

PLANNING BOARD MINUTES

May 28, 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 YOUNG MOVED TO APPROVE THE MINUTES OF MAY 14, 2003 AS CORRECTED. BOARD MEMBER FREEMAN SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

ANNOUNCEMENT OF AGENDA

Item 6 was placed before Item 5 on the agenda.

REQUESTS FROM THE AUDIENCE

Roger Hertrich, 1020 Puget Drive, said that the purpose of the City codes is to protect the citizens of Edmonds from the negative impacts of development. Most citizens try to comply with the code requirements, and they look to the City to provide protection for them. They do not mind when their planning bodies take a considerable amount of time to come with changes and solutions, as long as they are making an effort to protect the citizens. He urged the Board not to rush their decisions on code amendments that are important to the public. When codes have existed for long periods of time, the citizens grow to have certain expectations, and the City will find disappointment amongst the community if changes are made without their awareness.

Mr. Hertrich asked that the Commission take time to carefully consider whether or not they really want to get rid of the hedge regulations. He said that it is inappropriate to get rid of this regulation just because the staff cannot come up with answers. The staff and Planning Board have the job of protecting the citizens. He said he hopes they do not throw out the hedge regulations. If they do, he suggested that the public could get lazy and allow their hedges to grow to heights that end up blocking someone else's view. This would not happen if the public knew there was an ordinance that they must abide by.

Mr. Hertrich referred to the public advertisement that was provided regarding the public hearing for File Number CDC-03-60. The advertisement announces that the Board would be holding a public hearing on potential amendments to the ECDC

making the decisions of the Hearing Examiner on permit applications final with appeal to Superior Court, and clarifying the rules for reconsideration of Hearing Examiner decisions. He suggested that this description is not very informative, and a person would not get a real good idea of what was being proposed unless they were able to obtain a copy of the staff report that explained the issue in greater detail. He suggested that this item is another issue the Board needs to take their time with and think about how they can protect the public.

Ray Martin, 18704 – 94th Avenue West, agreed with Mr. Hertrich that the Board should not rush into any decisions. He recalled that in December a few years ago, City Council Member Miller said the Council must bite the bullet and approve the PRD ordinance. That same PRD ordinance is still in litigation now. Mr. Martin suggested that there is some confusion as to what the subject of the public hearing is, and he suggested that the Board should start by asking themselves some questions, such as who proposed the amendments to ECDC 21.40.020 and 17.30.000 and why. He questioned if the reason the staff is proposing the changes is to allow the department head to have more power. He said the Board must ask themselves whether the proposed amendments would benefit to the community or the developers. They must also ask whether or not the community supports the amendments. He pointed out that Page 2 of the staff report emphasizes that City officials must be careful to follow the adopted regulations in regard to the citizen’s wishes. He reminded the Commission that they live in a democracy, and the City Council is chosen as the citizens’ democratic representatives. He said it is important for the Board to also ask themselves how much it would cost the City to have a judicial hearing as opposed to one man (hearing examiner) making the decisions.

Mr. Martin said he has been through this process with the City previously, and he would prefer to talk with the City Council rather than the Hearing Examiner. There are seven good minds on the Council, and they can give his concepts good consideration. On the other hand, one Hearing Examiner may or may not be perfectly well-qualified. He felt there would be more likelihood that issues would have to be taken to Superior Court, and this would cost the City more money.

Karen Biermanski, 8129 Frederick Place, said she does not believe the citizens of Edmonds would be well served if they were required to hire legal counsel in order to take issues of concern to Superior Court—especially when they have an elected City Council to represent them. She said she would rather appeal to the City Council and referring all appeals to Superior Court would be abdicating the Council’s responsibility. She urged the Board to decide to have the City Council make the final decision.

Board Member Crim suggested that the public reserve their comments related to File Number CDC-03-1 until the public hearing is opened.

PUBLIC HEARING ON FILE NUMBER CDC-03-60 – POTENTIAL AMENDMENTS TO THE ECDC MAKING THE DECISIONS OF THE HEARING EXAMINER ON PERMIT APPLICATIONS FINAL WITH APPEAL TO SUPERIOR COURT, AND CLARIFYING THE RULES FOR CONSIDERATION OF HEARING EXAMINER DECISIONS

Mr. Chave said this item was actually referred to the Board by the City Council. During the Council’s retreat in February they discussed their role in land use hearings and felt it was important to review the subject again. They asked that the Board review the issue, solicit public input and provide a recommendation for their consideration. The Planning Board has held a discussion session on the issue, and staff provided some ideas, both pro and con, about why the City Council should make the final decisions versus the Hearing Examiner with no follow up appeal to the City Council. He explained that, right now, the City has a number of different processes for decisions. Those decided at the staff level allow appeals to the Hearing Examiner with no further appeal opportunity except to Superior Court. He said most of the Hearing Examiner decisions are also appealable to the City Council.

Mr. Chave referred to the summary provided by the staff of the current Council decisions and appeals. He advised that applications for conditional use permits, variances, shoreline permits, draft environmental impact statements, preliminary plats for formal subdivisions, consolidated permits and review of approved permits are all Hearing Examiner decisions with an opportunity for a closed record appeal to the City Council. Design review applications are considered by the Architectural Design Board, with a closed record appeal to the City Council. Planned Residential Development applications

are reviewed by the Hearing Examiner. He then makes a recommendation to the City Council, who makes the final decision. Rezone applications are reviewed by the Planning Board. They make a recommendation to the City Council, who makes the final decision. He emphasized that all of the appeals before the City Council are closed record, and no new testimony or information can be entered into the record. The City Council only reviews what has already been entered into the record. They must follow all of the code requirements and their discretion is limited.

Mr. Chave reminded the Board that the City Council is seeking feedback from the Board as to whether they should participate in quasi-judicial decisions, or if the decision maker should be the Hearing Examiner with an appeal directly to Superior Court. He said that, at this time, the Board is seeking public testimony, both pro and con. The Board has also been reviewing the thoughts put together by staff. However, he emphasized that the Board has not made a decision at this point. He advised that the Washington Cities Insurance Authority (WCIA) would be available at the Board's June 11th meeting. He suggested that this meeting be conducted in a workshop format, taking up the majority of the meeting time. The WCIA representatives would discuss their experience with quasi-judicial matters and the different review processes. He said staff recommends the Board hold a public hearing tonight, continue the Board deliberations and then hold a workshop with the WCIA at the next meeting.

Board Member Young referred to Attachment 1, which provides a good summary of 11 categories of quasi-judicial decisions and appeals. It appears that all but a few of them allow an appeal to the City Council. He questioned if the Board would be discussing a blanket change to get the City Council out of the appeal business in its entirety or if they would be discussing a recommendation that appeals to some quasi-judicial matters would go before the City Council, while others would not. He questioned whether this change has to be an all or nothing amendment or if the Board could exercise their discretion by giving the City Council the final appeal on some items but not others.

Board Member Crim said the Board could make whatever recommendation they want to the City Council. If they choose to eliminate the City Council from the process entirely, they could do so. Or they could decide to "pick and choose." Mr. Chave agreed, but he cautioned that the more complicated the review process becomes, the more difficult it would be to sort out.

Board Member Hopkins inquired about how many appeals per year are forwarded to the City Council for review. Mr. Chave answered that the actual number of appeals per year that go before the City Council is about 12. Board Member Hopkins asked how many of the twelve applications that go before the City Council end up in Superior Court. Mr. Chave answered that probably three or four of the 12 cases end up going to Superior Court.

Board Member Dewhirst emphasized Mr. Chave's comment that when hearing appeals, the City Council is limited to the rules and laws established for the City codes. Mr. Chave explained that when the Hearing Examiner reviews a case, he looks at the conditions and reviews the pertinent codes, and that is what he bases his decision upon. The City Council is bound by the exact rules and codes. When the Hearing Examiner makes a decision, he must cite the specific conditions and findings upon which his decision was based. When the City Council reviews appeals of Hearing Examiner decisions, they must use the same findings and conditions. He added that the City Council is further bound in closed record reviews because they cannot accept any new testimony.

Mr. Dewhirst inquired if appeals before the Superior Court would allow new testimony, or if they have to be based on the established record. Mr. Chave answered that, in general, the courts would have to rely on the record that is established at the City level, but he is not sure whether additional public testimony would be allowed or not. He suggested that this question be forwarded to the City Attorney for a response. Mr. Bowman said his understanding is that appeals to Superior Court would be based on the record established at the lower level. Appellants would be allowed to make arguments on information that has already been entered into the record, but they would not be allowed to introduce new evidence.

Board Member Young asked that the information the Board requested from the City Attorney be available to the Board Members prior to their next workshop regarding the issue. He said that it is important for the Board to have a clear understanding as to whether or not the Superior Court would allow additional public testimony and accept new testimony during the appeal process. Mr. Chave agreed, and said that either the City Attorney or the representative from the WCIA would address this issue at the next meeting.

Mr. Chave said it is important for the Board to know that the fee for appeals to the City Council is now set at \$205, plus the cost of a transcript. In contrast, there is a \$110 filing fee for appealing to Superior Court. While it is usually necessary for an appellant to hire an attorney to take an issue to Superior Court, the City is finding that many also hire attorneys to argue their appeals before the City Council, as well.

Board Member Dewhirst requested that Mr. Chave expand on the rules the City Council Members must follow in closed record appeals. Mr. Chave explained that City Council Members are not allowed to talk to any of their constituents about issues that could possibly come before them on appeal. He said the City Council Members are, typically, experienced enough that they recognize issues that are related to development projects and could possibly end up before the Council on appeal. They know that they have to avoid talking about these issues. The only thing a City Council Member can do at this time is direct their constituents to the City staff to have their questions and concerns addressed.

Mr. Chave referred the Board to the memorandum from the City Attorney dated October 2002. In his memorandum, the City Attorney advised that, in this day and age, land use decisions are very prescribed and the rules and codes are fairly well laid out and much more specific than they ever have been before. These rules and codes allow the process to be predictable, and an applicant can know that if he/she follows the codes and rules set forth by the City, their application will be approved. It would be difficult for the City to turn down an application that meets all of the code requirements. He said the City Attorney's main point was that it is difficult for appellants to prevail against land use decisions made on projects that meet all of the code requirements. He said it is important to realize that developers of projects in Edmonds have, typically, studied the code requirements at length, and they have expert consultants who have significant knowledge of the situation. For this reason, the City Attorney had suggested that the real fight should be at the time the rules and codes are made and not during the decision making process. In other words, he believes that the codes are the most important place for public involvement.

Board Member Crim summarized that the City Attorney is suggesting that citizen concerns can best be addressed during legislative processes. He reminded the Board that they forwarded more detailed design guidelines to the City Council more than nine months ago, yet they have still not been adopted. Once they are adopted, they will provide a much more well-defined design review process than what currently exists.

Board Member Dewhirst pointed out that, at the County level, the only appeal for most land use issues is directly to the Growth Management Hearings Board. There is no opportunity to appeal these decisions to Superior Court or to the County Council. Mr. Chave explained that the Growth Management Hearing Board's main jurisdiction has to do with comprehensive plans and growth policies. They also can look at situations to make sure there is consistency between regulations and comprehensive plans, but their role does not typically fall into project review actions. However, if a project proponent finds there is inconsistency in the local plans or a body is not applying their own growth policies to a particular project, the Growth Management Hearings Board can become involved. But they, generally, do not review projects to determine if a City has correctly applied their own policies. He briefly noted that, in the case of the Town of Woodway, the Growth Management Hearings Board found that their policies were not consistent with the Growth Management Act, and that is why the project was turned down.

Peter Beck referred to previous Board comments that perhaps the City Council is limited in their decision making abilities because they do not understand the code requirements as well as the Hearing Examiner does. However, Mr. Beck suggested that the Hearing Examiner is not infallible. He currently works for several different municipalities, and it is possible that he could get the rules and codes mixed up. Mr. Beck shared a situation in which he was involved in a Hearing Examiner decision that was determined by the City Council to be inaccurate. He said the Hearing Examiner can only provide one set of eyes and ears, while the City Council has many members who are elected to represent the best interest of the citizens of Edmonds. He said he believes it is the City Council's responsibility, as elected officials, to make these decisions. He said he is opposed to the City Council passing this responsibility off on the Hearing Examiner.

Ray Martin, 18704 – 94th Avenue West, said it seems the Board needs to deal from the top of the deck and be a bit more straight forward. If they hold a public hearing now and then have a closed meeting with the WCIA in private, the public would be out of the picture. Board Member Crim emphasized that the workshop presentation by the WCIA would be at an open public meeting, however, the public would not be invited to provide testimony. Mr. Martin said it is important that the

Board allow the citizens to provide input after they have all of the information available. Board Member Crim explained that the purpose of the public hearing is to collect information from the public regarding the issue at hand. At the next meeting, the Board intends to discuss the issue with the WCIA and the City Attorney, then a proposed ordinance will be drafted by the staff. Once the draft ordinance is available, another public hearing on the specific ordinance would likely be held. Then the Board would make a recommendation to the City Council. The City Council would hold another public hearing on the issue before making a final decision.

Mr. Martin said he is still confused about the exact action that is being proposed.

Fennis Tupper, 711 Daley Street, said he returned to Edmonds in 1980 and has lived in his present home ever since. He said he was involved in the original development of the Edmonds Community Development Code. However, over the last ten years there have been many changes to the code. For instance, Chapter 15 (Purposes) was eliminated and the individual purposes were placed throughout the various zoning ordinance laws. He said that while he agrees that a lot has come about as a result of the Growth Management Act, he is concerned about the proposal that is being considered by the Board at this time—particularly the staff evidence listing a summary of City Council decisions and appeals. While the summary, itself, is correct, Mr. Tupper referred to RCW 35.63.130 which sets up the Hearing Examiner system in the State of Washington. He summarized that Section C states that the Hearing Examiner cannot make decisions on rezones. He can only make recommendations. He said the problem with allowing some land use decisions, and particularly rezones, to be heard by the Hearing Examiner is that they involve changes to the density, dimension or bulk standards. He again emphasized that the Hearing Examiner cannot make decisions related to rezone applications because it would be against State law. He concluded that if the Hearing Examiner is allowed to make the final decision on rezone and PRD applications, the City could find themselves in a real financial and legal dilemma.

Roger Hertrich, 1020 Puget Drive, said that he has been involved in issues related to City government for the past 30 years. He said he has been involved in many appeals to the City Council on various actions, including an Architectural Design Board decision and a Planned Residential Development project. He has also appealed City Council decisions that he feels are inaccurate to the Superior Court. When faced with having to hire an attorney, he found the whole process was shocking and difficult. He said he found that it is a big issue for a citizen to take an appeal to the Superior Court. He said he has also appealed staff decisions, which is one of the most difficult things to do because the “staff is always right.” However, he said he knows that the staff also makes errors in interpreting the code requirements.

Mr. Hertrich referred to one appeal he made to the Hearing Examiner regarding the staff’s interpretation of wall graphics. In this case, the Hearing Examiner found with staff, and he had to go through the reconsideration process, which is ineffective. He suggested that if the Board wants to make a change that will improve the review process, they should review the reconsideration process. Until there are good rules for reconsideration of a Hearing Examiner decision, there will be no opportunity for an appellant to make his/her case the second time around. When his appeal was reconsidered, he received a small change in the Hearing Examiner’s decision, but it did not affect the outcome very much, so he appealed to the City Council. The City Council reviewed the issue with a different interpretation because a lot of things in the Code are not clearly defined. He said that unless the City has a total list of definitions to cover everything in the code, they cannot leave it up to the staff to make all of the interpretations. There needs to be an opportunity for the citizens to appeal to the City Council, without having to spend a lot of money on attorney fees. He said that, in his case, the City Council found his argument to be correct, and this decision was made without having to tie up the court system. He noted that there is a long wait to get items on a Superior Court agenda, and both the developer and the appellant would suffer.

Mr. Hertrich said the City has existed for a long time with appeals to the City Council. Last year, there were only twelve appeals filed, and only about four of these were not resolved and had to go to Superior Court. He said there does not appear to be a problem now. It seems like they are hearing that the City Council does not want to hear PRD appeals and be put on the spot for tough decisions. However, on the PRD application they reviewed at their last meeting, they were able to quickly make a decision.

Mr. Hertrich emphasized that while the City Council is bound by the same rules as the court, they can interpret things differently because they know the City of Edmonds. In court, the first thing that happens is that the appellant’s standing is

challenged. The appellant must prove that he/she has a right to bring the issue to court. However, most people feel they should have the ability to appeal a sign downtown no matter where they live.

Mr. Hertrich said he believes the whole concept that is being considered by the Board is wrong for the people living in Edmonds. They have participated in their government processes for many years, and now it appears that they are being left out of involvement as a result of the Growth Management Act requirements. He referred to a recent Hearing Examiner hearing at which the tape recording malfunctioned and the meeting had to be held again. While the applicant was able to be present to get his comments on record again, the citizens who testified at the first hearing were unable to attend. If the change in the review process had already been approved, their only option would be to appeal the Hearing Examiner's decision to the Superior Court. Now they can appeal the decision to the City Council if they attended the first meeting.

Mr. Hertrich said that he has found errors and misinterpretations of the code in many situations. For instance, there is a rule in the BC zone that condos can be on the second floor, but the ground floor must be used for commercial purposes. Staff recently interpreted an application that allowed the second floor to be called the ground floor. He said he has appealed the staff's interpretation, and it is possible that the City will recognize their error and reconsider their decision. If not, the issue would end up in Superior Court if the review process were changed. As the process currently exists, the issue would be sent to the City Council for consideration.

Mr. Hertrich urged the Board to keep the decision making process at the City level. He concluded by stating that "if it isn't broken, don't fix it."

Diane Azar, 8202 Talbot Road, said that the citizens present at the hearing have also been involved in the legislative process of changing the code provisions as recommended by the City Attorney. She said that no one wants to have to take an issue to Superior Court, and getting together the money that is necessary to do so is often difficult. It is punitive and very expensive and time consuming, as well. The developer is the one who makes the money from projects, yet the citizens volunteer their time because they have a vision for what is important to Edmonds. They do not go through the process to make a profit. She said the City Council Members were elected by the citizens to represent their best interest, while the Hearing Examiner was hired by the staff. She referred to Mr. Beck's statement that the City Council can provide more eyes. If a law is correct, everyone will come to the same decision, whether it is the City Council, the citizens, the developer or the Hearing Examiner. If the laws are not so arbitrary, there would be no disputes and citizens would not have to go before the City Council with appeals. But they should maintain this right rather than being required to take their appeals to the Superior Court. She said she knows of individuals who have gone to Superior Court, including herself, and it is not fun.

Ms. Azar said she believes that land use decisions should be predictable, and the City Council should be given the opportunity to represent the citizens of Edmonds. She recalled that during the October PRD hearings, many citizens spoke and provided the same feedback. It is important to the citizens that their elected officials represent them. She said the citizens have expressed support for the interim City Council ordinance that required that the City Council, rather than the Hearing Examiner, make the final decision on PRD's. She said this is what public testimony is all about. It is a pleasure to see people come to public hearings because they believe that their opinions are valued, but she noted that there are not a lot of people present before the Board because they do not feel that their comments are valued. Having public hearings before the City Council would put everyone on a level playing field, and she urged the Board to keep the interim ordinance in place. The Hearing Examiner could make a recommendation, but the City Council should make the final decision.

THE PUBLIC PORTION OF THE HEARING WAS CLOSED.

Board Member Hopkins said it seems sort of paradox that regulatory reform has made land use decisions so predictable. It makes depoliticalization seem like a desirable goal but it creates frustration because the public can only affect the outcome at the legislative part of the process and many people do not have the time or the knowledge to get involved significantly at that point.

Board Member Hopkins said he would like staff to provide more information about the reconsideration process for appeals to a Hearing Examiner decision. Mr. Chave explained that there is a small section in the City's code related to the reconsideration process, but very little guidance is provided. He said the timeframe for reconsideration is almost concurrent

with the appeal period. Therefore, it is difficult to know whether it would be better to seek a reconsideration of a Hearing Examiner decision or file an appeal. If a person chooses to request a reconsideration, the appeal period would be expired by the time the issue is reexamined by the Hearing Examiner and there would be no opportunity to appeal the decision. He suggested that it would be appropriate for the Board to discuss the reconsideration process—particularly the option of expanding the appeal period in order to accommodate the reconsideration process.

Board Member Works asked that staff provide further comment regarding the reference Mr. Tupper made to RCW 35.63.130. She recalled that Mr. Tupper's comments were related to whether or not it is legal for the Hearing Examiner to make the final decision on rezones and PRD's. Mr. Chave explained that right now, the Hearing Examiner reviews PRD applications and makes a recommendation to the City Council. The Planning Board reviews rezone applications and makes a recommendation to the City Council. Another option the Board could consider is to have the Hearing Examiner make the final decision on most land use issues, and the only appeal opportunity would be to Superior Court. The Board could also choose different processes depending upon the type of land use action. However, he emphasized that staff is not proposing that the Board consider any changes to the rezone application review process. Rezone applications would still be reviewed by the Planning Board, and they would forward their recommendation to the City Council for a final decision. The City Council has discussed the PRD review process at length—particularly whether or not a PRD should be considered a rezone action. They have specifically asked the Board to provide a recommendation regarding the PRD review process.

Board Member Crim said it is important for the Board to remember that the reason they are considering the issue of the design review process is because the majority of the City Council Members have requested that they do so. The City Council is very interested in this issue. Because there are many factors that need to be considered, it is likely that it will take the Board a substantial amount of time to formulate their recommendation. He recommended that the citizens who are interested in the issue obtain a copy of the packet of material that was provided to each Board member as background information. This packet includes the written opinion of the City Attorney.

Board Member Young inquired if it would be possible for the Board to continue the public hearing to the next meeting. He said Mr. Hertrich's comments regarding the published notices were well taken. If there is no prohibition against extending the public hearing, he said he would certainly be willing to do so to allow the public to comment again after the WCIA has had an opportunity to make a presentation to the Board.

Mr. Chave noted that the public portion of the hearing was already closed by the Board Chair. If the Board decides they want to hold another public hearing, they would probably need to provide some draft code language to advertise the public hearing to the public. He said it would probably be better to advertise another public hearing than to continue the one they conducted tonight. He noted that if the public hearing were continued to a date certain, the City would not be required to re-advertise.

Board Member Young agreed that the document prepared by the staff and the City Attorney brings out pertinent information, and the citizens should read it. He said he has no objection to taking additional testimony after the work session that is scheduled for the next meeting. When Board Member Young suggested that staff advertise the ten different categories of land use applications, Mr. Chave suggested that perhaps this would not be a good use of their advertising money since the meeting has been identified as a work session and no public comment would be accepted. He suggested that the money would be better spent on advertising for a future public hearing related to the issue. At that time, they could identify specific code sections and provide draft language and examples of recent Hearing Examiner decisions.

The Board agreed that a work session regarding the design review process would be scheduled for June 11. They agreed that no public hearing would be held at that meeting. They also agreed that after the work session, they would discuss the opportunity for another public hearing. They indicated their desire to learn more from the WCIA regarding how many jurisdictions in the State use a review system where appeals go directly to Superior Court and how many use an appeal process that allows the City Council to make the final decision.

**BRIEFING ON FINDINGS AND RECOMMENDATIONS OF THE DOWNTOWN PARKING STUDY
CONDUCTED BY LANDSMAN TRANSPORTATION PLANNING**

APPROVED

Mr. Bullock provided a brief status report on the parking study that was commissioned by the City Council for the downtown area. He said staff anticipates that the City Council would accept the final report and remand the issue back to the Board for review and to come up with some possible code amendments related to parking. He said the consultants for the project has completed a number of tasks. They reviewed the parking inventory that was done by the City during the summer of 2000, which identified the on and off-street parking that is available in the downtown. After reviewing the study, the consultants completed and analyzed a turn over rate study by checking the license plates of all the cars on each block to see how long each stayed in a parking stall. This study helped identify whether the cars were owned by customers or employees of the downtown businesses. The consultants also conducted a number of stakeholder interviews by contacting property owners, developers, City Council Members, and other interested individuals to talk about the current parking situation. In addition, the consultants completed a peer review of other jurisdictions with similar downtowns and compared the City's current parking code with others. The final report should be available within the next week and will be forwarded to the City Council.

Mr. Bullock noted the following points that were brought out in the study:

- Downtown Edmonds has more than enough parking.
- The majority of the cars parking in Edmonds are parking for an hour or less, but about 13 percent of the cars parked along the pedestrian corridor stay for seven hours or more, and that is what the City needs to change.
- The City issued about 350 employee parking permits last year. These were given to the employees of the downtown businesses, and allowed them the ability to park more than three hours in the three-hour parking zones that are located off of the pedestrian corridors. There are about 500 spaces available for this use.
- The parking ratio for all the commercial spaces in the downtown area combined is just over one stall for every 500 square feet of commercial space, which is a flat generic parking ratio regardless of the use. The current code has a very high parking requirement for high-density uses such as restaurants, but a lower requirement for less intense uses. About 80 percent of the stockholders have indicated that they do not believe there is a parking problem in the downtown area, and they recommend that the parking ratio be changed to a flat amount regardless of the type of use.
- The City's current strategy for issuing employee parking permits is for up to 50 percent of a business' employees. Because there is more space available than people using it, the report suggests that the City offer parking passes for 100 percent of these employees.
- The report recommends that the City consider increasing the employee parking permit fee to bring in more revenue to assist in some of the other recommendations made in the report.
- The report suggests that the pedestrian corridors be reserved for customer parking only, and they need to raise the parking fee for employees that violate the regulations and park in these areas. This would encourage them to park in the areas identified for employee parking.
- The consultant recommends that the City increase or improve their signage for the general public to clearly identify where the available parking is located, such as the public safety building.
- One of the strongest recommendations is that the City ensure that there is adequate enforcement of the parking regulations to make the program work. If there is no enforcement, people will quickly learn that there are no consequences for their actions, and they will park wherever it is convenient.
- Since it has always been difficult for the City to project the types of commercial uses that would be located in the downtown area, it has also been difficult to identify the number of required parking stalls. The consultant recommends that there be a flat parking requirement for the downtown area. This could be similar to the one stall per 500 square feet average that currently exists. When new development is proposed, the flat rate parking standard would be applied.
- The report recommends that the parking requirement for existing commercial buildings in the downtown area be considered adequate for any type of use.
- The in-lieu-of parking fee should be eliminated altogether. While the consultant recommends that the money available in this fund be used for parking related activities such as leasing land for parking, paying for a parking management officer, etc. He pointed out that it is unlikely that the City would ever bring in enough money from the in-lieu-of parking fund to construct a parking structure. Therefore, the actual purpose for establishing the fund would never be realized.

Mr. Bullock again stated that the final report would be available within the next week, and a copy of it will be forwarded to each of the City Council and Board Members. Once the document is accepted by the City Council as the final report, it will be remanded to the Board for review and consideration of code amendments to implement the recommendations in the report.

Board Member Guenther said that when he works on development projects, he is required by many jurisdictions to provide a TDM Plan to identify alternative parking options for employees. He inquired if it would be possible for the City to come up with a requirement for employee parking that could be applied City-wide rather than building-by-building. Mr. Bullock answered that parking management needs in the downtown area are different than the needs along Highway 99 where there are large lots with parking off street. In the downtown area, a large amount of the parking is provided on the street. He said that a lot of the recommendations in the report are targeted at strategies for improving both customer and employee parking.

Board Member Guenther inquired if the report would provide any recommendations for improving alternative means of transportation for employees. Mr. Bullock said that since the study is related to parking, it does not address transit issues. He added that in order for the Transfer Demand Management (TDM) requirements to apply, the employee base must be large enough to fall under the jurisdiction of that law. The downtown area does not. Board Member Guenther suggested that there must be a way to apply some kind of plan for employee parking for the downtown area businesses as a group. Mr. Bullock answered that the City's Transportation Plan references all of the community transit routes. In the downtown area there is a fairly good system of public transportation. While it could be improved, staff believes this will happen as the downtown area grows economically. However, the purpose of the parking study was to address parking issues, not transit issues.

Board Member Dewhirst inquired if the parking ratio recommended in the report of one stall for every 500 square feet of space would apply to residential development, as well. Mr. Chave clarified that this ratio would only apply to commercial development. The parking ratio for residential development in the downtown area would remain at one stall per unit, and information collected by staff indicates that this would be sufficient because of the other transportation options available, as well.

Board Member Freeman inquired regarding the boundaries of the area that was included in the study. Mr. Bullock said the study area includes all the BC zone, as well as a portion of the RM zone. He said that maps would be provided in the report to clearly identify the boundaries of the study area.

Board Member Cassutt asked how the City staff plans to make sure that the recommendations identified in the study are implemented. Mr. Bullock answered that staff would be recommending some code amendments for the Board's consideration that would implement the recommendations identified in the study. They would also provide some recommendations for enforcement of the new code requirements.

CONTINUED DISCUSSION ON PROPOSED AMENDMENTS TO ECDC CHAPTER 21.40.020 AND 17.30.000 REGARDING THE REGULATION OF HEDGES (FILE NUMBER CDC-03-1)

Mr. Bowman recalled that after the last public hearing regarding the hedge regulations, the Board directed him to review the impact of hedges on solar access. He said the Revised Code of Washington (RCW) allows cities to regulate the impacts to solar access, but most communities do not. He said that the City of Kent has a very complex process for regulating solar access. However, Mr. Bowman said he believes that solar access is a separate issue than what is being discussed by the Board related to the regulation of hedges. Regulating solar access would require an entirely different code amendment process. Mr. Bowman said he also discussed the issue of solar access with the City Attorney, who pointed out that a number of factors would have to be considered such as the orientation and location of the hedge.

Mr. Bowman referred to Mr. Hertrich's comment that the staff is recommending that the City get out of the business of regulating hedges because they can't come up with code language that would be enforceable. He reminded the Board that he has repeatedly stated that staff would be willing to come up with draft code language for the Board's consideration, if that is their desire. If they want the staff to continue to regulate hedges, they need to give them the tools to do so because the current definition is extremely difficult to administer and is not well written for a code enforcement process. He explained

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that the Board has the option of either strengthening the definition (examples have been given) or making the decision that the City should not be in the position of regulating hedges. The staff's recommendation is that the City should move away from regulating hedges because of limited staff resources and the difficulty of coming up with regulations that address every situation. But if the Board decides to recommend that the City continue to regulate hedges, the staff would be willing to help them come up with a new definition. In addition, the Board must decide where on the property they want to regulate hedges—only in the setback areas or anywhere on the property.

Mr. Bowman recalled that a lot of good testimony was provided at the public hearing, as well as in writing. The Board needs to deliberate and decide which way they feel the City should go, bearing in mind that the City Council will make the final decision after considering the Board's recommendation.

Board Member Crim said it is important that the Board establish sufficient record to send forward to the City Council to clearly identify the rationale for their recommendation. Therefore, the minutes from their deliberation will be very important. He said there is no questions that most of the Board members would like to continue to regulate hedges, but the practical problem is related to the cost and manpower associated with enforcement.

Board Member Guenther noted that most of the public testimony provided at the public hearing was related to view impacts associated with hedges. However, the protection of views is a private issue that must be dealt with between the neighbors because the City cannot regulate view. The reasons for continuing to regulate hedges must be related to the public's health, safety and welfare. As far as he can see, hedges are not inherently dangerous.

Mr. Bowman said it is important for the Board to consider all of the aspects associated with the issue of hedges. He said the driving force behind the current regulations goes back to 1956 when the City decided that they wanted to regulate hedges similar to fences. It was determined that anything that screens off one property from another should be allowed to be no higher than six feet. The City of Edmonds has regulated hedges ever since that time in one form or another. He noted that if the Board decides they want to regulate hedges similar to fences, they should keep in mind that trellises are allowed to be up to eight feet in height, and perhaps it would be appropriate to allow hedges to do the same. Hedges within the side and rear yard setbacks could be regulated the same as a fence. Hedges within the front setback could be required to meet the site distance requirements. However, this type of regulation would only be possible if the City has a clear definition for hedge.

In regards to enforcement, Mr. Bowman said this could be done on a complaint basis, with the City hiring an expert to come in and analyze the offending vegetation to determine its age. Or they could do an inventory of all properties, which would be much more costly. He referred to the Hunts Point ordinance as an example of an ordinance that uses the process of mitigation that requires the neighbors to try and work out the problem before bringing the issue to the City. Mr. Bowman recalled that some citizens suggested that the City should provide mediation services to help property owners work out issues related to hedges and views. He said the City does not currently offer a mediation program, but they refer individuals to a mediation service.

Mr. Bowman said that many comments were made by the public that views contribute to the ambiance of the City, and that views should be considered as part of the character of the community. However, staff does not believe that this argument would be sufficient to support the City's decision to regulate hedges based on views.

Board Member Freeman pointed out that the Hearing Examiner has gone on record stating that residents in the bowl area are sensitive to view protection. Therefore, she said that since there are height restrictions for fences, there should also be a height limitation for vegetation that is located along the boundary of a property. She concluded that hedges perform the same function as a fence. Mr. Bowman said that the City has attempted to regulate the height of hedges since 1956, but this has been difficult because the existing definition of hedge is ambiguous. He noted that the Hearing Examiner's decision of 1989 set the landmark for the interpretation that has been consistently applied by staff since that time. Board Member Freeman agreed that a better definition of the term "hedge" would be needed, and she suggested that the one provided a few weeks ago by staff would be adequate.

Board Member Hopkins summarized that much of the public testimony has been related to view protection and not hedges per say. This fact, along with the staff's investigation about the impact hedges can have on sunlight leads him to believe that

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in order to address the issue adequately, the City would have to regulate all vegetation and not just hedges. He said he does not believe this would be feasible. Mr. Bowman agreed. He pointed out that a person could plant a tree in the middle of his/her property that could grow to sufficient height to either block view or sunlight from an adjacent property.

Mr. Bowman suggested that because the City Council's original charge was that the Board review the regulation of hedges, they should focus their efforts on that issue. He pointed out that in 1989 the Hearing Examiner recommended that the City take steps to resolve the ambiguity found in their hedge regulations, but this has not been done yet. As he pointed out to the City Council, Mr. Bowman said that if the Board recommends that the definition of hedge be strengthened and given more clarity, staff could enforce the regulations. But they cannot enforce the hedge regulations effectively as they currently exist.

Mr. Bowman also emphasized that it would be difficult to draft regulations to address every situation. As an example, he referred to a situation on 220th Street where a gentlemen planted a row of fir trees in his front yard to screen himself off from the busy street. He questioned if the Board feels it would be appropriate to regulate these trees, as well. Board Member Freeman said these situations should only be regulated on a complaint basis. Mr. Bowman agreed, but said the problem is that while the adjacent property owners might not have a problem with the trees when planted, future adjacent property owners might. Since the trees would be counter to the code requirements, the property owner would be required to remove the trees if someone complains.

Board Member Freeman suggested that if the regulations only apply to hedges that are located along the property line, many of these problems could be avoided.

Board Member Crim suggested that the Board conduct a straw vote to determine the direction they would like to go with the hedge regulations. Board Members Dewhirst, Hopkins, Guenther, Crim and Cassutt indicated that they would be in favor of the City getting out of the business of regulating hedges altogether. Board Members Freeman, Works and Young indicated that they would be in favor of attempting to come up with draft language that would allow the City to continue to regulate hedges. Board Member Freeman suggested that before the Board decides to get out of the business of regulating hedges, they should at least make an attempt to come up with some draft language.

Board Member Crim inquired how much time it would take the staff to draft ordinance language for the Board's consideration that would tighten the definition of hedge. Mr. Bowman said that staff could provide draft language for the Board to consider, but it probably would not be available until the end of August. The Board agreed to allow staff to create some draft language for their consideration that would address the following:

- Only hedges within the setback area would be regulated by the City.
- Enforcement would be done on a complaint basis.
- If there is an argument about how old vegetation is, an expert would be hired.
- The complainant would be responsible to pay for the cost of the review.
- The definition of hedge that was provided previously by staff would be used in the draft language, with the deletion of the phrase "that shields or separates from view."

Board Member Dewhirst expressed his opposition to the staff spending significant time to create draft language to regulate hedges. He said he would rather the staff spend their available time focusing on the redevelopment of Highway 99.

Board Member Crim said he feels it is important that the Board at least make an attempt to come up with workable regulations for hedges since eliminating the regulations would leave a lot of people with no where else to turn. However, he emphasized that while this would not be the desirable solution, it might be the reality. The Board agreed.

REVIEW OF EXTENDED AGENDA

Mr. Chave referred the Board to the additional letter they received regarding amateur radio antennas. He said that this letter would be added to the official record. He also noted that the City Attorney would be providing more information, as requested by the Board, at a later date.

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Mr. Chave reviewed the extended agenda. He noted that a work session related to the process for reviewing land use applications is scheduled for June 11, which would include a presentation by the Washington Cities Insurance Authority (WCIA). A public hearing on a rezone application is scheduled for June 25, along with a quarterly report on the wireless facilities regulations as requested by the City Council. At the July 9 meeting, staff hopes to have the City Attorney's information regarding amateur radio antennas available for the Board's review. This agenda will also include a discussion regarding the Comprehensive Plan amendments as well as a quarterly report from the Parks and Recreation Department. On July 23 staff anticipates that the Board will discuss non-conforming regulations, depending on the City Attorney's availability.

The Board agreed to cancel the second meeting in August.

Board Member Crim suggested that since the issues related to the land use review process are highly sensitive, it would be appropriate for the staff to advertise the work session and presentation by the WCIA in a manner that would obtain maximum exposure to the public. Mr. Chave indicated that staff could place a display advertisement in the newspapers, which is different than a legal advertisement of the meeting agenda.

PLANNING BOARD CHAIR COMMENTS

Board Member Crim had no additional comments to provide.

PLANNING BOARD MEMBER COMMENTS

There were no Planning Board Member comments provided during this portion of the agenda.

THE MEETING WAS ADJOURNED AT 9:25 P.M.

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