

EDMONDS CITY COUNCIL APPROVED MINUTES

July 22, 2008

The Edmonds City Council meeting was called to order at 7:01 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

STAFF PRESENT

Gerry Gannon, Assistant Police Chief
Duane Bowman, Development Services Director
Stephen Clifton, Community Services Director
Brian McIntosh, Parks & Recreation Director
Noel Miller, Public Works Director
Gina Coccia, Planner
Scott Snyder, City Attorney
Sandy Chase, City Clerk
Jana Spellman, Senior Executive Council Asst.
Jeannie Dines, Recorder

1. APPROVAL OF AGENDA

Change to
Agenda

Mayor Haakenson relayed Council's request to add "Reconsideration of the Public Hearing on the Liquor Control Board License application for Province, Inc., DBA Five Spice Bistro" to the agenda.

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

2. CONSENT AGENDA ITEMS

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

Roll Call

A. ROLL CALL

Approve
07-15-08
Minutes

B. APPROVAL OF CITY COUNCIL MEETING MINUTES OF JULY 15, 2008.

Approve
Claim
Checks

C. APPROVAL OF CLAIM CHECKS #105599 THROUGH #105681 FOR JULY 17, 2008 IN THE AMOUNT OF \$155,046.93. APPROVAL OF PAYROLL DIRECT DEPOSIT AND CHECKS #46835 THROUGH #46955 FOR THE PERIOD OF JULY 1, 2008 THROUGH JULY 15, 2008 IN THE AMOUNT OF \$858,652.39.

Claims for
Damages

D. ACKNOWLEDGE RECEIPT OF CLAIMS FOR DAMAGES FROM HAINES POINT HOMEOWNERS' ASSOCIATION (AMOUNT UNDETERMINED), AND WILLIAM STANTON (\$1,776.36).

Masonic
Lodge 100th
Anniversary

E. PROCLAMATION IN HONOR OF THE 100TH ANNIVERSARY OF EDMONDS MASONIC LODGE NO. 165.

Old
Woodway
Elementary
School Park

F. REPORT ON BIDS OPENED JULY 8, 2008 FOR THE OLD WOODWAY ELEMENTARY SCHOOL PARK AND REGIONAL INFILTRATION SYSTEM AND AWARD OF CONTRACT TO PREMIUM CONSTRUCTION GROUP, INC.

G. ORDINANCE NO. 3690 – AMENDING THE OFFICIAL STREET MAP AUTHORIZING THE DEVELOPMENT SERVICES DIRECTOR TO MAKE CHANGES (REDUCE CERTAIN PLANNED LINE RIGHT OF WAY ON 203RD STREET SW FROM THIRTY TO FIFTEEN FEET IN WIDTH.

3. PUBLIC SERVICE ANNOUNCEMENTS

Chamber of
Commerce /
“Everything
Edmonds”

Bob Rinehart, Greater Edmonds Chamber of Commerce Board Member, provided the Council an update on the Chamber’s web-based “Everything Edmonds” campaign that encourages Edmonds residents to patronize businesses in Edmonds. Their objective was to promote local businesses, boost sales tax revenues, provide a hedge against declining sources of revenue and reduce the need to increase taxes. Their premise regarding the value of patronizing local business was reinforced by a reputable study that illustrated for every \$100 an individual spent at a local business, \$68 was recycled within the community, compared to \$43 for big box businesses. Further, local business owners are active in the community as evidenced by local businesses’ involvement in Halloween and sponsoring the 4th of July and other events. He advised the EverythingEdmonds.com website was fully sponsored and maintained by the Chamber and included information regarding every licensed business located in Edmonds.

Chamber of
Commerce /
“Everything
Edmonds”

Jan Vance, Executive Director, Greater Edmonds Chamber of Commerce, displayed the EverythingEdmonds.com website, that contains Find a Business, Calendar/Events, Edmonds Links and Featured Businesses. She displayed several photographs contained on the website and sayings that encouraged residents to shop locally.

Bettinger/
Kretzler
Historic
House

Fred Bell, South Snohomish County Historical Society, read a letter in response to the questions Council President Plunkett presented via email to the Historical Society: 1) Would the Historical Society be willing to put their proposal in writing? *Yes, however, it would have saved time if they had known of this requirement two months ago.* 2) Will the Historical Society pay for a temporary move? *No, the Society will not invest in a temporary project.* 3) Will the Society pay for a permanent move? *Yes.* Would the Historical Society pay for the maintenance? *Yes.* Will the Historical Society bond for maintenance? *Had the Historical Society known of this requirement two months ago, they would have researched the request and obtain the bond if deemed necessary.*

The owners of the Bettinger/Kretzler house have offered the historic residence to the City, the Historical Society or a private party as a goodwill gesture to the community. The City turned down the offer due to the cost of moving and maintaining the house; however, the Historical Society recognized the historical significance and, believing it was in the best interest of the community to save it, accepted the challenge to find a new location within the bowl. The initial deadline of July 1, 2008 for the Historical Society to provide the property owners a solution was extended to August 1, 2008; however, having explored all options and after lengthy discussion, the Historical Society has reluctantly decided they cannot accept the responsibility of relocating the house within the prescribed time limit and relinquishes its interest in the house back to the owners.

Verizon NW
Franchise
Agreement

4. PUBLIC HEARING AND FIRST READING: AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON GRANTING A NONEXCLUSIVE FRANCHISE TO VERIZON NORTHWEST, INC. TO CONSTRUCT, MAINTAIN, OPERATE AND REPAIR A CABLE SYSTEM TO PROVIDE CABLE SERVICES IN, ACROSS, OVER, ALONG, UNDER, UPON, THROUGH AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF EDMONDS; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE

Community Services/Economic Development Director Stephen Clifton advised the Council was provided with copies of minor amendments to the agreement that was contained in the packet. He explained Verizon was currently in the process of upgrading its existing Telecommunications Facilities in the City by installing

a state-of-the-art Fiber to the Premise Telecommunications Network (FTTP). In addition to providing residents with voice and high-speed data services, Verizon Northwest Inc. seeks to provide cable television service, utilizing the FTTP Network, to City residents, businesses and institutions in competition with the existing cable television operator serving the City. In order to do so, Verizon and the City must first execute a cable franchise agreement. As such, Verizon has requested a franchise from the City to operate and provide cable television service within the City's incorporated areas. Included in the Council packet is a staff report, ordinance granting a nonexclusive Franchise to Verizon and a Cable Franchise Agreement between the City and Verizon Northwest Inc. The staff report contains a summary describing why Verizon needs a franchise agreement to operate a cable television system within the city, requirements for granting franchise agreements under United States Code Title 47 and other applicable provisions of the law including Edmonds City Code 4.68. The report also highlights significant terms of the franchise agreement.

With regard to the negotiation process, Mr. Clifton explained because Verizon planned to provide cable television service throughout southwest Snohomish County, earlier this year City Attorney Scott Snyder and he recommended the City work with other jurisdictions and collectively negotiate a franchise agreement with Verizon to ensure the public receives maximum rights and benefits from their respective franchise agreements. As authorized by the City Council in February 2008, Mr. Snyder and Elana Zana, Ogden Murphy Wallace and he negotiated an Interlocal Agreement with Snohomish County and nine other cities (North Puget Sound Consortium). On March 25, 2008 the City Council authorized Mayor Haakenson to sign an Interlocal Agreement with the consortium members. The City Council also authorized executing a consultant agreement with River Oaks Communication Corporation to help the consortium and the City negotiate a franchise agreement. The consortium and River Oaks have since negotiated on behalf of all consortium members in an effort to create a template that could be used by each as a base document subject to refinement and further negotiation between Verizon and each entity. He noted consulting on cable telecommunication matters was a core function of River Oaks and they had provided consulting services on cable television and other telecommunication matters in 25 states in addition to providing consulting services that involve a variety of cable television, Wi-Fi and other telecommunication projects. They have also worked successfully with over 30 communities in the Seattle-Tacoma area and worked on franchise agreements with Everett, Kirkland, Marysville, Mukilteo and Snohomish with Comcast and its predecessor.

Bob Duchon, Vice-President, River Oaks, explained they were part of the negotiating team to develop a franchise template to serve as a model for the nine cities and Snohomish County. The goal was to develop a franchise that was competitively neutral, mindful of the current Comcast agreement and ensure there was competitive neutrality between the documents. The Verizon agreement differed from the Comcast agreement because Verizon was a common carrier with a telecommunications network that wants to be in the cable business; Comcast is a cable company that is now in the telephone business. He pointed out similarities between the Verizon and Comcast agreements, both are 15 year franchises, and both contain customer service standards and insurance provisions. He summarized the franchise agreement with Verizon achieved competitive neutrality between the companies and the agreement had been intensely negotiated with Verizon and represented an agreement in the best interest of the residents of Edmonds. He noted they worked closely with Ogden Murphy Wallace in crafting the agreement and expressed his appreciation for their assistance.

Councilmember Orvis asked if the two networks would carry similar channels and would both broadcast Council meetings. **Denise Reddy, Franchise Manager, Verizon**, advised they had committed in their agreement to provide both the current government access channel, the Edmonds Community College channel and in addition reserved two channels for future educational/government purposes.

Councilmember Wilson commented in Pierce County the communities worked together to form a multi-jurisdictional cable clearing house for production and in the past other cable franchise agreements in Snohomish County have included some level of financing to the community college for educational programs. He asked if a specific amount toward educational purposes or formation of a multi-jurisdictional

production facility was considered in this agreement. Mr. Duchen answered the document contains a provision that allows the City to collect \$0.35 per subscriber per month for educational and governmental (EG) purposes which can be increased to \$1.00 per month. There is also a provision in the document for a \$10,000 EG grant.

Mr. Snyder explained in addition to the consortium, Elana Zana and he had been negotiating on behalf of Edmonds, Woodway, Woodinville and Mukilteo and as part of that negotiation had “set the table” for facilities at Edmonds Community College. He noted the previous term PEG (Public Education and Governmental) was shortened to Educational and Government programming with the belief that there are many avenues for individuals to get their message out via the Internet without raising first amendment and cost issues. Mr. Clifton advised Edmonds Community College was working with southwest Snohomish County cities to structure the type of entity in Pierce County whereby a facility, possibly located at Edmonds Community College, could produce programming for cities. The cities have been meeting with Edmonds Community College on a potential structure and equipment. He noted if a facility were co-developed at Edmonds Community College, students would have the ability as part of a communications program to hone their skills while producing programming.

Councilmember Wilson asked if the \$10,000 EG grant was one-time funding. Mr. Clifton advised it was. Councilmember Wilson noted the \$0.35-\$1.00 per month was through the 15 year term of the agreement. Mr. Snyder explained FCC regulation provides that a franchisee who makes a grant was entitled to pass that cost on to the consumer. In effect, the \$0.35-\$1.00 per subscriber fee was a “backdoor tax.” The Comcast agreement provided for upfront grants but no monthly charge. Negotiations with Comcast would begin this year and it was anticipated an agreement would be in place within three years when the Comcast agreement expires. At that time the focus would shift from upfront grants to continuing funding mechanisms. The franchise agreement between the City and Verizon authorizes fees of up to \$1.00 with an initial level of \$0.35. The Council has the ability to raise the fee over the course of the agreement as deemed appropriate as long as it was applied uniformly to both franchisees.

Councilmember Wambolt referred to the list of major provisions in the staff report, specifically that Verizon must offer cable television service to a significant number of subscribers within 12 months of the service date and asked how a significant number was defined. Mr. Clifton relayed according to Verizon significant was described as just over 50% of residents.

Councilmember Wambolt referred to the provision that Verizon would pay the City a franchise fee in the amount of 5% of its annual gross revenues derived from operation of the cable system and asked how much this would be. Mr. Duchen advised it would depend on the number of subscribers; Verizon was typically successful in obtaining approximately 20%. Mr. Snyder noted 5% was the maximum permitted by law. He noted because a Verizon customer would be a former Comcast customer, it was not anticipated there would be any impact on City revenues. Councilmember Wambolt asked whether Verizon expected new customers. Mr. Clifton clarified there was not expected to be a net impact to the City budget because it was unlikely a customer would subscribe to both Comcast and Verizon; the current 5% franchise fee collected from Comcast would be offset by the franchise fee collected by Verizon. Ms. Reddy noted there may be some opportunity to acquire additional customers who currently subscribe to satellite service; satellite customers do not pay a franchise fee to the City. There was also an opportunity to generate franchise fees as consumers decide to enhance their service offerings.

Mr. Snyder recognized another valuable member of the negotiation team, Peter Camp, Snohomish County Executive’s office, whose time and energy resulted in a much better deal for all participants than could have been realized on their own. He pointed out the security and liquidated damage provisions in the Verizon franchise agreement, noting the Comcast agreement was taken over from Chambers Cable. When Chambers came into the community, they were a first time cable network that did not have the track record of Verizon or Comcast. Therefore many of the franchise agreements for start-up cable companies have very extensive

security provisions. Verizon, as a Title 2 telephone provider, has their plant and fiber optics already in the City's right-of-way. The City has the ability under its police power to impose separate security requirements. Unlike overhead cable, if for some reason Verizon failed, the City would like to have the fiber optic cable. He concluded although the security and liquidated damage provisions were less than in the Comcast agreement, they were appropriate in light of the economics and the financial stability of Verizon.

Mr. Clifton expressed his thanks to Elana Zana, Ogden Murphy Wallace, for her assistance with negotiating the franchise agreement. He noted not only did she provide an overall structure to the negotiating team, she excelled in keeping key members focused and also maintained consistent follow-through, ensuring all consortium members were kept informed in a timely manner. He also recognized Denise Reddy, Verizon, and Emma Zavala-Suarez, Stoel Rives, who assisted Verizon with negotiations.

Mayor Haakenson opened the public participation portion of the public hearing.

Roger Hertrich, Edmonds, welcomed competition between Verizon and Comcast. He expressed concern with the potential danger to public safety due to the amount of equipment mounted on poles throughout the City and asked who was responsible for the condition and replacement of the poles. He suggested requiring an inventory of the poles' condition and certification that they could accept the additional load.

Hearing no further public comment, Mayor Haakenson closed the public hearing.

Councilmember Bernheim asked whether the agreement governed or established standards for stringing wires. Mr. Snyder answered that was closely regulated by the State Electric code and State statute as well as the Snohomish County PUD who owned the poles. He noted in reviewing the Snohomish County PUD's pole attachment agreement for Edmonds' own fiber, there were strict standards regarding separation, weight, height, etc. He was satisfied that issue was adequately addressed.

Councilmember Bernheim commented he had noticed many unattractive wires on poles, often with 50-100 extra feet of wire. Mr. Duchon answered this agreement did not regulate that; because Verizon's network was a FTTP network, they could not use the cable franchise agreement as a means of regulating what was done in the right-of-way including equipment on poles. Mr. Snyder advised the agreement preserved the City's police power and to the extent the City had the ability to regulate that issue, it could. He advised in neighborhoods where utilities were underground, Verizon's facilities would be underground; in neighborhoods where it was on poles, the equipment would remain on poles.

Councilmember Bernheim asked if there was any regulation of "careless looking wiring." Mayor Haakenson advised the loops brought to his attention were extra wires that Verizon had not yet strung. Mr. Snyder noted if there were concerns about a specific location that information could be passed on to the State Electrical Inspector. Mayor Haakenson noted early on Verizon was linking wires with large junction boxes between poles that were very unsightly and blocked views. After contacting the local representative, Verizon was more careful about where they located the junction boxes. He concluded Verizon had been very responsive.

Mayor Haakenson advised as the ordinance adopting the franchise agreement required a first and second reading, it would be returned to the Council next week for final authorization.

Underhill
Comp Plan
Request
(215th Street
SW)

5. **PUBLIC HEARING ON THE PLANNING BOARD RECOMMENDATION TO DENY THE REQUEST BY JAMES UNDERHILL TO AMEND THE COMPREHENSIVE PLAN DESIGNATION FOR PROPERTIES ALONG A PORTION OF 215TH STREET SW AND EAST OF 76TH AVENUE WEST FROM "MIXED USE COMMERCIAL" TO "SINGLE FAMILY URBAN 1" (FILE AMD-07-14).**

Planner Gina Coccia reviewed the Comprehensive Plan amendment process, explaining James Underhill filed an application to change the Comprehensive Plan designation for properties along 215th Street SW near

Stevens Hospital. The Planning Board held a public hearing on June 11th and considered the staff report, public testimony and testimony from the applicant. Based on their findings, the Planning Board made a recommendation to the City Council to deny the proposed plan amendment. She displayed the existing Comprehensive Plan map, identifying the subject properties, designated Mixed Use Commercial and located within the Medical/Highway 99 Activity Center. She identified the existing zoning as Multiple Residential (RM-2.4). She also identified two other areas of Single Family Urban 1 designation in the surrounding area.

Ms. Coccia provided a brief history, explaining there were 19 parcels in the applicant's proposal; 2 parcels along 76th Avenue West have requested to be removed from the applicant's proposal. The area was developed with houses in the late 1950s and early 1960s and annexed into Edmonds in 1959. The area has been zoned and designated for multiple residential use since at least 1963. Single family homes are a permitted primary use in the existing RM-2.4 zone.

Ms. Coccia reviewed the Planning Board's findings:

1. *Is the proposed amendment consistent with the Comprehensive Plan and in the public interest?*
 - The proposal is inconsistent with the Comprehensive Plan and inconsistent with the goals and objectives of the Medical/Highway 99 Activity Center.
 - The application would not be in the best interest of the public.
 - The current Comprehensive Plan designation and zoning have been in place since the early 1960s.
 - The single-family residential nature of the neighborhood along 215th Street SW has remained intact and has not changed for a long time.

2. *Is the proposed amendment detrimental to the public interest, health, safety or welfare of the city?*
 - The proposed amendment is counter to the intent of the Comprehensive Plan and not in the best interest of the public.
 - Staff feels that the proposal does not appear to have a logical boundary.

3. *Does the proposed amendment maintain the appropriate balance of land uses within the city?*
 - The balance of land uses would likely not be impacted either way.
 - The intent of the Comprehensive Plan is clear that the area should be mixed use.
 - The proposed amendment, if approved, would change the land use designation that has been in place since at least 1963, which calls for more intense development.
 - The applicant's argument that the neighborhood is close to shopping, medical, educational opportunities and public transit is good, but these amenities really support a more intense use of the properties.

4. *Is the subject parcel physically suitable for the requested land use designation and the anticipated land use development, including, but not limited to, access, provision of utilities, compatibility with adjoining land uses and absence of physical constraints?*
 - The applicant did not make an adequate case that the subject parcel would be physically suitable for the requested land use designation.
 - The site is relatively flat and does not appear to be physically impacted by critical areas. However, there is a fundamental difference between this single-family residential area that is completely surrounded by more intense uses than the other single-family residential areas that are located around the periphery of the Medical/Highway 99 Activity Center. These other neighborhoods extend out from the activity center and into surrounding residential zones.

Ms. Coccia explained the existing residential homes may remain, but changing the Comprehensive Plan and later the zoning to limit future uses to single-family residential would not be appropriate. It would result in an island surrounded by other more intensive uses. The activity center is an economic driver for future development, which means more intensive uses would occur in the area in the long term. The fact that the two western-most properties have asked to be removed from the applicant's proposal suggests a problem – it

could be expected to result in a loss of future economic value and tax revenue because the future of the neighborhood would no longer have the potential for a variety of more intense uses. If the two western properties were removed from the proposal, it would also further exacerbate the island effect that approval of the proposed amendment would have on the vicinity.

Applicant

Jim Underhill, Edmonds, explained their neighborhood consisted of 19 houses, 50 residents, and 18 of the 19 houses are owner-occupied. It is a place that has experienced the benefit of private funds to upgrade homes, provides affordable housing to the City and is a place that has matured and diversified. The neighborhood is also an historic community. In order to protect the neighborhood, 17 of the 19 homeowners agreed to apply, 10 paid an equal share of the \$2600 fee. He acknowledged the request had not been without opposition or debate.

Mr. Underhill questioned which vision for their neighborhood would be adopted - the City's vision which would eliminate residential houses and opening properties to offices, apartments and other commercial uses or the vision of the present owners who desire to retain the character and use of the neighborhood and realize the protection of the Single Family Urban 1 designation and thus continue to provide the City with quality affordable housing and the many benefits that offers. The City's intension for the neighborhood was made clear in discussions by the Hwy. 99 Task Force; their neighborhood had no future as a residential area. He reported on his contact with the Edmonds School District and Stevens Hospital as their neighborhood was included as a residential street in their master plans; both indicated they would not object to the proposed amendment. The City's Technical Committee also did not object to the amendment as they provided no comment. He noted several Planning Board Members favored their request as did many of the people in attendance at the meeting. The Comprehensive Plan also supports their request in nine specific places and he was incredulous that the City's Planning Division felt it necessary to undo an established neighborhood that contained quality and affordable houses to develop a new neighborhood that included affordable, quality housing. He noted the City could not afford to build affordable homes such as existed in this neighborhood.

Mr. Underhill referred to the Planning Board minutes, specifically the comments by Board Member Jim Young regarding the need to protect this type of neighborhood. He noted the faults in the City's analysis were not challenged by the Planning Board and recalled several members of the Planning Board who spoke against the amendment asked whether bulldozers were in front of their houses, commenting unless bulldozers were ready to tear down the houses, there was no issue.

He referred to the City's plans for intense development in their neighborhood, and plans for BR/BR2 (Business Residential) that was intended for communities surrounding 76th and 212th that would allow three stories of mixed use to more intensely develop the immediate neighborhood, a zone the Planning Board denied in the past. Their neighborhood had never been an impediment to the economic development of Hwy. 99, and staff provided no statistics or analysis to support that claim.

With regard to the parties who asked to be removed from the request, the owner on the south side was an absentee landlord and did not share the neighborhood's vision. The Martinez assert that harm would occur if the amendment were allowed to move forward, but provided no description regarding the degree or type of harm that would occur. With regard to staff's comment that this neighborhood is different, he agreed they were different and took pride in that. They are a vibrant, thriving neighborhood. With regard to the City's finding that their request failed all four criteria; in the neighborhood's view, they passed all four. There are nine sections in the Comprehensive Plan that support single family residential homes. The residents of this neighborhood are committed local consumers and are what is needed in the community, part of the blend from apartments to condominiums to single family residence, not an isolated group but part of the whole. He requested the Council approve the Comprehensive Plan map amendment to Single Family Urban 1.

Mayor Haakenson opened the public participation portion of the public hearing. He advised the Council received two emails and a letter, from Susana Martinez who requested denial of the request and from Doug and Cathy Stewart who asked that the request be upheld.

Norman Knaack, Edmonds, a 30-year resident of 215th Street concurred with Mr. Underhill's statement. He noted it had always been a single family neighborhood and requested the Council's assistance in keeping it a single family neighborhood.

Mark Schrock, Edmonds, a 14 year resident of 215th Street, advised on October 10, 2008, the neighborhood would celebrate the 50th anniversary of Joseph and Lola Luschen's dream for a tract free from the threat of moving or being crowded out. He recommended the covenants they filed with Snohomish County and by which the neighborhood has abided by for 50 years not be tossed aside. He concurred with Mr. Underhill's comments.

Vicki Thompson, Edmonds, a 31-year resident of 215th Street, commented there used to be more air and less noise. As development has occurred around them including apartments, condominiums, a larger hospital, their single family neighborhood was what was left of mixed use. She asked the Council to help them retain what was left of their neighborhood.

Roger Hertrich, Edmonds, expressed his support for Mr. Underhill's comments, recalling Mr. Underhill had spoken out a number of times over the years regarding protection of his neighborhood. Mr. Hertrich suggested the Planning Board identify this as a special district due to its historic value. He urged the Council to see the neighborhood's point of view and the importance of retaining a sense of history throughout the City. He agreed this was a fragile area, surrounded by increasing commercial development and high density residential.

Hearing no further public comment, Mayor Haakenson closed the public hearing. He advised the Council also received emails/letters from Barry Stewart, Linda Van Nest, and Helen Maeda in favor of Mr. Underhill's proposal and a letter from Alden & Joanna Peppel who were opposed.

Councilmember Orvis inquired about the covenants referred to by Mr. Schrock. Ms. Coccia advised the covenants were contained in the packet on page 81 and the City Attorney's response regarding the covenants was contained in his memorandum (Exhibit 4).

Councilmember Wilson commented it was his understanding that the covenants did not affect the City's ability to zone the property but the covenants would require the neighborhood remain single family in perpetuity or until the covenants were removed. City Attorney Scott Snyder responded covenants were for individuals to support via courts; the City did not recognize covenants and they had no legal bearing on the Council's decision. Councilmember Wilson concluded from Mr. Snyder's comments that covenants were only as good as an owner was willing to enforce them. Mr. Snyder agreed, noting that was a completely separate process.

Councilmember Wilson asked if anyone could enforce a covenant. Mr. Snyder answered only another property owner within the subdivision. Councilmember Wilson assumed all the homeowners in this subdivision had the right to enforce the covenants upon other property owners. Mr. Snyder agreed. Ms. Coccia referred to Item 16 on page 83 of the packet, which states the covenants would expire in 1983 unless readopted and there was no evidence that they had been readopted. Councilmember Wilson commented the covenant issue was moot because they had expired. Mr. Snyder reiterated the covenants were irrelevant to the Council's decision.

Councilmember Orvis commented the City was under no obligation to enforce covenants. Mr. Snyder agreed.

Councilmember Bernheim asked whether this was a down zone. Development Services Director Duane Bowman explained this was a Comprehensive Plan amendment that would change the land use designation to Single Family Urban 1 which would potentially lead to a rezone/down zone of the property to single family from multi family. He noted the Comprehensive Plan must match the zoning; this was the first step whereby the property could ultimately be rezoned to single family.

Councilmember Bernheim asked whether there had ever been a similar request made or granted in the past 20 years. Mr. Bowman could not recall such a request but would need to research the records.

Councilmember Wambolt pointed out nothing would happen in this neighborhood under the current zoning to make it multi family unless the current owners sold or redeveloped their property. Mr. Bowman agreed, noting single family use was allowed in the multi family zone.

Councilmember Wambolt commented he had never seen a municipality enforce any covenants; that was the responsibility of the Homeowners Association. Mr. Bowman agreed it was the responsibility of the Homeowners Association or other party to the covenants.

Councilmember Wilson referred to the finding that there was not a logical boundary for the area. Ms. Coccia relayed staff's finding that there was not an appropriate or logical boundary because it was not near any other Single Family Urban 1 property. Councilmember Wilson noted the criteria stated it would not be detrimental to the public interest, health, safety or welfare of the City and asked how the proposed boundary would be detrimental. Mr. Bowman referred to the existing Comprehensive Plan map, pointing out the single family area on the periphery, noting this area was not on the periphery and would create an island of single family in the center of the Hwy. 99/Medical area. Because multi family development, Edmonds-Woodway High School and Stevens Medical Center surround the neighborhood, the proposed amendment did not support the land use plan of mixed use high density for the area and the current designation was consistent with the plan for the area. Ms. Coccia referred to pages 43 of the packet, a map from 1963 where the City acknowledged there were single family dwelling units on that street and the land use plan at that time designated and zoned the area multi family.

Councilmember Wilson reiterated the current zoning allowed single family use. He referred to the first criteria, the proposed amendment is consistent with the Comprehensive Plan and Mr. Underhill's reference to statements in the Comprehensive Plan that single family was a goal/priority in the City. He asked what criteria the Council should use to judge whether an amendment was consistent with the Comprehensive Plan. Mr. Bowman answered the Comprehensive Plan must be considered as a whole. The agenda memo listed the criteria the Council must use in evaluating a Comprehensive Plan amendment. He quoted from Planning Board Member Reid's summation on page 11 of the packet, "Upon reviewing the Comprehensive Plan, he said he doesn't see any other single-family residential neighborhoods located in the center of the activity center. The proposed change would not be consistent with the Comprehensive Plan and would not be in the public interest. The proposal would also be inconsistent with adjoining properties." Mr. Bowman did not deny the neighborhood was unique, however, under the current land use designation and zoning, the property owners retain their ability to remain single family as long as they choose. However, from a planning perspective, it was appropriate to retain the historic designation.

Councilmember Wilson asked if there were any other examples in the Comprehensive Plan where the designation of six houses on one side of the street and ten on the other side was changed. Mr. Bowman explained the question before the Council was whether the area identified for a change in the designation was consistent with the vision for that area. If the Council believed it was not, the Council could concur with Mr. Underhill's request. The Planning Board and staff have identified reasons they did not find it consistent with the Comprehensive Plan.

Councilmember Bernheim asked whether the homeowners had any vested rights in the current zoning, an expectation of the zoning when they purchased their property. Mr. Snyder commented that was a legislative matter for the Council to consider. Mr. Bowman advised there was no vested right in the current zoning. Councilmember Bernheim summarized the Council was legally authorized to change the zoning as long as it was done via due process. Mr. Snyder and Mr. Bowman agreed.

Councilmember Wilson asked if the Council was compelled to accept the application if it determined the four criteria had been met. Mr. Snyder advised the criteria had to be met for the Council to consider the application; it was the Council's legislative decision whether to act.

COUNCILMEMBER BERNHEIM MOVED, SECONDED BY COUNCIL PRESIDENT PLUNKETT, THAT THE COUNCIL NOT ACCEPT THE PLANNING BOARD'S RECOMMENDATION AND ADOPT THE REQUEST SUBMITTED BY MR. UNDERHILL.

Council President Plunkett referred to the fourth criteria, the subject parcels are physically suitable for the requested land use designation(s), pointing out this criteria had been met as evidenced by the statement in the staff report that the subject area itself is physically suitable for the requested land use designation. With regard to the third criteria, does the proposed amendment maintain the appropriate balance of land uses within the city, he pointed out this criteria had been met as evidenced by the statement in the staff report that changing the designation of a portion of one street from "Mixed Use Commercial" to "Single Family Urban 1" did not significantly affect the overall balance of land use in the City.

With regard to the second criteria, is the proposed amendment detrimental to the public interest and the first criteria, is the proposed amendment consistent with the Comprehensive Plan and in the public interest, Council President Plunkett concluded the proposed amendment was consistent with the Comprehensive Plan. He referred to pages 49, 50, 59 and 66 that reference Comprehensive Plan language regarding preserving older stock, diversity, affordability, and access to facilities, goals this proposed amendment achieved. He concluded the amendment met the four criteria.

Councilmember Orvis expressed support for the motion. With regard to the first criteria, he found it was met, referring to Mr. Underhill's comment regarding affordable housing. As a resident of the east side of Edmonds himself, he noted that area provided more affordable housing for Edmonds residents. With regard to the second criteria, he noted there were no engineering objections to the proposed amendment. With regard to the third criteria, he noted if the amendment were approved, there would be business, single family, multi family, and public uses mixed together, similar to downtown. He noted there were other pockets of similar zoning throughout the City. He disagreed with the finding that the proposed amendment would result in an island. He also found the amendment met the fourth criteria.

Councilmember Dawson stated this was a difficult decision, acknowledging there were many areas in Edmonds and other cities where redevelopment would best serve the interests of the community. An interesting thing about this neighborhood was that although the zoning designation had existed for some time, the neighborhood had not redeveloped. She noted there were many examples throughout Snohomish County of neighborhoods that were ripe for redevelopment that were in a state of blight and where it would clearly be in the best interest of the public for them to be redeveloped. This neighborhood, although adjacent to more aggressively zoned/developed areas, continues to exist and improvements are made by the residents which showed the zoning should be consistent with the way the neighborhood currently exists, not the way the City might like to see it developed. There was value to having a mix of uses in the City. She acknowledged she would not be sympathetic to the neighbors' objection to nearby development due to their single family designation, anticipating the surrounding area may develop more aggressively. If this neighborhood was able to co-exist with that development and continue to thrive, it was a value to the community. She agreed with Councilmember Orvis' comment regarding the importance of affordable housing stock in the community. She found the proposed amendment consistent with the Comprehensive Plan and expressed her support for the motion.

Although he understood the residents' reluctance to have their neighborhood developed multi family as it would degrade the neighborhood, Councilmember Wambolt indicated he would not support the motion. He reiterated it was not as if the properties were being condemned for multi family; the fate of the properties was entirely in the hands of the owners. He did not support the motion and was in favor of supporting the recommendation of the Planning Board.

Councilmember Wilson agreed this presented a difficult question to the Council. He noted the Planning Board did its job, determining that the request did not match the Comprehensive Plan. Although it could be debated whether or not the proposed amendment met the criteria, it was ultimately a question of vision. He would support the amendment due to the importance of affordable housing and because this neighborhood was a prime example of where citizens had maintained their homes and used the system to achieve their goal. Although there was reason to uphold the Planning Board's recommendation, his vision included strong neighborhoods such as this. He expressed his support for the motion.

Councilmember Olson indicated she did not support the motion. She agreed with Councilmember Wambolt that the neighborhood would not be redeveloped unless the residents sold their homes and pointed out the neighborhood had the same land use designation for a long time and no redevelopment had occurred.

Councilmember Dawson noted the issue was how the Council wanted that neighborhood to develop. She found maintaining the neighborhood in the current manner would be consistent with her vision for the city and it was appropriate to maintain those uses.

MOTION CARRIED (5-2), COUNCILMEMBER WAMBOLT AND COUNCILMEMBER OLSON OPPOSED.

Mr. Snyder asked whether Councilmember Bernheim intended for the motion to cover the entire neighborhood, recalling there were two properties that asked to be removed. Councilmember Bernheim clarified it was his intent to include the entire area. Councilmember Wilson commented his understanding that upholding the applicant's request to deny the Planning Board's recommendation did not include the two properties that asked to be removed. Mr. Bowman clarified the request included the two properties; they requested to be removed, however, the application applied to all the properties.

Councilmember Bernheim commented the neighborhood was a logical, integral whole. That was the character that the application and he intended to maintain and not to allow two properties to be developed as commercial or mixed use. He noted zoning was a legislative power and similar to property owners who were adversely affected when large condominiums were constructed in their view, property owners may be adversely affected when the City Council voted to retain a neighborhood the way it had developed. He noted there was room in the Comprehensive Plan for changes that value the present use as the best use.

As the seconder to the motion, Council President Plunkett advised it was his understanding the motion included the entire neighborhood.

COUNCILMEMBER WILSON MOVED, SECONDED BY COUNCILMEMBER OLSON, TO RECONSIDER THE MOTION.

Councilmember Wilson pointed out the Planning Board did not make a recommendation regarding the two properties on 76th who asked not to have their zoning changed; therefore the Council would be doing something extraordinary. He noted it was common in the Comprehensive Plan to have zoning on an arterial that allowed mixed use or commercial on properties that abut a residential area and therefore it would be applicable in this area. He suggested allowing a revote to reaffirm the Council's approval of a change for all the properties with the exception of the two properties who specifically asked not to be changed. Councilmember Dawson clarified these properties were not being rezoned; the Comprehensive Plan was being updated and a rezone would follow.

UPON ROLL CALL, MOTION FAILED (2-5), COUNCILMEMBER WILSON AND COUNCILMEMBER OLSON IN FAVOR; AND COUNCIL PRESIDENT PLUNKETT AND COUNCILMEMBERS ORVIS, BERNHEIM, WAMBOLT, DAWSON OPPOSED.

Proposed
Vacation of
Alley Right
of Way
Between 8th
Ave N and
9th Ave N

6. **PUBLIC HEARING ON THE PROPOSED VACATION OF THE UNOPENED ALLEY RIGHT-OF-WAY LOCATED BETWEEN 8TH AVENUE NORTH AND 9TH AVENUE NORTH, NORTH OF DALEY STREET.**

Development Services Director Duane Bowman questioned whether the Council had received all the materials that Eric Thuesen provided. Mayor Haakenson advised the Council had received a 40-page letter from Mr. Thuesen tonight. Mr. Bowman distributed additional information received this afternoon from Mr. Thuesen. City Attorney Scott Snyder suggested proceeding with the hearing and if the Council deems the new material worthy of review, they could consider continuing the hearing. Mr. Bowman noted the Council also received a letter from Jim Wold.

Councilmember Dawson advised the information she just received included correspondence with her husband's law firm and she did not find it appropriate for her to participate if her husband's law firm were potentially involved in litigation regarding this matter. She recused herself and left the room.

Mr. Bowman recalled on June 24, 2008, the City Council passed Resolution No. 1178 initiating this vacation action. He displayed an aerial photograph and identified the property owned by Mr. Thuesen that was currently developed with a single family house and a small detached garage in the east corner. He also identified the 7.5 foot unopened alley right-of-way located north of Daley Street, between 8th Avenue North and 9th Avenue North, identifying the area where the alley was used for access as well as the Wold and Olson residences and 9th Avenue. He explained the Wolds had an easement across properties 847 and 853. He identified the portion of the alley to the west where the topography was very steep and displayed a topography map that identified the contours of the block between 8th and 9th.

Mr. Bowman displayed a drawing of the 800 block of Daley Street prepared by Jim Wold that illustrated uses along the alley. The alley was created with the original plat of Edmonds and had never been used by the City. It was originally intended when the area to the north subdivided that the other half of the alley would be dedicated to the City which never happened. The alley had never been used with exception of the east portion. He noted the Wolds (third property on the southeast side of the alley) had a private easement across the other two properties on the southeast side of the alley, providing that property access from the alley as well as the easement. He identified the Olson property (on the northeast end of the alley) which had access to their garage from 9th Avenue. He identified the location of the new house on the Thuesen property and a garage in the southeast corner, advising Mr. Thuesen had preliminary subdivision approval to create two additional lots.

Mr. Bowman relayed the criteria that the Council must consider for an alley vacation, a) the vacation is in the public interest, and b) no property will be denied direct access as a result of the vacation. He pointed out the Reidy's primary vehicle access was via Daley. The recently approved short plat for the Thuesen property allows a lot in the center of his property. It was originally a two-lot subdivision; however, following a court case, Mr. Thuesen was allowed to reapply and he received approval for a three lot subdivision. He displayed the approved preliminary plat for the short subdivision of the Thuesen property, identifying the existing house, a center lot with access via an access easement to 8th Avenue and a third lot on the western end. He displayed the conceptual development plan reviewed as part of the short subdivision, identifying the existing home at the east end with a detached garage, the generalized location of the home on the center lot that did not utilize the 7.5 foot alley for its access, and the third house with access onto 8th.

With regard to the first criteria, the vacation is in the public interest, Mr. Bowman advised the City had no planned or existing improvements in the alleyway. It would be in the public interest to vacate the right-of-way and return it to the tax rolls. Regarding the second criteria, no property will be denied access as a result

of the vacation, he advised access was currently available to all properties. The most likely issue would be the Olsons access to their garage via the alley which he explained could be accomplished via an exchange of easement by the property owners to the south granting access over the existing alleyway. He concluded no property was deprived of direct access or uses the alley for access. With regard to compensation, staff did not recommend any compensation for the recommended right-of-way, it came from the properties to the south and vacating the unused right-of-way reduced the City's liability for any of the existing unused conditions.

Council President Plunkett asked whether there was a pending lawsuit. Mr. Bowman advised there was no lawsuit, only a threat of a lawsuit. City Attorney Scott Snyder clarified the Council was not giving the property away, the City would simply vacate its interest, the property goes where it goes by operation of the law. Title issues were not part of the Council's role; the Council's only considerations were whether the vacation was in the public interest and ensuring no one was denied direct access as a result of the vacation.

Pointing out the materials Mr. Thuesen provided referenced legal action and a Councilmember chose not to participate due to potential legal action, Council President Plunkett was uncertain what legal activity surrounded this matter. Mr. Bowman explained the City was involved in a lawsuit with Mr. Thuesen during the subdivision of his property regarding the wetland area; Mr. Thuesen prevailed and the court decision allowed him to apply for the third lot on the property and fill the wetlands. The other issue was the Reidys have a small shed on the rear of their property that encroaches into the alleyway and a corner that projects onto Mr. Thuesen's property. The City began an enforcement action to compel the Reidys to move their shed out of the City's right-of-way. The Reidys chose to pursue the vacation request and prevailed in the Council initiating the vacation request. He attempted to get the Reidys and Mr. Thuesen to work out an agreement to rectify the situation; Mr. Thuesen would like to use the alley for a retaining wall to improve the access to his third lot; the Reidys want to preserve their shed. The parties were unable to reach an agreement and Mr. Thuesen was opposed to the alley vacation and the Reidys want to pursue the vacation to allow them to reclaim the property.

Mr. Snyder explained the City may grant a temporary encroachment permit to use the public right-of-way; absent that permit the City had a right to compel removal of any object in the public right-of-way. The only way the shed could remain would be if the City vacated the right-of-way.

Mayor Haakenson referred to Mr. Thuesen's 40+ page document that states approval of any alley vacation will result in suit for damages from the petitioner against the City. Mr. Snyder trusted the Council to apply the criteria and he would defend a lawsuit if necessary.

Councilmember Bernheim referenced Mr. Snyder's comment that it was the duty of the City to compel the removal of the shed, pointing out to the east there were fences, landscaping and other structures in the right-of-way. Mr. Snyder acknowledged much of the unopened rights-of-way in the City were occupied by fences, landscaping and structures. The City acts on complaint; when a complaint was received, the City must investigate and take necessary action.

Mayor Haakenson opened the public participation portion of the public hearing. He advised the Council had received a 40-page and a 10-page letter from Mr. Thuesen and a letter from Jim Wold.

Laurie Niven, Edmonds, expressed her support for vacating the alley with no compensation to the City. Although she did not know everyone's opinion with regard to the vacation, she urged that whatever the decision, there not be any divisiveness among the neighbors and that access to garages be maintained.

Jim Wold, Edmonds, was uncertain whether the easement to his property from 9th Avenue was legally established. He explained the builder who built the five homes along Daley Street from 9th to 8th lived in the house he now owned. He assumed at that time the builder moved the fence line back of the two houses

between his house and 9th Avenue North to provide access to his garage. In the late 1960's the owner prior to the Olsons removed their original garage and built a garage on the back accessible only by the 7.5 foot right-of-way and the "easement" developed by the builder. Those two homes were the only ones using the right-of-way. When he moved in they removed the garage in the rear and replacing the pad with landscaping. He noted he still used the right-of-way and easement on occasion for transporting landscaping materials. He concluded the alleyway was not essential for him and he was in favor of the vacation.

Ken Reidy, Edmonds, commented 118 years had passed and the City had not established any public use for the 7.5 foot unopened alley right-of-way between 8th and 9th and the City has no future plans for the right-of-way. He found it in the City's best interest as well as the public's best interest to vacate the right-of-way, pointing out public rights-of-way must be maintained by the City for the safety and convenience of the public. He was unaware of any City maintenance of the right-of-way; its unmaintained condition coupled with the steepness of the slope created an unnecessary liability for the City and managing a right-of-way was a burden to the City requiring additional administrative effort to monitor its status. The public would benefit from vacation of the right-of-way by the property being subject to property taxes. He noted in 1980 via ordinance 15 feet of the right-of-way was vacated. In 1993 using this vacation the prior owner of his home purchased the 15 foot section of the right-of-way. He concluded the alley right-of-way was not continuous to 8th as the first 15 feet were privately owned. He supported the vacation of the remaining 7.5 feet of unopened alley right-of-way. He noted the status of his shed was separate from the issue of vacation and assured the shed would be removed.

Eric Thuesen, Edmonds, commented the issue was not the vacation of the entire alley but only the unused portion where the two arrows meet on Mr. Wold's drawing; the other portion of the alley had been in use since 1956. He provided background on his property, explaining after purchasing the property in 2004, he applied for a short plat utilizing a portion of the alley for access; the final approved short plat shows use of the alley. In July 2007 a construction survey revealed the Reidy's shed encroached onto the alley. He filed a complaint with the City against the encroachment due to his intent to utilize the alley. Engineering plans he received after receiving the short plat approval in July 2007 showed the use of the alley for access to the first lot. That was approved by the Engineering Department with the exception of an encroachment permit, needed to build a retaining wall in an alley. The retaining wall encroachment permit was not granted; the wall could not be constructed until an encroachment permit was finalized and issued for the structure encroaching into the alley. He referred to conversations in early July 2007 with the Reidys attorney and his request that the City pursue code enforcement to remove the shed. He filed an objection to the proposed vacation of the alley and referred to Section 20.70.040B that states the City cannot proceed with vacation if 50% or more of the property abutting the street or alley file written objection. He advised he had a vested interest due to the approved building permit that included alley access. He was opposed to the alley vacation, finding it a violation of his vested rights and 20.70.040B.

Mr. Snyder commented in a vacation, the City could reserve easements and still vacate the property. He asked whether the Council reserving an easement for embankments or retaining walls would address his issue. Mr. Thuesen answered his problem was with Mr. Reidy's shed which Mr. Reidy had elected not to remove. He noted the retaining wall would be used to support the land; the roadway would be adjacent to the retaining wall. Mr. Snyder concluded from Mr. Thuesen's comments that a portion of his access road would be within the 7.5 foot alley right-of-way. Mr. Thuesen agreed, explaining because of the Reidy's shed, he had to make adjustments to move the retaining wall out of the right-of-way. He objected to the vacation as it did not resolve the problem of the Reidy's shed.

Greg Olson, Edmonds, whose property was on the northeast corner of the alley, explained his objectives were to, 1) maintain access to his garage, 2) improve the safety and security of the alley, and 3) prevent any increase in traffic or parking in the alley. He noted their original garage was moved to the rear when their home was remodeled in 1967 and their sole access to the garage was via the alley. The previous owner granted a permanent easement to Mr. Thuesen on the north side of this property which provides access to the

buildings on the 509 9th Avenue North property. He requested a permanent easement be granted on the alley right-of-way to retain access to his garage. He used the access on a daily basis and it was used occasionally by Mr. Wold; he wanted to prevent any further parking by the buildings to the west. He noted the fences on both sides of the alley were quite low and the owners at 853, 847 and 841 Daley as well as he were best equipped to ensure the safety and security of the alley. He expressed support for vacation of the alley.

Forest Wold, Edmonds, urged the Council to favorably consider vacation of the right-of-way, commenting it made economic and public policy sense.

Hearing no further public comment, Mayor Haakenson closed the public hearing.

Council President Plunkett asked whether with some thought/time there would be a way to allow the retaining wall to be built and the right-of-way vacated in the future. Mr. Snyder requested this matter be continued to allow staff to consider the material submitted tonight and to compare the plat approvals to determine what was vested. If there are prescriptive rights, that was for the court to decide. He suggested the Council ask any questions and ensure the record accurately reflected what rights are vested under plat approvals.

Councilmember Wilson commented the packet Council received on Friday did not include the 40-page letter Mr. Thuesen provided tonight. He agreed with Mr. Snyder's suggestion to continue the matter to a later date to provide the Council and staff an opportunity to consider all the material. He asked about the comment that the Reidy property included the first 15-feet of the alley from 8th Avenue North. Mr. Bowman answered his research revealed there were some street and alley vacations done but it was not clear that the alley was vacated and the survey submitted by the Reidys did not show the alley as part of their property. The ordinance that did the original vacation on 8th Avenue and the ordinance that vacated the portion on the east side where the Reidy's is located does not affirm in fact that 7.5 feet on the westerly portion of the alley was vacated. The east 15 feet of 8th Avenue was in fact vacated.

Mr. Bowman referred to Council Resolution No. 474, dated August 19, 1980, that shows 100 feet plus 7.5 feet. Unfortunately the ordinance did not show this same drawing that vacated the east 15 feet of 8th Avenue North and he requested an opportunity to research the matter further. He agreed the Council may need to continue the matter, noting some of the parties may not be able to attend a meeting until late August or early September. Mr. Snyder agreed with Mr. Thuesen that the code states the City shall not proceed with the vacation if the owners of 50% or more of the property abutting the street or alley or part thereof object. He recommended the record accurately reflect the abutting property ownership.

Mr. Bowman disagreed with Mr. Thuesen's assertion that only a portion of the alley was proposed to be vacated; the proposal was to vacate the entire alley between 8th and 9th Avenue. The neighbors have discussed establishing easements on the portion identified on Mr. Wold's drawing as in use since 1956 (the east end of the alley). Mr. Snyder agreed a written staff opinion would be helpful.

Mayor Haakenson encouraged the Council to ask any questions and staff would provide a report with answers to their questions at a later date. Following a brief discussion regarding scheduling and availability of property owners, Council President Plunkett agreed to schedule the matter as time was available on the agenda. Mr. Snyder suggested continuing the public hearing to allow the property owners to comment on staff's response.

Councilmember Wilson asked if this vacation arose due to the location of the Reidy's shed. Mayor Haakenson explained the neighbors contacted him to discuss issues of access to their property. Staff and he cannot bring a vacation request to the Council; it must be generated by the Council. Councilmembers Wambolt and Olson met with the neighbors and proposed the vacation. He advised the Reidy's shed was a separate issue. Mr. Bowman explained when a complaint was filed regarding the Reidy's shed, the options

were to remove the shed or vacate the right-of-way; a portion of the shed would be required to be removed even if the alley were vacated. Mayor Haakenson explained the neighbors on both sides of the east side end of the alley inquired about vacating the alley due to concern with access to their property and concerns with parking in the alley when houses were constructed to the west. Councilmember Wilson advised he would defer any further questions until staff provided a written report.

Councilmember Bernheim commented Mr. Thuesen's submission of materials was timely; he was entitled to present material at the hearing. For Councilmember Bernheim, Mr. Snyder explained the City owned a right-of-way easement and did not own the underlying fee. When the City vacated the easement, the property reverted to the owner of the underlying fee. In most cases it was to the middle of the roadway, however, when the entire dedication originally came from the same tract of land, it reverted to those properties. It would appear it would revert to the owners of the property in the original Town map.

Councilmember Bernheim asked whether there was any basis for Mr. Thuesen's assertion that he owned 50% of the property abutting the property to be vacated. Mr. Snyder wanted to ensure the record clarified the application and Mr. Thuesen's abutting ownership. Councilmember Bernheim asked Mr. Snyder to research whether the middle lot in the subdivision would have direct access. Mr. Snyder noted another issue was vesting.

Mayor Haakenson advised the hearing would be continued to a date as yet unknown. Mr. Bowman advised the hearing would be re-advertised and the property owners notified.

Mayor Haakenson declared a brief recess. Councilmember Dawson returned to the dais.

7. AUDIENCE COMMENTS

Old Safeway
and Skippers
Properties

Rick Senderoff, Edmonds, objected to Councilmember Wambolt's guest view in the *Edmonds Beacon*, finding it used subjective and speculative language that did not necessarily contribute to productive public discourse and discouraged a good faith effort by citizens to find a solution to an ongoing Edmonds issue when developers obtain properties critical to the city's future without intending to develop until building codes were changed. The old Safeway and Skippers properties were critical due to their proximity to the waterfront and the business core; leaving them undeveloped did not produce revenue, present additional business opportunities nor provide quality of life benefits. He objected to Councilmember Wambolt's use of the term "small group" noting that a small group of citizens represented a large constituency who supported him in the past election, support that was largely due to his position against changing building heights, a position he now appeared to reject. He noted during the open public forum, 19 citizens expressed their support for exploring the option of acquiring the properties so that the City might develop a plan with vision. Further, over 100 individuals donated over \$4,000 to benefit students who designed plausible alternative solutions. Not a single Edmonds resident expressed support for any other option including an owner-driven or City-driven master plan without ownership of the property. He concluded it appeared Councilmember Wambolt had sided with developers who wanted to redevelop the property with taller buildings than were currently allowed. He objected to Councilmember Wambolt's reference to other ballot measures and financial issues facing Stevens Hospital and other public interests, summarizing Edmonds residents were aware there were difficult choices to be made but continue to invest in themselves, their property and community. He urged the Council to consider and research all options.

Plastic Bag
Issue

Don Hall, Edmonds, proposed the City consider the plastic bag issue, recalling the Seattle City Council passed a resolution regarding plastic bags although he did not agree with charging a fee for a plastic bag. He was opposed to plastic bags due to their impact on marine life, killing 100,000 marine animals and 2 million birds per year. He noted China was eliminating all thin plastic bags, Australia was phasing out plastic bags by year end and other cities were imposing laws regarding plastic bags. He cited new products that replace plastic bags including bio-bags for composting. He recognized Petosa's and other stores downtown for

discontinuing the use of plastic bags, advising bio-bags were available in several downtown stores. He urged consumers to request stores eliminate plastic bags.

555 Main Street

Rick Gifford, Edmonds, land use counsel for the 555 Main Street site and the property owners Rick Kent and Mark Trumper, explained they propose to develop a mixed use commercial office building at 555 Main Street as their business was outgrowing their space in Harbor Square. They were here tonight regarding the new BD1 zone in which this property was located. He advised they attended last week's Council meeting where information was introduced by staff but they did not have an opportunity to respond. He asserted the Council was pressed to take action without opportunity to be accurately and fully briefed, a process that had ripple affects that created additional problems and further ambiguities. He noted the contemplated project at 555 Main had been designed with an emphasis on the needs of his clients' business, the code language, and the underlying philosophy of the City's plans for its retail corridor as expressed in the BD1 code. In discussions with planning staff, they were encouraged to submit a code interpretation request to assist staff in assessing the project, the first for review under the BD1. Although they did not find a code interpretation necessary nor justified, they complied with staff's suggestion. They received a surprising interpretation followed by the late night marathon Council meeting last week. Now the Council was preparing to adopt an unnecessary interim ordinance even though the plain language of the code was clear, the as yet unsubmitted project conforms with the code and there was no urgency for the Council to act in a precipitous manner.

Mr. Gifford requested the Council reconsider its request for an interim ordinance which would rewrite the existing BD1 code to require 15-foot ceilings to the back of a building. He found it a mistake to rush to a stopgap solution without first examining the purposes to be served and the irreparable harm such a short term action may have on his clients' business, other businesses, and the City's planning and economic objectives. He urged the Council to consider the underlying issues in this first practical test of the BD1 zoning ordinance and address those issues with a more considered approach to "fix" the code. His clients had worked hard to properly apply the City's BD1 code and persisted with the city to accomplish other objectives such as possibly preserving the existing residential structure. They were committed to continuing to work with the City in good faith to accomplish their vision for the site in accordance with all applicable policies, codes and guidelines. They believed the design concept that started this process met and exceeded BD1 code requirements and fulfilled the spirit in the provisions - great storefront retail on Main Street, upscale and green commercial space with alley access to below ground off-street parking to keep cars off the street and places for customers to shop. The building would also provide an exciting new home for an indigenous business with local ownership. He urged Council to decline the proposed interim ordinance and recommend to staff that the BD1 code interpretation be withdrawn. His clients were willing to retract their request for a code interpretation if necessary to accomplish this and withdraw their pending appeal to the Hearing Examiner regarding the code interpretation, allowing them to proceed in due course with design, planning and application to the City for their proposed project.

COUNCILMEMBER DAWSON MOVED, SECONDED BY COUNCILMEMBER BERNHEIM, TO EXTEND THE MEETING FOR 20 MINUTES. MOTION CARRIED UNANIMOUSLY.

Establishing Clear Priorities

David Thorpe, Edmonds, clarified his reference last week during the nuisance hearing regarding friends that lived next to a hoarder that they lived in Lynnwood. He spoke in favor of a process that allowed the Council to establish clear priorities that met short and long term goals, a necessary first step for staff, Council and Edmonds citizens so that clear and concise decisions could be made. He noted with regard to the Downtown Waterfront Activity Area, information was spotty and not clear or concise. As the property was not listed for sale, he questioned whether the City was wasting time and resources. With a long and short term priority list and details of actions and expenses, the pros and cons of each item could be discussed. He commented on how Bellevue had grown from a bedroom community to a world class city. He pointed out the impact of transforming the former Eastside Catholic School site into the Downtown Park; Bellevue Square was previously 1-2 stories and open air, it was now a covered mall with no personality. The park did not generate money and density downtown was increasing; Edmonds was not in that league. He disagreed

with Councilmember Wilson's comment last week about more realistic, less ambitious, preferring preserve and foster, not protect and limit. He noted the community recently passed the EMS levy, supported the school levy and may soon be asked to increase funding for Stevens Hospital along with other projects. He urged the Council to lead and supply accurate information to allow citizens to make good decisions on future expenditures.

PCC Site

Roger Hertrich, Edmonds, recalled rain barrels were approved via the adoption of an interim ordinance, an action he viewed as a mistake. He expressed concern with the location of the garbage enclosure in the setback at the PCC site which Mr. Bowman indicated was approved last year and did not require ADB review because it was such a small project. Next, he reminded the public the Planning Board would be discussing parking of recreational vehicles on Wednesday, July 23. He advised the following were considered recreational vehicles: travel trailers, folding tent trailers, motor vehicle trailers, campers, a canopy removed from a truck or boat, boat, boat trailer, snowmobile or snowmobile trailer, and other similar conveyances. He noted under the proposed regulations, residents would be limited on the number of vehicles and where they could be parked. He also thanked Bob Gregg for not building a third floor, noting the building looked great. Mr. Hertrich likes the design and the color, and noted Old Milltown was back.

Ch. 16.43 BD
(Down-town
Business)
Zones

8. **ZONING ORDINANCE AMENDING THE PROVISIONS OF CHAPTER 16.43 BD (DOWNTOWN BUSINESS) ZONES.**

Mr. Bowman explained this was the result of Council discussion and direction regarding interpretation of the BD1 zone. Two versions of the interim zoning ordinance were prepared to address the issues of the interpretation of what the Council meant in regard to the ground floor in the BD1 zone. He explained an interim zoning ordinance was a tool available to the Council; the Council could adopt one of the ordinances drafted by the City Attorney or state an alternate position. He noted an interim ordinance required a public hearing within 60 days of passage and referral to the Planning Board for review and recommendation to the Council. Mr. Snyder explained the purpose of an interim zoning ordinance was to preserve the status quo. Two versions of the ordinance were provided, one with an emergency clause making it immediately effective and the other without the emergency clause.

Councilmember Dawson reiterated the statement she made last week, that this was what the Council thought they were doing when they adopted the ordinance. She was uncertain now whether it was the wisest decision or whether the Council considered it but she did not recall the Council had any intent other than this. She noted this was an example of unintended consequences and she was not convinced that the result on this property or other properties would be the best course of action. Mr. Bowman commented there seemed to be consensus on the Council that the ground floor was all commercial. He referred to excerpts from the Planning Board and Council minutes regarding the discussion regarding BD1. If the Council was uncertain they wanted the entire ground floor to be commercial, he suggested the Council provide alternate direction.

Councilmember Dawson commented it appeared this could be a very good project and she was not opposed to allowing that to happen, but she was uncertain what options were available to the Council. She reiterated it was clear from the Council's previous deliberations that they did not intend to have anything other than commercial on the ground floor. Mr. Snyder agreed there was never any discussion of any other uses in the back on the ground floor. He noted if the situation were left open and a development permit were submitted, the Council would be considering it as a quasi judicial body in a much more limited situation with a much more expensive potential. He also pointed out the potential that the back portion of the ground floor would be unregulated, which was not what he envisioned the Council intended.

Councilmember Dawson advised she was not inclined to adopt an interim zoning ordinance, noting although it was likely the Council's intent at the time, it may not be direction the Council would have taken if they, staff or the community had thought about it. Mr. Bowman advised the property owners requested a code

interpretation and presented a good argument that the Council did not envision a 15-foot ceiling height for parking and questioning whether the Council intended for there to be a split of a 15-foot ceiling height.

Assuming there were four Councilmembers who wanted to adopt a different version, Councilmember Dawson asked the fastest way to put something in place that would suit the needs of the property owner, the Council and the community and not result in litigation. Mr. Snyder suggested setting a baseline with regard to what the Council thought they were doing and refer it to the Planning Board and bring changes back via an interim zoning ordinance. Mr. Bowman agreed an interim zoning ordinance would be the best route as it would allow the property owner to move forward, establish the Council's direction and refer the matter to the Planning Board. Councilmember Dawson concluded from Mr. Bowman's comments that staff would bring back a different interim zoning ordinance at a later date. Mr. Snyder commented that left the door open to an application. Councilmember Dawson commented the Council would need to rely on the property owners not to submit an application and sue the City and to accept that the City was making a good faith effort to address their needs. She asked if staff could return with a different interim zoning ordinance. Mr. Bowman agreed staff could, with Council direction.

Mr. Snyder expressed concern with designing an ordinance around a project. Councilmember Dawson commented this issue highlighted that the Council, staff or Planning Board did not think about this issue at the time of their original discussion. Mayor Haakenson suggested the Council give staff direction regarding what they would like in an interim zoning ordinance.

Councilmember Bernheim commented he was not necessarily supportive of a mandatory 15-foot ceiling for the entire floor and did not support enacting an ordinance that requires that. He suggested referring this to the Planning Board to examine the staff interpretation and the proposed ordinances and determine if they were appropriate to clarify the matter. He was satisfied with a 45-foot depth, noting a depth of 60-feet with a 15-foot ceiling was unnecessary. He was willing to live with the existing code and risk the submittal of an application.

Council President Plunkett commented the idea being discussed was considered in zones other than BD1. Although he understood the Council's intent in BD1, he was satisfied with 12-15 foot ceilings going back X square feet and allowing a great deal of flexibility behind that depth. He suggested the best method would be via an interim ordinance following review by the Planning Board.

Councilmember Wambolt commented the height limit was 25 feet; a building could only achieve 30 feet with 15-foot first floor in the BD1 zone. He noted the BD1 zone was crafted to be retail; however, the current property owners wanted to construct a mixed use building with a significant amount of office space.

Rick Gifford, land use attorney for the property owners of 555 Main, explained the code mandates commercial use in the BD1, retail was an allowed commercial use; nowhere in the BD1 did it mandate retail. The structure of the design standards indicate street front retail was a high priority, which is the reason this building was designed to provide that height in the retail space along the frontage of Main Street. Councilmember Wambolt commented the Council hoped it would primarily be retail and recalled there was a unanimous vote in support of the 15-foot ceiling height. He recalled the 15-foot ceiling height was desired so that the building would be versatile. He noted the 15-foot ceiling height was from the floor to the ceiling height, the finished ceiling height would be less than 15 feet. Although there was reference in the code to 30 feet, he noted it did not apply to BD1.

COUNCILMEMBER ORVIS MOVED, SECONDED BY COUNCIL PRESIDENT PLUNKETT, TO EXTEND THE MEETING FOR AN ADDITIONAL 20 MINUTES. MOTION CARRIED UNANIMOUSLY.

Mr. Bowman referred to ECDC 16.43.030.B.6.c, which states in no case shall the depth of the commercial space as measured from the street front of the building be less than 30 feet, which he noted applied to the BD1 zone. Mr. Snyder expressed concern with complying with the public participation requirements of the GMA; an interim zoning ordinance was a tool to establish a regulation and hold a public hearing at a later date. He was concerned with opening the discussion because it was not on the agenda for public comment, there was no way any member of the public could have known and there may be opposing viewpoints. He noted an interim zoning ordinance was a tool to start a process not a tool to conclude it. Mayor Haakenson requested the Council provide direction regarding what they wanted in an interim zoning ordinance.

Councilmember Orvis supported the Council passing Exhibit 2. If the Council wanted to address what could be done in the back half of the building, it should be referred to the Planning Board to allow for a full public process. The intent of this interim zoning ordinance was to clarify the Council's intent; if the Council wanted to change the policy, a full public process including a Planning Board hearing and public hearing before the Council was appropriate. He noted the depth in BD2 and BD3 was 60 feet; he was unclear why less depth would be allowed in BD1.

Council President Plunkett observed Councilmember Orvis apparently did not like the idea of an interim ordinance, pointing out there would be a public hearing regarding the interim ordinance. Councilmember Orvis hoped the intent of what the Council passed would be followed until the code were changed and that it would not be changed on the fly without a public process. The intent of the ordinance he voted for was a commercial floor with a 15-foot ceiling height all the way to the back and he did not want that changed without the full participation of the public. If the Council wanted to allow more flexibility in the back half of the building in BD1, it should be referred to the Planning Board. Mayor Haakenson suggested Councilmember Orvis provide his logic for a 15-foot ceiling height all the way to the back.

Council President Plunkett assured the interim ordinance would follow due process. Councilmember Orvis answered not in respect to this application; this application should follow the Council's intent based on the code that was adopted at the time. He pointed out BD1 is the most sensitive zone and he was unwilling to change the intent of the code based on one application. Mayor Haakenson reminded this proposed applicant had not requested any change; staff and he were seeking clarification regarding the Council's intent. The property owners have the opportunity to appeal staff's decision.

Councilmember Wilson commented he understood the Council's intent and supported allowing that to stand and allowing an appropriate due process to change it as needed. If the Council did nothing, the property owners could challenge staff's interpretation via the appropriate legal avenues, a path he did not find the most amicable way to achieve a good project in the most important zone. Another option would be to withdraw staff's interpretation and the property owners request for an interpretation and be in a position where there was unregulated space, not what he believed the Council wanted. He noted a process would be required to pass any interim ordinance and by the time it was concluded, there should be time to develop something good. He commented the Council could do nothing tonight and move forward with due process which would allow the possibility of litigation or pass the interim ordinance. He preferred to pass the interim ordinance in Exhibit 2 tonight that reflected the Council's intent.

Councilmember Dawson commented at the time the ordinance was passed, the Council relied on the advice of Mark Hinshaw and staff regarding what was needed to ensure space was usable to retail in the future and that was the Council's intent. The more she contemplated this, she was not convinced the 15-foot ceiling height was necessary the entire depth of the building. As long as commercial was on the street front, she was uncertain whether the uses in the back mattered. She agreed a certain depth was necessary to ensure the space could always be utilized as commercial in the future. She was comfortable giving staff direction to return with an interim ordinance that had commercial to a depth certain and the ceiling height appropriate for retail to a depth certain and providing specifications for a corner lot. She assured this was not because of this specific project but because the current discussions illustrated the limitations of the code as adopted.

Mayor Haakenson commented the BD1 zone also did not address what uses would be allowed behind the commercial space and asked if Councilmember Dawson would be amenable to allowing commercial, office or other use but not residential. Councilmember Dawson commented that was an issue that would need to be discussed by the Council. She pointed out the intent was to design space that could be used for retail, not to require the space be used for retail. She was comfortable with an interim ordinance that allowed commercial space behind. Mayor Haakenson anticipated it was not the Council's intent to have a 15-foot ceiling height for parking, acknowledging parking was not required for commercial in the BD1 zone.

Although not on the Council at the time but as an observer, Councilmember Wilson observed most of the community thought what the Council adopted was a 15-foot ceiling height throughout whether it was the right policy or not. He found it reactionary to create something totally new on the fly even if a due process followed, particularly if staff determined the Council's intent. Mayor Haakenson assured staff was willing to take on the challenge. Councilmember Dawson clarified she did not disagree with staff's interpretation of the ordinance as it currently exists; that was the Council's intent and what the ordinance says. She concluded perhaps the Council's intent was not the wisest decision and the Council should move in a different direction knowing what it knew now.

Councilmember Wambolt pointed out the reason parking was not required in the BD1 zone was the Council was lobbied by many citizens not to require parking. He recalled the concession for those who wanted increased heights was not to require parking. He noted just because the lot was 120 feet in depth, the building was not required to extend to the property line.

Councilmember Olson recalled at the time of the original discussion, the Council was thinking about BD1 in the flat area, not on the hill. Because most of the lots in the flat area did not have much depth, this was never discussed.

COUNCILMEMBER BERNHEIM MOVED, SECONDED BY COUNCILMEMBER OLSON, TO REFER THIS BACK TO THE STAFF TO COME BACK WITH A DIFFERENT INTERIM ORDINANCE THAT DOES NOT RELY ON THE FULL FLOOR PRINCIPLE BUT ALLOWED ADDITIONAL FLEXIBILITY IN TERMS OF THE DEPTH OF THE GROUND FLOOR WITH 15-FOOT CEILING HEIGHT.

Councilmember Bernheim commented the reason he did not support implementing the intent of the past Council was because he did not believe that was what the current code states. He did not agree with that policy and there was no reason to implement it if the Council was not comfortable with it. He clarified the ground floor was the floor with the entry on the street.

Councilmember Orvis indicated he would not support the motion as any change to the Council's original intent should be via the Planning Board process.

Council President Plunkett expressed support for the principle but he found Councilmember Orvis' point about going to the Planning Board compelling and a better representation of the process utilized when the zone was created and a better way of respecting the public's wishes.

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

COUNCILMEMBER ORVIS MOVED, SECONDED BY COUNCIL PRESIDENT PLUNKETT, TO EXTEND THE MEETING UNTIL 11:15 P.M. MOTION CARRIED UNANIMOUSLY.

COUNCILMEMBER ORVIS MOVED, SECONDED BY COUNCILMEMBER WAMBOLT, TO ADOPT THE INTERIM ORDINANCE IN EXHIBIT 1 AND REFER THE ISSUE WITH THE COUNCIL'S COMMENTS TO THE PLANNING BOARD. UPON ROLL CALL, MOTION CARRIED (4-3), COUNCILMEMBERS WILSON, WAMBOLT AND ORVIS AND COUNCIL PRESIDENT PLUNKETT IN FAVOR; COUNCILMEMBERS OLSON, BERNHEIM, AND DAWSON OPPOSED. The ordinance approved reads as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, ADOPTING AN INTERIM ZONING ORDINANCE TO CLARIFY THE PROVISIONS OF CHAPTER 16.43 BD (DOWNTOWN BUSINESS) TO CLARIFY AND SUPPLEMENT THE PROCEDURES APPLICABLE TO THE GROUND FLOOR REQUIREMENTS IN THE BD-1 ZONE, SETTING A PUBLIC HEARING DATE, AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

Liquor
Control Board
License
Application
(Province)

9A. **RECONSIDERATION OF THE PUBLIC HEARING ON THE LIQUOR CONTROL BOARD LICENSE APPLICATION FOR PROVINCE, INC., DBA FIVE SPICE BISTRO.**

COUNCILMEMBER WAMBOLT MOVED, SECONDED BY COUNCILMEMBER OLSON, FOR RECONSIDERATION OF THE DECISION TO HOLD A PUBLIC HEARING AT THE AUGUST 18 MEETING REGARDING THE ISSUANCE OF A LIQUOR LICENSE TO FIVE SPICE BISTRO.

Councilmember Dawson advised she would not support the motion to reconsider. The only way for the Council to have any input to the Liquor Control Board regarding whether or not a license should be granted would be to allow for a public hearing. The law provides for a public hearing in order to provide that feedback to the State.

Councilmember Wilson explained when he was asked to pull this item from the Consent Agenda, he believed it was common practice which he later learned it was not. However, the principle upon which he acted was still appropriate; anything the Council was asked to vote on as representatives of the citizenry, the public should have an opportunity to voice their concerns. He understood from City Attorney Scott Snyder that there was little to no impact on the decision made by the Washington State Liquor Control Board (WSLCB) and there was only a narrow range of reasons for an applicant to be turned down. He cautioned the public it was unlikely they could convince the WSLCB to do anything other than what they were already planning to do. He asked whether the Council needed to vote on the list of liquor licenses to be granted and if so, it was appropriate to hold a public hearing. If the Council did not need to vote, perhaps in the future the list could be presented as an update. In this instance because the public was given the expectation that they would have an opportunity to comment on August 18, it was appropriate to hold the public hearing. He asked what the Council's role in the future should be with regard to WSLCB licenses.

Councilmember Orvis commented because the Council gave the expectation that a public hearing would be held, the Council should follow through. He acknowledged the Council did not have the authority to deny the application but could state their opinions to the WSLCB.

Councilmember Wambolt suggested reconsidering the decision to hold a public hearing because the Council did not have the facts at the time that decision was made. He clarified the Council had no role in granting/denying liquor licenses, did not have to hold a public hearing and the WSLCB had signed the site since June 4.

MOTION FAILED (2-5), COUNCILMEMBERS WAMBOLT AND OLSON IN FAVOR.

Mayor Haakenson requested Mr. Snyder describe the Council's role in the WSLCB request for information from the City. Mr. Snyder suggested the Council packet include the WACs and criteria the WSLCB used to allow the Council and the public to address the factors in which the WSLCB was interested.

Mayor Haakenson suggested the list of applications continue to be presented as they had been on the Consent Agenda, noting this was the first time there had been a concern raised. Council President Plunkett

commented the process seemed to work, the item was pulled from the Consent Agenda and a public hearing was scheduled.

Councilmember Dawson suggested if the Council was not approving the list, it could be provided in a report on the Consent Agenda which would provide an opportunity to comment and allow an opportunity to request a public hearing. She noted the Council was simply acknowledging. She suggested clarifying for the public whether the Council was voting on or merely accepting the list of business that had submitted an application for a liquor license. Mr. Snyder advised he would provide the criteria to the Council and review the City's ordinance against the current WACs and provisions.

Councilmember Olson was concerned the public was being given a false impression that they would be able to have an impact on the liquor license as a result of the public hearing. She recommended making it clear that the public's comments would probably not have an impact on the license.

9B. COUNCIL REPORTS ON OUTSIDE COMMITTEE/BOARD MEETINGS.

Hotel/Motel
Tax Comm.

Council President Plunkett distributed information regarding the Hotel/Motel Tax Committee.

Sound Transit

Councilmember Dawson reported the Sound Transit Board would be voting on Thursday whether to place a ballot measure in the November 2008 election. She anticipated there would be enough votes to support a 15-year plan that would bring light rail to Lynnwood and a 30% increase in bus service to Snohomish County as well as improvements to the Edmonds and Mukilteo Sounder stations.

S. Snohomish
Co. Cities

Councilmember Olson advised the South Snohomish County Cities group was meeting on Thursday.

Port
Commission

Councilmember Wambolt reported at their June 10 meeting, the Port Commission voted to repay 10% of the loan to purchase the buildings at Harbor Square, the maximum they could prepay without penalty. The Port Commission plans to start a Student Representative Program in September and they established their budget schedule for 2009. At their July 14 meeting, the Port reviewed revised plans for the new restroom facility for which they are hoping to obtain a grant. They were unsuccessful in obtaining a grant last year. They also discussed the new law effective December 1, 2008 requiring that 2% of fuel sold be ethanol.

Health District

Councilmember Orvis, modeling his ski helmet, reported one of the events the Snohomish County Health District Board sponsored was to check the installation of child safety seats. Another topic addressed by the Board was the importance of helmets when skateboarding, skiing or bicycling. He urged all children to wear helmets and urged all adults to persuade/make their child wear a helmet.

10. MAYOR'S COMMENTS

Plastic Bags &
Bottles

Mayor Haakenson referred to the request by Mr. Hall that the Council consider a ban on plastic bags, noting he also received an email suggesting the Council ban bottled water at their meetings. He suggested the Council consider both issues in the future.

11. COUNCIL COMMENTS

Bottled Water

Council President Plunkett agreed the Council could consider their use of bottled water, recalling the Council had discontinued the use of bottled water in the past.

Passing of
Warren
Schweppe

Councilmember Wilson observed the passing of Warren Schweppe, a tremendous community leader, a 9-year member of the Holy Rosary Church, former leader of the VFW, and past president of the Kiwanis. He commented this was a loss of a tremendous citizen and expressed his sympathies to the family.

National Night
Out

Councilmember Dawson announced next Tuesday was National Night out in Edmonds. She noted the Council would also be meeting next Tuesday, the fifth Tuesday of the month.

PCC Market

Councilmember Wambolt commented on the PCC Market being rebuilt on the former Albertson's property, noting their mode of operation seemed to be that it was easier to ask for forgiveness than for permission. He noted their cutting of the trees resulted in only a \$500 fine, an amount he found inadequate and recommended they be required to replant mature trees. Now an issue has been raised about the wall around the garbage enclosure. He recalled when the Council discussed the rain barrel, it was unclear what material would be used for the trash enclosure. He requested staff provide the Council an update with regard to the trash enclosure, the tree removal and the rain barrel.

Mayor Haakenson referred to comments he received that the City must be excited about the new revenue streams the City would receive from the new PCC. He pointed out PCC would only replace the revenue the City lost when Albertson's closed.

Passing of
Warren
Schweppe and
Walt Sellers

Mayor Haakenson commented that with the passing of Warren Schweppe and Walt Sellers the City lost two great community leaders who would be missed.

12. ADJOURN

With no further business, the Council meeting was adjourned at 11:21 p.m.