

**JOINT CITY COUNCIL/PLANNING COMMISSION MINUTES
MARCH 9, 2010**

The meeting was called to order by President Gore at 7:00 p.m.

CITY COUNCIL MEMBERS: Mr. Gore, Mr. Taylor, Mrs. Richardson, Mr. Fogt, Mrs. Groat, Mr. Reams, Mr. Berbee

PLANNING COMMISSION MEMBERS: Mr. Cunningham, Mr. Bergwall, Mr. Draughn, Mr. Pratt, Ms. Shay, Mr. Soller EXCUSED: Mr. Kraus

OTHERS PRESENT: Mayor Schmenk, Director of Administration Froment, City Engineer Klingman, City Planner DeLong, Engineering Clerk Penhorwood, Clerk Patterson

CITIZENS PRESENT: Scott Failor

AGENDA:

Mr. Cunningham suggested discussing the sections on fences before getting into the PUD discussion. All agreed.

Sections 1123.01 and 1139.21.

Mr. Cunningham explained that a citizen came before Planning Commission with a concern about fencing and the way the code was written and what it allowed a neighbor to do, which was not conducive to being good neighbors and was also looked at from a safety perspective. Also, the previous language led to some confusion and some issues. These changes will be coming forward to Council in the near future.

Definitions were changed. Decorative fence was defined and functional fence was changed to just "fence."

(69) Decorative Fence – Any fence, hedge or other landscaping material used for decorative purposes only and not intended for use as an enclosure, barrier, or means of protection or confinement. Decorative fences shall not be site obscuring.

(70) Fence – A structure, hedge or other landscape material positioned up to or on top of the property line or setback line for the purpose of separating properties, or for screening, enclosing and/or protecting the property within its perimeter.

(158) Site-Obscuring Structure – Opaque or having such qualities as to constitute a complete visual barrier to persons outside the perimeter of the site-obscuring object. A fence, which partially obscures a site, shall not be considered site-obscuring if it has maintained at least 40% opacity.

Mr. Cunningham added that this would mean it is 60% transparent. Mrs. Groat said she would read it the other way, that it would be 40% transparent. Mr. Bergwall said when you say at least 40%, it would lead people to think that if it were 60% or 80%, it would be better and more opacity is darker or less able to transmit light.

Mr. Gore said a citizen came forward with a concern, but why did Planning Commission decide all of sudden to redefine or define?

Mr. Cunningham said there is a fence on 6th Street, and it comes all the way down a driveway. The issue with this fence is whether or not it would block the view. It was construed as decorative the closer it got to the street, and it was considered to be a functional fence where it was next to the house itself. He noted the fence is higher than code permits now. There was discussion with the builder of the fence on how much you were going to be able to see through the decorative fence.

Mr. Bergwall said the old language said a functional fence was defined as something that encloses an area. The point is that it can be functional as a screen, a windbreak or a barrier. It can have more than the function of confinement or enclosure. That needed to be changed. Everything that wasn't functional was decorative, and functional was only that which enclosed something. This made for quite a difference in the ability of the folks who issue the fence permits as to what is or isn't appropriate.

Mr. Gore asked if anything that's existing that doesn't meet this definition would be grandfathered. Response was yes.

Mr. Fogt questioned that the height was not written in these sections. Mr. Cunningham said it's in a separate part of the code. The height is 6'.

Mrs. Groat asked if opacity is defined in the code. Response was no. She feels there is enough question about it, that it should be defined or else a synonym given for exactly what you intend.

Mr. Taylor asked how opacity would be measured. His 40% may not be your 40%. His concern is, who says what is 40%. Mr. Bergwall said it can be calculated. If you do a typical post support board, picket board, you can calculate the surface area of the fence and determine the percentage of open space. If you use some woven material, etc. you'll see in vehicles, appliqués in windows or on busses, advertising and all of those have a specific reference to what its opacity or transmittency is. The little dots or pixels that make the image that reflects back, occupies so much of the surface area. Mr. Taylor asked, "How does a novice know to get that so that it's real simple." Mr. Gore asked if the City has staff that can enforce that and can make that determination.

Mr. Soller said in the real world, he feels we're either going to have 100% opacity or we're not; it's going to be completely blocking, or there is going to be some gaps in between the boards or the shrubbery. He thinks that's where the zoning inspector shouldn't have any trouble enforcing it.

Mr. Bergwall explained that a picket fence is set with a picket and the width of a picket is an open space, another picket, etc. You also have two or three cross boards. That's why the 40% made sense.

Mr. Reams said the code is defining fences as also being hedges or landscaping material. It's easy to define opacity with a wooden fence, but if you're looking at a hedge, that's almost impossible to measure. Mr. Cunningham said you are going to know when you can't see through a hedge or when you have to drive around the hedge. The zoning inspector needs the authority to protect people from not being able to back out of their driveway, not being able to see down the road or not being able to see kids coming down the street. That's a big concern.

Mr. Gore said the purpose is not to go out and find people who are in violation; the purpose is to prevent it from ever happening to begin with.

Mr. Cunningham said that's what the code does. Citizens have to get a permit first, which is also covered in the code.

Mr. Fogt asked if the code spells out how close to the street a fence can be constructed? Mr. Cunningham said a fence, other than a decorative fence, can't go

further than the front of the building. The decorative fence can go to the sidewalk, which is the problem.

Mr. Fogt asked if this code goes against any of the homeowner's association building codes. Mr. DeLong said the City does not monitor homeowner's association building codes. If someone comes in for a fence permit and is in a homeowner's association, the City does not verify that. They are putting that fence up at their own risk. The homeowner's association can take action against them for doing that.

Mr. DeLong said that the purpose of this decorative fence was to open up visibility for people backing out of their driveway, especially in the old part of town where you have driveways, side by side, and people being allowed to put a fence between them all the way out to the right-of-way.

Mr. Reams said the code says you can't have the fence within this 30' triangle of an intersection. He asked if a reference could be added for something like that with a driveway. He noted some hedges on 6th Street are going to be over 3' tall. The code says you have to keep them trimmed below 3'.

Mr. Taylor noted a problem on Linden and 6th Street. In the summer when those hedges grow, you have to pull out into the intersection in order to see to the left.

Mrs. Richardson asked if the "Site-Obscuring Structure" just pertained to the decorative fence. Mr. Cunningham said it wouldn't need to apply to a fence, due to where a fence is allowed to be placed. Mrs. Richardson suggested adding the word "decorative" in front of "fence." A *decorative* fence, which partially obscures a site.....

Mr. Cunningham said Planning Commission will take this back and look at the fence code again.

Mr. Fogt expressed concern that the fences or shrubs can extend beyond the sidewalk, closer than the sidewalk, but yet there are places without sidewalks where the shrubs would go clear to the street. He asked why we're not enforcing what we already have in place. Mr. Cunningham said hedges were not acknowledged in the code before. It was agreed that areas without sidewalks need to be addressed. Mr. Draughn said the code states that any kind of decorative fence can't be any closer than the road right-of-way line, so he feels it is defined.

Opacity versus transparency should be clarified.

Mr. Fogt asked how the fence code affects ORW, which is located in the City, as well as JDC and West Central? Response was those areas are in AR and GOV Zoning Districts. It was noted that GOV is not listed in this section of the code and should be added.

Regarding the triangle issue, Mr. Reams said on a decorative fence there is a proposed maximum height permitted of 3' and if you put up fence along that triangular area, the code says 2'6" as measured from the grade of the sidewalk. He said there are some places where there is a bit of a grade between the street level and the property. He asked if we had any issues with the height difference. If it's 2'6" from the street level, should it be from the sidewalk level on those corner lots? Mr. Reams noted in the area of 8th and Grove, there are shrubs in a hill that obstruct vision. He asked if the code should reference street grade on the corner lots.

Chapter 1145 PLANNED UNIT DEVELOPMENT

Mr. Cunningham gave an overview of the proposed changes and the reason for some of the changes.

Mr. Cunningham said this is the second time the Planned Unit Development process has been revisited. A major change was made to the process in 2006 and over the last several years, Planning Commission noticed deficiencies in the process. The Commission agreed on a rewrite of Chapter 1145 in order to make the process flow better.

The Planned Unit Development is to allow for a distinctive approach with its own piece of property, to allow for some creative changes, to allow flexibility in planning and allow for a flow in design, which might differentiate between the standard R2 or R1 or SR zoning. Whereas, you will still accomplish the same, have a nice laid-out plat, but maybe have some distinctions in terms of the different types of housing styles, different types of density and structures within that setting.

1145.01 OBJECTIVES FOR A PLANNED UNIT DEVELOPMENT (PUD) --Not much change to the objectives.

1145.02 DEFINITIONS. Sub Area – There were some concerns with the sub areas and how they were referred to. With the past PUD's, sub areas and how they

matched up with the phasing of the project added to some confusion, so Planning Commission looked at that definition. Definition is as follows: *Sub Area. A “Sub Area” is a defined use area within a PUD that is its own zoning district. Each “Sub Area” shall designate its specific use(s), as well as acreage, development standards, conceptual road alignments, gross densities, and other standards that may be required by the Planning Commission.* Mr. Cunningham said the best point of reference for a number of these changes is the development that was proposed for the Cook property.

1145.03 AMENDMENTS TO PLANNED UNIT DEVELOPMENT. This section was added because in the existing code, there was no amendment process.

Mr. Cunningham noted that because of the PUD process, it went from Planning Commission to Council and then it became a codified zoning rule. Planning Commission wanted to come up with a way that the developer could make a non-substantive change by working with City Staff and Planning Commission.

Mr. Taylor asked if the developer wanted to make amendments, would it add to the length of time for final approval, or if it's a change by the City's request, would we still have the same time restraints. Mr. Cunningham said in general, it actually decreased the time because it no longer would require it to go back through the entire process if they had a change that was non-substantive and didn't impact the zoning; it could go through City staff review and approval.

Mr. Gore confirmed that if there is a request for change, the City Engineer and City Planner could sign off on it. If they chose not to, then the process starts over if they want to continue to make the change. Response was yes. Mr. Gore understands that the Planner works for the Engineer, but what happens if they don't agree? Response was that is covered in the next to the last sentence in (b), “If both the City Engineer and the City Planner do not agree, such adjustments shall not be allowed except by amendment.” Mr. Gore interprets that sentence to mean that if they don't agree with the Plan; he doesn't interpret that to mean if they disagree with each other. Mr. Pratt made the suggestion to add “either or”. “If *either or* both the City Engineer and the City Planner do not agree.....

1145.04 PROJECT OWNERSHIP. This defines how a PUD project would be owned.

1145.05 PROVISIONS GOVERNING PLANNED UNIT DEVELOPMENTS. Talks about how it would comport with other areas of the code.

1145.06 USES PERMITTED AND CONDITIONAL. This section puts all the permitted uses and conditional uses in one section. This will make things easier on the developer and Planning Commission if there are a lot of questions about where they got what and why they're doing it. It's a matter of looking at what they're proposing and making a decision based on that presentation.

1145.07 COMMON OPEN SPACE. Mr. DeLong said he made a few modifications to this section since the Planning Commission meeting. There had been some confusion on interpretation of what was required in the PUD portion of the code versus what was required under the Subdivision section of the code. What's being proposed in this version is the breakdown of acreage, 40 acres or more or 40 acres or less. Also added open space, commercial and industrial, at a lower level and added a calculation for mixed use developments.

1145.08 DISPOSITION OF OPEN SPACE. City doesn't want all parks left for the City to take care of. That's what led to this discussion. All land dedicated to the City would have to meet the requirements as defined and determined by the Planning Commission. As far as most developments, Planning Commission is driving towards the homeowners of the PUD taking care of itself.

1145.09 PROCEDURE FOR APPROVAL OF A PUD. This gives the developer a good understanding of the process.

Mr. Taylor said he and Ken Kraus previously discussed aerial shots of a particular area showing before and after. This was discussed when talking about major changes to areas larger than a 40-acre tract, so as not to reduce total aspect of what's outside of that tract. Example, Nevin develops the Cook property, and then takes an aerial shot so that when he develops, he doesn't lose the character of the surrounding properties to degrade their value. This was more for the 100+ acre tracts.

Mr. DeLong said under the PUD sketch plan, he beefed up some of the application requirements for any size development. An aerial was requested for the area extending further out from the development, up to 500'.

Part of the PUD process is the Design Review, per Chapter 1144. Mr. Cunningham said this becomes a nice fall-back so that Planning Commission knows that when decisions are made, there will be another level of review in the overall development before they actually start turning dirt.

Mr. DeLong explained that the PUD process has been shortened. Before, you had a Preapplication meeting, a PUD Sketch Plan, a Preliminary Development Plan and then a Final Development Plan. The process has been condensed, and the Preliminary Development Plan and the Final Development Plan combined into one. At the start, an applicant will need to bring to the City a little more than what has been requested in the past. With the PUD Sketch Plan, everything is spelled out for what they need to provide. City is not asking for a whole lot of detail for this portion of the process. This will give the City a good idea of what the developer wants to do. Street layout, lot layout, etc. is not needed at this time in the process. Staff just needs to know what the developer is doing in a conceptual aspect.

Once that process is finished, will get into the Development Plan. That is when the zoning is put in place; that's the process that will go to City Council; that's when the land uses are all clearly identified, the permitted and conditional uses, setback, design standards, everything.

Mr. Cunningham said one of the issues they've run into in the past is developers were spending a lot of money at the front end, and if it was denied at some point in the process, it would lead to frustration and in turn, lead to other developers shying away from the City of Marysville.

Mr. DeLong added that with the existing process, the Final Development Plan application is pretty much identical to the Preliminary Development Plan, so it doesn't make much sense taking them through it again when the zoning and everything is put in place.

Mr. DeLong said these proposed changes are meant to streamline the process. The platting was pulled out. The intent is to get the zoning in place, then go through the platting process.

Mr. Taylor wanted to make sure we still end up with a quality product. Mr. DeLong said the City will still be getting the same product presented as in the existing format. The only thing that is changing is minimizing steps in order to

make the PUD process more lucrative for developers to pursue. What used to take 6-7 months will now take 4-5 months.

Mr. Gore stated this new proposed process is eliminating some of the duplication.

Mr. Bergwall said a point to be made with this process is it puts a lot of emphasis on the sketch plan and the reason for that is at that stage, the developer should be more flexible in their thinking because they haven't invested so much in the engineering and in time; whereas before, we would tend to say that "this is just the sketch plan, so lets get through that then we'll pick that up in all of these other stages." By that time, the developer would come in and say they had been here how many months and we've gone through all this expense on engineering and then Administration and/or Council would get calls about Planning Commission making life difficult for these folks. If the developer does a good job and follows the schedule and understands the code, they can get through this process in a relatively short period of time, and we can end up with quality development. If they don't and they don't want to take the input from the initial meeting and from the sketch plan review, then it can take a long time through the sketch plan and then they can say it took a long time to go through the sketch plan. Mr. Bergwall said that's the place to spend the time, and making it more streamline later on just makes good efficiency.

Mr. Soller commented that one of the problems with the previous language is that it wasn't very clear in what was expected in each phase. It made it very difficult for Planning Commission to make a decision on one of the phases, because there were parts of that application Planning Commission didn't agree with. The proposed changes will make it easier to advance a sketch plan, because they know exactly what they're asking for, and it should be relatively easy to vote on that individual item without worrying about what the platting is inside. That will be a separate event, as well as all the uses for the property when that timeframe comes. The developer will be forced to present that to Planning Commission, rather than having that negotiation during the Planning Commission meeting.

Mr. Fogt commented that he is in support of making the process quicker, but he doesn't want to lose the quality of the project.

Mr. Berbee asked if the Halcyon project was a PUD. Mr. Cunningham said that is an existing PUD. That project began in 2003/2004 so it falls under the old PUD code written in 1977.

Mrs. Richardson asked for clarification in 1145.13 regarding public notification, “At least 10 calendar days before the regularly scheduled Planning Commission meeting regarding the Sketch Plan, the City Staff shall notify the adjacent property owners by mail of the proposed development.” Does that mean the notice is mailed 10 days prior to the meeting or it needs to be received by the property owner 10 days in advance of the meeting. Response was the notice is to be mailed 10 days prior to the meeting. Mrs. Richardson suggested adding the words “shall be mailed 10 calendars”.

Mr. Fogt commented that he appreciates all of Planning Commission’s work on the Adena Pointe development.

Mr. Gore said that he appreciates all of Planning Commission’s work. They put a lot of time and effort in special projects to try to make this community what we all want it to be. On behalf of Council, thank you for those efforts.

Mayor Schmenk recognized Planning Commission members John Cunningham and Pat Soller. This is their last meeting as members of the Planning Commission. Mayor Schmenk and City Council wished them luck and thanked them for their contribution to the community.

ADJOURNMENT: There being no further business to come before this Joint City Council/Planning Commission meeting, the meeting adjourned at 7:55 p.m.