

APPROVED AUGUST 13, 2008

**CITY OF EDMONDS  
PLANNING BOARD MINUTES**

**July 23, 2008**

Chair Guenther called the meeting of the Edmonds Planning Board to order at 7:03 p.m. in the Council Chambers, Public Safety Complex, 250 – 5<sup>th</sup> Avenue North.

**BOARD MEMBERS PRESENT**

Cary Guenther, Chair  
Michael Bowman, Vice Chair  
Judith Works  
Jim Young  
Don Henderson  
John Dewhirst  
Philip Lovell

**STAFF PRESENT**

Duane Bowman, Development Services Director  
Rob Chave, Planning Division Manager  
Mike Thies, Code Enforcement Officer  
Karin Noyes, Recorder

**BOARD MEMBERS ABSENT**

John Reed

**READING/APPROVAL OF MINUTES**

**BOARD MEMBER YOUNG MOVED THAT THE MINUTES OF JULY 9, 2008, BE APPROVED AS CORRECTED. BOARD MEMBER BOWMAN SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.**

**ANNOUNCEMENT OF AGENDA**

No changes were made to the agenda.

**AUDIENCE COMMENTS**

**Roger Hertrich, Edmonds**, reported on his attendance at the July 22<sup>nd</sup> City Council Meeting, at which they reviewed the proposed nuisance ordinance. He noted that the proposed ordinance was redrafted recently by the City Attorney, and extensive changes were made after the Planning Board reviewed the items. For example, provisions were added to regulate the types of uses that are allowed to occur in backyards, regardless of whether they are screened or not. However, the City Council discussed that it should not really matter what uses are located in a backyard, as long as they are screened to minimize their impact to adjacent property owners and the general public.

Mr. Hertrich referred to the rain collection tank that was installed by PCC as part of their redevelopment of the old Albertsons site. He noted that this tank was installed without the required permits from the City. PCC has been fined, and the issue is scheduled to go before the Architectural Design Board (ADB) for a review of their landscaping proposal. He noted that landscaping is a significant issue, especially when trees were removed to accommodate the tank.

**CONTINUED PUBLIC HEARING ON REVISIONS TO EDMONDS COMMUNITY DEVELOPMENT CODE (ECDC) CHAPTER 17 – PROPERTY PERFORMANCE STANDARDS (NOT INCLUDING 17.40) (FILE NUMBER AMD-07-6)**

Mr. Bowman introduced Mike Theis, Code Enforcement Officer, who was present to answer questions of the Board and public. Mr. Bowman recalled that the Board requested staff prepare a draft of the proposed ordinance that distinguishes between the language that is already part of the code and the new proposed language (Attachment 1). The Board also requested that staff provide a copy of the original proposal, which included both the nuisance standards and the performance standards (Attachment 2). He reminded the Board that, upon the recommendation of the City Attorney, the nuisance standards were later removed and forwarded to the City Council for review as part of Chapter 6.

Mr. Bowman advised that the Planning Board held a public hearing on the proposed performance standards on July 9<sup>th</sup>. There has been some public confusion that the nuisance standards would regulate recreational vehicles, which are actually being addressed by the proposed performance standards. Therefore, the Board agreed to continue their hearing until after the City Council's hearing regarding the nuisance standards on July 22<sup>nd</sup> so that all interested members of the public would have an opportunity to participate in the correct hearing.

Mr. Bowman reviewed each chapter of the proposed ordinance and specifically noted the following:

- **Chapter 17.60.010 – Proof of Compliance.** As proposed, it would be the burden of a property owner to demonstrate that he/she is in compliance with the ordinance.
- **Chapter 17.60.030.F – Standards.** The City's existing standards for particulate matter are old, and the City Attorney updated the language to bring it into compliance with the State requirements.
- **Chapter 17.60.030.H.2 – Open Storage of Lumber.** Mr. Hertrich previously commented that the ordinance should not require a property owner to construct a roadway for emergency access to the back of a property. However, this provision is actually intended to apply to lumber yards. It is important that these facilities maintain an emergency access road. It doesn't really refer to the storage of wood in the back yard of single-family residential properties.
- **Chapter 17.60.040 – Vehicles in Residential Zones.** The City has received a number of complaints regarding vehicles being parked on residential properties, particularly vehicles that are stored in yards. The complaints are primarily related to junk vehicles. The intent of the proposed code language is to establish standards for outdoor storage of vehicles.
- **Chapter 17.60.040.E.1 – Storage of Vehicles in the Front Yard.** The purpose of the proposed language is not to allow large recreational vehicles to cover up most of the exposure of the front of the house.

Mr. Bowman said the purpose of the hearing is to solicit additional public testimony. The Board would then have an opportunity to discuss the proposed language and provide additional direction to staff.

Board Member Young summarized that the purpose of the ordinance is to rewrite a portion of the code to make enforcement more clear and to make the regulation of nuisances that have a history of being brought to the attention of the Code Enforcement Officer more enforceable for the benefit of the community. Mr. Bowman clarified that the draft ordinance came out of a series of issues that have been raised to the Code Enforcement Officer regarding the way properties are used in the City. He reminded the Board that the nuisance standards were extrapolated out of the original draft and forwarded to the City Council for consideration. The remaining performance standards are identified in the proposed language before the Board for review. Mr. Bowman advised that the City receives a lot of complaints related to vehicles, and the proposed regulations are intended to be very clear and enforceable. It is important that residents and City staff have a clear understanding of what the standards are.

Board Member Lovell referred to Attachment 2 and inquired if it would be possible for staff to identify those items that were taken out of the original draft ordinance. Mr. Bowman said this would be a difficult task for the staff to accomplish. He

**APPROVED**

clarified that the proposed draft that is currently being considered is identified in the staff report as Attachment 1. Attachment 2 is not the draft the Planning Board is considering at this time. Board Member Reed requested the draft known as Attachment 2 for informational purposes.

**Harry Shelton, Edmonds**, said he has lived in his same house in Edmonds for the past 50 years. He pointed out that the proposed ordinance does not provide a definition of what is meant by the term “approved parking surface.” He noted that an approved parking surface could be a clean gravel surface that is maintained and free of weeds. It does not necessarily have to be paved. He said a lot of areas that are considered “approved parking spaces” are part of the road right-of-way. When this space is at least 15 feet wide, there should be no problem with an 8-foot wide recreational vehicle parking in the space. He said the City should not ask property owners to add pavement to the area that is considered street right-of-way.

Mr. Shelton said that he originally had a 3-foot wide ditch that ran along the front of his property. It was totally useless and difficult to maintain. Upon his request, the City agreed to allow him to use the space for parking. The City’s Public Works Department indicated that they would do the work if he would purchase the tiles. Once the tiles were installed by the City, Mr. Shelton said he covered the area with gravel to make the space sufficient for parking. He said it would not be right for the City to now say he cannot park his RV in this location.

**John Heighway, Edmonds**, referred to Chapter 17.60.030.A and suggested that “11:30 p.m.” should be changed to “10:00 p.m.” He also referred to Chapter 17.60.030.B and asked if the lighting provisions would apply to both commercial and residential properties. If so, he suggested the proposed language also address the maximum illumination allowed. He expressed concern that the proposed language does not include adequate definitions for the various terms used. He referred to Chapter 17.60.030.H and inquired if the term “open storage” is defined in the proposed language. He questioned if the provision would regulate the open storage of vehicles, as well as other materials. He asked if the required screening device could include both a fence and/or vegetation. He noted that vegetation often grows to a much greater height, resulting in a better screen. However, he suggested that more thought be put into this requirement, since fences and hedges located close to the street can end up blocking site distance for vehicles entering the roadway. He noted that the code requires that fences and hedges be lower near streets.

Next, Mr. Heighway referred to Chapter 17.60.040.C, which states that no more than two recreational vehicles would be allowed to park on a residential lot. He noted that the term “recreational vehicle” can include a number of items such as snowmobiles, motor cycles, boats, cars, trailers, etc. He said his neighbor currently has six recreational vehicles parked on his property, and it does not create a problem. He suggested the proposed language should include a clear definition for the term “recreational vehicle.”

Mr. Heighway referred to Chapter 17.60.040.E, which regulates how intact, appropriately licensed and operable vehicles may be parked or stored outside a structure. He suggested this provision would be difficult, if not impossible, for the City to enforce. He referred to the City’s maximum lot coverage requirements, and suggested that some property owners may not be able to increase their impervious surface enough to provide a storage space that meets the requirements of the ordinance. He suggested they allow property owners to create storage spaces by using permeable asphalt and other materials that allow soil to drain.

Mr. Heighway referenced Chapter 17.60.040.E.2.b, which would prohibit junk vehicles from being stored outside of an approved structure. It states that covering a junk vehicle with a blue tarp would not be considered acceptable. He said he currently uses a manufactured cover for his RV. Just because a person cannot see what is under the cover, doesn’t mean it is a junk vehicle. He suggested the provision prohibit the use of tarps but still allow manufactured covers to be used for licensed recreational vehicles. He referred to Chapter 17.60.040.J and pointed out that, as written, the provision would prohibit boats that are on trailers and campers that are on trucks from parking in a front yard, except on the driveway or an improved front yard parking surface. However, it would not prohibit a boat that is off the trailer or a camper that is off the truck from being stored in these locations.

Mr. Heighway summarized by suggesting the Board review the proposed ordinance and compare it with what they see happening on properties throughout the City. The ordinance should be reduced down to something that is easier for the public to digest, similar to what is currently being done with the nuisance ordinance.

**David Gavurnik, Edmonds,** recalled that at the last public hearing, a realtor was present to complain about situations that were considered “junk vehicles.” He said that as he drove around the City over the past few weeks, he found an advertisement for the sale of home that was listed for \$930,000. One of the amenities listed on the flyer was the availability of space to park an RV.

Mr. Gavurnik explained that the location where he stores his RV’s is seven feet below the grade of the street, and he doesn’t own enough property to install a six foot fence around the space. However, he has and would continue to use shrubs and other vegetation to screen the vehicles from view. He described various situations in his neighborhood where people have or are storing RV’s in their yards. He summarized that over the years things have changed and people have moved. He said that he has two boats, a large one and a small one. He said he purchased the large boat in Edmonds, and he spends a considerable amount of money within Edmonds to keep his recreational vehicles maintained. If he is not able to store the boat on his property, he may be forced to move it to Dagnars or somewhere else. That means he would likely spend more of his money in Everett instead of Edmonds.

Mr. Gavurnik submitted photographs to illustrate various situations in his neighborhood where RV’s are being stored. He noted there is a wide range of situations, and most people have put forth a lot of effort to screen the vehicles from view. He suggested that no one really wants to be obnoxious, and he doesn’t want the City saying he can no longer store his recreational vehicles on his property. Mr. Gavurnik referred to an article in a recent edition of *THE EDMONDS BEACON*, titled “Junk or Treasure? You Decide.” He agreed this is a tough value judgment the Board and City Council must make. He summarized that Edmonds is not a big brother city, and he doesn’t want it to become such. He noted that while blue tarps are obvious and easily catch a person’s eye, property owners also have the option of using gray or silver tarps that are easier to hide and do not draw as much attention. He concluded that there are ways to mitigate issues. He said he wants to be a good neighbor and still have his toys.

**Roger Hertrich, Edmonds,** suggested that people all over Edmonds would end up breaking the law if the draft ordinance is adopted as written. He said a number of people left the City Council meeting when they found out that RV’s would not be discussed, and he was disappointed that these individuals did not choose to come before the Planning Board to voice their concerns. He said that he recently traveled down 84<sup>th</sup> Avenue to identify the possible code violations that would occur if the proposed language is adopted. Nearly every property owner would be in violation of one provision or another, and this should tell the Board that the proposed language is overdone.

Mr. Hertrich said that while he can understand the public’s concern when large RV’s that are out of proportion with a neighborhood are stored in front yards. However, he questioned where people would store their trailers, motor homes, boats, snowmobiles, motorcycles, etc. These items are typically stored outside, and people have to use covers during the rainy winter months. He pointed out that RV’s come in many different sizes, and he suggested the proposed language would end up taking away property owner rights. He urged the Board to consider the need to protect private property owner rights. He expressed his belief that people should be able to store these vehicles on private property and use canopies to provide weather protection.

Mr. Hertrich referred to the provision that would limit the number of cars that could park on a property to no more than five. He noted that in small residential zones, this would require that at least some of the cars be parked on the street. However, large lots can accommodate more vehicles on the property. As long as these vehicles are screened, they should be allowed. He expressed his belief that parking numerous cars in front of a house doesn’t look junky; it looks busy. The City should not be allowed to tell a person how many cars can be parked on a property as long as the cars do not impact what is seen by the general public from the street. He reminded the Board that the City Council agreed that screening from view is the appropriate way to address these situations. While he agreed there are extraordinary situations the City should pursue, they should not make everyone a criminal just to address these few situations.

Mr. Hertrich referred to Attachment 2 and said he has a difficult time sorting through the changes that have been made to identify which items were moved to the nuisance ordinance and which ones remain in the performance standards. He suggested that before the Board makes a decision on the proposed ordinance, they need to have a clean copy of the exact language that is being considered. He said it is wrong to hold a public hearing on a confusing and unclear document.

Mr. Hertrich advised that a neighbor two houses down from him claimed that he had too many cars parked on his property, which he did not. In order to enforce the complaint, City staff peered through his fence to look at license plate numbers. He said he does not want City staff peering through his fence to see what is in his backyard. As long as the backyard is not exposed to the view of the general public, the City should not regulate what is stored there. Mr. Hertrich concluded by stating his belief that the proposed ordinance is unnecessary. He agreed with that issues such as smoke, light, and noise should be regulated by the City, but much of the remaining language in the ordinance is not necessary. He emphasized that property rights are important and the Board should not be responsible for making decisions that take away property rights.

**Finis Tupper, Edmonds**, said he has been following this issue for several months. He said it is interesting how the City staff has changed their reasoning for the code rewrite over the process. He recalled that, originally, the Assistant City Attorney indicated that he pulled together a bunch of different code provisions for the Board to consider. However, the current City Attorney has referred to the code rewrite as a laundry list. The City Attorney did a lot of work on the nuisance ordinance prior to presenting it to the City Council for review, and he did a good job of organizing the language and making it clearer.

Mr. Tupper expressed his belief that numerous property owners would be out of compliance with the performance standard provisions if they are adopted as proposed. He expressed concern that this could result in situations of selective enforcement since the City only enforces a violation if a complaint is issued. He said he invited the Mayor via email to explain the qualifications of the person responsible for enforcing code violations and what criteria that person would use to inspect a property. He did not receive a response back. He suggested the proposed language would violate both State and Federal statutes, particularly Section 7 Article 1, which protects privacy and property rights. The proposed ordinance is far too broad. While he is glad the Board is taking the time to consider the proposal, he hopes both the Board and the City Council would deny it.

**Beverly Shelton, Edmonds**, agreed with the comments provided by the previous speakers. She urged the Board not to over regulate private properties. She said she and her husband have lived in Edmonds for 50 years, and there have been a lot of changes during that time period. She said that none of the RV's parked in her neighborhood bothers her, but the vegetation that is allowed to take over private and public property does. She suggested that overgrown vegetation is spoiling the community more than RV's. She said she and her husband have parked a trailer in their driveway for more than 40 years, and no one has complained. She expressed concern that if the proposed ordinance is approved, someone in her neighborhood may decide to complain.

**Tom Fagnam, Edmonds**, said he purchased his current residence in 1990 when it was part of unincorporated Snohomish County. He said his front yard is 75 feet deep, and he purchased the property so he could park his RV's and other toys. He said he currently has five vehicles, a boat, and a camper parked in his yard. Rather than parking them all in the driveway or in the single-car garage, he could build a large structure. However, this would probably have more negative impact on surrounding properties. Instead, he parks his boat and truck in the driveway, and the other vehicles to the side. He said he tries to keep them at least 40 feet from the road, and he provides a canopy to cover his boat. He questioned if the proposed ordinance would require him to install a fence and gate to totally screen the vehicles from the roadway. He agreed with the comments made by previous speakers. He also agreed there needs to be a definition for "approved parking surface." He summarized that there are options and alternatives to pavement so that a surface can remain pervious.

Mr. Fagnam referred to Chapter 17.60.050.A, which would limit the length of time a person could stay in an RV parked on private property in any given year. He questioned how the City would enforce this provision. Would they count how many days throughout the year that someone stays in an RV. He suggested this provision would be impossible to enforce. Lastly, Mr. Fagnam inquired how many complaints the City would have to receive before they act. He explained that his neighbor called the City to complain that he was cleaning deer and leaving gut piles in his backyard. In fact, he said he hasn't been hunting since before he purchased his current home. Upon investigation by the Health Department, it was found that the problem of rats originated from a situation that was not even on his property.

THE PUBLIC PORTION OF THE HEARING WAS CLOSED.

**APPROVED**

Mr. Bowman responded to the following questions and concerns raised during by the public hearing:

- **Private Property Rights.** The City must balance the rights of one property owner against those of surrounding property owners. He explained that the City does have the right and responsibility to establish rules and regulations for the use of properties.
- **Nuisance Standards.** The City Attorney pulled all of the nuisance standards from the proposed ordinance. All of the provisions currently identified in the draft are related to performance standards. He noted that the original combined ordinance included numerous definitions, and these could be put back into the performance standard language.
- **Impervious Surface.** The City is moving in the direction of trying to reduce the amount of impervious surface allowed. The Board could discuss the types of surfacing materials that should be allowed, since many materials allow water to percolate through.
- **Screening.** The City Council discussed the issue of screening and found there is not one answer that addresses all of the different properties. For example, on a sloped lot, even a six-foot fence would not adequately screen the property. The City Council was leaning towards the approach of “If you can’t see it, does the City really want to regulate it?” The City Attorney and staff are in the process of refining the nuisance ordinance to move in that direction.
- **Code Violation Complaints.** It only takes a single complaint to generate a code enforcement action, and the City does code enforcement on a complaint basis only. They only have one Code Enforcement Officer to handle all the various situations, and he doesn’t seek out violations.
- **The Ordinance is Too Broad.** If the Code Enforcement Officer determines a violation exists, it would be the City’s responsibility to demonstrate to the Hearing Examiner that a violation has, in fact, occurred. If the language is too broad or vague, this could be a problem for the City. It is important that the draft language contain good definitions.
- **Tarps.** The Board must decide whether or not the City should allow property owners to cover vehicles with tarps. He agreed that there are other options for covering RV’s, and the Board should discuss this standard further.
- **Noise.** The proposed language already exists in the City’s current code. Before any changes are made, staff would have to make sure the changes would not conflict with the State’s noise requirements.
- **Lighting.** It would be appropriate to identify an illumination standard in the lighting provision, and staff could research the issue to come up with a measurable standard.
- **Open Storage.** This section does not pertain to operable vehicles. It is referring to storage of other items and junk vehicles.
- **Definition of Recreational Vehicles.** A definition for “Recreational Vehicle” is contained in the proposed nuisance ordinance. He noted that this definition was contained in the original ordinance and could be added back into the performance standards.
- **Lot Coverage.** The zoning code deals with building lot coverage and structures, but not parking areas. The trigger for parking areas would actually be the provisions related to impervious surfaces. He noted that gravel is not considered a pervious surface under the City’s drainage requirements. If a gravel area is greater than 2,000 square feet, an approved drainage system would be required. He agreed the Board should consider other alternatives for constructing pervious parking areas.

Board Member Henderson recalled that at the last meeting he suggested that property owners should be allowed to have parking strips parallel to the street. The proposed language in Chapter 17.60.040.E.1 would prohibit this and only allow parking strips that are perpendicular to the driveway. He pointed out that parking strips parallel to the street are a common

**APPROVED**

occurrence throughout the City. He suggested that this provision be removed from the proposed ordinance. He also expressed concern that this provision would limit a front yard parking surface to no more than 50 percent of the minimum lot width. He said he knows of four people who have circular driveways that enter on one side the property and exit at the other. Three of the four cases he measured would exceed the 50% limitation. He expressed his belief that these circular driveways are attractive, and he does not feel the 50% limitation should be part of the ordinance.

Board Member Lovell reviewed that there are three possibilities for parking vehicles parallel to a public right-of-way: off to the side of the roadway and in front of the property; on the property and parallel to the right-of-way, but within the setback area; and parallel to the roadway, but further in. Mr. Bowman said the issue is whether or not the Board wants to recommend this be allowed. He questioned if the Board wants to allow RV's to be parked across the width of a lot.

Board Member Works inquired if staff has collected information from other jurisdictions about how they regulate RV parking. If so, she questioned if the proposed ordinance is similar to how the matter is handled elsewhere. Mr. Theis answered that most of the proposed provisions were gleaned from other cities, and regulating RV parking is more common in communities on the east side. Mr. Bowman agreed to provide the Board with copies of performance standards from other jurisdictions that are similar to Edmonds. He also agreed to research the issue of "approved parking spaces," as well as the possibility of including illumination standards in the proposed ordinance. Staff could also attempt to work in standards to address light pollution in the sky, as discussed earlier by the Board.

Board Member Lovell recalled there were numerous public comments about the use of tarps. He said he read through the proposed ordinance three times, and only found one reference to tarps, and this reference had to do with junk vehicles, not RV's. Mr. Bowman referred to Chapter 17.60.040.E.2.b, which refers to junk vehicles only. Board Member Lovell pointed out that this provision would not prohibit a property owner from using a tarp to cover an RV. Board Member Henderson clarified that there is no need to prohibit tarps from covering junk vehicles since the proposed ordinance would require that junk vehicles be stored inside an enclosed structure.

Board Member Dewhirst suggested the entire issue related to RV's and junk vehicles boils down to two issues: placement and screening from the public rights-of-way and adjacent properties. He said that from his vantage point after listening to the public testimony, it seems the biggest problem is when vehicles, particularly large RV's, are parked in the setback areas. He said he is not so concerned about the size of the property because if an RV is located in a setback it could impact adjacent neighbors regardless of the size of the property. He suggested that RV's be prohibited within the setback areas but allowed anywhere else on a property. He recalled that staff agreed to check with the Fire Department regarding the issue of public safety when RV's are parked within setback areas. Mr. Bowman said he has not been able to gather this information yet.

Board Member Dewhirst said that if the City Council is drifting in the direction of addressing the nuisance ordinance via screening standards, perhaps it would be appropriate for the Board to go that same direction with the performance standards. Mr. Bowman said the City Council is considering the approach of "If you can't see it, why regulate it?" Board Member Dewhirst recalled that the City has taken this same approach on a number of other items. He felt this would be an appropriate way to go, given the City's existing resources and the heat that can be generated by neighbor-to-neighbor kinds of arguments. He said it is important to keep in mind that about 95% of the people in Edmonds are going to obey the provisions to the best of their ability. There is only a small minority of people who will not. He suggested the laws should be written for the average, rational person and then the City can go after those who do not comply. Mr. Bowman said that if the Board is inclined to go in that direction, staff could redraft the provisions. The only difficulty is that, depending on the topography of a lot and the height of a home, it may be difficult to determine if a vehicle is adequately screened or not.

Board Member Young complimented the staff on the work they have done so far in their attempt to strike a balance. He recalled that at the last hearing, people displayed pictures of how junk RV's were causing problems, and they urged the City to do something to resolve these situations. However, tonight's testimony was just the opposite. He said that while he believes it is important to give staff appropriate tools to do their job, he is not sure it is within the Board's purview to decide what limits should be. The Board's responsibility is to hold a public hearing and forward the feedback they receive to the City Council. He said he would need policy direction from the City Council before he could make a recommendation on the proposed language. He said it would also be important to obtain feedback from the Fire Department regarding the proposal.

Board Member Young recommended the Board forward the language to the City Council without a recommendation and ask them to provide additional policy direction.

Chair Guenther agreed that the Board should move the proposed language to the City Council as soon as possible. However, he suggested that staff incorporate the Board's comments into one last draft before the document is forwarded to the City Council. Mr. Bowman suggested staff provide the Board with information about how other jurisdictions regulate RV's. He reminded the Board that their role is to be a recommending body to the City Council. The Board is made up of City residents with different view points. They have the ability to weigh the different view points and provide feedback to the City Council, who would be responsible for making the final decision.

Mr. Bowman cautioned that when considering the issue of private property rights, the Board must balance both sides of the issue. While the vast majority of citizens are good neighbors and take care of their properties, there is a minority of property owners who do not. The Code Enforcement Officer must have the necessary tools to deal with these situations. He asked that the Board allow staff one more opportunity to redraft the ordinance based on the public testimony and Board comments. The Board could review the document one more time before forwarding it to the City Council.

Board Member Young expressed his belief that the proposed ordinance should represent the minimum control necessary to solve the problems that precipitated the changes. In order to do this, staff must go back and identify exactly what those problems are and how the proposed ordinance would help staff resolve them. The remainder of the Board agreed that this approach would be appropriate.

Board Member Henderson expressed his opinion that the City should not regulate vehicles or parking areas except if they create a road hazard.

Mr. Bowman summarized Board Member Young's recommendation that staff review the problems that brought the issue forward, and then prepare a new draft that identifies the minimum standards necessary to deal with the issues. Chair Guenther cautioned that the new language should attempt to strike a balance between the community's expectations and the rights of private property owners. Staff agreed to present the new draft language to the Board for review. At that time, the Board could decide how they want to proceed with the matter.

THE PUBLIC HEARING WAS CLOSED

THE BOARD TOOK A BREAK AT 8:45 P.M. THEY RECONVENED THE MEETING AT 8:56 P.M.

**PUBLIC HEARING ON AMENDMENT TO CHAPTER 21.55.007 OF THE EDMONDS COMMUNITY DEVELOPMENT CODE (ECDC) CLARIFYING THE DEFINITION OF LOCAL PUBLIC FACILITIES TO ADDRESS THE SITING OF PRIVATE AND/OR FOR PROFIT COMMUNITY FACILITIES IN RS ZONES (FILE NUMBER AMD-08-3)**

Mr. Bowman recalled that in 2001, the City Council adopted Ordinance 3353, which established community facility zoning regulations, including a definition of local public facilities. On February 5, 2008, the City Council approved interim zoning Ordinance 3679 amending the definition of local public facilities. He explained that this action was predicated on the staff interpretation that was issued on January 15, 2008 regarding whether or not private recreational facilities are local public facilities. The interpretation concluded that the term "local public facility" includes private recreational facilities that are open to the general public for membership, subject to the grant of a conditional use permit. He noted that the interpretation was not appealed.

Mr. Bowman reminded the Board that they discussed this topic at their April 9<sup>th</sup> and May 14<sup>th</sup> meetings. Staff was directed to schedule a public hearing on July 23<sup>rd</sup>, utilizing the language from the original interim zoning ordinance. He referred the Board to Interim Ordinance 3679, which was included in their packets. He advised that if the Board agrees with the interim ordinance, staff would prepare a draft ordinance for the City Council that would permanently adopt the interim ordinance.

**APPROVED**

**Roger Hertrich, Edmonds**, said he spoke before the City Council when they were considering the interim ordinance. At that time, he indicated that he disagreed with Mr. Bowman's code interpretation. He said he does not believe the interim ordinance was ever necessary, and neither is the proposed ordinance. He pointed out that while the Klahaya Swim Club is open to the public, a judgment is made by the membership about whether or not a person can join. Therefore, it should not be considered a public facility. Mr. Hertrich summarized that the proposed ordinance is over done. Because of the waiting list and judgment on membership the pool facility could certainly not be considered a public facility that is open to the public.

**Finis Tupper, Edmonds**, recalled that the Klahaya Swim Club property was annexed into the City years ago, and it has been located on the property for a long time. He suggested that if the City wants to define the swim club as a recreational type facility, they should provide some performance standards for parking, etc. He reminded the Board of the problems that were created when the City purchased the old Woodway School site and eliminated the parking space that served the swim club previously. People are now parking on the roadway. He suggested it would be appropriate to establish standards and a clear definition. He cautioned that the City's provisions must make it clear that private gyms and other similar types of recreational facilities are not allowed in single-family residential zones.

Mr. Tupper expressed his belief that the zoning map should identify park property that is located in single-family residential zones. The map should also identify situations where the City has an interlocal agreement with the school district to use recreational property that is located in single-family residential zones. It is important that the public have a clear understanding of where these situations exist. He suggested a mistake was made when the City decided to rezone all of these properties back to their underlying zoning rather than showing them as public use zones. If the proposed ordinance is approved, they should consider doing a rezone of the swim club property to "public," as well. This would require the swim club to meet the same parking requirements that are required for schools.

THE PUBLIC PORTION OF THE HEARING WAS CLOSED.

Mr. Bowman said that while he understands Mr. Hertrich's position on the matter, he disagrees. The City Council concurred with staff that private recreational facilities are really part of local public facilities; hence the direction they took in enacting the interim zoning ordinance. He explained that the interim ordinance would close the loop hole in the current code. In the particular instance of the Klahaya Swim Club, the property was annexed into the City and part of the facility was built under the County's requirements. He reminded the Board of the City's current project of constructing a park on the eastern half of the Old Woodway Elementary School site, and there would be some parking available as part of this project. He noted that the swim club holds two or three swim meets each year, and he agreed there is a need for overflow parking space during these times. He said the swim club is working with the school district to utilize parking that is available on the Old Woodway Elementary School site.

Regarding Mr. Tupper's recommendation to rezone the property, Mr. Bowman emphasized that the Board is not considering a rezone application at this time. The issue before the Board is to decide whether or not private recreational facilities should be included in the definition of local public facilities. Staff recommends they not be since the clear intent is to include only public owned facilities.

Board Member Dewhirst pointed out that if the proposed ordinance is adopted, no other swim clubs would be allowed to locate in single-family residential zones. He questioned where these facilities could be sited. Mr. Bowman said they would be required to locate in commercial zones. The existing swim club would become a non-conforming use. The club has filed a conditional use permit application to allow them to add lanes to the pool, improve the parking areas, and do other improvements. The club's application is vested to the language that existed before the interim ordinance was adopted. However, from this point on, they would be allowed to continue the use, but they would not be allowed to expand the use further.

Board Member Young asked about the citywide implications associated with the proposed ordinance. He suggested that the Board is once again in a situation where the need of a particular property owner is driving the City's policy decisions. He said he doesn't have a problem with the swim club not being allowed to add new lanes. If the facility is a nonconforming use, it should not be allowed to expand.

**APPROVED**

Mr. Bowman explained that the proposed ordinance would correct the loopholes in the existing regulation. If private recreational facilities are considered local public facilities, then gyms and other uses would be allowed to locate in single-family zones. By adopting the interim ordinance, the City Council provided policy direction that public private recreational facilities should not be considered local public facilities. The issue is not really about the swim club, but the issue was raised a result of their application. Board Member Young suggested the definition of a local public facility should include only those facilities that are sponsored by a local government. A private entity should not be allowed to locate a public facility in a residential zone just because they provide a good service.

THE PUBLIC HEARING WAS CLOSED.

**BOARD MEMBER YOUNG MOVED THAT THE BOARD RECOMMEND THE CITY COUNCIL PERMANENTLY ADOPT INTERIM ORDINANCE 3679, WHICH CLARIFIES THE DEFINITION OF LOCAL PUBLIC FACILITEIS TO ADDRESS THE SITING OF PRIVATE AND/OR PROFIT COMMUNITY FACILITIES IN RS ZONES (FILE NUMBER AMD-08-3). BOARD MEMBER WORKS SECONDED THE MOTION. THE MOTION CARRIED 6-1, WITH BOARD MEMBER DEWHIRST VOTING IN OPPOSITION.**

**PUBLIC HEARING REGARDING AN AMENDMENT TO TITLE 21 OF THE EDMONDS COMMUNITY DEVELOPMENT CODE (ECDC) ADDRESSING RETAIL COLLECTION TANKS IN SETBACK AREAS BY AMENDING THE DEFINITION OF STREET SETBACK AND ADDING A NEW DEFINITION OF RAINWATER COLLECTION TANK (FILE NUMBER AMD-08-4)**

Mr. Chave reminded the Board that the City Council adopted an interim zoning ordinance (Ordinance 3682), which permits rainwater collection tanks within setbacks under specified conditions. He explained that under the interim ordinance, underground tanks are permitted in any setback while above-ground tanks are only permitted in commercial street setbacks. An education component must be part of any above-ground facility. He noted that the interim zoning ordinance amended the development code on a short-term basis, which enables the Board to examine the issue and recommend a permanent code provision.

Mr. Chave recalled that the ordinance was highlighted in a proposal from a specific proponent, PCC Natural Markets, who was in the process of redeveloping the Albertson's site. They ran into difficulty trying to accomplish LEED Status when remodeling a substantially developed site. He emphasized that the City Council has a record of supporting LEED developments and other measures to address climate change, etc., and that is why they approved the interim ordinance. He explained that, as with all interim ordinances, the Planning Board needs to hold a public hearing and make a recommendation on whether the interim ordinance should be made permanent before it expires after six months.

Mr. Chave referred to the two options that were identified in the staff report and described each one as follows:

- **Option 1.** Rainwater collection tanks could be allowed as a staff-approved conditional use. In this way, if the tank is not used for the intended purpose or if a subsequent owner discontinues its use, the City could require its removal from the setback area. The conditional use criteria could also be a little more specific in its requirement that the tank be landscaped to "fit in" with the setback area. Either the landscaping should be used to screen the tank or the tank should be painted or designed to be compatible with the building while providing decorative landscaping that would help soften the overall effect. The education features associated with the tank should also be emphasized so the aspect is obvious to even casual passersby.
- **Option 2.** This option would limit the above-ground setback location to remodels of existing sites where existing buildings are being retained in the redevelopment. This would tie the location in the setback more directly to a site need. If a property is already developed, it may be impossible or difficult to relocate a tank anywhere but within the setback, and Option 2 would be a more narrow application of the concept. It would also remove the incentive for a developer to provide a rainwater collection tank.

**APPROVED**

Chair Guenther referred to an article in a recent edition of *THE SEATTLE POST INTELLIGENCER* regarding rainwater collection systems. The article stated that rainwater is a resource of the State. However, it is difficult to regulate how much water is collected using rain barrels on private property. He asked how the proposed ordinance would impact the idea that water is a State resource. Mr. Chave said the State is struggling to address this issue. He referred to a policy statement issued by the Department of Ecology, which summarizes some of their issues. Right now it is awkward permitting these facilities through the State because of water right issues. However, the PCC's case is different because the rainwater coming down on the site is not going anywhere but Puget Sound. Again he noted that the State would have to work out issues related to water rights via the legislature.

**John Heighway, Edmonds**, said that while jumping on the "green" bandwagon is the popular thing to do, there are some things in the proposed ordinance that need to be addressed. For example, there must be performance standards, particularly if the facility is located in the setback or right-of-way. The City should have more control over the tank. He expressed his belief that PCC could have put a cistern on the ground rather than in the air. In addition, the proposed language should indicate that water tanks are recognized in the International Building Code, and they are required to build to the American Waterworks International Standard. This standard might address concerns that are not addressed by the City's permitting process. Since the tanks would be allowed to locate within a setback area, Mr. Heighway said he would also like the language to include a requirement for a fire connection hookup to the systems so they can provide a public benefit.

Mr. Heighway questioned who would be responsible for maintaining the tank. He also questioned what the tanks would be made of, and how the City would ensure they continue to perform adequately. He suggested the language include performance standards to address the appearance of the tanks. He noted that the tanks would likely have signs located on them to advertise the business they are intended to serve. He suggested that only public education information should be allowed on the tanks, and no advertisements.

Mr. Heighway pointed out that if water is collected from the roof of a structure, there may be some issues about the quality and condition of the water. He suggested the City should establish some guidelines for how the water would be treated and reused. Any water leaving the tank should be in a potable condition.

Mr. Heighway advised that his property has a 10-foot setback, and he has two rain barrels to collect up to 250 gallons of water from his roof. He suggested the proposed language should address rainwater collection tanks in single-family residential neighborhoods, as well. It would be appropriate to allow property owners to place tanks within the setback areas to collect up to 250 gallons of water.

**Finis Tupper, Edmonds**, referred to RCW 43.27A.020, which defines water resources as "all water above, upon, or beneath the surface of the earth, located within the State." He noted that, by definition, rainwater would be legally considered a resource of the State. It further states that property owners cannot capture, divert or reuse the water for private use because the water doesn't belong to the property owner. It is a public resource. He noted that Mr. Chave has offered no proof that the water running off a roof would not go to someone else's water right. He advised that Olympic View is the water provider for the Westgate area, and they purchased the old Woodway system. A lot of this water originates at Deer Creek and comes out from an aquifer that was created in the Westgate area. He summarized that there are water rights.

Mr. Tupper emphasized that the Planning Department staff is currently reviewing a permit application for the existing cistern that was installed on the PCC property, but no permit has been issued at this time. Although staff has indicated that a property owner would have to follow all Federal, State and local requirements, it is important to note that the Department of Ecology has not issued a permit for the cistern, which is required any time a property owner wants to capture water and reuse it for a private benefit.

Mr. Tupper referred to the "green" elements that were included in the construction of PCC's store in Redmond in order to meet the LEED requirements. He expressed his belief that the interim ordinance was a sham. The situation was not an emergency. It was a developer coming to the City to propose something that only allowed them to obtain 12 LEED points. It would have been possible for the developer to get a platinum rating without the cistern. He summarized that "the proof is in the pudding." All a person has to do is drive by the existing cistern and trash enclosure that were recently constructed by PCC to see the project is a mess. He noted they have removed three significant trees that were part of an ADB approved

landscape plan. He expressed concern that while this issue was discussed at length at another City Council meeting, the minutes from that meeting were not included as part of the Board's packet. At that City Council Meeting, he suggested that trees are more important than a rainwater tank. He invited the Board to visit the PCC site and note how important the trees are to the area. He concluded by stating that the tank does not contribute to the aesthetic appearance of Edmonds, and it is not an important element in order for the developer to obtain a platinum LEED rating.

**Roger Hertrich, Edmonds**, suggested that when the concept of allowing rainwater collection tanks was first brought before the City Council by one of their "green" Council Members, the City Council was overwhelmed with the idea of a platinum LEED rating. They didn't really realize what they were getting into when they created the interim ordinance to allow these uses to occur. They didn't have time to take the issue to the Planning Board for a recommendation. He noted that at their July 22<sup>nd</sup> meeting, the City Council discussed the possibility of approving another interim ordinance, and he reminded them of the rainwater collection tank ordinance. Some expressed concern about new interim ordinances because they recognized they made a mistake.

Mr. Hertrich emphasized that PCC's current cistern was created without a permit from the City. PCC started construction by removing all of the foliage from around the building and the City didn't know about this work until it was mentioned to them by a citizen. The rainwater collection tank doesn't leave much room for additional landscaping, which is an important element, particularly in setback areas that are closer to the public rights-of-way. He expressed concern that the staff makes decisions on a number of items that never come before the ADB for review. If the City wants to allow rainwater collection tanks, they should require a conditional use permit so they have the ability to require a property owner to remove the tank if it is no longer used. He recommended that, in the future, no rainwater collection tanks be allowed in the setback areas. He summarized his belief that staff's proposed Option 2 would be more appropriate than Option 1. He said he was not concerned about removing the incentive. If a property owner is really interested in obtaining a platinum LEED rating, they will do so without an incentive from the City.

Mr. Hertrich referred to the Planning Board minutes of April 9, 2008, in which the Board discussed the need for the tanks to blend in with the existing landscaping on the site. It was also discussed that PCC's project was originally submitted with no drawings for the proposed tank. The tank was merely an idea at the time. He expressed his belief that a conditional use permit should be required for these uses. He noted that, oftentimes, a remodel project is not required to obtain ADB review because there is not enough new construction to trigger the requirement. He suggested that the ordinance should require a standard hearing before the Planning Board to allow the public to offer comments about the proposal. He further suggested that if the City Council Members had a chance to pull their vote, a number of them would do so, particularly given that the developer removed trees and developed the tank without obtaining a permit. He also recommended the City do something about the garbage collection boxes that are located in the setback areas next to the sidewalk.

THE PUBLIC TESTIMONY PORTION OF THE HEARING WAS CLOSED.

Mr. Chave clarified that, as proposed, a building permit would be required for rainwater collection tanks. In addition, there are limitations as to what the collected water could be used for, such as flushing toilets, watering plants, etc. A property owner cannot use it for drinking water, etc. He emphasized that these standards are enforced by the Washington State Department of Health, so they do not need to be included in the proposed ordinance as performance standards.

Mr. Chave recalled there was some discussion by Mr. Heighway about including language to address small structures in residential setbacks. He suggested that this issue is more complicated than the Board is prepared to deal with at this time.

Mr. Chave explained that because PCC has filed a building permit application, their project is vested under the interim ordinance. Therefore, the permanent ordinance would only apply to future applications. He noted that PCC has submitted a landscape plan that removed a total of 13 trees from the site, but it would plant 27 new trees. Overall, there should be a fairly substantial upgrade.

Board Member Lovell referred to staff's Option 2, which would limit above-ground tanks within the setback areas to remodel projects only. Underground tanks would still be allowed in the setbacks. Mr. Chave said he doesn't know all the facts about what is and is not feasible, and suggested it would likely depend on the location of the existing building, how it

APPROVED

drains, etc. Board Member Lovell pointed out that the current code already allows underground tanks in the setback areas. Mr. Chave clarified that the interim ordinance would allow underground tanks in the setback areas, but the existing code language would not allow structures to be located in the setback areas, except in the BC zones because the tanks would be considered structures.

Board Member Bowman voiced his opinion that the tank that was recently installed on the PCC's property is unsightly. Mr. Chave pointed out that the project has not been completed at this point, and it is likely the end result would have a more acceptable appearance.

Board Member Bowman said he would prefer the second option, but he had concerns about allowing above ground tanks to be located in the setback areas. He also expressed concern that perhaps the tanks would result in a net "green" loss if electricity is required to pump the water that is collected in the cistern. He suggested more study should be done before the City decides to allow the use within setback areas.

Board Member Young proposed that the Board consider the option of recommending that the City Council allow the interim ordinance to lapse. The tank that PCC was allowed to install would likely be a one-shot deal. He said that while he supports activities that improve the environment, he is concerned that the Board is being asked to make a recommendation with insufficient information. If the public testimony is even remotely true, the PCC's tank would result in no net gain to the environment except a building getting Platinum LEED Certification. While this is something to be proud of, there was no net gain to the environment if trees have to be cut down to put in a storage tank. Again, he questioned whether or not the Board knows enough about the concept to promote its use. Rather than implementing one trend after another, Board Member Young suggested it would be more appropriate for the Board to consider these concepts as they holistically review opportunities for implementing sustainability elements into the Comprehensive Plan and Development Code.

Board Member Dewhirst said he would not support a recommendation to adopt the proposed ordinance for the following reasons:

- Ten percent of a setback area can be a huge amount of space, particularly on large or long lots.
- As per the ordinance, there is no height limit for accessory structures in any commercial zones. Only in residential zones is a 15-foot height limit on accessory buildings applied.
- The rainwater collection tanks could become another opportunity for property owners to have advertisements and signs and graphics, etc.
- The proposed ordinance does not require the tanks to blend into the landscaping to minimize the visual impacts.

Board Member Dewhirst said that while he believes there is some merit to allowing underground tanks within the setback areas in commercial zones, the zoning ordinances does not necessarily need to be changed to allow this type of use to occur. He summarized that if the Board chooses to move the ordinance forward to the City Council with a recommendation of approval, they must rewrite some of the language. He agreed with Board Member Young that these "one shot love affairs" represent interesting backdoor policy for the City of Edmonds. He said he applauds PCC's attempt to obtain LEED certification, but as a public policy, he would not be in favor of the proposed ordinance. The concept should be more broadly addressed as part of a much larger picture.

Board Member Works agreed with Board Members Dewhirst and Young that it would be premature for the Board to recommend adoption of the proposed ordinance at this point. Rather than taking separate action on this one sustainable element, it would be more appropriate to consider it as part of their broader effort to implement sustainable elements into the Comprehensive Plan and Development Code. She suggested that perhaps they could learn something from the structure that was erected on the PCC property that would help them make a more informed decision in the future. She expressed concern that, oftentimes, environmental elements conflict with each other. Therefore, it is difficult to address each concept in a piecemeal fashion.

Chair Guenther explained that the purpose of storing water is to reduce the demand on potable water systems. There is no need to use potable water to flush toilets and water landscaping, etc., and that is why a developer can obtain LEED points for installing a rainwater collection system. Mr. Chave added that reusing stormwater also means the water doesn't have to be

treated by the City's stormwater system. Board Member Lovell explained that the collected water is circulated through a separate piping system. Mr. Chave noted that the collected water is carefully regulated by the Health Department.

Chair Guenther advised that if the City Council were to allow the interim ordinance to lapse, they could always decide to revisit the issue at a later date as part of their discussion on implementing green elements into the Comprehensive Plan and Development Code.

Board Member Dewhirst agreed that it would be appropriate to recommend the City Council let the interim ordinance lapse. However, in the event the City Council decides to adopt the permanent ordinance, it might behoove the Board to provide additional direction. Mr. Chave pointed out that Chair Guenther would prepare a transmittal memorandum to accompany the Board's recommendation. The transmittal memorandum could outline the Board's discussion and concerns.

Board Member Henderson agreed the concept needs to be considered as part of a larger discussion on environmental sustainability for Edmonds. It is better to approach it as a comprehensive review of the Comprehensive Plan and Development Code rather than piecemeal changes. Board Member Bowman agreed but cautioned that it is not likely the City would be able to implement all the "green" concepts at one time. On the other hand, Board Member Young cautioned that the City should not jump on the bandwagon of implementing sustainable elements without considering the tradeoffs.

Chair Guenther reminded the Board that Mayor Haakenson is encouraging the City to add "green" elements to the code as they come up. Mr. Chave agreed and pointed out that they need to strategically figure out what to address and when. They might never have perfect information to base all of their decisions upon. Board Member Bowman agreed and added that technology changes on a regular basis. Mr. Chave said the City would eventually have to figure out which elements they are willing to experiment with.

Board Member Dewhirst explained that aesthetics is large part of the community's expectations. If the sustainable effort starts producing a number of unsightly projects, the public might begin to perceive the concept of sustainability as negative. This could impact the City's future efforts to implement sustainable elements.

Mr. Chave explained that PCC is meeting with the ADB to discuss how to work the landscaping to make the project more aesthetic. He suggested the Board report to the City Council that they would rather take the matter up as a larger discussion of the sustainability. This would allow them to wait and see how the PCC project goes before considering a permanent ordinance to implement the concept. The end result should be apparent before the interim ordinance expires.

Mr. Chave advised that water recycling, in general, is universally pushed for because it achieves several things at once. First it avoids the need to use potable water to water landscaping, flush toilets, etc. Second, it reduces the amount of water that goes into the stormwater system for treatment. He noted that if local climate change is going to continue to occur, there could be many wetter winters in the future. If that is true, some of the existing stormwater systems could be undersized. Recapturing water in other ways to keep it out of the stormwater system may have a very positive public impact.

Mr. Chave agreed it would be appropriate for the City to postpone adoption of a permanent ordinance to allow time for them to observe how the PCC facility works. However, he cautioned against waiting for definitive signs of success because they may not be apparent for many years. He suggested that PCC would likely be willing to report on how their system is working and what public benefit it provides. Chair Guenther pointed out that PCC would be required by LEED to submit measurements showing that the system is actually working.

**BOARD MEMBER DEWHIRST MOVED TO TABLE THE BOARD'S RECOMMENDATION ON THE PROPOSED ORDINANCE RELATED TO RAINFALL COLLECTION TANKS TO THEIR SEPTEMBER 10, 2008 MEETING. BOARD MEMBER YOUNG SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.**

**WORK SESSION ON PROPOSED COMPREHENSIVE PLAN AMENDMENTS ADDRESSING SUSTAINABILITY AND CLIMATE CHANGE.**

**APPROVED**

Due to the lateness of the hour, the work session was postponed until August 13, 2008.

**REVIEW OF EXTENDED AGENDA**

Chair Guenther reviewed that the August 13<sup>th</sup> agenda would include a work session on the propose Comprehensive Plan amendments addressing sustainability and climate changes. It would also include a work session on ground floor issues in the BD1 zone. Mr. Chave said the ground floor issue came up when the owner of property at 555 Main Street began considering redevelopment options. The current code requires a 15-foot high ground floor in the BD1 zone. Upon the request of the property owner, the City Council has asked the Board to review this requirement.

**PLANNING BOARD CHAIR COMMENTS**

Chair Guenther did not provide any comments during this portion of the meeting.

**PLANNING BOARD MEMBER COMMENTS**

None of the Board Members provided comments during this portion of the meeting.

**ADJOURNMENT**

The Board meeting was adjourned at 10:12 p.m.

**APPROVED**