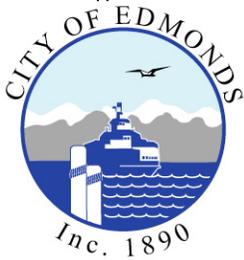


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CITY OF EDMONDS

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DEVELOPMENT SERVICES DEPARTMENT • PLANNING DIVISION

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BEFORE THE HEARING EXAMINER FOR THE CITY OF EDMONDS

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Phil Olbrechts, Hearing Examiner

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RE: Edmonds Public Works Noise Variance PLN2015-0035	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION
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SUMMARY

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The applicant has requested a variance to City of Edmonds noise standards for four nonconsecutive nights of construction work for a pavement preservation project on 220th Street SW between 76th Avenue West and the Interurban Trail. The applicant would schedule the four nights of work between August 15, 2015 and October 15, 2015. The variance is approved subject to conditions.

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TESTIMONY

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Michael Clugston, senior planner for the City of Edmonds, summarized the proposal. Mr. Clugston clarified that the work would be done between 6:00 pm and 7:00 am instead of the 7:00 pm to 7:00 am identified in the staff report. He also clarified that the number of days of construction work would be ten instead of the four identified in the staff report.

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Ryan Hage, City of Edmonds project manager, clarified in response to questions from the Examiner that the recommended condition for a complaint line would be handled by the contractor. The City has no supervisory authority over the contractor because the contract is with Snohomish County. Mr. Hage also identified the type of noises that would occur most frequently.

Alvin Rutledge, Edmonds resident, inquired about the starting time for the variance work.

Noise Variance

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EXHIBITS

The staff report and its 12 attachments were admitted as Exhibit 1 during the hearing.

FINDINGS OF FACT

Procedural:

1. Applicant. The applicant is the Public Works Department of the City of Edmonds.
2. Hearing. A hearing was held on August 13, 2015 in the Edmonds City Council Chambers at 3:00 pm.

Substantive:

3. Site/Proposal Description. The applicant has requested a variance to City of Edmonds noise standards for four nonconsecutive nights for construction work for a pavement preservation project on 220th Street SW between 76th Avenue West and the Interurban Trail. The applicant would schedule the four nights between August 15, 2015 and October 15, 2015. This work will include pavement grinding and overlay as well as crosswalk improvement at Highway 99. Noise levels would be as proposed in Ex. 1, att. 7.
4. Surrounding Area. Attachment 5 shows the extent of the project in relation to zoning and jurisdiction in the area. 220th Street SW is a minor arterial street running east west linking Edmonds to Mountlake Terrace and I-5. The western portion of the road in the project area runs through single-family neighborhoods, some of which are in Snohomish County’s jurisdiction. East of 76th Avenue, parcels are zoned for commercial uses and are chiefly developed that way with the exception of some multifamily development near the southeast corner of 76th Avenue and 220th Street.
5. Adverse Impacts. The noise generated by the proposal will not be significantly detrimental to the public health, safety and welfare or injurious to the property or improvements in the vicinity and same zone. 220th St. is a heavily travelled road and ambient nighttime noises are not significantly lower than those that will be generated by the proposed construction. Ex. 1, att. 6 shows that ambient nighttime noises on 220th St. range from 68 to 85 dBA. The maximum construction noises identified in Ex. 1, att. 7 from 50 feet are 90 dBA, with most noises at or below 80 dBA. The applicants have also identified numerous mitigation measures in Ex. 1, att. 7 to reduce noise impacts, such as noise shields and avoidance of work near residences during nighttime hours. Given other noise variances approved in Edmonds, it does not appear that any other mitigation is reasonably available to further reduce noise impacts.

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2 6. Necessity. The proposed variance is the minimum reasonably necessary to
3 complete the paving project. While the planned work could occur during the day (and
4 therefore not require a variance), lane closures on 220th Street would be required.
5 Public Works would like to avoid impacts to traffic during the day in this highly
6 travelled commercial area. Performing the work during the day would also take longer
7 (approximately six days) since travel lanes could only be closed during non-peak day
8 periods (between 9am and 4pm).

9 **CONCLUSIONS OF LAW**

10 **Procedural:**

11 1. Authority of Hearing Examiner. ECDC 20.85.020 provides the Hearing
12 Examiner with the authority to review and act upon variance applications as Type III-
13 A.

14 **Substantive:**

15 2. Review Criteria and Application. The project will generate night time
16 noise levels up to 90 dBA 50 feet from the noise source, which roughly equates to the
17 location of the property lines of the residential zoned receiving properties to the west
18 and the commercially zoned receiving properties to the north, south and east. ECDC
19 5.30.040, in conjunction with ECDC 5.30.050(A), limits noise levels, depending on
20 the zoning of the noise source and receiving properties, to 45 dB to 60 dBA between
21 the hours of 10:00 pm and 7:00 am and between 55 dBA to 70 dBA between 7:00 am
22 and 10:00 pm. Further, construction noise is exempt from the sound level limits of
23 ECDC 5.30.050(A) between the hours of 7:00 am to 6:00 pm. See ECDC
24 5.30.110(B). Since the project noise exceeds both daytime and nighttime noise limits
25 set by ECDC 5.30.050(A), the applicant must acquire a variance for the times it isn't
exempt as construction noise, i.e. 6:00 pm through 7:00 am. ECDC 5.32.120(C) (3)
provides that variances to noise standards shall satisfy the criteria of ECDC 20.85.020
[sic]. ECDC 5.30.120(A) and (B) also add additional criteria to noise variances.
Applicable criteria are quoted below and applied through corresponding conclusions
of law.

ECDC 5.30.120(A): *Variances may be granted to any person from any requirement
of ECC 5.30.040 or 5.30.110 if findings are made that immediate compliance with
such requirement cannot be achieved because of special circumstances rendering
immediate compliance unreasonable in light of economic or physical factors,
encroachment upon an existing noise source or because of nonavailability of feasible
technology or control methods.*

3. Special circumstances justify the noise variance due to public necessity of the

1 pavement project, the heavy traffic of 220th Ave as outlined in Finding of Fact No. 6
2 and the absence of any additional mitigation measures that could be used to further
reduce noise impacts as outlined in Finding of Fact No. 5.

3 **ECDC 5.30.120(B):** *Any such variance or renewal thereof shall be granted only for*
4 *the minimum time period found to be necessary under the facts and circumstances.*

5 4. The requested variance is for the minimum time period for the reasons identified
6 in Finding of Fact No. 6.

7 **ECDC 20.85.010:** *No variance may be approved unless all of the findings in this*
8 *section can be made.*

9 **ECDC 20.85.010.A(1) – Special Circumstances:** *That, because of special*
10 *circumstances relating to the property, the strict enforcement of the zoning ordinance*
11 *would deprive the owner of use rights and privileges permitted to other properties in*
12 *the vicinity with the same zoning.*

13 a. *Special circumstances include the size, shape, topography, location or*
14 *surroundings of the property, public necessity as of public structures and*
15 *uses as set forth in ECDC 17.00.030 and environmental factors such as*
16 *vegetation, streams, ponds and wildlife habitats.*

17 b. *Special circumstances should not be predicated upon any factor personal*
18 *to the owner such as age or disability, extra expense which may be*
19 *necessary to comply with the zoning ordinance, the ability to secure a*
20 *scenic view, the ability to make more profitable use of the property, nor any*
21 *factor resulting from the action of the owner or any past owner of the same*
22 *property;*

23 5. The special circumstances of the proposal are the location of 220th St. SW
24 in proximity to surrounding uses as well as the circumstances identified in Conclusion
25 of Law No. 3. The transportation needs of the area dictate the location of 220th Ave
SW and improvements such as the proposed pavement work are in the public interest
and cannot be avoided. The special circumstances are not predicated upon any factor
personal to the applicant and arise entirely from public necessity.

ECDC 20.85.010(B) – Special Privilege: *That the approval of the variance would*
not be a grant of special privilege to the property in comparison with the limitations
upon other properties in the vicinity with the same zoning;

6. Variances would likely be granted for any other improvements to public
roads that have similar impacts. No special privilege is involved.

ECDC 20.85.101(C) – Comprehensive Plan: *That the approval of the variance will*
be consistent with the comprehensive plan;

1 7. Page 86-87 of the Edmonds Comprehensive Plan contains a section on
2 noise pollution. This section of the Plan recognizes that noise can adversely affect
3 health and that measures should be taken to preserve a quiet environment. The limited
4 duration and extent of the noise variance in conjunction with the numerous mitigation
5 measures imposed upon the project are consistent with these comprehensive plan
6 objectives.

7 **ECDC 20.85.010(D) – Zoning Ordinance:** *That the approval of the variance will be*
8 *consistent with the purposes of the zoning ordinance and the zone district in which*
9 *the property is located;*

10 8. ECDC 16.10.000(B)(4) provides that one of the purposes of all residential
11 zones is to keep residents free from noise. The conditions of this variance decision
12 mitigate noise as much as reasonably possible and limit night time noise to moderate
13 levels. As conditioned, the proposal is consistent with the purpose of keeping
14 residents free from noise. ECDC 16.40.000 lists the purposes of the commercial
15 zones, which includes concentrating commercial uses for the convenience of the
16 public. Approval of the variance supports this purpose by maintaining adequate
17 public access to commercial uses.

18 **ECDC 20.85.010(E) – Not Detrimental:** *That the variance as approved or*
19 *conditionally approved will not be significantly detrimental to the public health,*
20 *safety and welfare or injurious to the property or improvements in the vicinity and*
21 *same zone;*

22 9. As conditioned, the variance will not create significant adverse noise
23 impacts as determined in Finding of Fact No. 5. Consequently, the criterion is met.

24 **ECDC 20.85.010(F) – Minimum Variance:** *That the approved variance is the*
25 *minimum necessary to allow the owner the rights enjoyed by other properties in the*
vicinity with the same zoning.

10. As determined in Finding of Fact 5 and 6, the applicants have provided as
much noise mitigation as they reasonably can under the circumstances and the
variance is limited to the time necessary to complete the project. The criterion is
satisfied.

DECISION

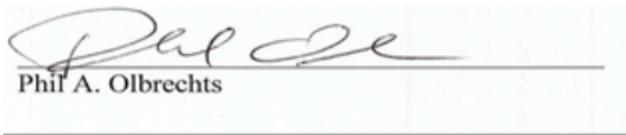
The variance application is approved and the applicant may exceed the City's noise
standards for four nonconsecutive nights between the hours of 6:00 pm and 7:00 am
for the noise levels proposed in Ex. 1, att. 7, subject to the following conditions:

1. A copy of the noise variance must be kept on the project site at all times.
2. The proposed noise mitigation measures described in Attachments 1 and 7
must be implemented, as applicable. In addition to the complaint phone
number identified in Attachment 1, property owners shall also be provided a

1 daytime phone number for a City of Edmonds or Snohomish County
2 employee to resolve situations in which complaints were not adequately
3 addressed by the contractor.

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- 5 3. Work near the intersection of 220th Street SW and 76th Avenue West must be
6 scheduled first each night (before 10 pm, if possible) to further minimize
7 potential noise impacts to the residents toward the western end of the project
8 site.
- 9 4. The noise variance shall be valid for only four (4) nights between August 15
10 and October 15, 2015. The Department of Public Works must notify the
11 Planning Department each time the variance is used.
- 12 5. The granting of this variance does not relieve the City of Edmonds
13 Department of Public Works from the remainder of the requirements and
14 standards of the noise ordinance.

15 Dated this 26th day of August, 2015.

16 
17 Phil A. Olbrechts

18 Edmonds Hearing Examiner

19 **Appeal Right and Valuation Notices**

20 This land use decision is final and subject to closed record appeal to the City Council as
21 authorized by ECDC 20.01.003. Appeals must be filed within 14 days of the issuance
22 of this decision as required by ECDC 20.07.004(B). Reconsideration may be requested
23 within 10 calendar days of issuance of this decision as required by ECDC 20.06.010.

24 Affected property owners may request a change in valuation for property tax purposes
25 notwithstanding any program of revaluation.