

PLANNING BOARD MINUTES May 14, 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

Jim Crim, Chair
James Young, Vice Chair
Virginia Cassutt
Janice Freeman
John Dewhirst
Cary Guenther
Ronald Hopkins
Judith Works

STAFF PRESENT

Rob Chave, Planning Division Manager
Duane Bowman, Community Services Director
Karin Noyes, Recorder

READING/APPROVAL OF MINUTES

BOARD MEMBER FREEMAN MOVED TO APPROVE THE MINUTES OF APRIL 23, 2003 AS CORRECTED. BOARD MEMBER YOUNG SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

ANNOUNCEMENT OF AGENDA

There were no changes made to the proposed agenda.

AUDIENCE COMMENTS

No one in the audience expressed a desire to address the Board during this portion of the agenda.

PUBLIC HEARING ON REGULATIONS CONCERNING AMATEUR RADIO ANTENNAS (FILE NO. CDC-03-4)

Mr. Chave recalled that the Board has discussed the amateur radio antenna regulations for the past few months. The issue was brought to the City's attention by a citizen who felt that requiring a conditional use permit was excessive and could potentially prohibit someone from exercising their right to operate a Ham radio. He advised that staff and the City Attorney have researched the FCC regulations related to amateur radio antennas, and at the advise of the City Attorney, the Board has been considering possible changes to the Code.

Mr. Chave said the City Attorney has advised that amateur radio antennas have been granted special status by the FCC. They are valued from a national standpoint as an issue of free speech. He said that while the City has historically regulated television antennas and satellite dishes, amateur radio antennas should be considered separately since they have stronger rights based on the FCC regulations.

Mr. Chave recalled that at the last meeting the Board proposed that the existing City code be changed, and they directed the staff to draft a proposal that would allow amateur radio antennas that are equivalent or smaller in size to what the City already permits outright for television antennas and satellite dishes. A conditional use permit for an amateur radio antenna would only be required if it would exceed the limitations identified in the code. The draft code language would allow amateur radio antennas that are 1 meter or less in width and mounted on a mast that is 12 feet or less in height as an outright permitted use. Amateur radio antennas that are mounted on towers would be permitted outright as long as they do not exceed the height limit for the zone. If the size or height of the antenna would exceed the limitations, a conditional use permit would be required. However, the draft proposal indicates that the conditional use permit application would be reviewed by the staff rather than the Hearing Examiner. It would also involve a public notification process.

Mr. Chave advised that the existing code for satellite dishes includes a technological impracticality provision, and staff tried to retain that provision when they inserted the language related to amateur radio antennas. The City Attorney has advised that it is important to retain this provision for situations where strict application of the provisions of the zoning code would make it impossible for an amateur radio antenna to receive or send a usable signal upon any lot in the City. This provision is also important in the event that the property owner believes that alternatives exist which are less burdensome to adjacent property owners. These situations can be taken before the Hearing Examiner, who can grant a waiver based on specific findings.

Mr. Chave said the City Attorney has recommended that the technological impracticality provision should be amended to become an interactive process. If a property owner does not feel it is practical to comply with the conditions imposed by staff as part of the conditional use permit, they could call for a negotiation or compromise process. Staff could coordinate discussions between the concerned neighbors and the particular party wanting to place the antenna in an attempt to resolve disputes in an amicable way. The City Attorney has stressed that while the City can attempt to minimize the impact of an amateur radio antenna, they cannot prevent someone from placing one on their property. The City Attorney has indicated that he would draft language for the Board's consideration to implement this concept.

Matthew Weston, 23003 – 97th Avenue West, said he is an amateur radio operator and has an antenna on his property. He noted that there is a Washington State Bill 56.97 currently proposed that would address amateur radio antennas. He said that, relatively speaking, most amateur radio antennas are larger than 1 meter in diameter. For local communications, the higher the antenna, the better. Mr. Weston encouraged the Board to consider the needs of the amateur radio operators. He noted that, just recently, some of these operators were involved in a life-saving rescue that would not have been possible if the antennas were limited to such small sizes.

Mr. Chave explained that, according to the proposed language, a property owner would still be able to install a larger antenna or have an antenna placed at a greater height with a conditional use permit. The idea is that if a conditional use permit were required for the larger or higher antennas, the proponents and neighbors would be encouraged to negotiate the best potential siting to minimize the impacts. He reminded Mr. Weston that the language would also include a technological impracticality provision that would prevent the City from prohibiting a property owner from placing an antenna on his/her property.

Board Member Hopkins asked that Mr. Weston elaborate on the appropriateness of requiring amateur radio antennas that are greater than 1 meter in width to obtain a conditional use permit. Mr. Weston answered that he does not know of many amateur radio antennas that are less than 1 meter in diameter. Most are larger, and he suggested that a radius of 25 feet would probably be more practical.

John Waldburger, 327 Second Avenue North, clarified that the numbers identified in the draft proposal for diameter came up as the Board tried to apply what is acceptable and allowed for television antennas and satellite dishes. While the 1-meter limitation was related to dishes and not antennas, this is not clear in the proposed language. He explained that the mast height of 12 feet and the 1-meter width limitation for dishes was put in place when congress was lobbied by the television and broadcast stations in an effort to prevent cities from making codes that would prohibit their equipment. While these regulations do not affect amateur radio antennas, the same logic should be applied. He suggested that dish style antennas should be limited to 1-meter in size unless a conditional use permit is obtained. However, no limitation should be placed on the width of an antenna. If the antenna can be mounted on a mast that is no greater than 12 feet in height, the diameter of the antenna would be limited to whatever the mast could support.

Mr. Waldburger noted that in 1985 the FCC approved resolution PRB-1, which allowed amateur radio operators to have antennas and prevented local jurisdictions from prohibiting them. He suggested that requiring a property owner to pay \$1,400 for a permit to install an antenna is, in effect, prohibiting their placement. He felt this would be in violation of the FCC ruling. He said the City should create some type of regulation that would allow a property owner to put up a small antenna without requiring a costly conditional use permit. The television antenna and satellite dish requirements should also be applied to amateur radio antennas.

To clarify for Board Member Hopkins, Mr. Waldburger explained that most of the amateur radio antennas are shaped like television antennas, which are far in excess of 1 meter in diameter. He again stated his belief that the City should adopt regulations for amateur radio antennas that are similar to those currently in place for television satellite dishes and antennas. If the antenna could be supported by a mast that is no greater than 12 feet in height, there would be no need for the City to specify the size and shape of the antenna. However, he agreed that dishes should be limited to 1 meter in diameter.

Sylvia Hochman, 300 Second Avenue North, said that she lives in the condominium building that is across from Mr. Waldburger's house. She noted that the Edmonds Community Development Code states that the general purpose of residential zones is to preserve for itself and its neighbors the following values: privacy, views and freedom from the visual pollution. She said that Mr. Waldburger's antenna cuts right across the skyline and is an intrusion on her view. She said she does not understand whether or not the proposed language would allow the neighbors to be involved in the process or if they would be at the mercy of Mr. Waldburger to make adjustments. She said it appears that he is intent on putting something bigger than he already has, and she wondered why the entire antenna could not be placed below the roof line. The neighbors should not be inconvenienced just because one person has the desire to have a Ham Radio setup. She questioned what rights the neighbors would have. She noted that the waterfront views are a significant City asset.

Mr. Chave explained that the Board is attempting to figure out which types and sizes of antennas should be permitted as outright uses and which types should require a conditional use process that would include neighborhood involvement. He cautioned, however, that even if a conditional use permit were required, the neighbors would be fairly limited as to what they could do because the FCC has ruled that individuals have a right to have amateur radio antennas. By requiring a conditional use permit, the neighbors could be involved in an attempt to negotiate an alternative location on the property, but the City would be fairly limited as to what restrictions they could apply. For instance, he said that requiring that the antenna be placed below the roofline would probably not be allowed. The City would also not be able to require a property owner to build an expensive tower somewhere else on his/her property as an alternative to putting the antenna on the roof. But the City would likely have the ability to require the property owner to put the antenna somewhere else on the roof to minimize the impact to neighbors.

Bruce Fowler, 7471 – 174th Street Southwest, said he has only lived in Edmonds for nine months. He pointed out that the booms on a normal television antenna are between 8 and 10 feet in diameter. He said he does not think the City should restrict someone from putting an amateur radio antenna that is similar in size and style.

Mr. Weston pointed out that in Mr. Waldburger's neighborhood there is a 65-foot tower with several antennas right off of Carry Road near the waterfront.

THE PUBLIC PORTION OF THE HEARING WAS CLOSED.

Board Member Works inquired if the proposed ordinance would require mediation between the property owners. Mr. Chave explained that if a conditional use permit were required for the placement of an antenna, public input would be solicited. Using this process, it is possible for the City to try and seek some discussion and negotiation between the applicant and the neighbors. However, the issue regarding technological impracticality is different. If a property owner feels that the requirements and conditions required by the City are impractical, the issue could be forwarded to the Hearing Examiner, and he would initiate some kind of negotiation process. With either process, some discussion between the property owner and the neighbors would take place. Again, he cautioned that both the City staff and the Hearing Examiner would be limited as to what conditions they could place on the property owner because the FCC ruling prevents the City from prohibiting amateur radio antennas.

APPROVED

Board Member Dewhirst noted that no information has been brought forward regarding the possibility of an amateur radio antenna interfering with radio and television uses. Mr. Chave answered that the FCC regulations and the electrical codes cover this issue.

Board Member Hopkins said he still feels that a two part regulation appears to be the best option, especially if the outcome is going to be determined by the FCC regulations. He said that, regardless of the process, smaller amateur radio antennas should be subject to a simpler process. He agreed that the draft language limiting the antenna to 1-meter in diameter unless a conditional use permit is obtained should be changed. He concluded that the comments from the public continue to argue in favor of a process that would be simpler for smaller situations, and he said agrees.

Board Member Crim agreed that there should be a distinction between the larger antennas and the smaller antennas, and the code language should make this clear. Antennas that are mounted on a mast that is 12 feet high or less with no additional support should be an outright permitted use. Antennas that are larger should require a conditional use permit. Dishes that are greater than 1 meter in diameter should also require a conditional use permit.

Board Member Freeman questioned whether or not the regulations should identify how close to the property line a ground mounted antenna could be located. Antennas should not be allowed to overhang onto adjacent properties. The Board agreed that the entire width of the antenna should be accommodated within the setbacks of the property.

Board Member Crim agreed with the City Attorney that the regulations related to amateur radio antennas should include its own provision related to technological impracticality. Mr. Chave said the existing language is related more to satellite television dishes and antennas. Under the FCC rules, amateur radio antennas have a great deal more protection than television satellite antennas and dishes. That is why the City Attorney is recommending that a negotiation process be included. However, he cautioned that while negotiations could take place, the City would have limited means to influence the outcome.

Board Member Dewhirst said he is uncomfortable with the definition for antenna, which appears to “make one size fit all.” Board Member Crim noted that, as proposed, there would be two separate sections. One would be related to television antennas and dishes and the other to amateur radio antennas. As recommended by the City Attorney, Section D.6 would be reinstated and a similar technological impracticality provision would be inserted in Section E related to amateur radio antennas.

The Board directed the staff to revise the draft language to indicate that amateur radio antennas that are mounted on a mast of up to 12 feet in height should be permitted as an outright use, with no limitation on the diameter. Antennas on towers would be permitted outright if they do not exceed the height limit for the zone. Dishes would be limited to 1-meter in diameter. Any antenna or dish that exceeds the limitations described above would require a conditional use permit.

Mr. Dewhirst said it is important to emphasize that the City’s hands are tied by the FCC regulations. The City staff and the Planning Board is trying to make the best of a situation that citizens might not agree with.

Mr. Chave indicated that the revised draft language would be available for the Board’s review at the next meeting. At that time, the Board could make a decision as to whether or not another public hearing should be conducted.

Board Member Young inquired if there is any way the Board could get some insight from the City Attorney as to the maximum impact the antenna could have before it crosses over into the threshold of not being able to be regulated by the City. As long as the City accommodates what the City Attorney has indicated they must allow, anything beyond that should require a reasonably priced conditional use permit. He said it is important that the Board be sensitive to the placement of amateur radio antennas and their impact to the neighbors. The City should be at least cognizant of the view value that exists between neighboring properties.

APPROVED

Board Member Crim noted that the Board is trying to make the regulations somewhat consistent with what currently exists for television satellite dishes and antennas. Mr. Chave agreed, but noted that the FCC rules are much more stringent for amateur radio antennas.

Board Member Freeman recalled that the Board discussed the option of reviewing the amateur radio antenna regulations on a yearly basis since technology changes so quickly. As technology improves, it may be possible to reduce the impact to neighboring properties. The Board agreed that an annual review would be part of the Board's recommendation to the City Council.

PUBLIC HEARING ON PROPOSED AMENDMENTS REGARDING THE REGULATION OF HEDGES (FILE NO. CDC-03-01)

Mr. Bowman recalled that at a previous meeting the Board directed him to prepare proposed amendments to the Edmonds Community Development Code that would take the City out of the business of regulating hedges. The Board agreed to present this draft language at a public hearing to solicit public testimony. He provided an overhead illustrating the proposed changes that would be necessary to implement deregulation of hedges. The proposed amendments would remove the definition of hedge from the code altogether, and all references to hedges would be deleted.

Mr. Bowman briefly reviewed that in 1989 the City's Hearing Examiner rendered a key decision regarding the definition of a hedge. In his decision the Hearing Examiner decided that if a tree was not low growing, it could not be constituted as a hedge. He went on to recommend that the City review the definition of "hedge" because of its vagueness. The basis for his decision stemmed from the definition of a hedge found in ECDC 21.40.020. It states "Hedge means a fence or boundary formed by a dense row of shrubs or **low** trees." Mr. Bowman said the City has used the 1989 Hearing Examiner decision as the basis for interpreting issues related to hedges. Last year the City Council held two hearings on appeals of Hearing Examiner decisions regarding hedges and upheld the past practice of applying the interpretation of the 1989 ruling. However, they also directed the Planning Board to study the issue and make a recommendation for their consideration.

Mr. Bowman provided pictures on the overhead projector to illustrate one of the cases that recently went before the Council on appeal. He explained that in this particular case a neighboring property owner planted a mixture of plant materials that grew to create a barrier between two properties. The Hearing Examiner determined that the plantings did not constitute a hedge because the plantings were not considered low growing trees, with the exception of some pyramidalis. He did require that the pyramidalis be trimmed so that it did not exceed six feet in height.

Mr. Bowman referred to letters the Board received from citizens regarding the hedge issue. A number of citizens would like the City to continue to regulate hedges and fences, mostly to protect existing views. However, he pointed out that the City Attorney has emphasized that there is no inherent right to a view across someone else's property. Therefore, the City must decide whether or not they want to be involved in the regulation of hedges.

Mr. Bowman said it is very difficult to define a hedge. He recalled that at the last meeting he proposed a definition that could work. He said his position, as a regulator, is that the City either needs to do something with the definition so that it can be enforced or they need to get out of the business altogether. The current definition doesn't work from an enforcement standpoint. Because of this, the City gets pulled into legal battles to defend the City's position. The City Council is right in saying that they need to make a decision to either get out of the business of regulating hedges or make the definition more specific. He noted that most cities do not regulate hedges, and information was provided for the few that do. He said that Hunts Point has a specific process that deals with not only hedges, but trees, as well. Their process allows for a complainant to pay for the burden of enforcement after mediation has been attempted. The issue can ultimately go before the City Council for a decision.

Mr. Bowman said that if the City decides to continue to regulate hedges, another issue that must be considered is whether or not the regulations should apply only to hedges along the property line or to hedges located on the inner property. In some cases, a hedge located in the center of property could have just as much impact to someone's view as a hedge located along the property line.

APPROVED

Mr. Bowman said another issue that must be considered is related to enforcement. In order to effectively regulate and enforce hedges, it is important to remember that when code enforcement cases are brought before the Hearing Examiner, the burden of proof is not on the property owner to prove they are not in violation of the code. The burden of proof is on the City. If the City approves a new regulation for hedges, the staff needs to be able to verify those hedges that are found in violation of the code. This can be done one of two ways. The most defensible, but also the most costly, method is to inventory the City to create a baseline for each property so that there is documentation of the existing conditions at the time the ordinance was passed. The Hearing Examiner could compare the existing conditions with the inventory to make a decision. Another method would be to rely on an expert such as an arborist who could examine the plant materials and estimate the age of each planting. The problem is that experts can be challenged by other experts. In addition, there is a significant portion of the City that was annexed in the 90's from Snohomish County, which has no regulations for hedges. Therefore, there are a number of existing conditions in this area. He indicated that an inventory would cost the City between \$100,000 and \$150,000 to complete. Numerous photographs and evidence would have to be collected to document the existing conditions. On top of that, the City would have to be prepared to spend money defending their position.

Mr. Bowman said the question has been raised about whether or not it is appropriate to spend public money for private benefit. Staff does not feel that spending the City's financial resources for what are, typically, neighborhood disputes would be an appropriate use of public funds, even though some additional property taxes could be generated by view property. There are other avenues that could be used by property owners to reduce the impacts associated with hedges and plantings. His experience with the citizens of Edmonds is that most can work together to resolve the problems. But there have been some situations where people are not very amenable to working together. He questioned whether it is appropriate for the City to get caught in the middle of these disputes.

Mr. Bowman recommended that the City no longer regulate hedges and that the appropriate modifications be made to the code. He referred to the proposed code amendments he prepared that would remove hedge regulations from the code. He advised that the Board is seeking input from the public regarding the draft proposal. Based on the comments provided during the hearing, the Board could provide direction to the staff to prepare an appropriate code amendment. The current definition has to be amended. The Board can either recommend strengthening the existing regulations or they can recommend that the City get out of the business of regulating hedges altogether.

Board Member Young inquired what proportion of the code enforcement officer's time is spent taking care of issues related hedges. Mr. Bowman said that there are currently seven cases relating to hedges that have not been resolved, and these cases consume a significant amount of time on behalf of the staff, the City Attorney, the Hearing Examiner and the City Council.

Bruce Fowler, 7471 – 174th Street Southwest, said he has noticed there is quite a lot of hostility between the neighbors in his area related to hedges. He said he has noticed that the property at the northwest corner of the intersection of 174th Street Southwest and 73rd Avenue has a hedge that is at least ten feet high. It is definitely a hedge and overhangs on the City pavement. He said he believes the City has more right-of-way than what the paving is in this area. The City usually requires fences to be a maximum of 3 to 3½ feet to allow a view around the corner. The height of the hedge in this location forces a complete stop and someone is going to eventually have an accident. He said he does not believe the City should relinquish their right to regulate hedges along public rights-of-way. However, he has mixed emotions about regulating hedges between private properties.

Joan Swift, 18520 Sound View Place, said she has lived in her home since 1973. She clarified that the City does control hedges that encroach into the public rights-of-way preventing people from seeing around corners at intersections. The City staff is recommending that this be the City's only responsibility in regards to hedges. However, she suggested that it is important that they keep in mind the quality of life and safety of the individual citizens living in the homes affected by hedges. She said that when she purchased her home in 1973, the lot to the south was virtually bare for the first 40 feet adjacent to her property line. This allowed her property to receive a lot of sunlight. Now the neighbors have planted 13 Douglas Firs and Cedar Trees that are now about 50 feet in height. These trees were planted only 22 feet from her home, and the branches grow out over her property line. The trees have grown so tall that they can no longer be trimmed back from her property. In addition, the sunlight has been blocked so significantly that her deck is covered with slime and is not safe to walk on. She has been advised to pressure wash it every three weeks.

Mr. Swift referred to photographs she provided to the City in January illustrating the trees. She said these photographs were taken three years ago, so the trees are taller now. She suggested that the City consider safety and sunlight factors as well as view because trees can start to become dangerous during winter storms.

Ms. Swift said she could assist the City in writing a definition for hedge. She said there are a lot of definitions available to use as examples. The Oxford English Dictionary defines a hedge as something that creates a barrier. If a tree was planted as a hedge when it was low and then becomes tall, it does not stop being a hedge. If it was a hedge when it was planted, it is still a hedge when it grows taller.

Ms. Swift informed the Commission that Clyde Hill has a good hedge ordinance that does include trees. She said it is important to define the word "hedge" and then draft an ordinance that is enforceable only on a complaint basis. If all parties want the hedge, they should be allowed to maintain it as long as no one complains. The complainant should also have to pay a set fee that is large enough so that people are not encouraged to submit frivolous complaints. The complainant should be required to post money with the City to cover the costs incurred by the City (not including court costs.) The two parties should be required to meet and discuss the problem with the code enforcement officer. If this does not work out, the City could require that both sides go to a County mediator, which she believes the County provides free of charge. The next step would be to go before the Hearing Examiner if the County mediator cannot help the parties resolve their issues. If the complainant does not like the Hearing Examiner's decision, he/she can take the issue to the City Council for a final decision.

Ms. Swift said that when she purchased her home, she became one of the charter members of the Edmonds Arts Commission and was given the responsibility of writing an ordinance to create the first Arts Commission. She said it is not all that difficult to write an ordinance and anything worthwhile is worth the effort. She said she does not want to have neighbors fighting with neighbors.

Regarding the issue of view, Ms. Swift said it is just as important that trees and hedges not block view as it is that radio antennas not block view. Because of the shade from the trees her neighbor planted, she cannot plant anything on her side of the property line, and her view of the ferry dock is gone. However, she emphasized that she misses the sun more than her view.

Linda Perdomo, 821 Bell Street, said that she is a native of Edmonds, and she recognizes that is becoming a rare breed. She said one of the things that makes it "an Edmonds kind of day" is that the City was and should remain a City of good neighbors and a City of respect for others. The citizens of the City cherish their views and nature. When property is bought up left and right at very large sums of money, it is clear that view is valued by many people. What has made life difficult is that the good neighborliness and common courtesy that was the foundation of people in the town is starting to erode. Although it would be good to have a mediation process to deal with these issues, the reason there are complaints is that neighbors do not talk to each other anymore.

Ms. Perdomo said that her neighbor planted cedar trees along the only place that she had a view of the Sound. As the trees have grown over the years, her view has been blocked. These trees were planted for no other reason than to block her view. She said the intent of the current hedge regulations makes sense, and would allow people to enjoy the view available from their property. They also help to promote neighborliness and respect for the neighborhood. If the City were to get out of the business of regulating hedges, the neighborhood property values would decrease. She said she does not agree that the City should eliminate their ability to regulate hedges. However, she does agree that the process needs to be complaint based and that the code should be rewritten to include any plantings that are planted within 100 yards and block the view of adjacent properties. Neighbors should have the ability to file a complaint with the City. The City could then attempt to meet with the neighbors to ferret out the issues. However, mediation is not helpful if there is not a good code to use as the basis. If there were no regulations for hedges, the neighbors would have no ability to resolve the problem.

Ms. Perdomo referred to the proposal laid out by Ms. Swift, and said she finds that it makes a lot of sense. The complainant should be required to file a fee along with his/her complaint, but they should not have to fund the entire process. If mediation is not successful, then the side that is not willing to work out the issue should be required to pay a fee for the process to go before the Hearing Examiner.

APPROVED

Ms. Perdomo suggested that there should be some type of grandfather provision included in the regulations to address the issue of establishing a baseline. New plantings should be subject to the new regulations. This would help establish parameters for where to start.

Ms. Perdomo said she is having a hard time understanding why enforcement of the intent of the code is so difficult. She said she understands the burden of proof concern, but there are ways to address this. The complainant would have information and history to support their issue. Then the burden of proof could be shifted to the other side to show why they should not be required to take down or limit the height of whatever they have planted.

Ms. Perdomo concluded that while she agrees that both parties should work together to resolve issues on their own, the City needs to offer assistance to keep the feuds and ill will between neighbors from growing.

Joan Swift suggested that the new ordinance set a date, such as 1975, as a starting point. Anything planted before that time would be allowed to remain. Anything planted after that date would be subject to the new regulations. This would eliminate tall trees such as Douglas Fir, Cedar and Hemlocks that grow to block views.

Ms. Cassutt pointed out that there are many definitions for view. Some people consider a view to be the mountains. Others consider it to be the trees or the Sound. If the City decides to continue to regulate hedges, they should probably come up with a definition for "view." Board Member Crim agreed, but added that regulating view corridors is difficult and with the current budget situation, he did not feel it would be wise to take that project on now.

Board Member Freeman said she feels views are very important to the citizens of Edmonds. Her concern is related to the costs associated with having a hedge ordinance at a time when the City is facing financial difficulty. But she said she would hate to see the door closed forever to trying to come to some accommodation on the hedge and tree situation.

Mr. Bowman summarized that the Board received some good comments from the public. However, some would be difficult to administer. He noted that different people have different perspectives of view. He said that Ms. Perdomo raised a good question about whether view blockage would devalue properties. He agreed that if a property's view is eliminated the property would need to be reassessed. If the Board decides they want the City to continue to regulate hedges, they must decide if they want to do so only for property lines or for the entire property. He explained that someone could strategically plant trees in the center of a property that could end up obstructing an adjacent property owner's view. This type of planting would not be considered a hedge.

Mr. Bowman said another good issue was brought forth by Ms. Swift related to sunlight. He said he would like to discuss this issue with the City Attorney. While case law is clear that a property owner has no right to view over another person's property, it is possible that sunlight could be addressed. He said he still believes that regulating hedges would be extremely difficult, and he does not believe the grandfather clause or picking a date, as suggested by Ms. Swift, would be affective. Plant materials are considered real property. If the City were to select a grandfather date, the regulations would most likely be challenged. Typically, when new regulations are passed, whatever exists on the property on that date becomes vested. In Ms. Perdomo's case, the trees were planted under the current definition and are not considered a hedge. However, this would be considered a preexisting condition.

Board Member Crim inquired if it would be possible to look at the issue in a two-step process. They could do something immediately to take care of the cases that are now in front of them. Some kind of moratorium on hedge enforcement could be established while the Board explores options. Mr. Bowman said that would be possible, but staff would continue to use the City Council's affirmation of the Hearing Examiner's decision of 1989. If the plantings in question are not considered low growing, they could not be classified as a hedge. The City would continue to enforce the current Hearing Examiner precedence.

Board Member Freeman said her understanding is that a person would be allowed to trim branches from their neighbors trees if they overlap onto their property. She questioned what could be done in situations where it is impossible to trim a tree without going onto the adjacent property. Mr. Bowman answered that property owners own the air space above their

property. In Ms. Swift's situation, the trees are so tall and the topography so steep that it would require permission from the tree's owner to go on his property to trim the trees. He said this would have to be negotiated between the two property owners.

Board Member Young recalled that in previous Board discussions regarding the hedge regulations it has been noted that financing the enforcement of the hedge regulations might be in the City's best interest or cost neutral by virtue of the fact that if views are preserved, property values could be increased resulting in more revenue for the City. He inquired if that is true. Mr. Bowman said that since property taxation rates can only rise by one percent per year, there would not be significant revenue generated immediately. However, if a view were obstructed, the property assessment would be lowered.

Mr. Bowman encouraged the Board to think about what the community values. One significant community value is view. But it is difficult to determine exactly what view is and how they can regulate and quantify it. Board Member Young questioned whether it is the City's job to protect views.

Board Member Young clarified Mr. Fowler's concern by stating that trees and hedges that obstruct the right-of-way would continue to be regulated by the code. Public safety would take precedence. The proposed amendment would not usurp this power. Mr. Bowman added that the City does regulate things that impede the site distance view at intersections.

Board Member Dewhirst said the only time he has encountered a municipality dealing with views it has been the view from public lands. He said he has never encountered enforcement of private views. He said there are whole slew of things, such as light, safety, etc. that could be considered. But he suggested that these could be lumped together and some sort of arbitration process could be established. Once the City gets the two parties to arbitration, they could back out of the issue and let the property owners take responsibility. Mr. Bowman said he would explore this option with the City Attorney because there are some legal issues that must be considered. He said that in the majority of the cases, this process would be effective to address some of the common problems.

Board Member Guenther said one of the main concerns expressed by the public were related to obstruction of view. However, it is important for the Board to consider that only a small number of property owners in the City have a view of the Sound. He questioned if the Board should try to craft code language to meet the needs of just a small portion of the City residents or if they should be more concerned about other issues. He suggested that perhaps blockage of sunlight or safety and health issues should be of greater concern. Mr. Bowman agreed, and suggested that he be allowed to discuss this issue further with the City Attorney.

At the request of Board Member Works, Mr. Bowman reviewed the definition for hedge that he proposed at the Board's last meeting. It read as follows: "Hedge means any group of shrubs, bushes or trees planted in a line or in groups that forms a compact, dense living barrier that shields or separates from view." He suggested that if this definition were used, the words "that shields or separates from view" should be eliminated. He said that this definition would work in most cases. He challenged the Board Members to drive around the City and see how many hedges they see that are six feet in height or less.

REVIEW OF COMPREHENSIVE PLAN AMENDMENTS FOR 2003

Mr. Chave said he did not prepare any extensive information on this item for tonight's discussion. He reported that staff is proceeding to work on the maps. They are finding that it is not very hard to define the boundaries, but some interesting policy questions have arisen regarding transitions.

REVIEW OF EXTENDED AGENDA

The Board reviewed that a public hearing regarding Hearing Examiner decisions is scheduled on the May 28, 2003 agenda. Staff indicated that they would provide materials for the public and the Board prior to that date. Mr. Chave added that input from the WCIA would also be available before that date. The next meeting would also include continued discussion related to amateur radio antennas and hedge regulations.

APPROVED

PLANNING BOARD CHAIR COMMENTS

Board Member Crim provided no additional comments during this portion of the meeting.

PLANNING BOARD MEMBER COMMENTS

None of the Board Members provided comments during this portion of the meeting.

THE MEETING WAS ADJOURNED AT 9:12 P.M.

APPROVED