

Approved September 12<sup>th</sup>

**CITY OF EDMONDS  
PLANNING BOARD MINUTES  
July 25, 2007**

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Chair Guenther called the regular meeting of the Planning Board to order at 7:03 p.m. in the Council Chambers, Public Safety Complex, 250 – 5<sup>th</sup> Avenue North.

**BOARD MEMBERS PRESENT**

Cary Guenther, Chair  
John Dewhirst, Vice Chair  
Janice Freeman  
Jim Young  
Don Henderson  
Judith Works  
John Reed

**STAFF PRESENT**

Rob Chave, Planning Division Manager  
Scott Snyder, City Attorney  
Karin Noyes, Recorder

**BOARD MEMBERS ABSENT**

Michael Bowman

**READING/APPROVAL OF MINUTES**

Approval of the July 11, 2007 minutes was postponed until the August 8<sup>th</sup> meeting.

**ANNOUNCEMENT OF AGENDA**

No changes were made to the agenda.

**AUDIENCE COMMENTS**

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

**PUBLIC HEARING ON APPLICATION BY A.D. SHAPIRO ARCHITECTS AND VALHALLA PROPERTIES TO  
RZONE PROPERTIES AT 9521 AND 9531 EDMONDS WAY FROM RM-1.5 AND RS-8 TO COMMUNITY  
BUSINESS-EDMONDS WAY (BC-EW) (FILE NUMBER R-07-35)**

Mr. Chave advised that the application before the Board is to rezone properties that lie just east of the car wash property in the Westgate Center Commercial area. The subject properties lie just below the bluff that was recently developed as a single-family residential subdivision. It includes two properties that run perpendicular to Edmonds Way and go as far as 228<sup>th</sup> Street. He reported that staff was required to issue an environmental determination, and this resulted in their recommendation that the following two mitigating conditions be placed on the application prior to approval:

1. Access provided to any future development of the properties under the proposed zoning shall only be from Edmonds Way. No access shall be provided from the development to or from 228<sup>th</sup> Street Southwest.

2. Future development of the site shall make use of shared access drives to minimize the number of access points on Edmonds Way.

Mr. Chave advised that staff received a comment letter from the Washington State Department of Transportation stating they had no issue with the application except they wanted to review and approve any conditions the City imposes at the time of development. They would like to retain the ability to review the configuration of any future access to make sure it meets their approval. Mr. Chave pointed out that the BC-EW zoning designation is generally considered to be consistent with the Edmonds Way Corridor land use designation, and staff supports the proposed rezone. However, it is important to ensure there would be no chance for adverse traffic impacts as future development occurs, and that is why they proposed the two mitigating conditions.

Mr. Chave referred to the staff report, which outlines the criteria that must be considered when reviewing rezone applications. He said staff recommends approval of the application because it meets all of the rezone criteria. It is also consistent with the policies found in the Comprehensive Plan, which is to encourage a variety of development times along arterials such as SR-104.

Vice Chair Dewhirst pointed out that on both the Comprehensive Plan and Zoning Vicinity Maps that were provided in the Board's packet, it appears the proposed rezone would leave a sliver of land that would not be rezoned. Mr. Chave explained that property ownership in this area has changed in recent years, and portions of the parcels were divided and sold. However, the Comprehensive Plan and Zoning Maps have not been updated to reflect these changes. He referred to the Ownership Plan Map that was submitted by the applicant which shows that the western property line has jogs. However, the information they received from the County shows a squared-off map. He said he suspects the County map is out of date, and staff must still attempt to identify the actual recorded boundaries for the subject parcels. He noted that part of the property was sold to the single-family residential development up the hill and the zoning was not changed to reflect the sale. Depending on what happens with this proposal, he suggested the Board may want to review the boundaries and make corrections at a later time. Vice Chair Dewhirst summarized that the legal description provided by the applicant covers the land he owns, and that is what was included as part of the application.

Board Member Works referred to the letter that was submitted by Mr. Martin expressing concern about drainage on a parcel in the vicinity. She inquired about the location of this property and how it would be impacted by the proposed change. Mr. Chave answered that this property is actually located two lots down from the subject property where there is a low depression area. No one has evaluated this site, but drainage issues on the property would not be related to the property that is the subject of the proposed rezone.

Board Member Reed referred to Mr. Martin's letter, as well, and asked if the drainage concern should have been addressed as part of the SEPA review. Mr. Chave said the SEPA review only addresses drainage on the subject properties and those properties that are directly impacted by the subject proposal. There is no evidence to indicate a problem for the property identified in the comment letter. He noted that during the development permit stage of a project, stormwater planning must be done to address all of the drainage issues. Board Member Young agreed that stormwater impacts associated with the subject properties would have to be adequately dealt with before a building permit application could be approved by the City.

Chair Guenther reminded the Board of the Appearance of Fairness Rules and requested Board Members disclose any discussion they might have had regarding the application outside of the hearing. None of the Board Members indicated any ex parte communications. No one in the audience voiced a concern, either.

**Tony Shapiro, A.D. Shapiro Architects**, said he was present to represent the applicant, Valhalla Properties. He said they are excited about the prospect of turning the existing gravel pit into something of value to the City and community. He provided an aerial photograph of Edmonds Way and identified the location of the subject properties. He noted that, historically, the site has been used as a gravel pit and was actually mined in the 1930s and 1940s. The property was recently purchased by Rob Michel, and he utilized the upper portion for a single-family residential development. The lower half was later sold to Valhalla Properties to combine with lots they already owned. They are now proposing to rezone the parcels into a single BC-EW zone.

**APPROVED**

Mr. Shapiro provided a Comprehensive Plan Map to illustrate the land use designations for the surrounding properties. He particularly identified the parcel owned by Mr. Martin, which is separated from the subject parcels by one lot. He described the significant grade changes that are present on the subject properties, and noted that they would have a significant impact on future retail or commercial development and would present a challenge during the design phase of the project.

Mr. Shapiro referred to photographs he took of the surrounding properties to illustrate their existing condition. He noted that extensive exploration of the hillside was completed, and it was found to be very stable. However, they are proposing to carve the hillside out and further stabilize the ground in order to accommodate a higher use of the site. He said there is also a utility easement adjacent to the two narrow parcels, and the applicant would not be able to develop anything underneath the easements. He concluded that there are significant deterrents on the site that would limit how the development gets laid out. Mr. Shapiro reviewed the rezone criteria and explained that the proposal meets the criteria in the following ways:

1. **Whether the proposal is consistent with the Comprehensive Plan.** Mr. Shapiro referred to the Comprehensive Plan criteria the Board must consider, and provided the following explanation of how the proposed rezone would meet each one:

- ***Sufficient number of sites suited for commercial uses should be reserved for these purposes. The majority of such sites should be selected from parcels of land already identified in the Comprehensive Plan for commercial use and/or zoned for such use.*** Mr. Shapiro explained that the City wants to ensure that sufficient commercial sites are maintained within the City, and the proposed rezone would add additional commercial property to the City's inventory. He said a significant component of any future project on the site would be commercial, but the site is also well suited for multi-family residential uses because of similar developments that currently exist in the vicinity. He noted that the subject property is located in close proximity to the Westgate Center Area where the majority of the commercial properties on Edmonds Way are located. The existing grade change would enable the proposed properties to fit into the use pattern found between the commercial and residential areas. In addition, the applicant believes there would be minimal impact to the adjacent residential development because of the significant grade change.

Mr. Shapiro provided a diagram to illustrate the type of development the applicant is considering for the site. He particularly noted the significant grade changes on the site, and how this would influence future development of the site. The applicant hopes to terrace the hillside to recoup some of the land and expand the usefulness of the site. The applicant is planning to construct a mixed-use project with a variety of uses such as multi-family residential, office, commercial, and parking. He emphasized that the southwest corner of the site would be more than 40 feet below the residential development higher on the hill.

- ***Parcels of land previously planned or zoned for commercial use but which are now or will be identified as unnecessary or inappropriate for such use by additional analysis, should be reclassified for other uses.*** Mr. Shapiro said the applicant does not believe this condition would apply to the subject parcels on Edmonds Way.
- ***The proliferation of strip commercial areas along Edmonds streets and highways and the development of commercial uses poorly related to surrounding land uses should be strongly discouraged.*** Mr. Shapiro pointed out that the new zoning would allow for both commercial and residential uses to be set at multiple levels. The ground floor space would most likely be comprised of small-scale retail, office, and perhaps restaurant functions if parking allows. Additional mixed-use functions would be on the floors above the retail, with buildings fronting directly onto Edmonds Way. He summarized his belief that the site would be well suited for incorporating the proposed new zone.
- ***Design and location of all commercial sites should provide for convenient and safe access for customers, employees and suppliers.*** Mr. Shapiro pointed out that Edmonds Way is a busy street, with more than 20,000 cars per day. There are currently two curb cuts onto the subject properties, and the applicant hopes to retain both when the site is developed. They are working with staff to provide some type of access for properties to the east in order to minimize curb cuts onto Edmonds Way. He indicated the applicant's willingness to accept the staff's conditions

related to access from 228<sup>th</sup> and shared access opportunities. He noted that all references to future access from 228<sup>th</sup> Street would be eliminated from the application.

2. **Whether the proposal is consistent with the purposes of the zoning ordinance and the proposed zone district.** Mr. Shapiro reviewed the objectives of the BC-EW zone as follows:
  - *Provide areas for commercial uses offering various goods and services according to the different geographical areas and various categories of customers they serve.* Mr. Shapiro advised that the proposed BC-EW zone would continue the trend of small businesses along the Edmonds Way Corridor and add multi-family housing opportunities and office space along with the commercial component.
  - *Provide for areas where commercial uses may concentrate for the convenience of the public and in mutually beneficial relationship to each other.* Mr. Shapiro pointed out that the location of the subject parcels is ideally suited for street front commercial space, which would serve the adjacent residents and pedestrians along Edmonds Way. He referred to a preliminary sketch, which illustrates how the development could be laid out in fashion that would allow parking in front, with retail uses on the bottom floor and a variety of other uses on top. The applicant has also discussed the option of bringing the building front to the street edge. He summarized that the applicant believes the site is large enough to encounter multiple solutions that would achieve the desirable objective.
  - *Provide for residential uses, community facilities and institutions that may appropriately locate in commercial areas.* Mr. Shapiro pointed out that the proposed rezone would allow both residential and commercial facilities, which would augment and increase the residential and commercial diversity already found along Edmonds Way and 228<sup>th</sup> Street.
  - *Require adequate landscaping and off-street parking and loading facilities.* Mr. Shapiro pointed out that any development proposal for the subject properties would incorporate street-front landscaping. In addition, the new zoning designation would allow commercial storefronts facing Edmonds Way, with structured or at-grade parking. Delivery and garbage pick up would occur at the rear of the site, and storefronts would have maximum exposure onto Edmonds Way. Residential and office uses could be separated from the busy Edmonds Way by utilizing the existing grade change. He shared some of the concepts the applicant is considering for accomplishing this goal, and noted that the site adequately and appropriately poses potential for the new zone.
3. **The relationship of the proposed zoning change to the existing land uses and zoning of surrounding or nearby property.** Mr. Shapiro explained that if the subject parcels are rezoned, future development would mesh with the immediate neighborhood because the mixed-use function would maintain a minimum 15-foot setback from the surrounding single-family zoned parcels, and the existing hillside would reinforce the separation. In addition, it is important to remember there is already a major retail component present in the Westgate area.
4. **Whether there has been sufficient change in the character of the immediate or surrounding area or in City policy to justify the rezone.** Mr. Shapiro pointed out that the surrounding properties along Edmonds Way have many different multi-family complexes already in existence. He noted that granting a rezone to BC-EW would continue this trend toward higher density within the context of a residential area. At the same time, it would add commercial and office space to serve the local community. He said Edmonds Way is an appropriate location for greater density because it is a major arterial. He recognized that issues of privacy must be resolved, but the size has enough mass to allow them to address the natural conflict between uses and the busy road.
5. **Whether the property is economically and physically suitable for the uses allowed under the existing zoning and proposed zoning.** Mr. Shapiro pointed out that Edmonds Way is a main arterial, with more than 20,000 cars per day. This makes the site well suited for commercial uses. The proposed mix of both residential and commercial would achieve the best and highest use of the property, while serving both the housing and commercial needs of the community. He noted that many of the adjacent properties have been built out as both commercial and residential. Because of the significant grade change along 228<sup>th</sup> Street, the BC-EW designation would not be inappropriate. He

noted that the new zone would require a 15-foot setback from the street edge, so this would provide further separation from the residential neighborhood.

6. **The relative gain to public health, safety and welfare compared to the potential increase or decrease in value to the property owner.** Mr. Shapiro advised that the current zone would only allow residential uses, which the applicant believes is an undesirable solution. The current zone prevents the property owner from taking advantage of the property's position along Edmonds Way that supports both commercial and residential uses. The proposed rezone would help the City comply with the Growth Management Act requirements for increased density.

While the designs presented by Mr. Shapiro are conceptual, Chair Guenther noted that the Development Code requires applicants to include sustainable elements in the site design. He asked what elements the applicant intends to propose. Mr. Shapiro said the applicant is interested in retaining as many trees as possible, but they have not considered what sustainable elements would be incorporated in the project at this point. Once again, he explained that the applicant plans to carve into the hillside and make the cut more steep, and this should further stabilize the site. This would enable them to utilize the property to a higher level. Again, he said the applicant has not yet considered options for enhancing the environmental aspects of the site.

Board Member Reed expressed confusion because the points and criteria raised by Mr. Shapiro did not match those addressed in the Staff Report. He asked why the applicant did not use consistent language. Mr. Shapiro answered that he did not use the same verbiage, but he incorporated all of the points raised in the staff report and addressed all of the rezone criteria.

Board Member Freeman noted that the applicant's April 18<sup>th</sup> submittal includes the concept of accessing the subject properties from 228<sup>th</sup> Street. Mr. Shapiro agreed and emphasized that the applicant has accepted the staff's recommended condition that access to the site from 228<sup>th</sup> Street be prohibited. He said the information he presented for tonight's submittal addresses the change.

NO ONE IN THE PUBLIC EXPRESSED A DESIRE TO PARTICIPATE IN THE HEARING.

Mr. Chave clarified that the City's current street tree plan would require the applicant to provide street trees along Edmonds Way. This requirement must be incorporated into any site design plans, and would help soften the proposal's impact on Edmonds Way. He noted that the code requires other landscaping elements, as well. Vice Chair Dewhirst asked if landscaping would be required along the 228<sup>th</sup> Street property line. Mr. Chave answered that landscaping requirements would be addressed during the building permit phase. However, he noted the topographical change in this location would likely dictate a setback along 228<sup>th</sup> Street.

Board Member Young said he is inclined to support the proposed rezone because it would meet all of the rezone criteria. However, he asked staff to review how the BC-EW zone would be implemented beyond the three parcels that are currently being considered. Mr. Chave recalled that the City Council adopted the new Community Business-Edmonds Way (BC-EW) and Multi-Family Residential-Edmonds Way (RM-EW) zones several months ago, and they were intended to be applied to properties along Edmonds Way. He explained that, at this time, there are numerous zoning designations for properties along the corridor. The new Edmonds Way zoning designations were created to address the City's desire for more intense development along the Edmonds Way Corridor. Rezone proposals for properties along the corridor must be considered on a case-by-case basis, depending on the size, location, topography, etc. of each parcel. He emphasized that the subject property is a prime location for the new BC-EW zone because of the significant grade changes that currently exist. Mr. Chave emphasized that the Edmonds Way zones are only available to properties that are located within the Edmonds Way Corridor. The Westgate Center area is designated as a different type of commercial area. More intensive zoning would probably be appropriate for this area, but it is not specifically spelled out in the Comprehensive Plan.

THE PUBLIC PORTION OF THE HEARING WAS CLOSED.

**APPROVED**

Board Member Henderson expressed his belief that the application adequately addresses all of the rezone criteria, and he plans to support the proposed change. Board Member Works agreed the application meets all of the rezone criteria as outlined by the applicant and in the Staff Report.

Board Member Reed said he would support the rezone application, but he has some concerns. He recalled that when the Board forwarded their recommendation on the BC-EW zoning classification to the City Council, he voted against it because it would create the potential of a 45-foot tall building on the Edmonds Way street front. He felt this height would be too great. He noted that the subject property has 434 feet of street frontage along Edmonds Way, and it is difficult for him to tell how the average grade would be calculated and what the impact of the potential height would be. However, he said he is confident the Architectural Design Board could work this issue out.

Board Member Reed noted the property is adjacent to single-family residential properties. While the residential development close to Highway 99 would likely be redeveloped in the near future, the developer must be sensitive to the single-family development located on the top of the hill across from 228<sup>th</sup> Street.

Vice Chair Dewhirst said he plans to support the proposal. However, he suggested two additional conditions. First he proposed that the applicant be required to provide a mix of uses, including both residential and commercial. He noted that the current zoning designation would allow an all commercial development, and this would not be appropriate in this location. Second, he suggested the applicant be required to provide a minimum 25-foot landscape buffer along 228<sup>th</sup> Street, which would be equal to the setback requirements of an RS-8 zone. Mr. Chave explained that the Board does not have the ability to impose additional conditions on a rezone application unless the applicant offers them as part of a contract rezone.

Board Member Freeman said she would support the proposed rezone because it meets all of the conditions and criteria as outlined by the applicant and the Staff Report. In addition, she noted that the proposal would also provide a relative gain to the public health, safety and welfare. She recalled that at the last City Council Meeting, Council Member Marin talked of his concern about having enough housing for elderly people who can no longer drive. The subject property is located close and within easy walking distance to many of the services that people who can't drive need. Chair Guenther said he would support the proposed rezone application, as well, for the same reasons previously stated and based on the analysis provided in the Staff Report.

**BOARD MEMBER HENDERSON MOVED THAT THE BOARD FORWARD FILE R-2007-35 TO THE CITY COUNCIL WITH A RECOMMENDATION OF APPROVAL BASED ON THE ANALYSIS OF THE REZONE CRITERIA PROVIDED IN THE STAFF REPORT AND BY THE APPLICANT. BOARD MEMBER FREEMAN SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.**

**PUBLIC HEARING REGARDING EDMONDS COMMUNITY DEVELOPMENT CODE CHAPTER 17.40 (NONCONFORMANCE STANDARDS)**

City Attorney, Scott Snyder, said he originally intended to provide a presentation to the public regarding the proposed changes to the nonconformance standards (Chapter 17 of the Edmonds Community Development Code). However, because there was no one in the audience to participate in the hearing, he suggested they dispense with the lengthy presentation since the Board heard the report previously. The Board agreed to skip the presentation and begin their review and discussion of the proposed draft language.

Board Member Works referred to Item C (Lapse of Time) on Page 5 of the draft ordinance and suggested the proposed language is confusing. Mr. Snyder explained that, as proposed, any property that is damaged less than 75% could be reestablished as a matter of right. He referred to Item B (Continuation) on Page 3 of the draft ordinance, which states the general rule that nonconforming uses may continue unless required to be abated by Item C on Page 5. **He suggested, and the Board concurred, that the word “only” should be inserted between “reestablished” and “if.”** This would help make the section more clear. Board Member Works suggested it would also be helpful to have a clean copy of the proposed new language, as well as a document that identifies all of the changes that are being proposed.

**APPROVED**

Vice Chair Dewhirst referred to Item C.2 (Lapse of Time) on Page 5 and suggested that one year may not be enough for property owners to begin reconstruction when a building has been significantly damaged. Mr. Snyder recalled the Board discussed this issue at their last meeting, and Section F on Page 8 of the draft ordinance was changed to require that the repair be initiated by filing an application for a building permit within one year of the date such damage occurs. He suggested the same type of language could be incorporated into Item C.2 on Page 5 and in other sections of the document to address Vice Chair Dewhirst's concern. Board Member Young pointed out that this change would give property owners one year plus the time it takes to process a building permit. **The Board agreed that the last sentence of Item C.2 on Page 5 should be changed to read, "The use may be reestablished only if construction of a new or repaired building is begun within one year of the date damage occurred by the filing of a building permit in accordance with the requirements of the vesting ordinance (*specific reference would be provided*)."** They further agreed that this language should be applied uniformly throughout the document.

**Mr. Chave suggested that a third item be added to Item F (Restoration) on Page 9 to read, "If the building permit is allowed to expire, a property owner's right to restore would be extinguished."** The Board agreed with this change. Vice Chair Dewhirst noted that this is a common requirement for any building permit.

Vice Chair Dewhirst referred to the underlined words on the last line of Item B (Continuation) on Page 6. Mr. Snyder said this was meant to refer to the remainder of the section. **To make Item B on Page 6 more clear, Mr. Snyder suggested the last line be changed to read, "except as provided in the remaining subparagraphs in the section."** The remainder of the Board concurred with the proposed change.

Board Member Henderson referred to the two alternatives for the restoration section on Pages 8 and 9 of the draft document. He indicated he would prefer Alternative 1. He expressed his belief that Alternative 1 would be the simplest, and Alternative 2 would be more complex and probably unnecessary. Board Member Freeman inquired if Alternative 1 would ensure that a use such as the movie theater would be allowed to rebuild without having to meet the current parking requirements. Mr. Snyder cautioned that the two alternatives relate to nonconforming buildings, not nonconforming uses. He noted that while the City could permit the reconstruction of a nonconforming building, they would not be able to limit its future use. Mr. Chave reminded the Board that there is no longer a parking requirement for commercial uses in the BD1 zone. However, if an existing nonconforming building is reconstructed and converted from a commercial to a residential use, a parking requirement would be imposed.

Board Member Reed explained that Item C (Historic Buildings and Structures) on Page 6 would protect buildings such as the movie theater and allow them to be restored to their existing form if they are listed on the Edmonds Register of Historic Places. Mr. Chave said the Historic Preservation Commission is in favor of encouraging the adaptive reuse of historic properties in their original form. He cautioned that while the Commission might regret the loss of a particular use, they are more interested in retaining the historic buildings.

Board Member Freeman said Item C on Page 6 refers to properties that are on the Edmonds Register of Historic Places. Mr. Snyder emphasized that property owners must voluntarily place their properties on the Register. The Historic Preservation Commission has suggested that including provisions for the adaptive reuse of nonconforming structures might provide incentive for more people to list their properties on the Register. Vice Chair Dewhirst explained that the City cannot protect historic properties that are not on the Register because they do not have a mandatory preservation program. Again, Board Member Henderson explained that Item C on Page 6 offers rights for property owners to rebuild structures, but there would be no requirement that the property owner rebuild the building to its original form.

Vice Chair Dewhirst recalled that the Board previously requested feedback from the Historic Preservation Commission regarding the two alternatives for the restoration section. Board Member Works recalled that the two alternatives were included in the draft to allow the public to comment on their preferred choice. Mr. Chave said the Board could still ask the Historic Preservation Commission to comment on the two alternatives. Mr. Snyder explained that Alternative 2 would require an Architectural Design Board review to make sure the reconstructed building would be similar in design to the building that was destroyed. Board Member Works said she would not be in favor of requiring people to rebuild to a certain style. Mr. Chave noted that a property owner would still be allowed to choose between rebuilding based on the nonconformance standards or rebuilding based on the current zoning standard.

Vice Chair Dewhirst expressed his belief that forwarding a recommendation to the City Council without soliciting feedback from the Historic Preservation Commission regarding the two alternatives could result in the City Council remanding the issue back to the Board for further review. Mr. Snyder agreed it would be appropriate to solicit feedback from the Historic Preservation Commission regarding this section, but the Board could still review the remainder of the document.

Board Member Reed referred to Item C (Historic Buildings and Structures) on Page 6 of the draft document and inquired if it would be possible for the City to require people to place historic properties on the Edmonds Register of Historic Places. Mr. Snyder answered that some cities have mandatory historic districts, but applying this concept in Edmonds could be difficult because there is no standard architectural type or style of buildings. To this point, the City's preservation program has been voluntary. Making the program mandatory could run into significant constitutional issues because the majority of the buildings in the downtown are not historic. Therefore, the property owners would likely be opposed to having limitations placed on their ability to reuse their properties. Mr. Chave added that the Historic Preservation Commission has discussed the option of creating a historic district in the downtown, but they agreed that would not be appropriate for Edmonds. He expressed his belief that Alternative 1 would be the simplest, and Alternative 2 would be more complex and probably unnecessary. Because the Commission was not confident they could create a mandatory historic district, they decided it would be more appropriate to create specific design standards for the BD1 zone that could require that building design within the zone be consistent with the character of the district.

The Board directed Mr. Chave to invite representatives from the Historic Preservation Commission to the Board's August 8<sup>th</sup> meeting to provide input regarding the two alternatives for the restoration section. It was noted that this would require a continuation of the public hearing to that date, as well. Mr. Chave agreed to provide the standard advertising for the continued hearing, as well as a display ad in the local newspapers. He also agreed to contact local reporters to encourage them to write an article about the issues that are currently being considered by the Board.

Mr. Snyder said it is important to understand that the nonconforming use section is intended to be a bridge between historic preservation and reconstruction, and the goal is to offer owners of nonconforming historic structures a way to continue the uses that are beneficial to the neighborhood in terms of their ambiance, size, etc. Staff is interested in creating a tool that is somewhere between the existing nonconformance standards that have a very strict abatement process and a mandatory historic preservation program.

Board Member Young expressed his belief that the proposed new language would meet this goal as stated above by Mr. Snyder, and he plans to recommend approval of Alternative 1. He reminded the Board that they are only responsible for making a recommendation, and the City Council would make the final decision. The Board has talked about historic preservation and whether or not the City could compel a property owner to place a building on the Register. Allowing a structure to be rebuilt if it is on the Register would provide a significant incentive to property owners. He said he is ready to forward a recommendation to the City Council without waiting for additional comments from the Historic Preservation Commission. Board Member Henderson agreed that the Board should not wait to forward their recommendation to the City Council.

Mr. Snyder referred to Section 17.40.025 (vested nonconforming or illegal accessory dwelling units) on Page 11 of the draft document. He explained that this section was originally set up to encourage property owners to register nonconforming accessory dwelling units. The time period set in the ordinance has expired, so this language is no longer necessary.

Next, Mr. Snyder referred to Section 17.40.030 (nonconforming lots) on Page 15 of the draft document. He explained that the current language works well, but he recommended they delete Item D at the bottom of Page 17. He advised that requiring a lot to be consistent with the character of the surrounding area could run into legal challenges based on the Anderson versus Issaquah case. He noted that no substantive changes were proposed for Section 17.40.040 (nonconforming signs).

Mr. Snyder referenced the memorandum he prepared to provide an update on the constitutional limitations on the application of land use regulations to religious structures. He said that based on the information he provided in the memorandum, he is recommending that Item A (local churches) in Section 17.40.050 (nonconforming local public facilities) on Page 21 of the

document be deleted. He also recommended that Item B (schools) on Page 22 be deleted. He explained that from a policy point of view, staff feels the school district is responsible for determining the use of their buildings. In addition, the Essential Public Facilities Ordinance renders much of the language in Item C (local public facilities) on Page 23 unnecessary. Lastly, Mr. Snyder advised that Item D (parks) on Page 24 of the document would no longer be necessary. He suggested that this language was added when parks were treated different in the zoning code. Now the City's structure for designating parks in the Comprehensive Plan has been changed so that they cannot be nonconforming.

Mr. Chave expressed his belief that it would be worthwhile to continue the public hearing to August 8<sup>th</sup> to allow the Historic Preservation Commission and members of the public to comment further on the proposed ordinance, particularly the two alternatives discussed earlier for restoration. He suggested they invite the public and Commission to provide specific wording recommendations rather than general points of discussion. Board Member Dewhirst agreed and noted that this could become a politically charged issue, and a two-week delay would not be a significant problem. He suggested that staff send a letter to the Historic Preservation Commission offering them an opportunity to comment at the next meeting before the draft language is forwarded to the City Council. Mr. Snyder asked the Board to provide additional direction to allow him to bring back an updated draft ordinance that is close to its final form at the next meeting.

**BOARD MEMBER HENDERSON MOVED THAT THE BOARD DIRECT THE CITY ATTORNEY TO UPDATE THE DRAFT ORDINANCE AS PER THE BOARD'S DISCUSSION, USING ALTERNATIVE 1 AS THE PREFERRED LANGUAGE FOR THE RESTORATION SECTION. BOARD MEMBER WORKS SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.**

**BOARD MEMBER HENDERSON MOVED THAT THE HEARING ON ECDC 17.40 BE CONTINUED TO AUGUST 8, 2007. BOARD MEMBER YOUNG SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.**

THE BOARD TOOK A BREAK AT 8:50 P.M. THEY RECONVENED THE MEETING AT 9:02 P.M.

#### **DISCUSSION ON EDMONDS COMMUNITY DEVELOPMENT CODE TITLE 20 MATERIAL**

Mr. Snyder explained that staff's intent is to rewrite Chapter 20 of the Edmonds Community Development Code (ECDC) to combine all of the procedures into a logical format and to use a grid to make the processes more clear. He referred to Page 2 of the draft document, which provides an example of a uniform provision that is easier for staff to apply and the development community and citizens to understand. He emphasized that staff is trying to make as few substantive changes as possible as they rewrite the chapter. He recalled that at the last meeting the Board discussed two of the more substantial changes, which were related to the role of the City Council in quasi-judicial decisions and shifting the mailing notification burden to the applicant rather than City staff. He said staff intends to highlight significant policy changes and invite the public and Board to comment on them at the public hearing.

Mr. Chave advised that there are a number of decisions where a notice of application is sent out prior to a staff decisions. **Staff recommends adding a new column to the tables on Pages 2 and 3 to identify Type II staff decisions that require notice. The Board agreed that would be appropriate.** Mr. Snyder recalled that at their last meeting, the Board asked staff to collect information from other jurisdictions that place the burden of sending out notices on the applicants. He referred the Board to information from the City of Bothell, which was provided by staff as part of the Board's packet.

Board Member Works inquired if the comments provided by the Hearing Examiner regarding the reconsideration section were incorporated into the draft language. Mr. Snyder explained that the Hearing Examiner recommendations related to problems in the current code were changed. However, he was hesitant to incorporate the suggestions that would significantly change the City's current process for reconsideration. He cautioned against creating public controversy by changing the rules. Instead, the goal is to make the existing rules more clear.

Board Member Works noted the time limitations for reconsideration were not updated as recommended by the Hearing Examiner. Mr. Snyder explained that the Hearing Examiner's proposed change would be appropriate in situations where

**APPROVED**

there are multiple appeals. However, it could add a great deal of time to the process. He reminded the Board that developers have often expressed concern to the City Council about the building permit process being delayed for various reasons. He suggested this issue was addressed by using the phrase, "in 10 business days."

Board Member Works referred to Section 20.05.006.A on Page 20 of the draft language. She questioned the use of the term "convincing proof." **Mr. Snyder recommended, and the Board concurred, that this term should be changed to "clear and convincing proof." Board Member Works pointed out that all references to "planning commission" should be changed to "planning board." She also pointed out that in Section 20.05.006.B should be changed by replacing the word "is" with "its." In Section 20.05.006.C the word "decision" should be changed to "design."**

Board Member Works referred to Section 20.03.003.B.1 on Page 13 states that no notice is required for Type IV decision. However, Section 20.03.003.C.1 on Page 14 indicates that posted notice of a public hearing is required for Type IV decisions. These two sections appear to conflict with each other. **Mr. Snyder agreed to review these two sections and make changes to clarify the discrepancy.**

Board Member Works referred to Section 20.01.005.C on Page 4, which states that the City Council may consider the Planning Board's recommendation during a public hearing. She questioned the use of the word "may" in this situation. Mr. Snyder explained that the issue is not whether or not the City Council considers the Board's recommendation, but whether they do it in a public hearing. He further explained that, by State Statute, there must be a public hearing and in many cities the public hearing is held before the planning board or commission, which empowers the group. However, for many years the Edmonds City Council has routinely held their own public hearings. He suggested there is an argument to be made that doing it this way provides an opportunity for the public to skip an important part of the public hearing process by waiting to take their concerns to the City Council. He said he would carefully review the way the clauses are arranged in this section to make sure the City's current process is maintained.

Board Member Works referenced the memorandum that was provided in their packet regarding the issue of planned unit developments (PUD's). She suggested that since PUD's are not allowed in the City, perhaps they should eliminate all references to them in the tables on Pages 2 and 3. Mr. Snyder explained that a PUD process typically allows a developer to change the density or assign uses, but the City's planned residential development (PRD) ordinance limits a development to the uses available in the zone and no density expansion would be allowed. **He agreed with Board Member Works that the City's PRD process is very different from the typical PUD process. Therefore, PUD should be eliminated from the tables.**

Board Member Henderson questioned why definitions and descriptions for each of the different types of decisions were not provided in the document. He suggested language should be provided at the beginning of the document that specifically defines the types of decisions. Vice Chair Dewhirst and Board Member Freeman agreed. Mr. Snyder advised that staff is still in the process of reviewing the decision table on Pages 2 and 3 to make sure it is consistent with the City's current processes. The next step in the process is to cross reference to the various chapters in the document.

The Board discussed their concern that the way the draft tables are currently laid out, they are difficult to understand. **They agreed that the tables should be reformatted so that each one is on its own page. Board Member Henderson suggested that the abbreviations and acronyms that are used in the table should be eliminated, too.**

Even though the language might be repetitive, Vice Chair Dewhirst expressed his belief that a description of each of the decisions types should be provided at the beginning of the document; particularly since the goal of the rewrite project is to make the document more user friendly and easier for staff to apply. **The Board agreed that the information provided in Table B (decisions) should come before the information provided in Table A (action type).**

Vice Chair Dewhirst referred to Section 20.01.005.B on Page 4 and noted that the terms "public hearing" and "public hearings" have been used interchangeably. **Mr. Snyder suggested the term "public hearing" be used throughout this section. The first time it is used, the following language could be added, "public hearing shall refer to one or more public hearings, including continued public hearings." The Board agreed this would be appropriate.**

Vice Chair Dewhirst requested clarification of the term “docket” as used in Section 20.09.070. Mr. Snyder explained that the term “docket” is another way of saying a list of proposed Comprehensive Plan amendments. He reminded the Board that the City has established an application deadline by which all proposed amendments must be submitted in order to be considered as part of the yearly Comprehensive Plan amendment process. Mr. Chave advised that the City uses a docketing process, but they don’t specifically call it a docket. They keep a list of all of the amendments that have been proposed. Mr. Chave pointed out that “docket” is one way of referring to the list of proposed amendments, and the Growth Management Act uses the term “docket.” **He suggested that Section 20.09.070 be titled docket or list of code amendments. The section should make it clear that a docket refers to the list of code amendments that have been proposed for the year amendment process.**

Board Member Reed pointed out that the table on Pages 2 and 3 of the draft document indicates that site-specific rezones would be a Type III decision, which means the Planning Board would be taken out of the review process. Mr. Snyder emphasized that the rewrite would not change any of the fundamental processes. The proposed language was taken from Gig Harbor’s ordinance, and staff is still reviewing the document to make sure the categories match up with the way the City currently does business. Again, he emphasized that the Board should assume there would be no changes in the City’s current processes.

Board Member Reed recalled that at the last meeting the Board discussed the concept of getting the City Council out of the quasi-judicial decision making process. He reminded the Board that he voiced his belief that the City Council should maintain a role as an appeal body in some situations. Mr. Snyder said his understanding from the Board’s last meeting was that the majority of the members were in favor of getting the City Council out of quasi-judicial decisions. Other than that, it is not staff’s intent to change any of the processes that are currently used.

Vice Chair Dewhirst expressed concern that the draft document does not provide any reference to the rezone criteria that must be considered when reviewing rezone applications. Mr. Snyder advised that a chapter would be added to the Edmonds Community Development Code to outline the decision making criteria, but this information would not be outlined in Chapter 20.

The Board referred to the information provided by staff regarding notices and whether or not this burden should be shifted to the applicant. Mr. Snyder explained that, as per the current ordinance, if the staff makes an error when mailing notice, the City would potentially be liable. If this responsibility is shifted to the applicant, the liability associated with possible delays would also be placed on the applicant.

Board Member Works suggested that the overall permit review process might be faster, if the responsibility were shifted to the applicant. Staff would be able to spend more time reviewing permit applications rather than mailing out notices. She said she would be in favor of shifting the burden to the applicant.

Mr. Chave explained that staff works on many applications at the same time, and they have to keep track of all of the various steps in each process. Their goal is to shift responsibility for those portions of the process that don’t have to be done by the planning staff. This would allow the staff to focus on the actual reviews to get permits out in a timely manner. Mr. Snyder added that permit requirements have become increasingly sophisticated, and this has increased the staff’s burden. The City must decide whether they want to increase permit fees so staff can do all of the work, or shift some of the burden to the applicants. If applicants are required to mail their notices, the City would be able to avoid future adjustments to their fee schedule.

Board Member Reed expressed his concern that the notices happen in a timely and consistent manner, regardless of who sends them out. Therefore, enforcement of the notice requirement would be extremely important to make sure applicants do the notices correctly. He noted that, oftentimes, there are advantage to a central process rather than having various people handle the job. If the City shifts the notice responsibility to applicants, they must make sure the instructions are clear to avoid problems. Board Member Freeman pointed out that developers would have the option of hiring an independent company to send out their notices.

**The majority of the Board agreed that the notice responsibility should be placed on the applicant.** Mr. Chave noted that the notice would be drafted and printed by the staff, and then given to the applicant to post and mail. This would ensure a consistent format, but the applicant would be required to do the leg work.

Mr. Snyder summarized the major changes identified by the Board as follows:

#### **WORK SESSION ON DOWNTOWN BD1 DESIGN STANDARDS**

The Board postponed their discussion related to the downtown BD1 design standards until a future meeting.

#### **REVIEW OF EXTENDED AGENDA**

Chair Guenther reviewed that the August 8<sup>th</sup> agenda would include continued discussion regarding the code rewrite project. In addition, the public hearing related to the nonconformance standards was continued to August 8<sup>th</sup>. He reminded the Board that the August 22<sup>nd</sup> meeting was cancelled.

#### **PLANNING BOARD CHAIR COMMENTS**

Chair Guenther reported that he and Vice Chair Dewhirst provided a report to the City Council on July 24<sup>th</sup>. The purpose of their presentation was to update the City Council on what the Board has done in the past, the topics they are currently working on, and future topics.

#### **PLANNING BOARD MEMBER COMMENTS**

Board Member Works announced that she would judge the City's sand castle contest on July 30<sup>th</sup>.

Vice Chair Dewhirst reported that he attended a public meeting sponsored by Community Transit, at which they described their plans to provide bus rapid transit along Highway 99.

Board Member Freeman reported that she attended the first meeting of the Working 33 Group on July 19<sup>th</sup>. The group consists of 33 members, and their purpose is to discuss a waterfront redevelopment plan. She said she was pleased that Mr. Hinshaw was present, which indicates he hasn't given up on the City yet. The main issues to address include the high water table and parking. She said she was also pleased to learn that the Transportation Choices Coalition is working on ideas for dealing with parking issues. She said the Working 33 Group would meet again on July 26<sup>th</sup> and July 30<sup>th</sup>.

#### **ADJOURNMENT**

The meeting was adjourned at 10:00 p.m.

**APPROVED**