

MINUTES OF JOINT MEETING PLANNING BOARD/ARCHITECTURAL DESIGN BOARD

October 17, 2001

Chair John Dewhirst called the joint meeting of the Planning Board and Architectural Design Board to order at 7:20 p.m. in the Council Chambers, Public Safety Complex, 250 – 5th Avenue North.

**PLANNING BOARD MEMBERS
PRESENT**

John Dewhirst, Chair
Beverly Lindh, Vice Chair
Virginia Cassutt
Bruce Witenberg
Joanne Langendorfer
Cary Guenther
Jim Crim

**ARCHITECTURAL DESIGN
BOARD MEMBERS PRESENT**

James Chalupnik, Chair
Rob Michel
Carreen Rubenkonig
Tom Bykonen
Derek Gustafson
Linda Goodrick

STAFF PRESENT

Rob Chave, Planning Division Manager
Scott Snyder, City Attorney
Karin Noyes, Recorder

ABSENT

Shawn Mahoney

**DISCUSSION REGARDING ALTERNATIVES FOR A NEW DESIGN REVIEW PROCESS INTEGRATED WITH
THE PROPOSED NEW DESIGN GUIDELINES**

Mr. Chave referred the Board members to the historical information that was provided by staff and said that it is important to understand how this issue came about. He reminded the Board members that the purpose of the Cedar River Project was to consider design review issues. The consultants presented a set of recommendations that the Council found favorable. The Council directed staff to start working on the creation of new design guidelines. In conjunction with the new design guidelines, the Council asked that the design review process also be considered. Mr. Chave said his understanding is that the Council was primarily interested in having a process in which design related issues are raised early in the process. They were cognizant that one of the flaws of the City's review process is that design review comes too late in the process after a lot of work has already taken place with the design and changes are more difficult to make. He further explained that the Council also asked that the new design review process be more predictable and no more onerous than it already is. The Council let it open as far as what the exact process should be, but they want it to become more user friendly. He noted that the design guidelines can provide a key element to address the issue of predictability.

Mr. Snyder referred to a letter from Ms. Rubenkonig reviewing the changes that have occurred to the ADB process over the past few years. It appears that the ADB has tried to eliminate some of the problems that were identified previously. He said it may be that many of the concerns have been addressed by the steps the ADB has already taken.

Mr. Snyder referred to the court case Anderson verses Issaquah in which Issaquah's ordinance, which is identical to the City of Edmonds' ordinance, was struck down. He noted that the City of Issaquah used the same type of design review as the City of Edmonds in which a Board of experts is charged with reviewing designs to make sure they are in character with the community. The outcome from this court case is that if cities want to utilize this type of design review, there must be clear criteria to take the discretion out of the process. Making generalized, aesthetic decisions is no longer allowed. As a result of

this court case, the trend in most communities was to change the role of the ADB to use their expertise to create and review design criteria. If a development proposal can meet all of the criteria, the project would be approved.

Mr. Snyder explained that the focus of the Cedar River Study was to make sure that there is clear criteria that can be used during the design review process. He reminded the Boards that recent regulatory reform now mandates that only one public hearing can be held, and the Cedar River Study recommends that the ADB review take place in the preliminary stages of the design review process. However, it must be clearly understood that in order for the ADB to give their opinions early in the process, they would not be able to act as the quasi-judicial hearing body, as well. He explained that ADB members who express opinions regarding a project and give direction in the pre-design process are subject to challenge for pre-judgmental bias at a later hearing.

Mr. Chave said another difficult issue to address is the fact that since there can only be one public hearing for a project, all of the issues have to be on the table at the same time. A major project would require that the SEPA review be completed and the public comment period time done before the public hearing can take place. This makes it nearly impossible to have a hearing at the preliminary stages of a project because there is not enough detail to do the SEPA review.

Mr. Chave referred the Board members to the series of flow charts that were created by staff to illustrate the current process, the process recommended in the Cedar River Study, and another option that would allow the ADB to be involved in the initial phase of the review followed by a detailed design review phase. He said that another option would be for the ADB to step out of the design review process entirely and become a sort of design guidelines policy board now that the guidelines have been created. He suggested that the design guidelines may have more of an impact than design review on the way projects are approved in the future.

Mr. Bykonen said his main concern is not the process but the end result. Edmond is not a risk-taking City with a lot of award-winning architecture. He said he is most concerned about the outcome of a project, and if that means changing the ADB's role around, he is willing to do that to make sure they get better projects. He suggested that if risk-taking is encouraged by having the ADB review the preliminary plans early in the process, he would be in support of that option.

Mr. Chave said one recommendation could be to make preliminary review a mandatory part of the review process for projects over a certain threshold. He said one of the purposes of the preliminary review is not only to look at the conceptual designs, but also make the applicant aware of issues that may have a major impact on a particular design.

Mr. Bykonen expressed his opinion that it is important to have the design review take place early in the process because once a lot of time has been invested into the development plans, it is difficult for the developers to make changes. He suggested that there is a real balance between having guidelines that provide hard numbers and guidelines that allow flexibility in some areas so that there is a certain amount of design left to be done after the guidelines have been applied. Mr. Chave said that the proposed design guidelines offer a lot of flexibility, and there are not a lot of numbers included. There are numerous possibilities identified in the guidelines, and the intent was to provide as many options as possible. However, only experience will determine how well the guidelines work. He said his concern is that someone needs to be responsible for keeping track of these issues so that the document can be used as a living document and changes can be made as needed.

Mr. Snyder said that the most legally defensive approach would be to use the "Leavenworth approach" (open window design). However, the irony is that this approach is extremely opposite of risk taking and creative design. Another policy issue to consider is the development community's legitimate right to predictability. He said it is difficult for a developer to decide how much money they want to invest in a project design if they are not sure that the end product will be one they can use.

Mr. Chalupnik said he has not heard anything in the Boards' discussions regarding the desires of the citizens of Edmonds. The residents expressed themselves very strongly on some of the things they do not want, but all he has heard lately are ideas for accommodating the developers. He cautioned that this is not the primary concern of the ADB. The ADB has the responsibility of looking out for the best interests of the citizens of Edmonds. He said that in his past experience on the ADB, the developers who usually complain about the process taking too long are the ones who choose to stretch the limits of what is allowed and want to have special consideration. He said the guidelines are very prescriptive and if a developer

APPROVED

follows them, they should be able to have their projects approved in one hearing. He said the ADB spends a lot of time debating things that are not already prescribed. He suggested that holding a preliminary hearing will not improve this situation. The objections he has heard related to the process being too long are ill founded, and he suggested that the ADB is being treated as a “scapegoat” to excuse some other problems. The ADB works hard to make sure that they go by the rules. If the developers go by the rules as well, the projects tend to proceed through the review process very quickly.

Mr. Witenberg said he appreciates the work the ADB does and, to the limited extent that he understands the details they have to consider, he feels that their hands have been somewhat tied by the lack of specific guidelines and regulations to consider. He suggested that terms such as harmonious and beautiful are somewhat “in the eye of the beholder” and there is more room for disagreement when developers try to push the envelope. He said the Planning Board and staff have spent a lot time working with a consultant and the public to make sure that the new proposed guidelines will allow less room for developers to push the envelope. While they do provide flexibility for the developers to be creative, projects must follow the guidelines as prescribed.

Mr. Witenberg said the Board requested feedback from the City Attorney regarding how the City of Redmond’s review process works. Mr. Snyder explained that the City of Redmond uses a process similar to that recommended in the Cedar River Report. They have very detailed design guidelines for the downtown and four neighborhood quadrants as well as a unified permit process. After the architectural review board meets with a developer, they use the design guidelines to review the designs and make a series of recommendations. The permit is then submitted to the technical review committee that consists of staff members, as well as one design board member. The technical committee is responsible for making the decision at the staff level by speaking to all of the design issues that are identified in the design guidelines document. Whether the project is approved or denied, the applicant and the public both have the right to appeal the decision to the Hearing Examiner.

Ms. Rubenkönig clarified that the recommendations of the ADB are binding on Redmond’s project review. Mr. Snyder said that recommendations are binding on the staff’s decision, but if a project is appealed to the hearing examiner, he will apply the normal criteria to the review.

Mr. Snyder pointed out that the public is always good at expressing what they do not want, but they find it more difficult to be proactive and state what it is they do want. The role of the ADB should be proactive in finding out what the public wants and creating design criteria that can be applied and explained to the public.

Mr. Chalupnik reminded the Planning Board members that the ADB members have been chosen by the citizens of Edmonds to represent them during the design review phase of development. They ask them to use their best judgment, which includes using guidelines and codes. Beyond that, there is the matter of whether or not a project is aesthetically pleasing.

Ms. Lindh inquired how a developer could appeal the ADB’s opinion of aesthetically pleasing. She said the Planning Board has been considering the design guidelines for two years, but very few members of the public have shown any interest in participating with the exception of the Stakeholders Group. She said it is the Planning Board’s responsibility to listen to the citizens, but they want the system to be fair. If a developer is going to design something that the ADB feels is inappropriate for the character of Edmonds, would the ADB want to put the issue before the public as a referendum to vote on the design.

Mr. Chalupnik said that if the ADB does their job well, they pay careful attention to the code and the guidelines when making their decisions. That is their responsibility, but they should be allowed to use their common sense, as well. If they are only allowed to follow the guidelines when making decisions, there is no need for the ADB to continue. Ms. Lindh noted that the design guidelines allow flexibility, and it is important that there is a body responsible for controlling these opportunities. Mr. Chalupnik expressed his opinion that the flexibility allowed in the guidelines still deals with quantitative things, and is not relative to aesthetic issues. Mr. Dewhirst pointed out that there will be wide interpretation as to how the guidelines can be applied. The guidelines provide an outline and a process to interpret how they can be applied. But the collective expertise of the ADB is an important part of the review process.

Mr. Chalupnik said the new guidelines that are being proposed will be a strong tool for the ADB to use, but he is bothered that the ADB is being told that if their expert opinion goes beyond the guidelines, there is a risk of legal retribution. Mr.

APPROVED

Chave explained that the City Council did not just single out the ADB process as being a problem. Their goal is to end up with better design. They felt that design could be more creative—especially in the downtown area. The Planning Board is interested in really trying to extract from the ADB what they think the preliminary review process should be in addition to what the ADB's role should be and where.

Mr. Dewhirst inquired where the public hearing process would come into the new review process. Mr. Snyder pointed out in the City of Redmond, extensive public hearings took place during the creation of the neighborhood design guidelines, and the citizens were given an opportunity to express their concerns. If an applicant or citizen does not like the decision that is made by the technical committee, they can appeal to the hearing examiner. However, Mr. Snyder suggested that the City should be frank as to what can happen with citizen appeals. Citizens typically appeal and find themselves unprepared in their one opportunity to be heard. The citizens raise questions and concerns, but their questions are usually not substantial and do not provide competent evidence on which a decision can be based. That is why public comment opportunities are more successful if allowed early in the review process.

Mr. Snyder suggested that if the Boards really want to get the public to pay attention and get excited, they should start talking about allowing incentives to developers. He said that one way to address the constitutional limitations of taking the value of someone's property is to offer incentives for risk taking. For example, if the City is going to ask a developer to use more expensive materials, the developer will want something in return. However, he emphasized that this is a difficult political issue to raise.

Mr. Dewhirst asked that the ADB members provide the Planning Board with clear ideas about where they feel an ADB review would have the most impact in the process.

Mr. Michel said that as the prescriptive design guidelines are applied, issues of concern will start to be raised. There needs to be somebody at the end of the design review process to decide how these issues can be resolved. He said he can design a building that can meet the design guidelines, but the public would not like the design. While most developers will try to design buildings that look good and will sell, there may be some developers who don't care about aesthetic appearance. That is the danger of changing the ADB review to the early stages of the review process. He noted that the design guidelines do not tell what colors or materials should be used on the outside of the buildings, for example. Ms. Cassutt suggested that these issues could be taken care of during the early ADB review. Mr. Michel said that would all depend upon how much detail is required of the applicant for the preliminary review.

Ms. Langendorfer said it appears that one of the goals is to influence unique development. She said that if she were a developer, she would like to have input and recommendations and guidance from the ADB at the beginning of the design process. However, it seems that the ADB should also be the ones to make sure that the final design is in character with Edmonds. She questioned if there is some way for the ADB to review at both the beginning and end of the process without risking legal challenges.

Ms. Rubenkonig suggested that the Planning Board could sponsor the initial public review and the ADB could review the design later in the process. The ADB does not have to sponsor the early review. She said she has a strong opinion about this issue, but she also respects the Planning Board's desire to do what the City Council asked them to do. However, she said she has never viewed the ADB as the problem in the review process. She said the ADB's goal is not to get involved in designing projects for applicants. They can call out what needs further attention in the plans, but they should not try to change the designs themselves. The ADB is concerned that the prescriptive approach of the design guidelines will leave out design in its best form. She said that while she likes to discuss plans with developers, if the ADB tries to design projects, there is no limit to the amount of time that would be required for some applications.

Ms. Rubenkonig said she is not sold on the process that was recommended in the Cedar River Study. The ADB excels in representing the City's best interest as they review whether or not a proposal is in keeping with the design guidelines. The main issue that must be considered is who should take this responsibility, if it is taken away from the ADB. She said she has great concern with a final decision being left to the planning official because there is a lot that can happen between the ADB's preliminary review and the final decision that could influence staff's interpretation. At this time, the ADB's review and recommendation is established on record. If the applicant does not meet the requirements that are identified, the staff

APPROVED

cannot issue a permit. She said that the current ADB review process is open and fair, and she has great faith in the process and what it offers the citizens of Edmonds. If the Planning Board feels that others should share this review responsibility that is their decision to make, but the ADB is comfortable with the responsibilities they have been given. She suggested that if the ADB's responsibilities were lessened, they may not be as effective.

Ms. Goodrick agreed with Ms. Rubenkönig. She said her other thought would be that if the ADB's watchdog role is changed, staff would have to do this job. If the ADB loses its decision making and directive ability, she questioned whether the City would be able to get quality volunteers to participate. She concluded that, at this time, the ADB works well together to cover all of the ramifications of development.

Mr. Witenberg recalled that during a joint meeting early in the design guidelines process, the question related to the ADB's role in the review process was raised. He recalled that, at that time, the ADB recommended that before any changes to the review process were made, they wanted to have the opportunity to work with the new design guidelines to see whether the ADB's application of the guidelines could correct what many people perceive to be the problem. He said that, lately, he has not heard this request directly, but his interpretation is that is still the ADB's desire. He inquired if staff could conduct the preliminary hearing and meet with the developer and public instead of having the ADB at the beginning of the process and no longer acting as a quasi-judicial body. He suggested that, in some respects, this issue is like deciding whether or not the public wants to have a judge or a jury decide the issue. The jury is, theoretically, more representative of the community and there is a better opportunity for exchange of ideas. However, the hearing examiner would have the legal background to apply the evidence to the criteria in the guidelines and code.

Mr. Snyder said that another option to consider would be to flip/flop the Redmond process by having an eighth member on the ADB to participate on a preliminary review committee. That individual would then be barred from participating in the ADB's public hearing later in the review process. This responsibility could be rotated amongst the ADB members. He explained that the preliminary review would not be considered a public hearing. However, the public would be invited to attend and provide comment.

Mr. Chave added that the staff and ADB member participating in the preliminary review could listen to the proposal presentation and the public comments and make recommendations regarding the project. However, he cautioned that if the ADB wants to retain their role in quasi-judicial hearings later in the review process, they must be careful not to influence the design in the early stages. A lot of the design plans would be done before the project comes before the ADB for a public hearing, and the ADB would have the responsibility of deciding whether or not the designs meet the design criteria.

Mr. Bykonen stated that in order for the ADB's design review to have value, it must be placed at the beginning of the design process. If the ADB meets later in the process and decides to make changes to the designs that were already deemed acceptable by the preliminary review committee, it would be more difficult for the developers to change their plans. All the end review would end up doing is policing the situation, which is what the staff does now. He noted that designs issues related to color or materials, etc. can be changed as late as during the construction phase of the project.

Mr. Chave said that if his previously mentioned process were adopted, the ADB meetings would be very similar to what they are now. Mr. Bykonen said he would like to have a collaborative effort between the developer and the ADB at the beginning rather than wait until the end and then require changes to be made. However, it is important that the plans be detailed enough for the ADB to understand the design that is being proposed.

Ms. Rubenkönig asked that the ADB be allowed the opportunity to work with the new design guidelines and continue to have a dialogue with the Planning Board. It may become clearly apparent, as the ADB works with the document, that they need to take on a new role.

The Board members and staff discussed the fact that because the preliminary review is optional at this time, it would be difficult for the ADB to require that more details be provided. They discussed that if the preliminary review is mandatory, then the applicants would be required to provide all of the required elements of an application. Mr. Snyder advised that if the preliminary review is mandatory, the ADB could define exactly what they want to see. If certain parts are missing, the application would be considered incomplete and would not come before the ADB for review until all of the items have been

APPROVED

submitted. Mr. Snyder suggested that another option to consider would be to split the ADB into two groups. One could do the preliminary review of a project and the other could do the final review.

Ms. Rubenkönig said that until she has had an opportunity to apply the new design guidelines, she cannot make a recommendation on how the design review process should be. As the ADB starts working with the new guidelines, it will become more apparent as to the role the ADB should play in the review process. Mr. Dewhirst advised that the original Planning Board intent was to start out with the adoption of the guidelines and then follow with a discussion of the review process after the ADB had the opportunity to work with the document for a while. However, after the Planning Board started to convert the design guidelines into code it became apparent that issues regarding the design review process must be considered concurrently. He said it was also pointed out that if the design guidelines are adopted with the understanding that the design review process would be considered next, developers would likely hold back their projects until both issues had been decided. Therefore, the ADB would not be able to get an accurate picture of how well the design guidelines work.

Mr. Witenberg suggested that the issue related to which items require ADB review and which do not would have little impact on what is ultimately adopted as the new design review process. All items that require ADB approval would follow whatever process is adopted. The guidelines will be considered during that review regardless of whether the review process is changed or not. Somebody is going to have to work with the guidelines to see whether they work for the developers and whether the judicial body is able to apply them in a way that promotes some changes that are beneficial to the community.

The Boards continued to discuss the option of dividing the ADB into two groups—one would review the preliminary plans and one the final plans. Mr. Chave clarified that the group who conducts the final review would be able to review the minutes from the preliminary review as well as a history and staff report for each project.

Mr. Snyder said there appears to be a substantial number of Board members who would like an opportunity to apply the new design standards before any further action is taken related to the design review process to see if the changes that have already been made will address the policy concerns that have been raised in the past. They would like to make the preliminary review a mandatory requirement, with specific guidelines regarding the information and level of detail that must be provided. He said this option is definitely a viable one and could address his first concern regarding the Appearance of Fairness Doctrine. He said his other concern is related to pre-judgmental bias. He suggested that the ADB could be allowed to conduct a preliminary review and provide guidance to the applicant on how he can make his project better, but they would not be able to make any decisions or express a specific direction.

Mr. Chave advised that if the process described by Mr. Snyder is what the Board chooses to recommend, they would need to create some clear thresholds to identify those projects that would require ADB approval. They would also need to clearly identify the design items that must be submitted for the preliminary review. The Board's discussed the fact that this process might add extra meeting time to the ADB's schedule to make sure that the regulatory reform time limits are not interrupted. Mr. Bykonen suggested that a clear checklist to identify what is needed for the preliminary review could help speed up the process.

The Planning Board indicated that they feel comfortable that the input that was provided by the ADB, staff and the City Attorney will enable them to make a recommendation to the City Council. Mr. Dewhirst reviewed that the ADB's position is that they would like to conduct both the preliminary and final review at this time as per the direction provided by the City Attorney. Mr. Snyder clarified that a preliminary review would result in a recommendation rather than a decision. A preliminary review would include dialogue amongst the ADB, staff, applicant and public. Using the information provided, the ADB would then create a list of recommendations that would enhance the project. No formal transcript would be kept of this meeting. He cautioned that the preliminary review should look as little like a public hearing as possible.

Mr. Snyder suggested that the higher the threshold is for identifying the projects that require ADB review, the better. He cautioned that the City Council has expressed their concern about the length of the review time. He said the Boards should be careful about suggesting anything that would add time to the review process. He suggested that in addition to using square footage as a threshold, there are certain areas in the City where view should be considered, as well. Mr. Chave added that the threshold should also include all commercial development that is adjacent to single-family development. He emphasized that it is important to establish clear thresholds to identify when ADB review is required.

APPROVED

Mr. Dewhirst suggested that it might be prudent for the ADB to schedule all of their preliminary reviews on the same agenda. One meeting per month could be dedicated to preliminary reviews, and the other could be dedicated to final reviews.

Mr. Chave recommended that the ADB schedule a discussion regarding the threshold requirements on their next agenda and provided feedback to the Planning Board as soon as possible.

Mr. Dewhirst recommended that those projects that do not require mandatory preliminary review should require a mandatory staff pre-application review. Mr. Chave suggested that there be a threshold related to these types of applications, as well.

Mr. Dewhirst advised that the design guidelines will provide a decent outline for the ADB to use, but there is a lot of interplay of many elements and no one really knows how they will all work out. He suggested that as the ADB deliberates and discusses problems that will become apparent as they utilize the document, they should have some type of system for recording these issues and presenting them to the Planning Board for resolution. Mr. Chave suggested that perhaps each of the ADB's agendas should include a brief discussion regarding the design guidelines. Mr. Snyder suggested that perhaps a standard sub-committee should be formed to deal with issues that arise related to the design guidelines. He noted that there is also an opportunity for an annual review of the document as part of the Comprehensive Plan review process. A sub-committee could provide periodical reports to the Planning Board about changes that need to be made.

THERE BEING NO FURTHER ISSUES TO DISCUSS, THE MEETING WAS ADJOURNED AT 9:10 P.M.

APPROVED