So that money is there, and that's basically what, whatever instrument you want to choose here, is similar to what is going on with Palouse Wind.

Dave Gibney- And if I remember right this has a more rapid schedule than the 5-year.

Alan Thomson- It's more in detail this one. We don't have that detail for the Palouse Wind project, no. But nonetheless, that bond is there, and it will get updated every 5 years.

Weston Kane- And they're on the surety bond, then?

Alan Thomson- Yeah, I think so. Yes, yes.

Weston Kane- Yeah, they're not running a line of credit or anything like that?

Alan Thomson- No, no. The money is supposed to be there.

Dave Gibney- And, and Weston is correct. The main question that was still on the table at the, when we left this to go to wind, was, and I think the, I think that last option of basically the, believing that the company was solvent enough to have the money on hand, a guarantee bond was the one that had the most nervousness, and so, and, and, that also, I believe, is one of the reasons that attorney Tracy wants to have this stuff vetted before we do any final action. And I see that Commissioner Handy, who was a part of the discussion and crafted a number of, quite a bit of this language, wants to speak to us, so, has his hand up.

Tom Handy- Yeah, thank you. I just wanted to mention that most of the bonds or the letters of credit are reviewed by the issuing institution annually, or at most biannually. And so that, it is that time that they then report back to the county whether or not this entity is going to be renewed, or is still, in their minds, solvent enough. If they determine that they're not solvent, and they're not going to reissue the line of credit, or the, or the, or the letter of credit, or the bond, then the, the wind company has a certain amount of time to secure the same from somebody else. If within, and this is all kind of specified in there, if within 120 days before the expiration, that company who's issuing the instrument lets us know that they're not going to intend, they're not intending to renew. If the company, within a certain time frame, and I don't have it right in front of me, all of it, because I'm traveling, is unable to secure another one, then it's at that time that the County can call that bond or letter of credit funding into the standby trust fund. And then that's when the County gets all of the money. And it's at the County's discretion to do that when the company cannot secure any other method of guaranteeing this. So, there's 3 different ways. It's the bond that typically, like I say, most of these things get renewed annually, or at most, every 2 years. There's the letter of credit saying that the company's good for it, and the bank that issues that letter of credit will have access to that fund, that amount of money from that company, and they, you know, they will then, if we call it because they are out of compliance with the contract, then they have to deposit that amount of money into that trust fund that we have control over. The third way is for say a parent company or another company to do that for the operator. So, and this is pretty much tailored right off of what EFSEC did at the Wautoma Solar contract, you know? And so, my level of confidence that this is fairly sound is because of that. They've had a lot of attorneys already working on this, and so, anyway, that's all I have to say.

Dave Gibney- And it's probably true that a company in that case, could choose to try and litigate and delay and not do that funding if they're in the... in the State that they can't but I'm not at all sure there's any... I mean, are there... what kind of tighter guarantees could we actually find, you know.

Brian Davies- Diamonds.

Tom Handy- To put up a 100% cash bond, but... or cash deposit.

Dave Gibney- Yeah, a cash bond in the several million to billion dollars that it would take to rest orate. And I'm... I'm...

Tom Handy- Yeah.

Dave Gibney- And so Mister do you have anything besides the school board you were on. Tried this and failed.

Mike Dymkoski- I do, I do but I'll be brief.

Dave Gibney- Okay.

Mike Dymkoski- We're missing something.

Alan Thomson- Hold on, the microphone.

Dave Gibney- Okay, I really, you know, we're really pretty much done.

Mike Dymkoski- Thank you, Mike Dymkoski. At the point that a financial review, the yearly financial review, is being conducted by the County, if an issuing institution determines that the responsible party no longer qualifies for a letter of credit they no longer qualify on that day. And no... I don't know if anybody here has ever served on a bank board of directors or not. But no bank board of directors is going to honor an irrevocable line of credit to a company that is no longer solvent or exists in a functional capacity any longer. They're not going to make a loan to a company that doesn't exist. A surety bond will pay, you know, the construction world has been relying on surety bonds forever. Cash bonds are the safest, that's why the Court System requires them. Surety bonds are the second best, and they will pay on a bankrupt company. The Palouse School Board was one of those instances. But no financial institution is going to honor an irrevocable line of credit to a company that has gone bankrupt or isn't answering the phone anymore.

Dave Gibney- Okay.

Mike Dymkowki- And that's what you've got... that is what the County has to protect itself against, this irrevocable line of credit nonsense.

Dave Gibney- All right, thank you, for that clarification. And just to, you know, I haven't looked that closely. The Irrevocable line of credit is that on all of these, or is that just the last one? I mean where?

Brian Davies- Actually the second.

Dave Gibney- The second one.

Brian Davies- The second choice.

Dave Gibney- The second choice, okay so...

Alan Thomson- That's the... it's a choice.

Brian Davies- It's a choice.

Alan Thomson- The way that the code is crafted right now is you choose which one. It's not saying you have to do one or the other, you can choose.

Dave Gibney- And that's the County working with the developer as to which choice... the developer doesn't necessarily... the developer can say, we want to do this, and the County can say, no, we don't trust you to do this.

Alan Thomson- Yeah, the County should be the one deciding this.

Dave Gibney- Okay

Alan Thomson- Yeah, but there will be a conversation with the developer about that.

Brian Davies- Well it sort of looks to me like the irrevocable letter of credit would have a lot more hoops to jump through for. So, they, you know, standard surety bond I think is... is a way to go.

Dean Kinzer- And that's my point. You... you're all talking about endless litigation potential here, and why have the endless litigation when we can just require them to have the money in the bank?

Bill Myers- A long term CD or something like that just yeah.

Dave Gibney- So, I'm going to ask if the... if the concern of the irrevocable line of credit would go away if we just struck the... item 2, as the motion is the irrevocable... if we just remove that as a choice and left them with surety bond and guarantee.

Bill Myers- That would strike it anywhere else in the language. It shows up several times in the details, if you read into it, it's... it shows up .

Dave Gibney- I think the other place it shows up is where it's collected on.

Bill Meyers- Yeah, it's just... so if you... if we kill it up front then... then it's obvious that we'll take it out of the rest of the language.

Dave Gibney- Okay, actually yeah, I see the guarantor has that as one of the choices that they can provide as their guarantee. My quick look doesn't see any of that irrevocable line

of credit in the surety clause... bond clause and I see it as item B uh DIB... You know, line 18 on what appears to be page 6.

Okay, are there any further discussions... Go ahead Chris.

Chris Melhous- I guess on my end, I don't necessarily see a reason to give... what benefits the County to give anyone an option other than a surety bond. I just... between that and even the item 3, the guarantee portion of it.

Dave Gibney- Okay.

Chris Melhous- I think surety bond just seems like the smart, safe way to play it. Kind of streamlines it for everybody as well.

Dave Gibney- Okay, at this point, let's go into the discussion of formally amending the motion and if there's someone on the Commission who basically wants to say strike items 2 a revocable letter of credit and 3 guarantee. I'm not, you know. Brian will do it.

Brian Davies- Well, I will so move that we'd strike.

Dave Gibney- It would be...

Brian Davies- I, I... I don't have page numbers here right

Dave Gibney- I don't have the page num... I failed the new page number. So, we are in section...subsect... We're in section 2, subsection B...

Brian Davies- Page 4

Dave Gibney- And then we are wishing to strike items 2 and 3, which begin at line 3 of the next page, and continue through.

Brian Davies- line 3 of page 4 through line

Dave Gibney- 13 of the last page.

Brian Davies- Line 13 of the final page.

Dave Gibney- Correct, and what that... that leaves us with the only option to fund the decommissioning and site restoration is a surety bond.

Brian Davies- Surety bond.

Dave Gibney- Correct.

Brian Davies- I move that.

Chris Melhous- Second.

MOTION by **Brian Davies** and seconded by **Chris Melhus** to leave the only option to fund the decommissioning and site restoration as a surety bond.

Dave Gibney- Okay, is there any discussion? Members of the Commission, all in favor say Aye. Any opposed?

MOTION PASSES.

Dave Gibney- All right. Okay, well, thank you. We have a much shorter...

Julian Matthews- Alright.

Brian Davies- A unanimous decision.

Alan Thomson- I might recommend that we get that checked out through Denis and through the sources we have there, just to make sure we're not messing something up.

Brian Davies- Everyone should also realize that what we send to the County Commissioners can be changed by them.

Alan Thomson- Yep.

Brian Davies- So this, you know.

Dave Gibney- And just to be clear what we send to the County... what we draft and send for the SEPA, we do have an opportunity to make not... maybe not make totally significant amendments, but we do have the ability to amend and the end of our public hearing. Based on what we hear then, and...

Brian Davies- On the 17th of December.

Dave Gibney- And based on the SEPA comments and whatever. So, this is... we're getting ready to send this to review by for Denis, and to public hearing. It's not... It's not quite our last bite at this apple, and the Commissioners get a... and the Commissioners can accept what we send to them and adopt it with no changes or they can reject. Okay, and... but I think they can also reject it outright, but if they want to change the language themselves, that's when they get into a hearing of their own. So, Okay So there is Dean do you want to... do you have anything you might say about how... just because I don't think it's workable, but how we might hook the landowner a little more, and if that's what we want to... if we want to propose...

Dean Kinzer- Well, can... yeah, can I come forward with my recommendation? I've got 10 copies here.

Dave Gibney- Do you have... do you have an amendment to this... that would accomplish...

Dean Kinzer- Oh, that would accomplish that. Well, my amendment that I wanted to bring forward just replaces on page 10 of the original document, it replaces under N Items 1, and 2.

Brian Davies- in the original document.

Dave Gibney- Go ahead and... Go ahead and pass them around to us, and I apologize to the public that we probably aren't able to do that for them.

Dean Kinzer- Okay, if you don't mind, I'll read it real quick. Very short. Page 10 and 11, and under decommissioning, replacing both 1 and 2. It reads, prior to commencing construction of the project, the applicant shall prepare a decommissioning plan in a form acceptable to the County, the landowner is required to establish a fully funded decommissioning escrow account for each wind turbine site before the site generates any electricity, electrical power. The terms of the escrow account amount and updates to the escrow funding due to inflation factors will be set by the Whitman county Board of County Commissioners. The amount of the finding and the escrow account shall be determined on the site-specific conditions affecting the cost of decommissioning. Access, depth of foundation, terrain, etc. to include credit for salvage value of the equipment, Should there be any transfer of property ownership, the escrow account will be transferred to the new owner with all the rights and responsibilities of decommissioning the site. Upon termination, excuse me. Upon termination of the operation or its project, it is abandoned or ceased operation for more than 200 and 70 consecutive days except in the event of a man... of a... except in the event of a man-made or natural disaster, not in the control of the applicant, the current owner of the wind facility in coordination with the landowner and the Board of County Commissioners, will dismantle and remove above ground improvements, including wind turbines, step-up transformers, substations, underground transmission lines, and support structures, control hardware, and meteorological towers. The foundation will be removed... Will be fully removed at the request of the landowner. They shall also remove operations and maintenance buildings. The repairs of any damage as a result of such removal, restoration of the property, grade and implement... implementing erosion control devices and procedures, restoring the site as reasonably as possible to its pre-project condition as part of the decommissioning. In the event that the wind facility owners and landowners fail to fulfill their obligations under this section, the County may add a sole election dismantle and remove the wind tower or related facility, in such case, the current wind facility owners and landowners shall pay and be liable to the County for all the costs incurred by the County to complete the decommissioning.

And my reasons are this will assure that there will be funding to decommission the turbines at the end of their life. No questions asked there. This will give the landowner more control over the project in that if the wind turbines facility owners fail to perform in any way, the landowner can terminate the contract and decommission the site. These measures are needed because the wind turbines can... site cannot be repurposed safely for anything else. This will eliminate endless litigation if the bonding companies or owners of the wind turbines facility become bankrupt or undercapitalized. The bonding companies can refuse to bond a site for reasons of poor financial health, overextension or multiple projects, inadequate experience or excessive risk profile. Who becomes responsible for decommissioning if a bonding company and a wind turbine company go bankrupt? Would it be Whitman County or the State of Washington? The old wording, in the original document, it says that the County. The responsibility on the County to fund the decommissioning with endless litigation to try to get the wind turbine owners to pay. This avoids that. And my simple question was, how many wind turbine decommissionings would it take to bankrupt the County? So being responsible people, we shouldn't put the County in that position.

Dave Gibney- So, first I'm going to talk about a procedural, and then I have a couple of comments on. So, if you wanted to strike my entire amendment and substitute yours, that would be the motion to make. What I'm going to say is that the one that's before us... all of that work of, bonding has to be done before construction begins, rather than before electrical generation and there's significantly greater detail about what is actually required to do restoration, in that there has to be a detailed plan acceptable to the County before they identify the costs. We had a long discussion about trying to... about giving credit for value of recycles and elected to. No, you don't get any credit for what you might be able to sell the stuff for in the future. If you can sell it when you're decommissioning, that save your costs. The rest of these, what shall be done is... I didn't do a detailed comparison with a number of those are items 1, through 6 or 7 in the amendment, in the language that we had. The... I think we just dealt with a lot of the uncertainty about the ability to actually have the money there. What we... what I don't know that we have here is your... what we have is that the development, or what I had before the developer will... is the one responsible for making sure that that amount of money in the surety bond, where we're at now is available. Which, as you were... as we talked earlier, you would say that that's between the landowner and the developer rather than the County and the Developer. So, I think... I think most of what... and I... you base this on the original language in the ordinance versus what we had in the solar. So I think much of it is here and if we can... if we can come up with some way to, you know, as you say, add the land... add skin to the landowner's game, we might get both.

Dave Gibney- Julian.

Julian Matthews- Hey, Julian Here, so when you say, I don't know what you mean, add skin to the landowner's thing. But you're saying that the farmer or the person, like, say, what I

assume would be some farmer with land wants to lease his land to a wind turbine company, you're saying that he should come up with an escrow account?

Dean Kinzer- He should, he should bargain or contract with the turbine company to fund that escrow account. It's not, not unlike leasing a house out, a lot of time, they require first and last month damage deposit, and that's what this is.

Julian Matthews- So, because when you say escrow account, are you, what would the, amount of the escrow, you're saying that the, it wouldn't be the individual farmer, he's not bound to set up any escrow account or dump any of their own money into an escrow account. The wind turbine company will do that.

Dean Kinzer- Oh, he'd, that'd be his choice, but he's the one responsible for bargaining for the escrow account to be filled up before any energy is generated.

Julian Matthews- Okay, say the farmer doesn't want to, say the wind term company doesn't want to do an escrow account. Who would have to set up the escrow account then?

Dean Kinzer- I guess the deal's off, then.

Julian Matthews- Hmm.

Dave Gibney- Yeah, that's...

Julian Matthews- A surety bond doesn't suit that same interest?

Dave Gibney- I, that's the question I was proposing with, asking with Dean, is, is, the surety bond that the developer has to create, doesn't that actually, aside from the fact that it's with, it's a part of the continual, conditional use permit versus a deal between the developer and the landowner. Other than that, doesn't, isn't it, and again, what we have here, what you have doesn't have a whole lot of detail about...

Dave Kinzer- I left that detail up to the County Commissioners to draft something for that, yeah.

Dave Gibney- Okay. And, and we, we have that fairly explicit in, in, in this language, so.

Dean Kinzer- Right.

Dave Gibney- And, and again, didn't necessarily have this before you when you were...

Dean Kinzer- Correct. Yeah.

Dave Gibney- So... Okay? So, we have at this point, we have like, 3, we have, like, 3 choices. Some, Dean could move, and someone could second that his language

substitute entirely in for mine, and we can vote on that. And I'll just telegraph it, I'll vote against that, but maybe it may win. Or, and depending on that outcome, we would be back with what we have, and then we can attempt to draft somewhat more explicit details in my motion to accomplish some of what Dean's talking about, which I think really is, is, and I'm not, okay the way I read this, the money to do the work is coming from the developer, and the way you've written it, the money to do the work is coming from the developer, or the bond that they have, or a specific cash amount that's determined so I'm not, I'm not sure where that differs from what's being done, aside from perhaps you are saying, if it takes, you know, \$1 billion to do the restoration, that \$1 billion is in a bank account somewhere. And what we're saying, what this says is a bond in the amount of \$1 billion has to be available.

Dean Kinzer- You know, saying it and having it are two different things.

Brian Davies- I believe that what we're saying is the surety bond has to be in place before the conditional use permit is granted. Correct?

Dave Gibney- Yes.

Brian Davies- So that's right up front.

Alan Thomson- That's the way the original language is.

Brian Davies- Not after... not after things are going, and not after there's an agreement between a landowner. So, it's up front.

Dave Gibney- And as Alan says, that's the original, that's in the original language, and it is in the proposed language of the motion that I made.

Alan Thomson- And that language should be in whatever you craft. The timing of it.

Dave Gibney- So, among other things, this, commiss... Dean's motion actually puts that there can be a significant amount of construction done before the escrow has to actually exist.

Dean Kinzer- We can do away with that.

Dave Gibney- Yeah. So. It's up to someone.

Bill Myers- Well, I like what Dean's got here. It more greatly involves a landowner. If we could, you know, somehow it's a little difficult to craft this on the fly, but, if we could, include some of these spec, specifications, specif... anyway, these specific things, in your language Dave, that, the, you know, I think we'd have something here. I don't know how to

put that in the form of a motion. And where we'd go. I do like the idea of not being able to turn dirt before, you know, before, before you have the money in place.

Dave Gibney- The motion that I, Item I of the one that I said, you know, what has to happen for restoration is removal of all above ground and below ground project facilities, material, and infrastructure. Including below ground to bedrock, or the depth of a typical native Palouse Prairie ecosystem. Which basically is 20, 30 feet, so if for some reason, you know, they do a concrete piling deeper than that before they hit bedrock. They don't have to go quite that deep. That's the only difference between, as I see as to what Dean is saying of everything above and below ground. I think, I think that says everything above and below ground.

Bill Myers- I think you have that language, basically, just in the removal of all above ground and below-ground project facility material and infrastructure pretty, pretty, inclusive of everything. It's just, but if they pack it in, we want it packed out.

Dave Gibney- I do see that perhaps we want to strike, if we get to mine, we want to strike item 4, allocation of value for salvaged product materials, because we don't care. And that's left over, but, but then again, we can ask them, you know, but, in any case, the, the only, I could be wrong, but the only real difference that I see here, well, there's two of them, is one, okay, is that Dean's is for actual cash value in an account versus any kind of bonding and that the first call on that account, is the landowner. Rather than what we have here, which is the company do the work first. And then the landowner says, if the company doesn't do it, the County says to the landlord, the County says, the County says to the company, give us that money. And the County goes to the landowner and says, here's the money, you get to delete it, do the work. And if the landowner doesn't do it, based on the money that's been provided by the bond, not the cash, then the county will take the money and do it. But that's, that's the difference.

Dean Kinzer- Yeah, I just wanted the landowner to have skin in the game and know that if things don't get done, his property could be sold to pay for it, too. That's, it should be the property owner's responsibility.

Bill Myers- I agree. They are partners.

Dave Gibney- Okay. Julian, I, it's hard for me to see a hand raised, so yeah, he didn't raise anyway, but go ahead, Julian.

Julian Matthews- Yeah, I don't think that's fair. That's what I was asking. We'll say, skin of the game. You're saying that the farmer has to take on the responsibility of the wind turbine? I mean, the surety bond, Mr. Handy, I don't want to put you on it, but wouldn't a surety, or Alan, wouldn't a surety bond be sufficient? Because to me, it's really strange how you're going after the landowner, essentially when they're making decisions, you know, like, it's like, you have land, you do what you want on it, right? We don't tell you what to do on your

land, or what you can do with it, or if you have to have a bond because of the things that, problems you create on your land, and I don't think it's fair to landowners to make them, just because they may decide a wind turbines on their land, that they're somehow penalized, or put in a bad position because, well, this, what you're trying to state, I don't agree with that. I don't think the landowner should be penalized if they're using their land that they own for what they want to use it for. Just like you do, just like I do. I have my land, I do what I want with my land, up to a certain, you know, within the law and regulations, but I shouldn't have anyone trying to take my property without due process or trying to impact my ability to use my property without due process, and this is not due process.

Dean Kinzer- Well, we've determined that we're supposed to be watching out for the health, safety, and welfare of the citizens of this county, and we've determined that when these wind turbine projects are at the end of life, that it has to be decommissioned, and if it so happens that endless litigation doesn't result in some funding to decommission, then who's responsible? The county is going to be, at the end of that, the way the old section was worded, and the county isn't going to be able to afford it either. It is ultimately the landowner's responsibility if he's going to sign that contract. You, if you have tenants in a house, you have complete control over what they're going to do, and it's your responsibility to watch over and take care of that house.

Dave Gibney- And that is precisely the, well, really close, anyway, the deficiencies that we're seeing in the existing code and why we're here ultimately. And that was recognized when we were crafting the solar ordinance and that's what this language that I've put forth from the solar ordinance is intended to solve. It is intended that to the best, mechanisms available to anyone financially aside from an actual, well, and actually the bank. You can't even, you can't even put a billion dollars in a bank and have it guaranteed, or have that cash. Gold bar, even, you know, you could say, you know, in the foundation of the wind tower, there shall be sufficient gold to fund the removal and even that's not gonna work. But that's exactly where we're at, is that there weren't sufficient language in the original code to ensure that the county wasn't on the end of the hook. And that's what this tries to do. And it does, it puts the landowner in there as they are the, the County doesn't have to do the, the County isn't the first line of defense of doing the work, the company is. And then it's the landowner funded by the company, and then it's the County, but still funded by the company. And that the bond has to be there, available up front as, as a condition to even make the application.

Julian Matthews- So are you saying right now the county is on the hook for any decommissioning of any turbines, like, say, by the rest area?

Dave Gibney- It's, that's a potential. That's why, that, that is a potential. That's why we are here. Ultimately, that's the reason that we engaged in this entire process, is because the Commissioners, about a year ago, and this Commission, when we were doing the solar, recognized that that clause on decommissioning, was not very strong. And that's where...

Julian Matthews: Well, right now...

Dave Gibney- So, yes.

Julian Matthews- Regardless of whether we change the ordinance to ensure there's more, financial liability, those, the County, Whitman County, is on the hook for any decommissioning of all those wind turbines up by the rest area?

Dave Gibney- Or the endless litigation. Or the, there is a bond as Alan said, that company does have a bond, they did follow the procedures of the time, but the review of it and the specifics of how to determine whether it's sufficient or not is, is inadequate in the existing code. And just to, as a plug, that's the reason that I went to the Commissioners and said, you know, tell us to get something done, because we need this, we need to improve the code at least this much. Because although a developer can go to EFSEC, while EFSEC is doing their evaluations they, the law says that they have to at least look at and consider our existing code as it exists at the time that they get the application. And if that happens today, the code as it exists today is the 19.61 that's on the books that we acknowledge is inadequate. If we can get this part done before the mor, before somebody goes to EFSEC, then EFSEC has to take, at least take a look at what we say. They don't, again, it's correct they can override most everything that we have to say, but they have to at least listen and give a reason for why they're gonna override us.

Julian Matthews- That's, when they do that, that's to the Board of Commissioners, not to us. We give recommendations.

Dave Gibney- Right.

Julian Matthews: The County Commissioners, and they decide, yay or nay, whatever, they...

Dave Gibney- And that's why we're pushing to have an admittedly partial product to them quickly.

Julian Matthews- Okay, thanks.

Dave Gibney- Anybody else?

Bill Myers- I'd like having the money in the bank. That's how I like the, just as long as this is established up front as a, as, before any dirt's turned.

Weston Kane- So you're saying as a bond, then? Just...

Bill Myers- No, this escrow account.

Weston Kane- So, I guess my question would be, if we're setting up an escrow account between the company and the farmer, that's essentially guaranteeing the money's there, right?

Bill Myers- Money in the bank.

Weston Kane- And we voted 20 minutes ago to do away with the guarantee part of the, what we post code. So, we're kind of contradicting ourselves here.

Bill Myers- Oh, okay.

Weston Kane- I'm not saying it's, we shouldn't debate it, but I'm saying we already voted to not have this guarantee, right?

Bill Myers- I thought we did the letter of credit. Maybe I'm, maybe I'm...

Weston Kane- We took both out.

Dave Gibney- We took both out. We left with the only option subject to legal review and whatever, but what we, if we send it to the Commissioners at this point, their only option is a surety bond and frankly, I, I'm not, I don't know how that differs from well, actually, I do know how that differs from an escrow account containing exactly \$1 million or \$1 billion but, practically, I don't know how that's different, so. Go ahead, Dean.

Dean Kinzer- I would move to amend your proposal here at, on, I guess it's page 1, 2, 3, page 4, B. It says, the duty to provide financial assurance shall, yeah. Under surety bond is where I want to be. The applicant may provide financial security for the performance of its decommissioning and site restoration obligations. Can we add right behind the applicant and the landowner?

Dave Gibney- Okay, so Dean is most... is moving that... yes, I'm on page 3, as we account... as we count them here. In line 15 that the words and the landowner, be inserted after the applicant.

Dean Kinzer- And any other... any other place in the document tat that needs to be done also so.

Dave Gibney- Okay anybody second?

Bill Myers- Second.

MOTION by **Dean Kinzer** and seconded by **Bill Myers** to add the landowner after the applicant.

Dave Gibney- Okay, and I'm discussion. I don't know... that that changes things. It may... It may change things down to where, on item C. Okay, the... there's some language above here where it says, you know, what are the conditions that we're going to call the bond and

have that... have the funds moved at that time in their entirety to its... to an account controlled by Whitman County. I'm not sure how that affects... that if the... and as I would see just before 3 pm the last page. I'm not sure how that changes that mechanism. The, you know, the mechanism that's in place right now is basically at the point we're... we're saying you're out of business give us the money. At this point it goes to Whitman County, not the landowner's not involved at that point. So, we might need to change that. Other than that, aside from... and Dean made the motion, and it has been seconded.

Dean Kinzer- May I make a friendly amendment to that? Dave pointed out that it says the applicant and if we amend and the landowner may provide financial security, it should, perhaps it should be must provided.

Dave Gibney- Actually, I agree with that, and I'm also going to think that that was probably a result of us eliminating the other two options.

Dean Kinzer- Oh.

Dave Gibney- The may was there before because the applicant had 3 options.

Dean Kinzer- Okay.

Dave Gibney- So, effectively in doing scrivener's corrections and everything, we struck that may and made it the shall.

Dean Kinzer- Okay.

Dave Gibney- Anyway.

Dean Kinzer- Alright.

Dave Gibney- But so noted for the record.

Dean Kinzer- Shall or must would work.

Dave Gibney- Yeah, Any other discussion? Dean made the motion if you want to speak more towards it.

Dean Kinzer- That would give the landowner some skin in the game and cover a lot of the bases. I still... I am a little, I guess, reserved about whether that surety bond is going to have the money there or not at the end of the game and we're going to end up in endless litigation because of it, but it would at least cover that part of it, getting the landowner to have some skin in the game, and maybe a little more control.

Dave Gibney- Okay, all in favor of adding the words and the applicant?

Dean Kinzer- And the landowner.

Dave Gibney- and the applicant and the negative state... the applicant and the landowner.
All in favor? Any Opposed?

Julian Matthews- No.

Dave Gibney- We got a no from Juian... I've got... I count 5 no's here at the table with Julian.

Julian Matthews- Yeah, that's me Julian no.

MOTION FAILS.

Dave Gibney- Sorry, Dean that amendment has... to the amendment has failed.

Dean Kinzer- I tried.

Dave Gibney- Okay, I would like to ask if anybody would like to move that we strike item 4 on line 31 on page 1.

Weston Kane- I move that we strike item 4 on page 1, the allocation of value for salvaged project material.

Chris Melhous- Second.

MOTION by **Weston Kane** and seconded by **Chris Melhus** to strike item 4 on page 1, the allocation of value for salvaged project material.

Dave Gibney- Discussion. That was left over back when we were intending to potentially give credit for the recycled value of the materials, and we concluded that we were not interested in being in that business.

Brian Davies- Being in that business.

Dave Gibney- All in favor? Opposed?

MOTION PASSES.

Dave Gibney- That one passed.

Julian Matthews- All right.

Brian Davies- Which one was that again?

Bill Myers- Going up to page 1, going to the line looks like an 8 and 9, I'd like to strike 60 and add 90. That in form of a motion.

Chris Melhous- Second.

MOTION by **Bill Myers** and seconded by **Chris Melhus** to strike 60 and add 90.

Dave Gibney- We have a motion and a second to basically give the Board of Commissioners and the... and the County staff 30 more day more. Making it 90 days. All in 90 days. Any discussion. All in favor? Opposed?

MOTION PASSES.

Dave Gibney- Done.

Brian Davies- And that was right on page one?

Dave Gibney- Yes.

Bill Myers- On line 25, including below ground to bedrock or depth of typical native. That's basically what we're stating, is anything that's in the ground, foundation. The whole thing comes out. Okay that's just. That's I just wanted to... I like that, that's all.

Dave Gibney- I mean...

Weston Kane- Isn't that last line added on from what our solar request?

Dave Gibney- It was, the other... there were two ques... well there was no questions about the depth of the solar, because who's, you know, below ground period. The wind went further. This... this actually, you know, that to bedrock or the depth. That's language I added because we... it was recognized that... that perhaps the depth of a wind tower was maybe we didn't have to ask them to go all... to remove everything that... to.... The mitigation to a level would be appropriate and that that was in the... that was in the letter from the Board of County Commissioners to establish the depth of the removal.

Bill Myers- Okay.

Dave Gibney- So, if you want to, if you want to just leave it at everything below ground, we would strike that.

Bill Myers- I'd say the removal of all above ground and below ground project facilities, material, and infrastructure. Period. That's pretty inclusive, that's everything. I mean if they packer, packed rock in they pack it out. And so I'd say strike including below-ground, you know...

Dave Gibney- So Bill is moving that we end item I in lines 25 through 27 by making after infrastructure a period and striking the rest of the phrase. Is there a second.

Chris Melhous- Second

MOTION by **Bill Myers** and seconded by **Chris Melhus** to end item I in lines 25 through 27 by making after infrastructure a period and striking the rest of the phrase.

Dave Gibney- All in favor? Opposed?

MOTION PASSES.

Dave Gibney- Okay is there any... anything in yours that you believe we don't have covered by the clause and some of the other stuff here. Actually the rest of this just says you're going to have to make sure that you have got... it's got to be a good estimate of good and fair, and validated estimate of what it would cost to do the restoration.

Dean Kinzer- Yeah, updated annually, I hope.

Dave Gibney- I'm not sure what the.

Brian Davies- Do we need to add best available size?

Dean Kinzer- It's in a different spot.

Dave Gibney- I think there was a... well, okay, the... the costs to do are re-evaluated annually the actual work, probably shouldn't change.

Dean Kinzer- Yeah, unless there's some new technology for erasing a site like that, you know, you're right.

Dave Gibney- And that would... new technology would reduce the cost, but, but it wouldn't change. We're going to re... we're going to remove it. Okay. Anybody, so, are we all okay, are we ready to make a vote, final vote on this amendment to the 1961 code and consider that we have accomplished what we wanted to tonight?

Bill Myers- Well, I got a, on page 2 line 20 words as near as possible. Is there a reason to qualify that?

Dave Gibney- It's a fact of the matter.

Bill Myers- Just a fact of the matter?

Dave Gibney- You take vegetation away, you can't make it perfect. But you're going to make a try.

Julian Matthews- I'd like to take a vote on this so we can say we did something tonight.

Dave Gibney- Okay, I will consider that a move to end discussion. Is there a second?

Brian Davies- I'll second.

MOTION by Julian Matthews and seconded by Brian Davies to end discussion.

Dave Gibney- I have a motion to end discussion. All in favor please say aye. Opposed? Your discussion is over.

MOTION PASSES.

Dave Gibney- All in favor of amending section N, I think it is, of the decommissioned section of 1961 to be the language that has been discussed tonight. All in favor, please say aye. Opposed?

MOTION PASSES.

Dave Gibney- Okay, we are there.

Julian Matthews- Good Job.

Dave Gibney- We are there. So, we're about out of time, and I... but at the next meeting that we're going to hold, which will be on the 12th of November, Wednesday, here in this room, we're gonna discuss the per... the... what I sent forth at the last meeting on a start of protecting of landmarks. And what I, just to bring y'all, everybody, and explain it once more, I, this is a... this would be a new section to 1961. And I have it in 3 different place, things. It says, you can't put a wind tower within X of an incorporated community. You can't put a wind tower within X of the unincorporated, rural, residential areas, zones that we have in the county. That's the Steptoos and, and whatever. And the one that we're, you know, the one that we're really talking about, is you can't do it within X of the following national following landmarks. I didn't put any reasons for any of this in what I have. That, you know, fleshing out the language. And we, we may or, I don't even know if we have to have reasons in the code if we have reasons... supporting reasons and findings of fact, then we adopt it and send it forward. But that's what we're gonna talk about next week. And if we get through that. We will have a product ready to go through the process. And, and maybe we, maybe we, maybe we actually get that extra time that, you know, Commissioner Tracy, or attorney Tracy said that if we could do it by the 12th, that would be good. I am going to point out something that I learned on, in discussing the setbacks, and, in, if we do something which makes the Palouse Wind a non-conforming use as it is, which the setbacks, as we've

discussed, would do. I don't, that makes them, I don't think changing the bonding requirement will make them non-conforming. But they look, they're conceivably some of the towers that exist are within 6 times the height of the tower of a neighboring property line. That, would very likely constitute an explicit, significant financial taking to Palouse Wind. So we may need to throw a clause in the setback language that we've already adopted that says it doesn't apply to the existing Palouse Wind . Because...

Brian Davies- Wind farms created before a certain date.

Dave Gibney- Wind farm, you know. Because they, there would be an, the thing is an existing use gets grandfathered into the code that they existed on unless they want to make a change of greater than, I believe, 75%, in which case they have to either get an additional conditional use, adjust on the board, through the examiner. Or they don't get to do it. And I could be wrong, but I suspect that replacing the generator at the top of it, that repowering an existing wind turbine would be deemed greater than that amount. So, I believe, and we've got some time to think about it and work on that, but I believe that we would need to add to the setback language that the new setbacks don't apply to the existing wind farm. Or, or not. We can think about that, over time. It's just something, but, but, you know the, we've been advised that whatever we do is not a taking to those landowners who may have an agreement with a potential project today on the decks but, and frankly, you know, that litigation might not be all that hard to deal with. But, if we were to say to the existing wind farm that half of, and I'm just making that up, half of your existing turbines can't be repowered. That's probably worth some lawyer time. So...

Denis Tracy- It's doubtful that that issue is gonna, would be able to be resolved by November the 19th Mr. Chairman.

Dave Gibney- Well, I'm, I, I can, we can add to our existing setback that these new setbacks don't apply to Palouse Wind. Or to any existing, existing wind turbines at the point right now.

Brian Davies- Created after a certain date and time.

Alan Thomson- We're looking into that legally.

Dave Gibney- Yeah, created before.

Denis Tracy- So, I'd encourage the Planning Commission, if you have a specific proposal, you know, when you're talking about the, when you're talking about repowering, there would be no impediment to Palouse Wind to putting in a new generator on the top of their existing tower, as long as it is approximately fairly close to the, the, effect on the environment that the current tower has. If you're talking about replacing a 300-foot some tower with a 700-foot tower, yes, big difference. So, if that's what you mean by repowering, then, then, I guess my point in, in pointing this out is please, you would please to the

Planning Commission, ask a very specific question about, if you're going to talk about repowering, what do you mean by repowering?

Dave Gibney- And I agree, that's why I'm just bringing the issue up right now. But if, but it is likely, and I don't know, but it is likely that some of those towers that exist were put in at four times the height of the tower to an existing non-participating residence. But closer than that to the adjacent property lines. And that's the one where I wonder whether we would be making it. And, and again...

Denis Tracy- And I can... I can answer that question, Mr. Chair. There would not be a problem with, with doing that, you do not have to explicitly exempt Palouse Wind from the new code. Palouse Wind's project is already exempt from the new code, as long as they remain within the parameters of their permit that they have now. So...

Dave Gibney- Okay, I think there's a nuance there that, in the, in the, in how grandfathering to non-conforming use works in zoning law. I could very much be wrong. I am not at all suggesting that we make that amendment to the code tonight. I am saying that we may need to talk about it at the next meeting, or the meeting after that.

Julian Matthews- Yeah, because Denis, doesn't that, isn't, that's what I was just saying. So, you can't put in a new code, and like you're saying, you know, make everyone, like, make, when the whatever one that is up by the rest area, they're already done, right? They're, they're, the code is in place that they went up, set it up under, and so now they're done. And anything we do from now on, like everyone's saying, well, the County Commissioners didn't understand the ordinance at the time of how to best write it up, and so we can't do anything, this, this can't affect people or the current wind turbines that are in place right now, pretty much.

Denis Tracy- I'd agree with that statement. This, the new code can't affect an existing project. Their operating conditions have been established by the permit that they already have. So, they, as long as they stay within that permit, then they'd be allowed to continue.

Julian Matthews- We just need to think about any new projects, not past projects or trying to penalize people that were fully compliant with the ordinance at the time.

Dave Gibney- So, I, I still think there may be potential nuances, because one method of repowering a turbine, a wind turbine is to remove the existing tower and replace it with a higher one. That's one of the methods that has been used elsewhere. Maybe they can do it, maybe they can't. I don't think we need to belabor it tonight. We do, I'm just saying, we may have to talk about it and we will have more information at a future meeting. I was just trying to heads up the Commission here, so.

Alan Thomson- Well, to be clear, in planning and zoning, when you expand the project, then you have to go through another CUP. And if, repowering can be one of three things and

that's up to the operators to decide which way they want to go. You could change the power structure of an existing turbine without making it bigger or increasing the footprint in any sense. That's one option. A second option is you put new blades on and those blades are going to be larger than the ones that are there right now. So that would be, in my mind, as a Planner, an expansion of your current CUP. Third option is you put in a new tower altogether and you put in a taller tower with longer blades. That definitely is not what they have in their CUP at this moment in time. So, as a Planner, I would say that they need to go through a new CUP, and then, potentially, you're going to run into the new code. That's the way I would look at it as a Planner.

Dave Gibney- And, and I, thank you, Alan, and, and that's all I'm, again, we're just trying to warn every, you know, that's something that may yet be on our table to accomplish what we said we want. Does, and I said that if we had time, and we are past 9 o'clock, but, you know, anybody out there who wants to speak briefly? Seeing none...

Julian Matthews- Motion to adjourn.

Brian Davies- Second.

Dave Gibney- We have a motion to adjourn and a second. All in favor?

You have to think about that. We're adjourned.

MOTION by **Julian Matthews** and seconded by **Brian Davies** to adjourn the meeting.

9:00 p.m. – WORKSHOP ADJOURNED.