These Minutes Approved
February 12

PLANNING BOARD MINUTES

January 22, 2003

Chair Crim called the regular meeting of the Planning Board to order at 7:00 p.m. in the Council Chambers, Public Safety Complex, 250 – 5th Avenue North.

PRESENT	ABSENT	STAFF PRESENT
Jim Crim, Chair	Cary Guenther	Steve Bullock, Senior Planner
James Young, Vice Chair		Don Fiene, Assistant City Engineer
Virginia Cassutt		Karin Noyes, Recorder
Janice Freeman		
John Dewhirst		
Wayne Zhan		
Ronald Hopkins		

Mr. Guenther was excused from the meeting.

READING/APPROVAL OF MINUTES

BOARD MEMBER ZHAN MOVED TO APPROVE THE MINUTES OF JANUARY 8, 2003 AS CORRECTED. BOARD MEMBER FREEMAN SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

ANNOUNCEMENT OF AGENDA

There were no changes made to the proposed agenda.

REQUESTS FROM THE AUDIENCE

There was no one in the audience who desired to address the Board during this portion of the meeting.

PRESENTATION OF DRAFT STORMWATER COMPREHENSIVE PLAN AND DRAFT SOUTHWEST EDMONDS BASIN STUDY

Don Fiene, Assistant City Engineer presented a power point presentation of the Draft Stormwater Comprehensive Plan. He explained that the purpose of updating the plan is to meet the State erosion control requirements, manage water quality and quantity and protect the environment. The new plan will also help protect property and rights-of-way from erosion and flooding, ensure the City is in compliance with the Federal and State laws and identify projects and other actions to meet the objectives. When completed, the plan must meet the regulatory authority and requirements of the Growth Management Act, the National Pollutant Discharge Elimination System Phase 2 Permit, and the Endangered Species Act.

Mr. Fiene advised that there are two flow patterns in Edmonds: waterways that drain directly into Puget Sound and those that drain into Lake Ballinger and into Lake Washington and Puget Sound in a less direct flow. At this time, all basin studies have been completed with the exception of the Southwest Edmonds Basin Study, which is now in draft form. This study will be presented to the Board for review in conjunction with the draft Stormwater Comprehensive Plan. The intent of each of the basin studies is to characterize the system and identify projects that are needed. Every study included public meetings, and most had citizen advisory committees appointed to assist in the project.

Mr. Fiene referred to Section 2 of the draft plan, which identifies the 1991 plan goals and how they were accomplished over the past ten years. He said one goal was to modify the regulations to comply with Federal and State requirements. To meet this goal the City developed a new stormwater management ordinance in 1995 that was determined to be equivalent to the DOE's State standards. Another goal was to identify localized problems. Over 130 work orders were completed since 1991 and City forces installed 2,000 feet of storm pipe per year. Developing a funding strategy for capital and O & M funds was another goal, and the City initiated a new storm utility rate structure in 1998. Another goal was to improve education and public involvement. Over the past several years the Discovery Program was created, which includes a full-time environmental education coordinator.

Mr. Fiene advised that the Southwest Edmonds Basin study is the last to be completed by the City. It is located in the very southwest portion of the City in an area where there are little or no storm systems. There were many problems in this area when it was first annexed into the City. However, because there was good, sandy soils, an infiltration system was built to solve the majority of the problems. The City has also addressed other problems that have arisen in the past in the new basin study. Two public meetings were held and a consultant was hired to identify projects and solutions to resolve the problems in this area.

Next, Mr. Fiene referred to Section 3, which relates to stormwater management for new development and redevelopment. He noted that the construction site run off program that has been in effect since 1995 meets the State and Federal requirements. A post construction stormwater management program has also been in effect since 1995. However, new State requirements found in the 2001 State Department of Ecology Stormwater Manual are more stringent. The plan recommends that the City review the State manual and determine how it applies to Edmonds. Then they should adopt the manual and revise the ordinance.

Mr. Fiene said Section 4 is related to illicit discharge detection and customer response. He said the definition of illicit discharge is any discharge not composed entirely of storm water. There are federal requirements for mapping, legal prohibition and enforcement, IDDEP Plan, and educational outreach. The plan recommends that the City develop an IDDEP Plan and revise the ordinance. It also recommends that the City hire one employee dedicated to illicit discharge detection and customer response.

Mr. Fiene referred to Section 5, which deals with operations and management. The City has seven full-time employees in the stormwater program. The street storm manager spends about half his time on storm runoff. They maintain over 4,000 catch basins and manholes on an 18-month cycle. They also do streetscape and ditch maintenance, as well as inspect storm detention ponds on a regular basis. He noted that it is the City's responsibility to inspect private storm detention facilities and make sure they are being maintained. These employees also respond to spill and flood situations and work on repair and replacement projects. The plan recommends two additional employees be hired over the next six years to maintain the system on a required one-year cycle, which would meet the new State and Federal mandates.

Mr. Fiene said Section 6 covers the public involvement and education programs, which are key elements of the plan. The current program has three target audiences. schools, annual earth day events, and citizen advisory groups. The discovery program does a good job of targeting school age children. Staff mails out information to schools on a yearly basis and they are able to reach a lot of people with this proactive program. He recalled that before the 1995 plan was adopted, the City staff held public meetings in an effort to reach out to the public. They also created best management practice hand outs to send to developers and contractors. The plan recommends the City continue with their existing public involvement and education programs.

Mr. Fiene said that Section 7 deals with environmental concerns and fishery resources. All water bodies in the City have been studied extensively, which is important. The basin studies and critical areas and stream inventories have been completed for the entire City. There have been some problems with disturbance in buffer areas even though the City has done a good job. People working in buffer areas have good intentions, but they are often unaware of the law. The City needs to reach out to these people with better education. The plan recommends that a letter be written and public meetings be held regarding the critical areas buffer. Those who own property close to critical areas should be invited to participate.

Mr. Fiene advised that Section 8 covers the hydrologic and hydraulic analysis portion of the plans. Section 9 is related to project identification and an equipment improvement program. Project identification was done based on the basin studies. 19 projects were identified and analyzed in this section. They were prioritized using the criteria found in the draft document. With regards to funding, Mr. Fiene advised that a new source of revenue would be coming into affect if approved by the City Council. The storm system development charge is similar to the sewer and water charges already in affect. Developers would be charged to buy into what all the other ratepayers have been paying for all along. With respect to capital funding, a few assumptions were made in the capital improvement plan. One was that the City would obtain secure bond funds in 2003 and 2005, and the finance director has discussed this option with the City Council. There would also be additional revenue from the storm system development charge. In addition, the staff will be pursuing grant funding and in lieu of funding for the Perrinville diversion. There is a good chance the City will receive some grant funding to help with this project.

Mr. Fiene briefly described the problems in the Perrinville area. Perrinville Creek, which is located in Southwest County Park, has some fragile stream banks. The development of the watershed up above brought high flow rates, and water up high enough on the banks to erode the soil into the Sound. This has been happening for about 30 years. There was a fence going across the creek that was 17 feet up in the air, which illustrates the significant amount of erosion that has occurred. Development up stream is causing the problem. The project identified in the draft plan is different than what is identified in the basin study. The basin study proposed that a pond be constructed to slow the storm rates, but the location of the pond would have been where the new Perrinville Post Office was built. Since this land is no longer available, a new plan was necessary. Another idea was to do some stream bank stabilization measures in this area, but it is difficult to access and would do nothing to the flow rates. The staff also looked at the possibility of getting cost share funding from Lynnwood because they contribute to half the watershed. However, this funding is not likely to occur. The new solution is to divert the storm flows through a 42-inch storm system down towards the Lynnwood Treatment Plant road and directly into the Sound. This would keep the flow rates down and reduce the sedimentation down stream. The cost of the project is estimated to be about $2.2 million.

Mr. Fiene referred the Board to the project descriptions that were provided for each project identified in the plan. A cost estimate was also identified for each.

Mr. Fiene said Section 10 is the financial program. He noted that a separate storm utility has been in effect since 1998, and the rates were recently increased. A rate schedule through 2007 was identified in the plan.

Mr. Fiene concluded by stating that the City must adopt the Stormwater Comprehensive Plan by March 10 in order to meet the Federal requirements and to enable the City to submit their application for a NPDES Phase 2 Permit. The Southwest County Drainage Basin Plan will accompany the draft Stormwater Comprehensive Plan through the process.

Board Member Dewhirst requested clarification as to whether the revenue coming in would adequately cover both the capital projects and the maintenance projects. Mr. Fiene answered affirmatively. He said there would also be sufficient revenue to pay the interest on the secure bonds.

Board Member Young said it is always helpful to him to have a picture of where the money comes from and where it will be spent in a graph format. He said he would like staff to attempt to provide this information for the public hearing on February 12. He recalled that Mr. Fiene mentioned three or four sources of revenue that fund stormwater management within the City, and it would be helpful to understand what the projects are compared to the revenue base broken into the various categories. Staff should also provide a graph illustrating where the money would be spent.

Mr. Fiene replied that Table X-3 at the very end of the document shows the beginning cash balance, income coming in, the charges for services, etc. The capital program expenditures are identified in Table 9.A. Board Member Young agreed that these tables are helpful, but for those who are not familiar with these types of plans, it would be easier to understand if the information were provided in a picture graph format.

Board Member Young inquired if staff is contemplating the addition of a staff person to monitor water control during construction. Mr. Fiene said the City has inspectors for erosion control. The additional employee would be for illicit discharge, which is a current program. This person would go through the City looking for problem polluters, educating businesses and contractors, providing spill response, etc. This is a requirement of the Federal plan. Mr. Dewhirst inquired if any money is available from the Federal Government to help the City pay for the additional employee. Mr. Fiene answered that there is no money from the Federal Government, but there may be some grant opportunities.

Board Member Young agreed that the additional staff person would be a legitimate expense of the stormwater utility. He suggested that the cost of this should be built into the rate schedule. Mr. Fiene said the additional employee would be paid for directly by the utility, just as they do with employees in public works and other utilities.

Board Member Zhan inquired regarding the level of service the plan is trying to meet. What type of a storm is the proposed plan intended to handle? Mr. Fiene explained that there are three major storms that are typically used for planning purposes: a 2-year storm, a 10-year storm and a 100-year storm. The requirements for every new storm system are based on the 100-year storm. Since 1995, the requirements for new detention systems look at the 2, 10 and 100-year storms. The new systems have to be designed to detain stormwater at the pre-development rate in the event of any of these types of storms.

Board Member Zhan inquired how much the City spends on claim settlements per year. Mr. Fiene answered that the City does not receive a lot of claims. The last big event that caused much damage was in January of 1997. Even then, the City of Edmonds did a lot better than many other jurisdictions. They have worked to fix the problem areas since that time. He briefly described some of the repairs that took place after that storm to correct the problems. Mr. Fiene concluded by stating that, overall, Edmonds is above average in stormwater management compared to other jurisdictions.

Board Member Zhan inquired regarding staff's opinion of natural stormwater systems. Mr. Fiene answered that the staff has learned that natural systems are best. The main costs are the problems with impervious surface and forcing drainage out of its natural direction. The City requires that a natural drainage path be followed as much as possible.

Board Member Hopkins pointed out that illustration 1.1, a map depicting all basins in the City of Edmonds, was not provided in the draft document. Mr. Fiene answered that when he comes back before the Board on February 12 for the public hearing, he would have this map available for the Board's review.

PUBLIC HEARING ON PROPOSED AMENDMENT TO ECDC CHAPTER 20.35 CONCERNING PRDS AND CHAPTER 16.20 REGARDING SINGLE-FAMILY RESIDENTIAL ZONING CLASSIFICATIONS

Mr. Bullock briefly reviewed the history and background related to the Board's deliberation and City Council's adoption of the PRD Ordinance. He advised that the City has had a PRD provision in their code since the late 1960s. The first application that was processed and approved was in 1968. He said that while the City is not required by any State law to have a code addressing or allowing PRDs, the concept has been thought to be a benefit to a community—especially in those areas that are substantially built out. Most of the undeveloped properties left in Edmonds are encumbered by unique circumstances that make them difficult to develop. The majority of development taking place in the City is infill development, and PRDs are one way to address these unique circumstances.

Mr. Bullock explained that the way the City's PRD ordinance has been written is that there has been a very high level of design and review required of the applicant. The assumption is that the end product would be of a higher quality since the applicant has to go through the review process.

Mr. Bullock advised that the City's Comprehensive Plan that was adopted in response to the Growth Management Act (GMA) addresses PRDs as a desirable way to accommodate the growth that was mandated for Edmonds. According to the GMA, the City must work with the County and State to determine where the population and employment growth could be accommodated in the State. The end result was the identification of a population target for the City. When this target was identified, the City conducted a series of workshops. The public feedback to the Planning Board and City Council was that they do not want to see major wholesale rezones throughout the City to accommodate the additional growth the City is required to plan for because this would have a negative impact on single-family neighborhoods. They indicated that they wanted to see the development capacity of the current zoning utilized to its fullest potential instead. If this is done in a way that is sensitive to the character of the neighborhoods, the City will be able to accommodate their employment and population targets without rezoning properties. The City has operated under that premise for the past eight years.

Mr. Bullock explained that, as part of GMA, a Growth Hearings Board was established to make sure the policies and directives of the GMA are implemented throughout the State. The intent is to keep the growth in the urban areas rather than expanding into the rural areas. Edmonds has been designated as an urban area. More recently, the Hearings Board has made the finding that in urban areas the density must be a minimum of four dwelling units per acre. However, the City's largest zoning classification is RS-20 which calculates to 2.2 dwelling units per acre. This is substantially short of what the Hearings Board has established as urban density. He emphasized that he is not saying the RS-20 zoning classification is illegal, and there has been a lot of debate about whether the mandate was related to an average density or the lowest density. However, it is a fact that, right now, the City does have an RS-20 zone that they enforce as such. Therefore, the City must be very careful with any development—especially PRDs—that they do not force a developer to have large lot sizes that are not consistent with the Hearings Board findings of four units per acre for the minimum urban density.

Mr. Bullock advised that the PRD ordinance that was put into affect in 1980 stayed the same until the Planning Board reviewed it in about four years ago. When the Board first started their review, they considered how often the PRD ordinance was being used and feedback from both the residents and applicants. They found that the use of the PRD ordinance had been on a steady decline over the previous ten years and there had been very few PRD applications because the process was too difficult and there was very little benefit to the applicant. Because the City's Comprehensive Plan had to accommodate the growth targets as mandated by GMA, the Board's desire was to have a mechanism that would allow the City to deal with the infill situations using the PRD ordinance as a desirable tool. They proposed, and the City Council approved, adjustments to the ordinance to encourage its use.

Mr. Bullock pointed out that the old ordinance contained criteria that was very ambiguous and there was a wide range of opinions as to whether a proposal met the criteria or not. Another difficulty with the old ordinance was that in trying to apply the provisions of the ordinance you had to move back and forth between various sections of the code to figure out what could and could not be done. The new ordinance that was approved by the City Council clarified the ambiguities, making the PRD process more logical. In addition to these amendments, the process was changed. After the City Council approved the new ordinance and a few project proposals were taken through the PRD review process, some concerns were raised before the City Council—particularly regarding the review process. As an interim measure, the City Council adopted an emergency ordinance clarifying that the City Council would make the final decision on PRD applications.

Mr. Bullock recalled that the City Council asked the Planning Board to take additional public comments and consider making some changes to the ordinance. The Planning Board has invited public comments on a few occasions and held several conversations with the City Council. The proposed amendments identify the Board's attempt to change the current PRD ordinance to address the concerns raised by the City Council and public. The draft is not necessarily what will be recommended to the City Council for adoption, but was intended to provide language for the public to respond to and provide more specific feedback.

Mr. Bullock referred the Commission to the letter from staff dated January 15, which outlines the proposed amendments. He particularly noted the last bulleted item, which explains that because a PRD is an alternative form of development that still meets the use and density requirements of the underlying zone, it's not a rezone of land that would require a public hearing before the City Council. The City's Hearing Examiner would hold the public hearing on a PRD proposal and an appeal of the Hearing Examiner's decision would be taken to Superior Court. The Board is interested in receiving public input regarding these issues.

Mr. Bullock advised that the Board is also seeking feedback on the question of how to calculate density in single-family zoning districts. He explained that maximum density is a term already defined for the City's multi-family and commercial/mixed-use zones. In order to establish a maximum density figure for the single-family zones, the Board will be considering making some changes to the City's Development Code as it relates to single-family zoning districts. He referred to the chart that identifies the different zoning districts and the zoning standards for each. An additional column would be added to the table to clarify the allowed density in each zone. This density would be stated in a number of so many units per acre. The idea is to use a density number to determine how many units an applicant of a PRD can apply for based on the sizes of the lot and the maximum density figure. This change would further clarify the fact that whenever someone applies for a PRD they would be consistent with the density of the zoning district. Therefore, it would not be considered a rezone. He said the City Council has established a policy both for the density and the criteria that a PRD has to meet in order to be approved. In addition, it allows the Hearing Examiner to make the decision on the PRD application rather than the City Council.

Mr. Bullock briefly highlighted the other proposed changes as follows:

- Remove the option of proposing attached dwelling units in PRDs in single-family zones, even when critical areas are present on site.
- Clarify that PRDs are not rezones because the applicant must comply with the individual zoning district requirements. PRDs are an alternative means of development within the zone.
- Clarify that the perimeter setback and buffer requirements of a PRD make sure it will not create undo impacts on existing surrounding development.
- Clarify the open space requirements.
- Require a neighborhood meeting when a PRD is proposed in single-family zoning districts.
- State that the Hearing Examiner would hold a public hearing on the PRD proposal and make the final decision.

Mr. Bullock pointed out that the Comprehensive Plan has a number of policies that support the goals of the PRD ordinance. Some are specifically addressed and encouraged by PRDs and others are general policies that are aimed at preserving the environment, creating open space, protecting wildlife, etc. A PRD, in many cases, would do a better job of protecting and preserving these features than would a standard subdivision because development can be compressed on the site in areas that are most developable leaving the areas with sensitive features alone.

Mr. Bullock noted that the Comprehensive Plan specifically addresses PRDs on Pages 30-31, which lists the policies that relate to housing and housing development. A number of items on the list could be applied to PRDs in general. For example, Item C.1 specifically identifies PRDs as a desirable way to develop in single-family areas. Next, he referred to Pages 78-81, which provides another group of policies related to housing and affordability and meeting a range of uses for different needs and income types. A lot of these policies could also be applied generally to PRD developments. Item G.2.a specifically addresses the desirability of PRDs.

If a piece of property with some critical area were developed using the standard subdivision format, Board Member Young inquired if the critical area would be afforded the same protection as it would if the property were developed as a PRD. Mr. Bullock answered that the critical areas ordinance is a separate document. Regardless of whether a property is developed as a standard subdivision or a PRD, the provisions of the critical areas ordinance would be enforced. However, there are ways for a standard subdivision to be developed using the minimum lot sizes. For example, half of some of the lots could be located in the critical areas and be protected with a native growth protection easement. From a legal standpoint, a native growth protection easement should provide as much protection to the critical area as a separate tract would. But in reality, if the property were developed as a PRD, the critical area could be protected through a separate tract. All property owners would have ownership of the tract, but none would own it for themselves. Staff has found that there is typically less likelihood that someone will throw their grass clippings or cut down trees, etc in a separate tract than they would on their own property that has a native growth protection easement designation. He concluded that the legal protection is the same but the practical protection is not.

Board Member Crim advised that the Board received two written comments from the public regarding the PRD ordinance. One was from Karen Burmanski and the other was from Gerald Steele, the Attorney for the Talbot Group.

Rich Demeroutis, 921 Pine Street, said the major issue he has with the PRD ordinance relates to open space and recreation for PRD developments. He referred to the project on Sixth and Bell, and said the project was originally going to be condominiums, but the developer decided to put in six individual structures instead. He used the walkways in between the buildings to meet his open space requirement. He recommended that the open space be separate from the thoroughfares between buildings. He noted that this is not as much of a concern for RS-8 zones as it is for multi-family zones.

Mr. Demeroutis said another concern is who would be the arbitrator of which trees and natural vegetation must stay and which can be removed. Who will enforce the requirements? He recalled that when the current ordinance was adopted by the City Council, Councilmember Miller suggested that the Council not wordsmith the document further. However, Mr. Demeroutis pointed out that without the additional wordsmithing, people are able to find loopholes. He thanked the Board for doing a good job of reviewing the PRD ordinance.

Roger Hertrich, 1020 Puget Drive, said that a PRD development is certainly different than a standard subdivision. A PRD is basically a bunch of variances put together in a package and is really a gift to a developer because he only has to do one process. Mr. Hertrich recalled that environmental factors were a major factor in the original PRD ordinance. He agreed that PRDs are an alternative form of development. However, density should not be the only factor in determining whether a PRD is a rezone or not. They should also consider whether or not the proposed PRD fits within the neighborhood and represents the feeling that you get from other residents in that neighborhood.

Mr. Hertrich said the residents of Edmonds have appreciated the ability to follow PRD applications through the process, and they believe the 7-member City Council, operating under very strict rules, should make the final decision. Edmonds has always been a town of citizen involvement. The whole process could be smoothed out so easily if the Board and staff had not decided to do everything they could to make sure PRDs are not explained as rezones. If they had not been concerned with that one element, the process would have been easier. It would be easier to leave the process the way it has been for so many years and avoid the court actions that have been discussed and the rules that have been laid down as a result of court cases. He expressed his opinion that the City Council is not so overloaded that they cannot be responsible for making the final decision on PRD applications. He suggested that if this one item were taken off the list of changes, there would be very little left for the Board to consider.

Mr. Hertrich said it appears that the development of PRDs today is based on trying to satisfy the GMA. Councilmember Wilson worked with the Planning Board as a staff member when the current PRD ordinance was considered. For some reason, it has been very difficult to change the ordinance because the staff cannot find a group of ordinances to satisfy the citizens of the City. He suggested that the new ordinance satisfy at least the first concern voiced by the citizens. The City Council should make the final decision.

Mr. Hertrich said he is still unclear as to the best way to deal with open space in R-6 and RM zones. If the width of the roadways is reduced in larger PRD projects, the overflow parking will go into the adjoining streets that are not part of the project. He also questioned where the RV parking would be located. He said that many PRDs in the County and in other jurisdictions have required the developers to provide parking and storage for recreational vehicles. They have also required recreational lots in large developments. He expressed his opinion that sometimes the developer has to give up a lot in order to provide recreational space, but the City does not have an overabundance of parks so they need to provide recreational space on site.

Mr. Hertrich questioned why the PRD concept is so dissatisfying to the general public. He pointed out that there are examples of previous PRDs that are completely out of the site of surrounding properties, and that is how a PRD should be designed. If a PRD can be seen from a single-family neighborhood, it cannot be considered similar to the general development pattern of the neighborhood. However, if the alteration were not visible, it would not have an impact on the existing neighborhoods.

Mr. Hertrich emphasized that the development and its relationship to the neighborhood is the key factor. The density idea of so many units per acre is not a good comparison of whether a PRD is a rezone or not. A rezone has to do with what you see, and not the exact numbers.

Stephen Michael Smith, Professional Planner, Lovell-Sauerland & Associates, 19400 – 44th Avenue West, Suite 200, Lynnwood, WA 98036, distributed a letter outlining his three observations on the proposed revisions.

Mr. Smith said he disagrees with Mr. Hertrich's characterization of a PRD as a comprehensive variance package. A variance is used in Edmonds to eliminate a situation that is not the applicant's doing. Variances can be obtained for preexisting situations where there is no way to put a house on an existing lot. Secondly, Mr. Smith pointed out that a variance does not require any public interest justification. PRDs, on the other hand, must meet the public interest criteria in order to be approved. For example, they could provide additional landscaping or sensitive areas protection in exchange for additional density. He added that numerous measures are provided throughout the PRD process that do not exist with conventional subdivision techniques. He concluded that to say a PRD is nothing but a variance package is slighting the PRD process.

Mr. Smith explained that in order for the public justification to occur such that a developer chooses the PRD process over a conventional subdivision process, the benefits have to justify the costs. A PRD process requires substantially more time and money for additional planning work, engineering work, recreational equipment, landscaping, and other special requirements. These all come as an additional expense to the developer under the guise of some kind of public benefit. He said that, in his opinion, in order for the PRD ordinance to be successful, it is important that they make sure there is some incentive for the developers to actually use it.

Next, Mr. Smith referred to the letter from staff describing the options for calculating density. Two of the three options would use a net density, and would not allow for any additional units in exchange for the additional requirements to a developer. Neither of these options would provide an incentive for a developer to go through the extensive review process and provide all of the added amenities. It appears that the goal of some is to create an ordinance that would not be used so that the status quo can be preserved. However, he said he would hope the Board is spending their time and energy to come up with an ordinance that would be used. If so, allowing some type of density bonus should be part of the ordinance.

Mr. Smith said he has had two of his projects go through the City's PRD review process, using the current ordinance that calculates density based on gross lot area and allows rounding to the nearest whole number. One parcel was a little more than two acres in size and the other was about an acre. Each of the projects was able to get an additional unit, which does not seem extreme based on the types of extra provisions that must be met. He suggested that the current method used for calculating the density in a PRD be retained. He also suggested that the City prepare some Beta testing and review some sample projects to determine what the net and gross calculations would provide on various sizes and shapes of projects. This would help them understand what the net result of the ordinance would be. Again, he emphasized that if the net gain to the developer is zero, it is not likely the ordinance will be used.

Mr. Smith referred to the proposed review process and said he has been before many hearing bodies over the past several years in Snohomish County. His experience is that the protections afforded to everyone are much greater using the Hearing Examiner as the hearing body rather than the City Council. He said that of the last three PRD decisions made by the City Council, two have been appealed to court. While he cannot guarantee this would be different if the Hearing Examiner made the decisions, the City Council has provided guidance that they do not want to be part of the process.

Mr. Smith referred to the opinion stated by the Attorney for the Talbot Park Estates that, based on a court case, PRDs are rezones, and the City Council cannot delegate the authority to approve rezones to the Hearing Examiner. However, Mr. Smith said the attorney failed to point out that the statute was revised in 1997, giving the City Council the authority to delegate rezone decisions to the Hearing Examiner. Whether a PRD is a rezone or not is irrelevant. The City Council has the authority to hand it to the Hearings Examiner for the final decision. He referred to the two excerpts from State Law (RCW 35A.63.170(1) and RCW 36.70.970), which clearly indicate that the Hearing Examiner can make these decisions. He concluded that trying to avoid categorization of PRDs as rezones is unnecessary and produces no benefit to the City or the PRD ordinance. He said he supports the review process outlined in the proposed amendment.

David Toyer, Master Builders Association of King and Snohomish County, 2155 – 112th Avenue Northeast, Bellevue, WA 98004, said the overriding question that needs to be answered is whether or not the City is willing to make the Growth Management Act (GMA) work. He explained that the GMA identifies 13 goals to provide a balance for preserving the environment and planning for where people are going to live and work. When the urban growth areas were created, 8.6 percent of the County was set aside to accommodate the anticipated urban growth. Unless the City wants to consider more multi-family development or smaller lot development standards, growth management is not going to work. The Talbot Group and their attorney, Gerald Steele, still continue to push on the issue relative to their large lots that do not comply with the GMA requirements for urban density.

Mr. Toyer reminded the Board of a decision by the Growth Hearings Board related to property in the Town of Woodway. This decision stated that a 20,000 square foot minimum zone is not allowed under GMA, yet the Talbot Group continues to argue the density and that development around the neighborhood needs to be in character with the large lot design. However, this is not legally possible now. He also referred to a Growth Hearings Board decision identified as Benaroya. In this decision, the Board ruled that the requirement to insure neighborhood vitality and character is neither a mandate nor excuse to freeze density at its current level. The Board further stated that increased densities are desirable in urban areas while recognizing that such growth can be done in a way that would encourage neighborhood vitality. They also mandated that a predictable and equitable process be established, and this supports the argument in favor of the Hearing Examiner being the final decision maker to depoliticize land use issues so the GMS is a fair process that will work.

Mr. Toyer said he agrees with Mr. Smith that the PRD ordinance must provide incentives to the developer for incurring all of the additional review process and amenities. He pointed out that this has been done successfully in other jurisdictions. He reminded the Board that the PRD ordinance is intended to be a tool available to increase the density while at the same time provide community amenities. However, an incentive must be present in order for the tool to be utilized. Rather than this being just a profit margin issue, developers are trying to build to what people are looking for in a home and its accessibility. Incurring design review for single-family development is not a requirement in most other jurisdictions in Snohomish County, and it can be expensive. If the requirements in the PRD ordinance are so prescriptive, they will end up with box style development, and he does not feel this is the direction the City wants to go.

In reviewing the proposed ordinance, Mr. Toyer pointed out the following issues:

- Section 20.35.040: Mr. Toyer said the opening paragraph is confusing as to which criteria must be satisfied.
- Section 20.35.040.A.1: Mr. Toyer pointed out that a lot of the proposals for buffering will add costs. The consumer will end up paying for this and there needs to be some incentive to spread the costs out amongst the houses.
- Section 20.35.040.B: Mr. Toyer inquired what the setback requirement for an average underlying zone would be. Mr. Bullock answered that it would be 25 feet. Mr. Toyer noted that the proposed ordinance would require a 25-foot buffer, but it does know specifically what the buffer must be. A PRD would build single-family homes next to single-family homes, which he feels is a compatible use. Therefore, there is no need for significantly greater buffers.
- Section 20.35.050: Mr. Toyer suggested that the incentives are not enough to make the PRD Ordinance a tool that will work. If there comes a time when the City must prove to the State that it can accommodate its growth targets, the City will have to show that they have taken reasonable measures to do so. Based on the proposed ordinance, it would be difficult for the City to defend itself.
- Section 20.35.050.D: Mr. Toyer said there appears to be two separate open space requirements. One would apply to all PRDs and the other would only apply to those that are more than five lots. He suggested that this section be divided into separate items.
- Section 20.35.060: Mr. Toyer pointed out that other types of single-family residential development does not have the same level of review. He said he is curious to see how they flush out the building design characteristics and limit design yet still be flexible.
- Section 20.35.080.A.2: Mr. Toyer questioned whether the pre-application meeting would be mandatory for all PRD's or only for those that have particular challenges.
- Section 20.35.080.A.4: Mr. Toyer suggested that the last sentence of the first paragraph should read, "Appeals of the Hearing Examiner decision shall be to Superior Court."

- Section 20.35.090.D.1.d: Mr. Toyer questioned how the City would gauge quality and who would be responsible for making that decision. Will the City develop a materials list or establish a standard for separation between plant types, etc.? He said more information needs to be provided to illustrate what quality will mean.

In conclusion, Mr. Toyer emphasized that it is important for the City to decide how to make the GMA work. They cannot choose whether they will comply or not. They must deal with the mandates of GMA. He said also strongly encouraged the City to allow a homeowners association to have ownership of the tracts. If it is required that the property is divided with equal interest amongst all home buyers, the development would not qualify for federal lending programs.

Before a new ordinance is adopted, Mr. Toyer encouraged the City staff to research the provisions more to see how well the provisions would actually work. He suggested that this could be done by working with the developers and consultants and Beta testing it against projects in the community that represent projects they want. This will help them identify what does and does not work before the ordinance is adopted.

Diane Azar, 9202 Talbot Road, P.O. Box 6006, said she represents the Talbot Group, which consists of citizens and property owners in Edmonds. The Talbot Group is asking the Board to work with them, not as an industry, but as citizens of Edmonds. She said that to permit a PRD to be constructed in a community is a privilege and applicants and builders are allowed to be exempt from many provisions of the subdivision ordinance. She said PRDs are subdivision, and their attorney correctly analyzed the courts decision on the issue. The Council, in turn, interpreted the ordinance to find that they should be making the final decision on PRDs. If the Hearing Examiner had been given the authority to make the final decision, the City Council would not have had the ability to deny the PRD on an appeal. She urged the Board to recommend that the City Council retain this authority. The citizens should be heard by their local representatives. While this may be a political issue, it is the City Council's job to make these decisions.

Ms. Azar recommended the following three important requirements that must be included in the ordinance:

- A PRD should be visually screened from surrounding large lot residential development by distance and natural features.
- Traffic from PRDs with more than three dwelling units must directly access a collector or arterial street.
- PRDs shall provide adequate overflow parking for residents, guests and others. The clustering necessitates increased parking, and there should be provisions above the requirements of a normal subdivision.

Ms. Azar read a letter written by Attorney, Gerald Steele, on behalf of The Talbot Group, dated January 21, 2003 into the record. (A copy of this letter was provided to each Board Members and is available to the public at the Planning and Development Services Office.) She thanked the Board for allowing her to go over the issues identified in the lengthy letter. The Talbot Group has spent too much time studying the PRD issue to not go over the letter.

THE PUBLIC PORTION OF THE HEARING WAS CLOSED AT 9:30 P.M. THE BOARD TOOK A TEN-MINUTE BREAK UNTIL 9:40 P.M.

Mr. Bullock pointed out that a good number of the comments made in the letter from Gerald Steele on behalf of The Talbot Group were related to comments the City Attorney, Scott Snyder, about what the ordinance allows. One case that was cited was a case review of the entire PRD ordinance. What the court referred to as the City Council and Hearing Examiner's responsibilities is completely different than what the current ordinance calls for. He emphasized that Mr. Snyder has reviewed the proposed ordinance and agrees that it would be defensible in court. In fact, a number of the proposed changes were recommendations from Mr. Snyder.

Mr. Bullock referred to some written questions he received from Board Member Young. He questioned why the City eliminated the criteria or statement found in the old ordinance that would require undevelopable property in order to use the PRD provision. Board Member Young clarified that the first PRD ordinance stated that PRDs were an alternative development tool for properties that had steep slopes or other challenging features.

Mr. Bullock said he was able to locate the original PRD ordinance in the City's archives. One general guideline and criteria that was included in the original ordinance was that the PRD would only apply to those properties where unusual

circumstances existed, making it difficult to develop using a standard subdivision. This was intended to include situations such as steep slopes, streams, ponds, habitat, etc. He said that when the Planning Board and staff talked about this issue in the years leading up to when the new ordinance was adopted, one thing they discussed was the fact that they feel they could get superior development through the use of a PRD as opposed to a standard subdivision. A PRD would require more design controls and opportunities to give direction to developers about what they want it to look like and how it can be compatible with the community. Standard subdivisions have no criteria to address these issues. The old ordinance also limited PRDs to projects that would create five or more lots. However, the remaining developable lots in Edmonds are generally small and would be subdivided into four or fewer lots. The intent of the new ordinance was to allow more projects to potentially use the PRD option because it would allow the City to have more control over the design.

Mr. Bullock said the second question Board Member Young presented was related to whether or not the State Law requires the City Council to make the final decision regarding a PRD. He explained that the reason subdivision applications require final approval from the City Council is that they usually require the City Council to accept dedications of roads. In Edmonds the preliminary review and approval of a subdivision application is done by the Hearing Examiner. The applicant must then prepare the application for final approval to meet the conditions identified by the Hearing Examiner. The final approval is done administratively by the City Council, who makes sure the conditions of the preliminary approval have been met and accepts any dedication that is part of the application. The City Council does not conduct a preliminary review and approval of a subdivision application. They only make sure the conditions identified by the Hearing Examiner have been met.

Board Member Young inquired if the City Council would have the ability to deny a subdivision application if it meets all of the conditions placed upon it by the Hearing Examiner. Mr. Bullock answered that it would be very difficult for the City Council to deny a formal plat at its final approval state because they are only reviewing the application to make sure the project has complied with the original conditions set by the Hearing Examiner. They do not have the ability to place new conditions on the final approval. He further explained that the PRD ordinance would follow the exact same process. If a PRD and a subdivision are applied for together, they would have the exact same review process. They would both go to the Hearing Examiner for a preliminary review of the plat or PRD. The Hearing Examiner would place any conditions necessary on it and the developer would make the changes in order to comply. Then the application would go before the City Council for final approval.

Board Member Young said his understanding from the City Attorney is that the sequence of events proposed in the ordinance is prescribed by law. He questioned if the Board has the option of recommending any other process. Board Member Crim said the Board can make a recommendation to the City Council on what they think the best process is. Both he and Board Member Cassutt pointed out that when meeting with the City Council, they got the distinct impression that the City Council does not want to make the final decision on PRD applications.

Mr. Bullock said the way the ordinance is drafted, the Hearing Examiner would issue the preliminary approval for the PRD. Assuming his decision is not appealed, there is a secondary application made later for the final plat approval, which is an administerial review by the City Council to make sure the project is in compliance with the preliminary conditions.

Board Member Crim asked the Board Members to share their thoughts on the density calculation issue. Board Member Dewhirst recommended that the Board consider Option 3, which makes it a uniform factor. Board Member Crim agreed that the best options would be either Option 1 or Option 3.

Board Member Freeman said she is in favor of Option 3. However, she expressed her concern about the last sentence, which states that it could penalize landowners who don't need much land for roads or easements. She did not feel it is appropriate to penalize anyone. Perhaps they could change this to "15 percent or less if the applicant can demonstrate that it can be done with less."

Mr. Bullock said this is difficult to predict the amount of property needed for roads and easements. The moment it is left open for the applicants to try and show a design that uses less space, they could find situations where developers are coming up with pretty wild surveys to create subdivisions that have little or no road. He agreed that they don't want to penalize if they do not have to, and there are circumstances where someone might not have to dedicate a road, but he does not know what the perfect solution should be.

BOARD MEMBER DEWHIRST MOVED THAT THE BOARD RECOMMEND THE CITY COUNCIL ADOPT OPTION 3 AS THE METHOD OF CALCULATING DENSITY. THIS WOULD TREAT DENSITY AS A NET DENSITY, BUT APPLY A UNIFORM FACTOR TO ACCOUNT FOR ROADS AND ACCESS EASEMENTS. BOARD MEMBER CASSUTT SECONDED THE MOTION. THE MOTION CARRIED 6-1, WITH BOARD MEMBER YOUNG VOTING IN OPPOSITION.

Board Member Dewhirst suggested that the Commission has done their duty in reviewing the PRD Ordinance as set forth by the City Council. While the ordinance is still a little rough and could use some more work, he suggested that they should forward it to the City Council with the following four amendments:

- **Section 20.35.050.D:** Add a sentence at the end of this section as follows: "The homeowners association shall be the sole owner of all common open space and critical areas within the PRD."
- **Section 20.35.060.B.6.a:** Change the word "should" to "shall."
- **Section 20.35.080.A.2:** Change to read, "In any single-family residential zone, the applicant shall host a public pre-application neighborhood meeting to discuss and receive public comment on the conceptual proposal.
- **Section 20.35.090.D.1.d:** Delete the words "or quality."

BOARD MEMBER DEWHIRST MOVED THAT THE BOARD FORWARD THE PROPOSED ORDINANCE (FILE NO. CDC-02-221) TO THE CITY COUNCIL WITH THE AMENDMENTS AS NOTED ABOVE. BOARD MEMBER CASSUTT SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

ADMINISTRATIVE REPORTS

Mr. Bullock referred the Board to the information provided in their packets regarding growth targets. He noted that this is scheduled on the agenda for discussion on February 12. He encouraged the Board to review this information and bring it to the February 12 meeting for further discussion. A public hearing has been tentatively scheduled for February 26, 2003.

PLANNING BOARD CHAIR COMMENTS

Board Member Crim had no comments to provide during this portion of the meeting.

PLANNING BOARD MEMBER COMMENTS

Board Members Dewhirst, Crim, Hopkins and Zhan indicated that they would not be present at the next meeting.

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE BOARD, THE MEETING WAS ADJOURNED AT 10:10 P.M.

APPROVED