

**APPROVED ON OCTOBER 24, 2007**

**CITY OF EDMONDS  
PLANNING BOARD MINUTES  
October 10, 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**

Duane Bowman, Development Services Director  
Mike Thies, Code Enforcement Officer  
Karin Noyes, Recorder

**BOARD MEMBERS ABSENT**

Michael Bowman (excused)

**READING/APPROVAL OF MINUTES**

**BOARD MEMBER YOUNG MOVED THAT THE MINUTES OF SEPTEMBER 26, 2007 BE APPROVED AS SUBMITTED. BOARD MEMBER HENDERSON SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY, WITH BOARD MEMBERS DEWHIRST AND REED ABSTAINING.**

**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 REGARDING EDMONDS COMMUNITY DEVELOPMENT CODE (ECDC) CHAPTER 17 (NUISANCE) (FILE NUMBER AMD-07-6)**

Mr. Bowman recalled that on April 25, 2007 the Planning Board reviewed a draft of potential changes to Chapter 17.50 of the Edmonds Community Development Code (ECDC) regarding property performance standards. He noted that the proposed amendments were driven by the types of complaints the City's Code Enforcement Officer has receive over the past several years. He advised that the draft ordinance was updated to reflect the comments provided by the Board on April 25<sup>th</sup>. The following changes were made:

- Section 17.60.030.B was modified to prohibit attractive nuisances dangerous to children from be located outside an enclosed building or on a vacant lot.
- Section 17.60.030.H was modified to allow up to 10 days to begin a construction project.

- In order to consolidate vehicle regulations, provisions related to prohibiting trailers and canopies were moved to a new Section 17.60.040.E.2.n.

Mr. Bowman emphasized that the proposed changes to Chapter 17.60 are representative of the types of complaints the staff gets from the community regarding nuisance situations. The Board must review the proposed document and determine whether or not they are appropriate to move forward to the City Council for final approval. He suggested that when reviewing the proposed code language, the Board members should ask themselves whether or not the nuisances are something they would like to have located near their property. He noted that a number of jurisdictions are working to clear up their nuisance regulations. Mountlake Terrace and Yakima are both actively pursuing more enforceable nuisance codes.

Mr. Thies explained that in the draft document, staff attempted to identify the types of issues they deal with on a regular basis via citizen complaints. He noted that the definition section was updated to provide a clear definition for what is meant by the term “vehicle.” He provided pictures to illustrate examples of the following situations that currently exist in the City:

- Vegetation growing around junk vehicles.
- Over abundance of recreational vehicles parked on a single-property.
- Recreational vehicles that are so large they overpower the neighborhood.
- Recreational vehicles that are covered by blue tarps.
- Too many vehicles parked in front yards or on the street in front.
- Containers and plywood and/or plastic buildings.
- Overgrown and unkempt vegetation in yards.
- Canopies and tarps.
- Outdoor storage units
- People living in recreational vehicles on single-family residential properties.

Mr. Thies advised that the City has received 85 complaints about canopies and tarps that are used to cover vehicles. These situations are usually located in areas where the City would not allow permanent structures, typically within the setback areas.

Mr. Bowman advised that staff attempted to put together suggested code language for property performance standards that address the issues that are raised on a regular basis. He referred to the pictures that were shown by Mr. Thies and suggested the Board consider whether or not they represent situations that are desirable in the City’s residential neighborhoods. The proposed ordinance should represent the community’s desires and not necessarily what staff wants.

CHAIR GUENTHER NOTED THAT NO ONE WAS PRESENT IN THE AUDIENCE TO PARTICIPATE IN THE PUBLIC HEARING.

The Board reviewed draft language and made the following observations and suggestions:

- **Section 17.60.030.F:** Board Member Henderson questioned if the City has a definition for “hazardous trees.” Mr. Bowman answered that this term refers to trees that show obvious signs of distress. Board Member Henderson suggested that including the phrase “any other vegetation” could open up a can of worms. Mr. Thies pointed out that this language already exists in the code and would not really apply to vegetation on public property. It is more related to vegetation that extends into the public rights-of-way. Board Member Henderson suggested the language be made clearer.
- **Storage Containers:** Board Member Henderson said he supports the proposed language related to storage containers. However, he pointed out that property owners can request that large dumpsters be delivered to their home, and they are not charged extra to leave them there for extended periods of time. Mr. Thies said staff has only received two complaints related to this type of situation in the last five years, so he does not see it as a significant problem.
- **Sections 17.60.030.M and 17.60.030.N:** Board Member Henderson pointed out that the proposed language states that garbage and recycling containers cannot be stored in front yards. However, it should be noted that everyone puts these

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containers out in front of their homes on garbage days. He suggested the language be changed to either define the term “stored” or provide a specific exception for garbage days. Mr. Thies said the City has only received six to ten complaints of this type over the past five years; and typically, they are related to situations where property owners do not move their containers after the garbage has been picked up. Mr. Bowman agreed with Board Member Henderson’s concern and said staff would update the language as per his recommendation.

Vice Chair Dewhirst pointed out that Section M would prohibit property owners from storing garbage containers in their front yards. However, in some situations, homes are further back on the property and there is no other place to store the containers except in the front yard against the house. The Board agreed the language should be changed to allow containers to be stored in front yards as long as they are screened from the public’s sight and not within the public rights-of-way.

Board Member Freeman pointed out that some properties have steep slopes that make it difficult to move the garbage containers from the back of a property to the street front. She suggested the language allow staff to take the actual configuration and topography of the lot into consideration when regulating these situations. Mr. Bowman agreed to review the language to consider difficult storage factors

- **Overgrown Vegetation:** Board Member Works expressed concern about allowing vegetation to become significantly overgrown in residential neighborhoods. She noted that invasive plants tend to spread onto neighboring properties. Board Member Reed questioned if there is anything in the proposed language to regulate vegetation on residential properties. Mr. Bowman said there are no significant provisions in the current draft to deal with overgrown vegetation. Board Member Freeman suggested the ordinance should address all noxious weeds and invasive vegetation and not single out certain types. Mr. Thies said overgrown vegetation is a difficult subject to address, but other jurisdictions in the area have attempted to do so. Mr. Bowman agreed to discuss this concept with the City Attorney to identify the City’s options for regulating overgrown vegetation and noxious weeds.

Mr. Thies said the City receives numerous complaints related to vegetation and noxious weeds. Vice Chair Dewhirst questioned if the City’s fire code would address situations that occur within the public rights-of-way and setback areas. Mr. Thies said the fire code would only address these situations if there are drought conditions. Mr. Bowman said the City does have some authority to regulate these situations if they present a danger to the public’s health and safety. He suggested the Board carefully consider what the public wants. He noted that most property owners would be against allowing these situations to occur in their neighborhood because they often result in decreased property values for surrounding property owners.

Board Member Young recalled that a few years ago, the Board agreed the City did not have the right or authority to guarantee a property owner’s view. He suggested there could be repercussions if the City were to regulate noxious weeds, but not other situations that could have a significant impact on property values. He questioned if the City should be responsible for these situations if they do not present health or safety hazards to the public.

Board Member Young agreed that the majority of property owners in the City would be in favor of keeping nuisance situations out of the setback and right-of-way areas. However, instead of creating codes to accomplish this task, the City could address these situations as public health and safety issues. He suggested it would be more appropriate to encourage property owners to work together to resolve issues rather than expecting the City to take care of their problems. Mr. Bowman countered that sometimes a property owner is unwilling to work with neighbors to resolve problems.

Chair Guenther suggested that perhaps vegetation could be regulated by the degree of nuisance. If a situation only impacts an adjacent property owner, the City could require both parties to work the problem out on their own. However, if a situation reaches the point that it impacts the character of the entire neighborhood, the City could get involved. He pointed out that many of the City’s current zoning codes are intended to preserve the character of the neighborhoods.

Board Member Freeman expressed her belief that all property owners have the right to enjoy their properties, and they have a right to expect the City to protect them from situations that impact their ability to enjoy their properties. Board Member Works agreed. She noted that while most property owners are reasonable and problems can be worked out

through compromise without the City getting involved, some situations involve property owners who are unwilling to work with their neighbors.

Board Member Young questioned the harm of allowing citizens to do whatever they want on their properties as long as it does not present harm to the surrounding property owners. Vice Chair Dewhirst suggested that this decision must be made by the community. He recommended the Board forward the draft language to the City Council. Hopefully, the public would participate in the hearing before the City Council and indicate whether or not they want the City to regulate noxious weeds and/or invasive vegetation. He questioned if there is a definition for the term “noxious weeds.” Chair Guenther answered that the State has a definition for this term.

Vice Chair Dewhirst suggested the City Council would likely find there is public interest in keeping invasive species off of private property. Board Member Henderson pointed out that many noxious weeds are so prevalent in neighborhoods that it is very difficult for property owners to get rid of them. He expressed his belief that it would not be practical to adopt code language that would allow the City to penalize property owners who have these species present on their properties. Vice Chair Dewhirst pointed out that the code enforcement officer would only become involved in these situations if a complaint were filed. Board Member Henderson questioned if it would even be appropriate for the City to regulate noxious weeds if it is impossible to get rid of them. Vice Chair Dewhirst suggested it would be appropriate for the City to start addressing the problem of noxious weeds by prohibiting them in the setbacks and rights-of-way.

- **Section 17.60.040.C:** Board Member Henderson noted that the section reference should actually be 17.50.040.E.
- **Sections 17.60.020.G and 17.60.030.K:** Board Member Reed noted that both of these sections deal with the storage of waste which attracts insects or rodents. He said some people might argue that compost piles attract rodents, so the proposed language should make it clear that composting would not be prohibited. Mr. Bowman pointed out that Section 17.60.030.O talks about composting and requires that it be kept in a manner that does not attract insects and/or animals. However, he agreed to review the draft language to make sure that composting would not be prohibited.
- **Sections 17.60.030.I and 17.60.030.J:** Board Member Reed suggested that it might be appropriate to include fire wood in these two sections that talk about the storage of combustible or flammable materials or substances. Mr. Bowman agreed to change the language to include firewood.
- **Section 17.60.030:** Board Member Reed expressed his opinion that the introduction to this section was unclear. He suggested the words “any of the following” be moved to just after the word “maintained.” In addition, he suggested the term “maintained” be defined in the code.
- **Section 17.60.040.D:** Board Member Reed pointed out that the proposed language would prohibit all vehicle oriented businesses. He questioned if the real intent of the language is to prohibit business that require the actual storage of vehicles on site. Mr. Thies said this section is intended to apply to property owners who sell or repair cars in residential neighborhoods as a business. Mr. Bowman added that the intent of the proposed language is to avoid situations where vehicles are allowed to accumulate. Board Member Reed again stated his opinion that the term “vehicle oriented businesses” is broader than the intent of this section.
- **Section 17.60.040.E.2.d:** Board Member Reed said this section places limitations on a property owner’s ability to work on vehicles outside an enclosed structure. He questioned if this prohibition would prohibit a property owner from renovating or overhauling a bus or boat if he/she were unable to place the vehicle within an enclosed structure. He suggested that if the language is not intended to prohibit this type of activity, then the wording should be changed to make it clearer.
- **Section 17.60.040.E.2.f:** Vice Chair Dewhirst recalled that the Board previously agreed it would be inappropriate to not allow a property owner of two adjacent lots to park recreational vehicles on one of the lots. He noted there are several situations in Edmonds where this type of use occurs, and it should be allowed to continue. The remainder of the Board agreed this would be appropriate as long as the properties are adjacent to each other. Mr. Bowman agreed to make the change as recommended by the Board.

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- **Section 17.60.050:** Vice Chair Dewhirst recalled the Board's earlier decision that the language in this section be changed to allow some leeway for people to use recreational vehicles when guests are visiting. The Board agreed that this change should be made, and Mr. Bowman agreed to make the change.
- **Section 17.60.030.L:** Board Member Dewhirst pointed out that, as currently proposed, the language in this section infers that the City would be allowed to have stagnant water, but no one else would. Mr. Bowman agreed to rework the language in this section to make its intent clear.
- **Section 17.60.040:** Board Member Reed pointed out that the formatting must be updated in this section because it currently skips h, i, j, and k.

Mr. Bowman invited the Board to provide feedback about whether or not they are in favor of updating the code to make it more aggressive in addressing nuisance situations. Board Member Young agreed that the nuisance ordinance is necessary in order to protect the general public from things that are nuisances. However, in his opinion, most of the pictures shown by Mr. Thies represent situations that would not qualify as any other nuisance than visual annoyance.

Board Member Freeman said she moved to Edmonds from a Columbia, Maryland, a community that was well regulated. When looking for a home, she immediately walked away from a property that was located across the street from property where numerous junk cars were stored. She suggested that if they want to have community standards, the City must go beyond regulating just those nuisances that represent public safety and health concerns.

Based on the number of complaints the staff has received, Board Member Works said it is apparent the community would be in favor strengthening the nuisance section of the code. She agreed with Vice Chair Dewhirst that it would be appropriate to forward the draft ordinance to the City Council so they can solicit public input regarding the issue. Board Member Henderson said he would support the draft ordinance, with the exception of the comment he made earlier that the City should not regulate vegetation.

Board Member Reed noted that most of the pictures provided by staff illustrate situations where nuisances infringe in the setback areas or onto other properties and public rights-of-way. He suggested that perhaps the ordinance should protect the setback areas and public rights-of-way and then not worry so much about what people do on the rest of their property. He expressed his belief that property owners must have the right to use their property however they want. He summarized there are certain things that should be regulated because they represent a common vision of what citizens of Edmonds want to see, but the City should not go overboard in this effort. He expressed his belief that the draft language represents a good compromise for regulating nuisances.

Board Member Freeman suggested they approach the issue from the standpoint of requiring property owners to respect their neighbors' rights rather than allowing them the right to do whatever you want on your own property, regardless of its impact to neighboring property owners. She expressed her belief that government should be utilized to help people live in harmony with each other. Mr. Bowman suggested that the proposed ordinance would provide a basis for property owners to work together to resolve conflicts. If a property owner doesn't want to cooperate with the neighbors, a complaint could be filed and the City could step in to address the problem. Vice chair Dewhirst noted there are many neighborhood situations that make it difficult for property owners to work together, and the City must have codes in place to deal with the chronic offenders who are difficult to work with. He summarized there is a community expectation that the City should help property owners address significant situations. He expressed his opinion that the language proposed in the draft ordinance would be appropriate and on the right course for accomplishing this goal.

Board Member Young inquired if the proposed ordinance would be enforceable, as written. Mr. Thies answered affirmatively. Board Member Young said that if the proposed ordinance would be enforceable, he would be in favor of moving it forward to the City Council.

CHAIR GUENTHER CLOSED THE PUBLIC HEARING.

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Mr. Bowman advised that he would invite the City Attorney to review the changes and provide feedback, particularly related to the noxious weed language, and attempt to have a new draft before the Board for consideration at their November 14<sup>th</sup> meeting. At that time the Board could decide if they want to add language related to vegetation.

Mr. Bowman emphasized that it is important to find out what the community wants and this would likely become evident when the draft language is presented to the City Council for review and a public hearing. He explained he would present the draft ordinance to the City Council's Community Services Committee first. The Committee would likely schedule the ordinance as a work session before the entire City Council as a whole prior to the actual public hearing.

### **CODE RE-WRITE PROJECT UPDATE AND TOPICAL DISCUSSION**

Mr. Bowman announced that there has been some recent controversy regarding the Planned Residential Development (PRD) regulations found in ECDC 20.35 that requires the City to move this section up in the code rewrite process. He advised that the Hearing Examiner recently issued two decisions regarding PRD's that were contrary to the way the City has processed and interpreted the PRD Ordinance in the past. Specifically, the Hearing Examiner raised issues regarding perimeter buffering requirements. In addition, staff has raised concerns over criteria for tree retention and what is meant by the term. Staff recommends the Board consider the impact of the critical area and common useable open space requirements. At this time, there is confusion about whether or not the required critical area space can be credited as open space.

Mr. Bowman reminded the Board that the City Attorney has drafted language (Title 20) that would consolidate the preliminary subdivision and PRD review process to just the Hearing Examiner, and this language would likely be presented to the Board on November 28<sup>th</sup>. However, the City Council has expressed their desire that the Board address issues related to the PRD ordinance as soon as possible.

Board Member Reed recalled that in addition to their recommendations to the City Council related to the PRD Ordinance, the Hearing Examiner also raised other concerns related to the development code and offered to help staff rewrite sections of the code to address the concerns they raised. Mr. Bowman summarized that the Hearing Examiner has offered possible amendments to clarify certain sections of the code language, particularly the PRD Ordinance.

Vice Chair Dewhirst pointed out that the initial approach staff gave for the code rewrite project is long gone. Mr. Bowman agreed that the work is being driven by the importance of issues. Vice Chair Dewhirst asked for a timeline for sequencing the rewrite of each of the code sections. Mr. Bowman reviewed that the Board has already worked through the nonconforming and nuisance sections, and staff would bring back the nuisance section for final review before moving it on to the City Council. Meanwhile, the City Attorney would continue preparing draft language for the procedures section (Title 20). The Board must also deal with the PRD ordinance as soon as possible and then move into the sign and zoning regulations. They must also review the definitions section. He said staff's goal is for the Board to get through all of the sections by early 2008 so the changes could be adopted by the City Council in the spring.

### **REVIEW OF EXTENDED AGENDA**

Chair Guenther asked staff to contact Mr. MacIntosh to schedule an update on the Parks, Recreation and Open Space Programs.

Vice Chair Dewhirst asked when the Waterfront Redevelopment Plan would come before the Board for review. Board Member Reed reported that a public meeting was conducted on October 5<sup>th</sup>, where the consultant presented five alternatives, and an additional public meeting has been scheduled for October 18<sup>th</sup> for this same purpose. The group intends to announce the preferred alternative at a public meeting on October 25<sup>th</sup>. He advised that Chris Keuss, Port of Edmonds Executive Director, is currently making presentations before several different groups in the City and information regarding the plan is also available via the Port's website. Mr. Bowman advised that once a preferred alternative has been selected, the group would work with the City on the public process for getting a final plan adopted.

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Vice Chair Dewhirst expressed concern that the Board may be asked to spend a significant amount of time working on the Waterfront Redevelopment Plan at the expense of their work on the code rewrite project. He voiced his opinion that the code rewrite project should not be pushed back. Mr. Bowman agreed that it is important to keep the code rewrite project moving on schedule, but the Board must also recognize that the Waterfront Redevelopment Plan is very important to the City. He suggested it may be necessary for the Board to schedule special meetings in order to take care of both projects. Vice Chair Dewhirst suggested it would be appropriate for Chair Guenther to share this information with Mayor Haakenson and ask him to identify what the Board's priorities should be. The Mayor should also be clearly informed of the staffing requirements needed to accomplish both tasks simultaneously. Board Member Reed pointed out that the Parks, Recreation and Open Space Comprehensive Plan would also come before the Board for review in the near future. In addition, Vice Chair Dewhirst added that the City must update their Shoreline Master Program as required by the State.

### **PLANNING BOARD CHAIR COMMENTS**

Chair Guenther recalled that at his last meeting with the Mayor, Mayor Haakenson advised that after the Board finishes their work on the code rewrite project, they should consider creating a new section that deals with green and sustainable development. Mr. Bowman reported that he attended a conference regarding this issue and obtained a lot of useful information about building green that would be posted on the City's website. He noted that cities in the Puget Sound area are in various stages of implementing green concepts into their code.

### **PLANNING BOARD MEMBER COMMENTS**

Board Member Reed said it would have been nice to hear from the public regarding the proposed amendments to ECDC 17.60 prior to making a recommendation to the City Council. As it is, the document would be forwarded to the City Council without public input. Mr. Bowman said he plans to present the proposed amendments to ECDC 17.60 to the City Council's Community and Development Services Committee for review prior to presenting the language to the City Council as a whole. He said he suspects the word would get out about the proposed changes and the public would be prepared to speak at the public hearing before the City Council.

Board Member Reed reported that he and Board Member Freeman participated on the Waterfront Redevelopment Committee, and many of the Board Members attended the public meeting where the alternatives were presented. He offered clarification that when a vote was taken, many of the committee members were caught off guard. No one voted in favor of the first two alternatives, and the majority indicated that the third alternative was their preferred choice not necessarily based on the building heights that were proposed, but because it was the alternative that provided a pedestrian access over the railroad tracks. He expressed his belief that height would clearly be an issue when the preferred alternative is presented to the public.

Board Member Freeman suggested that what the Waterfront Redevelopment Committee thought at the end of their work is not really as important as the discussion that took place before the alternatives were presented. She said she supports the concept of taller buildings, but that is not likely the consensus of the entire group. She noted that the group was not allowed to choose portions of each of the alternatives. They were merely asked to identify the one they most preferred. She expressed her belief that as the committee worked through issues, the opposing views came closer together. She cautioned that they must be careful not to let members of the public shoot the entire plan down based on only one aspect. Instead, they must work to resolve differences and compromise to come up with a plan that works for everyone.

Board Member Freeman announced that SnoIsle Regional Libraries would host a showing of "The Inconvenient Truth" on October 21<sup>st</sup> at 2:00 p.m. in the Plaza Room of the Edmonds Library Building.

Vice Chair Dewhirst distributed fliers announcing a series of free seminars sponsored by the Washington State University Beach Combers. He said he attended one of their seminars and found it very informational. The topic of the October 18<sup>th</sup>

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seminar is on the impacts of global warming, particularly as it impacts the northwest. The topic of the November seminar is Orca Whales. He recommended Board Members attend.

Mr. Bowman reported that Council Member Dawson worked with Snohomish County and the City of Mountlake Terrace to organize the first and hopefully annual "Graffiti Community Paint Out" on October 6<sup>th</sup>. Volunteers went to a location below Funtasia to paint over the graffiti on the wall, the building and the tunnel. The taggers came back late Sunday evening and hit the back side of the building, but they did not hit the wall because it is more visible. The City of Mountlake Terrace painted the building again, and it has been hit once more. The building owner has agreed to continue to paint over the graffiti so the taggers will understand they cannot have the area back. He summarized that the event was very successful.

**ADJOURNMENT**

The meeting was adjourned at 9:07 p.m.

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