

**APPROVED MARCH 12<sup>TH</sup>**

**CITY OF EDMONDS  
PLANNING BOARD MINUTES**

**February 12, 2014**

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Chair Cloutier 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**

Todd Cloutier, Chair  
Neil Tibbott, Vice Chair  
Ian Duncan  
Bill Ellis  
Philip Lovell  
Valerie Stewart

**STAFF PRESENT**

Rob Chave, Development Services Director  
Michael Clugston, Planner  
Karin Noyes, Recorder

**BOARD MEMBERS ABSENT**

Kevin Clarke (excused)  
Madeline White (Student Representative)

**READING/APPROVAL OF MINUTES**

**BOARD MEMBER ELLIS MOVED THAT THE MINUTES OF JANUARY 22, 2014 BE APPROVED AS SUBMITTED. VICE CHAIR TIBBOTT SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY, WITH BOARD MEMBER STEWART ABSTAINING.**

**ANNOUNCEMENT OF AGENDA**

The agenda was accepted as presented.

**AUDIENCE COMMENTS**

Debbie Madison announced that she and Nicole Hughes have been appointed to serve as the Economic Development Commission's (EDC) liaisons to the Planning Board.

**PUBLIC HEARING ON PROPOSAL TO REZONE A PARCEL LOCATED AT 7533 – 228<sup>TH</sup> STREET SOUTHWEST FROM RESIDENTIAL MULTIFAMILY (RM-2.4) TO RESIDENTIAL MULTIFAMILY (RM-1.5) (FILE NUMBER PLN20130074)**

Mr. Clugston advised that the applicant has applied to rezone the parcel located at 7533 – 288<sup>th</sup> Street Southwest from RM-2.4 to RM-1.5. He referred to Attachment 2, an aerial photograph of the vicinity, noting that the property is located within a transition area just east of Highway 99. Immediately to the north of the subject parcel is a senior housing development that was constructed about 10 year ago. He reminded the Board that in order to approve the rezone proposal, they must find that it meets the following criteria:

1. **Comprehensive Plan.** *Whether the proposal is consistent with the Comprehensive Plan.* Mr. Clugston referred to the Comprehensive Plan Land Use Designation Map (Attachment 4), noting that the designation for the parcel is “Corridor Development” within the Highway 99 Corridor and Medical/Highway 99 Activity Center. Compatible zoning classifications for this designation include General Commercial (CG and CG2) and appropriate transitional zones such as RM-2.4 and RM-1.5.
2. **Zoning Ordinance.** *Whether the proposal is consistent with the purposes of the zoning ordinance, and whether the proposal is consistent with the purposes of the proposed zone district.* Mr. Clugston referred to the Zoning Map (Attachment 3) and reviewed that the subject parcel is currently zoned RM-1.5. Properties to the south and east are predominantly zoned single-family residential, with CG zoning to the west. Immediately to the north is a large parcel that was recently developed as senior housing. This property was rezoned in the mid 1990s from Business Commercial (BC) to RM-1.5 with the intent of developing senior housing.

Mr. Clugston advised that the subject parcel was annexed into the City in 1961 and the 8-unit apartment building currently on the site was built per the zoning code in place at the time. An accessory structure was built behind the apartment building in 1967. When the City implemented the current multifamily zones in 1980, the site was rezoned to RM-2.4, making it nonconforming with respect to density. Only seven units would have been allowed as opposed to eight. The proposed rezone would bring the existing eight units back into conformance for density and also allow for the possible creation of up to three additional dwelling units. He emphasized that the use and development standards for the RM-1.5 and RM-2.4 zones are the same. The only difference is the number of units allowed.

3. **Surrounding Area.** *The relationship of the proposed zoning change to the existing land use and zoning of surrounding or nearby property.* Mr. Clugston pointed out that rezoning the parcel from RM-2.4 to RM-1.5 would result in little external change from existing conditions given the applicant’s desire to create living space in the existing accessory structure on the site. He pointed out that the parcel to the west is zoned RM-2.4, but the existing structure on the site has been used for offices under a conditional use permit since 1974. The parcel immediately to the east and those to the south of 228<sup>th</sup> Street have been zoned and developed as single-family residential since the area was annexed in 1961.
4. **Changes.** *Whether there has been sufficient change in the character of the immediate or surrounding area or in City policy to justify the rezone.* Mr. Clugston explained that the transitional character of the immediate and surrounding area has remained largely unchanged for many years, with the exception of the parcel immediately to the north of the subject site. This particular site (22707 – 76<sup>th</sup> Avenue West) had been zoned Business Commercial (BC) for many years but was down-zoned in 1995 to RM-1.5 to allow for the development of the low-income senior apartment complex that was built there in 2006.
5. **Suitability.** *Whether the property is economically and physically suitable for the uses allowed under the existing zoning, and under the proposed zoning.* Mr. Clugston commented that the parcel is suitable for development at either RM-2.4 or RM-1.5 densities and the uses allowed in the zoning and development standards are identical. The only issue is whether there would be enough parking on the site to create the extra dwelling unit the applicant envisions. After further review, staff finds that there would be sufficient parking spaces to meet the requirement.
6. **Value.** *The relative gain to the public health, safety and welfare compared to the potential increase or decrease in value to the property owners.* Mr. Clugston explained that, as currently envisioned, the change would not result in a significant gain to the applicant or the public. The applicant simply wants to create a new dwelling unit in the back as part of the existing accessory structure. However, it is important to keep in mind that, once rezoned, the applicant would have the ability to redevelop the property to the maximum density allowed in an RM-1.5 zone (11 units). Again, he said the only difference between the two zoning classifications is density.

Based on the findings of fact, analysis, conclusions and attachments in the Staff Report, Mr. Clugston recommended the Planning Board forward a recommendation to the City Council to approve the request to rezone the subject property from RM-2.4 to RM-1.5.

Board Member Ellis requested clarification of the Fire Marshall's comment (Attachment 7) about addresses for the new unit. Mr. Clugston explained that the apartment building is addressed as 7533, with units 1 through 8. The Fire Marshall is simply confirming that the address for the new unit would also be 7533, with a unit number of 9. In some instances, there are separate addresses for each of the units.

Board Member Ellis asked if there would be sufficient space on the property for emergency access if an additional unit is constructed. Mr. Clugston answered affirmatively.

Chair Cloutier opened the public hearing. No one in the audience indicated a desire to participate, and the hearing was closed.

Board Member Lovell referred to a letter from the applicant, which states his plans to convert the accessory unit to dwelling space. He said he assumes the applicant would be required to obtain all of the necessary building permits. Mr. Clugston said that is understood.

Chair Cloutier clarified that approval of the rezone should not be construed as an endorsement of any particular building plan. The Board is charged with making a recommendation on the rezone proposal, irrespective of the property owner's plans for future development of the site.

Vice Chair Tibbott requested clarification about the property's relationship to the Highway 99 Corridor and Medical/Highway 99 Activity Center. Mr. Clugston explained that the parcel is located within the area identified in the Comprehensive Plan as the Highway 99 Corridor and Medical/Highway 99 Activity Center. He further explained that there are a host of zoning designations that could be applied in this land use designation, including RM-1.5 and RM-2.4. He said it would seem appropriate to have transitional zoning from Highway 99 to the east, using either RM-1.5 or RM-2.4 zoning. Mr. Chave added that there is a lot of multifamily zoning in the activity center, and many of the medical uses that surround the hospital are actually located in residential zones.

Vice Chair Tibbott asked for more information about the property that is located to the west, which is currently zoned RM-2.4. Mr. Clugston said the single-family home that is currently on the property has been used as an office for the past 40 years. Retail uses are located immediately to the west of this office site.

**BOARD MEMBER LOVELL MOVED THAT BOARD FORWARD FILE NUMBER PLN20130074 TO THE CITY COUNCIL WITH A RECOMMENDATION OF APPROVAL BASED ON THE FINDINGS OF FACT, ANALYSIS, CONCLUSIONS AND ATTACHMENTS IN THE STAFF REPORT DATED FEBRUARY 4, 2014. BOARD MEMBER STEWART SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY.**

**PUBLIC HEARING ON A PROPOSED AMENDMENT TO THE EDMONDS COMMUNITY DEVELOPMENT CODE (ECDC) TO ALLOW RECREATIONAL MARIJUANA USES IN CERTAIN ZONES AND ADOPTING OTHER RESTRICTIONS ON THE LOCATIONS OF THE USE (FILE NUMBER AMD20130014)**

Mr. Chave advised that this is a public hearing on the City's consideration of zoning for recreational marijuana-based businesses, which is essentially a local implementation of Initiative 502 (I-502). He noted that a lot of information was provided in the Board's packet, as well as a draft ordinance for the Board's consideration that would allow recreational marijuana producers and processors as permitted uses in the General Commercial (CG and CG2) zones and recreational marijuana retail outlets as permitted uses in the Community Business (BC), Downtown Business (BD), Neighborhood Business (BN) and CG and CG2 zones.

Mr. Chave explained that marijuana processors and producers are defined as wholesale businesses, and CG and CG2 are the only zones that allow wholesale uses. The proposed ordinance would allow marijuana retail outlets in all of the commercial zones, except the Planned Business (BP) zone. He advised that the zoning for this small area along Edmonds Way near Westgate was developed as part of a study and anticipates small scale uses that generate little traffic. Marijuana retail outlets would generate more traffic and would not be compatible in this particular zone.

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Mr. Chave emphasized that regardless of the zone, all recreational marijuana uses would be subject to the buffer restrictions and placement requirements outlined in I-502, as well as the requirements set forth by the Liquor Control Board (LCB). He provided a map to illustrate how the buffers set forth in I-502 would be applied throughout the commercial zones in the City. He noted that staff prepared the map using information from State records. He summarized that the use would be limited to just a few properties at Five Corners, a quadrant in Perrinville, and numerous properties along Highway 99.

Mr. Chave advised that a separate licensing ordinance is being developed for the City Council's review. The Board's review should focus only on regulating the uses. He noted that licensing provisions and state buffer requirements are referenced, but not repeated, in the draft ordinance. If the State were to change the rules, the City would receive notification and be able to make appropriate adjustments at the local level.

Mr. Chave recalled that, at their last meeting, the Board's discussed whether recreational marijuana retail uses should be allowed in a broad range of business zones or if they should be limited to the CG and CG2 zones. However, there appeared to be a strong consensus that producer and processor uses would be more appropriate on Highway 99. He said the Board would be particularly interested in hearing from the public regarding this issue.

Mr. Chave said the City Attorney asked him to reiterate that the I-502 does not authorize or include medical marijuana uses. This was made clear in the draft ordinance, as well. The City Attorney is still reviewing the issue, and it is possible he will want to strengthen the language to make it clear that medical marijuana uses are not permitted in Edmonds.

Mr. Chave referred the Board to a letter the City received from Ryan C. Espegard, Gordon Thomas Honeywell, dated February 11, 2014. Mr. Espegard indicates support for the draft ordinance, which would allow the uses authorized by I-502. He was supportive of the concept of not over regulating or creating a duplication of the State regulations.

Mr. Chave also referred to a letter from John and Jolene Smith, residents on 5<sup>th</sup> Avenue, dated February 12<sup>th</sup>. The Smith's letter encourages the City to ban I-502 businesses and allow them to locate elsewhere.

Board Member Duncan requested clarification on how the City generated the map that illustrates the I-502 buffers. He pointed out that there are no buffers shown around the Montessori school in Perrinville and the daycare center at Harbor Square. Mr. Chave said the map identifies uses that are registered with the State. He agreed to follow up with these two situations.

Board Member Duncan said that, upon closer examination of the map, it appears that there would be few, if any, sites in Edmonds available for recreational marijuana uses. Mr. Chave said there would be numerous sites along Highway 99 and a few sites at Five Corners. He reminded the Board that the City is only targeted to have two retail outlets.

Board Member Duncan asked if a recreational marijuana use would have to relocate if a restricted use is subsequently located nearby. Mr. Chave answered that the license would be valid for the period it was issued. However, he is not sure if State law would allow the license to be renewed for the same location.

Vice Chair Tibbott asked if I-502 uses would be prohibited from locating near churches. Mr. Chave said the buffers specified in I-502 include parks, arcades, child care centers, recreational centers, schools, and transit centers. Churches are not specifically limited, but if they house a licensed preschool or daycare, the restrictions would apply. Vice Chair Tibbott pointed out that most churches host children or youth programs. Mr. Chave said programming, itself, is not something that triggers the buffer requirement.

The Board continued to discuss the I-502 Buffer Map with staff, pointing out the specific areas where recreational marijuana uses would and would not be allowed. To clarify, Mr. Chave explained that recreational marijuana uses would be allowed to locate in mixed use zones, but not within residential units. He noted that this is consistent with the State's licensing requirements. It was noted that the buffer areas could change in the future based on changes in use, but this would trigger a license review by the State.

Board Member Lovell recalled that, at their last meeting where this item was discussed, Mr. Chave commented that there is no limit on the number of producers or processors a City can allow. Mr. Chave explained that State law limits the overall

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amount of marijuana that can be produced or processed, but it does not place restrictions on the number of businesses that can locate in a jurisdiction. It does, however, place a restriction on the number of retail outlets that can locate in a city.

Board Member Stewart pointed out that the draft ordinance does not address whether delivery would be allowed as a service option for recreational marijuana retail outlets. Mr. Chave pointed out that this would be a licensing issue that is outside the purview of the Board. Chair Cloutier noted that delivery is specifically prohibited by the State regulations.

Board Member Ellis expressed concern that the State could change the buffer limitations at some point in the future, making it possible for the use to locate in the downtown business district. Mr. Chave explained that the City would receive notification before the State made any changes, and he is confident the City would be able to react to the changes by adjusting its local regulations.

Board Member Ellis questioned why the draft ordinance should allow recreational marijuana retail outlets in the BD, BC and BN zones when the buffer restrictions would prohibit the use from locating on any properties within these zones. Board Member Duncan pointed out that allowing the retail uses to locate in zones other than CG and CG2 would provide economic benefits by drawing people into the City to shop and spend money. Mr. Chave commented that it comes down to how the Board views the use. If they view recreational marijuana retail outlets as part of the fabric of the community, there would be no reason to restrict the use. If they view them as different retail uses, restrictions would be appropriate.

Chair Cloutier opened the public hearing. There was no one in the audience who indicated a desire to participate, and the hearing was closed.

Board Member Ellis referred to the letter from Mr. and Mrs. Smith, which raises concerns about increased criminal activity associated with recreational marijuana retail outlets. He also noted that the State of Colorado has experienced significantly higher criminal activity in conjunction with the use. Because there is no federal recognition of the assets of recreational marijuana retail businesses, business operators end up having a lot of cash on site. This makes them a rich environment for thieves. Chair Cloutier pointed out that banks in Colorado have stepped up to provide a way for the businesses to handle their cash; and hopefully, this will improve the situation.

Board Member Stewart said she is personally uncomfortable with the idea of allowing retail marijuana uses in commercial zones other than CG and CG2. She would be willing to give the retailers a chance in other commercial zones, but the regulations must be strong enough to contain the use to the inside only, with no outside odor or signage that would attract people who are not supposed to be there. She expressed her hope that more people would come forward to express their viewpoints when the ordinance is presented to the City Council. Mr. Chave reminded the Board that the majority of voters in Edmonds voted in favor of I-502.

Board Member Duncan asked if the City would have a legal basis for prohibiting the use in Edmonds. Mr. Chave said at least one City has taken this approach, and the issue is currently being settled by the courts. He explained that there is a difference of opinion within the legal environment on whether or not cities can prohibit the use. The State Attorney General issued an opinion that local governments could restrict the use, but there is some discussion amongst the legal community about whether or not this opinion is accurate. The courts will have to ultimately make this decision.

Board Member Lovell referred to the letter the City received from the law firm, Gordon Thomas Honeywell. He said the author of the letter, Ryan C. Espesgard, also published an article in the Puget Sound Business Journal about whether or not a City could legally prohibit the use. Both the letter and the article suggest that the City would be subject to a lawsuit if they were to take this approach. He expressed approval would allow the City to avoid some of the problems that might arise if they try to totally exclude the use.

Board Member Lovell pointed out that marijuana uses would be primarily regulated by the State Liquor Control Board (LCB), who is responsible for issuing licenses. Mr. Chave explained that although the licenses would be issued by the State, local zoning would control where the uses can be located. Although it is not really a land use issue, Board Member Lovell expressed concern that if there is a problem with a recreational marijuana business, people will most likely call the City and not the LCB for resolution.

Board Member Lovell referred to recent articles in *THE SEATTLE TIMES* with respect to non-licensed activities associated with producing and selling marijuana products. In one situation, a business is selling marijuana from the back seat of a car, using the internet to arrange sales. In another situation, people have used a solvent/leaching process to make a very pure and powerful marijuana oil. He recognized that both of these situations are policing rather than land use issues, but they could happen in Edmonds, as well. Mr. Chave agreed that things that are not authorized or legal under I-502 will likely crop up in the early months, and it will take a while to correct some of the illegal behaviors. Board Member Lovell commented that the best the City can do is control and steer the uses in the appropriate direction via the draft ordinance. He said he does not support prohibiting the use entirely.

Board Member Duncan asked if adopting the ordinance could place the City at risk of a lawsuit if there is a leadership change at the Federal level and the attitude towards marijuana businesses changes at some point in the future. Mr. Chave answered that the State has done the best it can to insulate local jurisdictions from this type of risk. The State sought an opinion from the Justice Department so there is some acknowledgement that local jurisdictions are simply implementing State law. He said it is not likely that a change at the federal level would instantaneously create problems at the local level; there would be a process by which this would happen. Board Member Lovell pointed out that Item C in the draft ordinance (Attachment 7) speaks to this issue. It states that “no part of this ordinance is intended to or shall be deemed to conflict with federal law . . .” Mr. Chave said this language came from sample ordinances that were provided to local jurisdictions by the Washington Cities Insurance Pool. The intent is to provide the maximum protection for local jurisdictions.

Board Member Ellis observed that some people have suggested that the City ban recreational marijuana uses altogether, which is what the City Council essentially did on a temporary basis by adopting the interim ordinance. He suggested that it is the City Council’s responsibility to decide whether or not the use will be allowed in the City. The Board’s responsibility is to provide its best recommendation as to where the businesses should be located in the event they are allowed in Edmonds.

Board Member Cloutier emphasized that the Board is not endorsing the placement of any particular business in any location in Edmonds. They are simply making a recommendation on land use policy that would add additional constraints on the use in addition to those imposed by State law. The map illustrating I-502 buffers was provided as an example, and information may be different when someone applies for a license.

**BOARD MEMBER LOVELL MOVED THAT THE BOARD FORWARD A RECOMMENDATION OF APPROVAL TO THE CITY COUNCIL FOR FILE NUMBER AMD20130014, A DRAFT ORDINANCE (ATTACHMENT 7) AMENDING THE EDMONDS COMMUNITY DEVELOPMENT CODE TO ALLOW RECREATIONAL MARIJUANA PRODUCERS AS A PERMITTED USE IN THE CG AND CG2 ZONES; ALLOWING RECREATIONAL MARIJUANA PROCESSORS AS A PERMITTED USE IN THE CG AND CG2 ZONES; ALLOWING RECREATIONAL MARIJUANA RETAIL OUTLETS AS A PERMITTED USE IN THE BC, BD, BN, CG AND CG2 ZONES; PROHIBITING RECREATIONAL MARIJUANA USES IN ALL OTHER ZONES, AND ADOPTING OTHER RESTRICTIONS ON THE LOCATIONS OF RECREATIONAL MARIJUANA USES. BOARD MEMBER ELLIS SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.**

**REVIEW OF EXTENDED AGENDA**

Mr. Chave announced that a public hearing on the Westgate Plan and form-based zoning is scheduled for March 12<sup>th</sup>. In addition, the Highway 99 Task Force has requested a joint meeting with the Planning Board to discuss ideas for Highway 99 zoning. The Board agreed to schedule the joint meeting as soon as possible on either February 26<sup>th</sup> or March 26<sup>th</sup>. Depending on the date for the joint meeting with the Highway 99 Task Force, the Board agreed to conduct a retreat on March 26<sup>th</sup>. Mr. Chave said he would like to provide a status report on various projects staff has been working on, as well as a preview of their upcoming work on the Comprehensive Plan and Critical Areas Ordinance updates.

**PLANNING BOARD CHAIR COMMENTS**

Chair Cloutier reported that the February edition of the *AMERICAN PLANNING ASSOCIATION MAGAZINE* included an article titled, “*Metrics for Sustainable Development.*” He reminded the Board that the Mayor’s Climate Protection Committee previously developed a complete list of metrics as part of the Climate Action Plan, but it has not been

implemented. He suggested the article could be useful as the City moves this concept forward. The Board agreed to discuss the issue further at their retreat.

### **PLANNING BOARD MEMBER COMMENTS**

Board Member Lovell thanked Debbie Madison for attending the Board's meeting as the EDC's liaison. He said he was unable to find an agenda to either the January or February meetings of the EDC on the City's website. Ms. Madison advised that the EDC meets on the third Wednesday of each month. Mr. Chave said the City's website was recently updated to include an agenda for the EDC's February 19<sup>th</sup> meeting.

Board Member Stewart said she recently received a brochure regarding the Seattle 2030 District, which is a groundbreaking high-performance building district in downtown Seattle that aims to dramatically reduce environmental impacts of facility construction and operations through education and collaboration across every sector of the built environment. The program is free to any property owner in the district who wants to participate. Participants receive free technical support and special treatment by Seattle City staff to get projects through the permit process quickly. There are also incentives that are funded by sponsors of the organization. The group recently held a benchmarking meeting where it announced its significant progress towards its goals for reducing energy and water consumption, as well as greenhouse gases. She suggested the City could take a lesson from this program.

### **ADJOURNMENT**

The Board meeting was adjourned at 8:15 p.m.

**APPROVED**