

**City of Lynnwood
PLANNING COMMISSION MINUTES
January 28, 2010 Meeting**

Commissioners Present:	Staff Present:
Richard Wright, Chair	Shay Davidson, Administrative Asst.
Maria Ambalada	Paul Krauss, Comm. Dev. Director
Van Aubuchon	Kevin Garrett, Planning Manager
Chad Braithwaite	David Osaki, Deputy Comm. Dev. Director
Jeff Davies	
Bob Larsen, First Vice Chair	
Michael Wojack, Second Vice Chair	Other:
	Council President Ted Hikel
Commissioners Absent:	
None	

The meeting was called to order Chair Wright at 7:00 p.m.

Approval of Minutes

1. Meeting of January 14, 2010

Commissioner Wojack stated that under *Election of Officers* on page 1 the motion to nominate Chair Wright was actually made by Commissioner Larsen, not Commissioner Wojack.

Commissioner Braithwaite moved to approve the minutes as amended. The motion passed unanimously.

Council Liaison Report

Council President Ted Hikel reported the following:

- The Council had a public hearing on Monday night regarding permit timelines, which was favorable.
- The Council had a public hearing on the right-of-way vacation for 26th Avenue and the Legacy project, which was approved.
- The Council also held a public hearing on the Accessory Dwelling Units (ADUs). This will come back to a work session on February 1 and will be taken up again on the Council business agenda on February 8.
- The Council discussed the Meadowdale Gap MUGA boundaries at a work meeting and decided that it was quite a bit different than what most of the council members had expected. It has been forwarded to the Planning Commission and is on the agenda tonight to review.
- He and the Mayor were in Olympia the last couple days talking with the legislature and urging them to “do no harm” to cities. A number of council members attended three hearings recently to testify in opposition to opening Paine Field to commercial aviation.

Commissioner Wojack asked Council President Hikel what the Council's concerns were regarding ADU's. Council President Hikel explained that different members of the Council had expressed concern about: the height of the detached buildings; the question of whether we should allow detached units on lots as small as 8,400 or 7,200 square feet; and the idea of having a license for all rental housing including ADU's. He noted that a number of people showed up to testify on the matter.

Commissioner Aubuchon asked if the total square footage of ADU's would be limited as to total square footage. Council President Hikel replied that the current proposal they now would be limited ADU size to 600 square feet for a single bedroom and 800 square feet for a two-bedroom unit. Commissioner Aubuchon asked about impacts on parking. Council President Hikel stated that there are provisions for this. He noted that at the hearing the issue came up and concerns were discussed. Commissioner Aubuchon commented that in his neighborhood there are a number of people with multiple cars parked in their yard. There was discussion about code enforcement of this issue.

Commissioner Ambalada said that we need to be cognizant of the fact that we have many adult family homes taking care of seniors. These homes employ help and they often park in front of the homes. Council President Hikel commented that in most cases street parking is available. He pointed out that the City went to great efforts to provide the on-street parking on 188th Street.

Citizen Comments

None.

Public Hearings

None.

Work Session

1. Permit Processing Procedures Code Amendment. Consideration of amendments to City regulations for processing and acting on applications for development permits. Referral from City Council.

Deputy Community Development Deputy Director David Osaki introduced the item and presented a PowerPoint presentation regarding Growth Management land use planning in Washington State to show the Planning Commission how permitting fits into the planning program under the Growth Management Act (GMA). He went into detail discussed about the GMA goals, planning framework, regulations, comprehensive plan policies, development regulations, permitting, options for hearings, and proposed process changes.

Commission Comments and Questions:

Chair Wright asked how many conditional use permits are applied for each year in the City of Lynnwood. Deputy Director Osaki commented that it has varied, but over the last year there have been two or three; in peak years there have been three or four. Chair Wright then asked how many of those had been rejected and then appealed. Deputy Director Osaki said that he wasn't aware of any.

Chair Wright said he was trying to get an idea of the workload. Director Krauss stated that the Council has six hours of business meetings a month. One public hearing that Deputy Director Osaki mentioned took twenty hours. This has been a concern. If the annexation occurs we will have a significantly higher increase in the amount of development activity and processing of land use permits.

Council President Hikel said they that the City Council hasn't haven't really come to any decisions. He explained that the Council is looking at a calendar right now where they will have less than 100 hours for the entire year to do all the city business when they take out the portion that has to be devoted to budget this year. It is his opinion that if they put into effect policies that clearly state our objectives the effectiveness of these changes will become clear and the Council will not have to deal with these situations. He Council President Hikel gave an example of how, when the City Council y were looking at the proposal to developing the Alderwood Mall property, it consumed an enormous and unnecessary amount of Council's time. He encouraged the Planning Commission to consider the suggestions and give their best recommendation.

Chair Wright commented that the City of Edmonds just went through this same situation and turned these responsibilities over to a Hearings Examiner. It is his understanding that they are going to revisit that issue. He asked about background on their decision and staff's suggestion for avoiding that scenario. Deputy Director Osaki said they would check on the Edmonds situation and get back to the Planning Commission before the next meeting. He said he was aware that Mill Creek was also considering moving a lot of their decisions from the City Council to the Hearing Examiner.

Commissioner Larsen said he is generally very supportive of this idea. He referred to the slide at the right top of page 4 of the PowerPoint presentation packet. To the second bullet he would add: *Adequate decisions supported by clear, succinct regulations*. He said he is assuming that staff has reviewed the regulations and feels that they are substantially solid enough that a good Hearing Examiner would be able to look at them and feel comfortable ruling from them. Staff concurred with this and said they would be reviewing that thoroughly.

Commissioner Aubuchon referred to page 4, Specific Proposed Process Changes which refers to Appeals of the Hearing Examiner Variance and Conditional Use Permit (CUP) decisions. He asked if there is already some other means of redress for these decisions. Deputy Director Osaki explained how, at present, appeals would currently go to the City Council. After that, if you are not happy with what the City Council does, you can appeal the decision it to Superior Court. This proposal would eliminate the appeal to the City Council so that it would go right directly to court.

Commissioner Ambalada referred to the slide that says that Washington State law does not encourage the City Councils to get involved in some permit decisions and also that it is clear that City Council is a legislative body and should just be doing legislative work and policy making. She stated that the Planning Commission is really providing the City Council some ammunition against lawsuits. She referred to a case involving a repeal of a business license which was very sensitive and involved much of Council's time. Director Krauss agreed that this type of case puts the Council in a very peculiar position because the Mayor becomes the judge, the Council becomes the jury and the City Attorney becomes the prosecutor. He noted that they recently almost had a similar situation. Director Krauss discussed concerns about having the Council deal with this

type of sort matter. He noted that his recommendation is to have a good Hearing Examiner, give them provide good direction in terms of solid ordinances and solid plans, and let them do their job.

Deputy Director Osaki added that GMA has established guidelines that the permit decisions need to be timely, fair, and predictable. Putting a lot of quasi-judicial responsibilities on the City Council does makes the timeliness more issue very difficult to manage. He noted that he had heard from an the insurance authority several years ago that represents some cities has said that defending cases involving land use decisions is represents their highest volume of cases that they're dealing with now.

Commissioner Ambalada pointed out that Councilmembers are elected officials and this could also have an appearance of unfairness. She stated that this topic is a is very important and piece of documentation which she felt should be given priority to approve it because of the annexations and the revitalization of Highway 99.

Commissioner Braithwaite said he feels it is very reasonable to transfer the workload to the Hearing Examiner. He made the point that for a large developer with an army of lawyers, going to court rather than going to City Council is not a problem, but for an individual, having to go to the court may be cost-prohibitive. Director Krauss said that the individual would still have his or her day in front of the Hearing Examiner. He explained that there is a great propensity for the Council to feel empathy for people who come before them. This is understandable, but empathy is not something you can base land use decisions on. If you do, that can be very dangerous.

Commissioner Wojack asked if staff could bring back the City Council's concerns. Director Krauss noted that the discussion occurred at a work session so the minutes are not detailed. He stated that all of the Councils that he, David Osaki and Kevin Garrett have had these discussions with have had the same impulse that they were elected to do these things and they should have the ability to sit in judgment on these things. They didn't spend a huge amount of time on this.

Commissioner Wojack said he is generally very supportive of this in order to lessen the load for the City Council.

Planning Manager Garrett said he is in full agreement with Director Krauss and Deputy Director Osaki. He referred to Commissioner Braithwaite's concern about individual citizens. He commented that the nature of, the legal structure and the liability related to making decisions on land use matters has changed from where it was thirty or forty years ago. Today is really is much more of a judicial type of decision where there are a set of rules, law, and facts. The decision maker must take the facts, apply them to the code and, being cognizant of prior judicial decisions, render a judgment. This is the kind of function that a Hearing Examiner is trained to do. A City Councilmember, on the other hand, is trained to be empathetic. He summarized that part of what they are trying to do is to match the type of decision with the skills, capabilities and character of the decision maker.

Commissioner Larsen referred to council members' concern over not hearing the issues that people raise. He suggested that there is maybe a perceived disconnect between council members and the citizenry when they have to go to the hearing Hearing Examiner and they don't go to the Council. He suggested that a way to address this

might be that Hearing Examiner's report could be issued such that Council members could start to look for patterns in decisions. Director Krauss thought this was an excellent idea. He said they could say that their contract requires an annual report from the Hearing Examiner.

Council President Hikel stated that when it comes to these matters that have to be decided that are based on laws that have to be decided, the question is: Is it going to be decided on policy or is it going to be decided on politics? It's a very bad thing when Council's start making decisions on land use items based on politics because that's where you're going to get into legal difficulties. We already have a professional who gives us a report every year. We also have staff that feeds back to the Council so if there are problems they are trained to spot those and bring them back to the Council. Annexation will drive the need for even more time. We need to decide if it is going to be in front of the Council or in front of the Hearing Examiner. He stated that the bulk of Council's comments on this were that this looks like mostly a good idea.

Staff indicated they would bring back more information, have more discussion and then get comments on individual items.

2. Meadowdale Gap MUGA Boundaries. Establishing a common boundary between the Municipal Urban Growth Areas (MUGAs) between the cities of Lynnwood and Mukilteo in the Meadowdale Gap – the area generally located west of 52nd Avenue W, south of 148th Street and Norma Beach Road and north of Lunds Gulch.

Director Krauss reviewed the history of this area and current developments recent discussions between the Mayors and staff of Mukilteo and Lynnwood. The City Council has asked the Planning Commission to review this issue and give input. He offered any information that staff could provide and asked that the Planning Commission take some time to familiarize themselves with the area before the next meeting. He explained that from staff's perspective the 148th Street division works, but it doesn't mean it's the only answer. He discussed some possible alternatives for the boundary line.

Council President Hikel explained that the reason this was sent back to the Planning Commission is that the Council was taken aback by this when it was presented to them recently. In an earlier version of this, Mukilteo did want to take in the Norma Beach area, but that was all that the City was aware of. Now almost half of the area is proposed to become part of Mukilteo. They are asking the Planning Commission to reconsider the boundaries.

Director Krauss offered to provide the maps of the large annexation that is pending because it shows why the Council defaults to 148th Street as the boundary. 148th is the boundary of the annexation all the way over to I-5.

Chair Wright discussed his reservations about this. He said he would appreciate a better map showing the streets. He noted that they need to also take into consideration the drainage, the watershed, and neighborhoods.

Commissioner Braithwaite asked about the two islands shown off to the left. Director Krauss explained that the larger green parcel is already owned by the City of Lynnwood. The other parcel is owned by Snohomish County Parks.

Commissioner Ambalada asked if 148th could be divided in the middle. Director Krauss said it could be used as a boundary, but you can no longer divide it down the middle in Snohomish County. That shows would be the advantage of having an Interlocal Agreement that says you can share maintenance. The Snohomish County Boundary Review Board (BRB) requires that the first city to step forward to annex take the entirety of the road that serves as the boundary.

Commissioner Ambalada encouraged staff on the route the City is taking and to seek an amicable settlement with Mukilteo.

Commissioner Wojack asked staff to send the BRB's list of criteria so the Planning Commission could consider this as they review the area. Director Krauss indicated they would send out the BRB criteria and the maps.

Commissioner Larsen asked who owns the unplatted land in Lunds Gulch besides the City of Lynnwood. Director Krauss said there are a couple of private in-holdings. The County owns much of the creek system itself. Staff reviewed some details of the properties and indicated they would provide Council with the information requested.

Director's Report

Director Krauss discussed the following:

- The judge found in favor of Lynnwood in the Mill Creek Appeal. He reviewed key events of the hearing and the next steps in this process.
- A group in Parks is working with a couple of residents looking at a farmers' market.
- A major Comprehensive Plan Update is scheduled to occur this year, but the AWC is working with the legislature to change the cycletiming. This means the plan would be due in 2014 which would enable cities to have the benefit of all the census data and updated population projections. The City plans to go through the typical Comprehensive Plan Update cycle this year, but the major overhaul may not be due this year.
- He distributed *Planning for Climate Change*, a document that the Washington Chapter of the American Planning Association (APA) has put out. This talks about why and how communities can cope with climate change and a call to action. He pointed out that Keith Maw was one of the writers.

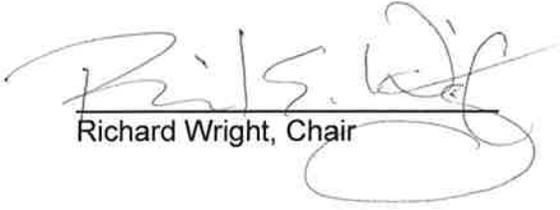
Planning Manager Garrett added the following:

- The filing date for the annual Comprehensive Plan Update cycle is March 1.
- He distributed and briefly discussed information a hand-out from the APA regarding *Planning for Transit-Oriented Development* which would be applicable around Highway 99, but and also around future light rail transit stations and City Center in general.
- He also distributed information on *Low Impact Development* from the APA. He pointed out that this information is available on APA's website.

Commissioner Ambalada commended those that were involved in SWIFT Transit. She has been very pleased with the service.

ADJOURNMENT

The meeting was adjourned 9:17 p.m.



Richard Wright, Chair