

**APPROVED MARCH 10<sup>th</sup>**

**CITY OF EDMONDS  
PLANNING BOARD MINUTES**

**February 24, 2010**

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Vice Chair Lovell called the meeting of the Edmonds Planning Board to order at 7:00 p.m. in the Council Chambers, Public Safety Complex, 250 – 5<sup>th</sup> Avenue North.

**BOARD MEMBERS PRESENT**

Philip Lovell, Vice Chair  
John Reed  
Valerie Stewart  
Todd Cloutier  
Kristiana Johnson

**STAFF PRESENT**

Rob Chave, Planning Division Manager  
Kiernan Lien, Associated Planner  
Gina Coccia, Associated Planner  
Bio Park, City Attorney  
Karin Noyes, Recorder

**BOARD MEMBERS ABSENT**

Michael Bowman, Chair  
Kevin Clarke  
Cary Guenther

**READING/APPROVAL OF MINUTES**

**BOARD MEMBER REED MOVED THAT THE MINUTES OF FEBRUARY 10, 2010 BE APPROVED AS AMENDED. BOARD MEMBER JOHNSON SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.**

**ANNOUNCEMENT OF AGENDA**

No changes were made to the agenda.

**AUDIENCE COMMENTS**

**Lora Petso, Edmonds**, expressed her belief that the City cannot afford less SEPA review. She recommended the Board not modify the thresholds in any way that would reduce SEPA. Doing so would be a death blow to the City's efforts related to sustainability. She referred to the SEPA Checklist, which includes questions related to sustainability that should be asked about any development that includes five or more buildings. Allowing a 20-unit condominium to be constructed without asking these questions would be terrifying.

Ms. Petso asked that she be added as a party of record to the proposed SEPA amendments so that she can receive notification of any continued meeting regarding the matter. She expressed her belief that the staff's proposal contradicts the City's newly adopted Community Sustainability element, particularly Items A, B, E.2, E.4, E.5 and F. She noted that SEPA changes are supposed to be supported by local conditions, plans and regulations, and Edmonds' plans call for more regulation not less. She observed that undeveloped properties in Edmonds are typically environmentally significant in one or more ways or they would have already been fully developed and utilized. If the Board recommends approval of the proposed changes, she asked them to please make sure the designations in the table match what is on the map in the Comprehensive Plan. Board Member Reed clarified that Ms. Petso referenced the Comprehensive Plan Map rather than the Zoning Map. He noted that

the designations are consistent with the Zoning Map. He further noted that Table 1 on Page 3 outlines the proposed changes to the flexible threshold standards by zone.

Ms. Petso said that as she reviewed the proposed amendments, she became particularly concerned about the idea of allowing development of up to 20 units on the Harbor Square and Safeway sites without requiring SEPA review, nor would SEPA be required for a large parking lot to be constructed near the ferry terminal. The Port's property would be completely exempt from the SEPA requirement. She noted there are significant drainage issues in that area and removing the SEPA review requirement would result in undesirable situations. She summarized that, as currently proposed, no SEPA review would be required for developments of less than 20 units on 212<sup>th</sup> Street between Highway 99 and the High School, either.

Ms. Petso referred to **Page 29 of the proposed amendments**, which makes references to the City beginning to lay the ground work for addressing climate changes through SEPA. She expressed concern that if the SEPA process is eliminated, this goal would no longer be possible. She suggested no changes be made to the thresholds.

Board Member Reed requested staff provide a map showing where the exception would be applied for developments of 20 units or less. He suggested this would be helpful in clarifying exactly what is being proposed.

**Alvin Rutledge, Edmonds**, said he attended the last City Council Meeting at which Board Member Clarke presented the Planning Board's recommendation for a name for the new park at 162<sup>nd</sup> Street Southwest and 75<sup>th</sup> Place West. He said the City Council accepted the Board's recommendation with one addition. They agreed it would be appropriate to provide a plaque listing the names of all the individuals who were nominated for the park name, as well as former City Council Member Peggy Olsen. Mr. Rutledge referred to Hickman Park, which was just recently named by the City. He suggested the City install a plaque at this park, as well, to honor the other individuals who were nominated. He indicated that a group of people would pursue this issue if the Planning Board does not, with the intent of installing an additional plaque at Hickman Park by September. He asked the staff to share the appropriate process the group should follow for installing the additional plaque.

#### **PRESENTATION BY BIO PARK, CITY ATTORNEY, ON HOMELESS SHELTERS**

Mr. Park reviewed that a few years ago, several churches approached the City of Edmonds with a request to establish emergency shelters during the winter season for the homeless. At that time, the City did not have code regulations in place for this type of use; and they were fortunate that the Revised Code of Washington (RCW) includes a provision that permits cities to adopt a temporary ordinance allowing non-profit groups and public agencies to change the use of their buildings to assist indigent persons.

Mr. Park reported that on December 15, 2009, the City Council adopted an ordinance that mirrored the RCW Statute. They also adopted an interim ordinance providing for zoning districts where such changes in use could occur. The zoning districts were identified as anywhere churches and/or local public facilities are allowed as permitted uses. He noted that most of the applications would be attached to churches, whose function and religious activity includes ministering to the poor and indigent. He said the City Council also adopted a resolution urging the staff to be as flexible as possible to allow the change in uses. However, the following conditions are required by State statute before a change of use can be approved:

- That the change of use does not impose a threat to the public's health, safety, and welfare.
- That the administration of the building is by a non-profit or public agency.
- That the change in use is no more hazardous than the existing use.
- That the use is temporary in nature.

Mr. Park pointed out that a change of use permit requires the applicant to provide hard wired smoke detectors and a sprinkler system. However, most churches that apply for the change of use permit will not have these elements as part of the structure. The ordinance will allow them to propose alternative methods for meeting the requirements, such as a night watch and limitations on how many persons can stay in the facility at any one time.

**APPROVED**

Mr. Park explained that before the interim ordinance can be made permanent, the Board must review the zoning portion of the ordinance, conduct a public hearing and make a recommendation to the City Council. The purpose of this meeting is for the Board to consider whether or not it would be prudent to adopt a permanent ordinance that allows a change of use for temporary shelters anywhere churches and local public facilities are allowed as primary uses.

Vice Chair Lovell recalled that prior to the City Council's adoption of the interim ordinance, the City's Fire Marshal talked about equivalencies for getting around the code requirements of hard wired smoke detectors and sprinkler systems, which most of the church buildings do not have. He also recalled that other guidelines were recommended such as clearly designating the shelter area and providing accessible egress locations. They also recommended the option of providing a night fire watch person who has access to emergency numbers, first aid, and other emergency equipment.

Vice Chair Lovell said that he understands how the proposed ordinance would be applied to church-owned properties, but he is less clear about how it would be applied to public-owned facilities. He noted that the ordinance would require the use to be sponsored by a local place of worship or other local, community-based non-profit organization, and normally this would be a church or church organization. However, he questioned if a City-owned facility could be used for a temporary homeless shelter as long as the use had a sponsor that could meet the criteria.

Mr. Park explained that the reason for including public agencies and other non-profit organizations in the ordinance is to keep the playing field level. However, it is clear that the vast majority of applications would come from churches. Because the City is a government entity, they cannot disfavor or favor churches. As long as they provide certain protections for churches and religious groups to practice their religion, the playing field must be level. As an example, he said the Red Cross could open a homeless shelter in Edmonds as a non-profit agency, if they owned a building in the City. However, they would have to meet the building code requirements and/or provide an alternative method for meeting the requirements. He advised that according to the State Supreme Court and Washington State Law, even if a proposal does not meet the letter of the code and should be otherwise denied, the applicant can offer alternatives. The City would have the responsibility, as a governing entity, to determine whether the proposed alternatives would meet the purpose of the law. That does not mean the City has to approve unsafe conditions and hazardous proposals, but they have to consider the alternatives.

Vice Chair Lovell asked who would be responsible for administering the criteria associated with the change of use. Mr. Park answered that the City's Building Official would have the final discretion for approving the permit and determining whether the structure being proposed for a change in use meets the conditions and requirements. Through the compliance permit process, the Building Official would conference with the Fire Marshal to review the plan and make sure it meets all of the requirements.

Mr. Park reminded the Board that the issue currently before them is the proposed zoning designation for where the change of use would be permitted and whether or not the zoning designation should be restricted. He pointed out that, as currently proposed, the change of use would be allowed in any zone in the City since any zone in the City also allows churches and public facilities as primary uses.

Mr. Chave explained that the proposed ordinance is a statement of intent or policy that covers not only zoning, but building issues. For the Planning Board's benefit, he suggested it would be helpful for the Board to understand exactly what changes would occur in the zoning code. The changes would be restricted to the definition in Section 5 of the resolution. The remainder of the resolution talks about building codes, which are not under the purview of the Planning Board.

Board Member Reed said the resolution references Ordinance 3730, which was not included in the Board's information. Apparently, the ordinance addresses some of the code exceptions for temporary shelter arrangements. He questioned if it would be helpful for the Board to have a copy of the ordinance for review. Mr. Park explained that Ordinance 3730 permits the City to allow changes in use on a temporary basis to assist indigent persons. It basically adopts the State Statutes (RCW 19.27.042 and WAC 51.16.030), and provides that the City will make use of the permission granted by the State to allow certain agencies to change use of their buildings to assist indigent persons. He said he has only one copy of the ordinance, but could provide copies to the Board Members at a later date.

Mr. Chave summarized that Section 5 sets up temporary homeless shelters as another form of public facility or a secondary use to a church. Mr. Park clarified that the use must be secondary for whoever applies for the change of use. Homeless shelters would not be allowed as primary uses. Because churches and local public facilities are allowed in all zones in the City as primary uses, any church or non-profit public agency with a structure could apply for the temporary change in use permit in order to provide a shelter for homeless persons.

Vice Chair Lovell asked if the zoning was left as broad as possible to allow flexibility. He recalled a previous discussion about potentially using the Senior Center as a homeless shelter. Mr. Park said the focus of the regulation should be on churches since most of the time churches would be the sponsor of a homeless shelter. However, the City could elect to utilize the Senior Center as a temporary homeless shelter as per the proposed zoning.

Vice Chair Lovell said he hasn't heard any compelling reason to make the zoning more strict because the approval of a specific site would depend on the Building Official's review of the application. Mr. Park agreed it would be the discretion of the Building Official to determine whether an application meets the conditions or not. Other than the few conditions noted earlier, the language would be very general.

Board Member Cloutier suggested the Board has been interpreting Section 5 of Ordinance 3769 to be more narrow than it is. As stated, homeless shelters can be located in any zoning district where a church is permitted as a primary use. That means it does not have to be in a church. The shelter could be located in any facility in any zone that allows churches as long as the use has a sponsor that meets the outlined criteria. He summarized that, as currently drafted, the use could be in any facility in any zone because all zones allow churches as primary uses.

Board Member Reed asked if a church or non-profit organization would be required to apply for a building permit for a temporary homeless shelter. Vice Chair Lovell noted there is already an application process for temporary homeless shelters. Mr. Park agreed that the application process is provided for in Ordinance 3730.

Mr. Chave suggested the Board also consider whether or not temporary homeless shelters should be permitted wherever regional local public facilities are allowed. Mr. Park pointed out that there are no zones in the City where a regional public facility would be a primary use, but a local public facility would not. Once again, he explained that temporary homeless shelters would be allowed in any zone that allows either churches or local public facilities as permitted or secondary uses as long as there is a qualified sponsor.

Mr. Park explained that the interim ordinance that was adopted on December 15, 2009 would expire on June 15, 2010. It would be desirable for the Board to make a recommendation to the City Council regarding the permanent ordinance before the interim ordinance expires. However, it would not be required. He agreed to draft codified code language for the Board's review and public hearing based on feedback provided. Vice Chair Lovell suggested the definition section of the Development Code be amended to encompass the temporary homeless shelter use. Mr. Chave agreed the provisions outlined in Section 5 of Ordinance 3769 would be translated into zoning code language.

Board Member Johnson said that when she reviewed Resolution 1213, the City Council's legislative intent seemed to focus on the faith community and public and non-profit agencies. The broader interpretation that would allow the uses in any building in any zone in the City that permits churches is an entirely different tact in her opinion. Board Member Cloutier pointed out that although a temporary homeless shelter would technically be allowed in any zone in the City, the use would require a qualified sponsoring agency. Mr. Chave agreed the definition ties the use to churches and community organizations.

**PRESENTATION BY BIO PARK, CITY ATTORNEY, ON TEMPORARY HOMELESS ENCAMPMENTS, COMMONLY REFERRED TO AS "TENT CITIES"**

Mr. Park advised that the City Council recently adopted an interim ordinance regulating temporary homeless encampments, which are commonly referred to as "tent cities." While there has been no concrete or reliable information that would suggest anyone is planning to create a homeless encampment in Edmonds, neighboring jurisdictions in King County have experienced the issue. In anticipation of future requests, some jurisdictions in Snohomish County have adopted ordinances

just in case. He noted that requests for homeless encampments usually happen quickly with very little notice. Therefore, it would be wise for the City of Edmonds to have an ordinance on the books for this type of use. He referred the Board to the template ordinance he provided for discussion purposes. He invited them to review the document and provide direction for him to proceed to create code language that would work for Edmonds.

Board Member Reed inquired if the City Council actually adopted an interim ordinance for homeless encampments. Mr. Park said it was his understanding that the City Council did adopt an interim ordinance. However, the Board concluded that there is no record that the draft ordinance was ever adopted by the City Council.

The Board and Mr. Park reviewed the draft template section by section and made the following comments:

- **Section 17.20.010 – Definitions.**

Mr. Park advised that Section A provides a definition for “Temporary Homeless Encampments” that was modeled after “Tent City.” Rather than using the term “Tent City,” the proposed ordinance uses “Temporary Homeless Encampments.” In Section B, the definition of “Sponsor” would be equivalent to a church or community organization that sponsors the encampment on their premises.

Vice Chair Lovell said that while Federal Law requires the City to allow religious organizations to implement these services for the people, the ordinance contains statements that seem to conflict and allow churches to set up homeless encampments on property that does not belong to them. For example, a “sponsor” is defined as a local place of worship or other local, community-based organization; it does not say it has to be a church. He asked if the intent was to limit the use to those that are sponsored by churches. Mr. Park explained that the law requires the City to allow churches to use their land to exercise their religious beliefs and it has been determined that ministering to the poor and needy is considered religious activity.

Vice Chair Lovell summarized that the two applicable requirements are that it be operated by a church and located on church property. Mr. Park clarified that ordinance would not be limited to just these two criteria. It is appropriate for the City to propose specific standards, but they must provide an option for the applicant to propose different alternatives for meeting the standards as long as the alternatives would still meet standards for safety, health, and welfare of the people in the encampment, as well as the neighboring community. He emphasized that the ability to “tweak” the standards would only be allowed for Churches and not for non-profit organizations who desire to create a temporary homeless encampment. Vice Chair Lovell expressed concern that, as proposed, a church could get permission from a private property owner to establish a temporary homeless encampment on property that is not owned by the church. Mr. Park said that was not the intent of the proposed language. He invited the Board to provide feedback about whether or not this should be allowed.

- **Section 17.20.020 – Temporary Homeless Encampment Permit.**

Mr. Park explained that the purpose of this section is to establish a new type of permit for temporary homeless encampments. It would allow these uses to occur as secondary uses in all zoning districts where churches or local public facilities are permitted as primary uses. As proposed, the permit would be a Type IIIA Permit, which would require a public hearing before the Hearing Examiner. The Hearing Examiner would make the final decision. However, he noted the Board could recommend changing the process so that the issue is decided administratively or by the City Council.

- **Section 17.20.030 – Standards.**

Item A. Board Member Johnson pointed out that the proposed language would require a 20-foot separation between the tents and any building, parked vehicle, etc. However, it does not address how close the tents can be located to the 6-foot fence that would be required around the perimeter of the encampment. She suggested that if the purpose of this section is to prevent fire hazards, they should also address the tents’ proximity to the fence. Mr. Park agreed that “fences” could be added to the language. He suggested the Board invite the Fire Marshal to review the draft language and comment about issues related to the fire code. He pointed out that the 20-foot separation came directly from the existing fire code.

Item B. Mr. Park advised that the purpose of this section is to require a 6-foot sight-obscuring fence to screen potential visual nuisances associated with the encampment from adjacent neighborhoods.

**APPROVED**

Board Member Johnson pointed out that this section could conflict with ECDC 17.30.010, which also addresses fences. In the event of a conflict, she asked if the provisions of the new ordinance would control. Mr. Park agreed that the code language that is more specific to the provision would control regardless of what the other section says (see Section 17.20.100). He noted that ECDC 17.30.010 relates specifically to the application and notification process for temporary homeless shelters. There are already procedures in ECDC 20 that deal with permit applications and processes in general. However, a different set of procedures has been proposed for this unique permit because the City must have a process for reviewing the applications and making decisions in a short time period.

Board Member Johnson advised that ECDC 17.30.010 also requires that fences be placed 30 feet from a corner in order to provide proper sight distance. Allowing a 6-foot tall fence on a corner lot near the road may create a problem. Mr. Park agreed that this technical standard must be addressed. He suggested the Board invite the City Engineer to review the proposed criteria and standards and provide feedback. Perhaps the City Engineer could provide a better solution to address the concerns.

Items D and E. Mr. Park advised that the Board could change the density to whatever they feel is appropriate, as long as it does not substantially deter a church from applying for a permit to establish a temporary homeless encampment. Vice Chair Lovell pointed out that, as proposed, a 100- person encampment would require at least a one-acre parcel. However, the proposed language does not take into account setback requirements and any structures that already exist on the site. If these factors are considered, the size of the lot would have to be even larger. Mr. Park agreed it would be appropriate for the Board to provide direction on whether or not the parcel size would be measured from boundary-line-to-boundary-line or just the area where tents could actually be located. The Board agreed it would make more sense to consider the area as the portion of property proposed for the actual encampment, and not include setback requirements, existing buildings, etc. Mr. Park requested staff assist him with issues such as maximum tent size, setback requirements, etc.

Board Member Cloutier suggested the best approach for tackling this project would be for the Board to start with sample ordinances that have been adopted and used successfully by other jurisdictions. He cautioned against creating an ordinance that is too restrictive on density since this could result in an encampment being scattered throughout the community. Mr. Chave agreed and particularly questioned the need for the proposed 20-foot separation between the individual tents. Board Member Cloutier concurred that it might not be necessary to require a 20-foot separation between each tent, but he recognized there needs to be a 20-foot separation in some areas to provide for fire access. Mr. Park agreed to obtain examples from other jurisdictions that have implemented and successfully used standards for temporary homeless encampments.

Board Member Johnson said it would also be helpful for Mr. Park to work with staff to identify how large a parcel would have to be to accommodate 100 tenants, given the current and proposed restrictions. She said she did some analysis in an attempt to understand the density issue better. She concluded that the minimum parcel size of 10,000 square feet would be too restrictive. Once all of the fire codes, parking standards, setbacks, etc. have been applied there would be very little space left for tents. She estimated that a 10,000 square foot lot would only accommodate three homeless tents. She said it would be helpful if staff could provide a sketch to help the Board gain a better understanding of what 100 homeless tents would look like on a proposed site. Board Member Cloutier added that if the City is going to allow this type of use on short notice, it would be helpful to provide examples of how to set up an encampment of a certain size. This would make it easy for the City to show how the standards could be applied. Mr. Park reminded the Board that the 10,000 square foot requirement would be the minimum size, not the maximum size. Board Member Cloutier expressed his belief that the code should be as flexible as possible so that temporary homeless encampments could locate successfully on small lots, as well as large lots.

Items F and G. Mr. Park advised that the proposed language would require one parking site for the host's permanent use and five parking stalls dedicated exclusively for the encampment. In addition, on-site parking required for the host site's permanent use cannot be displaced by the encampment. Board Member Johnson said that as the City collects information from other jurisdictions, it might be useful to obtain information about parking, as well. Board Member Cloutier noted that most of the people who would live in the encampment would not have vehicles.

Board Member Johnson suggested that parking could be evaluated on a case-by-case basis because the situation at each site could vary. In general, she suggested that if a church is willing to host a homeless shelter, they would also be willing to share a portion of their parking lot. She cautioned against requiring additional parking to be constructed for a use that would be temporary in nature. Again, Mr. Park said the intent is that they do not use the parking space that is currently required for the primary use.

Board Member Johnson suggested it may be appropriate to require a parking plan, which could include other solutions for addressing the parking concerns. Board Member Cloutier agreed that some flexibility should be allowed for the host to address the issue by providing parking elsewhere, etc. Mr. Park noted that the proposed language would allow the host to petition the Hearing Examiner for a deviation from the parking standards.

Item H. Mr. Park advised that while the current language would require that the encampment be located within ½ mile of transit service, the Board could choose to reduce or increase this requirement.

Item I. Mr. Park said that, as proposed, no children under 18 would be allowed in the encampment. He noted that this is a typical requirement used by most jurisdictions, but it is not a legal requirement. He also advised that Share Wheel, the managing agency for “Tent City” does not allow children under 18.

Item J. Mr. Park advised that this language would require the encampment to have a written code of conduct. He explained that it would be difficult for the City, as a governing agency, to prohibit items such as guns, alcohol, etc., at the encampment. Once a resident enters the encampment, it would be considered their home, and they would have certain constitutional rights. However, a private entity (sponsoring agency) could set more restrictions.

Items K and L. Mr. Park explained that this language would require that certain facilities and services be provided within the encampment such as waste disposal, drinking water, electricity, fire extinguishers, etc. He noted the Board could add additional criteria in this section, as long as they do not substantially impede the operation.

Items M and N. Mr. Park advised that these two sections would require the managing agency to appoint a member to serve as a point of contact for the City’s Police Department, and at least one member must be on duty at all times. It would also require the managing agency to permit inspections by the Snohomish County Health District.

Item O. Mr. Park said this language would require the managing agency to take all reasonable and legal steps to obtain verifiable identification from prospective residents. He explained that if a resident has a warrant out for his/her arrest, the managing agency would be required to contact the Police Department so that the person could be taken away. However, the City would not have the ability to prohibit properly registered sex offenders from the encampment, as long as the encampment is not located within the buffer areas where sex offenders cannot reside. As long as they comply with the existing laws, they would be permitted to live in the encampment.

Item T. Board Member Reed felt that requiring the encampment to be consistent with the goals and policies of the Comprehensive Plan was a vague statement that should be made more specific. Mr. Park agreed the statement is general in nature. However, the City currently requires all types of permits to be consistent with the Comprehensive Plan. He acknowledged that it is difficult to determine whether or not a permit meets all of the goals and policies of the Comprehensive, but it must remain as a standard.

- **Section 17.20.040 – Frequency and Duration.**

Mr. Park explained that most jurisdictions allow the temporary homeless encampments to operate anywhere between two and three months, but the Board could recommend a time period as short as 45 days. It is also standard practice to allow the encampment to be located on a site only once in a year. As proposed, the managing agency would be required to restore the site to its pre-encampment condition within one week.

- **Section 17.20.050 – Procedural Requirements for Temporary Homeless Encampment Permit Applications.**

Item A. Mr. Park advised that this section requires that an application be submitted at least 30 days prior to the anticipated start of the encampment. This section contains a list of items that could be required as part of the application. Board Member Johnson referred to Item 8 on the list and suggested the required site plan also include information about dimensions, parcel size, and site location. Mr. Park observed that providing examples, as suggested earlier by Board Member Cloutier, would help the managing agency prepare the required site plan.

Item B. Mr. Park advised that the language in this section came directly from the fire code. Any tents or structures in excess of 200 square feet would require approval from the Fire Marshal.

Item C. Mr. Park advised that, as proposed, a notice of application and public hearing must be provided within 10 days after the City has determined the application is complete. At this time, the notice requirements would be the responsibility of the applicant. However, he has discussed with staff the option of having the City provide notice for consistency, etc. As written, the applicant would have seven days to send out a notice to the neighboring property owners, publish a notice in the City's official newspaper, and post a notice on the subject site with a brief description of the proposed plan and the conditions that would apply.

Item E. Mr. Park explained that prior to an actual hearing before the Hearing Examiner, the managing agency would be required to participate in a community information meeting. He noted that many jurisdictions have incorporated this requirement to allow neighboring property owners and the community an opportunity to learn more about the proposal and express their concerns and/or support in an informal manner. He emphasized this is not a legal requirement. He explained that, as proposed, the permit would be a Type IIIA application, which would go straight to the Hearing Examiner for a public hearing. The Hearing Examiner's decision would not be subject to an administrative appeal. There would be no appeal to the City Council, either. The only opportunity for appeal would be to Snohomish County Superior Court. He noted that some jurisdictions require a Hearing Examiner review, and others allow for an administrative review with no public hearing.

Mr. Chave reminded the Board that the permits must be issued within a short time frame, which does not accommodate a lengthy appeal process. Mr. Park agreed that the applications must be processed within 30 days. If an appeal before the City Council were allowed, the process would be much longer. He noted that in past history, "Tent City" has moved into a location prior to resolving issues before the judicial court. They have argued that the process set up by a jurisdiction is substantially burdensome on their freedom of religious exercise. Board Member Cloutier summarized that the City would only have 30 days after an application has been submitted to complete the review process and issue a permit or the encampment might move in anyway. Mr. Park said that if the City has a process that is intended to be completed in 30 days, the burden would be a lot higher for the applicant to demonstrate to the judge that the compact process was burdensome on their freedom of religious exercise. He summarized that there are no guarantees that this will be a bullet-proof process that will avoid adjudication in court, but it gives the City a better chance to prevail.

- **Section 17.20.060 – Requesting Modifications of Standards.**

Mr. Park advised that this section provides the applicant with an opportunity to propose different standards to the Hearing Examiner, as long as they can demonstrate that the proposed modifications would result in a safe encampment.

- **Section 17.20.070 – Notice of Decision.**

Mr. Park noted that this language would allow the Hearing Examiner seven days to issue a final decision. Typically, the Hearing Examiner is allowed 14 days to issue his/her findings.

- **Section 17.20.080 – Indemnification and Hold Harmless Requirements.**

Mr. Park advised that this requirement is a warning to the sponsor to keep tight control on their residents. Board Member Reed asked if it would be necessary or possible to require the sponsor or managing agency to provide insurance. Mr. Park answered that it would be great if they offered to provide insurance, but it is not likely they would want to pay this cost. Vice Chair Lovell observed that a church would likely check with their insurance agent before pursuing a permit for a temporary homeless shelter on their property. Mr. Park explained that requiring a church to provide insurance would be considered a type of fee, and as proposed, there would be no fee associated with the permit. He advised that

establishing a monetary hurdle for religious organizations could be considered in opposition to their freedom of religious exercise.

- **Section 17.20.110 – No Intent to Create Protected/Benefited Class.**

Mr. Park explained that this section is intended to promote the health, safety and welfare of the general public. It further states that nothing contained in the chapter should be construed to create or establish any particular class or group of persons who will or should be especially protected or benefited by the provisions in this chapter.

Board Member Reed suggested the Board appoint a subcommittee to work with Mr. Park and staff to create draft code language for the Board’s consideration at a future time. Mr. Park explained that his intent was to provide a basic template for the Board to begin their discussion. His goal was to provide a rough idea of the legal parameters surrounding the issue and solicit feedback from the Board about how restrictive the ordinance should be. He would also like feedback about the ability of religious groups to petition the decision maker for possible exceptions to the standards, etc.

Vice Chair Lovell summarized that Mr. Park would collect sample ordinances that have been adopted and used successfully by other jurisdictions. This information could be used as a template to prepare draft code language for the Board’s consideration in March. Once the code language has been presented to the Board again, they may decide to appoint a subcommittee to review the document further and report back to the Board. Mr. Park agreed to work with City staff and the Fire Marshal to address issues related to building and fire code requirements. Mr. Park also agreed to work with staff to prepare additional information related to logistics, space, size, etc. Board Member Johnson reminded staff of her earlier request that a drawing be provided to illustrate how the proposed language would be applied to a given site.

The Board discussed that it would be appropriate to forward a joint recommendation to the City Council regarding the temporary homeless shelters and temporary homeless encampments at the same time. Mr. Park reminded the Board that the interim ordinance related to temporary homeless shelters was adopted by the City Council on December 15, 2009 and would expire on June 15, 2010.

THE BOARD RECESSED THE MEETING FOR A SHORT BREAK AT 9:02 P.M. THEY RECONVENED THE MEETING AT 9:12 P.M.

**CODE REWRITE: PROPOSED UPDATES TO THE CITY’S STATE ENVIRONMENTAL PROTECTION ACT (SEPA) RULES (ECDC 20.15A) (FILE NO. AMD-2009-6)**

Mr. Lien reviewed that the City’s SEPA regulations are codified in Edmonds Community Development Code (ECDC) 20.15A, and the original regulations were adopted under Ordinance 1855 in 1976. In 1984, the City adopted Ordinance 2461, which created ECDC 20.15A in order to come into compliance with the new SEPA rules in the Washington Administrative Code (WAC) 197-11 and the Model SEPA Ordinance in WAC 173-806. The SEPA regulations currently used by the City are essentially the same that were adopted 25 years ago, with only some minor amendments. He reminded the Board that the SEPA regulations (ECDC 20.15A) are being reviewed as part of the City’s comprehensive review of its development regulations. Due to changes to the Revised Code of Washington (RCW), WAC, and the City’s own code, ECDC 20.15A is long overdue for an update. He reviewed the issues being considered as part of the review as follows:

- **Adoption by Reference.** ECDC 20.15A adopts significant portions of WAC 197-11 (SEPA rules) by reference. Sections of WAC 197-11 have been added and/or removed since the City adopted Ordinance 2461 in 1984, particularly in regards to SEPA and Growth Management Act (GMA) integration. The proposed update would review changes in WAC 197-11 and the adoption lists in ECDC 20.15A to ensure the City is up-to-date and compliant with the State regulations.
- **Model Code.** ECDC 20.15A is largely based off the model code in WAC 173-806. As with WAC 197-11, there have been changes since 1984. The update will review WAC 173-806 and make updates to ECDC 20.15A where appropriate to ensure the City is up-to-date and compliant with State regulations.

- **Consistency.** As with the State rules, the ECDC has undergone a number of amendments since 1984. The update will ensure ECDC 20.15A is consistent with the rest of the City’s development regulations.
- **Categorical Exemptions – Flexible Thresholds.** State SEPA rules allow jurisdictions to modify the categorically exempt threshold levels for certain minor new construction activities. The City has only modified one of these flexible thresholds (landfill and excavation), and staff is proposing some changes.

Vice Chair Lovell said he read through the existing and proposed code language. He asked if it is correct that the City could request concessions from developers, as part of the SEPA review process, to mitigate the environmental impacts associated with proposed projects. Mr. Lien agreed that the City could place conditions on an application to mitigate the environmental impacts. He explained that there are several types of projects that automatically require a SEPA review. In other situations, a SEPA review would only be required if a proposed projects meets or exceeds the thresholds identified in the ordinance. If a SEPA review is required, the City has the ability to issue a Determination of Non-Significance (DNS), a Determination of Significance (DS) or a Mitigated Determination of Non-Significance (MDNS). An MDNS can be used to impose additional conditions upon an applicant to mitigate impacts associated with the project. In addition, the development code gives the City substantive authority to place conditions on permits that fall outside of the purview of the SEPA review. He noted that the SEPA review is done upfront so mitigation measures can be in place at the time a project or proposal comes before the Board for review.

Board Member Reed asked staff to identify the types of projects and permits that would not require a SEPA review if the City were to make no changes to ECDC 20.15A except to make it consistent with the new State SEPA rules. Mr. Lien answered that WAC 197-11-800 provides a list of exemptions, and there is also a list of statutory exemptions in the RCW. He explained that the SEPA review requirement is not necessarily tied to property but to project proposals. No properties are categorically exempt from SEPA review, but some projects are. For example, the current Edmonds code exempts residential structures of four or fewer dwelling units. Mr. Chave added that this threshold exemption currently applies citywide, and does not differentiate by location. Staff would like the Board to provide direction about whether it would be appropriate to have the same threshold for the downtown, the neighborhood commercial centers, and Highway 99.

Mr. Lien advised that WAC 197-11-800 establishes thresholds for certain minor new construction that are categorically exempt from threshold determination and EIS requirements. It also allows cities to raise the exemption levels to a specified amount. Again, he noted that the City has only raised threshold to the maximum amount allowed. He reviewed each of the flexible threshold categories and how they could be modified as follows:

1. The construction or location of any residential structure of four dwelling units. *WAC 197-11-800 allows this threshold to be modified up to 20 dwelling units.*
2. The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering 10,000 square feet, and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots. *WAC 197-11-800 allows this threshold to be modified up to 30,000 square feet.*
3. The construction of an office, school, commercial, recreational, service or storage building with 4,000 square feet of gross floor area, and with associated parking facilities designed for 20 automobiles. *WAC 197-11-800 allows this threshold to be modified up to 12,000 square feet and 40 automobiles.*
4. The construction of a parking lot designed for twenty automobiles. *WAC 197-11-800 allows this threshold to be modified up to 40 automobiles.*
5. Any landfill or excavation of 100 cubic yards throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76-09-050 or regulations there under. *The City has already bumped this up to 500 cubic yards, which is the maximum allowed by WAC 197-11-800.*

Board Member Reed asked if the 500 cubic yard threshold for fill and excavation would be a combined measurement or would the regulation allow 500 cubic yards of fill and 500 cubic yards of excavation. Mr. Lien said the City has traditionally measured the two separately. Any fill or excavation of less than 500 cubic yards has been exempt from SEPA.

When reviewing the flexible thresholds, Mr. Lien advised that the Board has the following options:

1. Leave the levels at the minimums established by WAC 197-11-800(1)(b).
2. Increase all or a portion of the levels for the entire City.
3. Establish different threshold levels for different Comprehensive Plan designations.
4. Establish different threshold levels for different zones.
5. Establish different threshold levels considering zoning and Comprehensive Plan designations.

Mr. Lien said staff is proposing the City adjust the flexible threshold levels by zone and consider the Comprehensive Plan designations, as well. He referred to Table 1 of the Staff Report, which outlines the staff's proposed threshold levels for the different zones throughout the City. He also referred to the memorandum he prepared dated February 24<sup>th</sup> and explained that determining the environmental impact of a development involves the context and intensity of the development and does not lend itself to a formula or quantifiable test. The context may vary with the physical setting, and intensity depends on the magnitude and duration of an impact. The same proposal may have a significant impact in one location, but not in another. For instance a 3-story, 6-unit multi-family residential development in the bowl of Edmonds may impact the views of several residences and have the potential for impact. However, the same development in a multi-family residential zone along Highway 99 is less likely to have any impacts, particularly to views.

Mr. Lien reminded the Board that the varying zones throughout the City were established for different reasons. ECDC 16.00.010.B lists one of the purposes of establishing zones is as follows:

*“To protect the character and the social and economic stability of residential, commercial, industrial, and other uses within the City, and to ensure the orderly and beneficial development of those uses by:*

1. *Preserving and retaining appropriate areas for each type of use;*
2. *Preventing encroachment into these areas by incompatible uses; and*
3. *By regulating the use of individual parcels of land to prevent unreasonable detrimental effects of nearby uses.”*

Mr. Lien said each of the zone chapters of ECDC identifies the purpose for the specific zones. For instance, ECDC 16.20.000 describes the purpose of the Single-Family Residential Zones and ECDC 16.60.005 describes the purposes of the General Commercial Zones.

Mr. Lien explained that the thresholds proposed would take into consideration the uses allowed in the zones, the intensity of development allowed, the character of development intended for the zone by the Comprehensive Plan, and potential for controversy of particular development activities. For example, he suggested multi-family development within the Downtown/Waterfront Activity Center could maintain the current threshold of four dwelling units, but the threshold could be raised in areas such as Highway 99 and other activity centers. He said staff is also recommending that the thresholds be maximized across the board for the General Commercial (CG) zones along Highway 99. This would encourage development by eliminating one of the permitting processes for commercial development.

Board Member Cloutier inquired if staff is proposing that the threshold for the Harbor Square Property be increased to 20,000 square feet. Mr. Lien reminded the Board that this property is currently zoned with a contract that does not even allow residential development. It is considered a commercial site. Mr. Chave suggested that it would make the most sense to determine the thresholds based on both the Comprehensive Plan and the zoning. For example, it could be problematic to raise the threshold for multi-family residential zones on portions of Edmonds Way where there is very little separation between the multi-family and single-family development. However, raising the threshold would make more sense on Highway 99 where there is much more intense development.

Mr. Lien explained that many projects are triggered by more than one of the flexible thresholds or by other SEPA requirements. He reported that since 2004 there have been 178 SEPA reviews conducted by the City, and 108 of them have been subject to the flexible thresholds. The most common SEPA trigger since 2005 has been the landfill and excavation levels, even though the level has already been maxed out by the City. Ninety of the projects exceeded the 500 cubic yards threshold, and 48 SEPA reviews were triggered solely by landfill or excavation levels. With the proposed categorical

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exemption levels identified in the table, 6 of the 178 projects requiring SEPA review since 2004 would have been exempt. He briefly reviewed the details in the table.

Mr. Lien advised that raising the flexible thresholds may have a few different impacts on the review process. For example:

- Projects that currently require SEPA review are forwarded to the Architectural Design Board (ADB) for design review. Staff conducts design review for projects that do not require SEPA. If the threshold levels are raised, fewer projects may be going to the ADB.
- SEPA also has a public notice requirement. Some projects that trigger SEPA also have public notice requirements so if SEPA was not required, notice of the project would still be carried out. However, other projects (such as a 5-unit condo) would not require a public notice on its own. With the current thresholds, a 5-unit condo would require SEPA review and a public notice. If the threshold were raised, fewer projects may require public notice.
- Raising the SEPA threshold level may provide one less hurdle for developers. One of the purposes of the General Commercial Zone is to *"Encourage the development and retention of commercial uses which provide high economic benefit to the city. Mixed-use and transit-oriented developments are encouraged which provide significant commercial uses as a component of an overall mixed development scheme."* Maxing out the flexible threshold level in the General Commercial Zone is one way to help encourage development in the zone.

Board Member Reed asked the difference in the review process for SEPA and non-SEPA projects. Mr. Lien answered that removing the requirement for ADB review would reduce the permit time. In addition, the public notice process adds time to the permit. He suggested the permit review time could be reduced by approximately 30 days if no ADB review were required. Board Member Reed asked how many times the City has issued a Determination of Significance. Mr. Lien answered that there has only been one Determination of Significance since 2004. An EIS was required, and the applicant withdrew the project.

Board Member Stewart said she would support the proposal to increase the flexible thresholds for properties along Highway 99 to encourage development. Transit-oriented development and density make sense in this area. However, she said she has strong reservations about increasing the thresholds for other parts of the City, particularly within the Downtown/Waterfront Activity Center. She noted that development of any land that has not already been degraded and any land near the waterfront would have the potential of increasing stormwater runoff, erosion and other impacts to the environment. She agreed with Ms. Petso's earlier remarks that the City should not necessarily try to escape the SEPA process. She said she can understand why this would be desirable for developers because the process can be lengthy. She read the following excerpt from Page 11 of the State Environmental Policy Act Handbook:

*The State Environmental Policy Act (SEPA) may be the most powerful legal tool for protecting the environment of the state. Among other things, the law requires all state and local governments within the state to:*

- *"Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment;" and*
- *Ensure that "...environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations...."*

Board Member Stewart reminded the Board that the City recently adopted the Community Sustainability Element of the Comprehensive Plan, and the Board should keep this element in mind as guidance as they go forward. She hopes the City can attract developers who are sensitive to the environment \ and are willing to use sustainable building practices when designing and developing projects, particularly along the waterfront. She observed that the purpose of SEPA is to protect the environment, and they must rely on the environment to sustain the community for generations to come. Mr. Lien pointed out that no threshold changes have been proposed for properties in the Downtown/Waterfront Activity Center.

VICE CHAIR LOVELL LEFT THE MEETING AT 9:48 P.M.

Mr. Chave reminded the Board that the City must amend their SEPA regulations to be consistent with current state law. In addition, staff felt it would be appropriate to review the threshold standards and recommend appropriate adjustments. A lot

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has happened since the City adopted their original SEPA rules prior to GMA. There were no critical areas regulations and other state laws that required SEPA to be coordinated with other development regulations. SEPA is not a tool for imposing standards that are already covered by other City regulations. For example, when the Critical Areas Ordinance dictates how natural features are to be handled, SEPA cannot be used to alter the standards. In earlier years, SEPA was used to address wetlands and other environmental issues, but this is no longer possible. Now the Critical Areas Ordinance dictates these standards, and it is much more restrictive than SEPA. He summarized that the issue is not as simple as saying if you change SEPA or elevate the standards, you will be less protective of the environment, because the environmental standards have changed significantly.

Mr. Chave recognized there are emerging issues related to sustainability and climate control, but they have not been formulated at this point. While the SEPA program could ask local jurisdictions to analyze these issues, there are no standards in place to conduct the analysis and it could become an expensive and subjective process. Also, until there are mitigation standards in place, the City cannot really address issues related to climate change as part of SEPA. He noted that both Seattle and King County talked about requiring this type of analysis, but no one has identified what the actual mitigation would look like. The issue is more complicated in Edmonds because there is so little new development. If the City were to use the SEPA process to analyze and mitigate climate changes and sustainability, it would only apply to new development. SEPA does not apply to upgrades of existing facilities, which is more the type of development activity that occurs in Edmonds.

Mr. Chave cautioned that SEPA is one aspect of sustainability, but not the largest. There are far more important things going forward to address these issues. The Board should keep in mind the context of the purpose and limitations of SEPA. That does not mean they should lift the thresholds, but when determining whether or not they change the thresholds, they should keep in mind the overall purpose and impact.

Board Member Reed asked what review process is used to deal with projects that do not require SEPA review. Mr. Chave answered that issues related to retrofitting and renovating buildings are addressed by the building codes and permit requirements. It is possible to tweak the building codes to impose green building standards, but it would require a different process that does not involve SEPA.

Board Member Reed asked if the ADB explores the environmental aspects of a project as part of their review. Mr. Chave answered that the ADB's review focuses on architectural design. The City's Development Code address issues such as critical areas, stormwater, etc.

Board Member Reed recalled Mr. Lien's earlier comment that changing the SEPA thresholds could change the review process and notice requirements, depending on the location of a project. This would be particularly true for Highway 99 because the ADB Standards are much higher than the SEPA Standards. SEPA requirements would not push a development on Highway 99 into ADB review, where it would elsewhere. In the Neighborhood Business (BN) Activity Centers, the change might be significant enough that it would warrant maintaining the existing thresholds.

Board Member Cloutier said it appears there would only be a 5% change in work load for staff if the thresholds were adjusted as proposed. He questioned why they are going through the process of raising the thresholds for such a small change in the workload. Mr. Lien said he was surprised that only a few projects would have been impacted by the proposed changes. Mr. Chave explained that reducing the workload is not the goal of the proposed changes. It is more about getting the most value possible out of the process. He reminded the Board of the City's desire to focus on Highway 99 as a transit-oriented growth area. Even though there has not been a lot of activity on Highway 99 that triggered SEPA review, there is potential for large projects in the future. In general, developers look at the process and requirements when evaluating sites within different jurisdictions. To the extent the City can coordinate and simplify the process, they should use this slow period to set the stage for future development. This will place them in a good position when the economy recovers. He expressed his belief that Highway 99 might be the City's best opportunity for change.

Board Member Johnson thanked Mr. Lien for the additional analysis he provided in his recent memorandum. The information will help the Board understand the context of the regulations and determine what the changes would mean. She said she was surprised to learn that so few projects would have been impacted by the proposed changes.

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Board Member Johnson recalled that the City Council has identified a number of locations for economic development such as Westgate, Five Corners, and Firdale Village. These are areas where economic development can be encouraged and the process streamlined. She questioned how the flexible thresholds and SEPA could be used to encourage future development.

Board Member Cloutier pointed out on the zoning map that almost all of the neighborhood centers would be unaffected by the proposed changes, which makes sense because they are adjacent to single-family development. The only places the changes would really have an impact are Highway 99 and the multi-family residential corridors on 212<sup>th</sup> and 196<sup>th</sup> Streets. He suggested that all reference to the Downtown/Waterfront Activity Center be eliminated from the proposed threshold change. Mr. Chave agreed that it might not make a lot of sense to change the thresholds in the BN zones in the downtown, but they should consider possible changes for the areas identified by Board Member Cloutier, as well as the Westgate area where there is a high concentration of multi-family residential that is separated from the single-family residential by topography. In light of the Citizens Economic Development Commission's work and the City Council's recent discussion about economic development, Board Member Reed suggested it might be premature to discuss significant changes for Westgate, Five Corners, etc.

Mr. Chave reported that at the City Council's retreat, he strongly encouraged them to hire a consultant to do the public process for Westgate and Five Corners. These are two locations that would benefit from a public process that is controlled by the City. He said he would like to give the City Council an opportunity to respond before the Board jumps in.

Board Member Reed suggested it would be wise to study how the proposed new thresholds would work in the Highway 99/Medical Activity Center. Mr. Chave agreed that it would be helpful to review the proposed changes in the context of the General Commercial Zone requirements. Board Member Reed expressed his belief that raising the thresholds for Highway 99 would reduce the length of the review process.

Board Member Reed said he would be interested in seeing only the changes that are required to make the City's Code consistent with State regulations. Then he would like to see what the additional changes would be if the thresholds were altered. Mr. Lien noted that the changes identified in red are those that are intended to make the document consistent with the model ordinance, State law and the City's code. The proposed changes related to thresholds are found on Page 6 of the draft ordinance. All other changes are intended to make the various documents consistent.

The Board agreed they would like to consider changes to the flexible thresholds, but only for the Highway 99 corridor and other multi-family residential areas along main arterials (212<sup>th</sup>, 196<sup>th</sup> and portions of SR-104). They directed staff to update the document and bring it back for further Board review. They agreed that their work on the Westgate Corridor should be postponed until a comprehensive review has been completed as referenced earlier by Mr. Chave. No changes should be made to the thresholds as they apply to the Westgate area at this time.

### **REVIEW OF EXTENDED AGENDA**

Mr. Chave agreed to meet with Chair Bowman and Vice Chair Lovell to prepare an extended agenda prior to the Board's next meeting.

### **PLANNING BOARD CHAIR COMMENTS**

Neither the Chair nor the Vice Chair were present to comment during this portion of the meeting.

### **PLANNING BOARD MEMBER COMMENTS**

Board Member Stewart reported on her attendance at the Building Code Panel on February 23<sup>rd</sup> where the Washington Building Code Council was present to talk about State Building Codes; how they must be reviewed every three years and how difficult it is to impose change related to higher energy requirements and more low-impact development strategies. The presenter said that while they are all important issues, they cost money for developers to implement. He acknowledged that it is a struggle to create change, but there is a move afloat to create more sustainable development. He noted that city codes

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can best State codes. One of the new members on the panel asked what holds developers back from actually developing potential sites, especially green development. One answer was that local codes are not favorable towards alternative methods or materials for construction. In addition, green developers often look to add their low-impact development elements at the end of a project, which tends to make more sense.

Board Member Stewart announced that another event is scheduled for March 23<sup>rd</sup> at 7 p.m. at the Renton Technology College, and the topic of discussion will be “Building Remodel and Historic Preservation.” The event is sponsored by the Construction Center of Excellence at Renton Technology College.

Board Member Stewart once again encouraged Board Members to reduce the amount of paper they use by obtaining electronic copies of their agenda packet. She said was surprised to learn that a recent City Council packet included 1,000 pieces of paper. She said she was pleased to note that at least a few City Council Members are setting good examples by using electronic copies at their meetings. She concluded that it is always better to reduce use than to recycle.

### **ADJOURNMENT**

The Board meeting was adjourned at 10:20 p.m.

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