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Board of Skagit County Commissioners
Skagit County Planning Commission
By Email Only

RE: Planning Commission Censure of Planning Commissioner Lundsten

Greetings,

I write regarding the September 22, 2020 censure issued by the Skagit County Planning Commission against Planning Commissioner Mark Lundsten, which has been the subject of significant media coverage and correspondence, most recently a January 11, 2021 letter from Mr. Lundsten to the Planning Commission and Board of Commissioners.

The censure arose from Mr. Lundsten's correspondence to the Board of Commissioners dissenting from the Planning Commission's recommendations involving then-proposed Comprehensive Plan amendments involving Blue Heron rookery setbacks and South Fidalgo zoning. The Planning Commission censured Mr. Lundsten on alleged grounds that the Planning Commission's bylaws generally require good order and conduct. For his part, Mr. Lundsten feels that the Planning Commission's censure violates the Open Public Meetings Act and infringes on his Constitutional right to free speech, and he thus seeks to appeal the Planning Commission's letter of censure to the Board of Commissioners.

At various points in this ongoing dispute, its participants have approached my civil deputies seeking legal advice in support of their cause. As such, I write to provide the view of the Office of the Prosecuting Attorney on this matter.

For the reasons discussed below, it is my recommendation that the Board decline to hear such an appeal, and the Planning Commission retract the letter of censure.

As an initial matter, there is no apparent appeal process by which the Board of Commissioners might review a decision of the Planning Commission to censure one of its members.

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While performing an important function under our system of land use regulation, planning commissioners are volunteers that serve at the pleasure of the Board, and the Planning Commission's sole mandate is to make non-binding recommendations to the Board on various proposed land use matters. If members of the Planning Commission (or any other member of the community, for that matter) feel that an individual planning commissioner is not fulfilling their duties in a satisfactory manner, the remedy is to request the Board decline to reappoint that member when their term is complete. In short, the issue at hand is a political question.

Mr. Lundsten alleges that the censure was undertaken by the Planning Commission following a series of non-public email communications, in violation of the Open Public Meetings Act, RCW Chapter 42.30 ("OPMA"), a statute that requires meetings and deliberations relating to agency action be done transparently. OPMA explicitly makes planning commissions subject to its requirements, RCW 42.30.020(1)(c), although one might reasonably debate whether a censure from the Planning Commission – since it has no legal effect – is subject to OPMA.

Mr. Lundsten further alleges that his free speech rights have been violated by the censure. U.S. Constitution Amendment I and the Washington Constitution both generally prohibit government from placing prior restraints on speech, and a censure, it could be argued, does just that. On the other hand, since it has no legal effect of any nature, it does not appear to me that the Planning Commission's letter constitute a violation of Mr. Lundsten's Constitutionally-protected free speech rights.

The main problem with the censure lies with the appearance it creates. The central purpose of the Planning Commission is to provide the Board with recommendations based on diverse viewpoints from our community. Dissenting opinion is something central to the Planning Commission's purpose and function, and is therefore difficult to construe as a violation of good order and conduct.

In light of the foregoing, I recommend as follows:

1. The Board of Commissioners should decline to hear an appeal of the censure letter.
2. The Planning Commission should retract the censure letter since it has no legal effect and is plainly distracting from significant amount of work in front of the Planning Commission, Planning Department and Board related to important land use matters.

Please advise if you have any questions or concerns.

Very Truly Yours,



Rich Weyrich