

**APPROVED APRIL 22<sup>nd</sup>**

**CITY OF EDMONDS  
PLANNING BOARD MINUTES**

**March 25, 2009**

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Chair Bowman called the meeting of the Edmonds Planning Board to order at 7:04 p.m. in the Council Chambers, Public Safety Complex, 250 – 5<sup>th</sup> Avenue North.

**BOARD MEMBERS PRESENT**

Michael Bowman, Chair  
Philip Lovell, Vice Chair  
John Reed  
Jim Young  
Kevin Clarke

**STAFF PRESENT**

Duane Bowman, Development Services Director  
Karin Noyes, Recorder

**BOARD MEMBERS ABSENT**

Cary Guenther (excused)  
Judith Works (excused)  
Valerie Stewart (excused)

**READING/APPROVAL OF MINUTES**

**BOARD MEMBER REED MOVED THAT THE MINUTES OF MARCH 11, 2009 BE APPROVED AS PRESENTED. VICE CHAIR LOVELL SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.**

**ANNOUNCEMENT OF AGENDA**

No changes were made to the agenda.

**AUDIENCE COMMENTS**

**Jim Wassall, Edmonds**, recalled that at their March 11<sup>th</sup> meeting, the Planning Board did not allow public comment during their deliberations on the proposed regulations dealing with short-term rentals in single-family zones because the public hearing had been closed. However, they referred to a letter that was submitted after the public hearing by an attorney for Jim Wilkinson, who owns a triplex development on Sunset Avenue. Mr. Wassall suggested it was inappropriate for the Board to consider the letter but not allow additional public comment after the formal hearing was closed.

Mr. Bowman explained that because the decision regarding short-term rentals is legislative rather than quasi-judicial, the Board is allowed to accept additional written or oral comments at any time without violating the Appearance of Fairness rules. It is up to the Board to decide how much weight to give testimony that is submitted after the formal public hearing has been closed. However, with quasi-judicial decisions, no additional comments, either written or oral, can be accepted after the formal public hearing has been closed. In order to accept additional testimony, the Board must reopen the formal public hearing. Board Member Reed asked if the City would be required to provide notice if a quasi-judicial hearing is reopened. Mr. Bowman explained that while it is possible to reopen the public testimony period during a meeting, in order to be fair, the Board should also continue the public hearing to a date certain and direct staff to advertise the date.

Board Member Young recognized that, legally, the Board can accept written testimony after a legislative public hearing has been closed. However, he suggested the Board make a policy decision to accept no additional testimony (written or oral) after the hearing has been closed. Mr. Bowman pointed out that once the Board has forwarded a recommendation to the City Council, the City Council would conduct another public hearing. Any additional comments that come in after the hearing has been closed could be considered at the City Council level. He cautioned that if the Board establishes a policy that they would no longer accept written testimony after a legislative public hearing has been closed, they should make this announcement at the end of the hearing so everyone in the audience has a clear understanding of the rules that would be applied.

The Board agreed it would be appropriate to formulate a policy for legislative public hearings that once a hearing has been closed, no additional written or oral testimony would be accepted unless the Board specifically asks for it, at which time both sides would be allowed to submit additional testimony.

Board Member Young referred to an email the Board received just hours prior to the meeting from Evan Pierce. He pointed out that, in addition to staff forwarding the email to each Board Member, many also received the email directly from Mr. Pierce. He said he does not want the City to give his email address and other contact information to members of the public. Mr. Bowman emphasized that staff does not give out the Board Members' personal information. He noted that this practice could be a particular problem with quasi-judicial matters since the Board Members are required to disclose any ex-parte contacts they receive. The Board agreed they did not want staff to distribute their contact information to members of the public. Instead, written correspondence from the public should be sent to the City, and staff would forward it to the Board Members. Board Member Reed suggested City staff use the "blind copy method" for distributing emails so that the individual email addresses are not printed on the correspondence.

Board Member Reed recalled that when he was a new Board Member, the City Attorney's Office provided a brief training session regarding the rules and procedures for public hearings. He suggested it would be worthwhile to repeat this presentation for the benefit of the new Board Members. Mr. Bowman suggested the City Attorney be invited to provide a brief presentation at the Board's retreat on April 8<sup>th</sup>. The Board Members concurred.

### **CONTINUED DELIBERATIONS ON PROPOSED REGULATIONS DEALING WITH SHORT-TERM RENTALS IN SINGLE-FAMILY ZONES**

Mr. Bowman recalled that the Planning Board conducted a formal public hearing on an ordinance dealing with short-term rentals in single-family zones on February 11<sup>th</sup>, and they continued their deliberations to March 11<sup>th</sup>. On March 11<sup>th</sup> the Board deadlocked on how to address the issue, and staff was directed to prepare two alternative sets of findings: one to support establishing a minimum 30-day rental requirement and another that would do nothing and allow the interim ordinance to expire. It is up to the Board to make a decision as to which alternative they want to recommend to the City Council. He reviewed the recommendation of each alternative as follows:

- *Alternative 1* – Based on the Statements of Fact and Conclusions summarized in this report, the Planning Board recommends that rental units in single-family zone districts should be required to maintain a minimum 30-day rental requirement. Further, that the City Council and City Attorney should establish an amortization schedule for existing short-term rental units. Staff used the comments provided by the Board on March 11<sup>th</sup>, particularly those from Board Members Clarke and Young, to formulate the Statements of Fact and Conclusions.
- *Alternative 2* – Based on the Statements of Fact and Conclusions summarized in this report, the Planning Board recommends disapproval of the application and that the interim ordinance should be allowed to lapse. The interim ordinance would ultimately lapse on May 14<sup>th</sup>, unless it is extended by the City Council.

Board Member Reed pointed out that the Statements of Fact and Conclusions for Alternative 1 were not accompanied by a draft ordinance. Mr. Bowman reminded the Board that they did not make a recommendation regarding the amortization schedule. Once the Board's recommendation has been forwarded to the City Council and the City Council has provided direction regarding amortization, the City Attorney would prepare a draft ordinance. Board Member Reed questioned if it makes sense to have two different sets of findings. Mr. Bowman reminded the Board that at their last meeting, three Board

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Members were in support of the ordinance and three were opposed. Because the vote was split, two sets of findings were necessary.

Vice Chair Lovell said he still supports Alternative 2, which would allow the interim ordinance to lapse. He expressed his belief that Alternative 1 would exacerbate the problem and would be very difficult for staff to administer. Board Member Young said he would support Alternative 1. He cautioned that if they allow the interim ordinance to lapse with no change to the code, there would be no minimum rental period in single-family zones.

Chair Bowman said he would support Alternative 2 because there does not appear to be a significant problem with short-term rentals in Edmonds at this time. The only complaints the City has received over numerous years have been related to the one house on Cyrus Place. The City could revisit the proposal again if additional problems come up, but he doesn't see short-term rental as a problem at this time. He noted there are other property owners in the City who currently rent their homes on a short-term basis, and no complaints have been filed. He summarized that there is no need to amend the code to address a problem that really doesn't exist.

Board Member Young expressed his perspective that the purpose of the Board is not to correct problems but to ask the question of how they would write the code for single-family zones to address the issue of properties being rented in single-family zones. He cautioned that if the Board only recommends amendments to address problems when numerous complaints have been filed, they will become a "response board" rather than the Planning Board. He expressed his belief that there is ample justification to support the proposed change because single-family zones were never set up to allow business-producing enterprises. Having a rental period of shorter than 30 days would be consistent with the regulations that apply to property owners who operate home-based businesses in single-family zones. He observed that the restrictions on home-based businesses were not established as a result of numerous complaints. They were intended to prevent problems from coming up in the future. He said he believes that allowing short-term rentals in single-family zones is a code oversight. The fact that there have been few complaints is completely academic. Businesses are not appropriate uses in single-family zones.

Board Member Reed said he believes there are better ways to resolve the issue related to the home on Cyrus Place than generating an ordinance to change the Development Code. The City already has regulations in place to address issues such as disturbing the peace and parking. He said he would support Alternative 2, which would allow the interim ordinance to lapse.

Board Member Clarke asked if it is currently legal for private businesses to hold weddings in single-family zones. Mr. Bowman answered that this type of use would be illegal. However, weddings are allowed on single-family properties, as long as they are not associated with a business enterprise. Board Member Clarke asked how the City would enforce this regulation. Mr. Bowman referred to the property on Cyrus Place, where the property owner was renting the home for weddings, conferences, etc. The City informed the owner that commercial activities that are not associated with the single-family use are illegal, and the property owner complied with the City requirement. However, an additional problem came up when the home was rented to a family for a week, and they held a wedding reception that impacted the neighbors. Board Member Clarke said he reviewed the City's records and found that the only complaints that have come up regarding short-term rentals are related to the house on Cyrus Place. Mr. Bowman agreed these are the only complaints he is aware of. No complaints have been filed regarding the triplex on Sunset Avenue.

Board Member Clarke said he appreciates the time and thoughtful effort staff went through to create the two alternatives. Seeing the Statements of Fact and Conclusions in writing helped clarify the issue in his mind, and he is now prepared to reverse his earlier position. He said he would support Alternative 2 because it is already illegal to conduct commercial activities in single-family zones, including bed and breakfast establishments. Mr. Bowman clarified that while bed and breakfast establishments are illegal uses in single-family zones, there is nothing to stop a property owner from renting out a room and serving breakfast. Board Member Clarke summarized that nuisance laws are already in place to address disagreements between homeowners and the police can be called in if there is a disturbance. The only property owner who violated the single-family zoning regulations (Cyrus Place) has discontinued the illegal uses. Therefore, there is no reason to create another policy or direction at this time. He said he still believes the principles he outlined at the last meeting regarding single-family zones. If the Board were to write the single-family zoning code from ground one today, he believes a short-term rental requirement should be included. However, he would be opposed to adding it at this later date. He suggested the

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City Council should make the decision without involving the Planning Board. Mr. Bowman reminded the Board that their purpose is to perform the ground work and make a recommendation that would help the City Council make the final decision.

Board Member Clarke summarized his belief that there has not been enough public record to show that short-term rentals have become a nuisance issue in the City, aside from the one property on Cyrus Place. The triplex on Sunset Avenue has not received any complaints against it, and he doesn't see how setting a minimum rental period would solve the nuisance issues that initially prompted the interim ordinance.

**BOARD MEMBER REED MOVED THAT THE BOARD FORWARD FILE NUMBER AMD-08-16 TO THE CITY COUNCIL WITH A RECOMMENDATION OF DENIAL BASED ON THE STATEMENTS OF FACT AND CONCLUSIONS IDENTIFIED IN EXHIBIT 2 OF THE STAFF REPORT (ALTERNATIVE 2). CHAIR BOWMAN SECONDED THE MOTION. THE MOTION CARRIED 4-1, WITH BOARD MEMBERS BOWMAN, LOWELL, REED AND CLARKE VOTING IN FAVOR AND BOARD MEMBER YOUNG VOTING IN OPPOSITION.**

Mr. Bowman advised that he would prepare the Statements of Fact and Conclusions for Chair Bowman to sign off on before forwarding the Board's recommendation to the City Council. He said he anticipates the City Council would consider the Board's recommendation sometime in late April.

#### **DISCUSSION REGARDING RETREAT AGENDA**

The Board discussed the following ideas for their retreat agenda:

- **Rules and procedures for quasi-judicial and legislative hearings.** The Board agreed it would be appropriate to invite the City Attorney to provide a brief presentation regarding the rules and procedures for quasi-judicial and legislative hearings. They also agreed it would be helpful to invite the City Attorney to review the procedures for communicating via email, particularly regarding quasi-judicial matters.
- **Policy for accepting testimony after a formal legislative public hearing has been closed.** Although not required by law, the Board agreed it would be appropriate to discuss the possibility of creating a policy for legislative hearing procedures so the process is fair. They discussed the need for a clear policy for taking additional testimony after the public hearing has been closed. They agreed that the policy should be clarified at the end of each public hearing so the public understands the Board's position. They discussed the possibility of printing the rules and procedure for both quasi-judicial and legislative hearings on the back of the Planning Board's agendas. Board Member Young referred to the Board's earlier discussion regarding short-term rentals in single-family zones and recalled that the Board received a letter of opposition just prior to their meeting. While he does not believe the Board Members acted dishonestly, members of the public could become confused because numerous people spoke in favor of the proposed 30-day short-term rental requirement at the public hearing, and the Board decided to recommend letting the interim ordinance lapse, instead. He summarized that accepting written testimony after a public hearing has been closed can appear unfair.
- **Sustainability.** It was discussed that Mr. Chave previously suggested the Board spend some time at their retreat to discuss the issue of sustainability. Vice Chair Lovell noted that there is a lot of enthusiasm amongst the community for cleanliness and sustainability. However, he questioned if the public has a clear understanding that implementing sustainable elements into projects costs more money. He suggested the Levy Committee would likely recommend a more realistic approach to development in order to improve the long-term economic health of the City and encourage development. Mr. Bowman emphasized that sustainability is not related to just "green" elements. It also includes elements such as a sustainable financial plan for the City to remain viable, capital infrastructure to support development in the City, etc. While development has been a negative concept in the past for Edmonds citizens, it is clear that the status quo is not working and the situation has to change. However, the majority of the citizens of Edmonds do not understand that the City's financial situation is bleak, and the purpose of the Levy Committee is to gain community awareness and figure out how to address the problem. As an example, he noted that 56% of the City's retail sales tax revenue in the past has come from car dealerships on Highway 99, and this is clearly not a sustainable way to fund City operations given what is happening with the auto industry now.

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Chair Bowman recalled the Board previously asked Mr. Chave to provide a pie chart showing a percentage breakdown of where the City's retail sales tax revenue comes from. Mr. Bowman indicated he would ask Mr. Chave to redistribute this chart as part of the Board's retreat packet. He noted that Mr. Chave also has information that compares the City's retail sales tax revenue with other jurisdictions in the State.

- **Alternative plans for the ferry terminal.** Board Member Reed suggested it would be appropriate to have a discussion about alternative plans for staging the ferry traffic at the existing landing and how this would impact the potential for public/private partnerships in the downtown waterfront area. The Board agreed it would be important to have a general discussion about this topic at the retreat. This would enable them to identify key issues for discussion at future meetings.
- **Alternative ways to fund the park programs.** Board Member Reed expressed concern that park funding could be significantly reduced as the City Council attempts to cut expenses from the budget. It is assumed there will not be sufficient general funds to support the park system over the next few years. He suggested the Board consider proactive ways to fund and support parks other than taxes. The Board agreed it is an opportune time to talk about this issue from a parks board perspective, particularly since three of the Board Members are participating on the Levy Committee. A retreat discussion would allow the Board an opportunity to provide a recommendation to the City Council regarding parks prior to the Levy Committee's presentation on April 21<sup>st</sup>.
- **Strategies for encouraging and supporting redevelopment in the downtown/waterfront area.** Vice Chair Lovell expressed his belief that unless and until the City creates a more supportive atmosphere and organized plan for this area, redevelopment is not likely to occur. Mr. Bowman suggested the Board consider the option of having the City initiate a "planned action" for the waterfront properties. The City would front the environmental costs of doing an analysis for the area. Once the Environmental Impact Statement (EIS) has been completed and the "planned action" has been adopted, any development proposal that is consistent could go straight to design and build. The "planned action" process would flush out issues related to parking, traffic, building height, utilities, etc. The Board agreed to discuss the concept at their retreat and determine whether or not they want to proceed with a work session discussion to consider the option further. Mr. Bowman cautioned that there is currently no City funding to support a "planned action" process. Board Member Reed reminded the Board that the City adopted the Downtown Waterfront Activity Center Plan in 1994, which lays out how the entire downtown and waterfront area should be redeveloped.

Board Member Young agreed with Vice Chair Lovell that the private sector is not going to take full advantage of the waterfront without some kind of public investment as a catalyst, and the same is true for Highway 99. He pointed out that part of the proposed levy funding could be used for economic development projects, such as a "planned action" for the downtown/waterfront area. Mr. Bowman reminded the Board that some funding has been set aside for the Edmonds Crossing Project. He suggested the Board explore whether some of that money could be utilized to study redevelopment of the waterfront area if the ferry terminal is not relocated. Board Member Young agreed that they might be able to use some of this funding to do a "planned action." The Board agreed that Stephen Clifton would be a great resource on this topic. Mr. Bowman summarized that Washington State Ferries is getting a lot of pressure to do private/public partnerships, and there is a lot of potential at the Edmonds waterfront. However, the parameters and ground rules must be clearly set forth. It is likely the City would have to make some concessions related to height in order to accommodate creative design.

Mr. Bowman explained that the purpose of a retreat is to allow the Board to discuss general topics and identify key issues they want to consider at future meetings. Chair Bowman announced that he would meet with Mr. Chave on March 27<sup>th</sup> to finalize the retreat agenda. He invited Board Members to forward additional agenda items to him as soon as possible. The Board agreed it would be helpful to identify time limits for each of the agenda items to make sure they have time to discuss each of the topics. The Board further agreed that after they have established a work plan for the year, it should be presented to the City Council to gauge their support and obtain additional direction before pursuing each of the items.

### **REVIEW OF EXTENDED AGENDA**

The Board did not review the extended agenda.

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**PLANNING BOARD CHAIR COMMENTS**

Chair Bowman did not provide any comments.

**PLANNING BOARD MEMBER COMMENTS**

Vice Chair Lovell provided an update on the Aquatics Center Task Force’s recent work. He advised that the Aquatics Center Study Consultant would meet with representatives from Harbor Square Athletic Club on March 26<sup>th</sup>. He reviewed that the Harbor Square Athletic Club has expressed an interest in a public/private partnership with the City of Edmonds to construct a large aquatic center at the Harbor Square Athletic Club location. The consultant’s study identifies four possible locations; two that involve Harbor Square and two that involve the Yost Pool site. He summarized that a public meeting has been scheduled for April 18<sup>th</sup>. He noted that the Parks, Recreation and Cultural Services staff would present the report to the Planning/Parks Board prior to presenting the information to the City Council in May. He advised that at their March 26<sup>th</sup> meeting, the Task Force would flush out a schedule for moving the report through the review process.

Board Member Young asked Chair Bowman to provide the Board Members with an advance copy of the retreat agenda. Chair Bowman agreed to send the Board Members a list of the topics and invite them to identify their priorities.

Board Member Reed announced that the City Council considered the Board’s recommendation for proposed changes to Chapter 20 of the Edmonds Community Development Code. They voted to support the Board’s recommendation, as presented, by a vote of 4-3. Mr. Bowman noted that the final ordinance would come back before the City Council for final approval on April 7<sup>th</sup>.

Board Member Reed thanked Mr. Bowman for all the hard work he has done over the past two years while he has served on the Planning Board. He said that while he does not always agree with Mr. Bowman’s recommendations, he appreciates all he has done to support the Board. He said he hates to see Mr. Bowman leave the City because he will take so much knowledge away with him.

Mr. Bowman said it has been a real pleasure to work with the Board. Serving on the Board is a thankless job, but it is important for people to be involved in their communities. He said he has been impressed with those who have volunteered to serve in the City, and he felt the Board Members have done an excellent job fulfilling their responsibilities. He said it has been a pleasure to work with the City for 19 years. The citizens of Edmonds are very nice, and Edmonds is a wonderful community. He emphasized that the citizens of Edmonds are fortunate to have such a good mayor to serve them, and the Levy Committee is one more example of the community’s tremendous effort to deal with difficult issues. He said he will miss the City staff he has worked with over the years, as well.

**ADJOURNMENT**

The Board meeting was adjourned at 8:36 p.m.

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