

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

**CITY OF EDMONDS  
PLANNING BOARD MINUTES**

**April 28, 2010**

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Chair Bowman 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**

Michael Bowman, Chair  
Philip Lovell, Vice Chair  
Kristiana Johnson  
John Reed  
Valerie Stewart

**STAFF PRESENT**

Rob Chave, Planning Division Manager  
Mike Clugston, Planner  
Scott Snyder, City Attorney  
Karin Noyes, Recorder

**BOARD MEMBERS ABSENT**

Kevin Clarke  
Todd Cloutier (excused)  
Cary Guenther (excused)

City Attorney Snyder explained that a motion is required to excuse a Board Member who has not notified the Chair of his/her absence. This is typically done when the Board Member returns at the next meeting and explains the reason for the absence.

**READING/APPROVAL OF MINUTES**

**BOARD MEMBER REED MOVED THAT THE MINUTES OF APRIL 14, 2010 BE APPROVED AS AMENDED. CHAIR BOWMAN SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.**

**ANNOUNCEMENT OF AGENDA**

Item 8a (Discussion on Wireless Facility Regulations) and Item 8b (Discussion on Civil Enforcement Procedures) were moved up earlier on the agenda to accommodate the presence of the City Attorney. The remainder of the agenda was accepted as presented.

**AUDIENCE COMMENTS**

**Al Rutledge, Edmonds**, indicated this is the fourth time he has approached the Board with a request that additional names be placed on a sign at Hickman Park to recognize other individuals who were nominated. He reminded the Board that Council Member Plunkett recommended that an additional sign be erected at Haines Wharf Park to recognize former City Council Member Peggy Olsen, as well as 12 or 13 other citizens, and the City Council agreed with the recommendation. He said that since the Board's last meeting, he received a letter from Brian McIntosh, Parks, Recreation and Cultural Services Director, responding to his request for additional signage at Hickman Park. However, he found the contents of the letter, as well as the City Council minutes, to be inconsistent with the discussion that took place at the City Council meeting. Therefore, he contacted Jana Spellman, Senior Executive Council Assistant, to request a recording of the City Council Meeting in question. He said he would like the City staff to review the recording of Council Member Plunkett's comments and then update the minutes to be consistent. Mr. Chave clarified that Mr. Rutledge would need to approach the City Clerk with his request for a recording of the City Council Meeting or for issues related to their minutes.

Mr. Rutledge advised that Board Member Clarke was present at the City Council meeting to present the Board's recommendation for naming the new park (Haines Wharf), and he heard the recommendation made by Council Member Plunkett. However, Mr. Clarke has not attended any of the last four Board Meetings to address his concerns. He suggested the Board should be concerned that Board Member Clarke has missed so many meetings. Unless he is ill, he should be attending the meetings on a regular basis.

Vice Chair Lovell recalled that after the last meeting, he made it a point to meet with Mr. McIntosh to discuss Mr. Rutledge's proposal, and Mr. McIntosh informed him that a letter of response had already been sent to Mr. Rutledge. Mr. McIntosh emphasized that the names and signs that were installed at both Hickman and Haines Wharf Parks are exactly what was recommended by the Board and approved by the City Council. There has been no official follow up action taken to erect additional signs at either park. The sign at Hickman Park collectively thanks those who were instrumental in the parks creation, but it does not name specific individuals. There is also an additional sign in the playground area commemorating J.P. Patches.

Mr. Rutledge recalled that the City Council moved to accept the Planning Board's recommendation to name the north park Haines Wharf Park and to have Dale Caryl and other individuals recognized in a different manner. Then Council Member Plunkett suggested that Former Council Member Peggy Olsen also be recognized. If an additional sign is going to be erected at Haines Wharf Park, he would also like an additional sign at Hickman park to recognize the individuals who were instrumental in the park's creation. He said he has a list of over 60 names that were submitted as potential park names. Again, he requested that parks staff obtain a copy of the City Council recording and listen to exactly what was said.

Vice Chair Lovell clarified that the names on Mr. Rutledge's list are those submitted by citizens as potential park names. They were not intended to be a list of individuals whose names should appear on a park sign.

Mr. Rutledge referred to the proposed amendments related to temporary emergency indoor shelter regulations and said he works with local food banks. He said he has forwarded information to the food banks and invited them to attend the Board's upcoming public hearing on the matter.

### **DISCUSSION ON WIRELESS COMMUNICATION FACILITY (WCF) REGULATIONS**

Mr. Snyder reported that a number of citizens have approached the City Council in the past months raising concerns about what they felt were deficiencies in the City's wireless facility regulations, and there have been several cases in the past few years concerning the City's ability to regulate the construction of WCFs (cellular towers and antennas). He explained that although the courts and the Federal Communications Commission (FCC) have not eliminated the ability of local governments to control the location and construction of WCFs through the permitting process, the FCC's declaratory ruling issued in November 2009 and recent case law serve as restrictive guidelines for cities issuing permits to wireless communication providers. Mr. Snyder briefly reviewed the concerns that have been raised by the citizens and explained whether or not the City would have the ability to address the concerns through changes to their permit requirements.

- **Public Property Preference.** The City has the ability to enact legislation that encourages wireless communication providers to place the facilities on public property whenever possible. However, the City cannot require them to do so.
- **Use of Existing Structure.** While the City has the ability to encourage co-location, they cannot require it. It is not possible to require one provider to lease space from another. The City of University Place has an ordinance that encourages wireless communication providers to use existing structures (co-locate) whenever possible. No conditional use permit is required for facilities that are co-located on existing sites. This provision makes it easier for providers to locate new equipment.
- **Non-Conforming Uses/Modification of Existing Facilities.** The City has a limited ability to regulate legal non-conforming structures. However, unless they are willing to pay a property owner, the non-conforming use can continue until modifications are proposed.
- **Replacement Structures.** Staff has provided some good suggestions to address replacement structures.
- **Inadequate Notice Requirements.** Citizens have recommended that the City's broadest type of notice (area-wide notice to properties within 300 feet) should be required for WCF permits. While it is hard to argue against having more

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public involvement, the question is how much is enough. Rather than expanding the notice requirement for just this one type of permit, it would be more appropriate, if the Board wants to go in that direction, to increase the City's most broad notice requirement. He cautioned against creating varying notice requirements, depending on the type of application.

- **Requiring Applicants to Prove a Facility is Needed.** The FCC limits the City's ability to require an applicant to prove a facility is needed. The City can require applicants to prove that additional coverage is needed, but they cannot require them to prove there are no other provider has coverage in the area. The fact that another provider already has a facility in the area is not relevant. However, the City can encourage co-location to address the concern.
- **Fall Zone.** The fall zone is regulated by the State Electrical Code.
- **Tower Lighting.** The Federal Aviation Administration (FAA) has regulations that control when a light should be placed on top of a tower.
- **Radiation.** The FCC has determined that local governments cannot regulate WCFs based on radiation.
- **Not in Single-Family Neighborhoods.** The majority of Edmonds is zoned single-family residential. If WCFs are not allowed in single-family zones, companies would not be able to provide adequate coverage. In addition, excluding the facilities from residential zones would run a fowl of the FCC regulations.

Mr. Snyder summarized that there is nothing wrong with the City's current WCF Regulations. They meet FCC Guidelines and comply with State Law. The current regulations have been in place for 10 to 15 years, and staff is proposing some minor amendments to address the citizen concerns. However, the Board should keep in mind that the FCC Guidelines significantly limit the City's ability to address citizen concerns through amendments.

Mr. Clugston reviewed that the City Council asked the Planning Board to re-examine the existing siting requirements for WCFs within the City of Edmonds. He explained that WCFs located in zoned areas are regulated in Chapter 20.50 (Attachment 3) and WCFs within the City rights-of-way are regulated in the Utility Wires Chapter within the Public Works Code found in Title 18.05 (Attachment 4). He referred the Board to the changes staff is currently proposing and reviewed each as follows:

1. **Move the public meeting requirement to before a WCF application being submitted rather than prior to installation.** The current code requires an applicant to hold a public meeting with surrounding property owners within 300 feet, but the meeting does not take place until later in the process when it is often too late for citizen comments to impact an applicant's decision. Staff's thought is that it would be more useful to have citizen input upfront before a permit has been applied for.
2. **Specify that only micro facilities may be located on Public Utility District (PUD) poles.** As currently written, there does not appear to be a restriction on what can go on PUD poles located in a right-of-way since the right-of-way is not zoned. As per the current language, it appears that almost any type of facility can be retrofitted onto a PUD pole. Staff is suggesting this be limited specifically to micro facilities, which are the only ones identified in Chapter 20.50 as being allowed in single-family zones.
3. **Clarify how the height would be determined.** The City's current method for determining height is sketchy, and staff has attempted to update the language to provide clarify.
4. **Update the design review process from the ADB to staff.** In general, WCF applications would be Type I Administrative Permits, and staff would review the applications based on the design standards in Title 18.05.030.
5. **Update the variance provision to reflect changes in Title 20.** Title 18.05 talks about the variance provision, but it has not been updated to be consistent with recent changes to Title 20.
6. **Add design standards for retrofit appearance.** This amendment would provide general guidelines and examples of how a micro facility has to blend in with the pole or the background.

Vice Chair Lovell cautioned that what really drives WCFs is technology and, to a certain extent, the market. Whatever changes the City makes to their WCF Regulations must be consistent with the FCC Guidelines, which address safety, performance, technology, etc. He cautioned that the more regulations the City has, the more difficult it will be for staff to implement the requirements. He expressed his opinion that if the current regulations work, they should not be dramatically changed. However, he agreed with staff's 1<sup>st</sup> recommendation to change the language to address the issue of large pre-cast concrete towers being erected in residential neighborhood without any opportunity for surrounding property owners to comment. The earlier the public learns of a proposal, the better. He also agreed that the 6<sup>th</sup> recommendation would be

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appropriate to address aesthetic issues and require the facility to blend in with the existing neighborhood. He recommended no further changes be made if the regulations meet State Law and FCC Guidelines.

City Attorney Snyder explained that there are some things the City can encourage to help address citizen concerns. For example, they could do more to encourage the use of public property and co-location. He said it would be simple to implement a priority list that would require an applicant to first consider opportunities to locate within public property or to co-locate on an existing facility. Locating within single-family zones should be the last priority and only allowed when there are no other alternatives.

Chair Bowman asked if there are incentives the City can offer to encourage providers to consider opportunities to co-locate or locate on public properties first. City Attorney Snyder answered that establishing a priority list and requiring an applicant to consider other alternatives before allowing a WCF in a single-family neighborhood would be helpful. Conditional use permits are currently required for WCFs, and perhaps it would be appropriate for the City to eliminate this requirement when a WCF is located on public property. This would make the permit process much simpler by eliminating the public hearing requirement. He summarized that the City could make it more difficult to put WCFs in residential zones and easier to put them on public property.

Chair Bowman expressed his belief that in the future, fewer and fewer people will have land lines for their home telephone service. There will have to be adequate coverage in the residential neighborhoods to meet the needs of customers. A safety concern could arise if coverage is not available in the case of an emergency.

City Attorney Snyder recalled that in previous years it was popular for local jurisdictions to require providers to camouflage the poles, and sometimes the treatment created obnoxious situations. He noted that most cities have taller buildings that can accommodate three-foot panels to provide coverage, but the City's maximum 30-foot height limit makes this alternative difficult. He summarized that topography is a particular problem in Edmonds.

Board Member Reed recalled that a few years ago, the Board reviewed an application for a large concrete tower that was proposed to be placed in a residential neighborhood. The surrounding property owners ended up working out a solution with the provider to address their concerns. The newest situation involves a proposal to place a very tall tower in a residential neighborhood, and the neighbors did not receive notice until 10 days before construction was scheduled. He expressed his belief that requiring earlier notice would be appropriate to allow the community to work with providers at the earliest point possible.

City Attorney Snyder explained that there is an overlap between Chapter 20.50 and Title 18.05. The City has fairly good regulations for new facilities, but the requirements are less clear for proposals to locate on existing facilities. He suggested the citizens would prefer small WCFs on existing structures throughout the community rather than new, very large towers. He summarized that because of the City's existing topography, it is difficult to provide service to all areas. Using existing utility poles prevents the need to further intrude on residential properties.

Board Member Stewart asked if staff has considered giving encouragement in the language regarding the impact of WCFs under the Endangered Species Act, which speaks to the tower structures being in the way of flight patterns of endangered birds. In addition, the United States Fish and Wildlife Service published voluntary guidelines for the siting of towers, which address the potential impact on migratory birds. As a sustainability piece, it will be important to at least raise the issue to potential applicants. She said she likes the idea of co-location whenever possible. In the spirit of sustainability, it is important to keep in mind that large poles will remain into the future. She referred to an application checklist created by the City of Sammamish, which requires an applicant to consider environmentally sensitive areas when siting their facilities. Given that the City has so much natural area, she hopes they give an opportunity for potential service providers to do the right thing and perhaps even fill out an environmental assessment if necessary to make sure everything is mitigated appropriately. City Attorney Snyder explained that most utility structures fall below the State Environmental Protection Act (SEPA) thresholds, but many communities have added self-certification requirements to their application process to certify that a facility complies with all state and federal environmental laws and is properly located.

Board Member Reed referred to Chapter 20.50, which represents the City's current code language for WCFs. He noted that the language references "General Commercial (CG) zones as shown on Plate 5" quite often, yet there is no Plate 5 in the code at this time. He said the only CG zones he knows of are those in the Medical/Highway 99 Activity Center and along the Highway 99 Corridor. However, there is a currently an application to convert property near the waterfront to a CG zone. City Attorney Snyder agreed to check with the City Clerk to locate Plate 5.

Board Member Johnson referred to Attachment 1 (City Council Minutes of December 15, 2009) in which Mike Cooper indicated that an existing wood utility pole in his neighborhood was going to be replaced with an 88-foot pole. She also referred to Plate 2 in Chapter 20.50, which illustrates a microcell and indicates the equipment would be placed on a wooden utility pole at the 40-foot level, with some additional antenna. She suggested that perhaps the illustration is out-of-date with current industry standards because of the most recent application that called for a microcell to be placed on a large concrete tower. City Attorney Snyder clarified that the recent application was for a pole within the public right-of-way, which was subject to the Utility Standards in Title 18.05 rather than Chapter 20.50. He clarified that the issue of wooden versus concrete poles has been addressed.

Board Member Johnson said it has been previously stated that only one type of WCF, the microcell, would be allowed to locate in a single-family area. However, it appears that a monopole could be as close as 60 feet to the lot line of a residential home because of the fall zone. She expressed concern that the regulations that provide for safety within the fall zone give the impression that single-family zones are protected in some way, but that is not really the case. City Attorney Snyder said the City's ability to regulate issues related to the fall zone are governed by the State Electrical Code, which focuses on the safety of the installation and maintenance of the facilities rather than what would happen if they were to fall down.

Board Member Johnson referred to the memorandum from City Attorney Snyder regarding the rules related to WCFs. The memorandum referenced a 9<sup>th</sup> Circuit Court decision (Sprint) that said that certain zoning requirements such as camouflage, modest setbacks, height of the proposed tower, proximity of tower to residential structures, surrounding topography, and maintenance of the facility are reasonable conditions for the construction of a WCF and are not effective prohibitions. She asked if there is anything more the City can do to further regulate WCFs that has not already been done. City Attorney Snyder said this is a policy question the Board must address. They could decide to completely revise the WCF ordinance, perhaps using the sample ordinance from the City of University Place as a starting place. The University Place ordinance is a finely-tuned ordinance that offers a few more protections than the City's current ordinance. It address issues such as camouflage and co-location and also encourages the use of public property. Another option is to incorporate some of the staff's recommendations to tighten the City's existing ordinance. They could also include amendments that encourage providers to co-locate and to first consider opportunities to place the facilities on public property. Many communities have found that screening and camouflage are things of the past, and it is better to encourage smaller scale facilities. Board Member Stewart suggested the Board follow the latter suggestion and focus on addressing the issues of co-location, establishing a priority list to encourage location on public property, and moving up the public meeting requirement. The remainder of the Board concurred.

Chair Bowman asked if the City has the ability to determine the location of WCFs. City Attorney Snyder answered that the City can determine the location through an application process, but they cannot decide an application based on the location of a competitor's facility. Each company has the right to have its own working network.

Board Member Reed questioned if requiring a public meeting prior to an application would be too early. On the other hand, it is not appropriate for surrounding property owners to find out about a project just days before the installation is scheduled to occur. He suggested that perhaps there is some middle ground. City Attorney Snyder commented that perhaps establishing a priority list for potential locations may help address the problem. The reality is that once a provider has leased or negotiated a co-location agreement, the chance of moving the facility to address neighborhood concerns is slim. The best approach is to identify alternatives early in the process. In addition to an earlier public meeting to discuss alternatives, it would also be appropriate to require an applicant to focus on a priority list for location, starting with public property. The City could prohibit a WCF from encroaching upon a single-family neighborhood unless there are no other alternative locations. He cautioned, however, that the City must be careful with the pre-application meeting concept. State Law has extremely strong vesting requirements, and requiring an applicant to do something before filing an application and vesting a

permit would not be allowed. They must make sure the public meeting requirement is not tied to the vesting of the application.

Board Member Reed said he would support Recommendation 3 if staff feels it is necessary to clarify how height is measured. He suggested that providing clarity would help both the utility provider and the public understand the rules.

Board Member Johnson suggested that proximity of a WCF to a residential structure could be addressed in the zoning requirements. City Attorney Snyder clarified that if the Board wants to take this approach, they must restructure the entire ordinance to include a discretionary review process. He said that, typically, an ordinance of this type would prohibit structures of more than a certain height in single-family residential zones unless a provider can show there is a coverage issue. Implementing this concept would require a much more involved process. If that is what the Board wants to do, he suggested they use the University Place regulation as a starting point. At the request of the Board, Mr. Clugston agreed to forward a copy of the University Place Ordinance to each of the Board Members.

Mr. Clugston agreed that the Board could do a total rewrite of Chapters 20.50 and 18.05 and perhaps combine the material into a single chapter. However, he recommended the Board focus on addressing the issue of co-location and establishing a priority list to require applicants to consider opportunities to location on public property first. They could also consider an amendment that would move the public meeting requirement to earlier in the process. The Board agreed this would be the best approach. Mr. Clugston indicated he would prepare code language for the Board's review on June 9<sup>th</sup> in preparation for the public hearing that is scheduled for July 19<sup>th</sup>. He agreed to review the University Place Ordinance and incorporate the site selection and co-location criteria into the Chapter 20.50 language. Chair Bowman suggested the draft language also include incentives to encourage applicants to use small micro facilities as opposed to large monopoles.

City Attorney Snyder referred to the Anacortes court case, which clarifies the grounds on which a city may deny a WCF permit and the obligations of the parties to determine if there are alternative sites. He pointed out that providers have engineers on staff to evaluate their coverage, file applications and provide scientific evidence to support their applications. The burden then shifts to the surrounding property owners to complete scientific studies and challenge the applications in a short period of time. While the City could impose a technical requirement, he questioned if citizens have enough money to acquire scientific information in a timely fashion to create a record that would support denial of an application. He suggested the citizens would benefit more by having clear priorities and encouraging public comments early enough that the provider can address the concerns as part of an application.

### **DISCUSSION ON CIVIL ENFORCEMENT PROCEDURES**

City Attorney Snyder advised that civil enforcement provisions are common throughout the State. As per the City's current code, when someone violates a code requirement, the typical route of enforcement is for the City to notify the individual of the issue and then give an opportunity for the person to correct the problem. If the problem is not corrected, the City sends out a notice of violation, and a hearing is scheduled before the Hearing Examiner. At the hearing, the Hearing Examiner can issue a continuing violation, which requires that the person either correct the violation or be fined each day the violation continues. He said the current provisions were adopted in the 1990s because they saved the City time and money as opposed to prosecuting the violation in municipal court. However, in a November 2009 Decision, Post versus Tacoma, the State Supreme Court determined that in order to impose a penalty, a local jurisdiction must provide an individual notice and opportunity for hearing for each and every penalty that is levied. Fines cannot accrue based on one notice and hearing. The proposed amendments would update the City's civil enforcement procedures to be consistent with State Law.

City Attorney Snyder referred to the court case, Reidy versus Thuesen, in which Mr. Reidy feels that justice was not done to him in the code enforcement process. Since this court case, a number of changes were made to Title 18 to clarify the appeal route for all of the technical code provisions. City Attorney Snyder advised that he would prepare a draft ordinance for the Board's consideration at a future meeting that incorporates the decision made by the State Supreme Court, and also attempt to make the language more user-friendly to address issues raised by Mr. Reidy. He suggested that Mr. Reidy may come before the Board to share his experience. He may also provide other recommendations for potential code amendments to address his concerns.

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**CONTINUED DISCUSSION ON TEMPORARY EMERGENCY INDOOR (HOMELESS) SHELTER REGULATIONS**

Vice Chair Lovell referred to Section 17.105.020.B.1 and suggested that the words “discernable” or “readily identifiable” be inserted between “no” and “threat.” He expressed his belief that determining whether there is a threat to human life, health and safety is a judgment call. He referred to the City Attorney’s memorandum to Mayor Haakenson dated January 13<sup>th</sup>, which states that the City must use the least restrictive alternatives available to accomplish its purpose.

Vice Chair Lovell also referenced Section 17.105.020.B.3. As currently written, a building that is used as a public gathering place could become the location of a temporary shelter if the temporary shelter use would be less hazardous than the use for which the building was intended. City Attorney Snyder explained that the City is obligated to enforce the State Building Code, which includes requirements for sprinklers, etc. However, the City Council adopted Ordinance 3730, exempting existing buildings that would be used for indigent emergency shelter from the change in use requirements such as installing sprinklers. The State Statute requires that code deficiencies that are exempted pose no threat to human health or safety and the proposed emergency temporary housing must be less hazardous than the existing use.

City Attorney Snyder advised that the draft ordinance prepared by Mr. Park is based on State Statutes and creates a very specific way to regulate homeless shelters and facilities for indigent people during times when the temperatures drop. He cautioned that however the City handles this issue, their regulations must comply with State Statutes that may or may not meet current State constitutional limitations on church and state.

Vice Chair Lovell recalled that at the December 15, 2009 public hearing before the City Council, several church representatives and the Fire Marshall indicated that the City has the ability to make reasonable and intelligent decisions as to what can be done to make a facility safe. These issues can be worked out by the Building Official and the Fire Marshall. The reason there have been no homeless shelters in Edmonds to date is because the current code requires sprinklers, and most buildings that are suitable for homeless shelters do not have sprinklers. Again, he suggested the word “discernable” be inserted between “no” and “threat” in Section 17.105.020.B.1. To illustrate the intent of Section 17.105.020.B, he posed a hypothetical example of a church with a basement with an egress corridor that is only four feet wide. However, the hypothetical code requires the egress to be 5 feet wide. To make matters worse, the church stores boxes in the corridor near the door, effectively making the egress only 2.5 feet wide. He suggested that in this case, the Building Official and Fire Marshall could require the church to remove the boxes, mark the door and provide arrows to direct people to the point of egress. He suggested the language be changed to make the intent more clear.

Mr. Chave pointed out that language appears to be missing from the end of Section 20.105.020.A.

Board Member Reed suggested the term “emergency temporary indoor homeless shelter” be used consistently throughout the document. He also suggested that the term “emergency” should be further defined. Does it include only situations where temperatures reach below a certain level? Board Member Stewart referred to the last paragraph of Resolution 1213 (Attachment 7), which states that the City is in favor of taking the most aggressive course available to ensure the safety and shelter of individuals and families during cold weather months or times of calamity or natural disaster. She suggested the definition of “emergency” should include calamities and natural disasters in addition to cold weather situations. City Attorney Snyder agreed to consider a potential definition for “emergency.”

**CONTINUED REVIEW OF SIGN CODE (ECDC 20.60) RESTRICTION ON NUMBER OF SIGNS PER SITE IN COMMERCIAL ZONES**

Mr. Clugston recalled that at their April 14<sup>th</sup> meeting, the Board talked about revising ECDC 20.60, which restricts the number of signs per site in commercial zones. At this time, the code allows a maximum of three permanent signs per site, or one per business on commercial sites with multiple business tenants. He reviewed that the Board asked staff to provide additional information on how other jurisdictions regulate the number of commercial signs and whether it would be feasible to regulate the number of signs not only by zone but by district (i.e. Highway 99 vs. downtown). Additionally, they wanted to review local multi-tenant sites to gauge how the proposed changes would look when implemented. He reviewed the information he collected from other jurisdictions as follows:

- **Kirkland** (Attachment 1) identifies different sign types and specifies the number of signs allowed per type, depending how the sign is being used and where it is located. Except for residential signs, signs are not differentiated by zone or district.
- **Mukilteo** (Attachment 2) does differentiate by zone but not by district. The code proscribes maximum number of signs for commercial sites. Each site may have 1 pole sign, 1 monument sign, and at least 2 wall signs, which is something the Board discussed as a possible solution for the downtown and Highway 99.
- **Shoreline** (Attachment 3) differentiates the number of signs by zone, but not by district. Each business may have at least 1 freestanding sign, 1 wall sign, and 1 projecting sign. They do not discriminate between multi-tenant and single-business sites.
- **Mountlake Terrace** (Attachment 4) describes signs by zone and allows up to 4 wall signs per wall in commercial zones, as well as at least 1 freestanding or monument sign.

Mr. Clugston emphasized that, as in Edmonds, each of the jurisdictions has maximum area requirements limiting the amount of possible signage. While all the jurisdictions regulate signs in a different way, they all tend to be more flexible than Edmonds.

Mr. Clugston provided photographs of several downtown multi-tenant sites (Attachment 5) showing various existing signage. He particularly noted the building at the corner of Fifth and Main, which has a commercial use on the ground floor and residential above. He noted that the current code would allow each of the businesses in the building to have one sign. He noted that the Starbucks business has two permanent signs, as well as some temporary window signs.

Mr. Chave explained that there is currently a conflict within the existing regulations. One provision appears to allow more than one sign per business, but another limits the number of signs per business on a multi-tenant site to one. He advised that where there is conflict, the more liberal provision would apply. The purpose of the proposed code amendment is to clarify the conflict so it does not constantly come up. In addition, there is language in the code that states that signage in the window does not count against the total sign area allowed per site. However, another provision limits the number of signs to one and does not discriminate between permanent signs and temporary window signs.

Board Member Reed observed that developments on corner lots have two street frontages. He felt it would be appropriate to allow the businesses to have signs on both street frontages. Mr. Clugston referred to the Old Milltown Development, which actually fronts on three streets.

Chair Bowman said he is always looking for opportunities to provide more signage for his business to attract people who are driving down the street. He asked if the banner on the new ACE Hardware business is code compliant. Mr. Chave explained that temporary signs are allowed, but banners are not permitted on a permanent basis. Chair Bowman said people seem to complain more about the temporary signs than the permanent signs. Mr. Clugston reminded the Board that the current proposal would only address the number of signs allowed on a multi-tenant site. The Board could address the issue of temporary signs as part of an overall update of the sign code at some point in the future.

Board Member Reed questioned if the wording placed on windows would be counted as part of a business's total allowed sign area. Mr. Chave answered that the code contains provisions to regulate the size of window signs, which are usually temporary lettering that is easy to apply. There are general exceptions in the code for window signage. As long as it meets the requirements for how it relates to the size of the window, it is not counted against the overall sign area allowed for the site. At issue at this time are the more permanent signs. Mr. Clugston observed that, according to the code language in question, each of the individual words would be considered a sign, and that is one of the reasons the sign code has been difficult to implement. Mr. Chave agreed it would be wise to exempt window signs from counting against the total number of signs allowed for each business. He said it is important to clarify that they are talking about permanent signs and not window signs when referring to the overall sign area and number of signs. Again, he said window signs are regulated based on the size of the window.

Mr. Clugston reviewed the two options recommended by staff as follows:

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- **Option 1** would remove the maximum number of permitted signs in business and commercial zones, and each business would have a maximum amount of sign area to divide up into the number of signs they felt appropriate.
- **Option 2** would continue but extend the three signs rule to provide some additional flexibility in how multi-tenant sites are addressed. This option would allow up to three signs per business regardless of location and would provide for a directory-type sign for multi-tenant sites.

Mr. Clugston said he tends to favor Option 2, which would allow a maximum of three signs per business on a multi-tenant site. The maximum total of permanent sign area would remain unchanged. He said he would also support an amendment that clarifies that window signs would not count against the total sign area.

Mr. Chave noted that some businesses use incidental information signs (i.e. ATM signs, “open” signs), which would be inconsistent with Option 2. He suggested the language include a provision that while incidental signs would count against the total sign area, they would not count against the number of signs allowed.

Mr. Chave summarized that the codes they reviewed from other jurisdictions regulate the number of signs rather than the sign area, and staff believes it is important not to allow too many signs. Therefore, staff supports language that limits the number of signs to three per business. In addition, one freestanding sign per site should be sufficient, with the exception of very large sites with two or three street frontages.

Board Member Johnson referred to the pictures provided by staff of the Old Milltown development. She noted that the current code talks about determining the sign area allowed based on street frontage. She questioned how this would be applied to a two-story building with access points on multiple street fronts. Mr. Clugston answered that sign area would be calculated based on street frontage where the main entrance to the business is located.

Board Member Johnson said the ACE Hardware Store at Old Milltown clearly illustrates the problem with the current code language. The hardware store already has three signs, which is the maximum allowed for a single site under the existing code. Mr. Chave agreed. He pointed out that the current language clearly allows more than one sign per site, but it also only allows a maximum of three signs per site. The two provisions are clearly inconsistent.

Vice Chair Lovell observed that Option 2 would offer the most flexibility to address the common situations in the City. Mr. Clugston agreed and added that providing a maximum number of signs allowed per business would also make the code easier to implement. He suggested the Board recommend Option 2, with supplemental language related to window signs as discussed earlier. Board Member Reed concurred. Vice Chair Lovell asked if Option 2 would adequately address conditions on Highway 99, and Mr. Clugston answered affirmatively. As proposed, each subtenant would be allowed three signs and window signs would be exempt. The site could also have one directory or monument sign advertising all businesses in the development.

Vice Chair Lovell asked if there is other verbiage in the code that limits the sign size. Mr. Clugston said there are already provisions in the code that limit the total sign area, as well as the height and size of a sign. Mr. Chave concluded that the existing sign area provisions are working well right now.

Board Member Reed asked if there is a variance process for sign location. Mr. Chave answered that there is a variance procedure that allows an applicant to go before the Architectural Design Board if there are unusual circumstances on the site, and the general variance procedure also allows an applicant to go before the Hearing Examiner. However, this process is not used often because the variance criteria are very strict. He said that when a tenant of a multiple-tenant site submits a sign application that proposes to take up all the allowed signage for the entire building, staff requires them to check with their building owner to make sure the proposal is consistent. However, this process is not specified in the code, so it is sometimes challenged.

Board Member Stewart said she likes Option 2 because it gives the most flexibility to businesses. She suggested the language should also provide an incentive to give businesses that are trying to go green additional sign area if they use recyclable or eco-friendly signs. She reminded the Board that the Citizens Economic Development Commission has formed

a subcommittee to work on green business recognition, and perhaps it would be helpful to provide incentives for green businesses to locate in Edmonds.

Mr. Clugston summarized that staff would prepare draft code language based on Option 2, including language to remove window signs from the number of signs allowed and the total sign area. He expressed his belief that allowing a business up to three signs would address situations where a business has multiple street frontages.

### **CONTINUED REVIEW OF TITLE 20 PROCEDURES**

Mr. Clugston recalled that the Commission previously reviewed proposed amendments to Title 20 that would result in staff reassuming the public notice requirements for project applications. The current process, which makes applicants responsible for sending out public notice, is difficult for staff to administer. The intent of the proposed amendment is to bring this responsibility back into staff's purview. They also reviewed amendments that would reorganize and clarify some portions of the text to make it flow better and make it easier to administer.

Mr. Clugston recalled that the Board previously reviewed proposed amendments to update the permit type matrix to more accurately reflect what the City does. The Board pointed out that as a result of the City Council's decision to hold closed-record appeals of quasi-judicial applications, all Type III-A permits identified in the matrix were changed to TYPE III-B permits. The Board suggested staff consider eliminating the Type III-A category. However, after further review, staff found there are still some processes that fall within the Type III-A permit category but have not been included in the matrix. For example, outdoor dining requires a conditional use permit, which can be reviewed by the Hearing Examiner if an applicant wants to exceed a certain threshold. This type of application is listed in the code language as a Type III-A Permit. Another example of a Type III-A Permit is the technology and practicality waiver for amateur radio antennas in single-family zones. The waiver provision allows an applicant to request a conditional use permit from the Hearing Examiner. Mr. Clugston suggested that these types of permits could be added to the matrix to make it clear there are still some Type III-A procedures.

Board Member Reed agreed that these types of procedures should be listed on the matrix. He reminded the Board that the matrix is intended to be all-inclusive. Mr. Clugston said there are likely other procedures in the code that are not referenced on the matrix. The Board agreed it would be appropriate to reference all procedural types on the matrix.

Mr. Clugston said that while the Board was generally satisfied with the proposed updates, they wanted to revisit the role of the Council in closed-record appeals. He reminded the Board that the proposed amendments incorporate the City Council's recent decision regarding their role in closed-record appeals. At the request of the Board, staff provided a document (Attachment 1) outlining the pros and cons of City Council involvement in quasi-judicial decisions. They also provided summary documents (Attachment 2) from the Washington Cities Insurance Authority (WCIA) regarding municipal claims and losses, including those from land-use decisions. As per the Board's request, staff provided an assessment of the numbers of closed-record appeals that have gone to the City Council and their outcome. He reported that since 2005, there have been six closed-record appeals heard by the City Council. Of those, one was remanded back to the Hearing Examiner and another was remanded to the Architectural Design Board. In each case, the decision maker reversed their original decision. There were three appeals where the City Council affirmed the Hearing Examiner's decision and denied the appeal. There was also one appeal where the City Council reversed the Hearing Examiner's decision and upheld the appeal.

Chair Bowman observed that in recent years, there have not been a significant number of land use applications due to the poor economy. He suggested there were likely more quasi-judicial appeals in years prior to 2005. Mr. Chave explained that there are not typically a large number of appeals to the City Council regardless of activity levels. However, he agreed to provide the Board with information dating back to 1999.

Mr. Clugston recalled the Board requested staff provide examples of how other jurisdictions deal with closed record appeals. He referred to Attachments 4 through 6, which outline how Mukilteo, Mountlake Terrace and Shoreline treat appeals. He summarized that some have closed record appeals to their City Council and some do not.

Vice Chair Lovell requested information about how staff developed the list of pros and cons of City Council involvement in quasi-judicial decisions (Attachment 1). Mr. Chave said he was the author of the list, and the information came from

hearings that were conducted years ago on the role of the Hearing Examiner and City Council in decision making. He recalled that there was an extended period of public hearings regarding the matter. The document was prepared to encapsulate the arguments on both sides in a simple manner. Vice Chair Lovell said that after reading the document, he has a hard time understanding why anyone would support closed record appeals before the City Council. Board Member Reed recalled that the document was helpful in the Board's previous discussions and was a key reason why they recommended 6-1 that a change be made. The City Council adopted the Board's recommendation by a vote of 4-3. However, this decision was overturned by a new Council in 2010.

Mr. Clugston agreed to prepare draft code language for the upcoming public hearing before the Board on June 9<sup>th</sup>.

### **REVIEW OF EXTENDED AGENDA**

Mr. Chave advised that he has been working with the Chair and Vice Chair to make minor tweaks to the extended agenda as additional items come up. He complimented the Board for moving through the large number of items on their agenda.

Chair Bowman reminded the Board that they previously discussed a desire to hold a retreat as soon as possible. The Board considered potential dates and directed staff to schedule the retreat for June 2<sup>nd</sup> at 6 p.m. in the Fournier or Brackett Room of City Hall.

### **PLANNING BOARD CHAIR COMMENTS**

Chair Bowman did not have any additional comments at this point of the meeting.

### **PLANNING BOARD MEMBER COMMENTS**

Board Member Johnson announced that the Port of Edmonds would conduct a public open house on Wednesday, May 5<sup>th</sup>, from 6:00 to 9:00 p.m. in Building 2 at Harbor Square. Board Member Reed advised that the Port is considering the option of applying for a rezone for the Harbor Square Property. If they move forward with a rezone, the issue would come before the Board as a quasi-judicial public hearing. He cautioned the Board about the Appearance of Fairness Rules regarding quasi-judicial hearings.

Board Member Johnson reported on her attendance at the April 21<sup>st</sup> Citizens Economic Development Commission (CEDC) meeting, where each of the four subcommittees provided the following report:

- **Strategic Planning and Visioning Subcommittee:** This group is meeting weekly to develop a recommendation to the City Council regarding why strategic planning is needed, what process should be developed, and what should be included in the plan.
- **Technology Subcommittee:** This group is focusing their efforts on a business plan for the City's fiber optic capability.
- **Land Use Subcommittee:** This group has the responsibility of initiating neighborhood business center plans for Five Corners and Westgate to position the areas to attract redevelopment. They will ask the City Council to retain a consultant to work with City staff to facilitate a design and planning policy for the area that would result in forming design standards and facilitating a review process by November 1<sup>st</sup>.
- **Tourism Subcommittee:** The Google Corporation wants to invest a great deal of money in a super high-speed internet test case, and Edmonds is one potential site. The subcommittee went on a field trip to Portland and met with their mayor, who said their sustainability program drives all decision making in their city.

Board Member Stewart said numerous people have expressed appreciation for Board Member Johnson's willingness to attend the CEDC meetings on behalf of the Board. They appreciate the input she has provided, and feel it would be helpful for the Board to provide a consistent Board representative to attend the meetings. Board Member Johnson said that although she has not been appointed as a member of the CEDC, she serves as a Planning Board Liaison. She asked if it would be appropriate for her to let the CEDC know of upcoming Planning Board hearings. The Board agreed that would be appropriate.

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The CEDC also discussed the option of sponsoring a large marching band competition in Edmonds during the 4<sup>th</sup> of July Parade, and there was also some discussion about expanding sporting events in the City to have a trickle-down effect on the economy. It was explained that when sports participants come for a weekend, they must have places to stay and eat, and their family members may also be looking for activities.

Board Member Reed reported that he spent the past weekend in Seabrook, Washington, in a rental home. He noted that Seabrook has a promotional program that provides materials such as “101 Things to Do In and Around Seabrook.” He suggested that perhaps a program of this type would work in Edmonds, as well. He said he would collect materials from their marketing program.

Vice Chair Lovell announced that there would be a special City Council Meeting on Friday, April 23<sup>rd</sup>, regarding the Skippers Property. The meeting would start at 9:00 a.m. as a closed session, and the open public session would begin at 9:45 a.m.

Board Member Stewart reported on her attendance at the Earth Day event that was sponsored by Sustainable Edmonds, where a good presentation was provided on what is happening with climate change as it relates to Edmonds. Board Member Cloutier, a member of the Mayor's Climate Protection Committee and Sustainable Edmonds, moderated the Earth Day event. Wes Gallagher, a member of the Mayors Climate Protection Committee, provided an overview of the Climate Action Plan, and the participants were divided into subgroups to discuss potential mini action items that could be accomplished. She said that both she and Board Member Johnson helped facilitate the subgroups. She said it was interesting to participate with others to identify doable action items that can positively impact the City’s carbon footprint and greenhouse gas emissions. She summarized that her group recommended targeting residents of the City and encouraging them to reduce their energy use. They recommended that a checklist be provided to help residents measure their success.

Board Member Stewart said she also attended a workshop entitled, “Climate Change in a Changing World,” which was sponsored by the National Association of Interpretation of which she is a member. A member of a climate impact group from the University of Washington made a presentation at the workshop, zeroing in on the specific impacts of climate change on Puget Sound. The presenter emphasized that based all the compelling data, it is estimated Puget Sound will experience a six-inch sea level rise by the year 2050 caused by tectonics and sinking land and the actual rise of water levels as a result of glacial melt and warming of the ocean temperature. The presenter explained that given the mean level temperature in the northern latitude, the impacts will be greater than those areas near the equator. She emphasized that it is important to consider climate change as an incentive in all planning.

Chair Bowman reported that his building, C’est la Vie, and the Arista Wine Cellar building will be the first structures in Edmonds to have the energy survey. Their goal is to cut their energy consumption by 10% right away. He noted that Board Member Cloutier, a member of the Mayors Climate Protection Committee, is helping them with the project. The pilot program will last for six months.

## **ADJOURNMENT**

The Commission meeting was adjourned at 9:43 p.m.

**APPROVED**