

PLANNING BOARD MINUTES September 10, 2003

Vice Chair Young 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.

BOARD MEMBERS PRESENT

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

BOARD MEMBERS ABSENT

Jim Crim, Chair

STAFF PRESENT

Rob Chave, Planning Division Manager
Meg, Gruwell, Senior Planner
Karin Noyes, Recorder

READING/APPROVAL OF MINUTES

BOARD MEMBER DEWHIRST MOVED TO APPROVE THE MINUTES OF AUGUST 13, 2003 AS CORRECTED. BOARD MEMBER CASSUTT SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

ANNOUNCEMENT OF AGENDA

There were no changes made to the proposed agenda.

REQUESTS FROM THE AUDIENCE

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

PUBLIC HEARING ON FILE NUMBER R-03-75

Meg Gruwell, Senior Planner, presented the staff report. She provided a map to illustrate the location of the subject property, which is located on the west side of 75th Place West from Lots 15706 to 16000. The proposal is to rezone the area from the current RS-20 designation to a higher density RS-12 designation. She advised that the property was annexed into the City in 1963 and was zoned to its current RS-20 designation in 1964. An RS-20 zoning designation requires an area of 20,000 square feet with a minimum lot width of 100 feet. However, the proposed rezoned area includes 13 parcels with lot sizes that range from 7,795 to 17,590 square feet in size and lot widths from 43 to 116 feet with the average lot size in the area being 11,000 square feet in area and 60 feet in width. It is not anticipated that approval of the rezoned area would result in any significant increase in density.

Ms. Gruwell advised that the applicants have requested the rezoned area because they have one lot adjacent to their house that they feel they could put a new house on. There is another lot in the area with a dilapidated home that could be replaced with a new home. But other than that, the density would not increase. She said staff recommends that the Board forward a recommendation that the City Council approve the rezoned area request as proposed.

Board Member Dewhirst noted that the staff report specifically states that while the rezone would bring most of the properties into conformance with the zoning ordinance, setbacks, etc., some of the lots would still be non-conforming. He said that if the properties were rezoned to RS-8, they would no longer be considered non-conforming, and property owners would not have to go through the variance procedure in order to remodel their homes. He inquired if this option was considered. Ms. Gruwell answered that if the area were rezoned to RS-8, most of the lots would be in conformance. But staff was concerned that this would end up encouraging subdivision of the lots when the Comprehensive Plan identifies this area as large lot single-family.

Gilbert Thiry, 15810 – 75th Place West, said that he and his wife purchased two lots in the subject area in 1986 with the intention of selling Lot 2 at some time in the future so that they could afford to continue to live on their property. He said that none of the lots in the proposed rezone area comply with the RS-20 zoning requirements.

Mr. Thiry said he spent a long time making up a list of what he thought would be persuasive reasons for the Board to recommend approval of the rezone request. But when he received the staff report, Ms. Gruwell had addressed all of his issues plus more in greater detail than he could have done himself. Therefore, he has no additional comments to add. He concluded by stating that he and his wife intend to sell their house and build a new house that is smaller than the one they currently live in on the adjacent property.

NO ONE IN THE AUDIENCE EXPRESSED A DESIRE TO ADDRESS THE BOARD DURING THE PUBLIC HEARING. THEREFORE, THE PUBLIC HEARING WAS CLOSED.

Board Member Guenther inquired why the property was zoned RS-20 in 1964. Was it because of the restrictions related to the hazardous slope in that area of the City? Ms. Gruwell said her understanding is that the property was zoned to RS-20 to address the steep slope issue. However, there are codes and hazardous areas requirements in place now that help protect the steep slopes and make sure the development that occurs is secure and safe.

Board Member Young requested that staff provide a brief description of what they use to compile their staff reports for rezone applications. Do they use information that is provided by the applicant or do they generate the staff report themselves based on their reading of the applicable codes. Ms. Gruwell said a combination of the two is used by staff to prepare the staff report. She said that she requests that all applicants provide certain information that is useful in understanding the situation, zoning and size of the subject property. She also checks the County records to determine lot sizes and view ownership records. She uses the City's database to identify other rezones and variances that have been issued in the area. The City's records are also used to identify the date the property was annexed into the City and when it was platted.

Board Member Young said that when the City Council held a public hearing on the last rezone application that was forwarded to the City Council with a unanimous recommendation by the Board for approval, some City Council Members observed that when an applicant or owner makes an application to rezone property within the City limits, they must identify a public benefit for doing so. The three City Council members who voted against granting the rezone did so because they did not feel the applicant had identified a public benefit. Board Member Young said his understanding is that the applicant has the responsibility to demonstrate why his/her application is a good idea. In the future, he would like rezone applications to identify reasons it should be approved and what public benefit would result.

Board Member Hopkins referred to Page 6 of the staff report. He noted that Item F provides a brief statement regarding the public gains that would result from approval of the application.

BOARD MEMBER DEWHIRST MOVED THAT THE BOARD FORWARD A RECOMMENDATION OF APPROVAL TO THE CITY COUNCIL FOR FILE NUMBER R-03-75 BASED ON THE SIX POINTS THAT IT IS CONSISTENT WITH THE COMPREHENSIVE PLAN AND ZONING ORDINANCE. IF APPROVED, THE REZONE WOULD BRING MOST OF THE PROPERTIES INTO MUCH MORE CONFORMANCE WITH THE ZONING CODE THAN THEY ARE NOW, AND THE CHANGE WOULD NOT HAVE ANY ADVERSE IMPACT ON THE SURROUNDING PROPERTIES. IN ADDITION, THE BOARD FINDS THAT THE SUITABILITY AND VALUE CRITERIA WOULD BE OBSERVED

APPROVED

AS STATED IN THE COMPREHENSIVE PLAN. BOARD MEMBER CASSUTT SECONDED THE MOTION. THE MOTION CARRIED 7-0 (BOARD MEMBER CRIM WAS ABSENT).

CONTINUED DELIBERATION ON FILE NUMBER CDC-03-4 (AMATEUR RADIO ANTENNAS)

Mr. Chave referred the Board to the memorandum from the City Attorney's Office. In addition, the City Attorney has drafted revised code language amending the City's codes that regulate amateur radio antennas. The staff provided each of the Board Members with copies of two letters that were just received by the City. He noted that in Mr. Waldburger's letter, he suggested a clarification change that the City Attorney has reviewed and feels is appropriate. Mr. Chave introduced Scott Snyder, the City Attorney, who was present to review his memorandum and answer the Board's questions.

Scott Snyder, City Attorney, explained that the new draft language sets a standard that limits the height of crank up amateur radio antennas to no greater than 65 feet, which is fairly standard in other jurisdictions that have given the matter any thought. He explained that it is important to understand that, from the aspect of community acceptance and legal reality, amateur radio licensees have a right to locate their facilities within the community. It is also important to understand that, regardless of the type of interactive process the City sets up to address this use, the ordinance must also allow the opportunity for a property owner to obtain a waiver for the requirements to allow the reasonable accommodation of an amateur radio antenna in cases where topography or other situations on the site make it difficult or impossible.

Mr. Snyder said that in 1985, PRB-1 was issued by the FCC, which created a limited federal preemption of local regulation of amateur radio antennas. He explained that pursuant to the applicable FCC mandate, local regulations that ban or fail to reasonably accommodate amateur radio communications are preempted by Federal laws. He recalled a previous conditional use application by Mr. Bulchis, which was denied by the City. The issue went to Federal Court where the judge immediately overturned the City's decision. The judge made it clear that the Federal Court would not uphold a city's denial of an FCC licensees' application based on issues such as view or aesthetic. However, local jurisdictions do have the ability to prohibit lattice tower structures in residential neighborhoods. In addition, if the City were to create a historic district, they would have the ability to deny permission for an antenna that would be out of character with the established historic neighborhood. Other than that, it would be difficult for the City to deny these applications.

Mr. Snyder summarized that while local authorities must accommodate amateur communications, the amateur radio operator does not have an absolute right to install the antenna of his or her choice. Local authorities should engage in an interactive process to negotiate placement, screening, and height restrictions which both reasonably accommodate amateur communications and protect the health, safety and aesthetic considerations of the community. He further summarized that as long as local authority makes a good faith effort to reasonably accommodate amateur communications, the court should uphold the regulation as applied. An interactive process would allow the City to review the application to find a balance between impacts to the neighbors and the amateur radio licensee's right to have an antenna. If the City were to require a conditional use permit for amateur radio antennas, there would be a number of conditional use criteria that would not be applicable in this context.

Board Member Hopkins inquired if the proposition that the Hearing Examiner engage in interactive negotiations between the applicant and the surrounding neighbors is unique to this particular situation. He questioned whether this same type of process could be used in other situations, and he expressed his concern that it would not be a practical approach in most other cases. Mr. Snyder answered that this is the only interactive process of this type that he is aware of in the City, with the exception of issues related to the American's with Disabilities Act (ADA). To address ADA situations, the City crafted a process that allows the staff more latitude to work with a person with disabilities to accommodate their needs. Appeals are taken directly to the Superior Court because of issues related to confidentiality rights.

Mr. Snyder said it is always difficult, in ordinances such as the one before the Board, to make sure the language is such that the citizens and the applicant can have some reasonable expectations as to what the outcome will be. The intent of the proposed language is to make the interactive process clear to the applicants and the citizens and to make sure that neither have an unrealistic expectation as to what the outcome might be. It must be clear, in the ordinance, that the applicant has the

right to have an antenna, and the City's only authority is to work with the applicant and the neighbors to ensure that the least burdensome alternative is used.

Board Member Dewhirst said the proposed draft language does not make it clear as to how many antennas would be allowed on any one property. He said that because the externality of the equipment is one of the major concerns, the number of antennas allowed should be addressed in the document. If too many antennas are put up in one area, they could end up blocking each other out. Mr. Snyder suggested that the Board might want to seek guidance on this issue from the industry. His only experience is related to cellular towers, which are self limiting because there are only so many that can be placed on one tower before they interfere with each other.

Board Member Freeman referred to the minutes from the last meeting, and said that she did not feel some of the Board's specific questions had been addressed in the new draft ordinance. One issue was related to size. She recalled that the Board agreed that the size of a dish should be limited to the standard width that is used in the industry at this time, which is 12 to 15 inches. The Board also discussed how they could use diameter as a limiting factor for radio antennas. Mr. Snyder pointed out that changes were made to Item E on Page 3 to express size in terms of diameter rather than area. He suggested that the same limitations that are on dishes should also be placed on antennas. He said the 1.1 meter diameter that is identified in the proposed language comes from the Federal Regulations. While the standard industry size has been reduced, the Federal Regulations have not been changed. He said he would be hesitant to include size limitations that are more restrictive than the FCC Regulations.

Board Member Freeman recalled that the Board previously discussed the need to limit the number of antennas that could be located on a single pole. Mr. Snyder said his thought is that this issue would be addressed as part of the interactive process. If a license holder wants a waiver so that he/she can have something more or different than what is considered "safe harbor," they would have the ability to apply for a waiver. The surrounding property owners would have the same ability to request a Hearing Examiner review to seek justification or relief if there is an easier way to accomplish the needs of the license holder.

Board Member Freeman suggested that throughout the document, the word "abutting" should be replaced with the word "adjacent." Mr. Snyder agreed that "adjacent" would be the more appropriate term.

Board Member Freeman noted that, as drafted, no fee would be required for the interactive Hearing Examiner review. She requested that the City Attorney provide a brief explanation as to why this is being proposed. Mr. Snyder said his thought was to make sure the City does not put an unreasonable burden on the property owner. As a general matter, the City Council's policy is to pass the cost of any regulation process back to the applicant or the appellants. Because this process could be triggered by neighbors, he felt that having no fee or just a small fee would be one way to show the City's good faith that they are not trying to set up unnecessary hoops for the amateur radio licensees to have to jump through.

Board Member Dewhirst said he is bothered that the interactive process would end up costing the City money. Given the current state of the City's budget, the entire community would end up paying for the privilege of one or two people. He said it would be difficult for him to support the proposed language without one or both parties being required to help pay for the interactive process. Mr. Snyder explained that because amateur radio antennas are a Federally defined right and not a privilege, these applications are different than other situations. Mr. Chave added that the interactive review process should not be considered a type of appeal, but an active process for the benefit of the neighbors. He questioned why the applicant should be responsible to pay for the review process when there would be no benefit to him/her.

Board Member Works referred to Page 3 and noted that both ground mounted and roof mounted towers would be limited to a maximum height of 65 feet. She questioned if this would allow an antenna to extend 65 feet above the roofline. Mr. Snyder answered that the antenna would only be allowed to extend to a maximum of 65 feet. When retracted, the antenna would be required to meet the height limitations of the zone. Typically, crank up facilities end up at double the height of the antenna when retracted.

Mr. Snyder inquired if the Board has received any information as to how many amateur radio license holders there are in the City and how many applications the City receives each year for antennas. Mr. Chave said the City only receives about one application every five years.

APPROVED

Board Member Hopkins referred to the letter the Board received from Mr. Waldburger suggesting a change to Section E. Mr. Snyder agreed that Mr. Waldburger's proposed change would be appropriate. He suggested that Section 16.20.050.E should be changed to read: "Approval of an amateur radio antenna dish which measures greater than one yard or 1.1 meters in diameter, or an antenna which." The remainder of the Board agreed that this change should be made.

Mr. Snyder pointed out that building permits and electrical permits would still be required for the installation of any amateur radio antenna device.

Board Member Dewhirst said he would like the ordinance to specifically address the number of television and radio antennas that would be allowed on a property. Mr. Snyder referred to Section 16.20.050.D.5 on Page 2 of the draft ordinance, which was provided to address the number of television antennas that would be allowed on a property. However, he cautioned that the problem with limiting the number of radio antennas is that there are a number of permissive licensed antennas that an operator could have. He suggested that the number of radio antennas allowed on a property could be dictated by the conditions of the license.

Board Member Guenther noted that every antenna application would require a building permit application and an interactive review process would be available for the neighbors to raise their concerns. Because of these two requirements, he felt the proposed ordinance was been crafted in such a way that would limit the number of antennas that could be installed, without adding specific limitations. Board Member Young agreed that there is an element of self-policing written into the ordinance.

Mr. Snyder suggested that language could be added as the second sentence to Section 16.20.050.F.3 stating that the number of antennas and area or view blockage would be no greater than the minimum necessary to permit the licensee the full use of his or her Federal license. He said this language would allow the applicant the minimum necessary to enjoy the use of his license and give the Hearing Examiner some direction for the interactive process.

Board Member Dewhirst suggested that language be added stating that "any number of antennas over two would trigger the interactive process." Mr. Snyder said that while it would be possible to include this language, he cautioned that it would require more research to further define the term "antenna." If a specific number limitation were included in the ordinance, a much tighter definition for "antenna" would be necessary. He said the approach he previously mentioned would provide direction to the Hearing Examiner to review the number of antennas to make sure the applicant had the minimum necessary to ensure the full use of his license. A case-by-case determination would be made by the Hearing Examiner.

Board Member Freeman said she would support the City Attorney's suggestion that the number of antennas be limited to whatever is necessary to enjoy the full benefit of the license. She said that technology is advancing all the time, and the City could get trapped by outdated requirements if they place specific numbers in the ordinance. The majority of the Board agreed that the ordinance should incorporate the change that was suggested by the City Attorney, and that they should allow the interactive process to police itself.

Mr. Snyder suggested that the following language be added to the first sentence of Section 16.20.050.F.3: "for example, the number of antennas and size of the area shall be no greater than that necessary to enjoy full use of the FCC license.

Mr. Chave said the Board should hold one more public hearing on the ordinance before forwarding a recommendation to the City Council. The Board agreed that the City Attorney should make changes to the ordinance as per the Board's discussion in preparation for a public hearing on September 24, 2003.

COMPREHENSIVE PLAN MAP AMENDMENTS

Mr. Chave reported that staff sent out another copy of the draft plan map to each of the Board members. He suggested the Board Members voice any concerns they might have regarding the map now. Otherwise, the map would be the subject of a public hearing on September 24th.

APPROVED

Board Member Dewhirst said he is uncomfortable with the idea of taking the draft Comprehensive Plan Map to a public hearing at this time. He said he found a lot of changes on the map that he did not anticipate such as changes to intensities and uses. He said he thought the maps were going to provide a straight conversion from the existing Comprehensive Plan Map to the draft Comprehensive Plan Map. He said he is particularly uncomfortable that what is being proposed for the hospital area and SR-104 are the same designations that are being proposed for Highway 99. In addition, there appears to be a lot of medium density multi-family zoning that has been changed to high density. He felt the Board should schedule an opportunity to review the rationale behind each of the map changes before presenting the map to the public for comment.

Mr. Chave said it is important that the Board read the map designations in conjunction with the written policies. The corridor designations are defined separately for each corridor. While the land use designation is identified as corridor, each of the corridors have very specific policies that are different than the Highway 99 policies. Mr. Dewhirst said the map should make this clear. In looking at the map, his impression is that the densities along all of the corridors would be the same. If they are defined differently in the Comprehensive Plan, he suggested that they should also be identified differently on the map.

Mr. Chave said it would be possible to identify each of the corridors differently, but that would be a change from what the City has done in the past. The list of designations would have to be expanded. He emphasized that no density changes were made from those identified on the existing map.

Board Member Dewhirst recalled that one of the rules the Board established early in the process was that the map should be easier to comprehend and understand. The way it is being presented is very confusing. He said another area he is particularly concerned about is in the downtown activity center north of City Park along Third Avenue South. It appears that the medium density multi-family residential zoning is now being identified as high density. Mr. Chave explained that in the Comprehensive Plan there are only two designations for multi-family residential uses: medium and high density. The RM-2.4 zoning designation can fall into either category.

Board Member Dewhirst said he would like to know more about the staff's rationale behind some of the proposals on the map before he goes into a public hearing and gets a lot of unnecessary criticism without knowing how or why things were done. Mr. Chave explained that a general hearing on the Comprehensive Plan Map has already been advertised for September 24th. But the more specific hearings will follow on October 8th. At the public hearing on September 24th, the Board would have an opportunity to entertain overall questions and comments related to the map. The Board would still have an opportunity for additional discussion after the public hearing to address Mr. Dewhirst's concerns.

Mr. Chave agreed with Mr. Dewhirst's suggestion that the map needs to depict things in the clearest way possible. When translating, staff tried to use the same symbols and nomenclatures that were used on the existing map. He said staff could provide a preliminary report prior to the start of the public hearing on September 24th to explain the rationale behind what is being proposed. After the public hearing, the Board would have the ability to make changes to the map as long as the overall purpose and intent of the plan is not changed.

Board Member Dewhirst said that, given the political tenor and times in the community right now, he is very worried about presenting the map, as currently drafted, to the public for comment. Mr. Chave said that he does not see a concern with presenting the draft map to the public for comment since it merely carries forward the designations that were identified in the 1995 Comprehensive Plan.

The Board agreed that the public hearing on the amateur radio antenna ordinance would be scheduled on the September 24th agenda first, and then the public hearing on the Comprehensive Plan Map amendments would be second.

Mr. Dewhirst suggested that more language be provided on the map to identify public uses such as cemeteries, the Frances Anderson Center, etc. He also suggested that it might be helpful if the staff were to provide an overhead of the existing Comprehensive Plan for each given area, as well as an illustration of what is being proposed to show how the uses are not really being changed.

PLANNING BOARD CHAIR COMMENTS

Board Member Young reported that he attended a relatively productive meeting of the Highway 99 Task Force in August. The next work item will be a workshop polling the different businesses along the Highway 99 Corridor to establish a record as to whether or not they have any problems, issues, etc. with the City of Edmonds. He said he conveyed to the task force that the Board is willing to look at anything that is within the planning laws whether it requires reassigning building heights, zoning, permitted uses, etc.

Board Member Young advised that the task force has wrapped up their presentations from other jurisdictions along the Highway 99 Corridor. While the presentations were informative, he said he expressed his opinion that the task force should consider something unique and different for their portion of the corridor.

PLANNING BOARD MEMBER COMMENTS

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

THE MEETING WAS ADJOURNED AT 8:15 P.M.

APPROVED