

**City of Lynnwood
PLANNING COMMISSION MINUTES
February 25, 2010 Meeting**

Commissioners Present:	Staff Present:
Richard Wright, Chair	Shay Davidson, Administrative Asst.
Maria Ambalada	Paul Krauss, Director
Van Aubuchon	Kevin Garrett, Planning Manager
Chad Braithwaite	David Osaki, Comm. Devt. Dep. 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 28, 2010

Chair Wright referred to the second paragraph on page 3 of 7 and corrected three typos.

It was moved and seconded to approve the minutes as amended. Motion passed unanimously.

Council Liaison Report

Council President Ted Hikel gave a report on recent Council activities.
[Microphone off]

Citizen Comments

None.

Meeting with Mayor Gough

Continued.

Public Hearings

None.

Work Session

- 1. Meadowdale Gap MUGA Boundaries. Establishing a 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 Ave. W, south of 148th St. and Norma Beach Road and north of Lund's Gulch.**

Director Krauss reviewed the background information on this area and solicited Commission comments.

Commissioner Larsen commented that he likes the boundary. He noted that the area west of 52nd and north feels like Mukilteo. He expressed concern that the drainage boundary would still affect Lynnwood and Lund's Gulch. He recommended moving toward an Interlocal Agreement with Mukilteo to help take responsibility for that. He suggested holding onto 148th as the boundary as much as possible because it is such a well-identified boundary. He expressed support for the rest of the boundary. Director Krauss responded to Commissioner Larsen's concerns about the drainage boundary. He noted that they did sit down with Mukilteo regarding this. The Interlocal draft talks about the mutual concerns of protecting Lund's Gulch and enabling each community to let the other community review development proposals and comment on them. Planning Manager Garrett added that this would apply to both private development and public projects. This would happen before the SEPA determinations.

Commissioner Aubuchon asked for more information about the drainage boundary. Director Krauss reviewed this.

Chair Wright asked why 148th was originally chosen as a boundary. Planning Manager Garrett stated that the original Comp Plan had a *Potential Annexation Area* and a *Probable Annexation Area*. At that time all of the Meadowdale Gap was in the Potential Annexation Area. Later, the City excluded much of the Meadowdale Gap from the MUGA. This created the gap area. The City moved their MUGA back into that area in 2007 but by that time Mukilteo had developed an interest in annexing a substantial part of it.

Chair Wright asked where the school district boundary is for Edmonds and Mukilteo. Planning Manager Garrett stated that it is 148th Street and Norma Beach Road.

Commissioner Braithwaite asked if anyone had considered asking the people in these neighborhoods which City they would like to become a part of. Planning Manager Garrett explained that both Mukilteo and Lynnwood have done large amounts of outreach. Mukilteo has been petitioned by the Norma Beach Road residents to annex into Mukilteo.

At the same time, during Lynnwood's 17 outreach meetings there were several people who said they would like to be in the annexation. There is also a pocket of Edmonds addresses in there who would like to be annexed by Edmonds, which is not possible.

Commissioner Davies commented that when he drove through the area Fisher Road felt like a Mukilteo neighborhood, but when you back up to 60th and 64th the housing developments feel more like a Lynnwood neighborhood. He thought that it would be easier for citizens to have the major roads be the boundary rather than having boundaries that jog around.

Commissioner Ambalada remarked that 148th is a good boundary because just south of that is a Lynnwood park.

Commissioner Braithwaite commented [Microphone off].

Planning Manager Garrett stated that the County policies related to moving MUGA lines put the onus on the cities that are involved to come up with a proposed solution. Failing that nothing will happen and the County will continue to be in charge of any development in this area. You can't annex the area until it's been officially included in your MUGA. It won't be officially included in the MUGA if there's a dispute over it. He also pointed out that 60th is not a through street. He noted that the recommended boundaries were primarily suggested because of access.

Commissioner Larsen suggested that the notion of natural boundaries is one of the more important principles in the process. Lund's Gulch could be argued as a natural boundary. If you go north of that natural boundary it probably ought to be Mukilteo. The question is, as you move east, where it should become Lynnwood.

Chair Wright discussed the drainage boundaries. He expressed some concern about an Interlocal agreement for the protection of Lund's Gulch, noting the issues Mukilteo has had with Japanese Gulch and other issues. He voiced an interest in seeing the City of Lynnwood continue to protect its investment in Lund's Gulch in order to preserve that area. This has been done with the concept of 148th being that boundary. He acknowledged that staff has put a lot of work into this and he agreed with Director Krauss that political settlement might have to be the end result of this. He noted that they may have compromised the original intent by moving the boundaries further south. He recommended taking a look at using Fisher Road and 148th.

Commissioner Larsen said he would be comfortable with including as many of the homes, north of the gulch, in Mukilteo as possible. He liked the idea of Lynnwood holding on to Lund's Gulch and defining that boundary as where the topographic break occurs.

There was some discussion about issues associated with having Fisher Road as a boundary. Chair Wright asked if the fire or police departments have had an opportunity to respond to this. Planning Manager Garrett said they have shown it to the fire department, but indicated they could get feedback.

Councilmember Hikel commented [Microphone off].

Chair Wright asked for recommendations:

Commissioner Wojack discussed concerns about dividing the gulch and depending on an Interlocal agreement. He recommending letting Mukilteo have the west end of Fisher Road because they do service from that side, but the east end definitely feels more like Lynnwood. He noted that he was on the fence about the location of the boundaries.

Commissioner Braithwaite stated that he also was on the fence. He looked at it in terms of geography, surface water, services and response times, and neighborhood feel. Regarding the neighborhood feel the area on the west side does feel like Mukilteo and the eastern part does feel like Lynnwood. From a geographical perspective it seems to make sense to draw the line from the existing Lynnwood city limits straight across 148th. From a surface water perspective it makes sense to have all of the drainage tributaries in Lynnwood. He is also concerned about waiting too long, having all that land sit in the County's jurisdiction, and possibly being developed in ways that the City of Lynnwood wouldn't be in favor of.

Commissioner Davis spoke in favor of keeping 148th as the northern border and the homes along 60th as the eastern border. West of 60th and north of Lund's Gulch would be Mukilteo.

Commissioner Aubuchon agreed that 148th was the best boundary. He thought that 52nd seemed more of a natural dividing line. Also, from a police or fire standpoint 52nd is a pretty good thoroughfare and would allow easy access to 148th and down to the Norma Beach area.

Commissioner Ambalada agreed with staff's proposal.

Commissioner Larsen said he was looking at this in terms of the environmental factors, road access, and the feel/sense of community. He is happy to see Lynnwood interested in taking charge of this gulch. He spoke in support of moving on this while the inertia is there with other jurisdictions. He stated that as you go west on 148th he sees a problem with service access and the sense of community. By the time you get to 60th it definitely feels like you have entered Mukilteo. East of 60th feels more like Lynnwood. He would like to see some kind of formalized agreement with Mukilteo regarding Lynnwood's interest in Lund's Gulch.

Planning Manager Garrett stated that staff would provide the Commission with a copy of the draft Interlocal Agreement for the next meeting. They will also get some comments from police and fire.

Commissioner Aubuchon asked about the City of Mukilteo's recommendation. Planning Manager Garrett said they are waiting to see what Lynnwood does. Director Krauss explained they had been trying to get something in the County Comp Plan docket by the end of January. If the cities come to agreement there is a process they can use that takes it in front of the Snohomish County Tomorrow.

Commissioner Ambalada suggested holding a tea party for the Mukilteo Planning Commission.

Planning Manager Garrett stated that to their knowledge the Mukilteo Planning Commission has not been active in this issue. Director Krauss concurred; he said that only the Mukilteo City Council has been involved with it.

Commissioner Braithwaite asked for more information about the annexation petition that Mukilteo had received.

Planning Manager Garrett indicated that they would bring back the requested information.

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

Director Krauss explained the direction that Council is moving on this issue. Deputy Director Osaki reviewed information that the Commission had requested earlier.

Chair Wright had asked about Edmonds doing something different with regard to their permit processes. He informed the Commission that last year Edmonds City Council removed its self from hearing appeals of certain land use actions including variances, conditional use permits and plats. In January of this year the Edmonds City Council passed an interim ordinance to restore their role in hearing closed record appeals of plats, conditional use permits and variances. He summarized comments from the minutes of that meeting and the public hearing which were included in the Planning Commission's packet.

Regarding the Lynnwood City Council's work session in November where they had recommended sending this matter to the Planning Commission, he recalled that Councilmember Wright had submitted a brief letter expressing concern about any proposal that would remove the Planning Commission or the City Council from having a review of land use actions. The discussion of the Council had centered around cleaning up language regarding SEPA appeals.

There was some positive reception of allowing the business license appeals to go right to the hearing examiner. For other items (1 through 4) in the appeal process - variance, Conditional Use Permits, preliminary plats and rezones – the Council was interested in hearing what the Planning Commission had to say.

At the last meeting Chair Wright had asked some questions about the volume of certain types of land use actions. From 2004 to 2009 there were:

- 24 Conditional Use Permit applications
- 9 variance applications
- 13 preliminary plats

Commissioner Larsen offered that items 1 through 4 are characterized by a specific and clear set of conditions or standards that are followed to make those decisions. Once the Planning Commission makes its recommendations and the Council makes its decisions and forms those rules, it seems there is a quasi-judicial environment within which you want to work. At that point it would be appropriate to allow professionals to deal with that, either staff or the hearing examiner. He felt that the City Council should be spending more of their time on policy formation and things like that. In principle he is comfortable with the direction they are going of having this go to the hearing examiner. His only concern was to make sure that the decisions that are being made by the hearing examiner or by staff (through administrative decisions) are what the Council intended.

Commissioner Wojack asked Deputy Director Osaki how much Council time the land use actions take. Deputy Director Osaki said that for Conditional Use Permits and variances the process right now is it would only go to City Council if the hearing examiner's decision is appealed. Preliminary plats can take a substantial amount of preparation time and meeting time.

Commissioner Wojack asked for clarification about appeals in the proposed code amendment. Deputy Director Osaki explained that the new process would be that Conditional Use Permits or variance appeals would go directly to Superior Court. For a preliminary plat, the proposed process would be that the hearing examiner holds the actual public hearing, instead of the City Council.

Chair Wright said he was sensitive to someone coming before the hearing examiner, needing to appeal it, but not having the resources to do so. He asked about inserting language giving Council the option to either hear the case or to send it to a public court. Director Krauss said they could ask the City Attorney, but it does raise the question of inconsistency by the Council.

Commissioner Ambalada asked if the Planning Commissioners could intercede in these appeals. She felt the Planning Commission was capable of handling these matters.

There was discussion about the roles of the Planning Commission and the hearing examiner. Chair Wright expressed concern about the Planning Commission carrying the liability for the City of Lynnwood on these issues.

Commissioner Aubuchon stated that they do not pay the Planning Commission enough to perform that role.

Commissioner Braithwaite stated that this proposal to take the matters to the hearing examiner and moving away from the City Council is a good idea. However, he expressed concern about the cost for individuals to appeal.

Commissioner Wojack also expressed concern about the cost to individuals, but he agreed with the idea of most of it going to the hearing examiner.

Chair Wright commented that most of the individuals who come before the City looking for Conditional Use Permits, variances or short plats are going to have the means to take this to court if they wanted to, but he expressed empathy for those who would not.

Commissioner Ambalada said she thought the Planning Commission could do a better job than the City Council and that if they assumed the duty then the City Attorney would be present to assist them.

Commissioner Larsen asked how common appeals are. Deputy Director Osaki stated that an appeal is rare. He stated that SEPA or environmental determinations are more likely to be appealed than a variance or Conditional Use Permit. He noted the times when you would have an appeal are when it was denied. Staff works hard in advance to inform applicants about their chances of approval so they are not surprised. Planning Manager Garrett agreed that appeals are very rare. He discussed a few of these. Regarding concerns about individuals not having the resources to appeal, he said what usually happens is that the individual will convince his neighbors that there is merit in the appeal and then the group of them have the resources to get the attorney and get in on the court process.

Chair Wright commented that once they have an annexation there will be quite a bit of buildable land and therefore more applications. The economic environment will also eventually start to turn around. That is really when this will become important, especially with regard to the City Council. He stated that although he has questions he does believe this is a good idea.

Commissioner Ambalada asked for staff's recommendation on how to address the financial concerns raised by the Planning Commission. Deputy Director Osaki reviewed staff's role in helping the public get involved in influencing the original decision before they even get to an appeal. He added that many of the reasons that people are interested in appealing is that the decision about the density was

made very early on as part of the Comprehensive Plan process and part of the Development Regulation process. Early involvement of public in these policy formation processes could alleviate a lot of frustration.

Planning Manager Garrett commented that those residents who have been successful in appeals generally already have legal counsel involved. The likelihood of success of a resident coming in at the first hearing can be related to the involvement of a crew of experts working on the proposal.

Commissioner Wojack commented that the public can also comment at the hearing examiner's meeting. He expressed support of this recommendation, but agreed with Chair Wright about concerns about access for some individuals. Deputy Director Osaki explained that this city has a very good hearing examiner who makes the public feel like they have been heard throughout the process.

Chair Wright commented that whether the appeal goes to the appellate court or to the City Council the rules are the same so the question really comes down to the will of the Council. This is why he was willing to insert the provision about the option of the Council to hear certain appeals. He recommended that they send this to the City Council for their review.

Summary comments:

- Commissioner Larsen stated that the hearing examiner is a more appropriate agent to handle these cases that are based on existing rules and evidence. Leave the policy making to City Council.
- Commissioner Ambalada discussed a prior appeal which consumed a great deal of time. She stated that she wants the City Council to be culturally sensitive in these cases.
- Commissioner Aubuchon agreed with Commissioner Larsen. He expressed support for this proposal in order to take some of the burden off the City Council's full plate. He did not think that the Planning Commission should be involved in the appeals.
- Commissioner Davies expressed support for the proposal as presented. The hearing examiner is trained in legal precedent and is going to understand the things involved perhaps more than individual council members.
- Commissioner Braithwaite expressed support for the proposal as presented. He encouraged staff to proceed with this.
- Commissioner Wojack expressed support for this.

Commissioner Braithwaite asked if there is any auditing of the hearing examiner's processes aside from the report that he provides us. Director Krauss said they do not. If the hearing examiner has a conflict of interest it is his responsibility to acknowledge that. If any of his decisions are appealed the way

he adjudicated the decision could be part of the appeal. Deputy Director Osaki stated that the Hearing Examiner Annual Report should be in their next packet.

3. Electronic Message Signs Code Amendment (2009-CAM-0004). Review of zoning regulations for electronic message signs.

Deputy Director Osaki noted that the version before them had been reviewed by the city attorney and hopefully reflected the Planning Commission's intent. He reviewed changes that the city attorney had made.

Chair Wright referred to item 4(c), line 94, page 3 of the ordinance regarding manufacturers' recommended brightness levels and asked how they could regulate that. Deputy Director Osaki said in order to implement that they will need to get the manufacturer's specs when the permit application comes in and store it somewhere. If they get a complaint they will have to measure the brightness and compare it against the manufacturer's specifications. He noted that another way to handle this would be to add a sentence that says upon request the applicant must provide those specs to City at any time. Chair Wright spoke in support of the second option because it keeps the burden of keeping the manual on the owner instead of the City having to keep those records.

Commissioner Wojack commented that owners might not inform them if they upgrade the electronics on their sign and get brighter LEDs.

Commissioner Davies stated that item 4(b) regarding maximum brightness levels would supersede item c, therefore he did not see the need for item c. He added that based on comments he has received from friends and co-workers he has found that people are not really that upset by these signs. The only things he has heard negative comments about have been the strobes and flashing effects and that language is handled well in the proposed code. He expressed concern that the language in item 5(a) might be a little strong. He is concerned that restricting video might not be received well by people that have made a significant investment in these signs.

Commissioner Braithwaite referred to item 5(a) and stated that he thought they had agreed on 5 seconds. Chair Wright thought that might be right, but he wasn't sure. Deputy Director Osaki stated that 5(b) would cover any concerns about strobes and flashing. He noted that per Commissioner comments at the last meeting scrolling will not be allowed at all. He clarified that signs inside windows would not be regulated by this code.

Chair Wright asked if they have had any contact with the business community on this. Deputy Director Osaki said they have not yet, but they plan to get it out to the public in advance of the public hearing. Chair Wright said he noticed a few signs along Highway 99 that have toned it down a little bit and he was wondering if outreach had been occurring. Deputy Director Osaki said that they had sent out

letters to properties that had electronic message boards about 6-9 months ago reminding them of the current code requirement, but they haven't sent anything out recently.

Commissioner Larsen stated that there is some justification to be concerned about drivers' distractions in terms of public safety. He spoke in support of moderating some of the more excessive signs that they've seen. He also noted that this is the time to be addressing this technology since many of the signs along Highway 99 are still the old style lights. He spoke in favor of proposed changes.

Commissioner Aubuchon asked about input from the industry itself. Deputy Director Osaki said they have not gotten that yet. Right now they are just in the draft form in preparation for the public hearing.

Commissioner Wojack found the minutes from a prior meeting and confirmed that they did discuss a 5-second rule. The other part of that was that the message had to finish being displayed within 10 seconds.

Commissioner Larsen asked for a recommendation from Director Krauss and Deputy Director Osaki. Deputy Director Osaki suggested that it could be somewhere between 1.5 and 5. Commissioner Braithwaite thought that 1.5 seconds might be close to flashing. He spoke in favor of a higher number.

Motion made by Chair Wright, seconded by Commissioner Braithwaite, to amend the language on 5(a) to 3 seconds. Motion passed unanimously.

Commissioner Wojack recommended keeping the proposed video language in the code.

Chair Braithwaite referred to section 2(d)i on page 2. He asked about adding, ". . . *subject to the maximum allowable sign area.*" This would provide clarity that the time and temperature wouldn't be in addition to the maximum allowable area.

Commissioner Larsen referred to page 3, item 5(a), and recommended deleting the last part of the sentence that says, ". . . *of at least television quality.*"

Chair Wright summarized the changes recommended by the Planning Commission as follows:

- Page 2, item 2(d)i – add: ". . . *subject to the maximum allowable sign area.*"
- Delete 4(c)
- Change 5(a) to 3 seconds

- On page 3, item 5(a) delete: *"of at least television quality."*

Other Business

1. 2009 Annual Report of the Planning Commission

Planning Manager Garrett reviewed the report which was contained in the packet.

Commissioner Wojack noted that the report says he was absent on November 13, but he noted that there was no meeting on that date.

Director's Report

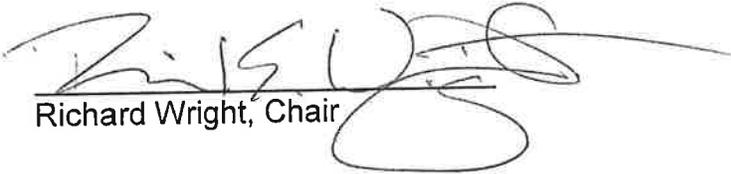
Director Krauss reported the following:

- Mill Creek says they will appeal the judge's ruling before the judge has even issued it.
- Council put a moratorium on the development of new mini-storage/warehouses. He reviewed the background on this matter. A City Council public hearing is scheduled for March 22 and staff will be working on a code amendment to deal with that issue.

Commissioner Aubuchon requested an update on Public Works capital facilities projects. Staff indicated they would follow up on that.

Adjournment

The meeting was adjourned 9:23 p.m.


Richard Wright, Chair