

City of Sumner

PLANNING COMMISSION

April 5, 2001

Members present: Livingston, Lovgren, Myers, Richardson, Smith, and Walker

Members absent: Nalder

Also present: Ryan Windish, Senior Planner; Pat Bosmans, City Attorney

CALL TO ORDER

LIVINGSTON called the meeting to order at 7:07 p.m.

MAYOR SKINNER presented a coffee table book for Pierce County to the members of the Planning Commission and thanked them for their dedicated service.

APPROVAL OF MINUTES

Minutes for February 22, 2001 and March 1, 2001:

MYERS motioned to approve both sets of minutes as printed and mailed.

SMITH stated that he was not present at the March 1, 2001, meeting.

RICHARDSON motioned to adopt the minutes as corrected. MYERS seconded the motion and it passed unanimously.

PUBLIC COMMENT

LIVINGSTON asked the audience for comments on any items not on the agenda.

There was no public comment.

UNFINISHED BUSINESS

Bryan Stowe (LU1999-52) 2000-2001 Comprehensive Plan Amendment

WINDISH gave a brief run through of the process that has taken place to date and gave a description of the property. This is the second public hearing. There was a public hearing on February 15, 2001, a study session on February 22, 2001, and another meeting on March 1, 2001. Two alternatives have been considered. Planning Commission directed staff to review a proposal alternative that would have the property zoned entirely General Commercial instead of M1. The second alternative was to have staff sit down with the applicant to explore the potential for a development agreement or concomitant agreement that would limit some of the uses on the property to make it more compatible with the surrounding zone. He referred to the March 28, 2001, memorandum which provides a summary of the research and analysis to date that staff has completed on this topic. The applicant and the agent have indicated that zoning the property completely General Commercial is unacceptable to them. He also referred to a letter received by Terry Brink which outlines the terms of the development agreement and summarized the terms outlined in the letter. The concomitant agreement could be drafted as such so that it doesn't have a five-year time

limit on it. In this instance, there may not be a benefit to having a five-year time limit. They are trying to look for an alternative that runs beyond that five-year limit. Staff recommends that the approval be made with this agreement. Mr. Windish referred to his memorandum on clustering and summarized his analysis on this topic. His memorandum also addresses calculations for average daily trips. A lot of information has been presented with several different alternatives. He asks the Commission to look through the lens of the criteria. He suggests some findings of fact be drafted to document the findings after making a decision. He summarized the options as follows: Approve the request per staff recommendations; Approve the request for modification - the General Commercial alternative or requiring a Development Agreement; Deny the request; or, deny the request and direct Staff to consider the request for the 5-year update to the Comprehensive Plan, and/or enter into a joint planning process with the City of Edgewood.

LIVINGSTON asked those who would like to talk that they sign in on the sign-in sheet. He recommends that they avoid a debate situation with a series of rebuttals.

TERRY BRINK, attorney representing the applicant, submitted the applicant's response into the record dated April 5, 2001. He is asking for permission to outline his submittal due to the fact that he received the letters from Ms. Urback and Mr. Blaylock so late. Typically in public hearings, the applicant would be given the opportunity to respond to the information submitted by Ms. Urback and the City of Edgewood. He clarified that underground parking would not be feasible for a parcel of property in this type of setting. He wanted to summarize the three different topics as follows: Voluntary Restrictions; Ms. Urback's letter, and the General Commercial alternatives. The reason they asked for additional time was to try and address some of the concerns raised by some of the neighbors and the City of Edgewood. One of the issues that came up during those deliberations, was the concern about the five-year sunset clause. A question was presented to the City Attorney as to whether or not a concomitant agreement could be crafted in such a way so that whatever they offered could last beyond the five years and lasts as long as the zoning lasts on the property. Ms. Bosmans has determined that this is possible. Some of the issues raised in Ms. Urback's letter are similar to some of her previous submittals. The applicant is acting in good faith to address some of the concerns that have been raised. He wanted to clarify some of the statements made in Ms. Urback's letter. She stated that the neighboring uses are all residential, however, this is incorrect. The neighboring uses to the east is M1 and part of the property to the north is zoned General Commercial. Ms. Urback has stated that somehow the City has misguided the applicant. The City has been very meticulous in giving advice to the applicant for this permitting process. Even if there was some ambiguity about this process, there is a lot of Washington law that deals with this. He cites case law on this topic and summarized the case. Ms. Urback's letter focuses on three issues. First, the question of the consistency with the city's Comprehensive Plan, the GMA, and the County wide policies; second, is whether there has been a change in circumstances; and last is whether the proposed rezone is in the public interests. Her focus is coordination with neighboring jurisdictions. He reminded the Planning Commission that the City of Sumner initiated a meeting with the City of Edgewood and took comments from them, and reviewed and considered the input. They attended and made a presentation at the Edgewood City Council, commissioned and considered an addendum to the final EIS, performed a thorough analysis of the proposal, and then they affirmatively responded to our requests to take a time out to accommodate some of the concerns raised. There is evidence in the record that is quite clear that there has been a great deal of meaningful coordination. Sumner has gone beyond the call to listen to what the City of Edgewood has had to say. There just simply is a difference of opinion between the jurisdictions. This is not a pristine environmental environment that is being dealt with. This is an area with acres of manufacturing and industrial uses. The City of Sumner acts independent of other jurisdictions. It has obligation to look at what other jurisdictions have to say about issues that could affect them, but it ultimately has the right to make it's own independent judgment. Washington law is very clear on what is required to show a change in circumstances. He cited case law on this issue and summarized the case. He refers to the public interest comments made in Ms. Urback's letter. Sumner's planning staff continues to recommend approval of the application after revisiting the issue and considering all the alternatives. This is a testimonial to their belief that it is in the public interest to use this property for the purpose that is being requested. Mr. Brink cited additional case law regarding a situation where a jurisdiction was opposed to action being taken by another jurisdiction. In this case, the Supreme Court upheld the rezone that was being requested because the two jurisdictions exchanged their views and consulted with one

another, and there were mitigation studies done. He wanted to remind that this is just a legislative process at this stage. The permitting process for a building permit is going to be a whole different process. All kinds of mitigation will be imposed that will be over and above the restrictions that are being offered by the applicant as well as the restrictions that are required with the underlying M1 zone. He addressed the General Commercial alternative that has been raised by the neighboring property owners and the City of Edgewood. He respects Ms. Bosmans' legal opinion, but he finds it difficult to believe that it is a good precedent to set for a Planning Commission in any jurisdiction to have a property owner within the jurisdiction come in and request a particular zone and for the Planning Commission to put in a different zone. He has never seen that done and it is not a good public policy. If the Commission decides to turn down the application, then his client does not want the General Commercial zone classification. It simply does not allow the kinds of uses that would have economic viability that would be suited for the topographic conditions that are there. He reiterated Staff's reasons for recommending denial of the General Commercial alternative that is outlined on page 20 of the Revised Staff Report.

LINDA BURGESS, 12822 51st Street, Edgewood, WA. The issue is whether the change in the zoning is necessary. She does not believe that a case has been made.

DALE OVERFIELD, a resident and property owner in Edgewood, posed the question as to what is the best use of this property, not a single individual's use. This land is elevated and it has views of the mountain. This is a nice residential construction site. This property would be best suited for residential and mixed commercial uses. The proposed rezone is inappropriate.

DUTCH VANDEVANTER, who a resident of Edgewood, stated that he cannot see the manufacturing area from his house. He purchased an acre of land on the top of the hill. He has a substantial investment in his house and has three small children that live there. There will be a substantial difference if manufacturing goes into that location. He moved there because he wanted to be in a rural residential area. This area would be a marvelous place to put in homes. Mr. Stowe is trying to create value at his expense.

DAN BURGESS, who is a resident of Edgewood, stated that he does not live near the property. He is one of people that incorporated the City. In the process of developing the boundaries of the city, at the time they had no energy to go beyond the unincorporated county. This is an emotional and quality of life issue, not laws and ordinances. This could easily be part of Sumner right now. Sumner should look at this from a neighborly point of view. He feels it should be remain the way it was when they incorporated it. It was residential. It is important to consider the fact that it could be Sumner's problem right now, not Edgewood's.

ROSE HILL, Mayor of Edgewood, appeared and stated that last month the Edgewood City Council passed a resolution in formal objection to the Stowe proposal. The uses are not compatible with Edgewood's surrounding uses, which are single-family residential. The countywide planning policies have not been met. She requests that the Planning Commission deny the rezone request as proposed.

MARY URBACK, attorney who represents the property owners, 12417 12th Street East, Edgewood, Washington. She identified three reasons that she feels are critical in terms of appropriate uses for this property. The first criteria is whether or not City's Comprehensive Plan, GMA, and countywide policies have been met. Merely listening to comments is not sufficient. There has to be some actual meaningful coordination between staff and council members. This is a unique piece of property that juts into the side of Edgewood. There is no other property on the west side of W. Valley Highway that is within the city limits of Sumner. The GMA requires joint planning to occur in this area. The transportation corridor is the key element for this area. A legislative policy decision is being made tonight. Sumner decided back in 1994 when they first considered the applicable zoning for this area that commercial with residential was not an appropriate use at that time. Nothing has changed since that time. It was already zoned light industrial on the other side. She referred to the zoning that was done on the East Valley Highway and that the highway was the line used to determine where appropriate uses should be. The staff report indicates that there is increasing pressure for industrial use. The property on the east side of W. Valley Highway

has been zoned industrial since 1994, however, not one development has occurred over there. Nothing has been offered to indicate that there is any current pressure to zone that property manufacturing. There has been no change in circumstances. The real change in circumstances is that the surrounding area is now within the City of Edgewood and the uses are zoned residential. The table prepared by Staff regarding the potential impacts of traffic represents why joint planning is crucial in this area. Ms. Urback submitted into the record a staff report from 1994 when the property was first zoned residential and commercial. It was known at that time that there was industrial on the east side of West Valley Highway. Nothing has changed. For these reasons, she requests denial of the rezone. It is in the public interest of the adjoining community to do joint planning with the City of Edgewood in the future. Three sides of this property are within the City of Edgewood.

ROGER BLAYLOCK, Senior Planner for the City of Edgewood, stated that he is not a resident of either Edgewood or Sumner. This is a legislative process. You have to use common sense and not approve or deny because of anything said by Sumner or by Edgewood. This proposal is for 68 acres, which is 17 city blocks. The impact is mostly upon the City of Sumner. The roadway to accommodate this area would need to be larger than Meridian in Puyallup. He cited a clause from the Comprehensive Plan, 3.5 Transportation Element. Can you increase the traffic in this area seven-fold and maintain the quality of life in Sumner?

TERRY BRINK addressed Mr. Blaylock's traffic concerns and stated that traffic mitigation under Washington law requires the applicant to mitigate the impacts that the applicant causes within the project. If his client is granted the zone being requested, any traffic that is caused by his project will have to be mitigated at the cost of his client. The concerns about traffic are legitimate, but the costs of the impact are the burden of the applicant. He refers to Ms. Urback's document and it proves that a mistake was made when the Comprehensive Plan was adopted with regards to this property. It should not have been classified the way that it was at that time and this document provides some evidence of this point. He referred to the testimony of Dan Burgess. He stated that the Planning Commission should be neighborly, but this is dangerous under the law for jurisdictions to be neighborly to the extent that they deny one of their own citizens the property rights that they are entitled to in order to accommodate the concerns of neighboring jurisdictions. The imposition would be at the cost to his client for the benefit of the neighboring jurisdictions.

FRED PIFER, stated that he was raised above this area, but no longer lives in this area. A lot of comments have been made about the visual impacts of the hillside. Anyone who lives on the brow of that hill will have a view of what takes place down on the valley floor. People will be buying very expensive homes in this area for the view.

MARY URBACK reappeared to state a clarification for the record. There was an implication that if the request is not approved that you would be taking away the property rights of Mr. Stowe. There is no applicant that would support the proposition that continuing the current zoning on this property would be the taking of a property right. There certainly is economic viability on this property as currently zoned. The implication that this would be a "taking" is not accurate and is misleading.

LIVINGSTON closed the public hearing for the Comprehensive Plan Amendment for Bryan Stowe.

MYERS motioned to recommend approval of the change in designation for the property from the present designation to an M1 designation with the attachment of the Concomitant and the other exhibits as recommended by Staff. SMITH seconded the motion.

Thereupon was discussion of the proposed motion.

MYERS stated that they have heard a lot of discussions in three or four different sessions and a lot has been said regarding nothing changing since the original plan. Several things have changed. The owner of the property decided that he didn't want to go ahead with that plan or it was not feasible and sold the

property. Then the State came along and helped the City with their wetlands study and determined that a big portion of the area that was to be the interchange with 167, which was 32nd Avenue, was mostly wetlands in the valley. They moved the interchange from 32nd to 24th. This was another big change. When we originally zoned that with the idea of residential and commercial mixed, it was to be an urban village near the interchange with Highway 167. That no longer exists. When the Comprehensive Plan was being done and things were being set up, there was no City of Edgewood. When they developed their city and their Comprehensive Plan, they never asked us what we wanted to see at the top of the hill. They did what they wanted to do and now they zoned property that cannot be built upon and zoned it R1 because there is no other reasonable designation for property that cannot be built upon. That is not a valid argument. There have been several major changes in the area and in the development of the City of Sumner. There are only 4 to 6 square blocks that are buildable, not 17 blocks, and this does not represent a large part of the City of Sumner. The only logical designation of this property at this time is M1. When the Comprehensive Plan is updated, we need to take a look at the area around 24th Street and try to come up with something that will replace this. It would be a good idea to have an urban village in the north end. He is in favor of this motion

SMITH stated he had no comments.

LOVGREN stated that she also was involved with the zoning subcommittee in 1994, however, she remembers the process differently. We decided to designate the hillside as residential for the purpose of protecting the hillside. That was done intentionally and with great purpose. There was also the idea of having a residential urban village area near the interchange. The interchange has moved, but it has not moved far away enough to state that this is not still a viable piece of property for an urban village. She disagrees that all 7 criteria have been met. There needs to be more residential in this town, not M1. There is plenty of available space for M1 in the valley. Joint planning has not been accomplished and there should be a compromise by all parties. The City of Edgewood residents deserve the exact same consideration as she would give every resident of the City of Sumner. There has not been enough change to that property to even begin to consider this change.

WALKER stated that she had to remember that this is an Comprehensive Plan amendment and determine whether or not this was in line with the whole basis of the Comprehensive Plan, such as encouraging mixed use and protecting residential areas, etc. Maybe the original designation of general commercial may not still be as appropriate as it was in 1994, she is not sure that M1 is the answer to that. She could not vote in favor of that. We would be setting a precedent for zoning in the north end because that pattern has already been started.

RICHARDSON referred to an earlier question regarding what is good public policy. Good public policy is blind to boundaries and gives deference to community's composition. He referred to the three points made in the applicant's rebuttal. The first was the issue of coordination. Coordination is a means, not an end. If coordination yields substantial reason for a policy to remain in accord with the current zoning, then it ought to. The applicant's second point seems to be overridden for giving due deference to property while consistent with the current use is still communally Edgewood residents. The applicant's third point is whether the rezone is consistent with public interest. It is not consistent when the adjoining zone is taken into account. A regional consideration requires that we do not undermine Edgewood's zoning that neighbors property. Staff's recommendation gives us what is possible for this zone. Staff made a very thorough presentation. In the end the issue really is what is good public policy. Good public policy is what would we expect Edgewood to do if the situation was reversed. This parcel is Sumner's to decide by happenstance. It does not communally belong to Sumner.

MYERS responded by stating the reason that piece of property belongs to Sumner is because that particular property owner wanted to come into the City of Sumner during the annexation north of town. The City of Sumner did not go out there and take it in. The current property owner wanted to come in. There was no City of Edgewood. That piece of property is not an intrusion into Edgewood.

A roll call vote was taken on MYERS' motion as follows:

LIVINGSTON - Yes LOVGREN - No MYERS - Yes RICHARDSON - No SMITH - Yes WALKER - No

Motion fails.

LOVGREN motioned to deny the proposal and direct Staff towards joint planning with the City of Edgewood. RICHARDSON seconded the motion.

LIVINGSTON asked for clarification on the scope and outlines of the term "joint planning".

WINDISH asked that the motion be restated.

LOVGREN restated the motion as follows:

LOVGREN motioned to deny the proposal and direct Staff to do joint planning with the City of Edgewood.

LOVGREN stated that she meant joint planning for the future of the corridor. This proposal should automatically be denied and then look at joint planning with the City of Edgewood for the entire corridor.

MYERS requested that this motion be separated into two motions.

PAT BOSMANS, City Attorney, stated that if neither side prevails then there is no action by this body. There will be no recommendation to the Council. There would be no action at the Council level because there has been no action at this level. The rezone would fail for lack of a vote. There would be no recommendation to take before the Council for them to consider. The application is essentially denied because of lack of a majority vote.

LOVGREN motioned to deny the application. Richardson seconded the motion.

A roll call vote on LOVGREN'S motion was taken as follows:

LIVINGSTON - No LOVGREN - Yes MYERS - No RICHARDSON - Yes SMITH - No WALKER - Yes

Motion fails.

WALKER motioned to direct Staff to initiate joint planning with the City of Edgewood during our Comprehensive Plan update phase for that corridor. LOVGREN seconded the motion.

A roll call vote on WALKER'S motion was taken as follows:

LIVINGSTON - Yes LOVGREN - Yes MYERS - Yes RICHARDSON - Yes SMITH - Yes WALKER - Yes

Motion passed 6-0.

The hearing adjourned for a five-minute recess at 8:55 p.m.

LIVINGSTON requested that the Planning Commission be provided some additional clarification on all of the procedural guidelines and rules that are open to the Commission.

PAT BOSMANS stated that the Planning Commission has held a public hearing, closed the public hearing, and motions were called for the Comprehensive Plan Amendment of Bryan Stowe. Rules for the Planning Commission provide that action requires a majority vote of the quorum. She discussed with the Chair during the recess was Sumner Municipal Code 18.56.147(k) which states City Council shall

consider the recommendations of the Planning Commission, City Council may hold a public hearing prior to issuing a preliminary decision on this proposed amendment. The ordinance on its face implies that there must be a recommendation for the City Council to consider. Since there is no recommendation from the Planning Commission, she suggests one of two options. First, that the Planning Commission make a motion to recommend to the City Council that they could not come to a decision on this matter and forward the record to the Council for their consideration. The second option would be to do nothing and let the Commission's vote stand as voted and then have to determine procedurally how this will all work out; or, continue this matter to a subsequent Planning Commission meeting where one more commissioner may appear or two may not be present, and a motion for reconsideration may be held. These are the only options at this point. The rules require that a motion for reconsideration be made by a member of the prevailing side. This presents another procedural difficulty since there is no prevailing side.

RICHARDSON motioned to make no action and debate this issue again with a full Planning Commission. MYERS seconded the motion.

MYERS amended RICHARDSON'S motion to delay the decision until May 3, 2001.

RICHARDSON motioned that the Commission not vote on this issue until there is a full Planning Commission at its first availability.

RICHARDSON clarified his motion as follows:

Postpone this decision until the 19th of April.

PAT BOSMANS indicated that the original motion was to continue for a full Commission that requested an amendment to provide to hear the matter on the 19th.

RICHARDSON withdrew his motion.

Thereupon, the motion rules were clarified for the Commission.

LIVINGSTON motioned to allow RICHARDSON to retract his previous motion.

A roll call vote was taken on LIVINGSTON'S motion as follows:

Livingston - Yes Lovgren - Yes Myers - Yes Richardson - Yes Smith - Yes Walker - Yes

Motion passes 6-0. (RICHARDSON'S motion to postpone is withdrawn)

A roll call vote was taken on RICHARDSON'S motion to continue this decision until the next scheduled meeting of May 3rd, which was amended by MYERS to be considered on April 19th, as follows:

Livingston - No Lovgren - No Myers - No Richardson - No Smith - No Walker - No

Motion fails.

Thereupon was discussion about the April 19th work session and whether it was classified as a "convening meeting". The City Attorney provided clarification on this issue.

LOVGREN stated that since the feelings on this issue are so strong that it would be better to just pass it on to the City Council. This is a deadlock.

LOVGREN motioned to pass this matter on to the City Council with the recommendation of being no recommendation because of a deadlock. MYERS seconded the motion.

A roll call vote was taken on LOVGREN'S motion as follows:

Livingston - Yes Lovgren - Yes Myers - Yes Richardson - Yes Smith - Yes Walker - Yes

Motion passes 6-0.

LIVINGSTON closed the Unfinished Business portion of the hearing for the Bryan Stowe Comprehensive Plan Amendment.

NEW BUSINESS

WINDISH stated that his intent was to discuss the rules and procedures and amending the process of moving things on the Council. This includes attaching a Findings of Fact. His objective is to have a good clean way of getting things to the Council so it will be clear how the Commission came to their decision. The dissenting side could also write out their decision.

Thereupon was discussion about different ways to prepare a template or vote sheet for the Commission to use so they could communicate their decision making rationale to the Council.

The Planning Commission directed Staff to come up with an avenue for conveying more than just the minutes to Council to give them an explanation of their decisions.

WALKER pointed out that vacancies for the Planning Commission are not advertised when a term expires.

CORRESPONDENCE

There were two letters submitted for the hearing.

Letter to the Planning Commission from Mary J. Urback dated April 2, 2001.

Letter to the Planning Commission from Roger J. Blaylock dated March 30, 2001.

Letter to the Planning Commission from Terry Brink dated April 5, 2001

STAFF COMMENTS

WINDISH stated that flyers went out for the Shoreline Workshop on April 19th. The open house will be from 5:00 p.m. to 7:00 p.m. There will be a staff presentation at 7:00 p.m. Leonard Bauer scheduled a parking workshop for the station area parking and market study. This will be held from 5:30 p.m. to 7:30 p.m. on April 17th. The East Sumner Neighborhood Plan was adopted. The North 8th Street annexation is going to move forward. There is now an Arts Commission for the City of Sumner.

COMMISSIONER'S COMMENTS

LOVGREN stated that agendas that are mailed out regarding the City Council meeting do not provide any information. It would be helpful if there were a brief description.

MYERS thanked the Mayor and the City Council for the books. It is nice to be recognized.

LIVINGSTON apologized for being late.

ADJOURNMENT

MYERS motioned for meeting adjournment at 10:03 p.m. LIVINGSTON seconded the motion and it passed unanimously.

Lori L. McNett, Minutes Taker