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CITY OF LYNNWOOD
COMMUNITY DEVELOPMENT

MEMORANDUM

To: Lynnwood City Council
Lynnwood Planning Commission

CC: Mayor Don Gough
David Osaki, Community Development

From: John E. Galt, Hearing Examiner 

Date: January 30, 2009

Subject: Annual Report for 2008

The Lynnwood Municipal Code provides for an annual report from the Hearing Examiner to the City Council and Planning Commission:

The Examiner shall report in writing to and meet with the Planning Commission and City Council at least annually for the purpose of reviewing the administration of the land use policies and regulatory ordinances, and any amendments to City ordinances or other policies or procedures which would improve the performance of the Examiner process. Such report shall include a summary of the Examiner's decisions since the last report.

[LMC 2.22.170] This Report covers the cases which I decided during 2008. The report is divided into two parts: Hearing Activity and Discussion of Issues. I am available to meet at a time of mutual convenience with Council and/or Planning Commission at your request.

Hearing Activity

I decided five land use applications during 2008. Each case is listed on the attached table in chronological order of hearing. Abbreviations are mostly self-explanatory: "Ad Ap" = Administrative Appeal. The one double "Decision" entry "Vacate/Sustain" means that I disagreed with the staff action in part and agreed with the staff action in part. Thus, I vacated part of the staff's action, but sustained the rest of its action.

By comparison, I decided 17 cases in 2007, seven in 2006, 16 in 2005, three in 2004, 11 in 2003, and 20 in 2002.

Discussion of Issues

The General Stor-AGE, LLC (General Stor-AGE) case (2007PDR0001) required resolution of an interesting conflict within City code. General Stor-AGE sought approval of a Planned Unit Development (PUD) and

Project Design Review (PDR) for a commercial use that conflicted with the adopted Comprehensive Plan and current zoning of the property.

PUD applications are handled under Process IV. [LMC 21.30.300, ¶ 1] Process IV (with but two exceptions, neither of which applied to General Stor-AGE's application) requires direct review and decision by the City Council. [LMC 1.35.400 - .499] The Council "may approve any use [in a PUD] not a direct contradiction to the objectives of the comprehensive plan, except as set forth in LMC 21.30.950(B)" (which pertains solely to density limitations in residential PUDs). [LMC 21.30.800] The PUD provisions require "project design review approval pursuant to Chapter 21.25 LMC prior to Process IV approval." [LMC 21.30.300, ¶ 2]

The PDR process, on the other hand, is administrative; appeals from a PDR decision by staff are handled under Process II. [LMC 21.25.185] One of the required approval criteria in the PDR process is consistency with the Comprehensive Plan. [LMC 21.25.145(B)(1)] (Interestingly, the PDR approval criteria do not require compliance with applicable zoning standards.)

The stage was thus set for an unavoidable conflict: Planning had to approve the PDR application before the Council could approve the PUD, but the proposal was inconsistent with the Comprehensive Plan, so Planning could not grant PDR approval (even though it thought the building design was fine). Planning had no choice but to deny General Stor-AGE's PDR application.

General Stor-AGE appealed Planning's denial of its PDR application to the Examiner. My Decision on the appeal was appealable directly to Superior Court, not to the Council. [LMC 1.35.200 - .299] I was thus faced with a conundrum:

Even though it is the central (and only) substantive issue in this appeal, it would be inappropriate for the Examiner to rule on whether the proposal is consistent with the Comprehensive Plan. The City Council has authority when considering a PUD application to allow any use, even one not allowed by the underlying zoning, so long as that use is "not a direct contradiction to the objectives of the comprehensive plan". [LMC 21.30.080, quoted in Finding of Fact 3, above] Were the Examiner to rule in this appeal on whether General Stor-AGE's proposal "is consistent" with the Comprehensive Plan under PDR criterion LMC 21.25.145(B)(1), he would be usurping the City Council's PUD authority under LMC 21.30.800 to determine whether to allow any use "not a direct contradiction to the objectives of the comprehensive plan". The Examiner should not usurp the authority of a higher ranking decision making authority. The Council is the highest ranking local decision authority. [LMC 1.35.080(B), quoted in Finding of Fact 4, above]

(Examiner's Decision, p. 7, Conclusion of Law 4, ¶ 1) How did I resolve the conundrum?

The Examiner is mindful that this Decision “dodges” the central issue in this case. However, the structure of the LMC is such that in this particular set of (hopefully unique) circumstances, the Examiner concludes that such an action is most appropriate. The Examiner concludes that when a PDR application which includes a use not expressly mentioned in the Comprehensive Plan for the area in which the site is located is accompanied by a PUD application for the same use, the PDR decisional criterion which requires determination of Comprehensive Plan consistency must be deferred to the City Council for consideration during its action on the companion PUD. In such cases, the Department should not deny PDR based on lack of Comprehensive Plan consistency, but should issue its PDR decision contingent on the City Council’s decision on the acceptability of the use and set forth its position on Comprehensive Plan consistency as a recommendation to the City Council on the companion PUD.¹ (In the alternative, an applicant could elect consolidated processing of both applications.)

(Examiner’s Decision, p. 7, Conclusion of Law 5, footnote in original)

This particular scenario may not frequently occur. However, when it does it creates a problem for applicant, staff, and Examiner alike. The Council may wish to explore code amendments which would eliminate the possibility of this conflict arising in the future. (Since this falls within the realm of a policy issue, it would be inappropriate for the Examiner to suggest alternative solutions.)

¹ It seems from the Department’s “Recommendation” in Exhibit L2 (quoted in Finding of Fact 1.C, above) that the department really wanted to leave the Comprehensive Plan consistency question to the City Council: The department said that “future approval” of the PDR would have to await City Council approval of the PUD. This Decision identifies a methodology within the existing code framework by which that may happen.

LYNNWOOD
HEARING EXAMINER DECISIONS - 2008

File Number	Applicant Name <i>Project Name</i>	Case Type Acreage No. of Lots	Decision Reconsideration Action	Decision Date Reconsideration Date
2007CUP0004	Edmonds Community College <i>Main Campus Remote Pkng. Lot</i>	CUP	OKw/c	01/14/2008
2007CUP0005	Sophie Court, LLC	CUP	OKw/c	05/29/2008
2007PDR0001	General Stor-AGE, LLC	Ad Ap	Vacate/Sustain	07/11/2008
2008CUP0002	Washington Baptist Convention <i>Good Shepherd Senior Housing</i>	CUP 2.25 0.00	OKw/c	09/02/2008
2008CUP0003	Silver Creek Community Church	CUP 5.00	OKw/c	12/15/2008