AGENDA

Lynnwood Planning Commission

Thursday, February 9, 2012 — 7:00 pm

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

A. CALL TO ORDER – ROLL CALL

B. APPROVAL OF MINUTES:
Meeting of January 12, 2012

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

D. PUBLIC HEARINGS
None

E. WORK SESSIONS

1. **Transition Area Zoning Regulations (2008CAM0003).** Proposed zoning and design guideline regulations for the Alderwood - City Center Transition Area, generally located east of 36th Ave W., south of 188th St. SW and west of Alderwood Mall Blvd.

2. **Permit Processing Procedures Code Amendments.** Consideration of amendments to City regulations for processing applications for certain development permits and business licenses.

F. OTHER BUSINESS

1. **Election of Officers**

G. COUNCIL LIAISON REPORT

H. DIRECTOR'S REPORT

I. COMMISSIONERS' COMMENTS

J. 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 February 9, 2012**	
Staff Report **Agenda Item:** Alderwood-City Center Transition Area	☐ Public Hearing ☐ Informal Public Meeting ☒ Work Session ☐ Business ☐ Information ☐ Miscellaneous
Community Development Dept./Economic Development Dept.	

ACTION

For discussion.

BACKGROUND

The Alderwood-City Center (ACC) Transition Area, also known as Transition Area, was designated with the adoption of the 2007 Comprehensive Plan amendments. This area, located generally east of 36th Avenue W, south of 188th Street SW, north of the future extension of 194th Street SW and northwest of Alderwood Mall Boulevard, was originally recognized as the "North End" of the City Center Sub Area Plan. Due to concerns about potential impacts to adjoining neighborhoods west of 36th Avenue West, including 191st St Place SW and 192nd Street SW, the area was removed from the City Center Sub Area and designated for further study in 2007.

Businesses in the ACC transition area wanted increases in the types of allowable uses and to develop with greater density. Neighboring residents were concerned that new development would impact their easterly views and increase traffic on 36th Avenue West.

In November 2008, City Council authorized a contract with Makers Architecture to address these concerns and recommend new zoning for the area. Since that time, there have been public meetings to gather input from area residents, property owners and businesses. Residents met on April 14, 2009 and businesses and residents met together on June 16, 2009 and July 15, 2010.

Planning Commission has considered the ACC Transition Area in four work sessions: August 26, 2010, September 23, 2010, October 28, 2010 and November 18, 2010. Certain key documents from those meetings are attached to this staff report.

Two key issues for the neighborhoods emerged as part of this process. These two issues, which are summarized in greater detail below, are views and 36th Avenue West impacts.

Views

Discussions with Makers, neighbors, business and property owners and the Planning Commission resulted in the creation of view corridors as a means to ensure views were not negatively impacted by development in the Transition Area. View corridors are visual extensions of the current rights of way of 191st Place SW and 192nd Street SW, if such streets were to be extended easterly. Building height is to be more limiting in these corridors than throughout the transition area to help maintain existing views. To offset the loss of development potential in the view corridors, the maximum building height outside of the view corridors is 120 feet.

36th Avenue West Impacts

To address impacts along 36th Ave W, the draft code creates a Limited Development Area (LDA) described as follows:

> The properties fronting the east side of 36th Avenue West, between 188th Street SW to the North and the future extension of 194th Street SW to the South (as 194th Street SW is identified in the City Center Street Grid Ordinance, as amended), from the 36th Avenue West property line to a line 100 feet deep (easterly) into the properties.

Within the LDA, certain uses are not allowed and/or limited in scale. Building heights are also more limiting than throughout the balance of the Transition Area.

OTHER ISSUES

Other issues in addition to 36th Avenue W impacts and views discussed during the course of the Transition Area include:

- Land uses
- Setbacks (from all streets)
- Landscape requirements

RECOMMENDATION

None. For discussion.

The purposes of the meeting will be to reacquaint the Planning Commission with past work that had been completed as well as some of the issues staff is currently working on.

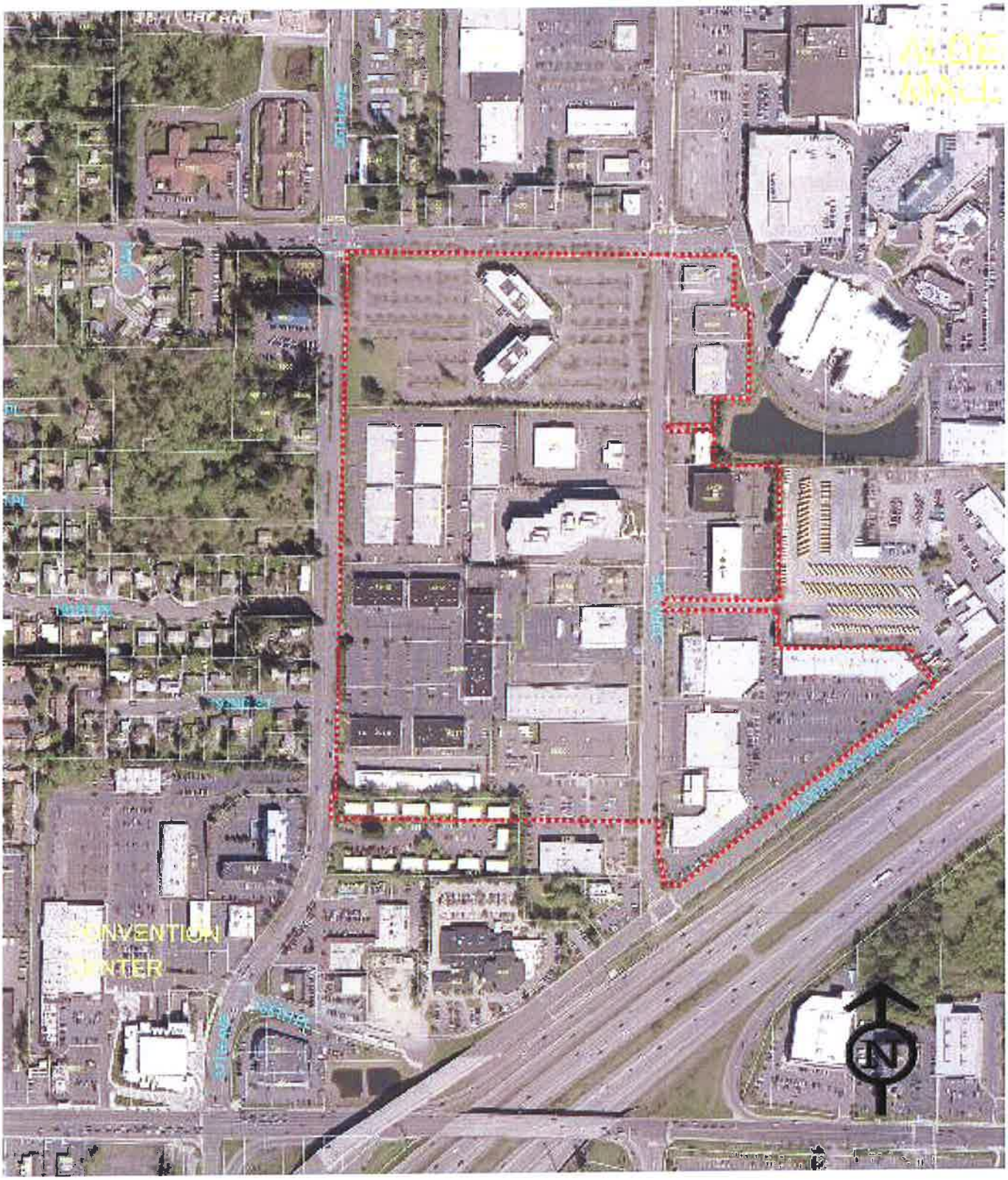
At subsequent meetings, the draft code and design standards associated with the Alderwood-City Center Transition Area will be presented to the Planning Commission in preparation for a subsequent public hearing.

ATTACHMENTS

- Transition Area Aerial Boundary Map

- Transition Area Parcel Map with Conceptual Limited Development Area and View Corridor
- Transition Area Limited Development Area Setback and Building Height Concept
- Transition Area Topography Information
- Existing Zoning Map
- Staff Report with Attachments, Planning Commission Meeting of November 18, 2010
- Planning Commission Meeting Minutes of November 18, 2010 meeting.

Alderwood—City Center Transition Area
Aerial Map

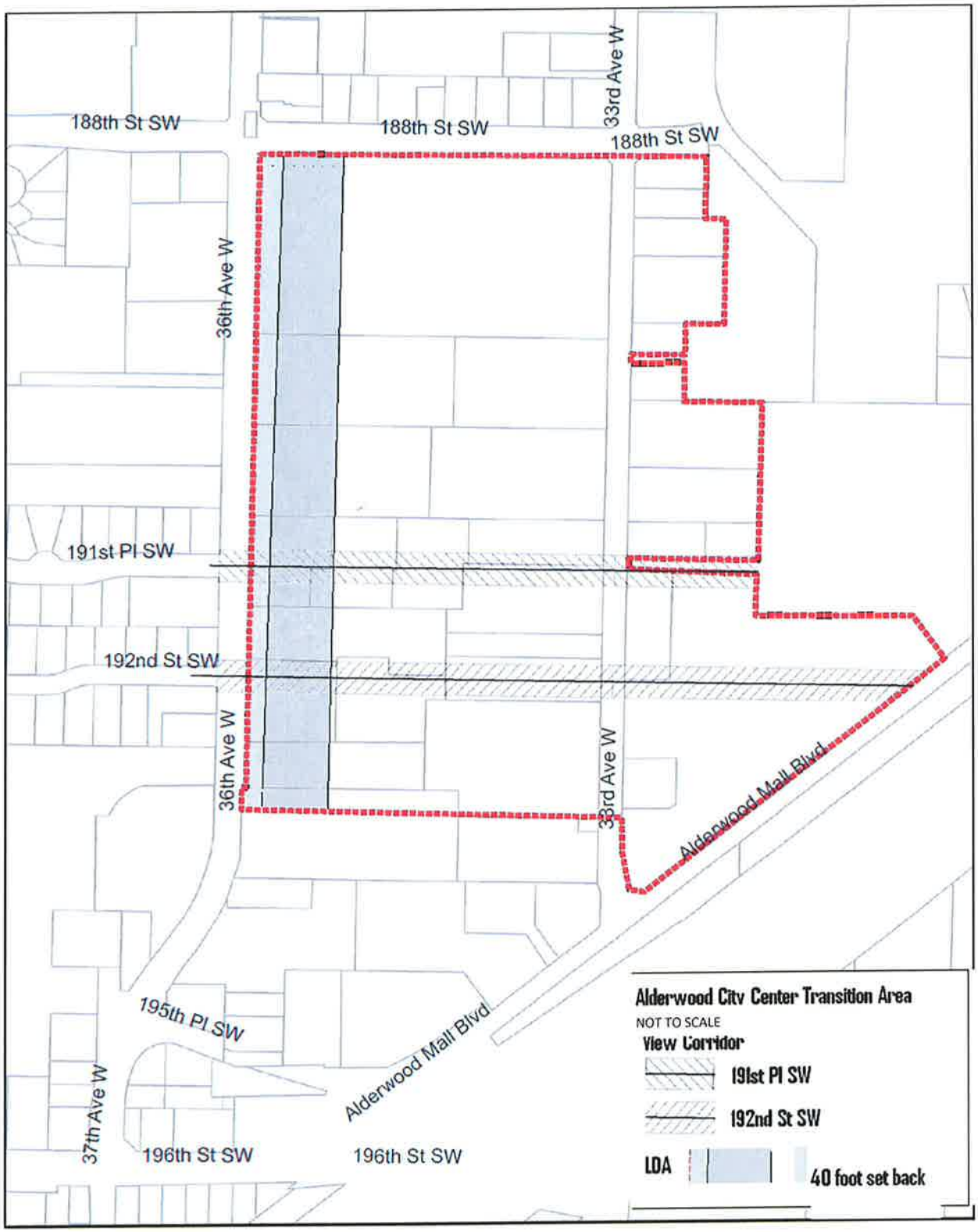


CITY OF Lynnwood

Transition Area

NOTE: Streets, lots and plats on this map are maintained by the Snohomish County GIS Department and may not be current.

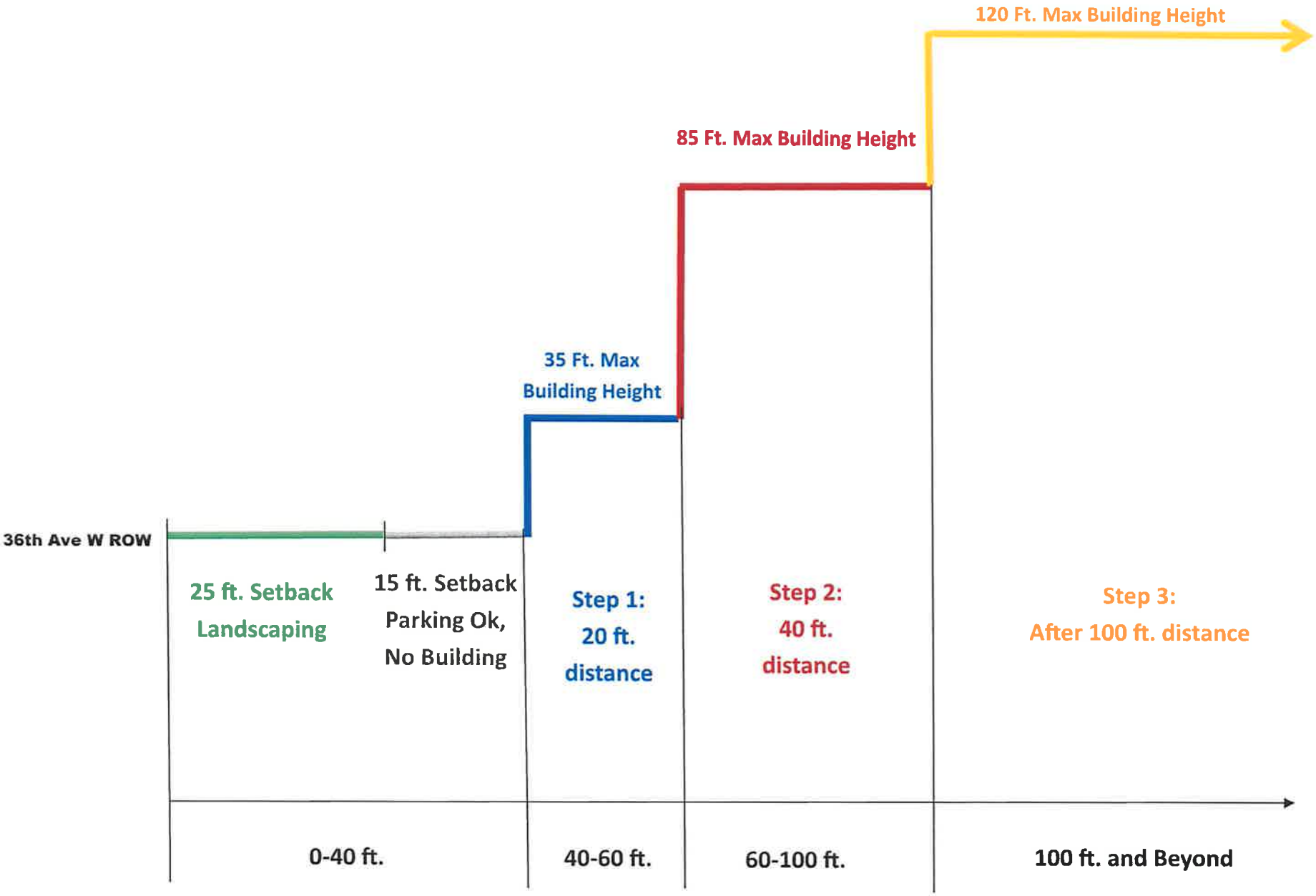
Alderwood-City Center Transition Area
DRAFT 2/9/2012
View Corridors and LDA Conceptual Map

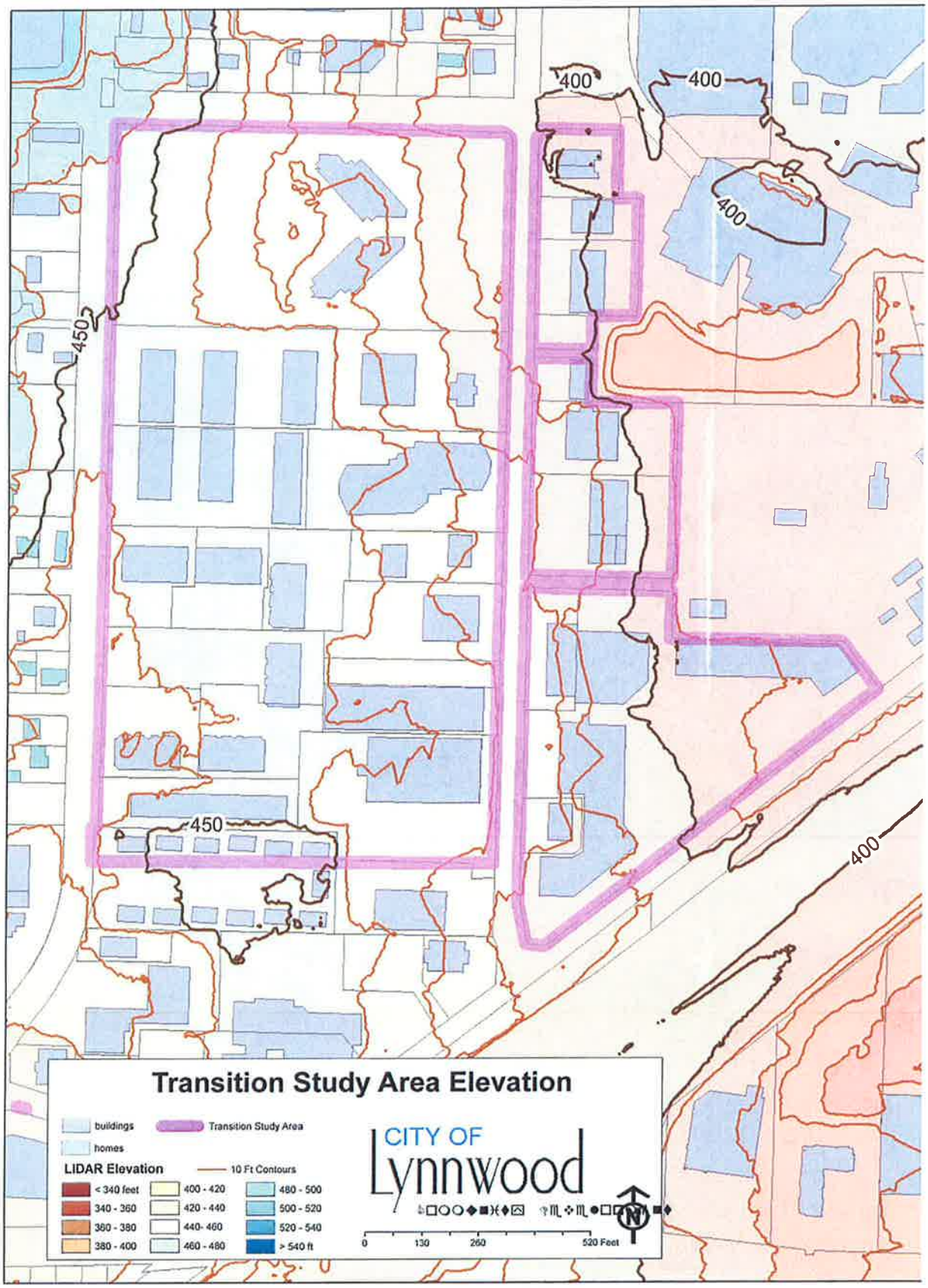


DRAFT 2/9/2012 (NOT TO SCALE)

Alderwood—City Center Transition Area

Proposed Height from 36th Ave. W



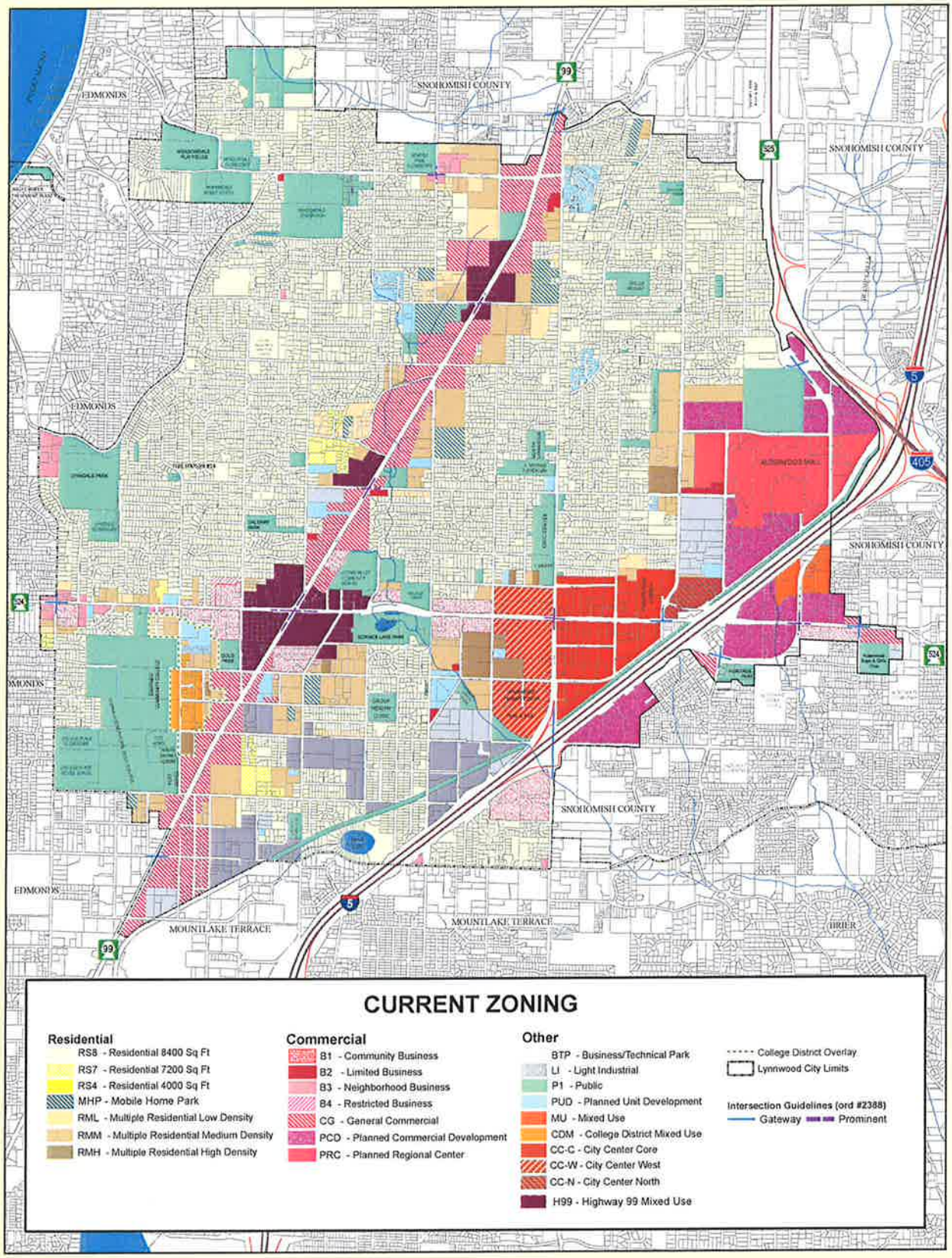

Transition Study Area Elevation
buildings
homes
Transition Study Area
LIDAR Elevation
10 Ft Contours
< 340 feet
340 - 360
360 - 380
380 - 400
400 - 420
420 - 440
440- 460
460 - 480
480 - 500
500 - 520
520 - 540
> 540 ft
CITY OF
Lynnwood
0
130
260
520 Feet
400
400
400
400
450
450

LYNNWOOD WASHINGTON
COMMUNITY DEVELOPMENT

Current Zoning

Effective through ordinance #2912
Effective date is 10/03/2011
Originally adopted on 10/26/1992, ordinance #1920

Created by the City of Lynnwood
Community Development Department
G:\GIS\Current\Maps\NewMaps\Zoning_2912



0 1,875 3,750 7,500 Feet

N

Note 1: Per section 17.02.250 and Chapter 17.10 of the Lynnwood Municipal Code (LMC), a property shall be subject to additional restrictions if it is located in an environmentally sensitive or critical area. For the location of these areas please see the Environmentally Sensitive Areas map and consult LMC Chapter 17.10.

Note 2: Streets, lots, and plats on this map are maintained by the Snohomish County GIS Department and may not be current.

Lynnwood Planning Commission **Meeting of November 18, 2010**	
Staff Report Agenda Item: G-1 Transition Area Zoning Regulations (2008CAM0003)	☐ Public Hearing ☐ Informal Public Meeting ☐ Other Business ☒ Work Session ☐ Information ☐ Miscellaneous
Lynnwood Depts. of Community Development and Economic Development	

Action

Discuss and provide direction to staff.

Background

The Transition Area is located on the east side of 36th Ave. W. between the City Center and Alderwood Mall. The area had been included in the Lynnwood City Center Subarea as part of the North End District. However, at adoption of the City Center Subarea Plan, neighbors raised concerns about potential impacts on the adjoining single family neighborhood (west of 36th Ave. W). Implementation of the City Center Plan in this area was deferred by designating this area as a Study Area. The 2007 Comprehensive Plan Amendments removed this area from the City Center and designated it as the Alderwood – City Center Transition Area (see description of land use concept, below).

This area is currently designated with two zones: Business and Technical Park (BTP), and Planned Commercial Development (PCD). The portion of the area west of 33rd Ave. W is zoned BTP; the portion east of 33rd Ave. is zoned PCD.

In November, 2008, the City Council authorized a contract with Makers Architecture to recommend new zoning regulations for the Transition Area.

Relevant Legal Citations

In 2007, the City Council amended the Land Use Element of the Comprehensive Plan to include the following land use concept for this area:

"Alderwood – City Center Transition Area

> **"Purpose:** This Plan category is intended to provide for a transitional area between the Alderwood Mall and the City Center. The Mall is the retail center of south Snohomish County and experiences a high level of activity, consistent with its retail character. The City Center is intended to be the business center of Snohomish County, with the character and intensity of an urban, mixed use

downtown area. This Transition Area will contain a mix of land uses that complements these two areas but at a lower intensity so as to minimize impacts on the residential area to the west (across 36th Ave. W.).

"Principle Uses: Offices, retail (excluding big-box stores), restaurants, services and multiple family residences (as part of a mixed use development).

"Locational Criteria: This land use category will be applied to the properties between the Alderwood Mall and the City Center and east of 36th Ave. W.

"Site Design: Buildings will typically cover up to 50 percent of a site, with open parking or parking structures, landscaping, and open space occupying the rest of a site. Usually parking will be located in open parking areas, although some parking may be located in parking structures (either as separate structures or under buildings with other land uses). Pedestrian connections between properties and through the area to both the City Center and Alderwood will be required.

"Building Design: Buildings will be architecturally interesting in appearance, with modulation and articulation of walls, ground-floor transparency, architectural highlighting of pedestrian entries, exterior pedestrian amenities and complementary colors, all as provided by the Citywide Design Guidelines. Building height and location will be managed so as to minimize shading and view blockage for the residential area west of 36th Ave. W.

"Performance Standards: On-site activities shall not substantially impact adjoining properties. Traffic flow from this area shall be managed so as to minimize impacts to the residential area west of 36th Ave. W."

The current zoning regulations for the portion of the area west of 33rd Ave W (BTP zone) are in LMC Chapter 21.50. The current zoning regulations for the portion east of 33rd Ave W (PCD zone) are in LMC Chapter 21.46.

Analysis and Comment

At the Planning Commission meeting of October 28, 2010, the Commission reviewed a revised outline of new zoning regulations for the Transition Area and discussed the results of an analysis of potential impacts on views from the single family neighborhood. Following that discussion, staff has made further changes to the zoning outline and has continued the analysis of impacts on views. The purpose of this work session is to report on those two topics and to seek direction from the Commission about moving forward with drafting zoning regulations for this Area.

Impact on Views: At the October 28 meeting, members of the Planning Commission expressed concerns about the impact of new, taller buildings on existing views of the Cascade Mountains. In response, staff has revised the outline of zoning regulations to suggest controlling such impacts by establishing view corridors. These corridors would be located as extensions of the current rights-of-way of 191st Place and 192nd Street. In these corridors, building height would be limited in order to maintain existing street views – the current proposal for maximum building height is 35 feet about curb

grade/elevation of 36th Ave. (Remember that, under current zoning, there is no maximum building height.) As this limit would significantly reduce the development potential at the property subject to these two corridors, the maximum building height outside of the corridors would be increased. The current proposal suggests a maximum building height of 120 feet. (To allow heights less than allowed in the City Center)

Treatment of 36th Ave. Frontage: The current outline replaces the two previously proposed scenarios for regulations for the 36th Ave. frontage (discussed at the last meeting) with a single recommended approach. This approach retains the "no building area" adjacent to the street and a 35-foot height limit in the first "stair-step", followed by increased building heights in the second and third stair-steps. These changes are consistent with the reduced height and increased height associated with the "view-corridor" approach, as described above.

Other Changes to the Outline: Staff has also revised the outline in response to specific comments by members of the Commission.

Analysis of Impact on Views: Staff is working on an analysis of the impact of this "view-corridor" concept on existing views; we will report the results of this work at the work session.

Prior Agreement: During discussion of view issues at the last meeting, members of the Commission and Councilmember Hikel expressed concern that changing the zoning regulations in this area would violate a prior agreement between the City and residents of the single family neighborhood. As stated at that meeting, staff has found no evidence of a written agreement regarding zoning of this area. Following that meeting, staff reviewed the Minutes of City Council meetings for the two years prior to adoption of the IP/BP zoning regulations (the predecessor to the current zoning). Again, we found no indication of a separate agreement on the zoning of this area. Staff will discuss the results of this research at this work session.

This research did show indications that there were extensive discussions about zoning regulations for the properties now know as the Transition Area. While it appears that no written agreement about those regulations exists, it's reasonable to conclude that the current BTP regulations represent the results of those discussions. It's important to remember that the current work to update these regulations is intended to maintain consistency with that earlier intent/purpose. The land use designation adopted for the Transition Area by the City Council in 2007 (see above) recognizes the need to respect and protect the single family neighborhood on the west side of 36th Ave. The current approach is intended to maintain that consistency by clarifying the restrictions on development along 36th Ave., limiting building heights (remembering that the BTP zoning does not limit building height) and establishing view corridors while allowing for land uses that are more closely linked to current or near-term development opportunities.

Next Steps: Following discussion of these changes and the view analysis, staff will ask for direction from the Planning Commission on the next step for this project: should staff

begin drafting new zoning regulations for the Transition Area, based on the current Outline of Zoning Regulations (with changes identified by the Commission at this meeting), or should we continue to refine the Outline, and review those refinements with the Commission, before drafting new zoning regulations?

Conclusions and Recommendation

Discuss outline and other information and provide direction to staff regarding zoning regulations for the Transition Area.

Attachments

A. Outline of Zoning Regulations (November 18, 2010)

DRAFT November 18, 2010

Alderwood-City Center Transition Area
Outline of Zoning Regulations

Purpose

The Alderwood-City Center Transition Area is intended to provide a linkage or connection between the Alderwood Mall and the City Center, while recognizing the proximity of the single-family neighborhood on the west side of 36th Ave. This linkage/connection would be developed by allowing a mix of land uses that complements the two areas but at a lower intensity than the City Center and in a manner that minimizes impacts on the residential area to the west.

Use Regulations

Permitted Primary Uses – General

Office (all types)
Financial, insurance and real estate services (all types)
Retail (max. floor area for a premise (21.02.578) of 50,000 sf.)*
Research and Development
Flex space
Personal care services (barber, hair salon, nail salon, tanning, etc.)
Print and electronic media businesses, not including external transmitting equipment
Eating establishments (restaurants (except drive-up or drive-through service), taverns, wine and/or beer bars, brew-pubs, etc.)*
Colleges, universities, trade and professional schools, technical and vocational schools*
Medical clinics
Hospitals*
Human service agency offices
Live/Work spaces*
Multi-family housing*
Senior housing (all types)*
Hotel/motel*
Athletic Clubs and facilities*
Clubhouse and fraternal, social, recreation and other not-for-profit associations, and similar
Libraries, museums, similar cultural uses
Wireless communication facilities (attached)
Veterinarian clinics* (may include boarding of and day-care for small animals, provided all on-site activities are enclosed in a building)

Conditional Uses – General

Child Day Care (all types, located in a larger building not as a stand alone use)*
Wireless communication facilities (not attached)
Manufacturing
Assembly*

* *See uses prohibited in the Limited Development Area*

Prohibited Primary Uses

Distribution and warehousing
Warehouses

Prohibited Uses
All uses not listed above, and particularly:
Adult uses and establishments
Drive through businesses
Gas stations
RV Parks, campgrounds and similar
Mini Storage on street level
Municipal Shops (21.02.513)
Outdoor sales and/or storage (Uses not fully contained within a building)
Secure community transition facilities
Sewage treatment plants
Vehicles repair
Work release facilities and similar
Wrecking yards
Any other uses similar to those listed above or any other use determined by the community development director to be inconsistent with the intent of the Transition Area (ref. 21.04.300)

Uses in Limited Development Area (LDA):

Limited Development Area (LDA) : The LDA is defined as the area fronting 36th Ave W from the back of the ROW 100 feet deep into the properties.

Retail uses and eating establishments may occupy no more than a total of 50% of the ground floor of a building in the LDA. (Where a building straddles the LDA boundary, this limitation applies only to the portion of the building in the LDA.)

*Prohibited Uses in the LDA:
Multi-family housing
Senior Housing (all types)
Hotel/motel
Child Day Care
Colleges, universities, trade and professional schools, technical and vocational schools
Outdoor athletic facilities and playgrounds
Athletic Clubs and facilities
Veterinary Clinics
Hospitals
Live/Work spaces

Development Standards – Along 36th Ave. W.

Set backs and building heights
25-foot landscaped set back from the front property line and 15 feet additional set back, with surface or underground parking allowed (no buildings allowed in this area);
Then, maximum building height of 35 feet, for next 60 feet (LDA)
Then maximum building height of 85 feet for next ~~50~~ 40 feet and
Then maximum building height of 120 feet for the rest of the Transition Area.

Development Standards – General

View Corridor

- Create a corridor along the view of 191st and 192nd from 36th Ave W to 33rd Ave W. Buildings in this corridor can be no more than 35 feet above curb grade.
- Restrict building width on buildings 85 feet or taller to create a more open environment;

Other

1. **Minimum lot area:** 1 acre
2. **Minimum lot width:** 150 feet
3. **Minimum set backs:**
   a. Along 33rd Ave West: Make Exhibit C: None required (sidewalk width of 12 feet)
   b. Along 188th St. : 10 feet
   c. Along Future 194th St Extension: same as 33rd Ave
   d. Interior Property Lines: No setback is required from interior property lines,(standard transition treatment adjoining residential zone at south)
4. **Minimum building separation:** none
5. **Maximum lot coverage**: none
6. **Maximum building height:** 85 feet
7. **Maximum Floor area:**
   a. Limited Development Area: None (Note: Floor area will effectively be limited by regulations for landscaping, building height, building setback and required parking.)
   b. Elsewhere:(3.0)
8. **Access Management:** Per Citywide access management policy, 1 driveway per property
9. **Pedestrian Promenade:**
   a. Provide safe and convenient East/West through block connection from City Center to Alderwood Mall (referred to as The Promenade)
      i. Maintain development rights of The Promenade area (height/density)
   b. Buildings fronting The Promenade: See Design Guidelines – Street Frontage Below
10. **Vehicular Connections:**
    a. Connections between parking lots
    b. 194th St ROW per ORD 2627
11. **Service Areas Including Loading Docks and Refuse/Recycling Areas:**
    a. Locate to avoid visual, auditory, olfactory or physical impacts on street environment and adjacent residential uses
    b. Prohibited facing 36th Ave W.
    c. Should not be visible from the sidewalk or from a public right of way; may be achieved by screening
12. **Open parking and parking structures:** LMC 21.18.800
    a. Residential Surface parking is limited to 1.5 spaces per unit. Tandem parking allowed only for residential uses and only in a structure. Shared parking is allowed.
    b. Provide paved or marked walkways through parking areas
    c. Landscaping required in parking areas to diminish the visual impacts of large paved areas
13. **Multi-Family Residential:**
    a. Density: 70 units per acre
    b. Provide common open space including landscaped courtyards or decks, gardens with pathways, play areas or other open space or activity amenities.

Project Design Review

Required, per City Center standard language

Design Guidelines
Use City Center Design Guidelines, with amendments for this area, and:

1. **Pedestrian Connections:**
    a. Minimum of 6 feet in width
    b. Provide safe and convenient pedestrian circulation throughout the site for users, between public right-of way and building entrances and between parking lots and building entrances (See City Center Design Guidelines page 11: Pedestrian Connections, except 6 foot width instead of 8 foot)
    c. Seating, lighting and other pedestrian amenities required.
2. **Mechanical Screening:**
    a. :Roof mounted must be screened so it is not visible within 150 feet of the structure when viewed from the ground level.
    b. Ground mounted must be screened to minimize visual and noise impacts to pedestrians and adjoining properties
3. **Street Frontages:** (Design Guidelines)
    a. Buildings fronting 36th Ave W:
        1. No blank, untreated walls
    b. Buildings fronting 33rd Ave W: See City Center Design Guidelines: Building Design Standards
        1. Building must have a clear convenient entrance to the public sidewalk
        2. Parking areas fronting 33rd must be screened
        3. No untreated or blank walls
        4. Provide pedestrian oriented space or landscaping
        5. Transparency on ground floor façade
    c. Buildings Fronting 188th, provide transparency
    d. Buildings Fronting 194th: Same as 33rd
    e. Buildings fronting the Promenade: Provide additional Pedestrian Oriented Articulation and Details

Non-Conforming Uses, Sites and Structures
Per City Center Standards

Signs

1. Each development shall submit a signage plan to show consistency throughout the project and consistency with guidelines including:
2. **General Sign Regulations:**
    a. Signs with individual backlit letters (i.e. Channel Letter Signage) are permitted.
    b. Neon signs are permitted except on top floor building facades facing West that would be visible from the residential areas West of 36th Ave
    c. External sign lighting (i.e. Uplighting) is permitted but shall not be directly visible from adjacent residential zoned properties
3. **Sign types, sizes, locations, etc.**
    To Be Determined

City of Lynnwood
PLANNING COMMISSION MINUTES
November 18, 2010 Meeting

Commissioners Present:	**Staff Present:**
Richard Wright, Chair	Shay Davidson, Administrative Asst.
Maria Ambalada	Kevin Garrett, Planning Manager
Van Aubuchon	Dave Osaki, Deputy Dir. Com/Dev
Chad Braithwaite	Mary Monroe, Tourism Manager Economic Development
Jeff Davies	Janine Lambert, City Center Project Manager, Economic Development
Bob Larsen, Vice Chair	
	Other:
Commissioners Absent:	Councilmember Ted Hikel
Michael Wojack, Second Vice-chair	

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

Approval of Minutes

1. Meeting of October 28, 2010

Motion made by Commissioner Larsen, seconded by Commissioner Ambalada, to approve the minutes. The motion passed unanimously.

Council Liaison Report

Councilmember Ted Hikel reported that the Council has been very busy trying to decide on a budget. The Mayor's Budget was presented to the Council in December. A task group of three councilmembers was appointed by Council President Mark Smith and came up with three reports with another one expected. On Monday November 22 the Council will be considering new taxes/revenues for the coming year. The proposals are for a new employee fee, maxing out all of our banked capacity for property taxes, increased utility taxes, and wage/step longevity freezes.

Citizen Comments

None.

Public Hearings

None.

Other Business

None.

Work Session

1. **Transition Area Zoning Regulations (2008CAM0003).** Proposed zoning regulations (permitted and prohibited land uses, development regulations, etc.) for the Alderwood-City Center Transition Area, generally located east of 36th Ave. W., south of 188th St. SW and west of Alderwood Mall Blvd.

Chair Wright solicited public comment. There was none.

Planning Manager Garrett stated that they have continued to revise the outline of zoning regulations. He displayed and discussed aerial photos of the Alderwood City Center Transition Area. He discussed two changes from the last version:

- View impact and view issues – At the last work session staff heard concerns that the program that had been recommended at that point had a substantial impact on views from the neighborhood. Staff is now suggesting an approach that deals with establishing two view corridors (described at the top of page 3 of the outline). Regulations could establish a view corridor that would look somewhat like an extension of the two streets – 192nd and 191st. In the view corridor building height would be limited in a manner that still allows the existing view substantially to remain. Outside of that narrow corridor they would allow substantial development to compensate for the decreased development in those corridors.
- 36th Avenue Frontage – They have retained the stair step approach/limited development area but the building heights have been increased as shown at the bottom of page 2 of the outline.

Other changes are:

- The land use *Assembly* is now shown as a conditional use.
- General typos and edits.

He addressed the topic of a prior agreement that might have been in place when the zoning for the area was adopted back in 1979. Since the last meeting staff has reviewed City Council meeting minutes from mid-1977 to the adoption of the new zoning regulations in 1979. They saw indications of substantial discussions going on about how this area should be zoned. There was a special City Council meeting at Lynnwood High School in that period with substantial public comments. They did not find any Council action regarding an agreement; however the Council did adopt, by Ordinance, a land use map designation for this area. About 4 or 5 months later the actual zoning regulations were adopted. The record in the Council minutes and the Ordinance gives very little background. He stated that the Purpose Statement of this zone recognizes the need for development in that area not to substantially or significantly impact the

single-family neighborhood. Staff still recognizes that this is an active single-family neighborhood opposite properties with redevelopment potential. The challenge is modernizing the zoning regulations while still respecting this balance.

Discussion:

Commissioner Ambalada commented that the outline is very good and reasonable. She referred to the view and asked if it would be defined as *territorial*. Planning Manager Garrett commented that it would not be *territorial* from the streets. From the streets there are currently mountain views.

Commissioner Braithwaite had the following questions:

- He asked if the zoning regulations are flexible enough to be economically feasible for developers. Planning Manager Garrett commented that they do not have in-house capability of doing a detailed economic analysis, but they generally depend on outside services, such as contractors, or information from property owners. He acknowledged that very little development is viable under current conditions, but they expect that in five to seven years it will be.
- He asked for more of a definition of the view corridor. Planning Manager Garrett explained this. Commissioner Braithwaite commented that this would impact certain property owners more than others. Planning Manager Garrett affirmed this.
- He asked if 120 feet is the next cost-efficient point for the stair step plan. Planning Manager Garrett stated that this is based on what they have heard is possible with a single run of elevators. Commissioner Braithwaite pointed out that under Development Standards it still says 85 feet. Planning Manager Garrett noted that this would be corrected.
- He asked about screening for rooftop equipment. Planning Manager Garrett referred to page 4 of the Design Guidelines, item 2(a) which is a fairly standard approach that the City uses. He stated that this would take care of air conditioning units and vents, but would not totally screen elevator overruns. He suggested that the Commission discuss whether the 120 feet be measured to the top of the wall or to the top of the elevator overrun.
- He suggested that they not be too specific with Design Guidelines and requiring specific architectural styles because when this is finally developed it may not be popular anymore. Planning Manager Garrett noted that the Design Guidelines for 33rd are in there because they see that street as becoming the main street of the area and a key part of that is the retail character where you can see into the buildings.

Chair Wright requested more information about where they would be seeing building elevation of 120 feet. Planning Manager Garrett reviewed this and noted

that it would be the first 1/6th of the block which would have the stair step as described in the outline. He offered to provide a map for future reference.

Commissioner Larsen:

- He asked how tall the Fisher Building is. Staff replied that it is between 75 and 80 feet. Commissioner Larsen asked what they expect the tallest buildings would be in the City Center area when that is built out. Planning Manager Garrett stated that in the north end the maximum building height was 140 feet. In the highest areas the maximum height would be 350 and then it would drop in several bands to 35 feet near the single family neighborhoods.
- He suggested that noise may be a big issue with this development and pointed out that sound bounces off glass and buildings pretty effectively. He suggested stating that no surface should be parallel to 36th in order to reduce the sound impacts.
- He likes the concept of a view corridor, but recommended working with the owners to make sure they will be comfortable with this.

Commissioner Aubuchon:

- He asked Councilmember Hikel if the history that was shared by Planning Manager Garrett is what he recalled. Councilmember Hikel agreed that there was no formal agreement written down. The agreement recognized what would be a good compromise with developers and the neighborhood. He noted that the zoning they ended up with was Industrial Park/Business Park. He stressed that the view corridors would still impact the neighborhood because there would still be 10 or 12 story buildings right across the street from single-family. He also expressed frustration with the impacts of the red lighting at the top of the Loews Theater building. He spoke to the potential for increased traffic, density, and visual impacts. He asked how this meets the guidelines for protecting single-family neighborhoods and discussed the importance of protecting these neighborhoods. Commissioner Aubuchon stressed that there was no written agreement at the time. He wanted to make sure that no one was led astray. Councilmember Hikel replied that what was written in the original zoning was what everybody agreed to. Commissioner Aubuchon asked if there are any projects pending or any pressing planning issue that they have to address. Planning Manager Garrett stated that he was not aware of any pending projects, but there is a planning issue in that they need to make the Comprehensive Plan and the zoning consistent.
- Commissioner Aubuchon pointed out that under the General Sign Regulations it is stipulated that there would be no neon signs permitted on the top of the building except facing west. He recommended that no signage be allowed on the top of those buildings at all because even if it doesn't face the houses there is still a glow. Planning Manager Garrett discussed the importance of signage to the businesses, but noted that they could have restrictions. Commissioner Aubuchon stated that he did

not want neon signs at the top of buildings, but did not mind an "open" sign at ground level or on the 33rd Avenue frontage.

Ms. Monroe commented that from an economic development perspective the freeway visibility for signage might be important. Commissioner Aubuchon replied that we do not need to see billboards from the freeway.

Chair Wright quipped that if they allow 120 foot buildings in that area it would block the lights for Councilmember Hikel.

Commissioner Davies asked why 120 feet was desired when the height of the current Pemco and Fisher buildings is about 80 feet. He thinks that buildings higher than those two existing buildings would be found the most objectionable to the neighborhood whereas another additional building or two that height or lower would not be as objectionable. Planning Manager Garrett replied that they are looking for Commission direction for the building height. They came up with the 120 feet idea when they considered doing the view corridors because they knew that doing a view corridor would substantially reduce potential development in those corridors. Commissioner Davies suggested that they try to encourage the taller buildings in the City Center, not in this area. Planning Manager Garrett noted that they could follow that approach if it was the desire of the Commission.

Commissioner Aubuchon commented that they could put a 120-foot building over by the bus barn and it would be about the same height, relative to 36th Street, as the Fisher Building which is one of the tallest buildings currently. Commissioner Aubuchon suggested that there might be some compromise areas that they could agree to in order to get to the 120 feet to offset part of this view corridor. He spoke against the higher buildings on 36th.

Commissioner Ambalada suggested that they try to have a strong relationship with the neighborhood that they are protecting. With regard to the lighting, the new Mercedes Benz on Highway 99 has a couple lights that directly affect the mobile home park in that area.

Chair Wright agreed with the 120 feet on the east side of 33rd and possibly on a portion some distance back on the west side of 33rd as well. 36th does not seem workable for that height of a building.

Commissioner Larsen commented that when he first saw the Fisher building and the Cosmos buildings they seemed very big to him, but from a functional perspective this is an area with a lot of potential. He suggested trying 85 foot allowed by the zoning code to 120 feet with an SPU that would be partly based on access, orientation, mix, etc.

Commissioner Braithwaite observed that the zoning regulations as they are now have no maximum height restriction. Councilmember Hikel commented that

whatever impacts they make will have long-range consequences for the property owners and the neighborhood. He again stressed the importance of preserving single-family neighborhoods.

Commissioner Ambalada suggested setting up a special meeting with members of the neighborhood. Planning Manager Garrett commented that they attempted that and the response they got was that the neighbors didn't want *anything* changed. There will be opportunity for the neighborhood to come in for comments when they have public hearings and they are welcome to be present at any work sessions. Staff is feeling the need to move toward a resolution of one sort or another and would not be supportive of looping back into a broad-based neighborhood program at this point in the project. Commissioner Ambalada asked about the promenade project. Planning Manager Garrett replied that there are no pending projects.

Planning Manager Garrett restated what staff had heard from the Commission:

- Building Height – Some support of Commissioner Larsen's suggestion to have an 85-foot maximum by right and then allow up to 120 feet with some sort of special permit.
- 36th Avenue – Concerns about noise and suggestions to have buildings set at an angle.
- Land Use – No further comments tonight. Consensus from Commission to move forward with the regulations.

2. **Project Highway 99 (2009CAM0001).** Draft Subarea Plan, Zoning Regulations and Design Guidelines, together with a Draft Supplemental Environmental Impact Report for the Highway 99 corridor, between 216th St. SW and 148th St. SW.

Public Comment:

Ed Trimakas, 20515 Highway 99, Lynnwood, stated that at the last meeting he had provided a pro bono study that he did of the corridor plan as he understood it. He offered to provide any answers to questions or disagreements that the Commission might have to this study. He also said that Planning Manager Garrett had stepped forward and made some proposals which he wanted to address tonight. They have a purpose-built building on property that has been zoned Commercial General (CG) for the past 34 years which is now being forced to become HMU-RE (Residential Encouraged). He expressed frustration that property 200 yards away from him still retains its Commercial General zoning while he is forced to jump through many different hoops. He discussed staff's solution to his dilemma. He asked how they could allow a competitor to his property to retain their CG zoning because they happened to be new. He criticized the concept of nodes along Highway 99 and pointed out that they normally result from a community, a locust or some reason which they would grow. In the case of the City's plans they have simply decided that certain

intersections would be nodes. Not only is this arbitrary, but it is unfair. He complained that in the course of the two years of this study he did not imagine the code would throw him out of business for the rest of his life. The building is useless if he can not do an auto-centric business. He suggested that instead of this broad approach they could leave this particular site CG. He criticized the Makers study and expressed frustration that he had not been automatically included as a person of interest. He expressed concern that this hybrid code has never been tried on a 5¼ acre strip with no real loci other than the fact that there are intersections.

Commissioner Ambalada thanked him for coming to share his thoughts with the Commission.

Commissioner Aubuchon also thanked him for taking the time to share his thoughts with the Commission. He commented that the area around Mr. Trimakas' building has increased in value substantially. He asked Mr. Trimakas if he is actively trying to lease his property. Mr. Trimakas replied that he is. He is not interested in selling it because the accumulated depreciation tax is huge. Commissioner Aubuchon asked Planning Manager Garrett how much of the zoning on Highway 99 is impacted by the state. Planning Manager Garrett was not aware of any parts that were impacted directly by the state. The larger question the city is facing is: *How do they accommodate future growth?*

Mr. Trimakas commented that the staff refers to the *need to respond to anticipated growth to limit sprawl.* He asked where they can sprawl in Lynnwood. He expressed frustration that Makers had expanded the project from the original intent of the City. By anecdotal survey he has ascertained that 80% of those with land in that area do not want the plan.

Staff Report:

Planning Manager Garrett briefly reviewed the history of this item. He reviewed summary tables of the comments on draft project documents with staff responses. He explained that they were looking for feedback from the Commission regarding the comments and responses.

Two other areas staff requested feedback were:

1. Trimakas' property - Staff is understanding and supportive of the concern of owners of single-purpose buildings. Staff's recommendation is to go forward and write regulations to allow their continued use and occupancy.
2. Public comments indicate concern that nodes of *residential required* may require too much of a hardship. Staff's recommendation at this point would be to set all nodes as *residential encouraged*. The *encouraged* concept would have a series of incentives for those that are open to doing mixed use. These incentives could include more density, higher building heights, more lot coverage, and reduced parking.

Commissioner Aubuchon referred to Shoreline's high density housing development at Echo Lake on Highway 99. He doesn't think this works well along a state highway moving 45 mph with 7 lanes of traffic. He also questioned the value of the Makers study. He suggested moving the high density residential development away from the Highway 99 corridor and leaving that area for commerce.

Commissioner Ambalada commented that she thinks they are going in the right direction, but that they need to be more compassionate and use common sense in dealing with requirements for businesses and property owners. She thinks encouraging residential rather than requiring it is a positive move. She recommended helping businesses as much as possible.

Commissioner Braithwaite stated that he has always been skeptical about residential development being successful on Highway 99. He commented that one of the challenges is to envision this area in 20 or 30 years. He is pleased to see that they have gone from requiring residential to encouraging it. He recommended encouraging incentives for larger lot sizes in order to get the efficiencies that make these sorts of developments economically viable. He emphasized that some of these nodes are far from pedestrian-friendly, but rather are *pedestrian-kill* zones at the moment. He suggested that they think more about pedestrian safety. He also wanted to be careful not to discourage traditional development in that area as well because of the tax revenue it can provide to the City. He had comments on the responses as follows:

- Page 1, the first item – He recalled that if a developer made improvements to more than 10% of the building they had to adhere to the new rules. He wondered if this might need to be revised or looked at again. Planning Manager Garrett commented that if the use of a property is non-conforming then the use could be expanded by no more than 25%. This would not apply to the re-occupancy because they would not be a non-conforming use. Also, going from *residential required* to *residential encouraged* removes the requirement for residential with the development of the property.
- Page 3, last item – He spoke against allowing 5-story wood frame buildings due to earthquake issues. Planning Manage Garrett commented that the current code allows wood frame construction only up to four stories and only for residential. The Wood Products Institute has come out with recommendations for allowing five-story wood frame residential construction using *engineered* wood products.
- Page 4, first item – They need to expand the plan for how they are going to address pedestrian safety.
- Page 7, first item – He thinks that in 20 years there will still be a lot of cars driving down Highway 99 and they should be more flexible in terms of both parking and drive-through facilities. Trying to eliminate those might be denying what Highway 99 really is.

Commissioner Larsen discussed the challenge of addressing rapid growth and the need to proceed with a lot of caution. His biggest concern, in addition to the pedestrian issue, is: *How do they bridge from today to where they want to go with this plan? How do they encourage investment to make this happen?* To the extent that they can soften some of these regulations, do more grandfathering, and not intimidate some of these owners they can encourage the owners to hang in there while the economy is in the dumps they can slowly move this where it needs to go. He suggested getting third-party input on this plan, perhaps by FutureWise or the City of Shoreline Planning Director Joe Tovar.

Staff's summary of comments:

- Some concerns about the overall direction we are going.
- General comments that if this goes forward, to go forward softly and slowly. Need to discuss how to encourage the transition.
- *Residential encouraged* is much better than *residential required.* Possibly move this further to *residential allowed* with the concept being that putting residential right on the highway doesn't seem very practical or feasible. Perhaps putting it further back off the highway could be a possibility in the future.
- Lighten up on some of the guidelines to allow development to occur so it won't be too restrictive to encourage growth along the highway.

Commissioner Aubuchon added that what Commissioner Larsen said was that we might want to consider situations like Mr. Trimakas' to be grandfathered in. He also referred to some of the public meetings they had earlier where it was always discussed that the residential would be behind the retail and not directly on Highway 99. That had been his understanding of what the presentation was. Ms. Monroe said the intention was not to preclude putting it on the highway, but realistically on those deeper properties a mixed development could be horizontal mixed use, not necessarily vertical.

Commissioner Larsen suggested recognizing the role of the Comprehensive Plan versus the zoning regulations. The Comprehensive Plan is more about the policy and what the City desires for an area. In the Comprehensive Plan they could voice the intent of what we are trying to accomplish in this area with recognition that markets evolve. They could say when these things develop, here's how we want to respond to them. This will give investors a sense of how long something's going to take to evolve and how it may play out in the future. Planning Manager Garrett replied that he would see the Sub-area Plan as being the place where this is kept.

Commissioner Ambalada added that in developing the Comprehensive Plan they should indicate that they are doing this towards accomplishing the Growth Management Act.

Commissioner Braithwaite summarized his comments as:

- Lots of carrot, less stick
- Allow residential
- Give incentives for property owners – additional density

Planning Manager Garrett suggested that they need to work with the Commission more to flush out the direction they have been given tonight prior to drafting any code language. He recommended that staff put together a document that encompasses the direction of where they are going to take this project before they actually write the code.

3. **Zoning Code Amendment – Changing Electronic Message Board Signs (2009CAM0004).** Amendment to City Zoning Code related to Changing Electronic Message Board Signs.

Deputy Community Development Director Dave Osaki explained that the draft that the Planning Commission came up with was in their packet. It was reviewed by the City Attorney and should be the final draft reflecting the Planning Commission recommendation. Since that time they have gone through the procedural matters such as the Environmental Review Process and the 60-day state agency review period where no comments were received. He stated that they intend to bring this back before the Planning Commission early next year for a public hearing. The next extension of the interim regulations is scheduled for April of 2011. There was a commitment to the City Council to at least get it through the Planning Commission hearing process before the next extension of those interim regulations.

Commissioner Braithwaite if the draft here was the same as the last time they looked at it. Deputy Director Osaki stated that it was exactly the same.

Director's Report

Planning Manager Garrett had the following comments:

- Most of the Council effort is going into the budget at this point. There are a lot of materials on the city website.
- The Lynnwood High School site process may become active again. Staff is recommending that the Commission take a project committee role in this process.
- He will be making a 2011 Work Program. Some items on it will be the Lynnwood High School site, the Changing Electronic Message Board Signs code amendment, Highway 99, Transition Area, and the 2011 Docket.
- Next meeting will be December 9 in the annex at 7:00 p.m.
- The Council approved 7 of the 8 docket items. The item still before them is the mobile home park zone and they have asked staff to final up an ordinance to institute a mobile home park zone similar to what the county

did. This will come back to the Council on December 13 and they may take final action that night.

- There are two Commission seats up for renewal – Commission Aubuchon and Commissioner Wojack.

Adjournment

The meeting was adjourned 9:22 p.m.

_____

Richard Wright, Chair

Lynnwood Planning Commission **Meeting of February 9, 2012**	
Staff Report **Agenda Item:** Permit Processing Streamlining Code Amendments	☐ Public Hearing ☐ Informal Public Meeting ☒ Work Session ☐ Business ☐ Information ☐ Miscellaneous
Community Development Department	

ACTION
For discussion.

BACKGROUND
For a number of years staff has been advocating a series of code amendments that have the potential to simplify and streamline the City's development approval and appeals processes. These improvements can be made without compromising our development standards or the ability of the public to have legitimate concerns heard and addressed. Staff had begun to bring these ideas forward to the Council and Planning Commission in 2009/ 2010 but the process was derailed by the need to focus on budget issues.

Staff originally developed these ideas to serve three purposes:

- Promoting economic development by facilitating permitting. Prolonged review times with uncertainty as to outcomes greatly increases the cost and risk of making private sector investments in Lynnwood. Making more approvals administrative or the purview of the professional City's Hearing Examiner who decides the issue based upon City ordinances, facts, testimony and law is an excellent way to meet these challenges. It is the approach used by many other jurisdictions that Lynnwood needs to compete with.

  With the way our procedures are currently organized, project opponents often get several bites at the apple to raise issues. This greatly increases the level of uncertainty and adds time to the review process that is not otherwise necessary. Appeals we have seen in recent years are not issues raised by residents but appear rather to be related to a desire to stifle commercial competition.

- To work around the limited time the City Council has available to deal with these quasi-judicial issues. We have often found it difficult to schedule timely reviews by the City Council and its focus ought to be more on setting goals, policies, and ordinances rather than dealing with day to day operations of our project review and appeals processes.

- Having the City Council involved directly in project approvals or appeals raises several other related concerns. Generally, in making these decisions the Council is acting in a quasi-judicial role which has implications on the ability to meet with or discuss the project with residents. It also raises the possibility of liability if decisions are found to have been influenced by anything other than the facts of the case. The Association of Washington Cities and the WCIA (that provides insurance to many cities (not including Lynnwood) has long advocated that Councils defer these decisions to Hearing Examiners

The need to consider these amendments has grown considerably due to the prolonged recession. Staff cutbacks have diminished our ability to provide timely customer service and support multiple hearings on a single application. More importantly, the need to support economic development to help the City "build" its way back to financial stability has become a primary goal.

Most of the proposed amendments would not normally come before the Planning Commission as they deal with sections of the Code that are outside your purview. However, one of the amendments deals with the processing of subdivisions and this does require review and hearing by the Commission.

DISCUSSION

The City of Lynnwood Municipal Code (LMC) establishes several processes that involve the City Council in quasi-judicial land use actions. City Council involvement in certain quasi-judicial land use actions is required under State law; others are not.

At a November 2009 City Council work session, staff identified possible amendments to the Lynnwood Municipal Code (LMC) that would change how certain land use applications would be processed.

More specifically, the discussion focused on certain land use processes that currently involve the City Council, but which could be heard/decided through other processes (not involving the City Council). These processes under discussion include:

1. Variance Appeals;
2. Conditional Use Permit Appeals;
3. Preliminary Plats;
4. Rezones (not concurrent with a comprehensive plan amendment); and,
5. SEPA Appeals.

Changes to the specific process would generally either:

- Place increased open record public hearing and/or decision-making authority with the Hearing Examiner; and/or,
- Eliminate the City Council's involvement in certain appeal processes and instead direct certain appeals to Court.

Involvement in quasi-judicial actions can be time consuming for the applicant, staff as well as a city council. Reducing the city council's role in land use actions results in the following:

Allocate More Time to Focus on Policy Issues
As noted earlier, quasi-judicial hearings/proceedings can be time consuming. Reducing/minimizing time on quasi-judicial land use actions allows local legislative bodies to better concentrate and focus on policy-making responsibilities.

Efficient Development Review Process
Streamlining process creates a more efficient development review process for an applicant. Eliminating processes that are not otherwise required also makes it easier for the City to comply with the Growth Management Act's "Regulatory Reform" requirements. Among those requirements is that final decisions on land use permits be completed within 120 calendar days of active processing.

It must be noted that such amendments would in no way eliminate a requirement for a public hearing, nor does it affect the need to comply with the SEPA process. The ability of the public to interact with the project would not be compromised.

Reduced Liability Exposure
Streamlining land use processes and/or directing certain actions to the Hearing Examiner potentially reduces local government liability exposure. Public hearings/meetings increase exposure to procedural issues related to the appearance of fairness doctrine and/or ex parte contact. Directing more responsibility to the hearing examiner should provide for more consistent, legally-sustainable rendered quasi-judicial decisions. In addition, as noted earlier, more efficient processes facilitate the City's compliance with regulatory reform requirements. Failure to comply with such requirements exposes the City to liability.

Cost
Removing otherwise optional steps in the permit process reduces City time and costs associated with preparing materials, providing notice and organizing other related information/requirements.

Staffing
Staffing reductions have made it difficult to meet our ordinance-required obligations when there are multiple hearings on an application.

Reasons why a city council may choose not to relinquish authority over land use actions is a belief that it provides more accountability to the public.

More specifically, there are options to amend the municipal code which could:

- Place increased open record public hearing and/or decision-making authority on quasi-judicial permits with the Hearing Examiner. (*The City has a hearing examiner on contract who holds public hearings/public meetings on certain quasi-judicial land use actions and who, depending on the specific quasi-judicial land use action, may make a recommendation to City Council or issue the final decision);* and/or,
- Eliminate the City Council's involvement in certain appeal processes and instead direct certain appeals to Court.

Prior Planning Commission Discussion

The Lynnwood Planning Commission discussed this issue at its January 28, 2010 and February 25, 2010 (minutes attached). Discussion included background about permitting processes, the number of land use cases the city deals with each year, the hearing examiner process, as well as how permitting is to fall within the confines of the GMA.

The Planning Commission was generally supportive of the idea of placing greater quasi-judicial decision-making authority with the hearing examiner for many of the reasons cited above including:

- Allow the City Council to focus more on policy making issues given the full plate the city council has.

- Some reference and discussion about how future annexation could result in a greater increase in quasi-judicial actions.

Page 8 of the Planning Commission's February 25, 2010 minutes summarizes much of the discussion and thoughts from the Planning Commission.

What actions does the City Council need to be involved in?

The City Council needs to adopt ordinances related to comprehensive plan amendments (which would not be affected by the proposal), rezones/PUD's and final plats (but not preliminary plats).

Comprehensive plan amendments are unaffected by this proposal. The final plat process is also unaffected by this proposal. Final plats are the council's review of a plat to ensure it meets all of the terms and conditions of the preliminary plat approval. (NOTE: The proposal would place the responsibility for conducting the public hearing and decision on the preliminary plat with the hearing examiner.)

Although the City Council needs to pass the ordinance on site-specific rezones, it (City Council) need not be the body that conducts the open record public hearing. That responsibility may be delegated to a different body such as the Hearing Examiner.

SEPA Code Amendment

Another permit processing code amendment that staff will be bringing forward relates to State Environmental Policy Act (SEPA) "categorical exemptions." Categorical exemptions are those activities which do not require SEPA review. These exemptions are spelled out in the Washington Administrative Code.

The State WAC does allow local jurisdictions the ability to increase the exemption levels for certain types of activities. Among the more common activities where the exemption threshold may be increased include the number of dwelling units that are developed, square feet of commercial, school, office and similar development, number of new parking spaces and cubic yards of grading (size of agricultural storage buildings/barns is another one).

Currently the City of Lynnwood SEPA requirements (adopted by ordinance in 1984) set these exemption thresholds at the minimum lowest levels. WAC 197-11-800(1)(c) allows them to be increased, if supported by local conditions including zoning or land use plans or regulations.

Specifically, WAC 197-11-800(1)(c) states,

> "(c) Cities, towns or counties may raise the exempt levels to the maximum specified below by implementing ordinance or resolution. Such levels shall be specified in the agency's SEPA procedures (WAC 197-11-904) and sent to the department of ecology. A newly established exempt level shall be supported by local conditions, including zoning or other land use plans or regulations. An agency may adopt a system of several exempt levels (such as different levels for different geographic areas). The maximum exempt level for the exemptions in (1)(b) of this section shall be, respectively:
>
> (i) 20 dwelling units.
>
> (ii) 30,000 square feet.
>
> (iii) 12,000 square feet; 40 automobiles.
>
> (iv) 40 automobiles.
>
> (v) 500 cubic yards."

A comparison of the City of Lynnwood's current SEPA threshold limits and the increase allowed by State law (and which will be proposed by staff) is as follows.

Current City SEPA Threshold	Maximum Increase Allowed by State Law
(i) The construction or location of any residential structures of four dwelling units.	Four dwelling units may be increased up to 20 dwelling units.
(ii) The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering 10,000 square feet, and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots.	10,000 square feet may be increased up to 30,000 square feet.
(iii) The construction of an office, school, commercial, recreational, service or storage building with 4,000 square feet of gross floor area, and with associated	4,000 square feet and twenty automobiles may be increased up to a total of 12,000 square feet and 40 automobiles.

parking facilities designed for twenty automobiles.	
(iv) The construction of a parking lot designed for twenty automobiles.	Parking lot designed for twenty automobiles may be increased up to a total of 40 automobiles.
(v) Any landfill or excavation of 100 cubic yards throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder.	100 cubic yards may be increased up to a total of 500 cubic yards.

The State Environmental Policy Act was approved by the State in 1971. As noted, the City's most recent overall update to the City's SEPA regulations was in 1984.

Obviously, SEPA has evolved since the mid-1980's. Since the time of the City's adoption of the SEPA regulations in 1984, the City of Lynnwood has adopted regulations that provide for additional specific protection of the environment. Growth management requirements and regulations, including zoning updates and critical areas regulations, are examples. The transportation impact fee ordinance and updated stormwater regulations are other examples of how the City now adequately addresses development impacts through up-to-date code requirements.

Amendments to the SEPA code alone do not require a Planning Commission public hearing. However, as it effects development in the City, staff will want the Planning Commission to have discussion on the SEPA exemption amendments.

RECOMMENDATION

None. For discussion.

ATTACHMENTS

Matrix Chart summarizing process changes
Planning Commission's January 28, 2010 minutes
Planning Commission's February 25, 2010 minutes

Existing and Potential Alternative Permit Processes

Process	Existing Process	Alternative Process
1. Variance Appeals	Appeal of a hearing examiner final decision on a variance is heard by the City Council (further appeals then go to Court.)	Appeal of a hearing examiner final decision on a variance would go directly to Court.
2. Conditional Use Permit (CUP) Appeals	Appeal of a hearing examiner final decision on a conditional use permit is heard by the City Council (further appeals then go to Court.)	Appeals of a hearing examiner final decision on a conditional use permit would go directly to Court.
3. Preliminary Plats	Step 1 Informal public "meeting" before hearing examiner. Step 2 City Council Public Hearing (open record hearing). *(NOTE: Approval of Final Plats currently rest with the City Council and would continue to do so.)*	Hearing Examiner open record public hearing. Hearing Examiner renders final decision.
4. Rezones (not concurrent with a comprehensive plan amendment)	Step 1 Informal public "meeting" before Planning Commission. Step 2 City Council Public Hearing (open record hearing).	Step 1 Hearing examiner public hearing (open record hearing). Hearing examiner makes a recommendation to the City Council. Step 2 City Council action (but no public hearing required).

5. SEPA Appeals*	<u>Procedural SEPA Appeal</u> Procedural SEPA appeals *(i.e. whether a DNS or mitigated DNS is appropriate)* are heard simultaneously with the public hearing on underlying application for a city permit. If underlying permit application does not include a public hearing, the SEPA appeal is heard by the hearing examiner. Municipal code says hearing examiner decision on SEPA appeal may be appealed to City Council.* ** The City's hearing examiner has ruled that the current SEPA appeal process is not consistent with State law. Municipal code allows two local SEPA appeals; Hearing examiner has ruled State law limits local SEPA appeals to one appeal. This should be rectified regardless of whether other amendments discussed in this memorandum are pursued.* <u>Substantive SEPA Appeal</u> Heard by the City Council. (Substantive	Removes the distinction between Procedural and Substantive SEPA appeals. SEPA appeals to be combined with the open record public hearing (if one exists) on the underlying permit – primarily the hearing examiner. Hearing examiner also would hear a SEPA appeal if there is no public hearing associated with an underlying permit.

	SEPA appeals relates to the City's use of policies to support/require specific mitigation measures.)	

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 7,200 200 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 limitsed 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 Managementland 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 detaildiscussed 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. HeCouncil President Hickel gave an example of how, when the City Council y were lookeding 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 ofsort matter. He noted that his recommendation is to have a good Hearing Examiner, give themprovide 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 isis 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 Eexaminer 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 developmentsrecent 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

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