

PLANNING BOARD MINUTES

August 13, 2003

Chair Crim called the regular meeting of the Planning Board to order at 7:00 p.m. in the Council Chambers, Public Safety Complex, 250 – 5th Avenue North.

PRESENT

Jim Crim, Chair
Ronald Hopkins
Virginia Cassutt
Janice Freeman
John Dewhirst
Cary Guenther

ABSENT

Judith Works
James Young

STAFF PRESENT

Rob Chave, Planning Division Manager
Karin Noyes, Recorder

READING/APPROVAL OF MINUTES

BOARD MEMBER DEWHIRST MOVED TO APPROVE THE MINUTES OF JULY 9, 2003 AS CORRECTED. BOARD MEMBER FREEMAN SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

ANNOUNCEMENT OF AGENDA

No changes were made to the proposed agenda.

REQUESTS FROM THE AUDIENCE

Marilee Beck, 550 Holly Drive, said that because she would be out of town during the month of September when the public workshop and public hearing on the Comprehensive Plan Map amendments would be held by the Board, she would like to obtain a copy of the proposed map so that she can have a good understanding of what is being proposed and how it would impact her property. Mr. Chave said the Board has tentatively scheduled the public hearing for September 24th, and that is likely the last time the Board would consider the issue. However, the City Council would also hold a public hearing on the proposal sometime in October. Mr. Chave encouraged Ms. Beck to come into the administrative offices to obtain a copy of the proposed Comprehensive Plan Map, which is one and the same as the zoning map.

Ms. Beck reminded the Board that the planned residential development that was constructed on Homeland Drive was one of the first to be approved in Edmonds. It was originally considered a major entrance into Edmonds. At one time, this area was identified for a change in order to be consistent with the zoning along Fifth Avenue. Mr. Chave emphasized that no changes are being proposed for Homeland Drive.

CONTINUED DELIBERATION ON AMENDMENTS TO THE ECDC REGARDING THE COUNCIL'S ROLE IN LAND USE HEARINGS (FILE NO. CDC-O3-60)

Mr. Chave recalled that when the Board last discussed this issue, they decided to integrate changes to the decision making process into the rewrite of Chapter 20 of the Development Code. The intent of the proposed amendments is to clean up the conflicting provisions for appeal periods and further clarify the Hearing Examiner reconsideration process. At the same time, staff intends to review Chapter 20 to better explain and consolidate the various processes so they are easier to understand.

Mr. Chave referred to the handout that was provided prior to the meeting, which is a table that compiles the various types of decisions and what process they follow. He asked that the Board review the list and provide feedback to staff on what the Board feels the proposed review process should be. Staff could then prepare a draft ordinance for the Board's consideration.

Board Member Crim referred to those decisions that require a public hearing, and asked if the appeal would be quasi-judicial. Mr. Chave answered that an appeal on any decision that requires a public hearing would be based on the record that has already been established, with the exception of non-project actions. He reminded the Board that, as a result of the Regulatory Reform Act, only one public hearing and one appeal can be allowed and must be based on the record that has already been established. For decisions that do not require a public hearing, such as staff decisions, an appeal would require a public hearing. For example, if a staff decision were appealed to the Hearing Examiner, the Hearing Examiner would hold the open record public hearing. Because only one appeal can be heard at the City level, any appeal of the Hearing Examiner's decision would go straight to court. However, a non-project action could allow multiple appeals because the regulatory reform rules would not be applicable.

Board Member Crim noted that decisions made by the Architectural Design Board (ADB) on major projects would fall into the same category as the process the Board recommended for planned residential developments. He suggested that the Board could identify other decisions that would fall into this same category since the Board has already made a recommendation for the City Council to accept the planned residential development review process. Mr. Chave agreed, but added that it is also possible to combine actions. For example, an ADB decision on a major project might also require approval of a variance request. The two application processes could be consolidated into one hearing before the Hearing Examiner. The ADB would send their comments and recommendation to the Hearing Examiner, but they would not hold a public hearing on the issue. Under the current process, the Hearing Examiner would make a decision that is appealable to the City Council.

Board Member Guenther inquired if planned residential developments (PRD's) are considered to be rezones. Mr. Chave answered that, as constituted in the City's ordinance, PRD's are not considered to be rezones.

Mr. Chave suggested that perhaps it would be helpful for the Board to discuss the major principles that will guide them as they sort through the individual decisions. If they try to make the review process too complex, they could end up creating even more problems. He referred to the document prepared by staff to identify the pros and cons for each of the options. He reminded the Commission that the public has expressed that going to court on appeals is not an adequate substitute for going to the City Council since it costs more time and money, and the court setting is more intimidating and less understandable to the average citizen. They felt that requiring all appeals to go to court would make the appeal process less accessible to the average citizen. On the other hand, Mr. Chave explained that taking the City Council out of the appeal process for quasi-judicial decisions removes only one intermediate step in the appeal process. Going to court has always been available to a citizen as an option. In many instances, especially those that are most controversial, attorneys are already involved in the dispute, and having one less appeal hearing to attend could actually reduce attorney time and fees.

Board Member Crim expressed his concern about the City Council's limited ability to discuss issues with citizens. If the Council was taken out of the quasi-judicial decision process, individual citizens could discuss their concerns over a specific project or development proposal with their City Council representatives. Currently, this can only happen after all decisions and appeals have been exhausted, which limits accessibility of citizens to their elected officials. Board Member Freeman agreed, and said that although members of the public have stated that they want the City Council to be involved in the final decision making process, what they really seem to be saying is that they want to talk to their City Council Representatives about their issues of concern. If the City Council is taken out of the decision making process, the City Council Members

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would be able to address some of the citizen's concerns and take part in discussions about a project before the final decision is made.

Board Member Guenther recalled that citizens have expressed their opinion that because the Hearing Examiner is hired by the City as a private contractor, they do not feel that he is as accountable for his decisions as the City Council would be. However, he said he does not believe that would be the case since the Hearing Examiner must make appropriate decisions because his job is on the line.

Board Member Crim inquired if having the Hearing Examiner be the final decision maker instead of the City Council would make the Hearing Examiner's job more difficult. Mr. Chave answered that the Hearing Examiner is already making recommendations or decisions on these items. Nothing goes straight to the City Council unless mandated by State Law. He concluded that the Hearing Examiner's caseload would not change.

Board Member Crim said that, right now, the Hearing Examiner is not involved in major projects that go before the ADB unless SEPA is involved. Mr. Chave said this would not change. The ADB would review all major projects unless a variance is required. In that case, the Hearing Examiner would review the project.

Board Member Freeman inquired if the Hearing Examiner would be able to hold his hearings at a time that is more convenient for the public. Mr. Chave said staff has discussed the possibility of moving the Hearing Examiner meetings to later in the afternoon to accommodate more of the public's schedules. Board Member Freeman noted that the Hearing Examiner hearings would not receive television coverage, as do the City Council public hearings. Mr. Chave agreed that it is unlikely the City would be able to provide television coverage for the Hearing Examiner hearings.

Regarding the issue of reconsideration, Mr. Chave explained that, at this time, there are inconsistent timeframes. The reconsideration process runs contemporaneously with the appeal process, starting with the date the decision was made. However, the appeal period is 14 consecutive days and the reconsideration period is 10 working days, which could potentially be longer than the appeal period. He suggested that these two periods should run concurrently because stringing them end-to-end would lengthen the process. He explained that if a reconsideration request is filed, the current process would allow the Hearing Examiner two weeks to review the case. Once the Hearing Examiner's reconsideration decision has been issued, the City should also allow a few days for an appeal to be filed. He suggested that one possibility would be to have a shorter reconsideration period. The appeal period could then be the full two weeks, but end a few days after the conclusion of the reconsideration period.

Board Member Hopkins inquired if a reconsideration request could be considered an appeal to the Hearing Examiner's decision. Mr. Chave explained that a reconsideration request is a request that the Hearing Examiner look again at the facts that have been presented. No new evidence can be introduced. He noted that, occasionally, the Hearing Examiner does change or modify his decision based on a request to reconsider. Board Member Hopkins said that, in order for the reconsideration process to make any sense, it must be separate from the appeal process and held before the appeal process begins.

Mr. Chave said that if the reconsideration process is to be meaningful, it should be the longer process. The reconsideration process could be two weeks and the appeal process could be one week more. However, he cautioned that if this type of change is made, it is likely that developers would complain about the process taking too long. Board Member Freeman expressed her opinion that it is more important to get it right than to get it done quickly. Board Member Crim agreed.

Board Member Dewhirst inquired if it is possible for the City to allow new information to be considered as part of the reconsideration process. Mr. Chave said that once the public hearing is closed, the reconsideration process cannot be used to provide additional evidence because this could be construed as allowing one party to enter new information, when not all parties of record would be allowed the same privilege. The argument could be made that the City was, essentially, holding two public hearings.

Board Member Dewhirst said it is likely that, in the coming years, that the reconsideration process will be used a lot. He said he would like to find a way to allow new information that was overlooked during the original hearing process. However, he agreed that would not be possible.

Board Member Hopkins said that perhaps it would be possible to have the appeal clock begin after the reconsideration process has concluded, if a reconsideration process is chosen. However, it should be possible to bypass the reconsideration period and go directly to an appeal. Board Member Dewhirst pointed out that because all parties of record have the ability to request a reconsideration or file an appeal, it would not be possible to bypass the reconsideration time period. Board Member Hopkins agreed that, since any party of record can issue an appeal or request a reconsideration, it almost has to be sequential. He also suggested that the priority should be placed on the reconsideration process.

Board Member Guenther asked how long it would take a project to get through the process if an appeal and a reconsideration request were filed at the same time. Mr. Chave said that he could not think of an instance where an appeal has been filed and then a reconsideration request. Usually, people are tracking the process and know what they want to do. Once the reconsideration request is filed, the appeal clock stops until after the reconsideration decision has been issued by the Hearing Examiner. Then the appeal clock starts again.

Board Member Dewhirst pointed out that when decisions are appealed to the City Council, at least four to six weeks must be added to the review process. In addition, there is an appeal period allowed after the City Council renders their decision. So the proposed process of running the appeal period and reconsideration period sequentially would not really add any additional time to the review process over what already is required. Board Member Crim agreed, and added that the appeal period could be shorter than the reconsideration period.

Board Member Dewhirst inquired if all parties of record would be notified if a request for reconsideration were filed. Mr. Chave answered affirmatively. In addition, the Hearing Examiner's decision would also be mailed to all parties of record. To make this clear, he suggested that the notification requirements be specified in detail.

Board Member Dewhirst inquired if it would be possible for the party other than the one asking for a Hearing Examiner reconsideration to ask for a reconsideration of a Hearing Examiner's reconsideration. Mr. Chave said that, in the past, this has not happened. However, this type of situation could definitely arise. He said it would be more efficient, if possible, for the Hearing Examiner to consider all requests for reconsideration at the same time. He reminded the Board that the reconsideration is supposed to be based on the facts that have already been set forth by the Hearing Examiner. Board Member Hopkins suggested that reconsideration of reconsiderations should only be allowed through the appeal process. Board Members Cassutt and Guenther agreed.

Board Member Dewhirst said that, oftentimes, a lot of emotion is attached to significant issues. While issues may seem petty to some, they are a big deal to others. Whatever the process is, it is important for the City to communicate a feeling of fairness that everyone would be given the same opportunity to be heard. Board Member Crim suggested that when one party requests a reconsideration, the request should be communicated to all other parties of record. The other parties should then be allowed an opportunity to indicate additional issues for reconsideration. Once the Hearing Examiner has rendered his decision on all of the reconsiderations, the appeal process would be the next step.

Board Member Crim questioned how all parties of record would have an opportunity to review a request for reconsideration that is filed on the 14th day of the time period. Mr. Chave answered that he is not sure that a reconsideration process could be used for renewed argument. The argument was supposed to have occurred at the hearing so additional back and forth rebuttal would almost end up arguing the hearing again. He said he would request feedback from the City Attorney regarding this issue.

Board Member Hopkins concluded that anything that could be done to improve the effectiveness of the reconsideration process and diminish the need for appeals would be appropriate. The remainder of the Board agreed.

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REVIEW AND DISCUSSION OF COMPREHENSIVE PLAN AMENDMENTS FOR 2003 (FILE NO. CDC-03-7)

Mr. Chave said the purpose of this discussion is to allow the Board to briefly review the Comprehensive Plan Maps and schedule a public hearing for the end of September. He referred to the draft of a press release that staff plans to distribute to the public notifying them of the September 24th public hearing. Staff is planning to hold an open house meeting preceding the public hearing in order to allow people who want to find out more to come and have their questions answered. In addition, the staff will post the existing and proposed plan maps, along with the zoning map, on the City's website.

Mr. Chave advised that staff has found that the zoning and plan designation boundaries line up very well. At this point, no rezones are being considered. The staff and their intern are working to complete the draft Comprehensive Plan Map boundaries and overlays that will be used for the hearing. He provided a picture of the overall Comprehensive Plan Map. In addition to the proposed Comprehensive Plan Map that will provide parcel specific information, staff will provide overlay maps to identify each of the specific areas within the City (Highway 99 Corridor, Edmonds Way Corridor, Westgate Corridor, Five Corners, Perrinville, Downtown/Waterfront). The overlays will be placed on top of the parcel specific designations. The boundaries on the overlay maps will be the same as the boundaries identified in the Comprehensive Plan Map so that there are no inconsistencies between the two. Since the Comprehensive Plan policies track closely with these boundaries, it is very important that the general concepts continue to be identified in map form.

Board Member Crim noted that the edges of the bubble areas will become property line specific. Mr. Chave agreed, but added that the names of the areas will remain the same. Mr. Chave provided a vicinity map of the Westgate Corridor that has already been done in parcel specific format. The overlay would be the Edmonds Way Corridor on top of the parcel specific designations.

Mr. Chave inquired if the Board is comfortable with the direction the staff is going at this time. If so, staff should be able to finalize the map and prepare the public notice to send out after Labor Day.

Board Member Cassutt inquired if the Board Members should attend the open house. Mr. Chave said it would be helpful, but would not be required.

Board Member Dewhirst referred to the draft notice that would be sent out to advertise the public hearing. He noted that the terms "land use map and concept map" are used. He suggested that instead of using the term "concept map" it should be called the "Comprehensive Plan Map." Mr. Chave agreed that the map should be called the Comprehensive Plan Map, and that further explanation could be provided to indicate that the existing Comprehensive Plan Map only shows concepts and not site specific information.

Board Member Dewhirst inquired when copies of the proposed new map would be available for the Board Members to review. Mr. Chave said he is having a series of meetings with various individuals such as the Parks Director, Edmonds School District representatives, etc. to make sure what is being proposed is understandable and that they are comfortable with it. Within the next two weeks, a copy of the map should be available to the Board Members. The Board agreed that they would rather have a paper map than an electronic map. They also asked that staff provide a copy of the zoning map. Staff agreed to mail the maps to the Board members since their second meeting in August was cancelled.

Board Member Hopkins said it is difficult for him to get a feel for the extent of the zoning map changes. He said the language in the draft memo states that the intent is not to change any zoning classifications that are consistent with the Comprehensive Plan and that property owners are being notified of specific zoning changes. Mr. Chave said the only zoning changes that have been identified involve split zones. He said that when the original zoning map was done in 1980, there were some areas with large parcels that had not been subdivided. Subdivisions have now occurred, and in some cases, the boundaries of the subdivisions do not coincide with the zoning lines. This has never been much of an issue, and no changes have been made to correct the situation. He said staff has classified the proposed zoning changes as housekeeping items.

Board Member Hopkins inquired if the property owners of the lots that are split zoned will be surprised or outraged at the proposed changes. Mr. Chave said the zoning changes are pretty straight forward, and would help clean up the single family and commercial parcels.

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Mr. Chave referred to the community commercial land use designations, and said that virtually all of the commercial zoning in the immediate Westgate area is neighborhood business, but there is a little bit of community business, as well. A change in the parcel specific map that identifies the area as community commercial would not require a zoning change because both the community business and neighborhood business zones are consistent with the community commercial land use designation. In addition, the land use for the hospital area would be identified as mixed use. The City could create a new mixed-use zone or they could use a mixture of the zones that already exist.

Board Member Dewhirst inquired if the staff has provided information regarding the Comprehensive Plan Map changes to the City Council as an informational item. Mr. Chave said they have not provided a specific update recently. He agreed that it would be appropriate to provide an update to the City Council prior to sending out the notice for the open house and public hearing in September.

REVIEW OF EXTENDED AGENDA

Board Member Crim reminded the Board that their next meeting in August has been cancelled. He also indicated that he would not be present at the September 10th meeting.

Mr. Chave reported that the City Attorney has prepared a memorandum that is several pages long regarding the amateur radio antenna issue. This information would be provided to the Board prior to the September 10th public hearing, along with an updated draft of the proposed ordinance.

Board Member Dewhirst asked that the Board also have an opportunity to review the new draft Comprehensive Plan Map at the September 10th meeting.

PLANNING BOARD CHAIR COMMENTS

Board Member Crim did not provide any further comments during this portion of the agenda.

PLANNING BOARD MEMBER COMMENTS

Board Member Dewhirst referred to the letter that was provided by the City Attorney about six months ago suggesting that people need to put more effort into the plans and recommendations that are made rather than citing the actual decisions that are made. He said that letter has been turned into a newspaper article in one of the local weekly newspapers. He said that as he read the letter in that context, it occurred to him that perhaps the Planning Department could prepare a handout, using this same information, to give out to neighborhood and community groups. He felt the City Attorney had distilled a lot of good ideas in his letter. The Board and Mr. Chave all agreed that would be a good idea.

Board Member Crim referred to the comments made by Council Member Wilson at the last City Council Meeting regarding this same issue. Council Member Wilson provided some very interesting comments about the fact that people are so interested in decisions that directly impacts their property now. But they are not so interested in participating in the legislative process of creating the codes and guidelines. Board Member Crim said it is important for the Board to continue to encourage people to get involved in the issues at the legislative level.

THE MEETING WAS ADJOURNED AT 8:10 P.M.

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