

**Planning and Zoning Board Minutes**  
**February 16, 2006**  
**6:00 p.m.**

Council Liaison: Karen Weitkunat

Staff Liaison: Cameron Gloss

Chairperson: Dave Lingle

Phone: (W) 223-1820

Vice Chair: Brigitte Schmidt

Phone: (W) 491-2579

Chairperson Lingle called the meeting to order at 6:00 p.m.

**Roll Call: Meyer, Smith, Stockover, Rollins, Schmidt and Lingle**

**Staff Present: Gloss, Eckman, Wamhoff, Shepard, Olt, and Deines.**

**Citizen Participation: None**

Director of Current Planning Cameron Gloss reviewed the Consent Agenda:

**Consent Agenda:**

1. **Minutes of the October 20 (Continued), November 17, December 8, 2005 and January 19, 2006 Planning and Zoning Board Hearings.**
2. **# 18-05B Kingdom Hall of Jehovah's Witnesses – Project Development Plan.**
3. **#1-95F New Belgium Brewery Amended Overall Development Plan.**
4. **#13-05B Sunrise Ridge Second Annexation and Zoning.**
5. **#53-05 Boma Annexation and Zoning.**

**Discussion Agenda**

6. **#1-95F New Belgium Brewery – Project Development Plan.**
7. **#19-05 Fox Meadows Business Park, Tract B – Request for Amended Modification of Standard.**

Director Gloss asked that Item 5, Boma Annexation and Zoning be placed on the discussion agenda.

Director Gloss asked that Item 6, New Belgium Brewery PDP be placed on the Consent Agenda.



**Citizen Participation:**

Barry McPhearson, 1960 Jamison Drive was there representing the majority of homeowners on the 1900 Block of Jamison Drive with regard to a lighting issue. They recently to the north had a new development which eventually would be 5 medical office buildings and unfortunately due to the planning of the space, the parking lot is on their backyards and the accompanying lights are on all night long and they are exceedingly bright. They are way in excess of the legal limits of light being allowed into their yards. He had a photometric drawing of what was intended for this space and they have also gone through and taken photometric readings throughout this space and in many instances they are 9 times in excess of what is allowed.

They have discussed this with the developer and he has sent them away saying "he does not care if they sell their house, his plan was approved before you bought your house". That is incorrect and they would just like some resolution. He addressed the problem with the contractor before the lights were installed, before the electrical was run and before the foundations were poured. He also suggested alternative solutions for them and was told to "go jump in a lake".

According to the document on file with the city, they are supposed to be 20 foot 6 inches high and some of the lights are approaching 3 foot higher than they are supposed to be. They are supposed to be installed with shields and none of them have shields. They are frustrated and are looking for a resolution.

Director Gloss understood that this is a zoning enforcement action and that request had already been forwarded on to zoning and they are actively pursuing it. He stated that this is an ongoing zoning investigation and the city will be pursuing compliance of that lighting plan as approved originally as part of the development. They have to be compliant in order to get a Certificate of Occupancy.

There was no other Citizen Participation.

Chairperson Lingle suggested adding Item 7, Fox Meadows Business Park to the Consent Agenda. The Board agreed to add it to the Consent Agenda.

**Member Schmidt moved to approve the Consent agenda consisting of Item 1, less the October 20, 2005 meeting, 2, 3, 4, 6 and 7. Member Meyer seconded the motion. The motion was approved 6-0.**

**Project:** Boma Annexation and Zoning, # 53-05

**Project Description:** Request to annex and zone 82.05 acres located at the southwest corner of East Douglas Road (County Road 54) and Turnberry Road (County Road 11). The property contains one (1) existing farmstead with agricultural uses and several existing oil wells. It is in the FA1 – Farming District in Larimer County. The requested zoning for this annexation is UE – Urban Estate.

**Recommendation:** Approval of the annexation and requested zoning.

**Hearing Testimony, Written Comments and Other Evidence:**

Steve Olt, City Planner gave the staff report recommending approval. He stated that there is no development proposal before the Board and nothing has been submitted. Tonight the Board was only considering the annexation and zoning of the property. The Board would be forwarding a recommendation to the City Council for the February 21 meeting.

The reason staff has asked this item to be pulled from the Consent Agenda is that staff was made aware by several residents that they had just received letters of notification around last weekend. After some investigating he discovered some insufficiencies in the mailing list. The next day the applicant provided staff with a new list of affected property owners, it was checked, and found to be sufficient to cover the property owners within the designated area. Another letter was sent out on February 8<sup>th</sup> which was 8 days ago. The people who received the second letter were concerned about not receiving the letter in a timely fashion as the Land Use Code would identify. Planner Olt reported that Section 2.2.6 of the Land Use Code dealing with mailings for development plans requires that letters be sent out 14 days in advance of the public hearing. In discussions with the City Attorney's office it has been determined that annexation is not truly defined as development in the city's Land Use Code.

Deputy City Attorney Paul Eckman added that was correct and that the annexation provisions of the Land Use Code don't require any notice. Annexation is not a quasi-judicial matter, it is legislative matter and this Board is only making a recommendation to the Council. However, zoning is, and in this particular case, any zoning of land of less than 640 acres or less is a quasi-judicial rezoning under our Land Use Code which

does require some notice. Those notice requirements are contained in Section 2.9.4(F)(2) which requires a 7 day mailing requirement.

Planner Olt stated that the letter went out of our office on February 8<sup>th</sup>, which was 8 days ago, so it does meet the 7 day requirement referenced. He felt what we were getting to is the question of whether the Planning and Zoning Board could consider this tonight or continue it based on a potentially insufficient notification. Staff's recommendation is that we have met the notification requirement and that the Board could consider this item tonight.

Member Schmidt asked about the 1/6 contiguity coming from the County Club North Annexation and the Douglas Road right-of-way and how did that fit with the statement made that roads don't count as contiguity.

Director Gloss replied that you jump over right-of-way to gather contiguity.

Planner Olt showed a visual of the annexation map and explained for the Board how this project gained its contiguity. It consists of 30 feet along the center line of Douglas Road, which is part of the annexation map for County Club North First Annexation and then the entire east property line. When you total those it is 1,349 feet and 1,341 feet is required.

Member Schmidt would not be as concerned about it, but it is only 8 feet that they actually meet the 1/6<sup>th</sup> requirement and we are 30-feet into a roadway.

## **PUBLIC INPUT**

Kathleen Kilkely, 920 Inverness Road stated that one of the reason some of them were there tonight was to ask for a delay because of the confusing and conflicting items here. The first one is notification and timing and the confusion of what the legal requirement. Most of the notices that were received by many people were actually postmarked on the 9<sup>th</sup>. The letterhead from the city does say that it was typed up on the 8<sup>th</sup>, but the postmark is the 9<sup>th</sup>. Many people received these either late Friday or Saturday, so if you count the number of days, Monday, Tuesday and Wednesday were working days when offices are open and they don't feel that was adequate enough for them to contact people and understand what is going on. Some of the confusion that has lead to this is the sign that is posted on the property says "Development Proposal Under Review".

She understands that the city has budget constraints, but the letter itself says "proposed development". It is an electronic document and it would take 5 minutes to correct that and reissue the letter so that it does not perpetuate the confusion about what is happening here tonight and so people understand it is a hearing for a petition for

annexation and zoning not a proposed development. The initial reaction from many of her neighbors was for development.

Ms. Kilkely cited Section 2.2.6 of the Land Use Code and the statement that formally designated representatives of bonified neighborhood groups shall also receive notice. She is a member and here tonight for the Northeast Neighborhood Coalition, which was formed about 10 years ago in this area. They have a long history with the Planning Department and had an informal verbal agreement that any development issues in the northeast part of either the Urban Growth Area or Unincorporated Larimer County, their organization would be added to the affected property owners list.

Some of the other questions they would like answered is the contiguity issue. She spent more than her share of time out in the field, so she is also curious as to when the engineering consultants supply the survey information for the site whether they also supply a plus or minus margin of error. We are dealing here with eight feet being the breaking point of either being or not being eligible for annexation.

They are also concerned with the road issue and how that affects contiguity. Even beyond that the Larimer-Weld Ditch runs there and she was curious about how the right of way of the ditch, which is probably what most of the chimney is composed of and how that might affect an annexation because it might be annexed into the city but it is not developable land and it will never be a Low Density Mixed-Use Neighborhood in the chimney area.

Karl Swenson, 3404 Corte Almadan, stated he is President of the Serramonte Highlands Homeowners Association also requested that the item be pulled from tonight's agenda so they would have ample time to see what is being proposed. They would also like answers to the questions that have been raised here tonight. In short this smells bad to him and it almost seems that it is being rushed through without proper review and without a lot of people having understanding of what is going on.

Marsha Lots, 3501 Juanita Road stated that she did not have much more to add that has not already been said other than her neighbors are very interested in what is going on and they would really like time to think about it and look it over and hope something good comes with it, but they don't like the way it is going now:

Catherine Saye, 3405 Corte Almaden, also from the Serramonte HOA stated that she had spoke to several of the neighbors and some of the concerns they had expressed were enclave concerns. One of her concerns was mostly a chance to understand more and learn more about the Urban Estate zoning and what that means and if there are other options of what this property could be to reflect more of what their neighborhood is.

**PUBLIC INPUT CLOSED**

Chairperson Lingle asked Planner Olt to address the issue of enclaves.

Planner Olt replied in looking at the map, there is a gap between the southwest corner of the proposed Boma Annexation and city limits. He pointed out the properties that would have to voluntarily annex to create an enclave that would annex Serramonte Highlands because it is the Growth Management Area boundary line and unless those properties voluntarily annex to close that gap, it is very unlikely it is going to occur.

Chairperson Lingle asked about the city's letter language and the signage that is posted on the property.

Planner Olt replied that we have a standard sign and we have a rezoning sign. Historically we have always posted a Development Under Review sign, we don't have five or six different signs for the nature of the proposal that is before us. The sign does have a phone number to get information. Until today, he had not received any phone calls as to what is going on on that property.

We have talked previously about the legal notification requirement from the standpoint of a mailed letter. Staff feels that because of the nature of this request being an annexation and zoning, that the seven day requirement is what applies here. The letter was dated from the Current Planning Department on the 8<sup>th</sup> it was postmarked the 9<sup>th</sup>, which meets the 7 day requirement. Once it leaves our office we have no control over the delivery time.

Director Gloss reported that in reviewing the annexation map, this property has contiguity along its entire eastern boundary, which based on the dimensions staff has makes it compliant with the 1/6 requirement under State law. There was a question about the applicant's accuracy of the materials presented. He asked that the applicant come forward to speak to that issue. Staff is convinced that the contiguity per State law has been met.

Bud Curtis, Northern Engineering stated that their survey department did go out and survey this ground and he feels confident that what they came up with was within platting standards. This material was also checked with city survey staff, which reviewed the legal description and the acreage they reported.

Member Schmidt asked if the RUL, Rural Open Lands zoning district were an option for this property.

Planner Olt replied it would if this were to be delayed, but that is not an adopted zoning district that is available yet. The applicant has submitted in a timely fashion a voluntary request for annexation and they have been to initiating resolution on January 17<sup>th</sup> in front of Council and based on State Statutes there is a requirement that they go to City Council for first reading within 60 days of that initiating resolution.

**Member Meyer moved to recommend to City Council approval of the Boma Annexation and Zoning based the findings of fact in the staff report.**

**Member Smith seconded the motion.**

Member Stockover commented that most of the audience was concerned about being able to know what ultimately happens with the property. He asked for a recap of what they can do with the property if they don't annex it versus if we do annex it.

Planner Olt replied technically because it is eligible for annexation and based on the Intergovernmental Agreement with Larimer County and the city of Fort Collins; for them to proposed development they have to request annexation and come into the city. There really is not a choice at this point in time.

Member Stockover asked if any development that comes forth will be posted and everyone will be notified and they will be fully aware of what happens.

Planner Olt replied that when they submit a development plan there will be put a sign on the property, there will be a neighborhood meeting prior to submittal of the development proposal, it would go through our development review process with the full development project development plan submittal of a site plan, landscape plan, building elevations, utility and stormwater drawings and the environmental drawings that are necessary. At this point in time we are not reviewing a development plan.

Member Stockover just wanted to get that on the record that we are not rushing anything along and that all the property owners will have ample time to give input as to how it proceeds after this.

Member Schmidt asked that the letter that goes out be more specific and we will make sure the Northeast Neighborhood Coalition will be added to the notification list.

**The motion was approved 6-0.**