

AGENDA

Lynnwood Planning Commission

Thursday, March 25, 2010 — 7:00 pm

City Council Chambers, 19100 – 44th Ave. W., Lynnwood WA

A. CALL TO ORDER

Chair WRIGHT
Commissioner AMBALADA
Commissioner AUBUCHON
Commissioner BRAITHWAITE
Commissioner DAVIES
Commissioner LARSEN, First Vice-chair
Commissioner WOJACK, Second Vice-chair

B. APPROVAL OF MINUTES:

Meeting of February 25, 2010

C. COUNCIL LIAISON REPORT

D. **CITIZEN COMMENTS** – on matters not on tonight's agenda.

E. MEETING WITH MAYOR GOUGH

F. PUBLIC HEARINGS

None

G. WORK SESSIONS

1. 2010 Amendments to the Comprehensive Plan (2010CPL0001).

Introduction to proposed amendments to the City's Comprehensive Plan for consideration in 2010 ("2010 Docket").

H. OTHER BUSINESS

1. **Meadowdale Gap MUGA Boundaries.** Recommendation to City Council regarding a boundary between the Municipal Urban Growth Areas (MUGAs) of 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 Lunds Gulch.

2. **Hearing Examiner Annual Report for 2009.**

I. DIRECTOR'S REPORT

J. COMMISSIONERS' COMMENTS

K. ADJOURNMENT

The public is invited to attend and participate in this public meeting. Parking and meeting rooms are accessible to persons with disabilities. Upon reasonable notice to the City Clerk's office (425) 670-5161, the City will make reasonable effort to accommodate those who need special assistance to attend this meeting.

Lynnwood Planning Commission
Meeting of March 25, 2010

Staff Report

Agenda Item: G-1
2010 Comprehensive Plan Amendments
(2010CPL0001)

- Public Hearing
- Informal Public Meeting
- Work Session
- Other Business
- Information
- Miscellaneous

Dept. of Community Development — Staff Contact: Kevin Garrett, Planning Manager

ACTION

Discussion only at this work session.

BACKGROUND

The Municipal Code provides a process for annual consideration of amendments to the City's Comprehensive Plan. Review of these amendments is a major component of the Planning Commission's annual work program.

The Municipal Code provides for two "types" of proposals to amend the Plan: formal amendment applications and suggested amendments. Suggested amendments are ideas or proposals that someone would like the City to consider but, for whatever reason, they do not wish to file a formal application.

COMMENT

This year, all Amendments have been initiated by staff (no suggested amendments or private applications were filed). Attachment A lists the proposed 2010 Comprehensive Plan Amendments (note that they are listed in no particular order). This work session is to introduce these amendments to the Planning Commission. Staff will give a brief explanation of each proposed amendments, after which the Planning Commission will have the opportunity to ask questions about each proposal. Future Commission meetings will include opportunities for more detailed discussion of each proposal (including staff from other departments, as appropriate). Following these work sessions, a public hearing will be held to provide the opportunity for the public to comment on the proposals. Following the hearing, the Commission will be asked to make a recommendation to the City Council on each proposal.

RECOMMENDATION

Discuss proposed Amendments.

ATTACHMENTS

- A. 2010 Docket – List

2010 Comprehensive Plan Amendments

The City of Lynnwood is considering the following amendments to the City's Comprehensive Plan in the annual review of proposed amendments to the Plan for 2010 ("2010 Docket").

Name	Location	Summary Description
Land Use and Housing Elements	Citywide & MUGA	Adopt mobile home preservation program similar to that recently adopted by Snohomish County
Energy & Sustainability Element	Citywide	Add GHG emissions reduction targets to Element
Implementation Element	Citywide	Annual update – no policy impact
Parks Element Update	Citywide	Annual update of Element; no policy impact.
Transportation Element	Citywide	1) Include references to Lynnwood's vision statement related to transportation 2) Revise references to the regional plan (i.e. VISION 2040, Transportation 2040) 3) Include additional detail regarding pedestrian and bicycle skeleton systems 4) Include reference to the Interurban Regional Trail and its importance as a transportation corridor 5) Revise bicycle skeleton map to include new bicycle facilities completed over the past year
Land Use and Transportation Elements	Lynnwood Transit Center	Show location of future LRT route and stations
Land Use Element	Meadowdale Gap	Adjust MUGA boundary (if agreement complete)
Land Use and Transportation Elements	Highway 99	Revisions recommended by Project Hwy 99 (such as "show BRT station locations")
Introduction	Citywide & MUGA	Amend growth targets – clarifications and corrections; no policy impact
Housing Element	Citywide	Review/Update of 60/40 housing retention goal and related goals and policies
Land Use Element	SW corner of 208 th St. & 62 nd Ave (Aurora Heights #2)	Consider revising land use designation from SF-1 to SF-2 (consistent with existing lot size) and concurrent rezoning (RS-8 to RS-7)

Lynnwood Planning Commission
Meeting of March 25, 2010

Staff Report

Agenda Item: H-1
Meadowdale Gap MUGA Boundary
(2009ANX0001)

- Public Hearing
- Informal Public Meeting
- Work Session
- Other Business
- Information
- Miscellaneous

Dept. of Community Development — Staff Contact: Kevin Garrett, Planning Manager

ACTION

Recommend a common boundary for the Lynnwood and Mukilteo Municipal Urban Growth Boundaries in the Meadowdale Gap area.

BACKGROUND

The Meadowdale Gap is an unincorporated area on the north side of Lund's Gulch that is not included in any city's Municipal Urban Growth Area (MUGA). This residential area is located south of 148th St. SW, west of 52nd Ave. W and north of Lund's Gulch (see attached map). When the MUGAs were mapped (in 2001-2), this area was not included in the MUGA of either city. Both Lynnwood and Mukilteo could provide municipal services to the area. Most of the land in the Meadowdale Gap is developed with single family residences. Stormwater run-off from the southern part of the area flows into Lund's Gulch; run-off from the rest of the area flows into the Puget Sound. The cities believe that it is their mutual interest as well as that of area residents that we come to an agreement on how to divide and support this area. For more Background information on this item, see the staff reports for the January 28th and February 25th meetings.

ANALYSIS/COMMENT

Staff at the two cities have developed a proposal to include half of the Gap in Mukilteo's MUGA and half in Lynnwood's MUGA. That proposal was shown to the Planning Commission in January. Developing that proposal was guided by following principles:

- Generally divide population and land area of Gap evenly between cities;
- Keep residences and local streets providing access to those residences in same city;
- Divide the area in a manner that recognizes existing neighborhoods and their orientation towards both cities;
- Support reasonable and efficient provision of urban services;
- Control any impact to Lund's Gulch through joint review of future development proposals in the Gap;

- Allow Lynnwood to continue its efforts to own and protect parcels comprising the Gulch and potentially for the City to assume responsibility for the County park should that become possible in the future; and
- Equitable sharing of responsibility for maintenance of arterials providing access to the Gap (for example, 148th St. SW).

On January 19, 2010, the City Council referred this matter to the Planning Commission for a recommendation on the boundary.

Thematic maps of the area (terrain/drainage, travel routes, aerial photo and subdivisions) were sent to the Planning Commission last month, along with the decision criteria on annexations for the Boundary Review Board. Please bring these materials to this meeting.

The Planning Commission discussed these maps and alternatives for possible MUGA boundaries at the February 25 Commission meeting. At that meeting, the Commission asked staff to contact City Police and Fire departments for any concerns about annexing areas in the Gap. When contacted by Community Development staff, senior staff in both departments reported no major concerns with annexing the Gap. Fire staff said that emergency dispatch would send the closest unit(s) in response to calls for service, without regard to city boundaries. They also said that Mukilteo staff would have more experience in responding to situations in the bluff-type terrain in the Norma Beach area. Police staff said that the area has a relatively low rate of calls-for-service and that the Gap could be served as part of the (new) beat that would serve the western area of the NES Annexation. Response times for the Gap might be higher than for the existing City simply because the Gap is further west and farther away from the rest of the City.

RECOMMENDATION

Identify preferred common MUGA boundary for the City Council

ATTACHMENT(s)

None

**AN INTERLOCAL AGREEMENT BETWEEN
THE CITY OF LYNNWOOD
AND
THE CITY OF MUKILTEO
REGARDING ANNEXATIONS AND THE ESTABLISHMENT OF A
MUNICIPAL URBAN GROWTH AREA BOUNDARY FOR AN AREA
COMMONLY REFERRED TO AS THE MEADOWDALE GAP**

This AGREEMENT between the City of Lynnwood, a Washington municipal corporation (“Lynnwood”), and the City of Mukilteo, a Washington municipal corporation (“Mukilteo”) (collectively the “Cities”), is dated this ____ day of January, 2010.

Whereas, Lynnwood and Mukilteo have each identified Municipal Urban Growth Areas (MUGAs) adjacent to their corporate boundaries; and

Whereas, Snohomish County Tomorrow has included and adopted the Cities’ MUGAs in the Countywide Planning Policies; and

Whereas, Lynnwood and Mukilteo each intend to initiate annexations of territory within their respective MUGAs; and

Whereas, the historical delineation of Lynnwood’s and Mukilteo’s existing MUGAs resulted in the creation of an unincorporated “island” commonly called the “Meadowdale Gap” (also known as “Norma Beach Gap”), which area is not currently claimed by either of the Cities; and

Whereas, the Meadowdale Gap is located entirely within the Snohomish County Southwest Urban Growth Area; and

Whereas, under the Growth Management Act areas like the Meadowdale Gap should be annexed by cities as cities are the units of local government most logical and appropriate to provide a full range of urban services; and

Whereas, it is in the long term interests of the Cities, Snohomish County and residents of the Meadowdale Gap to include the Meadowdale Gap in the Municipal Urban Growth Areas of Mukilteo and Lynnwood; and

Whereas, the preservation of Lunds Gulch and its environmental features is of paramount importance to the Cities. Both Cities have extensive experience with managing development in and near gulches and with landslide, steep slope and related sewer and stormwater issues. Both Cities also have similar Critical Area Ordinances and stormwater codes that have regulations to protect gulches and both Cities have Comprehensive Plans with future land use designations that are intended to retain

single-family land uses in the Meadowdale Gap area due to access and steep slope issues; and

Whereas, the location of Lunds Gulch drainage area, including its associated environmental features and upland areas, does not conform to future boundaries of the Cities and both Cities have mutual interests in the protection of the environmental lands in Lunds Gulch and the Meadowdale Gap; and

Whereas, the Cities desire to cooperate with each other and to facilitate each other's annexation proposals;

Now, therefore, the Cities agree as follows:

Section 1. Meadowdale Gap shall be incorporated into each City's respective MUGA in the manner represented by the map attached as Exhibit A and incorporated herein by this reference.

Section 2. Prior to the annexation of any portion of the area identified in Exhibit A, the Cities shall enter into an interlocal agreement providing for the shared maintenance, repair and improvement costs for 152nd St. upon annexation of the 152nd St. SW (from 52nd Avenue West to 60th Avenue West) and/or 52nd Ave., West (from 148th Street SW to 152nd Street SW). The agreement shall establish an equitable share of 50% (or nearly approximate to) of the rights-of-way into one and/or both of the Cities, and for the maintenance, repair and improvement costs incurred for the annexed right-of-way according to a street maintenance plan developed by the Cities.

The Cities agree to provide opportunities for staff review and input on proposed development activities within the area identified in Exhibit A. Said development activities shall include full subdivisions, short plats, shoreline substantial development permits (including shoreline conditional use permits, shoreline variances and shoreline exemptions), comprehensive plan amendments and rezones. Each City shall provide notice of these development activities to one another and shall consider the input of the other City in developing recommendations and making decisions. The Cities also agree to transmit to one another SEPA documents for non-exempt actions within the Meadowdale Gap area for review and comment prior to making a threshold determination for an action.

Section 3. The Cities will provide opportunities for staff review and input on public projects and proposed revisions to regulations that may reasonably be expected to have an effect on the environment of Lunds Gulch, including, but not limited to, critical areas regulations, stormwater regulations, and grading regulations. Each City shall provide notice of such projects and proposals to one another and shall consider the input of the other City in taking action on such proposals.

Section 4. The Cities will support each other's efforts to secure grant funding to acquire land and/or development rights and to undertake environmental restoration projects benefiting the Lunds Gulch drainage basin as generally depicted on Exhibit A.

Section 5. This Agreement shall be interpreted and construed according to the law of the State of Washington. The section numbers of this Agreement are for convenience or reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections. Any judicial action to enforce this Agreement shall be brought in Snohomish County, Washington.

Section 6. Any notice to be given, or document to be delivered by either party to the other, shall be delivered in person or mailed by certified mail and addressed to either City at the following addresses:

Lynnwood: Attn: City Clerk
 City of Lynnwood
 19100 44th Ave W.
 Lynnwood, WA 98036

Mukilteo: Attn: City Clerk
 City of Mukilteo
 11930 Cyrus Way
 Mukilteo, WA 98275

Either party may, by written notice to the other, designate a different address or designee.

Section 7. This Agreement shall not be construed to provide any benefits to third parties.

Section 8. Each party shall be solely responsible for the acts or failure to act of its employees occurring during or arising in any way out of the performance of this Agreement, and shall release, defend and indemnify the other party, its officers and employees, with respect to all claims, losses, expenses and damages incurred as a result of the party's acts or omission related to the performance of this Agreement.

Section 9. This Agreement shall take effect on the last date approved by both parties and shall remain in effect until modified by mutual written agreement of the parties.

Section 10. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

Section 11. This Agreement constitutes the entire agreement between the parties with respect to the framework issues for annexations. It is anticipated that the parties will enter into further interlocal agreements on specific subject areas, as indicated in the text of the Agreement.

Section 12. This Agreement may not be amended, modified or changed, nor shall any provision hereof be deemed waived, except by an instrument in writing signed by the party against whom enforcement of any such waiver, amendment, change, or modification is sought.

Section 13. This Agreement may be signed in counterparts and, if so signed, shall be deemed one integrated agreement.

IN WITNESS WHEREOF, the parties have signed this Agreement, effective on the latest date indicated below.

CITY OF MUKILTEO

CITY OF LYNNWOOD

By _____
Joe Marine, Mayor

By _____
Don Gough, Mayor

Date _____

Date _____

ATTEST:

ATTEST:

Christina J. Boughman, City Clerk

John Moir, Finance Director

Approved as to form:

Approved as to form:

Office of the City Attorney

Office of the City Attorney

Attorney for the City of Mukilteo

Attorney for the City of Lynnwood

**Lynnwood Planning Commission
Meeting of March 25, 2010**

Staff Report

**Agenda Item: H-2
Hearing Examiner 2009 Annual Report**

- Public Hearing
- Informal Public Meeting
- Work Session
- New Business
- Old Business
- Information
- Miscellaneous

Lynnwood Dept. of Community Development – Staff Contact David Osaki

ACTION

For Information Only.

BACKGROUND

Lynnwood Municipal Code (LMC) Section 2.22.170 requires the Hearing Examiner to make an annual report to the Planning Commission and City Council. Attached is the Hearing Examiner's Annual Report for 2009.

The Hearing Examiner decided nine (9) land use cases in 2009 including two (2) preliminary plats (totaling 12 lots), two (2) conditional use permits, two (2) variance extensions and three (3) appeals.

Issues that the Hearing Examiner has identified during the course of those land use hearings are discussed in the Hearing Examiner's report.

RECOMMENDATION

For information only. No action required.

ATTACHMENTS

Hearing Examiner 2009 Annual Report

JOHN E. GALT
Quasi-Judicial Hearing Services
927 Grand Avenue
Everett, Washington 98201
Voice/FAX: (425) 259-3144
e-mail: jegalt@gte.net

MEMORANDUM

To: Lynnwood City Council
Lynnwood Planning Commission

CC: Mayor Don Gough
✓ David Osaki, Community Development

From: John E. Galt, Hearing Examiner 

Date: January 11, 2010

Subject: Annual Report for 2009

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 2009. 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 nine land use applications during 2009. Each case is listed on the attached table in chronological order of hearing. Abbreviations are hopefully self-explanatory: "Interp Ap" = Appeal from an administrative code interpretation; "Ad Ap" = Administrative Appeal.

By comparison, I decided five cases in 2008, 17 in 2007, seven in 2006, 16 in 2005, three in 2004, 11 in 2003, and 20 in 2002.

Last year's cases included two preliminary subdivision applications totaling 12 proposed lots, a day care center, a Conditional Use Permit for a car dealership sign, two one-year variance extensions, and three appeals, two of which involved the same hotel proposal.

Discussion of Issues

I discovered during the car dealership sign case that the LMC's provisions regarding maximum allowable sign area are less than crystal clear. One of the standard rules of statutory construction is that the use of different words or terms in a statute evidences a difference in intent. Section 21.16.310 LMC regulates both "total allowable sign area" and sign area per "face." I interpret the former to refer to the maximum allowable area for the sum of all sign faces and the latter to refer to the maximum allowable area of any one sign face. (A two-sided sign has two sign faces. If, in simple terms, a two-sided sign were 5' x 10', each face would contain 50 square feet and the total sign area would be 100 square feet.) If that is not the City's intent, then a code "scrub" to clarify intent would be appropriate.

The *Legacy Hotel* appeals raised the question of "standing to appeal." "Standing" means the legal right to take an action; one who has "standing to appeal" is legally entitled to file an appeal. The LMC has very relaxed standing requirements for appeals to the Hearing Examiner. In a July 16, 2009, Interlocutory Order Denying Motions to Dismiss, I explained the LMC's SEPA standing provisions as follows:

- B. Lynnwood's primary SEPA appeal procedures are contained in LMC 17.02.195. Subsection 17.02.195(A)(1) LMC provides that "Any agency or person may appeal" a SEPA threshold determination. Subsection 17.02.195(A)(1)(a) LMC requires that an appeal be filed within 14 days of the issuance of the threshold determination and further provides that timely appeals are to be handled "pursuant to Process VI, LMC 1.35.600 et seq."
- C. Process VI [LMC 1.35.600 *et seq.*] says nothing at all about standing to appeal.
- D. The word "person" is not defined in Chapter 17.02 LMC (See Definitions at LMC 17.02.220), Chapter 1.35 LMC, or Chapter 197-11 WAC (See Part Eight). The word "person" is defined in Chapter 17.10 LMC, Environmentally Critical Areas: "'Person' means an individual, firm, partnership, association or corporation, governmental agency, or political subdivision." [LMC 17.10.030(P)] The word "person" is used in at least one section of Chapter 17.10 LMC¹: "Any person who objects to the final order of the city under this chapter may file an appeal" [LMC 17.10.120]
- E. It is entirely reasonable and appropriate to apply the Chapter 17.10 LMC definition of the word "person" to that word's usage in Chapter 17.02 LMC, especially since both usages refer to the right to appeal an action and both occur in the same code title. A corporation is considered a person under the LMC and has standing to appeal SEPA threshold determinations.

¹ The Examiner has not looked for other usages.

- F. The LMC establishes no other restriction on standing. “Any person” has standing to appeal a SEPA threshold determination. That phrase is itself a standing provision, albeit a very expansive one. If the City Council wishes to further limit SEPA appeal standing, it may add limiting language to the LMC. Unless and until it does, the existing, clear language must be given effect.

I explained the Project Design Review (PDR) appeal standing provisions as follows in that same Order:

- C. Section 21.25.130 LMC requires issuance of “a notice of an impending [PDR] decision”. [LMC 21.25.130(A)] That notice must include “A statement that only persons who submit written comments to the director or specifically request a copy of the original decision may appeal the director’s decision.” [LMC 21.25.130(A)(8)] “Any party of record may appeal the [PDR] decision of the director” by filing a written appeal within 14 days of the director’s action. That phrase itself is a standing provision, slightly more restrictive than the SEPA standing provision. Such appeals are handled under Process II. [LMC 21.25.185]
- D. Process II (LMC 1.35.200 *et seq.*) says nothing at all about standing to appeal.
- E. The term “party of record” is not defined within Chapter 21.25 LMC. Given the content of LMC 21.25.130(A)(8), the term must necessarily be read to mean “persons who submit written comments to the director or specifically request a copy of the original decision”; any other interpretation would create an internal conflict within Chapter 21.25 LMC. Internal conflicts in code chapters are to be avoided where a reasonable interpretation exists that does not create such a conflict.
- F. Section 21.25.130(A)(7) LMC requires the notice of impending PDR decision to indicate that persons must submit written comments to the director within 14 days of the notice. “The director shall consider all written comments ... received ... prior to the date on which the decision is to be made.” [LMC 21.25.140] The more liberal of those requirements is the second one: Any written comments received prior to the PDR action are to be considered by the City. Any person who submits timely written comments is a party of record.

State law, on the other hand, includes restrictive standing provisions, both as to judicial SEPA appeals and as to judicial appeals under the Land Use Procedures Act (LUPA). It could easily be the case that a person would have standing to appeal an administrative action to the Examiner, but would lack standing to file a judicial appeal of the Examiner’s action. It is up to the City Council to determine whether it wishes to tighten local standing to match judicial standing provisions in state law.

The *Legacy Hotel* appeals also brought to the fore another procedural issue: To whom may one appeal an Examiner decision on a SEPA appeal? Section 1.35.640 LMC states that the right exists for a closed record appeal before the City Council of the Examiner's decision on a Process VI SEPA appeal. However, RCW 43.21C.075(3)(a) and WAC 197-11-680(3)(a)(iv) both allow one and only one administrative SEPA appeal at the local government level. Therefore, LMC 1.35.640 conflicts with state law and rule with respect to administrative SEPA appeals (but not with respect to any other administrative appeals assigned by code to Process VI). A local ordinance cannot conflict with a mandatory state law. Therefore, the Examiner's decision must be final with right of appeal to Superior Court as provided for under RCW 43.21C.075 and WAC 197-11-680. It would be helpful if the Council could address this conflict.

**LYNNWOOD
HEARING EXAMINER DECISIONS - 2009**

File Number	Applicant Name Project Name	Case Type Acreage No. of Lots	Decision Reconsideration Action	Decision Date Reconsideration Date
2008PLT0001	McCormick Family Trust <i>Joywood Estates</i>	Pre Plt 1.50 6.00	OKw/c	01/20/2009
2008PLT0002	The McNaughton Group <i>Johnson Addition</i>	Pre Plt 1.54 6.00	OKw/c	01/20/2009
2008CUP0007	Lynnwood Free Methodist Church <i>Day Care Center</i>	CUP 3.16	OKw/c	02/18/2009
2009MAI0001	General Stor-AGE	Interp Ap	Deny	03/13/2009
2009CUP0001	University Volkswagen-Audi	CUP	OKw/c	03/30/2009
2006VAR0002	Kevin Gillen	Var Ext	OKw/c	07/10/2009
2006VAR0001	Kevin Gillen	Var Ext	OKw/c	07/10/2009
2008ERC0031	360 Degree and Innkeepers USA <i>Legacy Hotel</i>	SEPA Ap 3.30	Deny	10/01/2009
2008PDR0015	360 group and Innkeepers USA <i>Legacy Hotel</i>	Ad Ap 3.30	Deny	10/01/2009