

EDMONDS CITY COUNCIL APPROVED MINUTES

February 5, 2008

Following a Special Meeting at 6:30 p.m. for an Executive Session regarding labor negotiations, the Edmonds City Council meeting was called to order at 7:00 p.m. by Mayor Haakenson in the Council Chambers, 250 5th Avenue North, Edmonds. The meeting was opened with the flag salute.

ELECTED OFFICIALS PRESENT

Gary Haakenson, Mayor
Michael Plunkett, Council President
Peggy Pritchard Olson, Councilmember
Steve Bernheim, Councilmember
D. J. Wilson, Councilmember
Deanna Dawson, Councilmember
Dave Orvis, Councilmember
Ron Wambolt, Councilmember

ALSO PRESENT

Hilary Scheibert, Student Representative

STAFF PRESENT

Tom Tomberg, Fire Chief
Gerry Gannon, Assistant Police Chief
Duane Bowman, Development Services Director
Stephen Clifton, Community Services Director
Noel Miller, Public Works Director
Rob Chave, Planning Manager
Dave Gebert, City Engineer
Debi Humann, Human Resources Manager
Frances Chapin, Cultural Services Manager
Gina Coccia, Planner
Scott Snyder, City Attorney
Sandy Chase, City Clerk
Jana Spellman, Senior Executive Council Asst.
Jeannie Dines, Recorder

1. APPROVAL OF AGENDA

COUNCILMEMBER WAMBOLT MOVED, SECONDED BY COUNCILMEMBER OLSON, TO APPROVE THE AGENDA IN CONTENT AND ORDER. MOTION CARRIED UNANIMOUSLY.

2. CONSENT AGENDA ITEMS

COUNCILMEMBER WAMBOLT MOVED, SECONDED BY COUNCILMEMBER OLSON, TO APPROVE THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY. The agenda items approved are as follows:

A. ROLL CALL

B. APPROVAL OF CITY COUNCIL MEETING MINUTES OF JANUARY 22, 2008.

C. APPROVAL OF CLAIM CHECKS #101779 THROUGH #101927 IN THE AMOUNT OF \$1,493,618.80 FOR JANUARY 24, 2008, AND APPROVAL OF #101928 THROUGH #102061 IN THE AMOUNT OF \$197,575.82 FOR JANUARY 31, 2008.

D. ACKNOWLEDGE RECEIPT OF CLAIM FOR DAMAGES FROM TERRY A. STOWERS (AMOUNT UNDETERMINED).

E. TRAFFIC IMPACT FEE ANNUAL REPORT

F. ORDINANCE NO. 3678 - FINAL APPROVAL OF A 17 LOT TOWNHOUSE SUBDIVISION KNOWN AS COOPER'S CREST LOCATED AT 8016 - 8024 212TH STREET SW. (APPLICANT: SCOTT SCHLUMBERGER OF MICHEL PROPERTIES, INC.)

Roll Call

Approve
01/22/08
Minutes

Approve
Claim Checks

Claim for
Damages

Traffic Impact
Fee Report

Ord# 3678
Approve
Cooper's
Crest
Subdivision

Agreement
with Fire
Union

G. APPROVAL OF AGREEMENT BETWEEN THE CITY OF EDMONDS AND UNION LOCAL 1828, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS.

North End
Taxi License

H. APPROVAL OF 2008 TAXICAB OPERATOR'S LICENSE FOR NORTH END TAXI.

Surplus City
Vehicles

I. AUTHORIZATION TO CONTRACT WITH JAMES G. MURPHY TO SELL SURPLUS CITY VEHICLES AND EQUIPMENT.

Fiber
Broadband
Agreement

J. AUTHORIZATION FOR MAYOR TO SIGN REVISED FIBER BROADBAND AGREEMENT WITH EDMONDS SCHOOL DISTRICT.

Res# 1165
Paine Field

L. RESOLUTION NO. 1165 OF THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, OPPOSING COMMERCIAL AIR PASSENGER AND OTHER INCOMPATIBLE AIR SERVICE AT PAINE FIELD LOCATED WITHIN SNOHOMISH COUNTY.

Transportation
Benefit
District

M. COUNTYWIDE TRANSPORTATION BENEFIT DISTRICT.

3. PROCLAMATION IN HONOR OF ARTS DAY 2008

Arts Day
Proclamation

Mayor Haakenson read a Proclamation declaring February 21 as Arts Day in Edmonds. Edmonds Center for the Arts Executive Director Joe McLalwain, on behalf of the arts organizations and artists living and working in Edmonds, thanked the Council for their support of their contribution to the city.

4. INFORMATIONAL PRESENTATION BY CITY OF LYNNWOOD STAFF ON THEIR OLYMPIC VIEW DRIVE IMPROVEMENTS PROJECT.

Olympic
View Drive
Improvements

City Engineer Dave Gebert explained the City of Lynnwood was preparing to begin construction on the Olympic View Drive project this spring.

Bill Franz, Lynnwood Public Works Director, thanked the City for being a funding partner with Lynnwood on this important project and for the City's patience in holding the funds for several years while Lynnwood assembled their funding package. He commented on the lengthy and often difficult process of funding transportation projects, particularly in recent years due to price escalations. Lynnwood now had sufficient funds to proceed with the project. He advised they worked with the Transportation Improvement Board on funding, obtained another STP grant and the Lynnwood City Council committed over \$2 million in General Funds to this project. He also thanked Edmonds staff for their cooperation, commenting the citizens of both Edmonds and Lynnwood would benefit from the project.

With regard to detour routes, Mr. Franz stated to bid the project at an affordable price, it was necessary to allow the contractor to close the roadway for short periods of time. He acknowledged this would cause short periods of inconvenience but the roadway would not be closed as long and would ultimately result in a faster and less expensive project. He noted this idea was developed as part of the public outreach; citizens indicated they preferred short periods of inconvenience rather than a longer project.

Jesse Perrault, Project Manager, reviewed project facts:

- Project length: approximately 1.8 miles
- Project Limits: 168th Street SW on the north to 76th Avenue W on the south
- Existing Right-of-Way Width: 60-foot wide, primarily Lynnwood owned
- Average Daily Traffic: 11,300

He reviewed project features:

- 5-foot wide concrete sidewalks with concrete curb and gutter on both sides. Currently only an asphalt pathway exists on one side.

- ADA compliant wheelchair ramps and crosswalks at several locations
- 14-foot lanes to accommodate bicycle traffic
- Enclosed drainage collection and conveyance system
- Stormwater detention/infiltration with water quality facilities (off-site facility at Lynndale Park)
- Additional retaining walls to contain improvements within the city's right-of-way
- Significant illumination improvements

He reviewed related projects including 176th Street SW improvements, Edmonds waterline in Olympic View Drive and Olympic View Drive /176th Street SW traffic signal.

He described the project schedule, explaining the project would be completed in two phases. Construction on the first phase, from 168th Street SW to 178th Place SW, will begin spring 2008 and construction on phase two, from 178th Place SW to 76th Avenue W, will begin spring 2009.

He reviewed funding for the project:

- \$1.7 million Federal Funds -
- \$3 million TIB funds for construction
- \$466,000 TIB funds for design
- \$2,250,000 Lynnwood Strategic Investment Plan
- \$1,631,136 Lynnwood Stormwater Utility
- \$304,000 Lynnwood Capital Development Fund
- \$123,000 Lynnwood Street Fund
- \$250,000 City of Edmonds
- \$125,000 Snohomish County

Mr. Perrault explained detour maps were an important component of a recent open house. Approximately 1,100 newsletters were mailed to Edmonds and 400 to Lynnwood residents. He displayed a detour map, identifying primary and secondary detours. He identified a primary detour that would be open during both phases of the project for regional traffic that would be permanently signed during construction. He provided an example of a secondary detour that would be used for local traffic during individual portions of the project. He advised the project limits of the construction would be discussed with the contractor and communicated to residents via the website and mailings.

He explained 52 people attended the open house and 7 comment sheets and 6 emails were received. He recalled comments related to access during phasing, concern with speeds once the improvements were completed, street lighting, steep slopes, loss of trees and mitigation, and utility improvements.

Councilmember Dawson thanked Mr. Gebert who had been working with her to address neighbors' concerns. She explained some Edmonds residents were frustrated with the lack of information they received because this was not a City of Edmonds project. She pointed out the tax dollars for this project were Edmonds, Lynnwood, federal, Snohomish County funds and the project would impact many Edmonds residents. She urged Lynnwood staff to communicate with Edmonds residents in the same manner they did with Lynnwood residents. She asked whether there was a difference in the mitigation provided to property owners in Lynnwood versus Edmonds. Mr. Perrault responded they treated Edmonds residents as their constituents because they were a vital component to the project. With regard to mitigation, he noted there were not as many tools for Edmonds residents as there were for Lynnwood residents. For example Lynnwood's tree program was only for Lynnwood residents. However, there was flexibility in the project funds to compensate for lost trees on private property on the Edmonds side. He recalled concern expressed by Edmonds residents regarding loss of trees, noting it was difficult to

determine until the project began which trees would be impacted. There was flexibility in the project funds that would allow mitigation 1:1 for every tree that was removed on private property.

Councilmember Dawson suggested in the future these issues be resolved earlier in the process as many of the residents' frustration were due to feeling rushed at the last minute. To the extent Lynnwood's regulations prohibit mitigation for Edmonds residents, she suggested Lynnwood investigate whether a change was necessary in the code that would allow Lynnwood to treat Edmonds residents the same. Mr. Perrault explained the environmental review required mitigation but that did not apply to Edmonds residents. He acknowledged it was a political rather than a financial problem. Councilmember Dawson urged Lynnwood to continue working with Mr. Gebert on this project.

Councilmember Wilson inquired about traffic counts taken at the north end of phase 1 and the south or west end of phase 2 and the disparity between number of vehicles entering the area from Lynnwood traveling to Edmonds. Mr. Perrault answered he did not have those numbers immediately available. He advised the 11,300 vehicle count was taken at the intersection of 176th & Olympic View Drive and traffic counts vary throughout the corridor. Councilmember Wilson expected much of the traffic traveled into Lynnwood. Mr. Perrault agreed, noting the traffic generators were typically residents in north Edmonds using this as an alternate route to reach 68th and I-5 via Hwy. 99.

Mayor Haakenson asked Mr. Perrault to identify what part of Olympic View Drive was in the City of Lynnwood. Mr. Perrault answered the entire right-of-way of Olympic View Drive was within the city of Lynnwood's boundaries, south of Meadowdale Middle School west to the Perrinville area. He advised a small portion was in unincorporated Snohomish County.

With regard to funding, Mr. Perrault commented although Edmonds did not provide a large contribution to the project, staff's support and mediation with Edmonds residents had been invaluable.

Closed Record
Appeal
S. Leiser
24110 84th
Ave W

5. **CLOSED RECORD APPEAL OF THE HEARING EXAMINER'S DENIAL OF TWO STREET SETBACK VARIANCES AT 24110 84TH AVENUE WEST IN THE MULTIPLE-RESIDENTIAL (RM-2.4) ZONE. APPELLANT AND APPLICANT: SHAUN LEISER (FILES V-2007-81 & AP-2008-1)**

Mayor Haakenson advised this was a quasi judicial matter and under the Appearance of Fairness Doctrine, asked Councilmembers if they had any conflicts or ex parte contact to disclose.

Councilmember Bernheim advised he had driven past the area. Mayor Haakenson advised all Councilmembers would participate. Mayor Haakenson advised Mr. Leiser would have 20 minutes for his presentation and invited him to reserve time for rebuttal.

Planner Gina Coccia reviewed the chronology. She referred to the LIDAR map on page 14 of the record that illustrates the site and approximate contours and location of the property in relation to Edmonds Way. She advised Mr. Leiser applied for two setback variances to the required street setbacks along Edmonds Way and 84th Avenue West for the construction of a five unit multi family building. The site is located in the RM 2.4 zone which requires a minimum street setback of 15 feet. She identified the change in elevation along Edmonds Way, noting three of the property lines require street setbacks.

She displayed the proposed site plan, page 28 of the record, identifying the property line on 84th Avenue West and Edmonds Way where a 10 foot setback was requested. The variance request on 84th Avenue West was to allow parking within the street setback which was not permitted in the RM 2.4 zone. She advised when the project was presented to the Architectural Design Board (ADB) in 2004, the proposal

met the setback requirement; however, the ADB requested Mr. Leiser apply for a variance to preserve mature trees on the south.

Ms. Coccia explained in 2004 Mr. Leiser applied for a concurrent ADB review and variance. Staff recommended approval to the ADB with conditions. The ADB recommended approval to the Hearing Examiner with conditions, one of which was that Mr. Leiser seek a variance for the parking on 84th Avenue West. She explained the variances expired and Mr. Leiser reapplied. A public hearing was held on December 6, 2007, the staff report begins on page 3 of the record and the verbatim transcript begins on page 72. The Hearing Examiner denied the variance request and the applicant filed a Request for Reconsideration, page 97 of the record. The Hearing Examiner denied the request for reconsideration and the applicant appealed the decision to the City Council.

Councilmember Bernheim asked staff to identify trees that would be removed if the variance were not granted and the area where parking was proposed within the setback. Ms. Coccia identified the two setback variances, 1) reducing the required 15 foot setback along Edmonds Way to 10 feet and 2) allow parking within the street setback on 84th Avenue West. She noted in the verbatim transcript and the Request for Reconsideration Mr. Leiser described why he feels he met the variance criteria. She advised the 15-foot setback on Edmonds Way was not shown on the site plan. She identified the mature fir trees 18-inches in diameter. She noted the original site plan showed the parking spaces outside the 15-foot setback; the variance request was to allow parking within the setback to preserve the trees.

Development Services Director Duane Bowman referred to the site plan, identifying the proposed 10-foot setback as requested by the variance. He advised the required 15 foot setback, not shown on the site plan would extend through the back of the buildings on the proposed site plan.

Councilmember Wambolt pointed out the agenda memo recommended upholding the Hearing Examiner's decision and denying the variance, but the staff report recommended approval. Ms. Coccia acknowledged the original staff recommendation was approval but staff now recommended upholding the Hearing Examiner's decision. Mr. Bowman clarified when staff made a recommendation to the Hearing Examiner it was their recommendation as staff and their recommendation at that time was to approve the variance. Once the Hearing Examiner acts, staff was carrying forward the Hearing Examiner decision and staff now supports the Hearing Examiner's decision.

Councilmember Dawson asked why staff originally recommended approval, why the Hearing Examiner rejected that position and why staff now supported the Hearing Examiner's recommendation. Ms. Coccia advised the current proposal was File V-2007-81 and APL-2008-1. The staff report for V-2007-81, beginning on page 3 of the record, outlined the history, background, topography, characteristics of the neighborhood, Comprehensive Plan compliance, policies, required code sections, parking standards, tree cutting code, original approval (page 7 of the record) and variance criteria in ECDC 20.85 (page 8).

She referred to staff's findings with regard to the variance criteria (page 9 of the record), highlighting Item J – “the preservation of trees is a comprehensive plan policy that is encouraged,” and Item D – “there is a wide expanse between the edge of the developed portion of Edmonds Way right-of-way and the west/southwest property lines,” which the 2004 staff report argued seemed to reduce the need for a 15-foot street setback from these property lines, in the original approval. She referred to the recommendation on page 10 of the record for approval of both setback variances with several conditions. Ms. Coccia referred to the Hearing Examiner's decision (page 86 of the record) and her conclusions (page 92). The Hearing Examiner did not find the applicant met all six variance criteria.

Councilmember Dawson observed staff's recommendation was based on special circumstances that exist due to the slope and that it was consistent with the Comprehensive Plan due to the desire to protect the

trees. The Hearing Examiner found the request for a variance was not driven by the site but by the number of units. Ms. Coccia referred to page 93, Conclusion 3, where the Hearing Examiner states the applicant's proposal to place five dwelling units was not the minimum necessary to allow enjoyment of the same rights afforded to other parcels in the zone.

Councilmember Orvis observed the number of parking spaces proposed was the number required for three-bedroom units. Ms. Coccia agreed the parking requirements were based on the number of bedrooms. Councilmember Orvis referred to the description of parking ratios on page 7, commenting the parking requirements were less for two-bedroom units. Ms. Coccia agreed. Councilmember Orvis asked whether there was a requirement for three-bedroom units in this multi family zone. Ms. Coccia answered no. Councilmember Orvis asked whether there was a requirement that the units be detached. Ms. Coccia answered no, stating the applicant may have selected that design to avoid the mass of a large building.

Councilmember Dawson asked whether the record contained an explanation of what changed between the initial granting of the variance and this denial, noting the Hearing Examiner's decision implied that a code change necessitated the denial. Ms. Coccia referred to the verbatim transcript (begins on page 72), advising the applicant did not change anything and had submitted the same site plan and building elevations that was approved in 2004. The only change was in 2005 the City adopt its critical areas ordinance. She referred to page 74 of the record that states a geotechnical report would be required if the buildings were within 65 feet of the top of the slope. She noted the slope adjacent to the property exceeds 15% and in some areas 40%, therefore a geotechnical report would be required with the building permit. She referred to the relevant code section ECDC 23.80.070.A.1.a, Alterations.

Councilmember Dawson clarified the difference was that under the old code there was not the special consideration for steep slopes that exists in the current code. City Attorney Scott Snyder clarified there were some additional procedural requirements such as the geotechnical report but there had not been any substitutive change in any of the decisional criteria.

Councilmember Bernheim observed if the variance were not granted, trees would be cut and if the variance were granted, trees could be retained. Ms. Coccia noted the Comprehensive Plan encouraged tree retention. She referred to the verbatim transcript and Mr. Leiser's explanation to the Hearing Examiner why he proposed the change in the location of the parking, the affect on the trees and why he was requesting a variance to allow the parking to intrude into the setback. In the previous plan, the parking stall met the setback requirement.

Councilmember Dawson commented the issue was not that the trees would be preserved if the variance were granted; if the variances were not granted, the buildings could not be constructed as proposed. Ms. Coccia agreed.

Applicant

Shaun Leiser, property owner and developer, requested the Council overrule the Hearing Examiner's decision and reinstate/reapprove his formerly approved variances with no change. He provided a history of the project, explaining this was an unusual and difficult property with five sides and surrounded by three roads. The setbacks from the roads and property lines take up so much of the property that it was impractical to build dwelling units comparable to units built on other properties in the same vicinity with the same zoning. After many months of planning and design, he applied for a consolidated ADB and setback variance. He explained the sole reason for the variance was to provide better access to the project for residents as well as emergency vehicles. On July 7, 2004, the ADB reviewed the project and was impressed with the design and quality of the project and recommended approval. In an effort to preserve mature trees on the property, in the ADB's motion to approve the project, they recommended he seek a setback variance along 84th Avenue West to allow retention of more of the existing trees on the site. He

applied for this variance at the ADB's recommendation. The Hearing Examiner, Ron McConnell, then considered the ADB's recommendation and the two variance requests and granted approval of the project and the variances. There were no appeals filed.

Mr. Leiser noted he was aware the ADB approval was valid for 18 months and could be extended for one year. He assumed, incorrectly, that variance approvals were valid for the same length of time. By the time he was ready to proceed with the project, the ADB approval was still in effect but the variances had expired. He believed this was only a technicality and he only needed to reapply as the project had not changed and the City's rules and regulations had not changed, the City had already thoroughly considered the variances and determined the project met the requirements for granting the variance, staff supported the variances and there was no citizen opposition. To his surprise, the Hearing Examiner denied the variance request.

He described the variance requests, 1) a 5-foot variance along SR104 to improve access for residents and emergency vehicles, the minimum needed to accomplish this, and 2) a 5-foot variance along 84th Avenue West to preserve existing mature trees, the minimum necessary to preserve the trees. He pointed out the City's professional planning staff supported the project and the variance applications throughout the process because the variances make for a better project and Hearing Examiner McConnell agreed with that position; however, Hearing Examiner Rice did not.

Mr. Leiser concluded the land use review process was difficult, time consuming and expensive. Its purpose was to ensure projects built in the city were of the highest quality possible. He questioned the City making two different decisions on an identical project reviewed under identical regulations. He reviewed alternatives, 1) if the Council denied his appeal, he could redesign the project to avoid the need for variances which would take time and money and would result in a project that planning staff and Hearing Examiner McConnell agree would not be as good as the proposed project, 2) if the appeal were granted, he could construct the project as planned and previously approved. He urged the Council to choose the sensible alternative and grant the appeal and allow him to build a project that was better for him, the citizens of Edmonds and the City as a whole.

In response to questions the Council asked previously regarding trees to be retained, Mr. Leiser explained under the current design, without the variance, the trees would be removed. Mayor Haakenson clarified if the variance were granted the trees would be preserved. Mr. Leiser agreed. With regard to Councilmember Orvis' question about attaching the buildings, he read from the Comprehensive Plan that the City's development policies encourage high quality site and building design to promote coordinated development, to preserve trees, topography and other natural features of the site. Stereotype, boxy multiple unit residential units are to be avoided.

Councilmember Dawson asked if there was anything in the record regarding the financial feasibility of developing the property with fewer units than currently proposed. Mr. Leiser answered there was not.

Councilmember Bernheim asked whether the trees would be saved if the variance were granted. Mr. Leiser identified the trees to be retained, the 15-foot setback on 84th Avenue West, and the two ADA accessible parking stalls that are shifted 5 feet to the south to allow preservation of the trees. His original design showed the parking stalls outside the setback which required removal of the trees. Councilmember Bernheim asked whether the project could proceed if the variances were not granted. Mr. Leiser answered there were two variance requests, 1) a reduction from 15 feet to 10 feet along Edmonds Way and 2) a reduction from 15 feet to 10 feet along 84th Avenue West. His original plans to the ADB requested only a reduction in the setback along Edmonds Way. After the ADB review, they suggested he apply for a variance to reduce the setback on 84th to preserve the trees.

For Councilmember Bernheim, Mr. Leiser identified the trees that would be retained if the variance were granted. Councilmember Bernheim noted the variance was necessary to preserve those trees. Mr. Leiser agreed.

Councilmember Bernheim referred to his comment regarding this being a better project with the variances. Mr. Leiser referred to the ADB minutes, specifically Board Member Utt's comment that he appreciated the material submitted as part of the application and he liked the site plan layout and thought the architectural materials and vocabulary of the building address the design standards very well.

Mr. Snyder asked how the granting of the street setback variance on SR104 would result in preservation of the trees. Mr. Leiser acknowledged the variance along SR104 would not preserve the trees.

Councilmember Bernheim asked if he was aware of the setback requirements when he purchased the property. Mr. Leiser answered he was, noting during the design process, staff suggested he consider applying for a variance due to the irregular shape of the property and the three sides that require a street setback. He noted a lot such as this would typically be treated as a corner lot with two street setbacks and two side setbacks; because of the irregular shape, the property had three street setbacks and two side setbacks, encumbering the size of the available building footprint.

Councilmember Bernheim asked whether the record contained assurance that the trees would be preserved if a variance were granted. Mr. Snyder answered it was not in the record of this proceeding but tree preservation was confirmed in the ADB's approval of a landscape plan. He referred to the ADB's motion for approval that identified preservation of the trees. Mr. Leiser agreed that bound him to preserve the trees.

Council President Plunkett referred to Mr. Leiser's comment that if he did not build this design, he could build something else. Mr. Leiser acknowledged in any situation another design could be proposed. He noted if the theory Hearing Examiner Rice used was applied, that a project could be redesigned as no one was allowed the maximum number of units allowed by the zone, there would be no need for a variance process. He noted if the zoning allowed five units on the site, the site should be allowed to be developed to maximize the potential of the land, use the existing infrastructure to its highest and best use, reduce sprawl, etc. Ms. Coccia referred to page 67 of the record, the Hearing Examiner's decision from 2004 that included conditions to retain as many of the healthy significant trees as possible.

Councilmember Orvis asked if any alternative plans were included in the record. Mr. Leiser answered there were not.

Councilmember Wilson clarified under the critical area ordinance, if there were not a geotechnical analysis, a 65 foot setback from the top of the slope would be required. Ms. Coccia advised the applicant was required to submit a geotechnical report to be closer than 50 feet plus a 15 foot buffer from the top of the slope. The geotechnical report was submitted with the building permit application. She clarified the matter before the Council was the setback variance which was different than the steep slope setback or buffer. She referred to page 105 in the record. Mr. Snyder clarified it was a required finding but was no longer a consideration.

Councilmember Wilson referred to page 91, criteria for variance review, noting the Hearing Examiner's finding appeared to be related to the special circumstances criteria, that there were no special circumstances and granting the variance would provide special rights. Mr. Snyder suggested the Hearing Examiner's rationale be addressed during the Council's deliberations.

Councilmember Orvis pointed out all six variance criteria must be met to grant a variance and the applicant had the burden of proof. Mr. Snyder agreed.

Councilmember Wilson referred to Ms. Coccia's testimony to the Hearing Examiner that someone standing at the fence at SR104 would not experience the roadway due to the elevation. Ms. Coccia referred to page 81 and her statement that there was a huge fence that encloses most of the property, and treating the west property line as a street setback did not feel appropriate. But having it be 10 feet, which corresponds with a side setback felt much more appropriate. Ms. Coccia referred to the LIDAR map on page 14 of the record that illustrates the distance of the developed right-of-way from the property line. Councilmember Wilson asked whether it was uncommon to stand 10 feet from a roadway and not feel the presence of the roadway. Ms. Coccia clarified her comment that the developed right-of-way felt further away than it technically was.

Councilmember Bernheim asked why staff determined special circumstances existed that were not related to the profitability of the development. Ms. Coccia referred to the findings in the staff report on page 9 of the record. Councilmember Bernheim asked if staff considered Mr. Leiser would not need the variance if there were fewer units or the units were smaller. Mr. Snyder referred the Council to variance criteria in 20.85.010.A.2, special circumstances and the ability to make more profitable use of the property.

COUNCILMEMBER DAWSON MOVED, SECONDED BY COUNCILMEMBER ORVIS, TO DENY THE APPEAL AND UPHOLD THE HEARING EXAMINER'S DECISION.

Councilmember Dawson clarified there were two variance requests and the motion addressed both. First, with regard to the variance to the setback on SR104, she acknowledged if that variance were granted it may make a difference to the second variance, if it was not granted, the second variance was moot. With regard to the trees, the variance to the setback on SR104 did not relate to the preservation of the trees. She found the Hearing Examiner did an excellent job reviewing the variance request, noting the Hearing Examiner's statement on page 83 of the record that she did not have no harm no foul authority. Councilmember Dawson pointed out a proposal that people liked was not a consideration in whether it met the variance criteria. Further, variances are not to be granted lightly and are to be strictly considered. She noted that was the reason for the code, if there was a desire to allow something else, it should be allowed outright. She concluded variances could only be granted for very limited circumstances including special circumstances and the minimum necessary.

Councilmember Dawson commented one of the variance criteria was that the variance not be detrimental to the public safety, health or welfare and although the proposal met that criteria, it was not the only criteria. She pointed out there were lots that could not be developed under existing regulations unless a variance were granted and there were lots that what could be developed was not marketable and by requiring the owner to comply with the zoning criteria would deprive them of all economic use of the property. She noted there was nothing in the record indicating this property could not be developed with fewer units or small units or even a smaller variance that would be the minimum necessary and allow the owner rights enjoyed by other properties in the vicinity with the same zoning. She found that criterion was not met. She acknowledged it may be arguable there were some special circumstances that make the property unusual but did not find the variance sought to be the minimum necessary to achieve use of the property. As the Hearing Examiner indicated, the code did not provide that an owner be allowed to have as many units on the property as the zoning allowed. She agreed with the Hearing Examiner's conclusion that the standards for a variance had not been made.

With regard to the second variance, if the first variance were not granted, the proposed site plan could not be developed, making the second variance moot and therefore it should be denied. She noted although it would be nice to preserve the trees, it was not a basis for granting the variance. She expressed her

appreciation for the Hearing Examiner's serious examination of the proposal and not granting it solely because no one objected. She concluded there was no legal basis for the Council to overturn the Hearing Examiner's decision and she urged Councilmembers to uphold her decision.

Councilmember Orvis agreed with the Hearing Examiner's decision, noting tradeoffs between unit size, attached versus detached, number of units, access for residents and public safety were challenges faced by developers in a multi family zone but they did not create a special need. He found there was ample room on the site for five units, acknowledging they may not look like the units proposed or be as large as the proposed units. He did not find there was any special circumstance or that the requested variance was the minimum necessary.

Councilmember Wambolt expressed his support for the motion to uphold the Hearing Examiner's decision. He referred to reasons the applicant gave for approving the variance including preservation of the trees, noting the Hearing Examiner visited the site and found nothing special about the trees. He noted many of the other reasons the applicant gave were personal and were not reasons to approve the variance. He recalled Mr. Leiser's reference to the ADB's previous support of the project, noting just as there was a new Hearing Examiner with a different view, the current ADB may make a different finding as none of the members at that time were on the ADB now. He did not find any reason to reverse the Hearing Examiner's decision.

Councilmember Bernheim commented the shape of the property reduced the useful area, noting a similar number of units may be able to be constructed if it were a regularly shaped parcel. He questioned whether the five-sided configuration, the topography, the trees and the cul-de-sac, the retaining wall on SR104 were factors that contributed to a special circumstance.

Councilmember Wilson referred to the Hearing Examiner's statement on page 92 of the record that the shape and location of the site could satisfy the variance criterion, a requirement for special circumstances, and on page 91 provides the definition of special circumstances: special circumstances include the size, shape, topography location or surroundings of the property, public necessity as of public structures, environmental factors such as vegetation, streams, ponds and wildlife habitat. He found this parcel met the definition of special circumstance. He noted the Hearing Examiner acknowledges the five sides brings about the need for the variance but does not preclude the fact of the special circumstance on the site. He pointed out the elevation of the property compared to the right-of-way and the experience of the property in relation to the street also contributed to special circumstance. He did not support the motion, noting the question before the Council was whether the Hearing Examiner's findings were sufficient. He found all the Hearing Examiner's findings were based on the first finding that the design of the structures necessitated the variance. He reiterated the shape and location, as the Hearing Examiner states, met the special circumstance criteria.

Councilmember Dawson clarified the requirement to grant a variance was not merely that a special circumstance exists but that special circumstances exist and therefore strict enforcement of the zoning ordinance would deprive the owner of use of rights and privileges permitted to other properties with the same zoning and that it should not be predicated on the ability to make more profitable use of the property. She acknowledged this was an unusual site, noting there were many unusual sites in the city. She noted if the Council wanted, the code could be modified to allow reduced setback on 5-sided properties but the code did not currently state that. Further, there was nothing in the record to suggest the proposed variance was the minimum necessary and there was ample evidence in the record that the property could be configured in a different manner that may allow as many units of the same size. She concluded there was nothing in the record that indicated the property could not be developed in a manner that would allow the owner use of the property.

Councilmember Olson indicated she would not support the motion. She agreed with Councilmember Wilson that this was a difficult, unusual property to develop. She pointed out the ADB supported staff's recommendation and the first Hearing Examiner supported the ADB's recommendation. She did not agree with the decision of the second Hearing Examiner.

Councilmember Orvis agreed with Councilmember Dawson, pointing out if five units could be located on the site without granting a variance, the proposed variance was not the minimum necessary and no variance was necessary to allow reasonable use of the property.

Councilmember Bernheim commented if the property were regularly shaped and had RM 2.4 zoning, five units could be constructed; however, because the irregular shape constricts the developable area, it denied the owner the rights and privileges allowed to an owner of a regularly shaped lot. Councilmember Orvis questioned what was a regularly shaped lot, noting there were many unusually shaped lots in Edmonds. If a variance were granted for this lot based on that premise, a variance would need to be granted to all irregularly shaped lots which would be unfair to those who have previously developed in the multi family zone and abided by the 15 foot setback. He pointed out a variance was not an incentive tool but a safeguard of property rights and intended for extreme cases.

Councilmember Wambolt commented there was no evidence in the record that five units could not be built on the site. Although five units were allowed in this zone, five was not the minimum required.

Council President Plunkett agreed with Councilmember Orvis regarding other unusual properties in Edmonds, noting a difficult property did not equate to a special circumstance.

UPON ROLL CALL, MOTION CARRIED (4-3), COUNCIL PRESIDENT PLUNKETT AND COUNCILMEMBERS DAWSON, WAMBOLT, AND ORVIS IN FAVOR; AND COUNCILMEMBERS OLSON, WILSON AND BERNHEIM OPPOSED.

6. AUDIENCE COMMENTS

Councilmember Dawson cautioned the public not to comment on the preceding item until the Council adopted findings.

Item 7 on the
Agenda

Roger Hertrich, Edmonds, referred to Agenda Item 7, commenting it appeared staff's interpretation created a variance; staff realized an error was made and was asking the Council to close the loophole which he supported the Council doing. He pointed out there was no identification of the project for which the interpretation was required and staff's interpretation appeared to suggest if a membership was open to the public, a private organization became a local public facility. He noted memberships were not available to the general public without application and most private organizations existed for profit. He expressed concern that the public was not aware of staff interpretations or the appeal period.

Amend the
Definition of
Local Public
Facility

7. ADOPTION OF INTERIM ZONING ORDINANCE AMENDING THE DEFINITION OF LOCAL PUBLIC FACILITY.

Development Services Director Duane Bowman advised the issue before the council was a proposed interim ordinance to close a loophole in the public facilities regulations that the Council adopted in 2001 under Ordinance 3353. Staff discovered current regulations potentially opened the door for private recreational facilities to be considered a community facility. It was staff's opinion that was not the Council's intent when the ordinance was adopted; however, that was how the ordinance was worded. After extensive consultation with the City Attorney's office, a staff interpretation was rendered. After the staff interpretation was made, he directed the City Attorney to prepare this interim ordinance to allow time to close the loophole. He requested the Council adopt the interim ordinance and set March 4, 2008

as the date for a public hearing on the interim ordinance. He advised the notice requirements regarding the interpretation were followed as well as expanded to include the neighborhood where a private recreational facility is located near the Klahaya Swim Club.

City Attorney Scott Snyder commented zoning codes were in derogation of common law property right; ambiguity was resolved in favor of the property owner. He read from 21.15.070.A.1 that states it is primarily used by members of the general public for recreational purposes. By federal law a facility of this kind could not exclude people based on race, religion, creed and a variety of other protected statutes. While the City felt this facility was beyond what was intended, it fell within the ambiguous gray area. Staff felt that was not the intent in the ordinance and recommended the interim zoning ordinance.

Councilmember Wambolt commented the agenda memo referred to single family zone but not multi family zones. Mr. Bowman responded multi family had a different definition and allowed for private recreational facilities whereas the RS zones did not.

Councilmember Dawson recalled this had arisen on a few other occasions where an interpretation was required and she appreciated staff pursuing an interim zoning ordinance. She commented this was not an erroneous interpretation; it was an unintended consequence that was not foreseen.

Councilmember Bernheim commented when reading the January 15 interpretation and the code, it was his conclusion that private facilities were included in the definition of local public facilities. He asked how this issue arose. Mr. Bowman answered a private recreational facility wanted to do an expansion to add a lane to their swimming pool. Although this raised a number of issues, the underlying issue was whether they were a local public facility. Staff's analysis concluded they were although he did not believe that was the intent of the Council when the ordinance was adopted. He issued the interpretation and directed the City Attorney to prepare an interim zoning ordinance to close the loophole. In the meantime the facility has filed an application for a Conditional Use Permit and they are vested to the existing public process for that expansion.

Councilmember Bernheim commented the question now was whether the Council wanted to follow through with its intent that local public facilities were of a public nature and not private clubs.

For Councilmember Orvis, Mr. Bowman confirmed this facility was vested.

COUNCIL PRESIDENT PLUNKETT MOVED, SECONDED BY COUNCILMEMBER BERNHEIM, FOR APPROVAL OF ORDINANCE NO. 3679. MOTION CARRIED UNANIMOUSLY. The ordinance approved reads as follows:

AN INTERIM ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING THE DEFINITION OF LOCAL PUBLIC FACILITIES IN ECDC 21.55.007, SETTING A PUBLIC HEARING, AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

8. MAYOR'S COMMENTS

Mayor Haakenson relayed a notice he received from the Association of Washington Cities that Councilmember Olson earned a Certificate of Municipal Leadership (CML), a program that provides an opportunity for Councilmembers in Washington to enhance their knowledge of leadership skills in order to provide more effective local government. He noted there were two CML levels; Councilmember Olson has completed the first level. He congratulated Councilmember Olson on her achievement.

Ord# 3679 - Amend the Definition of Local Public Facility

Certificate of Municipal Leadership Earned by Peggy Olson

Status of
Projects on
76th Ave W,
Olympic
View Dr, and
196th

Mayor Haakenson advised 76th Avenue West in Perrinville was reopened to traffic today, Olympic View Drive would be opened the middle of next week, and 196th was now open although there would be some paving done next week where 11th and 12th Avenues join 196th.

9. COUNCIL COMMENTS

Council
Retreat Report

Council President Plunkett reported on the Council retreat, advising on Friday the Council spent a great deal of time discussing the budget and future revenue needs. He advised the Council discussed an EMS levy, insurance EMS billings, fire service structure, traffic signal cameras, and Transportation Benefit District. These items would be presented to the Council in the future for additional discussion. On Saturday Councilmember Wilson provided a report on Lake Ballinger, the Council informally approved the continued use of the Strategic Plan developed in 2004, discussed Planning Board and ADB appointments, and discussed an Adopt a Dog program. The Council also discussed the Harbor Square Antique Mall waterfront property; presentations will be made to the Council in the near future. He read a statement the Council developed with regard to the Harbor Square Antique Mall waterfront property:

Waterfront
Antique Mall,
Harbor
Square, and
Skipper
Properties

“With regard to waterfront Antique Mall, Harbor Square and Skipper properties, the Council recognizes the importance of being proactive rather than reactive. It is the intention of the Council to work collaboratively with the property owners to establish a plan for the area that is consistent with the values and vision of the Council and the public as a whole and the rights of the property owners and to move forward expeditiously with a public process that may result in legislative changes necessary to achieve the goals of the city.”

He assured all the discussion items would be coming to the Council for further discussion in the future.

Stevens
Hospital

Councilmember Wilson advised Stevens Hospital was considering a number of changes noting a majority of the Commission members do not believe the current facility can be renovated. They are discussing demolishing the existing facility, selling it to a different entity, or moving Stevens to a different site. He advised Stevens Hospital planned to go to the voters in August. It was the administration’s intent to move to a different site outside Edmonds, preferably in Lynnwood, because a minority of their patients are Edmonds residents and they want to be closer to their patient base. He suggested the voters of Edmonds, who constitute a large portion of the Hospital District, communicate with Stevens Hospital’s President and CEO, Michael Carter. His email is mcarter@stevenshealthcare.org and Commission members’ emails were available on Stevens’ website.

Sustainable
Edmonds

Councilmember Bernheim advised he had been participating for the past few years with sustainable cities groups in the Puget Sound area and a more formal Sustainable Edmonds group had been established. They held an organizational meeting last week and he invited the public to attend their next meeting on February 21 at 8:00 a.m. in his office. He also encouraged the public to attend the Mayor’s Climate Change meeting on February 21 at 9:00 a.m. in the Mayor’s office.

Climate
Change
Meeting

Councilmember Dawson referred to Councilmember Orvis’ comment that everyone on the Council had won a contested election which would lead to an interesting Council. She commented discussions at the retreat reflected a number of differences of opinion among Councilmembers, reinforcing that Councilmembers could disagree respectfully and have good discussions/arguments. She looked forward to working with this Council in the future and the discussions they would have, noting differences of opinion were part of a healthy democracy.

Councilmember Olson thanked Senior Executive Council Assistant Jana Spellman for organizing the retreat.

Councilmember Wambolt thanked Council President Plunkett for developing a very strong agenda for the retreat, noting the Council accomplished a lot and the two new members demonstrated they would be very valuable members of the Council. He advised changes being considered at Stevens Hospital would be the main topic at the Hwy. 99 Taskforce meeting next week.

Councilmember Orvis echoed Councilmember Dawson's assessment of the retreat, commenting there was a great deal of independent thinking, no grudges or cliques, and Councilmembers each were thinking for themselves.

Student Representative Scheibert encouraged everyone especially younger voters to participate in the caucus or the primary election and to stay politically active.

10. ADJOURN

With no further business, the Council meeting was adjourned at 8:56 p.m.