

**APPROVED OCTOBER 23<sup>RD</sup>**

**CITY OF EDMONDS  
PLANNING BOARD MINUTES**

**October 9, 2013**

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Chair Reed 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**

John Reed, Chair  
Valerie Stewart, Vice Chair  
Todd Cloutier  
Bill Ellis  
Philip Lovell  
Madeline White (Student Representative)

**STAFF PRESENT**

Rob Chave, Development Services Director  
Stephen Clifton, Community Services/Economic Development Director  
Karin Noyes, Recorder

**BOARD MEMBERS ABSENT**

Kevin Clarke  
Ian Duncan  
Neil Tibbott

**READING/APPROVAL OF MINUTES**

**BOARD MEMBER LOVELL MOVED THAT THE MINUTES OF SEPTEMBER 25, 2013 BE APPROVED AS AMENDED. VICE CHAIR STEWART SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.**

**ANNOUNCEMENT OF AGENDA**

The agenda was accepted as presented.

**AUDIENCE COMMENTS**

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

**PUBLIC HEARING ON A PROPOSAL TO LIMIT CERTAIN OFFICE USES FROM LOCATING IN BUSINESS SPACES ALONG DESIGNATED GROUND FLOOR STREET FRONTAGES (GFSF) WITHIN THE DOWNTOWN BUSINESS (BD1) ZONE (FILE NUMBER AMD20130013)**

Mr. Clifton informed the Board that, in addition to the required public notification, the City sent hearing notices to all property owners within the BD1 zone. He advised that the proposal before the Board has been discussed by the City Council, the Planning Board and the Edmonds Economic Development Commission (EDC) since early 2011. He noted that the Staff Report contains four documents related to the proposal to limit certain office. He reviewed each of the attachments as follows:

- **Attachment 1** provides an overview of the proposal, which contains a summary, introduction, and references to City documents and various reasons cited by Roger Brooks for supporting the proposal. He noted that the title of the document is not the same as the title of the agenda packet. The title on Attachment 1 (Create Economic Vitality – An Edmonds City Center that is Economically Strong, Thriving, Lively and Social) is intended to reflect the true goal of the proposal.
- **Attachment 2** provides a chronology of the events that occurred during the long, 2½-year process.
- **Attachment 3** is a map depicting the boundaries of the BD1 Zone.
- **Attachment 4** is an inventory conducted by staff in response to a May 13<sup>th</sup> meeting with property owners within the BD1 zone.

Mr. Clifton advised that his comments are intended to illustrate why consideration should be given to restricting and promoting certain uses along designated ground level street frontages within the BD1 zone. He reminded the Board that the issue was raised, in part, as a result of past conversations with property owners and leasing agents and looking at what other cities are doing to create a stronger retail/entertainment core. In fact, the concept or goal of creating a strong retail core in Edmonds goes back to 2006 when the Edmonds Economic Development Plan was adopted. He specifically noted that Goal 2, Policy 2i of the plan states, “Create synergy for commercial businesses where possible, for example, by implementing a retail core area in the downtown.” He suggested that another way to phrase this goal is “How does our community open more opportunities for retail, dining, specialty shops, entertainment venues and galleries within a concentrated area?” He pointed out that land-use goals and strategies for many downtown areas incorporate four prominent themes: a central gathering place, sense of place, connectivity, and varying degrees of density. He emphasized that in order to achieve these objectives, downtowns need economic development/vitality, safety, housing, businesses, and tourism. A vibrant open-door retail/service core will help advance these objectives. He specifically discussed the following concepts:

- **Central Gathering Place.** Retail/restaurants and open-door service uses, particularly independently owned, add to Edmonds’ distinctiveness because they are the most visible elements within the downtown core of Edmonds. As stated in a 2010 email he sent to a property owner, “Edmonds’ unique downtown character is defined by the diversity and concentration of complimentary commercial uses such as restaurant/cafes, art galleries, house wares, books, garden supplies, specialty boutiques, hair/nail salons, etc. These uses generate pedestrian activity and a lively social environment that, in turn, sustains a mix of uses. Creation of a critical mass of this type of activity also helps to increase the drawing power of the central area commercial retail sector. While pure, by-appointment office uses have the ability and flexibility to open in more locations within commercial areas, uses such as retail stores, restaurants, art galleries, etc., have limited business spaces/stock and thrive best when there is a concentration of similar uses.” The City and business community have been working to attract businesses that will help bring life to the downtown streets during the weekend and evening hours, and it is starting to pay off.

This message is consistent with information provided by Mr. Brooks nearly two years later (November 8, 2012) during his presentation at the Wade James Theater regarding the “20 ingredients of an outstanding downtown.” Two of these ingredients relate to how clustering of like-businesses works and the power in critical mass. He said Mr. Brooks specifically highlighted that while spending millions of dollars on beautification, public parking, street trees, façade improvements and a host of other things can help improve the physical environment, a downtown can still be lifeless. He emphasized that what is happening **inside** the buildings is what makes a downtown work as a community center and gathering place. There are beautiful streetscapes that have no street activity, which he suggested is due to lack of businesses along the streetscape that attract people.

- **Public Safety/Less Activity.** Office uses are typically closed in the early evenings and on weekends, creating less lively and darker streetscapes. The resulting impression of the area is that it is not inviting, thriving, interesting or friendly to walk around. A healthy retail core is also important for maintaining safe streets in many central cities. According to Crime Prevention through Environmental Design, businesses on the ground floor provide “eyes on the street” and deter criminal activity. Retail businesses, restaurants, art galleries, etc., stay open for longer periods of time than office uses, thus providing more activity on the street beyond 5:00 or 6:00 p.m. The proposal before the Board is expected, over time, to help create a more concentrated “festival retail” environment that does not close at 5:00 or 6:00 p.m. Instead, the downtown core would invite people to hang out and enjoy the environment later into the evening.

- **Intensity.** Retail, restaurant, gallery, and service uses can also help stimulate housing and business development within downtown areas as they often provide essential services to City residents. This can be partially attributed to the vibrancy that these uses add to downtown streets.
- **Tourism.** A strong retail core helps attract shoppers and tourists who invest significant amounts of money into the city, county and state economies. Tourism is the 4<sup>th</sup> largest industry in Washington State; and in turn, it supports businesses and their employees. Downtown Edmonds is home to many independent retailers and restaurants. When tourists shop downtown, they are supporting the growth of smaller independent businesses. Conversely, negative fluctuations in the retail market, such as the absence of critical mass, can result in vacant storefronts thus affecting the street environment and eventually weakening the vitality of the downtown core. Retail and active-service uses are a critical part of sustaining the health of downtown.
- **Direction of the Downtown Core.** A city and business community can help and should orchestrate the business mix. Expressing support to establish a retail/dining/entertainment or “festival retail” core helps guide the kinds of businesses to recruit. This applies to the City, Chamber, landlords and leasing agents. If there is no concerted effort to fill spaces with certain uses, there will be less incentive/motivation to search for the types of activities or businesses that help increase the drawing power of the central area commercial retail sector. In other words, it can sometimes be easier to lease to a tenant that will not add to the commercial vitality of the business core. He could cite a number of successful conversations he has had with property owners and leasing agents about leasing property in the downtown core for uses other than office.

Once again, Mr. Clifton referred to Mr. Brooks’ “20 Ingredients of an Outstanding Downtown,” and noted that the following are specifically tied to the current proposal:

- **Nearly all begin with a plan.** The Economic Development Plan calls for creating a retail core and several Comprehensive and Economic Development Plan goals and policies support this effort. These specific goals and policies are outlined in Attachment 1.
- **Defining a strong brand and retail focus.**
- **Orchestrating recruitment of “critical mass” or “clustering.”** Staff recently reviewed a video from the Roger Brooks Library regarding the concept of “critical mass.” The video talks about the power of getting like businesses in a concentrated environment and how much synergy and livelihood that creates.
- **Starting with a demonstration project.** Many people have asked why the City is not proposing to apply the proposed amendment to the entire downtown core. As recommended by Mr. Brooks, staff is proposing to start small. If the concept is successful, the boundaries can be expanded. If not, the boundaries can be pulled back.
- **Developing gathering places.**
- **Sidewalk cafes and dining.** He noted that the recent widening of Main Street allowed restaurants to place chairs and tables on sidewalks, which has resulted in a more vibrant street front.
- **Investing heavily in retail beautification.** He has promoted a program he calls, “Paint the Town,” and many property owners have already painted their facades. More are planning to do so. This has created more of a “funky,” colorful downtown.
- **Activities and entertainment.**

Mr. Clifton advised that, on June 13<sup>th</sup>, the EDC expressed unanimous support for the proposal, and staff conducted meetings with property owners in the BD1 Zone on May 13<sup>th</sup> and September 4<sup>th</sup>. Approximately 50 invitations were sent out, and over 20 people attended. He noted that, at the May 13<sup>th</sup> meeting, some property owners expressed support for the proposal, and others wanted to continue the discussion. At the September 4<sup>th</sup> meeting, it seems most property owners supported the proposal. He concluded that, to date, none of the property owners he has spoken with have expressed outright opposition.

Mr. Clifton advised that within his critical mass video (referenced earlier), Mr. Brooks talks about the Ten Ten Ten Rule where cities try to get 10 places that sell food, 10 places that serve as destination retail shops and ten places that are open after 6:00 p.m. all within three lineal blocks. Walnut Creek, California, is a good example of this concept. Although the city’s population is only about 65,000, they have over 200 restaurants near the core of their downtown.

Mr. Clifton advised, that over the past few years, staff has conducted research to learn how other jurisdictions have successfully implemented provisions that restrict service/office uses within their retail core areas. He specifically noted the following:

- **Kirkland, Washington.** In 1990, the City of Kirkland adopted a code provision that limits the uses at street level to certain kinds of commercial uses. He recalled that members of the EDC and Planning Board met with Kirkland's Planning Director, who indicated that the provisions have been working well. However, he noted that they amended their 90-day nonconformance provision to 180 days to provide more flexibility during the recession.
- **Escondido, California.** In 2010 the Escondido City Council conducted an effort to reserve downtown storefronts for shopping, dining and entertainment. One of the city's specific goals was to promote a vibrant and exciting downtown environment by establishing areas with land uses that foster an 18-hour atmosphere.
- **Minneapolis, Minnesota.** This city's policy is to maintain a compact core by concentrating major retail facilities within an area designated as "Retail District." The Retail Detail serves as the primary center of retailing activity in the downtown.
- **Encinitas, California.** In 2007, The Encinitas City Council unanimously supported a proposal to preserve its downtown by restricting its ground-floor space to retail businesses.

Mr. Clifton pointed out that many cities in California have adopted similar policies including Coronado, San Diego, Redwood City, Alameda, Arcadia, San Luis Obispo, and Walnut Creek.

Mr. Clifton referred to Attachment 4, which is a spreadsheet of existing businesses in the BD1 zone. The businesses highlighted in yellow are those that would be impacted by the proposed amendment. He emphasized that it is not the City's intent to push out existing businesses that are not consistent with the proposal. These businesses would not be required to leave. A property owner would have the ability to fill any vacant space with a similar use to the one that left, if it is done with 180 days or six months from the date a space is vacated. It is not the City's objective to push these businesses out; rather, it is to prevent the number of certain office uses in the BD1 zone from increasing.

Mr. Clifton reviewed that the Planning Board conducted a workshop on the proposed amendment on September 11<sup>th</sup>. At that time, they asked about inserting clarifying language into Table 16.43-1 related to real estate offices. They also recommended that the first footnote at the end of the table should be changed to make it clear that buildings setback 15 or more feet from the sidewalk would not be subject to the BD1 zone GFSF requirements. In addition, the Board discussed the best way to address window displays and a question was raised about applying a 90-day nonconformance timeline versus the City's current nonconformance timeline of six months.

Mr. Clifton referred to Attachment 1 and noted that the modifications made as a result of the Planning Board's discussion are identified in green. He explained that window displays relate to visibility and aesthetics as opposed to the types of uses allowed in the BD1 Zone, so no new language was added to the amendment. Language relating to a 90-day versus 6-month nonconformance timeline was also not incorporated into the draft document. While the Board raised the question, there was no clear indication that the majority of the Board supported a shorter timeframe. He expressed concern that 90-days is not much time to recruit businesses, and he recommended the Board retain the 6-month timeframe. He summarized his belief that, at a minimum, the proposal would accomplish the City's goal of preventing the number of certain office uses from increasing within the BD1 Zone. He specifically noted that one property owner only supported the proposal when he learned of the 6-month timeframe and that his business would not be required to vacate the site when the amendment is adopted.

In addition to the changes made since the Board's last review on September 11<sup>th</sup>, Mr. Clifton recommended that the first footnote below Table 16.43-1 should be amended by adding the words "or park/plaza" after "sidewalk." He noted that this recommendation is based on a discussion he recently had with the EDC's Land Use Subcommittee about how to address the Old Mill Town property.

Mr. Clifton referred the Board to the following written public comments that were received regarding the proposed amendment:

- In an email dated October 3, 2013, Chris Fleck expressed support for the proposed amendment.
- In an email dated October 8, 2013, Pat McDevitt voiced his support for limiting certain office uses in the BD1 zone.
- In an email dated October 9, 2013, Richard Senderoff expressed support for the proposal, as well. He emphasized that, although he serves on the EDC, he was offering his support as a citizen.

Vice Chair Stewart asked the typical length of a lease in the BD1 Zone. Mr. Clifton answered that property owners do not share this information with him, but the typical timeframe is a minimum of five years.

Chair Reed clarified that the Board is being asked to approve the draft amendments to ECDC 16.43 found on Pages 6 through 8 of Attachment 1. Mr. Clifton explained that if the Board recommends approval, the draft changes would be forwarded to the City Council for adoption. If the City Council supports the amendments, they would direct the City Attorney to prepare an ordinance to formally adopt them into the ECDC.

**Ray Ault, Advanced Hearing Systems, Inc.,** said he leases property for his business at 104 – 5<sup>th</sup> Avenue North in Edmonds. He said that while he understands the intent of the proposed amendments, he has some questions and concerns. He asked if another hearing business could locate on the site if he vacates the premise or if future uses would have to conform to the new requirement. He requested clarification about why the Edmonds Vision Center would be an allowed use when his hearing business would not.

Mr. Clifton explained that if Advanced Hearing System, Inc. vacates its site, the property owner would have a timeframe of six months to lease the site to a similar business. If the site is not filled with a similar use within that timeframe, the property owner would be required to adhere to the new use requirement. He explained that the hearing business is different than the vision center because the vision center provides a retail environment at the storefront by selling glasses and sunglasses. He reminded the Board that they had a lengthy discussion about this issue at their last meeting, when he shared the example of a physical therapy business that is currently located in downtown Kirkland. Although physical therapy is not considered an allowed use along the street front, the business owner met the city’s requirement by providing a retail component (exercise equipment) at the front of the building, with the actual therapy taking place behind. He noted that hearing centers are less retail oriented and more medical oriented. He re-emphasized that Advanced Hearing System Inc. would be allowed to remain on the site until the business owner chooses to vacate. At that time, the site would be subject to the new code, and the property owner would have six months to fill the space with the same or a similar use. After six months, the property owner would be required to fill the space consistent with the new use requirement. Board Member Lovell clarified that Mr. Ault would not be allowed to relocate his existing business to another site in the BD1 zone.

Chair Reed referred to the footnote at the bottom of Table 16.43-1, which clarifies that service uses that do not provide open-door retail/dining/entertainment functions as a primary component of the business would not be allowed in the BD1 zone. The term “open-door” can be used to distinguish between the vision center and other types of medical uses. Mr. Clifton agreed. He also reminded the Board that only banks with tellers and no drive-thru service would be allowed in the BD1 zone.

Making note of the three written comments described earlier by Mr. Clifton, Chair Reed closed the public portion of the hearing.

Board Member Lovell observed that the additional language added to the last footnote under Table 16.43-1 was intended to clarify the types of service uses that would be allowed. He asked if the Board feels the language is sufficient to address the issue clearly. Mr. Clifton explained that it would be impossible to identify all potential uses that are considered open-door. The three examples were provided in the footnote because they were the topic of several lengthy discussions. He emphasized the need for some flexibility, as well.

Board Member Lovell said he supports a 6-month timeframe for nonconformance rather than a 90-day timeframe. Again, Mr. Clifton said he has heard from some property owners who are only willing to support the proposed amendment if the six-month timeframe is included. One property owner was under the impression that his site would have to be vacated once the amendment is adopted. Explaining the nonconformance and grandfather provisions provided him with enough assurance to support the change. He reminded the Board that one objective of the proposal is to prevent the number of office uses in the BD1 zone from increasing.

Vice Chair Stewart expressed her belief that a 6-month nonconformance timeframe seems counterintuitive to the City's goal of decreasing the number of service and office uses in the BD1 zone. From her perspective, it would be too easy for a property owner to fill the space with a similar use, particularly if it will affect their bottom line. She suggested the City provide incentives to property owners to search for a different use that is consistent with the proposed amendment. This would create synergy and ultimately make other businesses more successful. If property owners are allowed up to six months to lease to a similar use, the City will be stuck for at least five more years with a use that is inconsistent with its goal for the BD1 zone. She said she would support a 90-day nonconformance timeframe.

Mr. Chave pointed out that there are very few locations that would be nonconforming based on the current proposal. If approved, the proposal would prevent property owners from converting existing retail spaces to service or office uses. He suggested that, in the absence of concrete incentives and mandating the change through regulations, the City has had some success using the art of persuasion to encourage property owners to change uses. Again, he reminded the Board that only a small percentage of properties in the BD1 zone are occupied by uses that would no longer be allowed. The goal of the proposal is to make sure the number of office uses in the BD1 zone does not expand. He expressed concern that if the City pushes too hard, they may face more resistance from property owners. Again, he said staff has had a lot of success with getting property owners on board. Typically, they are willing to try when offered options.

Mr. Clifton recalled that Roger Brooks talked about how important it is for the community to help orchestrate the types of uses they want in the downtown core. As the downtown core starts to transform, property owners will realize they can get more rent from a retail use than an office use. Once the pieces fall together, property owners will offer even more support for the vision. He noted that the City has already had some success with this concept, and the proposed code change would provide more motivation.

Vice Chair Stewart expressed her belief that the number of businesses that would be non-compliant with the new code provision is more than a few. She suggested that the Board include both timeframe options (90-days and 6-months) for public hearing purposes. She also suggested that the Board raise the concept of creative incentives at the public hearing. She specifically noted that a non-profit business improvement district or a community enhancement fund could be used to help building owners make the transition. She suggested the Board could provide a range of options and then let the City Council make the final decision.

Mr. Clifton agreed that Vice Chair Stewart's comments could be included as part of the Board's recommendation. However, he referred to the concern raised earlier by Mr. Chave. In conversations he has had with property owners in the BD1 zone, he saw a shift in their support when they realized they would have more flexibility. They understand the goal, and they support it. However, he cautioned against scaring property owners away by shortening the nonconformance timeframe. If they can keep the number of noncompliant uses from expanding, the City will have achieved success.

Mr. Clifton cautioned that it will be a challenge to apply the new code provisions to the property located at 543 Main Street, which is currently occupied by several small counseling offices. Staff is considering options for addressing this particular property.

Student Representative White asked why the Twist Vinyasa Yoga Studio is identified as a nonconforming use based on the current proposal. Mr. Clifton explained that the yoga studio is considered a fitness center. It is operated by appointment only, and only members are allowed on site. Therefore, it would not be classified as an open-door service use. He noted that currently, the site has screened all sides of the business, and there is no connection between what is happening inside the building and the street. This results in a less lively streetscape.

Board Member Ellis asked if business owners have a clear understanding that the proposed amendments would not impact their ability to sell a business. Mr. Clifton said he has tried to make it clear that a business owner could sell and the same use or a similar use would be allowed to continue in its existing location.

Board Member Cloutier pointed out that only 14 of the 105 businesses currently located in the BD1 zone would be considered nonconforming based on the proposed amendment. That is not a significant number, but adding more,

particularly on Main Street would be undesirable. He agreed with Mr. Clifton that applying the proposed amendment to the property at 543 Main Street would be difficult.

Mr. Clifton said he has been working with three business owners, in particular, who are interested in relocating to downtown Edmonds but have been unable to find space that meets their needs. The building at 3<sup>rd</sup> Avenue and Dayton Street is too large. He suggested that these situations lend support to the proposed amendment.

At the request of Board Member Cloutier, Mr. Clifton briefly explained why real estate offices and some banks would be allowed in the BD1 zone. Mr. Clifton recalled that this issue was discussed at length by both the EDC and the Planning Board. It was determined that real estate uses are somewhat open door in that people love to walk by and view the displays and they can go inside and speak to an agent. Mr. Chave noted that he walks around Edmonds almost every day and notices that people are frequently stopped in front of the real estate offices looking at the window displays. Mr. Clifton advised that while banks would be considered open-door businesses, those with drive-thru facilities would not be allowed, and the banks must have tellers.

**CHAIR REED MOVED THAT THE BOARD FORWARD A RECOMMENDATION OF APPROVAL TO THE CITY COUNCIL FOR THE PROPOSED AMENDMENTS TO ECDC 16.43 (FILE NUMBER AMD20130013) AS WRITTEN AND AMENDED BY STAFF (SEE AMENDMENT TO FOOTNOTE BELOW TABLE 16.43-1). HE FURTHER MOVED THAT THE BOARD RECOMMEND THE CITY COUNCIL SPECIFICALLY EVALUATE THE 90-DAY VERSUS 180-DAY TIMEFRAME FOR NONCONFORMANCE. BOARD MEMBER CLOUTIER SECONDED THE MOTION.**

Board Member Ellis indicated his support for a 180-day timeframe for nonconformance. However, he agreed it would be appropriate to leave the matter up to the City Council, recognizing the different viewpoints expressed during the Board's discussion.

**THE MOTION CARRIED UNANIMOUSLY.**

**DISCUSSION/UPDATE ON POTENTIAL ISSUES RELATED TO INITIATIVE 502 (I-502) (CANNABIS) IMPLEMENTATION IN EDMONDS**

Mr. Chave reported that on August 20<sup>th</sup>, the City Council adopted Ordinance 3938, establishing an immediate emergency moratorium on all marijuana related business activities. The moratorium expires in February. He explained that the issue is divided into two categories: medical marijuana and recreational marijuana. The purpose of the moratorium is to allow the Washington State Liquor Control Board an opportunity to complete its rule-making for the licensing of such uses and to allow the City to study the secondary land-use impacts. He said he anticipates the State will start issuing licenses for the production, processing and retail sales of recreational marijuana in March or April, and the City needs to have appropriate regulations in place by that time.

Mr. Chave advised that on September 3<sup>rd</sup>, the City Council had a discussion about marijuana issues, and none of the Council Members indicated a desire to outright ban recreational marijuana. He noted that the City of Kent has taken that approach, and they are currently being sued. Assuming the City Council's position holds, the next step will be to adopt specific regulations to govern the use. Any land-use amendments will come before the Planning Board for a public hearing and recommendation to the City Council.

Mr. Chave reviewed that, at one time, the Liquor Control Board recommended that recreational marijuana uses should not be allowed to locate within a 1,000 foot distance from schools, daycares, churches, parks, etc. However, the distance would be measured by the most common pathway between the two uses. The Federal Government pushed back, and the Liquor Control Board is now recommending a distance of 1,000, measured as the crow flies. As currently proposed, marijuana uses would not be allowed within 1,000 feet of the perimeter of a school, daycare, church, park, etc. He expressed his belief that the latter approach would be the simplest to implement.

Mr. Chave referred to the map that was provided in the Staff Report to reflect the staff's best effort to identify where the required buffers would rule out the opportunity for marijuana uses to be sited. He said that at a recent meeting of the City

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Council's Planning, Public Works and Parks Committee it was suggested that it might make the most sense to permit recreational marijuana uses (processing, production and retail sales) in the General Commercial (CG) and General Commercial 2 (CG2) zones, which are located along Highway 99. Sites within this zone are accessible to most anyone. The neighborhood commercial zones are very small and there is more chance that a restrictive use will eventually locate in the area, making it difficult for a marijuana business to renew its license. This would be less likely to occur along Highway 99.

Mr. Chave explained that the purpose of this discussion is to introduce the issue to the Planning Board. Since it is likely that the Board will be asked to act quickly, it is important for them to be aware of the issues. The City Council committees will continue their discussions and provide additional direction for how they want the Board to proceed.

Mr. Chave pointed out that, technically, medical marijuana uses are not licensed or otherwise authorized by any state or federal agencies. Therefore, the City may choose not to regulate them from a land-use standpoint. The City can just prohibit these uses until the State or Federal Government provides regulations.

Board Member Lovell reported that he attended the first City Council meeting where this topic was discussed. The package that was prepared for the Staff Report provides a good answer to many of the questions that were raised by the City Council. Based on State law, the City does not have a lot of flexibility related to recreational marijuana rules and regulations. Because he does not anticipate there will be large parcels of land on which a marijuana production or processing business could locate, the City will likely be dealing with just retail sales. Mr. Chave disagreed. He pointed out that a production facility could be located in a warehouse facility that accommodates indoor operations. However, he agreed that most of the spaces in the neighborhood commercial zones are too small.

Board Member Lovell referred to a memorandum from the City Attorney, which was included in the Staff Report. In the letter, the City Attorney cautions the City not to ban recreational marijuana business from locating in the City because it will likely be challenged. He noted that the State has proposed guidelines for the number of recreational marijuana retail sales locations each City should be allowed to have, and Edmonds has been allocated two. He summarized that while the City must allow for these uses, they can limit where they are located via zoning and land use regulations. He agreed with staff's suggestion that these uses be limited to sites along Highway 99 in the CG and CG2 zones.

Chair Reed asked if the buffers identified on the map provided in the staff report are statutory. Mr. Chave answered that they the buffers identified on the map are based on State law. They could potentially be enlarged, but not reduced. He reminded the Board that most of the neighborhood commercial centers could potentially accommodate marijuana uses, but they are small locations and it is possible a day care or other use could locate in the area that would prevent the marijuana business from renewing its license.

Board Member Lovell noted that the staff report also provides information about the direction the state is taking regarding taxation. Currently, a 25% excise tax would be charged, as well as an 8% sales tax on the production, processing and retail sales. This equates to about \$6.25 per gram. He concluded that it would take a significant amount of traffic to support a marijuana business, given the high level of taxation involved. The location needs to be accessible to a large amount of traffic, and Highway 99 fits this requirement.

Board Member Lovell asked how much of the anticipated excise tax collected from recreational marijuana production, processing and sales would come to the City. Mr. Chave answered that it would be very little. Most would be considered State revenue.

Mr. Chave said he anticipates the issue will come before the Board before the end of the year or at their first meeting in January, since the moratorium ends at the end of February.

Board Member Ellis said he recently viewed a news item on television about the ability to sell recreational marijuana at farmer's markets. He asked if the City would address this issue in its regulations. Mr. Chave answered that this would require a separate provision. It would not be an issue if the use is limited to CG and CG2 zones since farmer's markets are not allowed in these zones.

Board Member Ellis asked how the use would be regulated in the Esperance area, which is not part of incorporated Edmonds. Mr. Chave said this area would be regulated by Snohomish County. He pointed out that, in King County, most of the retail locations for marijuana sales will be located within cities. That is not the case for Snohomish County where nearly half of the locations are unallocated. He noted that locations in Esperance would still have to abide by the buffer rules.

Board Member Lovell pointed out that State law prevents a single business from being a producer, processor and retailer of marijuana. If someone chooses to establish a processing business on Highway 99, no retail sales would be allowed to occur on the site.

Board Member Lovell asked if anyone on the Planning Board would support a proposal to ban recreational marijuana businesses in Edmonds. No one indicated support for that approach.

**STUDY SESSION ON AT&T MOBILITY AND THE BUSCH LAW FIRM'S APPLICATION TO AMEND THE EDMONDS COMMUNITY DEVELOPMENT CODE (ECDC) TO ADDRESS THE LEGAL STATUS OF EXISTING WIRELESS COMMUNICATION FACILITIES THAT WERE BUILT PRIOR TO AND JUST AFTER ADOPTION OF EDMONDS' ORIGINAL WIRELESS ORDINANCE (FILE NUMBER AMD20130005)**

Mr. Clugston advised that AT&T and the Busch Law Firm have applied to amend the ECDC to address the legal status of an existing wireless communication facility that is located on the Commodore Condominiums but currently unpermitted. He reviewed that, for a number of years, AT&T has been working with City staff to address the issue, and they are proposing the code amendment as the best approach. He noted that minutes from the Board's August 14<sup>th</sup> discussion were included in the Staff Report as Attachment 1. Attachment 2 is the applicant's proposed code amendment.

Mr. Clugston explained that the applicant's goal is to have their facility, and their facility alone, become nonconforming by the proposed amendment in ECDC 17.40.023. He noted that upon review of all of the wireless permits, he found that this site is the only location where the amendment would apply. While there is an additional wireless facility on top of another building in the bowl, it is already identified as nonconforming and the amendment would not be applicable.

Board Member Lovell asked if staff anticipates any additional exceptions down the road. Mr. Clugston answered no. He said he reviewed permits for the past 17 years and this is the only unpermitted facility that exists in the City. The one on the Harbor Building is nonconforming, so the change would not apply. He explained that AT&T went through the building permit process and applied to move the antenna from the roof to the side of the building as required by code. However, after the permit was approved, the building owner denied AT&T's request based on comments received from residents living in the condominium development. Staff asked if it would be possible for AT&T to relocate the antenna to the side of another building in the downtown, but AT&T indicated this is a key building within their network in the bowl. AT&T has worked to come up with other options to get the site permitted, and the proposed amendment is the solution they have come up with.

Chair Reed recalled that when the wireless code was last updated in 2009, the City went to great lengths to ensure that the facilities would be as unobtrusive as possible. The proposed amendment would sidestep that requirement. He questioned if it would be appropriate for the City to require the applicant to make every effort to comply with the new rules. Mr. Clugston explained that this is a unique site and the only one in Edmonds with this issue. He agreed that there are other tall buildings in the downtown where the applicant could locate the antenna on the side of the building as required by the new code. However, the applicant has indicated that is something they just cannot do. The way their system is set up in the bowl, their siting on the Commodore Condominiums is the lynch pin to their entire operation in downtown Edmonds. Clearly, one option to address the problem is to declare the facility legally nonconforming.

Vice Chair Stewart recalled that when Mr. Lyons from the Busch Law Firm came before the Board previously, he mentioned that the proposed amendment would only apply to wireless communication facilities constructed between July 12, 1997 and August 5, 1998. However, the proposed code language states that it would apply to all wireless communication facilities constructed prior to August 5, 1998. She asked if this change would increase the number of facilities impacted by the change. Mr. Clugston answered that it would not increase the number of facilities impacted. As long as the end date is August 5, 1998, it is probably not necessary to include a beginning date.

Board Member Ellis recalled that there was a very small period of time when wireless installations were in limbo. Because no permit was required, there is no record of their existence. The proposed amendment would only apply to facilities that were constructed before August 5, 1998, which equates to just this one facility. He noted that the facility is not visible from the street, and it is very difficult to identify from uphill properties, as well. In addition, he understands that the residents of the building do not want the facility located on the side of the building as required by the current code.

The Board scheduled a public hearing on the proposed amendment for December 11<sup>th</sup>.

### **REVIEW OF EXTENDED AGENDA**

Chair Reed reviewed that the October 23<sup>rd</sup> meeting will be dedicated to park issues (quarterly report, Parks, Recreation and Open Space Plan, and Park Naming Policy). The November 13<sup>th</sup> meeting is scheduled for a continued discussion on proposed revisions to the allowed activities provisions in the Critical Areas Ordinance and a public hearing on the reasonable use provisions in the Critical Areas Ordinance, as well the City Council's interim zoning ordinance. The Board would also continue their discussion on the Westgate Plan and form-based zoning. The agenda for December 11<sup>th</sup> will include election of 2014 officers and a public hearing on proposed amendments to the Wireless Facilities Regulations. A public hearing on the Westgate Plan and form-based zoning has also been tentatively scheduled for December 11<sup>th</sup>.

Chair Reed advised that the Board's next quarterly report to the City Council is scheduled for January 7<sup>th</sup>.

Board Member Lovell asked if a transportation study is being done in conjunction with the Westgate Plan. Mr. Chave answered that the City is still working to secure funding for the study. The City Council has allocated \$50,000 in the budget, which is not enough for the extensive study that is envisioned.

### **PLANNING BOARD CHAIR COMMENTS**

Chair Reed announced the Snohomish County Summit and Candidate's Forum that is scheduled for October 12<sup>th</sup> from 9:00 a.m. to 4:00 p.m. in Everett. He also announced that on October 14<sup>th</sup>, the Alliance of Citizens for Edmonds (ACE) and the Senior Center will host a City Council Candidates Forum. The event convenes at 6:00 p.m. at the Senior Center.

### **PLANNING BOARD MEMBER COMMENTS**

Vice Chair Stewart reported on her attendance at the recent meeting of the Edmonds Tree Board where it was reported that they are drawing up a resolution that would designate "heritage trees" in the City. They will ask the City Council for funding to hire a consultant to draw up some definitions they need for their Tree City USA proposal. The definitions will include terms such as pervious and impervious. They are also hoping to get funding for a GIS Study for an overlay of impervious surfaces and tree canopy in the City to help inform future planning.

Vice Chair Stewart said she also attended the October 8<sup>th</sup> City Council Meeting at which the City Council decided to no longer move forward with master planning for Harbor Square. Some City Council Members were in support of further visioning as part of a more comprehensive planning effort. The City Council also continued their discussion on the Shoreline Master Program and have scheduled another workshop.

Vice Chair Stewart urged the Board Members to use electronic copies for their packets. This would not only save paper, but staff time and trees. Interested Board Members should contact Ms. Cunningham to have electronic documents sent to them. They are also available on the City's website.

### **ADJOURNMENT**

The Board meeting was adjourned at 8:38 p.m.

**APPROVED**