AGENDA
Lynnwood Planning Commission
Thursday, December 8, 2011 — 7:00 pm
Permit Center — 4114 198th St. SW., Lynnwood WA
NOTE MEETING LOCATION CHANGE

A. CALL TO ORDER – ROLL CALL

B. APPROVAL OF MINUTES:
   Meeting of September 8, 2011
   Meeting of September 22, 2011

C. COUNCIL LIAISON REPORT

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

E. PUBLIC HEARINGS
   None

F. WORK SESSIONS
      Title 21 regarding zones in which self-storage and similar land uses are permitted
   2. Lynnwood Crossing EIS/Process (2006ERC0006)

G. OTHER BUSINESS
   None.

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  
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<td><strong>Staff Report</strong></td>
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<td><strong>Agenda Item:</strong> F-2</td>
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<td>Lynnwood Crossing DEIS (06ERC0006)</td>
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**ACTION**
Discussion

**BACKGROUND**
On October 7, 2011 the City of Lynnwood issued a draft environmental impact statement (DEIS) for the Lynnwood Crossing project (copies of the DEIS have been provided to the Planning Commission previously when the DEIS was issued). Lynnwood Crossing is the name for the proposed project to redevelop the former Lynnwood High School site.

Five (5) alternatives were evaluated in the DEIS. The DEIS was issued with a 45 day public comment period that concluded November 21, 2011. Written comments were encouraged during the public comment period. All written comments received during the public comment period will be addressed in the Final Environmental Impact Statement (FEIS). The FEIS is currently under preparation and will be provided to the Planning Commission when completed.

Upon completion of the FEIS and associated appeal periods, certain actions addressed by the EIS will be considered by the Planning Commission. This includes a comprehensive plan amendment from "Public Facilities" to "Mixed Use", a rezone (from "Public Semi-Public" to "Commercial Residential") and zoning code text amendments.

A briefing on the upcoming process will be presented to the Planning Commission at the December 8, 2011 meeting. At this time, the briefing will focus on general processing issues related to the applications rather than on substantive issues.

**RECOMMENDATION**
For discussion only.

**ATTACHMENTS**
LHS Process Summary
(Copies of the Draft EIS have been provided to the Planning Commission previously.)
Lynnwood Crossing Review (General) Process

(These approvals will be processed concurrently to maintain consistency)

**Comprehensive Plan/Zoning Map/Zoning Text Amendments**

**Staff**
- Following issuance of FEIS, staff prepares detailed data, maps and analyses of the proposals.

**Planning Commission**
- The Planning Commission studies proposals in work sessions.
- Public hearing(s) are conducted - public comments are accepted.
- Planning Commission makes recommendations to City Council.

**City Council**
- City Council reviews the Planning Commission's recommendations.
- Work sessions are held, as necessary
- Public hearing(s) are conducted - public comments are accepted.
- Final decisions by City Council

**Development Agreement**

**Staff**
- Staff prepares detailed data, maps and analyses of the proposals and drafts ordinance/agreement

**Planning Commission (Optional)**
- The Planning Commission reviews proposal

**City Council**
- Work sessions are held, as necessary.
- Public hearing is conducted - public comments are accepted.
- Final decision by City Council

**Planned Action Ordinance**

**Staff**
- Drafts ordinance and prepares detailed data and analyses.

**Planning Commission (Optional)**
- The Planning Commission reviews proposal
City Council
- Work sessions are held, as necessary.
- Public hearing is conducted - public comments are accepted.
- Final decision by City Council

(The following additional approvals will occur after (and if) the City Council approves the project.)

**Binding Site Plan approval** (A binding site plan is a process allowed under Washington State law for subdividing land for commercial and industrial developments).

Staff
- Staff will review the proposed Binding Site Plan application for compliance with state and local laws and formulate a recommendation to the mayor.

Mayor
- Reviews the staff's recommendation and grants/denies preliminary and final BSP approval.

**Project Design Review**

Staff
- Review submitted site and building plans for compliance with the City of Lynnwood’s City Wide and Commercial District Design Guidelines and formulate a recommendation to the Community Development Director.

Community Development Director
- Reviews the staff’s recommendation and grants/denies Design Review approval.

**Development Permits** (clearing, grading, building etc. permits)

Staff
- Technical staff review the submitted site and building plans for compliance with Federal State and Local ordinances, the International Building code, Uniform Fire Code etc.

Appropriate Department Head(s)
- Relevant technically qualified official(s) (e.g. City Engineer, Building Official, Fire Marshal, etc.) review staff recommendations and grant/deny permits.

For more information please visit the Lynnwood City Website at [www.ci.lynnwood.wa.us](http://www.ci.lynnwood.wa.us) or call John Bowler, Associate Planner at (425)670-5407.
**Lynnwood Planning Commission**

**Meeting of December 8, 2011**

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| **Agenda Item:** G-1  
PowerPoint Presentation - FYI |

Lynnwood Community Development Dept.

**ACTION**
None. For information.

**BACKGROUND**
The Washington State Department of Commerce ("Commerce"), the State agency that oversees Growth Management, coordinates and administers a course called the "Short Course on Local Planning." This course is intended to provide basic education about land use planning to the citizens of Washington State and is one of several ways in which Commerce provides direct assistance to local governments. Several Lynnwood planning commissioners have attended the course in the past.

City staff recently attended a short course. One of the speakers was Jay Derr, a managing partner at the law firm of GordonDerr who spoke on legal framework for Land Use Planning. A copy of Mr. Derr’s PowerPoint presentation is enclosed as a matter of information.

Additional information about the Short Course on Local Planning, including a video of one of the other short course presentations held in the State, may be found on the Washington State Department of Commerce website at

http://www.commerce.wa.gov/site/395/default.aspx

**RECOMMENDATION**
For information only.

**ATTACHMENTS**
Legal Framework for Land Use Planning

November 15, 2011
Western Washington University

Presented by
Jay P. Derr
Gordon Derr
ATTORNEYS AT LAW
Land Planning

OVERVIEW

1. Substantive Legal Issues -
   i.e., what are the basis and limits of planning authority?
   a. Constitution
   b. Statutes
   c. Common Law (courts and boards)

2. Procedural Legal Issues -
   i.e., how do we exercise planning authority?
   a. Constitutional Restrictions
   b. Processes for Legislative and Administrative Actions
      including appeals
   c. Appearance of Fairness Doctrine

Part I
Substantive Requirements and Issues
CONSTITUTIONAL BASIS OF PLANNING AUTHORITY

- Art. I, §1 "All political power is inherent in the people..."
- Tension between two key constitutional principles:
  "Police Power" v. Property Rights

CONSTITUTIONAL BASIS OF PLANNING AUTHORITY

Police Power:
Planning is recognized as a legitimate exercise of the police power (i.e., power to protect public health, safety and welfare):
- Any county, city, town or township may make and enforce within its limits all such local police, sanitary, and other regulations as are not in conflict with general laws.
  - Art. XI, §11

CONSTITUTIONAL LIMITS ON PLANNING AUTHORITY

Countervailing Principle: Property Rights
"The basic rule in land use law is still that, absent more, an individual should be able to utilize his land as he sees fit."
Norco Construction v. King County,
97 Wn. 2d 980, 665 (1983)
CONSTITUTIONAL LIMITS ON PLANNING AUTHORITY

"Substantive Due Process"
The right to have rules adopted that are reasonable in aim and scope and targeted to appropriate objectives.

Inquiry:
- Does the regulation seek to achieve a legitimate public purpose?
- Are the means used reasonably necessary to the stated objective?
- Is the chosen regulation unduly burdensome on the land owner?

Void for vagueness:
- Regulations must be specific enough to provide fair warning.

CONSTITUTIONAL LIMITS ON PLANNING AUTHORITY

"Takings"
State and Federal Constitutions require compensation if the government takes property.
"No private property shall be taken or damaged for public or private use without just compensation." Washington State Constitution Article 1, Section 16.

Categorical Takings: e.g., physical occupation of property.
Regulatory takings: Regulations can go "too far" and constitute a taking of property:
- What is the government's purpose?
- What is the means the government used to accomplish its purpose?
- Does the regulation deprive the owner of all economic use?

ADDITIONAL CONSTITUTIONAL LIMITS ON GOVERNMENT ACTIONS

- Limits on Taxation: Art. VII
- No Lending of Public Credit: Art. VII, 7
- Limits on Local indebtedness: Art. VIII, 6
- Private use of Public Funds Prohibited: Art. XI, 14
STATUTORY BASIS FOR PLANNING

Planning Enabling Statutes:
- Planning Commission Act, RCW 35.63
- Optional Municipal Code, RCW 35A.63
- Planning Enabling Act, RCW 36.70
- Charter Form of Government, Art. XI, Sec. 4

STATUTORY BASIS FOR PLANNING

The Growth Management Act – “GMA”
RCW 36.70A
- Establishes planning goals and requirements for local jurisdictions, with emphasis on deference to local planning actions.
- Key emphases:
  - Protect Critical Areas
  - Conserve Resource Lands
  - Limit Sprawl
- Significant commitment to public participation in local legislative process

STATUTORY BASIS FOR PLANNING

The Growth Management Act – “GMA”
RCW 36.70A

- County Wide Planning Policies
- Comprehensive Plan
- Development Regulations
- PROJECT PROPOSAL
STATUTORY BASIS FOR PLANNING

The Growth Management Act – “GMA”
RCW 36.70A

Protect Critical Areas
• Jurisdictions must designate and protect critical areas
• Critical areas are: Wetlands; critical aquifer recharge areas; fish and wildlife habitat conservation areas; frequently flooded areas; and geologically hazardous areas
• Use “Best Available Science”

STATUTORY BASIS FOR PLANNING

The Growth Management Act – “GMA”
RCW 36.70A

Conserve Resource Lands
• Jurisdictions must designate and conserve resource lands.
• Resource lands are: agricultural, forest, and mineral resource lands.

STATUTORY BASIS FOR PLANNING

The Growth Management Act – “GMA”
RCW 36.70A

Prevent Sprawl
• Designate Urban Growth Areas “UGAs” for “Urban Growth.”
• Urban/Rural densities.
• UGA Boundaries are based on population projections.
STATUTORY BASIS FOR PLANNING

The Shoreline Management Act
RCW 90.58
- Governs "shorelines" and their "shorelands."
- Emphasis on:
  - providing a shoreline location for a defined set of shoreline preferred
    (i.e., water dependent) uses;
  - accommodating reasonable and appropriate uses;
  - protecting shoreline ecology and natural resources; and
  - preserving the public's right of access to and use of the shorelines.
- Requires jurisdictions to:
  - Plan and adopt regulations (Shoreline Master Program), and
  - Implement a permitting program (Shoreline Substantial Development
    Permit, Conditional Use Permit).
  - "No net loss" of shoreline functions.

STATUTORY BASIS FOR PLANNING

The State Environmental Policy Act – SEPA
RCW 43.21C
- Requires environmental review of agency "actions."
- Procedural requirements, with substantive authority to
  condition or deny a project proposal.
- Steps:
  1. Is SEPA review necessary?
  2. Determine "Lead Agency."
  3. Evaluate proposal;
  4. Threshold Determination – identify whether there are
    probable significant adverse impacts (DS, DNS, MDNS).
  5. If DS, review further in Environmental Impact Statement.

SEPA: SUBSTANTIVE AUTHORITY

RCW 43.21C.060
"any governmental action may be conditioned or
denied pursuant to this chapter: PROVIDED, that such
conditions or denial shall be based on policies
identified by the appropriate governmental authority
and incorporated into regulations, plans or codes
designed by the agency..."
SEPA: SOME OTHER TOOLS/PROVISIONS

- Planned Action, RCW 43.21C.031
- Infill Development, RCW 43.21C.229
- Transit-oriented Development, RCW 43.21C.420

STATUTORY BASIS FOR PLANNING

Subdivision Act
RCW 58.17

- Governs most divisions of land, with some exceptions.
- Emphasis on ensuring uniform administration of division of land throughout state.
- Requires jurisdictions to adopt subdivision regulations.
- RCW 58.17.110 ensure adequate provisions for things like access, utilities, schools, parks, etc.

STATUTORY BASIS FOR PLANNING

IMPACT FEES / Exactions
RCW 81.02.020

- Generally prohibits "any tax, fee, or charge" on the construction of buildings or development, subdivision, classification, or reclassification of land.
- Exceptions:
  - 82.02.050 allows GMA planning cities and counties to impose impact fees.
  - Also, exception for "voluntary agreements" that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or site.
- Courts have applied this prohibition to restrictions other than fees.
AND OTHER RELEVANT STATUTES AND REGULATIONS AFFECTING LOCAL LAND USE ACTIONS

- Hydraulic Project Approvals, RCW 77.55
- Archaeological Resources and Historic Preservation, RCW 27.44 and 27.53
- Stormwater NPDES Permits
- State Noise Standards, RCW 70.107
- Air Permits, WAC 173-400

INTEGRATING OVERLAPPING REGULATIONS & PROCEDURES

- RCW 43.21C.240: During project review, evaluate whether existing plans and regulations adequately address specific impacts of the proposal and, if they do, then no additional analysis or mitigation required.
- See also, RCW 36.70B.030(2): local regulations shall be determinative of:
  - Type of land use
  - Residential density
  - Adequacy of public facilities and services

OTHER STATUTORY TOOLS FOR LOCAL GOVERNMENT ACTIONS & DEVELOPMENT PARTNERSHIPS

- Community Renewal Act, RCW 35.81
- Interlocal Cooperation Act, RCW 39.34
- Development Agreement, RCW 36.70B.170-210
- Municipal Special Purpose Entities:
  - Parks and Recreation
  - Ports / Industrial Development
  - Utilities
OTHER
"PLANNING SUBSTANCE" FROM THE COMMON LAW:

Rezone requirements
- Must be based on "changed circumstances."
- Must be consistent with Comprehensive Plan.
- Cannot be "spot zone."

Vesting
- Building permits (RCW 19.27.095) and plats (RCW 58.17.033[1]) are vested when a complete application is filed.

Part II
Some Key Procedural Requirements and Issues

CONSTITUTIONAL PROCEDURAL LIMITS ON PLANNING AUTHORITY

"Procedural Due Process:"
The right to have certain rules followed before changes are adopted that affect rights, responsibilities or property.
- Notice
- Opportunity to be heard
- Procedures differ, depending on type of decision (administrative, legislative, quasi-judicial)
- Governed by statute and regulations, as well as constitutional overlay
STATUTORY PROCEDURES

- Legislative Actions
  - Planning Enabling Acts
  - SMA
  - SAA

- Permitting Decisions (Administrative and Quasi-Judicial)
  - RCW 36.70C
  - SMA, RCW 90.58
  - SEPA, RCW 43.21C

OVERVIEW OF THE INTEGRATED PROJECT REVIEW PROCESS

APPEALS

- Legislative Actions to Growth Management Hearings Board, then Courts.
- Permit Actions
  - Shoreline permits to Shorelines Hearings Board
  - Others through Land Use Petition Act, RCW 36.70C
  - "Fuzzy Lines" Rezones and Master Plans
APPEARANCE OF FAIRNESS DOCTRINE

ORIGIN:
- Common law doctrine applicable to quasi-judicial actions.
- Has been codified at RCW 42.36.
  - Prejudgment
  - Ex parte communications

GENERAL DUTY:
Public hearings and decisions must not only be fair but appear fair.

PURPOSE:
Important for public confidence in the system to have hearings and proceedings which appear to be fairly conducted.

APPEARANCE OF FAIRNESS DOCTRINE

REMEDY:
- If an appearance of fairness violation is found, the remedy is to invalidate the local land use regulatory action. The result is that the matter will need to be reheard.
- Remedy holds, even if the vote of the offending decision-maker was not necessary to the decision.