

**From:** [Alan Thomson](#)  
**To:** [Jeff Marshall](#); [Kenneth Millar](#)  
**Subject:** FW: FW: Whitman County Planning Commission - June 18th meeting  
**Date:** Friday, June 20, 2025 11:25:03 AM

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Jeff and Ken,

Could you post this up on the Renewable Energy Information spot please under the heading *Dave Gibney agenda plan*. I'm going to be sending you another one shortly. Thanks.

Alan.

Thursday, after our last meeting, I sent Alan, Mark, and Denis a series of questions regarding our process. Generally asking for some legal advice. I have these questions copied below this note. As well as Denis's initial response.

Denis responded that he would consult the specialist zoning attorney his office has contracted with. As the note states, this attorney has not been available until next week.

It is clear that we need to be very careful if we do decide to revise the current setback language in 19.61. Since we will not have a complete response in time to review before our meeting of June 18<sup>th</sup>, I plan to not discuss the setback and height sections of 19.61 until the next meeting.

So, starting at the next subsections, I hope we can make significant progress on the remaining subsections of 19.61.060 - Development Standards and Criteria,

3. Site Access and Traffic Management
4. Noise
5. Air quality:
6. Vegetation and wildlife construction limitations:
7. Overhead electrical transmission and collector lines
8. Avian and bat studies and requirements:
9. Stormwater:
10. Geologic and Flood Hazards:
11. Water Resources:
12. Cultural Resources:
13. Visual Resources

Below is Denis's response followed by my 4 questions. As usual, please do not use reply all and please include Alan if you do respond to me.

Deni's response:

**From:** Denis Tracy [DeniT@whitmancounty.gov](mailto:DeniT@whitmancounty.gov)

**Sent:** Friday, June 6, 2025 12:13 PM

**To:** [gibney@pullman.com](mailto:gibney@pullman.com); Alan Thomson [Alan.Thomson@whitmancounty.gov](mailto:Alan.Thomson@whitmancounty.gov); Mark Storey

[Mark.Storey@whitmancounty.gov](mailto:Mark.Storey@whitmancounty.gov)

**Subject:** RE: 19.61.060 - Development Standards and Criteria - (e)

I think I agree with your understanding on that section.

On all of your questions I've reached out to my zoning expert.

She is out of the country now, but we will be speaking on June 18.

After I speak with her, I and/or she will put together a memo for you to try to address the questions and outline the guardrails re all the setback questions.

This may slow progress a bit, but we don't have to be in too big of a rush.

Best,

Denis

My 1<sup>st</sup> question:

**From:** [gibney@pullman.com](mailto:gibney@pullman.com) [gibney@pullman.com](mailto:gibney@pullman.com)

**Sent:** Thursday, June 5, 2025 9:16 PM

**To:** 'Alan Thomson' [Alan.Thomson@whitmancounty.gov](mailto:Alan.Thomson@whitmancounty.gov); 'Mark Storey' [Mark.Storey@whitmancounty.gov](mailto:Mark.Storey@whitmancounty.gov); 'Denis Tracy' [DenisT@whitmancounty.gov](mailto:DenisT@whitmancounty.gov)

**Cc:** [gibney@pullman.com](mailto:gibney@pullman.com)

**Subject:** Protecting specific Landmarks?

I will probably send a few more emails today on various aspects of our endeavor Not in any order of importance.

So, on Ken Duff's request that we protect 3 specific Palouse Landmarks? On the face of it, there may be merit to such an exclusion. It might also cool some public opposition.

It would probably be easier to define a distance from Palouse Falls the made the visual impact small or non-existent. Doing so for Steptoe and Kamiak Buttes seems less practical.

Is there any precedent, Washington, or other states, for such (designated landmarks, parks, monuments) being excluded from renewable energy projects. Has EFSEC or the courts made any determinations in this area?

At this time, I am asking questions, not explicitly advocating this position.

Dave Gibney

Chair, Whitman County Planning Commission

509-715-9552

My 2<sup>nd</sup> question:

**From:** [gibney@pullman.com](mailto:gibney@pullman.com) [gibney@pullman.com](mailto:gibney@pullman.com)

**Sent:** Thursday, June 5, 2025 9:16 PM

**To:** 'Alan Thomson' [Alan.Thomson@whitmancounty.gov](mailto:Alan.Thomson@whitmancounty.gov); 'Mark Storey' [Mark.Storey@whitmancounty.gov](mailto:Mark.Storey@whitmancounty.gov); 'Denis Tracy' [DenisT@whitmancounty.gov](mailto:DenisT@whitmancounty.gov)

**Cc:** [gibney@pullman.com](mailto:gibney@pullman.com)

**Subject:** Setback to (non-participating) property line vs. non-participating landowner's occupied building

I will probably send a few more emails today on various aspects of our endeavor Not in any order of importance.

It is clear to me (but perhaps not to all members or the public) that setbacks of tower height plus 100 ft are intended to protect against purely physical damage in the event of structural tower/rotor failure.

And that setbacks of X(4) times tower height are intended to mitigate visual, aesthetic, health impacts on occupants of existing buildings owned by non-participating/non-consenting landowners. I guess buildings owned/occupied by participating landowners are dealt with in the lease agreement(s).

And, as some members of the public have noted, 19.61.060(c) regarding incorporated communities somewhat blurs this distinction.

The idea of applying the X(4) times setback to adjacent property lines is showing some traction.

When evaluating “taking” vs. “health, safety and welfare” where would the lack of an occupied building, and therefore is less likelihood of constant human exposure to flicker, shadow, noise, etc, land on the arbitrary and capricious scale?

Also, some additional discussion on how zoning usually doesn't deal with speculative buildings that may some day exist.

At this time, I am asking questions, not explicitly advocating this position.

Dave Gibney  
Chair, Whitman County Planning Commission  
509-715-9552

My 3d question:

**From:** [gibney@pullman.com](mailto:gibney@pullman.com) [gibney@pullman.com](mailto:gibney@pullman.com)

**Sent:** Thursday, June 5, 2025 9:16 PM

**To:** 'Alan Thomson' [Alan.Thomson@whitmancounty.gov](mailto:Alan.Thomson@whitmancounty.gov); 'Mark Storey' [Mark.Storey@whitmancounty.gov](mailto:Mark.Storey@whitmancounty.gov); 'Denis Tracy' [DenisT@whitmancounty.gov](mailto:DenisT@whitmancounty.gov)

**Cc:** [gibney@pullman.com](mailto:gibney@pullman.com)

**Subject:** Changing setbacks for health, safety, welfare?

I will probably send a few more emails today on various aspects of our endeavor Not in any order of importance.

At our meeting of Wednesday, June 4<sup>th</sup>, we received a great deal of public comment regarding the setbacks section of 19.61. Mostly in favor of significant increases. I also appreciate the cautionary comments provided by Prosecutor Tracy.

After I closed public comment, each commissioner also spoke on this subject. All agreed that they needed time to think and do additional research. 2 commissioners appeared strongly in favor of increasing and 3 more appeared to be leaning that way. There seemed some additional support for making 4 times tower height apply to adjacent property lines, rather than occupied non-participating buildings.

I believe everyone heard and understood that any such changes need more support than just public comment and commissioner's opinions. It would need additional documentation of the "best available science" and "existing (or perhaps ongoing) legal precedence". Also, for various reasons, we are receiving very little public comment in support of additional renewable energy projects in Whitman County.

If we go down this path, it will quite likely significantly increase our timeline for a revised 19.61 ordinance and delay work on any Solar or BESS ordinances.

I know they don't wish to greatly influence the path of the commission, but I think we could use some direction from the BoCC about timelines and if they are interested in significant changes to the setbacks, and/or possible maximum height restrictions,

Can we get some guidance from the attorneys about a process that might hold up and not be deemed "arbitrary or capricious".

At this time, I am asking questions, not explicitly advocating any position.

Dave Gibney  
Chair, Whitman County Planning Commission  
509-715-9552

My 4<sup>th</sup> question:

**From:** [gibney@pullman.com](mailto:gibney@pullman.com) [gibney@pullman.com](mailto:gibney@pullman.com)

**Sent:** Thursday, June 5, 2025 9:16 PM

**To:** 'Alan Thomson' [Alan.Thomson@whitmancounty.gov](mailto:Alan.Thomson@whitmancounty.gov); 'Mark Storey' [Mark.Storey@whitmancounty.gov](mailto:Mark.Storey@whitmancounty.gov); 'Denis Tracy' [DenisT@whitmancounty.gov](mailto:DenisT@whitmancounty.gov)

**Cc:** [gibney@pullman.com](mailto:gibney@pullman.com)

**Subject:** 19.61.060 - Development Standards and Criteria - (e)

I will probably send a few more emails today on various aspects of our endeavor. Not in any order of importance.

- e. For purpose of this section, any consents to visual setback distances of less than 4X turbine height from a non-participating adjacent landowner's occupied buildings and less than the minimum setbacks from a nonparticipating adjacent landowner's property lines shall be documented by a fully executed, notarized agreement by the fee title owner, in a format that can be recorded on the affected real property title.

At the meeting, Alan stated that this section was to apply if/when future construction resulted in an occupied building inside a setback distance. I read it 9at least the 4x part as allowing an existing owner of an occupied building, presumably for some amount of compensation could allow a turbine less than 4x distance.

My understanding of zoning and land use law is that any actions I may take on my parcel, let's say A cannot cause any existing of an adjoining parcel, say B, to become non-compliant. If I have an existing alcohol or marijuana store, currently far enough from any limiting use (parks, schools, daycares, etc.) and the owner next door decides to start a daycare, my store doesn't become non-compliant.

It seems to me that it would be my choice if I wished to build a residence on my adjoining parcel less than 4x distance from a tower. The greater danger factor establishing the height pls 100 ft might be a reason to deny me the building permit. But, in no case can my actions post turbine permitting cause the turbine to become ex post facto non-compliant.

Not sure if this is a question or a comment

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