APPROVED JUNE 22nd

CITY OF EDMONDS
PLANNING BOARD MINUTES

June 8, 2011

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 – 5th Avenue North.

BOARD MEMBERS PRESENT
Philip Lovell, Chair
Kevin Clarke
Todd Cloutier
Bill Ellis
Kristiana Johnson
Valerie Stewart
Neil Tibbott

STAFF PRESENT
Rob Chave, Planning Division Manager
Karin Noyes, Recorder

BOARD MEMBERS ABSENT
John Reed, Vice Chair (excused)

READING/APPROVAL OF MINUTES

BOARD MEMBER CLARKE MOVED THAT THE MINUTES OF MAY 25, 2011 BE APPROVED AS AMENDED. BOARD MEMBER TIBBOTT SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

ANNOUNCEMENT OF AGENDA

No changes were made to the agenda.

AUDIENCE COMMENTS

No one in the audience expressed a desire to address the Board during this portion of the meeting.

PUBLIC HEARING ON POTENTIAL AMENDMENTS TO DOWNTOWN BUSINESS DISTRICT (BD) ZONES (FILE NUMBER AMD20110003)

Mr. Chave reviewed each of the proposed amendments as follows:

Designated Street Front and Commercial Depth Requirements:

Mr. Chave referred the Board to the proposed map of Designated Street Fronts for BD Zones (Map 16.43-1), which has been expanded to include all BD zones, not just the BD1 zone. The purpose of the map is to clarify where the primary pedestrian areas and commercial uses are intended to be oriented within the BD Zones. He explained that ground floor of properties along designated street fronts would be required to meet the commercial height and depth requirements. At this time, the commercial height requirement for the ground floor space of properties along the designated street fronts is 12 feet. The

proposed language identifies a consistent commercial depth requirement of 45 feet, which replaces the 30-foot requirement in the BD1 zone and the 60-foot requirement elsewhere in the BD zones. Staff believes the 30-foot standard is too small to ensure adequate commercial space. Conversely, it makes no sense to require a greater standard of 60 feet outside the retail core (BD1). He reminded the Board that multi-family residential and professional offices would be allowed to locate on the portions of ground floor space located outside of the designated street front areas and on the upper floors of all buildings in the BD Zones.

Mr. Chave said the Board is specifically seeking feedback from the public about the proposed amendment to the commercial depth requirement, as well as the proposed Designated Street Front Map. He advised that staff measured a large number of commercial spaces in the BD zones in 2005 and 2006, with particular focus on the BD1 zone. They found that the vast majority of the commercial spaces had a depth of at least 60 feet. Therefore, they believe that a 45-foot commercial depth requirement would be reasonable to ensure an adequate amount of ground floor commercial space. Again, he emphasized that this requirement would only apply to properties located along designated street fronts.

Step-Back Requirement:

Mr. Chave explained that, currently, there is no step-back requirement in the BD1 zone, but there is a 15-foot step-back requirement in all other BD zones. In order to increase the height of a building from 25 to 30 feet, a 15-foot step-back is required for the portion of the structure above 25 feet. This requirement results in a significant loss in the amount of developable area and ends up prohibiting buildings from actually being constructed within the established downtown height limits. He said the proposed language provided for the hearing identifies a reduced step-back requirement from 15 feet to 5 feet. However, the Board is also considering the option for removing the step-back requirement entirely from all BD zones. The logic is that if the 30-foot height limit is adequate in the BD1 zone, it should be adequate for all BD zones. In addition, the step-back requirement does not really add any additional protection that is not already addressed by the existing Design Guidelines for the BD zones. He said the Board is seeking feedback on whether or not the step-back requirement should be reduced or eliminated.

Uses in the BD1 (Retail Core) Zone:

Mr. Chave explained that the area one to two blocks radiating out from the fountain is known as the downtown retail core or BD1 zone. Members of the Planning Board surveyed the existing uses in this area and found that it is predominately retail and restaurant uses, with a fair amount of service uses that are generally compatible with retail uses. However, there are some uses that are not compatible, such as medical offices and/or other types of offices that do not have walk-in customers. These uses tend to want to wall off their businesses from the street front, which discourages pedestrian activity. If more of these types of uses are located in the retail core, they could undermine the viability of the existing retail uses. He particularly noted that medical uses are required to provide privacy to their patients. Because they have not been allowed to close off their front windows, they have used privacy screens inside, which have had the same affect.

Mr. Chave said the Board has discussed the idea of prohibiting certain types of uses that are incompatible with the retail core. As per the proposed amendment in Table 16.43.020, retail, restaurant and service businesses would be allowed, but office and/or professional office uses would only be located outside the 45-foot designated street front. Another option being considered by the Board would be even more restrictive to prohibit office and service uses in the designated street front areas in the BD zone. Only retail and restaurant uses would be allowed. He emphasized that the BD1 zone occupies only a small portion of the downtown, and the use restrictions would only apply to the designated street front areas. Office uses would still be allowed elsewhere in the building behind the front retail-oriented uses or on the upper floors of the building. He noted that if the proposed language is adopted, existing nonconforming uses would be dealt with via the nonconforming rules in the zoning code. They would be allowed to continue as the same type of use so long as they remain occupied.

Development Agreements:

Mr. Chave explained that a development agreement is similar to the “contract rezone” concept, which is no longer used by the City. As proposed, the development agreement concept would allow flexibility for a developer to propose modifications to the development standards in exchange for providing a public benefit. He referred to the proposed code language in

Section 16.43.050, which includes sample criteria and authorizes what can be modified by a development agreement. The Board is seeking specific feedback about whether the criterion is appropriate and whether development agreements should be available in all BD zones. They would also like feedback about whether specific conditions should be attached to development agreements, as well as what development standards could be varied, and to what extent.

Mr. Chave said that, as proposed in Section A, development agreements would be reviewed by the Planning Board as part of a public hearing process. The Board would forward a recommendation to the City Council, and the City Council would conduct another public hearing before making a final decision. The Board's recommendation and the City Council's final decision would be based on whether or not a proposal is consistent with the City's economic development and Comprehensive Plan goals and the downtown Design Guidelines.

Mr. Chave reviewed that Section B outlines what can be approved as part of a development agreement. The language includes two options. One would allow a development agreement to vary any of the site development standards contained in ECDC 16.43.030 or 16.43.040. An alternative would be to allow a development agreement to vary any of the site development standards contained in ECDC 16.43.030 or 16.43.040 except building height limits would only be allowed to increase to 35 feet or three stories, whichever is greater. He recalled that the Board specifically discussed the concept of using "stories" to address height. He explained that the topography in downtown Edmonds makes this approach difficult. Because of topographical changes, development on a single lot could accommodate up to three stories on one side, but four on another. He said the Board is particularly interested in hearing public feedback regarding this concept.

Mr. Chave referred to the criteria for approval of development agreements, which is outlined in the proposed language for Item C. As proposed, in addition to attaining at least a LEED Silver or equivalent level of green building certification, a development would be required to meet at least two of the following three criteria:

1. The development is designed to attain at least a LEED Gold or equivalent level of green building certification.
2. The development incorporates one or more of the follow uses designed to further the City's economic development goals: a hotel, a post office, a farmer's market, and/or studio work space, housing or live-work space for artists.
3. The development includes enhanced public space and amenities.

Mr. Chave observed that, typically, sidewalks in the downtown are narrow and buildings are constructed right to the sidewalk. A developer could propose an expanded sidewalk or plaza area to enhance the pedestrian space, which would meet one of the criteria for a development agreement. He reminded the Board that a development agreement must be consistent with the goals and policies in the Comprehensive Plan and the downtown Design Guidelines.

Chair Lovell referred to the proposed Designated Street Front Map (Map 16.43-1) and recalled the Board previously discussed that a portion of the street front on 5th Avenue between Howell Way and Erben Drive has a steep topography and is not really an ideal location for retail uses. It was suggested that this area should not be designated as commercial street front. Mr. Chave recalled this was discussed by the Board and the Citizens Economic Development Commission (CEDC) at a joint meeting. He said staff recommends that the designated street front extend all the way up 5th Avenue to the end of the BD3 zone. Otherwise, the area would be made available for other types of uses that are not compatible with retail and/or commercial uses.

Chair Lovell pointed out that Footnote 3 on Page 5 should be amended to identify a 45-foot commercial depth requirement in rather than a 60-foot requirement.

Board Member Ellis requested further information about how nonconforming uses would be addressed. While he understands the uses would be allowed to continue for a time after the amendments are approved, he asked when they would lose their nonconforming status. Board Member Johnson answered that the businesses would be allowed to continue as nonconforming uses as defined in ECDC 17.40. However, they would not be allowed to expand in any way, including the number of employees, equipment and/or hours of operation, except as provided in ECDC 17.40.050. If a nonconforming uses ceases for a period of six continuous months, any later use of the property occupied by the former nonconforming use would be required to conform to the zoning ordinance. In laymen's terms, the property could be rented to another similar

business or to a permitted use. However, if the building is vacant for six months, it may only be used for conforming uses in the code.

Board Member Clarke suggested that the Designated Street Front Map does not accurately represent how the City is legally platted into lots. Rather, it represents ownership. Mr. Chave explained that the map is divided into tax parcels, which are different than legal lots. In some cases, multiple lots are combined into a single tax parcel. As an example, Board Member Clarke specifically referred to the properties on the south side of Main Street between 2nd and 3rd Avenues South. The property to the west of the alley is divided into three lots, and the same size of property to the east of the alley is identified as a single lot because it is under the same ownership. Board Member Clarke pointed out that requiring a 15-foot step-back on narrow lots for portions of a building above 25 feet makes development challenging, if not impossible. The stepped-back portion of the buildings would be nonfunctional. Mr. Chave explained that the step-back requirement is particularly onerous for properties that have two street fronts (the main street front and the alley). These buildings are required to step back 15 feet on each side. Board Member Clarke referred to the property located just west of 3rd Avenue South at the northwest corner of the alley and questioned if it is legally possible to redevelop just one of the lots based on the current step-back requirement. Mr. Chave agreed that redeveloping just one of the lots would be very challenging.

Doug Spee, Woodway, said he has an office on Bell Street. He expressed his belief that the proposed code amendments are well written and would benefit all property owners in the BD zones. They do not favor any particular land owner. He said that while the step-back concept works well for high-rise development in downtown Seattle, the Board should keep in mind that development in downtown Edmonds is limited to three stories. Asking a developer to step back the top floor can kill the design and make a project unfeasible. He expressed his belief that a step-back requirement is the wrong choice to prequalify a developer for the additional 5 feet in height. Another option would be to allow the additional 5 feet in height if a building is modulated. He pointed out that the Architectural Design Board has the ability to effectively control whether a proposed building provides enough modulation to warrant the additional 5 feet in height. A step back should not be the only way a developer can obtain the additional height.

Mr. Spee referred to the proposed development agreement language (ECDC 16.43.050) and noted that the alternative language for Item B could be interpreted to allow building heights much greater than 35 feet if a developer proposes a 3-story building with tall ceiling heights on each floor. He suggested the language be clarified or that the reference to the number of stories be eliminated altogether.

Ron Wambolt, Edmonds, thanked the Board for the time and effort they have spent to work through the proposed amendments. He said he hopes that when they are presented to the City Council, they will be in a good frame of mind to support the Board's recommendation. He said he supports most of the changes as proposed. He specifically said he believes development agreements would stimulate economic development in downtown Edmonds. He noted there has been no new development in downtown Edmonds since the BD zoning was implemented in early 2006. While the economy is partially to blame, he believes the other cause is the rigid BD development standards. Currently, the only flexibility allowed in the BD zones is through a variance, which requires a developer to meet six criteria. While the variance concept is well intended, it generally curbs the granting of any variance. He said he believes the development agreement provision would open new opportunities for controlled flexibility. Developers would have more flexibility, but the flexibility would be controlled by the City Council. It sets up the opportunity for a win-win situation where the developer has to give something in order to get something in return. He said he hopes the Board can reach a unanimous decision and forward their recommendation to the City Council as soon as possible.

Stephen Clifton, Community Services/Economic Development Director, referred to the Planning Board's minutes of April 13th, which incorrectly quoted him as stating that "the step-back requirement should be applied in all BD zones." His intent was to suggest that he did not see the logic of applying a 15-foot step back in any of the BD zones.

Karen Wiggens, Edmonds, said she supports the Board's proposal to prohibit office uses in the BD1 zone. It is important for the retail area to be pedestrian friendly. However, she is not sure she supports the idea of prohibiting service uses, as well. Many people who visit the nail and hair salons walk to their destinations. She said she also supports the proposal to change the commercial depth requirement to 45 feet for all BD zones and to eliminate the step-back requirement. She explained that she owns a building on 2nd Avenue South and James Street, and they are currently negotiating a 10-year lease

with Landau Associates, which will be good for her and for the City. Part of the reason she can negotiate the new lease is because she can offer additional space on the third floor, which can be expanded on the east side of the building. There is no reason for a 15-foot step back on her building. If she was not allowed to expand her building to the street front, the City would lose a good business, and she is not the only property owner in this type of situation. She said that while she supports the development agreement concept, she cautioned that the proposed language appears to address one specific property, which can be a dangerous approach.

THE PUBLIC PORTION OF THE HEARING WAS CLOSED.

Chair Lovell requested clarification of Mr. Spee's comment related to the proposed language in Alternative B in ECDC 16.43.050 (height versus stories). He said he does not interpret the language to allow a 3-story building that is greater than 35 feet in height. Mr. Spee said he supports the concept of limiting building height to 35 feet. However, his interpretation of Alternative B is that a 3-story building could actually be much greater than 35 feet if each of the floors had a 16-foot ceiling height. He said he does not believe the language, as currently drafted, defines the maximum building height allowed.

Board Member Clarke observed that Ms. Spee is a successful developer in other jurisdictions in the Puget Sound area. He asked him explain how a developer could construct a 4-story building when the height is limited to 35 feet, particularly given the height required to provide a 12-foot ground floor commercial space, as well as space to locate the mechanical equipment. Mr. Spee answered that if a lot is sloped, it may be possible to construct four stories on one side. He said that if the proposed Designated Street Front Map is approved as presented, his property would qualify for four stories because a portion of the development would be outside the designated street front area. Therefore, he would not be required to provide 12-foot ceiling heights for the ground floor space. He briefly explained how a 4-story development could be accomplished on his particular lot.

Board Member Clarke reminded the Board that the objective of development agreements is to enhance flexibility. The development standards do not take lot size and topography into consideration, and applying a one-size-fits-all approach does not allow flexibility for developers to explore other options that would enhance overall development without creating a monstrous development that the community does not want. He recalled that the purpose of the height limit is to avoid massive buildings. Mr. Spee pointed out that a 30-foot high building could not be considered large. He suggested that one aspect that is missing from the conversation is that topography creates a stadium setting as you approach the downtown. The one-size-fits-all approach does not acknowledge that a slightly taller building on 4th Avenue South and Main Street would not look different from uphill. Development agreements would offer flexibility for the City to allow slightly taller buildings that do not block view from uphill. They also allow developers an opportunity to try and sell something that makes better sense to the public and the City Council. He said he has spent several months trying to offer ideas for how his development could provide more benefits to the community, but the current code language does not allow flexibility to implement any of the ideas.

Board Member Clarke pointed out that Mr. Spee also owns property in Redmond near their town center, which has potential for redevelopment. Mr. Spee said he purchased the property in July of 2008 and the permits to construct an 85-foot tall building were obtained in December of 2010. He said that while Redmond's development standards are different, they are not necessarily any better. However, they do not have a building height requirement for their town center zone.

The Board reviewed each of the proposed amendments and took action as follows:

Uses in the BD1 (Retail Core) Zone:

CHAIR LOVELL MOVED THAT THE BOARD RECOMMEND APPROVAL OF THE REVISED TABLE IN ECDC 16.43.020 AS PROPOSED BY STAFF. BOARD MEMBER CLOUTIER SECONDED THE MOTION.

Mr. Chave referred to the proposed table and noted that the only term currently defined in the code is "office," which means "a building or separate defined space within a building used for a business which does not include on-premises sales of goods or commodities." He noted that this definition is not particularly helpful, and that is why staff provided more descriptive language for office and service uses. He advised that the Board would review all the use classifications after the

University of Washington Team has worked out their proposal for form-based zoning for the Westgate and Five Corners commercial areas. He referred to the handout that matches the 1987 Standard Industrial Classification (SIC) Codes to the 1997 North American Industry Classification System (NAICS), which identifies very different kinds of service categories. He recalled the Board has talked about allowing personal service uses in the BD1 zone. He summarized that while they must deal with use definitions at some point in the future, the proposed amendment is workable because it includes terms that are used throughout the Development Code.

Board Member Ellis recalled the Board previously discussed the option of prohibiting both office and service uses in the BD1 zone. However, the motion currently on the floor would only restrict office uses from being located in the designated street front areas within the BD1 zone.

Board Member Stewart reviewed the updated results of the survey she and Board Member Johnson conducted to identify the current uses in the BD1 zone. They found that 35% of the designated street fronts were retail uses, 5% were art, and 23% were restaurant and food services. That means a total of 63% of the uses were retail and/or food related. In addition, 25% of the space was occupied by beauty and wellness uses, finance, insurance and real estate uses, and professional offices. Other uses occupied 4% of the space, and 8% of the space was vacant. Mr. Chave observed that professional offices occupy only a small percentage of the designated street front space in the BD1 zone. However, adopting the proposed language would eliminate the possibility of more of these uses locating in these critical retail areas.

Board Member Cloutier recalled the Board's previous discussion about what options a land owner would have if they are unable to rent their space for a retail use. If a space cannot be rented within a 6-month time period, he suggested it would be better to allow the space to be rented for a professional office use rather than remain vacant. He questioned how this need could be addressed. Mr. Chave said the proposed amendment would offer no option for other types of uses, and a development agreement would not be allowed to modify the allowed uses, either. Board Member Stewart suggested the purpose of the proposed amendment is to serve a greater City need. Landowners have the option of adjusting their rent and/or terms to attract retail tenants. Mr. Chave recalled an experience shared earlier by Mr. Clifton in which he encouraged a property owner to think more carefully about the types of businesses he/she was trying to recruit. The property owner assumed the space was more suitable for office use, but he was able to convince him/her that a retail food business would be a better choice. The property owner was able to successfully recruit this type of use. Board Member Stewart emphasized that getting more retail uses in the BD1 zone will be positive for the landowners, too.

Board Member Johnson pointed out that changing the uses allowed in the BD1 zone would not require a successful office use to terminate now. However, she felt the proposed amendment would be appropriate if the City's intent is to have retail uses in the BD1 zone. She agreed that service uses such as nail and hair salons could be part of the retail mix. She would even support allowing all service uses, but medical and other professional office uses should be prohibited.

Board Member Cloutier agreed the City's goal is to have retail uses in the BD1 zone. However, he cautioned against limiting the property owners' ability to rent their space **too m**uch. There should be some provision that allows nonconforming uses if that is the only type of use interested in the space. Allowing a nonconforming use would be better than an empty store front. Mr. Chave pointed out that the hardship to property owners would be mitigated by the fact that the use restrictions would only apply to the portions of buildings located within the designated street front. The limited use would apply to just a very small portion of the downtown area, and he would advocate holding firm on the areas that matter (BD1 zone).

Board Member Clarke said it appears that the vacant properties in the BD1 zone are designed for retail rather than professional office uses. Mr. Chave added that much of the vacant space is in space that has never been occupied but was constructed for retail uses. Board Member Clarke said he cannot foresee a situation in which the proposed amendment would place a hardship on a property owner. He expressed his belief that the proposed amendment represents the best interest of the public and provides a fair balance between the needs of the landowners and the current economic conditions.

Board Member Johnson pointed out that, as proposed, drive-through businesses would no longer be allowed in the BD1 zone. The Board has generally agreed with this approach. However, as she reviewed the table of permitted uses, her attention was drawn to hotel and motel uses, both of which are permitted primary uses in the BD1 zone. She explained that a

motel is designed for auto travelers, and a hotel is defined in Chapter 21 as containing five or more separately-occupied rooms. A boarding house is a use that contains not more than four rooms for lodgers and boarders. She expressed her belief that hotel and boarding house uses seem to be more consistent for the BD1 zone, but perhaps motels should be excluded. Motels require an additional driveway access, which is similar to a drive-through business. If one is permitted and the other is not, it appears to be contrary to the desired pedestrian environment in the BD1 zone. Mr. Chave acknowledged that, at one time, the terms "hotel" and "motel" were defined differently, but now there is much less distinction. He reminded the Board that the BD1 development standards prohibit additional curb cuts, which would address issues related to access. Board Member Johnson pointed out that the definitions she provided came directly from the existing ECDC. Mr. Chave agreed but said the definitions are old and need to be reviewed and updated at some point in the near future. Board Member Clarke explained that the term "drive-through" references the fact that a user is maintaining their auto in the rendering of the service such as a coffee stand, a fast-food restaurant, etc. People are served while they remain in their cars. On the other hand, people who visit motels are required to park their cars to access their rooms. In the transient lodging world, which covers hotels, motels, etc., there is no such thing as a drive-through motel. Therefore, he suggested that motels are unrelated to drive-through uses. He summarized his belief that the City should not prohibit transient lodging facilities in the BD1 zone.

THE MOTION CARRIED UNANIMOUSLY.

Designated Street Front and Commercial Depth Requirements:

BOARD MEMBER CLOUTIER MOVED THAT THE BOARD RECOMMEND APPROVAL OF THE AMENDMENT TO ECDC 16.43.030 TO CHANGE THE COMMERCIAL DEPTH REQUIREMENT TO 45 FEET IN ALL BD ZONES AS PROPOSED BY STAFF WITH THE CORRECTION TO FOOTNOTE 3 (CHANGE 60 FEET TO 45 FEET). HE FURTHER MOVED THE BOARD RECOMMEND APPROVAL OF THE DESIGNATED STREET FRONT FOR BD ZONES MAP AS PROPOSED BY STAFF. BOARD MEMBER STEWART SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

Step-Back Requirements:

CHAIR LOVELL MOVED THAT THE BOARD RECOMMEND THAT THE STEP-BACK REQUIREMENT BE ELIMINATED IN ALL BD ZONES. BOARD MEMBER JOHNSON SECONDED THE MOTION.

Chair Lovell said the logic behind his motion is that the Comprehensive Plan and Design Guidelines provide that building design shall include façade articulation and/or modulation. Using changes in textures, materials and articulation can achieve the same aesthetic result as requiring a step back. He expressed his belief that even a 5-foot step back would be too much when multiplied by the entire width of the lot.

Board Member Clarke observed that there is no step-back requirement in the BD1 zone. Similar to how the commercial depth requirement was changed to be consistent for all BD zones, he said he would support a consistent step-back requirement. He said the existing architecture in the BD zones reflects the uniformity of no step-back requirement since no new development has occurred since the step-back requirement was implemented. As examples, he noted the Windermere Building, City Hall, the Harbor Building, and the condominiums built in downtown. He concluded that the step-back provision has not proven to be a valuable contribution to the building code. For uniformity and to be consistent with how the City is currently developed, he recommended the step-back requirement be eliminated.

Board Member Ellis said he supports the motion to eliminate the step-back requirement for the same reasons that were stated by Board Member Clarke and Chair Lovell. He said he does not see why they should have a different step-back requirement for any of the BD zones. The current requirement is too blunt an instrument to accomplish its goal.

Chair Lovell referred to written comments submitted by Vice Chair Reed, which state, "I think the step-back change is good, though upper floor step-backs are a good design feature that I would hope is still used. Otherwise, we could end up with shoe boxes for the sake of maximizing square footage."

THE MOTION CARRIED UNANIMOUSLY.

Development Agreements:

BOARD MEMBER CLOUTIER MOVED THAT THE BOARD ADOPT THE PROPOSED LANGUAGE FOR ECDC 16.43.050 AS PRESENTED BY STAFF, USING ALTERNATIVE B. CHAIR LOVELL SECONDED THE MOTION.

Board Member Cloutier referred to Mr. Spee's earlier concern that using the term "story" could result in building that are significantly taller than 35 feet if a developer chooses to construct three stories that are each 16 feet tall. He reminded the Board that the additional height would only be allowed via an approved development agreement, which would be reviewed by both the Planning Board and the City Council. If the proposed height of a development is unreasonable, the City would not be obligated to approve the development agreement. A developer would have to make a strong case to support why each story would have to be so tall, and each request would be weighed against the Downtown Design Guidelines and the Comprehensive Plan policies.

Board Member Cloutier recalled that one Board Member expressed concern that if all provisions in ECDC 16.43.030 and 16.43.040 can be altered with the exception of height, these two code sections would be meaningless. He reminded the Board that any code diversion would have to be approved by the City Council as part of a development agreement. Mr. Chave added that a developer would have to make a case to support his request to modify a development standard. Board Member Cloutier said a Board Member also raised the question of what would happen if a developer chooses not to meet one of the requirements of ECDC 16.43.030 or 16.43.040 after a development agreement has been approved. Mr. Chave answered that the developer would be required to either amend the development agreement or request an entirely new development agreement, both of which would require a public process and final approval by the City Council. These inconsistencies should be caught during the development permit review, and no development permit would be issued for a project that does not meet all of the code requirements as outlined in the development agreement.

While he actually recommended including the reference to "stories" in Alternative B, Board Member Clarke questioned if it is needed if the goal is to create flexibility. He asked if the 35-foot maximum height limit would provide enough safeguard that someone would not be able to build a taller structure. If so, then reference to "stories" is irrelevant. Mr. Chave agreed and noted that height has traditionally been regulated based on a specific height and not stories. The language related to stories was added at the request of the Board. It is not really necessary. Board Member Clarke said it is possible for a development that is 35-feet high to include a taller first floor to accommodate the mechanical equipment and a taller third story to provide a greater ceiling height for residential units. This would allow for development that is architecturally unique and different than a standard box. He noted that other municipalities are allowing flexibility in their codes for this type of development. He said he would support the motion, but he would like to amend it to delete the reference to "three stories."

Board Member Ellis suggested it would make more sense to change Alternative B to read, "A development agreement for a development in a BD zone may vary any of the site development standards contained in ECDC 16.43.030 or 16.43.040 except building height may only be increased to 35 feet." Board Member Chave agreed that would be appropriate and would not alter the intent of the proposed language.

BOARD MEMBER CLOUTIER MOVED THAT THE MOTION BE AMENDED TO DELETE THE WORDS "OR THREE STORIES, WHICHEVER IS GREATER" FROM ITEM B.1. BOARD MEMBER JOHNSON SECONDED THE MOTION.

Board Member Clarke said he appreciates that the City Council takes the time to read the Board's minutes because they have spent a lot of time on this issue. That is one of the reasons he has taken the time to have the discussion about building heights versus stories and the combination of the two. This discussion helps to lay the foundation so the City Council can see the complexity of the problem they face in the BD zones and offer a solution that meets the Design Guidelines and Comprehensive Plan Policies to encourage positive economic development and suitability to the community in long-term investments with the anticipation of providing economic benefits for all stakeholders in the community. Board Member Clarke said it is important for the City Council and the public to have a clear understanding of the concept of highest and best use of the development of real estate. He explained that there are four criteria for evaluating the highest and best use of a piece of property:

1. Potential Development. The potential development must be physically possible based on current construction standards and standards associated with the site.
2. Legally Permissible. This falls directly under the zoning code and development standards to create the elasticity on legally permissibility. Flexibility in the code enables the highest and best use to expand and adapt to different market conditions, which is critical in the development arena.
3. Financially Feasible. This is a key concept for the community to consider. For example, if the cost of land and the cost of construction are both high, these costs must be covered by the economic feasibility of the proposed project. This is one reason why the step-back requirement is onerous. It reduces a developer's opportunity to spread the financial viability over a larger footprint. The Board has enhanced the concept of highest and best use by recommending that the step-back requirement be eliminated and by establishing a uniform commercial depth requirement of 45 feet. Both of these amendments allow for more flexibility for the types of land uses that can be put in the BD zones. It also enhances the arena for financial feasibility.
4. Maximum Productivity. Maximum productivity is based on opportunity costs. If a developer has two alternatives, they must determine which one produces the maximum productivity of the asset. The zoning code helps the developer be able to choose the best of all the land uses based on economics at the time of development.

Board Member Clarke summarized that if all four criteria can be met, there is a high probability that the project will be sustainable over the long term and improve the return to all stakeholders through increased tax revenues and enhanced use of the property by the community. He said the Board has worked hard to create an environment that meets and exceeds the goals of the Comprehensive Plan with respect to the economic sustainability of the community. Developers will be able to speak to all four points with more flexibility, and there will be more opportunities for return to the community.

Chair Lovell referred to Vice Chair Reed's written concern about changes that occur after a development agreement has been approved. Mr. Chave clarified that the staff cannot unilaterally change a development agreement. Changes would have to go back to the City Council for approval.

Board Member Stewart pointed out that the proposed amendment incentivizes the City's goal of being sustainable by requiring Silver and/or Gold LEED or equivalent for all development agreements. It is also important to consider the concept of adaptive reuse so that the uses of buildings can be altered as the market changes without requiring substantial redevelopment. In addition, new construction should use local materials and other sustainable resources, be energy efficient, maximize day lighting to reduce electricity requirements, and safeguard the indoor environmental quality by eliminating the use of toxic materials. She summarized that return on investment is not just about construction costs, it also includes reducing operating costs over the life of a building. These measures will help improve the economic and social sustainability of the City.

Board Member Ellis questioned how the Board came up with the four uses outlined in Item C.2. Mr. Chave said these uses were identified in discussions with the Planning Board and CEDC as priorities for promoting tourism in the downtown. Board Member Ellis asked if this list is intended to be exclusive of the things that are desirable or if additional uses could be added. Mr. Chave agreed that the four items may not be the only important and desirable uses, but they represent those that have been identified thus far. Board Member Ellis questioned if specifically identifying these uses would preclude other desirable uses in the future. Mr. Chave pointed out that the language could be amended in the future if more uses are identified. Board Member Ellis suggested that a better option would be to identify the four uses as potential examples, but not all inclusive. Mr. Chave cautioned against leaving the language so extremely open ended.

Board Member Clarke suggested another option would be to add "or characteristics" after "uses," and then include a provision that allows the Planning Board to make recommendations to the City Council for uses or other characteristics that may be considered in the future. This would allow the document to be more flexible rather than restricted to just those four uses. Mr. Chave pointed out that this process would really be no less time consuming than a development code amendment to add another use.

Board Member Clarke said it is important for the City Council to see that this concept was considered by the Board and their intent is that it not be limited to the four uses identified in Item C.2. Neither is the language intended to apply to the needs of

just one property owner. Mr. Chave said the items on the list have been pursued and talked about at various levels for quite some time. He said the list is intended to represent the uses that have been identified to this point. He noted that the City Council would also have the ability to add additional uses to the list prior to their final approval.

Board Member Johnson reminded the Board that in previous discussions with the CEDC, public restrooms were identified as a desired public amenity. She suggested that the words "public restrooms" be inserted into Item C.3 as an example of a potential public amenity.

Board Member Ellis requested clarification of how Criteria C.3 would be applied. Mr. Chave clarified that art features would only be required if the applicant chooses to utilize Criteria C.3, which calls for enhanced public space and amenities. Board Member Ellis suggested that the words "without limiting the scope of enhanced public space and amenities," be added at the beginning of the second sentence to make it clear that developers can propose public space and amenities that are not included on the list of examples.

BOARD MEMBER CLOUTIER MOVED THAT THE MOTION BE AMENDED TO CHANGE ITEM C.3 TO READ, "THE DEVELOPMENT INCLUDES ENHANCED PUBLIC SPACE AND AMENITIES. WITHOUT LIMITING THE SCOPE OF ENHANCED PUBLIC SPACE AND AMENITIES, EXAMPLES INCLUDE SUCH FEATURES AS PUBLIC RESTROOMS, ADDITIONAL BUILDING SETBACKS WHICH PROVIDE EXPANDED PUBLIC SIDEWALKS OR GATHERING SPACE, AND/OR COMBINED WITH EATING OR FOOD RETAIL SPACES WHICH INCLUDE OPEN AREAS ADJACENT TO THE SIDEWALK. ART FEATURES VISIBLE TO THE PUBLIC SHALL ALSO BE INCORPORATED INTO BUILDING AND/OR SITE DESIGN." BOARD MEMBER JOHNSON SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

THE MAIN MOTION TO RECOMMEND APPROVAL OF THE PROPOSED LANGUAGE FOR ECDC 16.43.050 WAS UNANIMOUSLY APPROVED AS AMENDED.

REVIEW OF EXTENDED AGENDA

Mr. Chave announced that the Board Members have been invited to attend the CEDC's June 15th meeting, at which the University of Washington/Cascade Land Conservancy Team will provide a final update on their work with the Five Corners and Westgate Commercial Centers before presenting their findings to the City Council. The Board would be invited guests of the CEDC and would not be voting on the item. He explained that after their presentation to the City Council, the Team would ask the City Council for authorization to begin the formal review of the Development Code and then the item will come before the Planning Board for review.

Mr. Chave advised that Mr. Lien would be present at the Board's June 22nd meeting to discuss the Shoreline Master Program Update.

PLANNING BOARD CHAIR COMMENTS

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

PLANNING BOARD MEMBER COMMENTS

Board Member Stewart announced that the City of Bellingham is sponsoring their 9th Annual Imagine This! Home and Landscape Tour on June 25th and 26th from 10:00 a.m. to 5:00 p.m. She said she would not be able to attend the event. She encouraged Board members to visit http://sustainableconnections.org/events/9th-annual-home-and-landscape-tour for more information. She felt the event would be of interest to the Board given the City's goal of implementing green initiatives in Edmonds. She would like ideas for promotional events to show off green projects that have occurred in the City.

ADJOURNMENT

The Board meeting was adjourned at 9:20 p.m.