

City of Lynnwood
PLANNING COMMISSION MEETING MINUTES
APRIL 10, 2003

Commissioners present:

Dave Johnson
Brian Bigler
Patrick Decker
Tia Peycheff
Jacqueline Powers
Donna Walther

Staff present:

Ron Hough, Comprehensive Planning Manager
Kevin Garrett, Current Planning Manager

Others present:

Greg Rubstello, City Attorney
Lisa Utter, City Council President

SUMMARY OF THE APRIL 10, 2003, MEETING MINUTES

Opiate Substitution Program Ordinance – Public Hearing

Attorney Rubstello and Planning Manager Garrett introduced the issue. A public hearing was held and testimony was taken from interested parties. The public hearing was continued until April 24 so the Commission can accept and consider further information before making a recommendation to the City Council.

2003 Comprehensive Plan Amendments – Study List Public Hearing

Staff reviewed the three formal applications and eight suggested amendments to the Comprehensive Plan. At the conclusion of the public hearing and discussion, the Commission forwarded its recommended Study List to the City Council.

CALL TO ORDER

Chair Johnson called the meeting to order at 7:00 p.m.

APPROVAL OF MINUTES

Commissioner Bigler moved to adopt the March 27, 2003, minutes as presented. The motion was seconded by Commissioner Decker and carried unanimously.

CITIZENS COMMENTS

None of the citizens present offered any comments.

PUBLIC MEETING

Opiate Substitution Program Ordinance

Greg Rubstello, City Attorney, explained that the City Council has asked the Planning Commission to review the appropriate zoning and land use regulations for siting opiate treatment clinics in Lynnwood. Mr. Rubstello referred to Interim Ordinance 2429 (Establishing Siting Requirements for Opiate Substitution Treatment Services) stating that City Council did not intend for that Ordinance to be final. The Commission is not limited in its recommendations to consider only those issues in Ordinance 2429 and the City Council will welcome all comments.

Planning Manager Garrett reviewed the process that would be taken during the public hearing on this issue. He distributed a memo from Peter Van Giesen, Nuisance Abatement Officer, discussing information received from his counterparts regarding treatment centers in Renton, Federal Way, and Shoreline. This information was entered into the record.

Chair Johnson explained that the Commission's role is to recommend to City Council appropriate land use for siting treatment centers and not the perils or positive aspects of treatment.

Mr. Johnson then opened the meeting for public comment.

1. Andrew Ko, Director, Drug Policy Reform Project, American Civil Liberties Union (ACLU) of Washington, 705 Second Avenue, Ste. 300 Hoge Bldg, Seattle, WA 98104

Mr. Ko stated that the American Civil Liberties Union (ACLU) of Washington supports the availability of methadone treatment and other legal opiate programs in all communities where residents suffer from addiction to heroin and other opiates. He stated that drug-dependent people seeking treatment are legally designated as disabled and protected by the Federal Americans With Disabilities Act. The ACLU requests that the Planning Commission and the City of Lynnwood issue the necessary permits to make methadone treatment available in Lynnwood.

2. Ellis McDaniel, 2025 South 341st Place, Federal Way, WA 98003 (WCHS CRC)

Mr. McDaniel shared an article from the Toronto Star Newspaper contradicting a report prepared by PriceWaterhouseCooper for Oshawa, Ontario, Canada that indicated there would be an increased crime rate or businesses would be affected adversely if an opiate treatment center were located in their central business district. Mr. McDaniel stated that the same land use issues that are applied to medical treatment programs should regulate methadone treatment programs. Methadone treatment programs are actually medical clinics and are treating patients who have medical problems.

3. Roland Hunter, 24417 119th Avenue SE, Kent, WA 98030 (CRC)

Mr. Hunter, CRC WCHS, Renton, quoted statistics from Department of Social and Health Services Report 2002 demonstrating the impact opiate treatment facilities have in their communities:

- Drug offenses – reduced by 85%
- Overall arrests – declined by 65%
- Emergency room visits – reduced 81%
- Psychiatric hospitalization – declined 100%
- Property crime arrests – reduced by 75%
- Medical hospital admissions – reduced by 82%
- Major health care service organizations – dropped by 68%
- Employment in the public sector– increased 22%

4. Don Floyd, Podiatrist, 18631 Alderwood Mall Parkway #203, Lynnwood 98037

Dr. Floyd's practice is located in the Alderwood Professional Building, the proposed site for the methadone treatment clinic. Dr. Floyd stated that his practice has been located in this building since 1984. He stated that he has attended the City Council meetings on this issue and presented a number of items to them, but did not bring those items with him tonight. He is opposed to this siting because of land use issues, particularly the close proximity to the high school, Toys-R-Us, and the Alderwood Mall. The building is presently about 65% unoccupied. Management of the building led the tenants to believe that there was going to be a large dental clinic occupying the space that CRC eventually signed a lease on. The tenants were notified of this lease the day it was signed. Prior to this, tenants had inquired about rumors they had heard

about such a clinic opening in the building, but no notification had been given to the City that CRC was looking at this area. Dr. Floyd understands that this agreement has been signed and CRC was to start renovating and hoped to open in December 2002, but they had not applied for building permits. Two long-term tenants have recently vacated the building because management is not willing to work with them on upcoming leases. The tenants were trying to amend their leases to address security issues if the methadone clinic was located in the building. Dr. Floyd's business insurance company (State Farm) has advised him they will not carry his business insurance because of a high risk factor if the clinic comes into this building. On the land use issue, Dr. Floyd does not feel that this is the appropriate place for this clinic. He agrees treatment is necessary, but a public health clinic providing psychiatric care would be more appropriate.

5. Tracy Shallbetter, Attorney, Davis Wright Tremaine, 1501 Fourth Avenue, Ste. 2600, Seattle, WA 98101-1688

Ms. Shallbetter, representing CRC, addressed Dr. Floyd's comments. She feels he does not like opiate treatment programs and he doesn't want them in his building. Dr. Floyd has given no reason as to why an opiate treatment program (OTP), which is a medical program, does not belong in the same place as an eye clinic, a podiatrist, and several other health facilities. There is not substantive evidence as to why an OTP is inappropriate to be sited in the same zone as other medical facilities. The OTP should be treated in the same manner as other medical facilities unless there is evidence showing that the patients actually pose a significant risk to the population that is not posed by other people. If that evidence is in the record, she hopes the City refers to it clearly if an ordinance is adopted such as Ordinance 2429. Ms. Shallbetter noted that this is a clear violation of ADA and has been stricken down by the courts in other instances where ordinances similar to 2429 were enacted.

6. Sheryl Baker, 18631 Alderwood Mall Parkway #203, Lynnwood, WA 98037

Ms. Baker and her husband also have a business in the building. An article in the Seattle Times in February, "Methadone Vaults into Role as Killer Drug", addresses many of the concerns they had when speaking before City Council, but at that time had no documentation (copies of the article distributed to the Commission). Some of the issues discussed were:

- increased deaths due to methadone overdoses
- abuse of methadone by patients
- patients allowed to take weekend doses home and then selling it to kids

This article substantiated many of the concerns that were raised during the Council meetings.

Chair Johnson requested that Ms. Shallbetter provide a copy of the Davis Wright Tremaine memo given to Council and she agreed to forward it.

At the conclusion of public testimony, Chair Johnson opened the discussion portion of the meeting. Chair Johnson began by asking if anyone representing law enforcement was present. Noting that there was no response, Johnson advised that the Commission, through the Chair, asked law enforcement to be present at this evening's meeting. Chair Johnson also asked Dr. Floyd to provide the Commission with the materials provided to City Council that he had mentioned in his testimony. Dr. Floyd agreed to provide land use information for the Commission to review.

Commissioner Bigler:

1. Questions asked of Mr. Ko:

What is his impression of the Interim Ordinance and, in particular, the 250 foot buffer between the clinic and any adjoining property?

Response: He believes it is in violation of the Americans With Disability Act (ADA) because it would be discriminating against people who are disabled.

How would a buffer discriminate against a disabled person?

Response: Any particular rule that sets up different treatment for a person with a disability is going to run afoul with the ADA.

2. Ms. Shallbetter was offered a chance to comment on the same questions. Ms. Shallbetter responded that one of the requirements under the ADA is that you cannot discriminate or treat people with disabilities differently unless it can be shown that they pose a significant risk that other people do not pose to the population. For example, for an opiate treatment program with an ordinance similar to 2429, the courts have stated that the cities have shown no reason to treat medical buildings that provide opiate substitution treatment any differently than Virginia Mason or other medical facilities. There is nothing that indicates that these people are a risk.
3. Asked Mr. McDaniel what draws his firm (CRC) to this particular location? Mr. McDaniel responded that the building has the space available. It is a medical building and they provide medical treatment.
4. Asked Dr. Floyd:

What other types of medical facilities are in that building?

Response: Two dental clinics, two eye clinics, a chiropractic clinic, hand therapy clinic, and a computer-training center.

Would it be appropriate for the OTP to locate in this facility if there is a preponderance of medical facilities that exist there now that cater to young children? Are there any medical standards available to determine what types of medical practices would go hand-in-hand with an OTP?

Response: He was not aware of any standards of that nature. The concerns that have been expressed were brought to the attention of the tenants when the initial articles in the paper describing the patients that use the clinics. A number of patients expressed concern about this and even stated they may not come to the Alderwood Professional Building because of the OTP.

Chair Johnson noted that Commissioner Powers has arrived and Council President Utter is also in attendance.

Commissioner Powers:

1. Asked Dr. Floyd:

What did his insurance company describe as the 'risk' of being near this clinic?

Response: There would be a likelihood they would no longer be able to carry the business insurance because the studies they had indicated that there was too high of risk to cover things such as computers, the fact they are a medical facility and the availability of syringes and other types of medical items in the clinic. He offered to provide a copy of the letter from the insurance company for the Commissions review.

What was the concern for being close to the high school?

Response: That was his statement and was not related to anything the insurance company had stated. He added that the President of the Lynnwood PTA had a very good presentation before the Council about allowing this clinic in this particular area.

2. Asked Mr. McDaniel:

Do most of the clients arrive in their own cars or do they take the bus?

Response: Public transportation, their own vehicles, or ride with others.

Is it mostly by their own vehicles?

Response: It is about 50/50 or maybe 60/40.

Do most of them come early or is it an even flow throughout the day?

Response: There are a number of patients arriving early depending on the time they report to work, and then it slows down throughout the day.

Commissioner Psycheff:

1. Asked Mr. McDaniel

What are the hours of operation for the clinic?

Response: 5:30 a.m. to 2:00 p.m.

Do clients hang around after hours of operation, are there security measures, and have there been any instances of theft?

Response: Clients do not loiter after hours, there are security measures at the clinics, and to his knowledge there have been no thefts.

Commissioner Walther:

1. Asked Mr. McDaniel:

Is his facility in a building with other medical treatment centers or is it isolated?

Response: One is a stand-alone facility and another one is located with a number of other shops that includes a day-care across from it.

Have there been any incidents of theft or crime or drug pedaling?

Response: Not to his knowledge.

Commissioner Decker:

1. Asked Mr. McDaniel:

How long does a single treatment for a patient take?

Response: It depends. If the patient has completed a counseling requirement, and there are no further medical issues to attend to, a treatment would take approximately 5 minutes

How many patients do you anticipate?

Response: There is a cap of 350 patients set by the state. There is a possibility this clinic may reach that number.

How large is the staff?

Response: It will be large enough to accommodate the number of patients. As the patient load increases, the staff will increase to accommodate that increase.

What would be the ratio of staff to patients?

Response: By law there are requirements for the number of patients a counselor may have on their caseload and there are other medical staff. In the Federal Way clinic there are 16 people on staff and it is very close to reaching the 350 patient cap.

Are there minimum buffers required for chiropractic, podiatrist, etc. clinics?

Response: Mr. McDaniel did not know of any. Attorney Rubstello added that Washington law provides that local jurisdictions may regulate the siting of OTPs through a conditional use process and further explained the legal issues involved with that law. Currently, conditional use permits are not required for other medical clinics.

Will patients be allowed to take weekend doses out of the clinic?

Response: Patients who take their doses out of the clinic have displayed responsibility and have earned their 'take home' status.

Chair Johnson noted that the number of patients visiting the clinic daily would be diminished by the number of patients allowed to take their doses home. Thereby, the activity/traffic related to the program would be between 150-200 per day.

There could be as many as 150 patients taking their methadone treatments out of the clinic?

Response: If they have met the criteria by showing they have met the responsibility to have take homes according to the law.

Why is the clinic not open later such as until 7 p.m. when people who work would be able to get to the clinic?

Response: Since the clinic opens at 5:30 a.m. most people can get their doses early in the morning and still make it to work. That has not been an issue so far.

Are you familiar with the Options Clinic or a company called Options? (A follow-up to why Lynnwood needs this clinic and how a clinic of this sort reduces crime, psychiatric evaluations, etc.). The Options clinic is less than a mile from the proposed location that he understands is a methadone treatment center. Is it a methadone treatment center?

Response: He was not familiar with that clinic.

Cindy Berg, lives in the community and is a chemical dependency professional. Ms. Berg was familiar with the Options Clinic and responded to the questions. It is an abstinence-based facility. Treatments are given for many types of addictions to many substances. It is not a methadone clinic. It is not an opiate substitution treatment clinic that dispenses a medication for treatment of opiates. Many of the people are there for deferred prosecutions, DUI, prescription frauds or drugs.

Why do you need special security at your clinic?

Response: Methadone is a narcotic that is required by law to be locked up.

Commissioner Walther asked staff and/or the attorney:

Are there any case studies available of other cities where an opiate treatment center has been sited in a professional medical treatment building?

Response: City Attorney Rubstello responded "No" and that he hadn't seen one. He doesn't recall any of this type of information being provided at the other public hearings, but if anyone has any they would like to submit to the City, they will be forwarded to the Planning Commission.

Could it be required that this kind of a facility be in a stand-alone building? Could that be covered by zoning regulations?

Response: City Attorney Rubstello replied that it would require a basis for that. One of the issues the ADA raises is that normally you can make land use decisions based on a rational basis that requires an explanation as to why this restriction is reasonably necessary. If the ADA applies in this case, then the standard is raised and the courts have said there must be a substantial public health/safety reason must be demonstrated for a special standard. The cities in the cases Ms. Shallbetter referred to did not demonstrate enough evidence to reach that threshold standard.

Chair Johnson thanked all those who gave testimony this evening. After a brief discussion with the Commission, Chair Johnson continued the public hearing to the next Planning Commission meeting on April 24 in order to receive further information.

Chair Johnson reported that Council President Lisa Utter has asked that the Council and the Planning Commission have a get together such as an outdoor barbeque in a public park. It was suggested they meet on a Wednesday in mid to late June. The exact date and time will be worked out between Council President and the Chair.

Commissioner Powers requested that staff provide the Commission with police reports from Federal Way about problems experienced in the area of the clinic before and after it was established there. Staff agreed to ask for that information.

2003 Comprehensive Plan Amendments – Study List

Planning Manager Hough described the three formal applications (Raskin Map Amendment, Alderwood Manor Community Church Map Amendment, and Steves Map Amendment) and the eight suggested amendments, which consisted of the City Center Plan, Mobile Home Park Study, Lytton Map Amendment, Palmer Text & Map Amendments, Opalka Map Amendment, Code-related Text and Map Amendments, Implementation Program Update Text Amendments, and Environmental Resources Element Text Amendments. The formal applications will all be processed, but the Commission must make a decision on which of the eight suggested amendments should remain on the Study List. The Commission's recommendations will be forwarded to the City Council.

Chair Johnson opened the public hearing to accept public testimony from interested parties.

Joan Holbein, 4515 176th Street SW #5, 98037 – Ms. Holbein asked how it was determined that the mobile home park she resides in was put on the Study List. Planning Manager Hough explained the process that has occurred during the past few years, including the Plan/Zone Consistency Review, as it related to mobile home park issues. After the explanation, Ms. Holbein stated that she wants the Mobile Home Park Study item to remain on the Study List.

Maria Ambalada, 4515 176 St. SW #16 – Ms. Ambalada is a resident at the Squire Mobile Home Park. As part of the study list, she would like to be assured that the residents of the two mobile home parks be notified of the public hearing and clearly mention the importance of their participation. Ms. Ambalada suggested that the public hearing be held in one of the parks in order that more senior citizens could attend. She is in favor of keeping the Mobile Home Park Study on the Study List.

Don Potter, owner of Kingsbury East. Speaking for The Squire and Kingsbury East, Mr. Potter requested that the Mobile Home Part Study remain on the list.

In addition to the above testimony, many other residents agreed that the Mobile Home Park Study should remain on the study list.

At the conclusion of all public testimony, the public hearing was closed.

Chair Johnson moved that the Planning Commission recommend the 2003 Study List as proposed by staff to the City Council for approval. He said, "Ron's excellent presentation and the testimony heard from these fine people support the Chair's motion." Commissioner Bigler seconded the motion and it carried unanimously.

DIRECTOR'S REPORT & INFORMATION

Planning Manager Hough reported on the following City Council meetings:

- Population & Employment Targets
 - March 10 – Council work session. Judith Stoloff (Co. planner) attended. No decision.
 - March 19 – Council Work Group – Cancelled due to long Exec. Session.
 - March 31 – Council Work Session – discussion but no decision
 - April 1 – Deadline for submittal to County.
 - April 16 – Council Work Group discussion scheduled.
- April 2 – City Center Plan
 - Council gave the okay to proceed with Phase 2.
- April 7 – Subdivision Code Work Session
- April 14 – Transitional Buffers Code Amendment
 - Returning to Council for Special Work Session

Mr. Hough reported the following on the Planning Commission candidates:

- One full application received, however that person lived just outside the city limits.
- Another application is expected to be submitted this week.

Changes to Planning Commission Agenda:

- April 24 – add the following:
 - Continued Public Hearing – Opiate Substitution Program Ordinance
 - Work Session – Signs in the Public Right-of-Way
- May 8 – Add Public Hearing – Signs in the Public Right-of-Way

ADJOURNMENT

Commissioner Decker, seconded by Commissioner Bigler, moved to adjourn. The motion carried, and the meeting adjourned at 9:05 p.m.

Dave Johnson, Chair