

EDMONDS CITY COUNCIL APPROVED MINUTES

July 29, 2008

The Edmonds City Council meeting was called to order at 7:00 p.m. by Mayor Haakenson in the Council Chambers, 250 5th Avenue North, Edmonds. The meeting was opened with the flag salute.

ELECTED OFFICIALS PRESENT

Gary Haakenson, Mayor
Michael Plunkett, Council President
Peggy Pritchard Olson, Councilmember
Steve Bernheim, Councilmember
D. J. Wilson, Councilmember
Deanna Dawson, Councilmember
Dave Orvis, Councilmember (arrived 7:05 p.m.)
Ron Wambolt, Councilmember

STAFF PRESENT

Duane Bowman, Development Services Director
Stephen Clifton, Community Services Director
Rob Chave, Planning Manager
Mike Clugston, Planner
Scott Snyder, City Attorney
Sandy Chase, City Clerk
Jana Spellman, Senior Executive Council Asst.

1. APPROVAL OF AGENDA

Change to
Agenda

Mayor Haakenson advised Item 3, Swearing In Ceremony for Corporal Damian Smith, would be rescheduled next month. He requested replacing that item on tonight's agenda with a report on PCC Market.

COUNCILMEMBER WAMBOLT MOVED, SECONDED BY COUNCILMEMBER OLSON, TO APPROVE THE AGENDA AS AMENDED. MOTION CARRIED UNANIMOUSLY. (Councilmember Orvis was not present for the vote.)

2. CONSENT AGENDA ITEMS

COUNCILMEMBER WAMBOLT MOVED, SECONDED BY COUNCILMEMBER OLSON, TO APPROVE THE CONSENT AGENDA AS PRESENTED. MOTION CARRIED UNANIMOUSLY. (Councilmember Orvis was not present for the vote.) The agenda items approved are as follows:

Roll Call

A. ROLL CALL

Approve
07-22-08
Minutes

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

Approve
Claim Checks

C. APPROVAL OF CLAIM CHECKS #105682 THROUGH #105842 FOR JULY 24, 2008 IN THE AMOUNT OF \$1,031,103.25.

Claim for
Damages

D. ACKNOWLEDGE RECEIPT OF CLAIM FOR DAMAGES FROM WILLIAM DAVID BARNUM & CHERYL BARNUM (AMOUNT UNDETERMINED.)

Yellow Cab of
Washington

E. APPROVAL OF 2008 TAXICAB OPERATOR'S LICENSE FOR YELLOW CAB OF WASHINGTON.

Olympic
View Drive
Water Main

F. AUTHORIZATION FOR MAYOR TO SIGN SUPPLEMENTAL AGREEMENT NO. 4 WITH CH2M HILL FOR OLYMPIC VIEW DRIVE WATER MAIN AND SEWER LATERALS PROJECT.

Ord# 3692
Amend Ord#
3691

G. ORDINANCE NO. 3692 - AMENDING THE PROVISIONS OF SECTION 2 OF ORDINANCE NO. 3691 IN ORDER TO INSERT A HEARING DATE.

Public Service
Announce-
ments

With regard to Public Service Announcements, Council President Plunkett advised an ordinance providing the necessary structure for public service announcements as part of the Council's agenda would be scheduled on a future Council agenda.

PCC Market

3. REPORT ON PCC MARKET

Mayor Haakenson recalled Councilmember Wambolt requested staff provide a report on the progress of PCC. Development Services Director Duane Bowman explained PCC Market would be occupying the space of the former Albertson's store at Westgate. He reported that an interior demolition permit was issued in December 2007. An application for administrative architectural design review was approved in January 2008 that included the building exterior remodel such as the new required trash enclosure, and bio-retention areas. Signage is under review via a separate permit for signage. A shell core permit including structural alteration was issued in February 2008; a tenant improvement permit was issued in April 2008; secondary permits such as plumbing, mechanical, fire sprinkler, fire alarm, sign, grease interceptor, side sewer have also been issued. The permit applications have been submitted for the fire suppression system for the commercial cooking hoods and are currently under review.

The Architectural Design Board (ADB) approved a package for project signage on April 18, 2008; the approval included the proposed sign package for building and site signage and artwork. A permit application for alteration of the parking lot for bio-retention area, rain gardens, is currently under review. A permit application for the rainwater harvesting system that includes the cistern tank is also currently under review. The permit application was received on June 19, 2008; on July 11, 2008, a complaint was filed regarding the installation of the cistern without first obtaining permits. The City's Building Inspector verified the tank had been installed and a stop work order was issued on July 11, 2008 for the tank. A fine for doing work without an approved permit will be assessed when the permit is issued.

On June 30, 2008 a complaint was received regarding cutting of trees on the north corner of the sidewalk on 100th Avenue. Upon investigation, staff determined a total of three trees were cut, trees that were part of the approved landscape plan for the former Albertson's store, which was in violation of the City's code. A letter was sent to PCC on July 1, 2008 notifying of the violation and a \$500 per tree fine was levied for a total of \$1500. The fine was subsequently paid by PCC and an ADB application for an updated landscape plan was submitted with double application fees assessed due to the violation.

PCC's updated landscape plan shows the removal of a total of 13 trees throughout the site including the 3 trees already removed and 27 new trees planted. On July 22, 2008 a complaint was received regarding the trash enclosure in the setback on the west side of the building. The trash enclosure was shown on the approved plans for the project and reviewed under the earlier ADB design review. The trash enclosure walls are considered a fence and are permitted within the setback area consistent with City code requirements. An application for ADB review of the landscape plan for the site was reviewed and approved on July 23, 2008. The review included integration of the rainwater collection system and trash enclosure into the landscaping, the removal of a total of 13 trees from the site and replanting of 27 new trees.

Ord# 3693
Verizon
Northwest
Franchise
Agreement

4. SECOND 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

COUNCILMEMBER WAMBOLT MOVED SECONDED BY COUNCILMEMBER DAWSON, FOR APPROVAL OF ORDINANCE NO. 3693. MOTION CARRIED UNANIMOUSLY.

COUNCILMEMBER DAWSON MOVED, SECONDED BY COUNCILMEMBER ORVIS, TO AUTHORIZE THE MAYOR TO EXECUTE THE PROPOSED FRANCHISE AGREEMENT ON BEHALF OF THE CITY. MOTION CARRIED UNANIMOUSLY.

Closed
Record
Review –
Arbor Court
23800-23824
Edmonds
Way

5. **CLOSED RECORD REVIEW: APPEAL OF THE HEARING EXAMINER DECISION TO DENY THE REQUEST BY STEVE SMITH DEVELOPMENT LLC, REPRESENTED BY JEAN MORGAN OF MORGAN DESIGN GROUP, TO SUBDIVIDE ARBOR COURT, A 1.27 ACRE PARCEL DEVELOPED WITH 35 TOWNHOMES, INTO 35 FEE-SIMPLE TOWNHOUSE PARCELS. THE SITE IS ZONED MULTIPLE FAMILY RESIDENTIAL (RM-1.5) AND IS LOCATED AT 23800 – 23824 EDMONDS WAY. (FILE NOS. P-08-16 AND APL-08-4).**

City Attorney Scott Snyder advised because the Council had not been provided a copy of the verbatim transcript, it would be necessary for the Council to have an opportunity to review the transcript before rendering a final decision. The Council could hear from the parties tonight and continue the closed record review to a later date following the Council's review of the transcript or postpone the matter entirely.

Council President Plunkett preferred to hear the matter tonight and continue Council deliberation to a later date.

Councilmember Dawson anticipated the parties would need to return for Council deliberation to answer any questions and asked whether the parties preferred to have the hearing in two parts or have the hearing at one time.

Jean Morgan, representing Steve Smith Development LLC, asked the date of the continued hearing. Mayor Haakenson answered it would be next Tuesday, August 5. Ms. Morgan advised they would be available. Councilmember Dawson asked whether the parties would prefer to have the entire hearing at one time or have testimony tonight and return for questions based on Council's review of the record. Ms. Morgan advised they would prefer to proceed tonight and return next week if needed.

For Councilmember Bernheim, Mayor Haakenson advised the Council would take testimony this evening and delay deliberation until next Tuesday. No further public comment from parties of records would be taken next week and following the Council's review of the verbatim transcript, the Council would ask questions and deliberate next week. Mr. Snyder clarified because this is a closed record review, there was no testimony, only oral argument based on the existing record. He suggested the Council have an opportunity to review the record before asking questions to avoid going outside the record. He recommended proceeding with oral argument and comments from parties of record and continuing the hearing to a date certain. He noted the Council may find their questions were answered via the transcript and he did not want to invite matters outside the record via Council questions.

Councilmember Wambolt inquired whether he could ask questions of staff. Mr. Snyder advised staff was limited to referencing relevant areas in the record. Mayor Haakenson commented it appeared it would be preferable to hold all questions until next week. Mr. Snyder answered it would be neater but it was up to the Council. Councilmember Wambolt asked whether staff could respond to questions via email. Mr. Snyder responded staff could not respond via email as Council deliberations needed to occur within the context of the Council Chambers. Mr. Snyder commented he was more comfortable with the Council asking questions of staff because staff understood they were limited to what was in the record. He suggested it would be more orderly for the Council to review the record to determine if their questions were addressed in the record and ask questions at one time. Council President Plunkett agreed it would be more orderly to take testimony tonight and take questions next week.

Observing this was a quasi judicial matter, Mayor Haakenson asked whether under the Appearance of Fairness Doctrine any Councilmember had any conflicts or ex parte communication to disclose regarding the

hearing. He read the list of parties of record: Northwest Townhomes, Steve Smith Development LLC, Jean Morgan, Al Rutledge and Roger Hertrich.

Councilmember Dawson disclosed that one of the parties of record supported her campaign in the past and one was her opponent in the last campaign but that would not affect her decision.

Councilmember Orvis disclosed his father lived near the site but that would not affect his decision.

Councilmember Wambolt disclosed Mr. Hertrich contributed to his campaign but that would not affect his views in this matter.

Council President Plunkett disclosed Mr. Hertrich called him to ask a procedural question; before proceeding with the conversation, both acknowledged they could not talk about substantive matters. He relayed Mr. Hertrich's question, why was the Hearing Examiner not present.

Councilmember Orvis advised Mr. Hertrich contributed to his campaign but it would not affect his decision.

Mayor Haakenson asked whether the four Councilmembers who made disclosures felt they were capable of making a decision without any bias. Councilmembers Dawson, Orvis, and Wambolt and Council President Plunkett advised they could. Mayor Haakenson asked whether any of the parties of record had any objection to the participation of any of the four Councilmembers. There were no objections voiced.

Mayor Haakenson established time limits for staff and applicant presentations, 10 minutes for staff and 20 minutes for the applicant.

Planner Mike Clugston explained the applicant applied for design review of the project in February 2007. After a public hearing, the 35-unit project received ADB approval in June 2007. In November 2007 the applicant applied for building permits to redevelop the site. At this time the building permits are under review. In March 2008 the applicant applied for a formal plat subdivision to create fee-simple lots associated with each of the residential units. The formal plat review process was based on the concept of a townhouse subdivision for multi-family developments. The townhouse review process is based on a formal staff interpretation from 2003 which was not appealed and has been in effect since that date. Since the Interpretation was issued, the process has been used several times and those formal plat subdivisions were approved by former Hearing Examiners as well as the current Hearing Examiner.

For this project, staff prepared a report recommending the Hearing Examiner approve the townhouse subdivision with conditions. A public hearing on the proposed subdivision was held on May 15, 2008. The Hearing Examiner subsequently denied preliminary plat approval. Three Requests for Reconsideration were filed in a timely manner. The Hearing Examiner reviewed the requests and upheld the denial.

In their appeal, the applicant requests the Council reverse the Hearing Examiner's denial of the proposed 35-lot formal plat. They maintain that the plat as originally proposed and as further clarified in their Reconsideration meets the criteria for approval of a townhouse subdivision.

In their reconsideration request, staff also raised concerns noting that a number of similar projects have previously been approved using the townhouse model. Staff raised these concerns and others in the City's Reconsideration Request and while the Hearing Examiner did not reverse entirely, she agreed that her understanding regarding the minimum lot area requirements for multi-family developments had been in error. That concern, minimum lot size, is no longer at issue.

Mr. Clugston pointed out the townhouse subdivision process exists only to create fee-simple lots in multi-family developments. The buildings the applicant has proposed were approved by the ADB and can receive

building permits as long as they meet the required building and zoning codes. The proposed structures are currently being reviewed for building permits. If approved, and without the subdivision, the applicant could build the proposed multi-family structures and either rent them or create condominiums. The other option, as intended by the townhouse subdivision process, is to create what are in essence single-family ownership opportunities in the development rather than having a rental or condominium situation. Staff recommends the Council consider the appeal and following next week's deliberation either, 1) affirm, modify or reverse the Hearing Examiner's decision to deny the subdivision, or 2) remand the application back to the Hearing Examiner for additional consideration or clarification, with the Council specifying the items or issues to be considered.

City Clerk Sandy Chase distributed copies of the verbatim minutes of the Hearing Examiner public hearing to the Council. Council President Plunkett clarified the verbatim minutes were being distributed for the Council's future review.

Jay Young, owner, Steve Smith Development LLC, explained over the past five years they have successfully built townhouse projects similar to Arbor Court and the type described in the Edmonds townhouse ordinance in Seattle, Shoreline, Juanita and Bellevue. He described their intent to build a well designed, infill housing product, affordable to workforce buyers. He explained there was no difference between a condominium project and a townhouse project; they preferred to build townhouses because a fee-simple townhouse was a more desirable product and it was less expensive to build as it did not require a homeowners association or expensive condominium liability insurance and were more attractive to first time homebuyers because they are less expensive, easier to finance and do not have homeowners' dues.

This site was advertised for sale as a development site; in 2006 they negotiated a purchase and sale agreement that included a feasibility period that would provide enough time for due diligence. During the feasibility period, they held a pre-application meeting with the City, meeting with a City planner and officials from the Building, Fire, Engineering and Water Departments. They had the property surveyed, met with the Department of Transportation, did an environmental review and conducted soil sampling. Based on the results of their pre-application meeting with the City and favorable findings from all the experts they hired, they proceeded with purchase of the property and the application process to obtain a building permit and subdivision. Now two years later after working diligently with the Planning and Building Departments, spending tens of thousands on professional fees to design and engineer this project to meet the code and current townhouse ordinance, and obtaining approval of the ADB and the City Planning Department, the Hearing Examiner denied their subdivision application. And after developing a comprehensive point-by-point appeal, the Hearing Examiner again denies their appeal.

He summarized they had done everything according to the City's code, hired the most competent experts, and adhered to the process as presented. He emphasized they were not requesting any variances, rezones, departures or special favors; their project mirrors the other townhouse projects recently approved and constructed. He expressed frustration that it did not matter what the Planning Department said with regard to a townhouse subdivision, its fate relied solely on the interpretation of an independent Hearing Examiner who in their opinion, did not accurately apply the Edmonds townhouse ordinance.

Jean Morgan, architect, President, Morgan Design Group, commented in the 20 years she has been designing single family and multi family homes in King, Snohomish and Pierce Counties, she had never encountered a situation where a Hearing Examiner overturned a formal code interpretation. She noted architects rely on City municipal and land use codes and clarification from City Planners in order to prepare site layouts. They conducted their due diligence including meeting with City Planners, Engineers, the Fire Marshal, and WSDOT multiple times. At no time was it ever indicated that this type of project could not be built as proposed on this site. In September they were provided a copy of Michel Construction's recently approved townhouse plat to use as a guideline; they designed their project using the same setbacks. She identified the four internal driveways in the project with no setback from the road, and 24-foot access road

with no internal setback. She concluded that without consistency in how codes and regulations were applied project to project and reliance on code interpretations by Planners, it was impossible for architects, developers or landowners to know how or what they are able to build in Edmonds.

Megan Nelson, attorney, GordonDerr, Seattle, explained in this instance, the Hearing Examiner had overturned a well considered, formal code interpretation five years after the fact. The Hearing Examiner second-guessed the subdivision recommendation of City staff, ignored the bad policy outcomes as a result of her decision and contradicted legal doctrines supported by Washington case law. Ms. Nelson requested the Council reverse the Hearing Examiner's decision and approve the Arbor Court townhouse plat. She provided the facts, public policy and law that should lead the Council to reverse the Hearing Examiner's decision in this matter.

She explained in 2003 the City's Planning Division issued its formal code interpretation, known as the townhouse subdivision policy. This formal code interpretation found that interior building and street setback requirements were not applicable to townhouse subdivisions. This interpretation was not appealed and therefore became the City's final authorized code interpretation. Over the past five years the City has approved several townhouse developments based on this formal code interpretation and last year this same Hearing Examiner affirmed the townhouse subdivision policy in her approval of the Michel Construction plat. In relying on this policy, past approvals and the assurance of the City Planning Division, the applicant submitted their application for the Arbor Court plat.

As outlined in the staff report, approval of the plat was recommended; staff found the applicant's proposal complied with the subdivision ordinance, the City's code and flood plain management provisions. Despite this recommendation, the Hearing Examiner denied the applicant's plat. Both the Planning Division and the applicant filed motions for reconsideration based on the formal code interpretation which allows plats such as the applicant proposed. On reconsideration, the Hearing Examiner for a second time disregarded the Planning Division's request and rejected the townhouse subdivision policy.

If the Council affirmed the Hearing Examiner's decision, Ms. Nelson asserted it would set a bad precedent and would set a poor public policy for the City. First, the Hearing Examiner's decision paralyzes the Planning Division; the Edmonds Municipal Code grants the Planning Division the authority to issue formal code interpretations. Such interpretations are appealable to the Hearing Examiner; this interpretation was not appealed. The Examiner's decision places into question the authority of the Planning Division to issue such interpretations. She questioned the incentive for the Planning Division to issue future interpretations if such decisions could not be relied upon by property owners, pointing out the Department could not move forward with any townhouse subdivisions until the application of interior setback requirements to townhouses was clarified. Second, the Examiner's decision jeopardizes development within the City; by removing certainty within the planning process, property owners can no longer rely on formal code interpretations even decisions issued five years ago and relied upon in other projects. The City will suffer if property owners are unable to develop their land without reasonable certainty.

Third, the Hearing Examiner's decision is contrary to previously approved townhouse projects. The Hearing Examiner approved the very similar Michel Construction plat that relies on this policy. She noted there are no discernable, factual differences between the two plats; the internal access road is actually wider in the applicant's plat as compared to the Michel Construction plat. Fourth, the Examiner's decision violates the City's infill related goals; the staff indicates the applicant's project exemplifies designed infill as stated as a policy goal in the City's Comprehensive Plan. The site is to be redeveloped from 12 units to 35 units, a more efficient use of a previously zoned multi family parcel. The Examiner's decision undermines the City's Comprehensive Plan goal of providing infill development consistent with neighborhood character based on streamlined permitting, flexible standards, and improved design guidelines by impeding infill development.

Fifth, the Examiner's decision is fundamentally unfair to the applicant. Developers must be able to determine the rules that govern their development. In this case the applicant relied on a five year old townhouse subdivision policy, several prior townhouse subdivision approvals, the Michel Construction plat and the assurances of the City's Planning Division. But the rules were changed and the reasonable expectations of Steve Smith Development have been violated. The Hearing Examiner's decisions are contrary to the outcome recommended by City staff. The staff report recommended approval of the plat. The Planning Division's motion for reconsideration stated its strong disagreement with the Examiner's denial of the plat and requested she revisit her decision regarding the townhouse subdivision policy. The Examiner ignored the Planning Division's requests and denied the applicant's plat.

Ms. Nelson commented the Examiner's rejection of the City's townhouse subdivision policy and resulting denial of the applicant's plat are without legal basis. She referred to legal arguments in their motion for reconsideration, identifying the applicable legal doctrines, the doctrine of collateral estoppel and legislative acquiesce. She explained collateral estoppel prohibits the re-litigation of a previously adjudicated legal issue; in this case the legal issue of permitted exception from interior setback for townhouse subdivision has already been decided and the Examiner cites no legal authority to reexamine the validity of the townhouse subdivision policy. The doctrine of legislative acquiesce recognizes after an extended period of time, in this case five years, a rule adopted by a governmental agency is deemed acquiesced to by the legislative branch. Again, the Examiner cites no authority allowing departure from this doctrine.

Ms. Nelson summarized the Hearing Examiner's decisions resulted in bad public policy, are contrary to the City's Planning Division recommendations and are unsupported by law. For those reasons, she requested the Council reverse the Hearing Examiner's decision and approve the applicant's subdivision. She noted the City's Request for Reconsideration stated a condition could be placed upon the subdivision approval which would allow certain technical issues to be revisited during review of building permits. The applicant is amenable to including such a condition on any future subdivision approval.

Mayor Haakenson invited parties of record to provide comment.

Al Rutledge, Edmonds, referred to Hearing Examiner finding #28 regarding his comments about the site not being included in the City's stormwater plan.

There were no other parties of record who wished to speak and Mayor Haakenson closed the opportunity for participation by parties of record.

Ms. Nelson did not offer any rebuttal to Mr. Rutledge's comments.

Councilmember Wambolt asked why the Hearing Examiner was not represented at the meeting. Mr. Snyder explained the Hearing Examiner was a decision-maker, not a party to the matter. Her opinion as written speaks for itself and typically a judge was not questioned at a later proceeding.

COUNCILMEMBER WAMBOLT MOVED, SECONDED BY COUNCIL PRESIDENT PLUNKETT, TO CONTINUE THIS ITEM TO AUGUST 5.

Councilmember Bernheim asked if Councilmembers could submit questions in writing prior to the meeting. Mr. Snyder answered yes as long as they were placed in the record and there was no response outside the meeting. He reminded staff was only able to cite the record or indicate the information was not contained in the record. Mr. Snyder clarified a Councilmember could provide written questions to allow the applicant and/or staff to respond, however, no response should occur outside the record and any written comments would be entered into the record at the next proceeding. He noted staff could prepare a written response that could be included in the Council packet; however, no discussion may occur outside the record or proceeding.

Councilmember Orvis requested the verbatim minutes be included in the packet for next week's meeting.

MOTION CARRIED UNANIMOUSLY.

Comp Plan
Amendment
Request at
110 Sunset
Ave. N.

6. PUBLIC HEARING ON THE RECOMMENDATION BY THE PLANNING BOARD TO DENY A PROPOSAL TO AMEND THE COMPREHENSIVE PLAN FROM "DOWNTOWN MIXED COMMERCIAL" TO EITHER (1) "DOWNTOWN RESIDENTIAL OFFICE" OR (2) "MULTI FAMILY – HIGH DENSITY" AT 110 SUNSET AVE. N. (FILE NO. AMD-07-16).

Planning Manager Rob Chave explained this proposal to amend the Comprehensive Plan map at 110 Sunset Avenue was referred to the Planning Board by the Council. The Planning Board held a public hearing and recommended the Council not approve the change in the zoning. The Planning Board agreed with staff's analysis that possibly in the future some transition would be appropriate for the area but changing the designation of this particular area was not appropriate as it would be an intrusion into the consistent commercial corridor along Main Street. The Planning Board also felt it was not appropriate to extend further north as those properties are currently zoned single family and there has not been any interest expressed by property owners for any change. The Planning Board was also concerned it could create a situation that compromised the existing transition. The Planning Board felt the OR zone was specifically tailored to a topographical situation on the west side of Sunset as identified in the Comprehensive Plan and it was not appropriate for these properties.

Mayor Haakenson opened the public participation portion of the public hearing, noting the Council received documents from Alan Young related to the public hearing. Mr. Chave advised the documents provided by Mr. Young were circulated to the Planning Board and were not returned to staff for inclusion into the record.

Harold Huston, Edmonds, commented he has no problem with the property owner. The house on 110 Sunset was built in 1948 and had been a residential house for over 60 years, prior to the inception of the City's first zoning map in 1956. He relayed before he made his proposal, he discussed it with Councilmembers and did not feel there was any opposition. Two senior planners concurred with his proposal and one suggested a moratorium on development of the lot until the Planning Board completed their review. He expressed concern with a Planning Board Member's question at the July 29 public hearing regarding the Council's authority to refer this proposal to the Planning Board, pointing out the Planning Board served at the pleasure of the Council and the Council was elected by the citizens. He recalled Mr. Chave's suggestion at the September 21 Planning Board that he consider proposing a multi-family zoning designation for the subject parcel to provide appropriate transition. He expressed opposition to another mega building in Edmonds, noting the street was one of the busiest in Edmonds.

Alan Young, Edmonds, owner of the subject property, requested the Council uphold the Planning Board's recommendation to deny the rezone. He noted there had been no communication with him in 20 months since this began in October 2006 until June 27, 2008. He expressed concern that the Comprehensive Plan amendment was proposed by Mr. Huston who was not involved until he purchased his condominium. Mr. Huston signed the purchase and sale agreement knowing he (Mr. Young) owned the property in front. Mr. Young recalled on October 1, 2006, 17 days before the Planning Board meeting, Mr. Huston took possession of the property. Then at the October 18, 2006 Planning Board hearing, there was only three sentences regarding the proposed amendment and 20 months later he learned of the proposed amendment for his property. He urged the Council to deny the proposed amendment, noting he purchased the property to preserve his view.

Al Rutledge, Edmonds, commented the Planning Board meetings and items to be discussed were posted on the City's website and the community was aware of the meetings.

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

Councilmember Wambolt asked if there was a loophole in the City's procedures that the property owner was not notified when someone else proposed a rezone of their property. Mr. Chave answered this was a very unusual situation regarding an individual property. In the past there have been proposals for groups of properties; however, it was extremely unusual to target one property. He explained notifications were typically accomplished for the public hearing and there was not a process for informing property owners of informal discussions without a formal proposal. He suggested discussing with City Attorney Scott Snyder who could propose an amendment. Historically the codes have not required an ownership interest; Comprehensive Plan amendments were a legislative decision and did not require an ownership interest. He noted this had not occurred since he had been employed by the City.

Councilmember Wambolt commented it was not reasonable to expect a property owner to review the City's meeting agendas to determine if their property was being discussed. Mr. Chave commented Mr. Young received notification and attended both Planning Board hearings. He acknowledged Mr. Young's frustration that a property owner should be informed if their property was the subject of discussion.

On behalf of the Council, Councilmember Wilson offered Mr. Young an apology that this had progressed this far without his being notified. Councilmember Wilson asked staff to identify what could be constructed under the existing BD2 zoning versus the new zone. Mr. Chave advised the existing Comprehensive Plan and zoning would allow a broad range of downtown commercial uses up to a height of 25 or 30 feet. The OR Comprehensive Plan designation and zoning has a cap of 25 feet and additional setback requirements not found in the BD2 zone. The multi family zones allow 25 plus 5 feet with specific pitched roof requirements to achieve a height above 25 feet. The multi family zones also allow multi family uses versus commercial which was one of the Planning Board's major concerns.

Councilmember Wilson asked if this was a spot rezone. Mr. Chave answered it was technically not a spot rezone as there were adjacent similar uses. The difficulty was that it negates/impinges on the pattern of use on Main Street. He noted the maps illustrate a consistent line that demarks the border between commercial and other uses. While technically not a spot rezone, it was a change in the pattern that was not warranted. Mr. Snyder referred to it as "ad hoc zoning creep," noting zoning creep referred to changes that did not follow a logical boundary.

COUNCIL PRESIDENT PLUNKETT MOVED, SECONDED BY COUNCILMEMBER WAMBOLT, TO UPHOLD THE PLANNING BOARD DECISION TO DENY THE PROPOSED AMENDMENT TO THE COMPREHENSIVE PLAN.

Councilmember Bernheim commented the agenda memo did not refer to the Planning Board's reasons for denying the proposed amendment and suggested in the future there be specific findings and conclusions.

Councilmember Wilson appreciated Mr. Huston's concern with regard to traffic and maintaining his view, noting one option may be to approach Mr. Young with a proposal to purchase the development rights on the property above a certain height.

Councilmember Wambolt acknowledged Mr. Huston would be disappointed but agreed with the Planning Board's unanimous decision. He relayed the Planning Board's suggestion that if there was to be a transition zone, it should be further north. He concurred with the Planning Board's reasoning.

Councilmember Orvis noted Mr. Young purchased the property to protect his views, suggesting the common goals of the two parties could be achieved without a Comprehensive Plan amendment. He encouraged Mr. Young to consider the difference in the zoning, noting although BC appears to have more development potential, it has stringent commercial standards that may be counter to the property's value. He did not agree with the Planning Board's concern regarding the depth of the commercial, noting the lots would need to be combined before that would be an issue as the current depth of the commercial would be measured from Sunset.

Council President Plunkett found this a difficult decision in view of Mr. Huston's long history of community involvement and his 40 year friendship. However, based on the facts and in the community's interest, he would support the motion.

Councilmember Dawson did not support the motion, commenting the zoning creep was the result of this parcel's commercial zoning. She found it more appropriate to zone the property residential or business/office and found it peculiar that it was zoned in the current manner.

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

7. AUDIENCE COMMENTS

Protection of
Species Over
Humans

Dave Page, Edmonds, commented most other counties believe the United States has a democratic form of government by majority rule. He referred to his earlier comments regarding the protection of several species over humans, noting the Porcupine Caribou was recently protected to prevent drilling in the arctic. He noted the Porcupine Caribou population that live under the Prudhoe Bay pipeline have increased 900% due to the warmth from the pipeline. He commented to other counties it may appear the people of the United States would rather protect fish, birds and animals than Homo sapiens, spend billions on foreign oil rather than use their own resources and fight wars on foreign soil rather than use their own resources.

Former
Woodway
Elem. School

Al Rutledge, Edmonds, recommended keeping the potential property purchase in front of the public. Next, he commented on the continuation of the case regarding the former Woodway Elementary School property. He encouraged the public to attend the Taste of Edmonds on August 8-10.

190 Sunset
and Skipper's
Properties

Don Hall, Edmonds, referred to the Council's upcoming discussion regarding the property at 190 Sunset and the former Skipper's property, suggesting the Council may be premature in making a decision regarding which path to follow. The owners have not made a specific proposal or design plan although there has been a great deal of speculation. He suggested delaying any action such as obtaining an appraisal until the property owners' proposals were made public and a determination could be made regarding how it would benefit or hurt the City. If the Council chose the path of the City developing the properties, he urged full funding from start to finish, recalling past plans were not funded such as the downtown street lighting, Arts Corridor, and many other projects. He reiterated his request to discontinue the use of plastic bags.

City
Employees

Harold Huston, Edmonds, commended the City's employees and the Mayor who also acts as the City Manager. He expressed frustration with the amount of time staff must spend with citizens he called "nitpickers." He spoke favorably regarding the Planning Division, pointing out even if a person did not like an individual, they should respect the position. He respected staff who were doing a job for the City and he was proud to live in Edmonds.

8. MAYOR'S COMMENTS

Edmonds
Night Out

Mayor Haakenson reported on the activities at Edmonds Night Out, expressing his appreciation to the Edmonds Police Foundation who sponsored the event. He next announced the City's annual document

Document
Shred Event

shredding event will be held on August 23 at TOP Foods from 9:00 a.m. to Noon.

9. COUNCIL COMMENTS

Comp Plan
Amendment
Notification
Procedures

Council President Plunkett referred to Item 6 where a single property owner was the subject of a Comprehensive Plan amendment and there did not appear to be any rules that he receive special notice. He inquired whether the Community Services/Development Services Committee wanted to take up this issue or have staff provide a recommendation. City Attorney Scott Snyder advised revisions to the City's procedures

had been drafted to simplify and provide great guidance to the public but not yet been presented to the Planning Board due to their workload. He suggested adding notification of a Comprehensive Plan amendment that was instituted by someone other than the property owner to those revisions. Council President Plunkett requested staff investigate when the Planning Board could consider the revisions.

Old Safeway
and Skippers
Properties

Councilmember Wambolt referred to Dr. Senderoff's comments regarding his editorial in the *Edmonds Beacon*. With regard to Dr. Senderoff's concern with the use of subjective language, Councilmember Wambolt suggested he be similarly concerned about being factual, noting he made several errors last week. First, the owners of the old Safeway and Skippers did not purchase the properties with the intention of waiting until taller buildings were allowed; they would like taller buildings but are proceeding with code-compliant projects. The Skipper's property was acquired December 2007. Second, Dr. Senderoff alleged he campaigned for election saying he would not change the building code. Councilmember Wambolt stated this was untrue, the central plank in his platform was his opposition to taller buildings downtown. That objective was accomplished with the establishment of the BD zones in 2006; he was the fourth vote on the Council that made that possible. Third, Dr. Senderoff said he had chosen to side with developers and not citizens, who Dr. Senderoff believed the majority favored the City purchasing the property. Councilmember Wambolt noted there were an abundance of citizens on both sides of the issue and the *Enterprise* newspaper stated its opposition to the purchase in an editorial last week. Fourth, in response to Dr. Senderoff's statement that it was speculation that the property purchase would be combined on the ballot with other items, Councilmember Wambolt assured that would be decided by the City Council and he was in a better position to assess Council views than Dr. Senderoff. Councilmember Wambolt summarized the Council welcomed citizen comments but urged them to be factual.

Night Out
Celebrations

Councilmember Dawson concurred tonight's Edmonds Night Out celebration was great, expressing her appreciation for the community's support of the event, particularly in the poor weather. She pointed out Edmonds has its Night Out Celebration on a different night than other cities/counties; the other Night Out celebrations are next Tuesday including one hosted by the Snohomish County Executive's office at McCollum Park.

Stevens
Hospital

Councilmember Wilson reported Stevens Hospital has put on hold any plans to sell the hospital and is considering a ballot measure. It was conveyed to him by Commissioners, employees and union members that one of the actions with the most impact in the past few months was the Edmonds City Council's resolution and they expressed their appreciation for the Council's leadership and attention to the matter.

10. ADJOURN

With no further business, the Council meeting was adjourned at 8:35 p.m.